

IN THE CIRCUIT COURT OF
LEE COUNTY, ALABAMA

ADMINISTRATIVE ORDER

An Order Relating to Virtual Court Hearings Before the
(Non-Family) Circuit Court of Lee County, Alabama

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, Supreme Court of Alabama Chief Justice Tom Parker issued an order dated March 24, 2020, for court reporters in a court proceeding 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

It is therefore ORDERED that until April 30, 2020, or during any subsequent period of time the Supreme Court of Alabama shall suspend or partially suspend in-court proceedings and allow for court hearings to be conducted by audio conference or video conference, the following rules and guidelines are hereby adopted and shall be followed by all parties appearing for any hearing or trial at 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.

The term "*party*" means a litigant, either self-represented or by and through counsel.

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 administrative orders issued by the Supreme Court of Alabama and Supreme Court of Alabama Chief Justice Tom Parker. 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; protection-from-abuse hearings; child-support hearings; civil non-jury trials; small claims proceedings; traffic dockets; all juvenile case proceedings, 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, and hearings on petitions for post-conviction relief. The above list is not intended to be exclusive.

4. All virtual court hearings with video capabilities 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 parties 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. Subpoenas. A subpoena issued for the appearance of a witness at a virtual court hearing shall clearly state the address at which 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 as permitted by this order. The subpoena also shall inform the witness that he or she has the option of testifying from his or her home or other location of his or her choice, provided the witness has: (i) a computer, smartphone, tablet, or other device with video conference capabilities (camera, microphone and monitor), (ii) free Zoom video conference software or such other video conference software permitted by the trial judge, (iii) an e-mail address and (iv) internet service with sufficient broadband for a video conference. If the virtual court hearing has been designated by the trial judge as an audio hearing only, video capability is not required.

The subpoena also shall instruct the witness that if he or she intends to testify, the witness must immediately contact the law office or person requesting his or her appearance and provide an e-mail address and telephone number where the witness can be reached during the scheduled virtual court hearing. It is the responsibility of the person requesting the subpoena to confirm

each witnesses' ability to participate in a video or audio conference. If the witness is not able to participate in the virtual court hearing from his or her selected location, it is the responsibility of the person issuing the subpoena to make arrangements for the witness to appear at a location having sufficient video conference or audio conference capabilities.

At least seven days prior to the scheduled virtual court hearing, each party shall file a list of witnesses who will be called to testify. The list shall include: (i) the name of each witness, (ii) telephone number where the witness can be reached at the time of the virtual court hearing and (iii) his or her e-mail address. If the identity of a witness is unknown to a party seven days prior to the virtual court hearing, this information shall be provided as soon as it is determined the witness may testify.

If the witness sequestration rule is invoked at a virtual court hearing, all witnesses testifying must be located so as to be unable to hear the testimony of other witnesses, except as may be otherwise agreed by the parties on the record. If necessary, witnesses may be telephoned and prompted to log onto the video conference or audio conference when it is time for the witness to give his or her testimony. A witness may also be placed on hold by the judge at any time that a discussion is needed to be held out of the presence and hearing of a witness.

Notwithstanding the foregoing, a witness need not appear at a location other than his or her residence if, at the time of the scheduled virtual court hearing, the witness is: (1) running a fever, (2) is in quarantine due to possible exposure to someone testing positive for COVID-19, (3) is over the age of 60 years or has an underlying medical condition that would create a greater risk to the witness if exposed to COVID-19, (4) if sick, or (5) pursuant to the statewide Order of the State Health Officer Suspending Public Gatherings Due to Risk of Infection by COVID-19 Amended April 3, 2020. Each subpoena issued for a virtual court hearing shall contain a

prominently-displayed notice that “all witnesses are required to have in their possession a government-issued photo ID to establish his or her identity at the virtual court hearing.” Before a witness is administered his or her oath and allowed to testify, the government-issued photo ID shall be shown to the court reporter who is transcribing the proceeding.

7. All persons appearing for a virtual court hearing at an office or other location shall adhere to the protocols adopted by the Centers 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.

8. Request for Virtual Court Hearing.

If a party wishes to request a virtual court hearing the request shall file a request. If objecting a party shall do so within seven days and cite each basis for the objection. The judge will then determine whether the virtual court hearing should be conducted. This requirement shall not apply to protection-from-abuse cases.

Those types of hearings exempted from the in-person suspension orders of the Supreme Court of Alabama will be held in the courtroom unless: (i) all parties to the proceeding waive their right and agree to a virtual court hearing, or (ii) the judge makes a determination that a virtual court hearing is necessary to safeguard the health of the public and/or those individuals involved in the court proceeding.

Procedure for Virtual Court Hearings. The date and time for the proceeding will be provided to all parties by Alacourt.com, regular mail, e-mail, or as otherwise allowed by the Alabama Rules of Court, statute or administrative order of the Alabama Supreme Court. Each party shall arrange for all witnesses to appear at the attorney’s office or other designated location so that AT LEAST 30 minutes before the proceeding is scheduled to commence, a “test run” can

be made. The parties shall ensure that all necessary equipment and software are in proper working order prior the scheduled hearing. Self-represented litigants shall file, at least seven days prior to the scheduled virtual proceeding, (except when the times have been shortened due to necessity) a notice of whether he or she has the ability, equipment, software, and bandwidth to participate in the virtual court hearing and, if so, shall confirm the e-mail address he or she will use to connect with Zoom and a telephone number by which he or she can be reached during the virtual court hearing. If a self-represented litigant notifies the court that he or she does not, the judge may hold a telephone conference to determine the best way to proceed.

It is the responsibility of the parties to have all witnesses present at a virtual court hearing. Each witness who appears must have a government-issued photo ID or the witness will not be allowed to testify, except by consent of all parties or leave of the Court. Before the virtual court hearing is scheduled to begin, each party shall contact each of their respective witnesses and place them on standby to give their testimony.

The judge will connect with all parties using Zoom software, for both the test run and actual conference. Once it has been determined that all necessary individuals are present and able to see and hear what is transpiring the hearing shall progress as though the parties were physically present, subject to the rules specifically adopted for virtual court hearings. Unless other arrangements are made, the Court shall place witnesses in the Zoom virtual waiting room until called to testify.

When a witness is called, the judge will remove the witness from Zoom hold. Each party may contact the witness by telephone, if necessary, to determine the cause of any problem and assist with possible solutions. At the conclusion of a witness's testimony, the witness will be

excused or instructed by the court to remain on call pending further instructions from any party who has indicated further testimony may be needed from the witness.

Virtual Court Hearings with Court Reporter. If a court reporter will be recording the virtual court hearing by videoconferencing, before testimony or other evidence is taken the judge shall obtain the verbal consent of all the parties on the record to have the court reporter create a record, even though the court reporter may not be physically present in a courtroom as provided in Section 12-17-275, Ala. Code 1975. Once all parties consent, the court reporter shall be present throughout the video conference and able to see and communicate with every witness who appears remotely using Zoom software. The court reporter shall ascertain the identity of the witness and administer the oath to the witness remotely. At all times the court reporter shall be able to see, hear, and communicate with the witness who is testifying. The court reporter shall record the virtual court hearing just as though the hearing were being conducted with all parties appearing in person. If the court reporter is asked to transcribe the record, the transcript shall reflect that it was made with individuals appearing remotely via video conferencing, and specify those individuals who were physically present with the court reporter during the virtual court hearing.

Virtual Court Hearings in Which No Court Reporter is Present. In any virtual court hearing in which a court reporter is not present to record the proceeding, the hearing may be recorded in any manner permitted by statute, rule, or administrative order of the Supreme Court of Alabama. Before the virtual court hearing begins, the judge shall explain to all counsel of record and to the parties the process that will be used to make a record of the hearing and obtain the verbal consent of all parties to the recording method being employed. Further, all witnesses

appearing for the virtual court hearing may be administered the oath by the judge presiding over the hearing or as otherwise permitted by statute, rule, or administrative order of the Supreme Court of Alabama and the consent of all parties to this procedure shall also be obtained prior to taking evidence in the virtual court hearing.

Recordings Prohibited. No electronic device or other means may be used by a party, attorney, witness, or any other person to capture images, videos, or sound recordings of any portion of a virtual court hearing without the express written consent of the judge. Any person violating this rule may be held in contempt of court.

Exhibits. Unless scheduling or other order dictates otherwise, no later than seven days before a scheduled virtual court hearing (emergency hearings excepted), the parties shall confer with one another regarding the use of exhibits at the virtual court hearing and stipulate to the admissibility of any proposed exhibit, to the extent they are willing to do so. Those exhibits will be deemed admitted.

Exhibits Capable of Being Displayed in an Electronic Format. Each party shall cause an exact copy to be made of all photographs, videos, and documents intended to be used at a virtual court hearing. The original and each copy of the original shall be pre-marked with the same number. Each marked exhibit shall also clearly identify the party offering the exhibit. All originals shall be retained by the proffering party and copies of the exhibits (hereinafter referred to as “court copies”) shall be placed in either a sealed envelope or box and mailed or delivered to the court reporter who will transcribe the virtual court hearing. The court reporter shall keep the court copies in a secure location and shall not open them before the virtual court hearing. At the virtual court hearing the court reporter shall unseal the court copies for the judge to view during the hearing. If a court reporter is not present at the virtual court hearing to record the proceeding,

all court copies shall be delivered to the judge presiding over the hearing, who will open the court copies and keep them secure.

Physical Exhibits Not Capable of Being Reduced to Electronically-Stored Format and Exhibits Used in Rebuttal.

Physical objects such as weapons, equipment, clothing, bullets, etc. if admissible, will be allowed into evidence at the virtual court hearing without being delivered to the Court before the hearing.

The court may also allow exhibits offered in rebuttal to be introduced even though the exhibits have not been provided to the court in advance of the hearing. Any physical or rebuttal exhibit offered shall first be marked and shown to the opposing party before it is offered into evidence. When a virtual court hearing concludes for the day, each party shall place both the exhibits that have been admitted into evidence and those disallowed by the court that day into an envelope(s) or box and the envelope(s) or box sealed in view of the judge or referee, court reporter, (if present,) and all other parties. Each exhibit envelope or box shall be accompanied by a certificate from the offering party that the exhibits were altered or changed in any way once placed in the envelope or box and sealed. The admitted and excluded exhibits shall be delivered with the seal unbroken to the court reporter recording the virtual court hearing as soon as possible after the hearing recesses each day. If no court reporter is present to record the proceeding, then the exhibits shall be delivered with seal unbroken to the judge presiding over the virtual court hearing at the end of each day's proceeding.

Procedure for Presenting Electronically-Stored Exhibits at Virtual Court Hearing.

Parties wishing to offer a document, photo, or video as an exhibit at the virtual court hearing shall cause a true and exact copy of the document, photo, or video to be created and stored

electronically on the computer or other device that will be used at the virtual court hearing. Before an authenticating witness is brought into a virtual court hearing or while the witness has been placed on Zoom hold, the party seeking the admission of the exhibit into evidence shall use the share feature available on Zoom to show the marked exhibit to the opposing party. Once the exhibit has been shared, the authenticating witness may be removed from Zoom hold and returned to the virtual court hearing.

Retention of Exhibits at Conclusion of the Virtual Court Hearing. All exhibits admitted into evidence or offered into evidence but not admitted shall be retained by the court reporter in a secure location for the same period of time prescribed for in-court proceedings. If no court reporter is present to record the proceeding, the judge presiding over the virtual court hearing will retain the exhibits as provided by law.

Attire. Appropriate courtroom attire, whether in a traditional courtroom or a virtual one, helps preserve the dignity of the occasion and promotes public trust and confidence in the judicial proceeding. Therefore, judges, referees, attorneys, parties, and witnesses should dress for virtual court hearings just as they would dress if they were appearing in a traditional courtroom. The judge or referee presiding over a virtual court hearing will determine the specific dress code for his or her court.

9. Criminal Proceedings Generally. Virtual court hearings in criminal 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 is not physically present in the same room with his or her attorney during a virtual court hearing. 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 and does not waive his or her right to be present, the defendant shall be brought into

the courtroom or the detention center's on-site video conferencing 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. The defendant shall be informed by the court of this right before the virtual court hearing commences.

10. 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.

11. For Defendants On Bond At Time of Plea. If a defendant is not incarcerated, the attorney for the defendant shall arrange for the client to appear at the attorney's office so that a test conference can occur 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. The judge taking the guilty plea will connect with the defendant, the defendant's attorney, and the District Attorney's Office (unless the District Attorney waives his or her right to be present) 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 defendant consents to

enter the plea by video conference, that the plea is freely, intelligently, and voluntarily made and all other requirements for entry of the guilty plea have been satisfied. 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 prosecuting attorney 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 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.

12. *For Incarcerated Defendants.* The general procedure outlined above for taking guilty pleas by video conferencing shall apply when a defendant is incarcerated at the time of his or her guilty plea. The 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 being transported to the courtroom. 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 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 phone or video software that ensures confidentiality of the communication.

13. *Public Access to Some Criminal Proceedings.* Because Alabama law recognizes the existence of a general First Amendment right of the public to have access to some criminal

hearings, it is hereby ordered that any person may make a request for access to a criminal virtual court hearing that relates to matters that have traditionally been open to the public. The individual making the request shall be given permission to enter any virtual court hearing held in this circuit as a spectator only, unless the defendant or the State asks that the hearing be closed and “advances an overriding interest that is likely to be prejudiced” if the hearing is made open to the public. *Press-Enterprise Co. v. Superior Court of California for Riverside County*, 478 U.S. 1 at 7, 106 S. Ct. 2735 at 2739, 92 L. Ed. 21 (1986). *Ex parte Birmingham News Co.*, 624 So. 2d 1117, 1124–25 (Ala. Crim. App. 1993).

An individual may request access to a criminal virtual court hearing by filing a written request with the court. The individual making the request shall provide the court clerk with the defendant’s name, the case number, if known, as well as the requester’s e-mail address. Notice of the request shall be provided to the prosecutor and the defendant and, if no objection is filed within 10 days of the notice, the requester will receive an invitation to attend any virtual court hearing held in the case that involves matters that have traditionally been open to the public. If an objection is made by a party within the time provided, the court shall schedule a hearing to determine whether the request for access should be denied and the hearing closed to the public. The court also finds that there is a compelling reason to implement this special access rule due to the community safety threat posed by COVID-19 and finds that any burden placed on an individual by these procedures is substantially outweighed by the need to protect the public from further spread of COVID-19.

Access in Civil Cases. Any person making a request to gain access to a virtual court hearing in a civil case may also use the same procedures described in the above paragraphs.

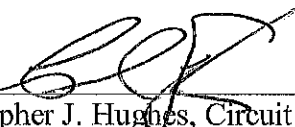
After notice to all parties and an opportunity to be heard, the court will determine whether access to the civil virtual court proceeding should be permitted under existing laws.

14. Audio, Video or other Technical Problems. 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-person 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 his or her ability to see or hear what is occurring during the video conference. An objection to the quality of an audio conference or a video conference *must* be made to the court on the record before the virtual court hearing has concluded. Any objection to the quality of the audio conference or video conference made thereafter, will be deemed untimely.

IT IS HOPED THAT THE ABOVE CAN BE SIMPLIFIED AS MUCH AS POSSIBLE BY AGREEMENT AND COOPERATION. ALL SUGGESTIONS TO THAT END, WHICH DO NOT COMPROMISE A LITIGANT'S RIGHTS, ARE WELCOMED.

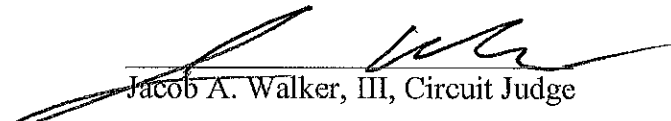
It is ORDERED that the Circuit Clerk shall provide the Alabama Administrative Office of Courts with a copy of this Order, and a copy shall also posted on the Lee County Court's official website.

Done this the 14th day of April, 2020



Christopher J. Hughes, Circuit Judge

37th Judicial Circuit



Jacob A. Walker, III, Circuit Judge

37th Judicial Circuit