

IN THE SECOND JUDICIAL CIRCUIT
STATE OF ALABAMA

ADMINISTRATIVE ORDER

An Order Relating to Virtual Court Hearings

WHEREAS, the Supreme Court of Alabama issued an administrative order dated March 13, 2020 that “. . . [a]ll in-person proceedings in all state and local courts in Alabama, including, but not limited to, proceedings in the circuit court, district court (including cases on the small claims docket), juvenile court, municipal court, probate court, and appellate courts, are suspended beginning Monday, March 16, 2020 through Thursday, April 16, 2020, subject to [certain] exceptions . . .”; and

WHEREAS, in the above-referenced administrative order, the Supreme Court of Alabama expressly provided in the order that “. . . all judges and clerks are urged to limit in-person courtroom contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing . . .” and further provided that “. . . [t]his order expressly does not prohibit court proceedings by telephone, video, teleconferencing, or other means that do not involve in-person contact. . .”; and

WHEREAS, Supreme Court of Alabama Chief Justice Tom Parker issued an order dated March 24, 2020, for court reporters in a hearing using audio-video communication technology to administer oaths to witnesses who are not physically present before the court reporter; and for trial courts to consider the testimony of those witnesses as evidence; and

WHEREAS, after consultation with all other judges of this Judicial Circuit, the following rules are deemed necessary for the local implementation of virtual court hearings;

It is therefore ORDERED that until April 16, 2020 or during any subsequent period of time the Supreme Court of Alabama shall suspend or partially suspend in-court proceedings, the following rules and guidelines are hereby adopted and shall be followed by all parties appearing for any hearing or trial that is presently pending or hereinafter filed in this Judicial Circuit in which sworn testimony is taken by the use of video conferencing or audio conferencing equipment.

1. Definitions:

The term "*video conference*" means the use of any interactive technology that sends and receives video, audio, and data so that two or more individuals can communicate with each other contemporaneously from different locations using cameras, microphones, speakers, cell phones or telephones, and computer monitors or screens that allow the individuals participating to view and hear each other.

The term "*audio conference*" means the use of any interactive audio technology, including a cell phone or telephone, that permits two or more individuals to contemporaneously speak with each other from different locations.

2. Each judge of this Judicial Circuit shall have the discretion to require that any non-jury court proceeding be conducted by video conference or audio conference. Except as otherwise provided by law or separate Supreme Court of Alabama order, every court proceeding conducted by the use of video conference or audio conference shall conform to the requirements of the above-referenced administrative orders. These proceedings shall hereinafter be referred to as "virtual court hearings."

3. Virtual court hearings may be scheduled and held in all non-jury cases, including, but not limited to, pendente lite hearings in domestic relations cases; domestic relations trials;

contempt hearings; modification hearings; civil motion hearings; child-support hearings; parentage hearings; hearings for injunctive relief; civil non-jury trials; small claims proceedings; traffic dockets; all juvenile case proceedings, including, but not limited to, detention and shelter-care hearings, adjudicatory hearings, disposition hearings, reviews, permanency hearings, aftercare hearings, and termination-of-parental rights hearings; criminal proceedings, including, but not limited to, initial appearance hearings, arraignments, preliminary hearings, hearings on motions to reduce bond, hearings on motions to revoke bond, probation hearings, probation revocation hearings, youthful offender hearings, hearings on habeas corpus petitions, and hearings on petitions for post-conviction relief. The above list is not intended to be an exclusive or exhaustive list but is offered merely as examples of the kinds of proceedings that may be conducted by use of a video conference or an audio conference.

4. All virtual court hearings must be conducted with Zoom software unless the judge presiding over the hearing authorizes the use of a different software or technology that has been deemed trustworthy and reliable for court use.

5. All counsel of record and all self-represented litigants shall be timely notified of the date and time of a scheduled virtual court hearing via Alacourt.com, e-mail, regular mail or as otherwise allowed by the Alabama Rules of Court or by statute.

6. A subpoena issued for the appearance of a witness at a virtual court hearing shall clearly state the address that the witness will need to appear to offer sworn testimony. Typically, this location will be the law office address of the attorney who requested the subpoena but may be any location designated in the subpoena. Further, each subpoena issued for a virtual court hearing shall contain a prominently-displayed notice that “all witnesses are required to bring to the virtual court hearing a government-issued photo ID.” The government-issued photo ID shall

be shown to the court reporter who is transcribing a video conference proceeding before the witness is administered his or her oath if the video conference proceeding is one in which a court reporter is present.

7. All counsel of record and all self-represented parties shall provide the court clerk with an e-mail to be used to correspond with the attorney or self-represented party in the event a virtual court hearing is held in a case. All counsel of record and all self-represented litigants are hereby ordered to provide written verification of their e-mail address to the court clerk within 10 days from the entry of this order, if not previously provided. The court clerk shall provide a copy of this order to all attorneys of record and to each self-represented litigant who does not currently have an e-mail listed in the case record.

In the event an attorney wishes to withdraw from a case, the motion to withdraw shall contain a certification that the attorney has notified his or her client of the requested withdrawal, that the client has been informed of all pending hearings or trial dates, and that the attorney has notified the client that it is the client's responsibility to immediately contact the court clerk to provide a current address and email for future court hearings, including virtual court hearings. If counsel is unable to communicate with his or her client, the attorney shall provide a brief account of attempts made to notify the client of his or her intent to withdraw and of the client's responsibility to provide the court clerk with a current mailing address and e-mail.

8. All persons appearing for a virtual court hearing at an office or other location shall adhere to the protocols adopted by the Center for Disease Control to limit the transmission of COVID-19, including maintaining a social distance of at least six feet, to the fullest extent practicable.

9. If a party wishes to request that a case be set for a virtual court hearing that has not already been set by the judge or if a judge or referee wishes to conduct a hearing or proceeding listed in one of the exceptions in the administrative orders dated March 13, 2020, March 15, 2020, and March 16, 2020, counsel for the party making the request shall first confer with counsel of record for all other parties involved (or if a party is a self-represented litigant, then directly with the self-represented party), or, if it is a hearing or proceeding listed in one of the exceptions, counsel for all the parties and/or self-represented litigants shall be notified, and determine whether all parties consent to holding a virtual court hearing. Each party shall thereafter file a notice with the court clerk, giving consent to the virtual court hearing or objecting to the hearing. In the event an objection is made to the virtual court hearing, the party making the objection shall state specifically each and every basis for the objection, and the judge or referee presiding over the case shall make a determination whether the virtual court hearing should be conducted.

10. With respect to all civil cases, including small claims cases, and domestic relations cases, a party filing a request to schedule a virtual court hearing shall first certify to the court in writing that he or she has made a good faith attempt to communicate with the opposing attorney or self-represented litigant in an effort to resolve the matters in dispute *prior* to filing a request to set for hearing and shall briefly describe the efforts made to communicate with opposing counsel or any self-represented party.

11. Procedure for Virtual Court Hearings. The judge assigned a case will schedule a virtual court hearing and notice of the date and time for the proceeding will be provided to all parties by Alacourt, by e-mail, by mail or as otherwise allowed by the Alabama Rules of Court or by statute. Counsel shall contact his or her client and arrange for the client and all of the

client's witnesses to appear at the attorney's office or other designated location AT LEAST 30 minutes before the proceeding is scheduled to commence. Counsel for the parties shall ensure that all necessary equipment and software are in proper working order prior to the time of the scheduled hearing and that bandwidth is adequate for video conferencing. Self-represented litigants shall contact the court clerk's office at least seven days prior to the scheduled virtual court hearing, except when the times have been shortened due to the necessity of scheduling an emergency hearing, and notify the court clerk in writing whether he or she has the ability, equipment, software and bandwidth required to participate in the virtual court hearing and, if so, shall confirm that the court clerk has the e-mail he or she will use to connect with the videoconference. If a self-represented litigant notifies the court clerk in writing that he or she does not have the knowledge, equipment, software, or bandwidth necessary to proceed with the virtual court hearing, the judge or referee presiding over the case may hold an audio conference with all parties and counsel of record to determine the best way to proceed. The judge and parties shall explore other possible options for conducting a virtual court hearing, including the use of the local access computer and any other available local facilities that may be equipped with the appropriate technology for virtual court hearings. Failure to attend and/or cooperate in the virtual hearing may result in contempt proceedings being initiated against the party, attorney, witness, or other person asked to attend.

It is the responsibility of the parties, whether represented by counsel or representing themselves, to have all of their material witnesses present at a virtual court hearing. Each witness who appears must have a government-issued photo ID with them at the time of the proceeding or the witness will not be allowed to testify, except by consent of all parties or with another acceptable proof of identification.

At the time the virtual court hearing is scheduled to begin, the judge or a member of the judge's staff will connect with all parties using Zoom. Once it has been determined by the judge that all necessary individuals are present and able to see and hear what is transpiring at the proceeding, the hearing shall progress as though the parties were physically present, subject to the rules specifically adopted for virtual court hearings.

In cases in which a court reporter is usually present, before the video conference proceeding begins, the judge shall obtain the verbal consent of all the parties and attorneys on the record to have the court reporter take down the record despite the fact that the court reporter may not be in a physical courtroom as provided in Section 12-17-275, Ala. Code 1975. Once all the parties and attorneys consent, the court reporter shall be present throughout the video conference proceeding and able to see and communicate with every witness who appears remotely using Zoom software. Prior to a witness's testifying, the court reporter shall ascertain the identity of the witness and administer the oath to the witness remotely. At all times during the witness's testimony, the court reporter shall be able to see, hear and communicate with the witness who is testifying. The court reporter shall record the video conference proceeding just as though the proceeding were being conducted with all parties and counsel appearing in person, but, if the court reporter is requested to transcribe the record, the court reporter shall reflect in the transcript that the transcript was made with all individuals appearing remotely with video conferencing.

12. Criminal and Juvenile Proceedings. Virtual court hearings in criminal and juvenile cases shall proceed in a manner consistent with the procedures described in the above paragraphs, subject to the additional safeguards provided herein when a defendant or alleged delinquent child is not physically present in the same room with his or her attorney during a virtual court hearing. Virtual court 72-hour detention hearings or pleas taken at these hearings in

juvenile delinquency cases must meet the legal requirements set out by Order of the Supreme Court of Alabama dated June 22, 2006 (and extended by Orders dated June 3, 2008, April 19, 2011, September 17, 2014, and April 17, 2017), the Court's Guidelines for Videoconferencing Detention Hearings (Temporary), and the Alabama Judicial System Polices, Procedures and Guidelines Governing Videoconferencing Appearances in Juvenile Courts which was approved by memorandum dated September 4, 2009. Further, with respect to all virtual court hearings held in juvenile or youthful offender cases that are considered confidential by law, the judge presiding over the case shall initiate the virtual court hearing using additional privacy measures provided by Zoom to make the virtual court hearing confidential.

A defendant in any criminal case may waive his or her right to be present at a virtual court hearing. However, if a defendant is incarcerated in the Butler, Crenshaw or Lowndes County Detention Facility and does not waive his or her right to be present, the defendant shall be brought into the jail or detention center's on-site audio/video room before the hearing begins and shall be connected to the virtual court hearing so that he or she is capable of hearing and seeing everything that transpires during the virtual court proceeding. Further, the defendant shall be afforded an opportunity at any time during the virtual court hearing to communicate privately with his or her attorney either in person or by use of a phone or video software that ensures confidentiality of the communication and the defendant shall be informed by the court of this right before the virtual court hearing commences.

13. Procedure in Criminal Cases for Guilty Plea Hearings. If the State and the defendant reach a plea agreement, the agreement shall be reduced to writing and signed by all parties and counsel of record. The attorney for the defendant shall submit the signed agreement to the judge assigned to hear the case, along with all other properly executed forms required for the court to

accept the defendant's guilty plea. Once it has been determined that all necessary paperwork has been submitted, the judge will schedule a virtual court hearing date and time and notice provided to all parties.

14. For defendants on bond at time of plea. If a defendant is not incarcerated, the attorney for the defendant shall contact his or her client and arrange for the client to appear at his or her attorney's office AT LEAST 30 minutes before the scheduled time for the hearing. The attorney for the defendant shall verify that all necessary equipment and software are in proper working order prior to the time of the scheduled court hearing. Either the judge taking the guilty plea or a member of the judge's staff will connect with the defendant and the District Attorney's Office using Zoom software. Once it has been determined by the judge that all necessary individuals are present and able to see and hear what is transpiring at the plea hearing, the judge shall proceed to take the defendant's plea after first determining that the plea is freely, knowingly, intelligently, and voluntarily made and all other requirements for entry of the guilty plea have been satisfied. Where applicable, a court reporter shall be present throughout the video conference proceeding and able at all times to see and hear the defendant who is entering a guilty plea and shall transcribe the hearing just as though the hearing were conducted with all parties and counsel appearing in person. It shall be the responsibility of the prosecutor to contact any victim that may require notification of the plea hearing and arrange for the victim to appear at the District Attorney's office for the virtual court hearing or in such other location approved by the judge accepting the guilty plea.

If a plea agreement calls for a defendant to serve a jail or prison sentence, the Sheriff shall be informed in advance of the date, time and physical location of the defendant at the time the plea is entered so that a deputy will be on hand to take the defendant into immediate custody.

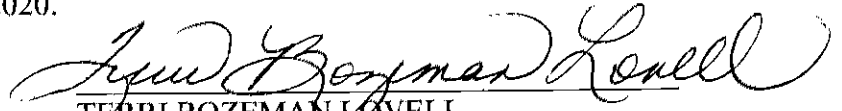
If the plea agreement calls for probation or an application for probation has been made, the defendant shall immediately report to his or her probation officer.

15. For Incarcerated Defendants. The general procedure outlined above for taking guilty pleas by video conferencing shall apply when a defendant is incarcerated in the Butler, Crenshaw or Lowndes County Detention Facility at the time of his or her guilty plea. The jail or detention center shall utilize Zoom software at its on-site audio/video room, which the court hereby designates as a temporary courtroom, so that pleas can be taken without the defendant's being transported to the courthouse. Other videoconferencing software also may be used at the discretion of the judge accepting the guilty plea. The attorney for the defendant may appear with the defendant at the jail or detention center or may appear from another location, provided that the defendant's right to communicate privately with his or her attorney is preserved. Each defendant entering a guilty plea shall be afforded an opportunity at any time during the plea to communicate privately with his or her attorney either in person or by use of a phone or video software that ensures confidentiality of the communication.

16. If the judge presiding over a virtual court proceeding determines at any time that the audio or video connection is so poor as to interfere with the fair administration of justice, the hearing shall be postponed until such time as a better connection can be obtained or the matter can be set for an in-court proceeding. However, it shall be the responsibility of a party or counsel for a party to *promptly* inform the court if there has been a disruption at their end of the communication that substantially interferes with their ability to see or hear what is occurring during the video conferencing. An objection to the quality of a video conference or an audio conference will be deemed untimely if made after a court has entered an order or ruling on the matter that is the subject of the virtual court hearing.

It is ORDERED that the Circuit Clerk shall provide the Alabama Administrative Office of Courts with a copy of this Order which Office will in turn send a copy to the Alabama State Bar Association.

Done this the 1st day of April, 2020.



TERRI BOZEMAN LOVELL
Presiding Circuit Judge
Second Judicial Circuit, State of Alabama

