



IN THE THIRTY-EIGHTH JUDICIAL CIRCUIT JACKSON COUNTY, ALABAMA

ADMINISTRATIVE ORDER

An Order Relating to Virtual Court Hearings

WHEREAS, the Alabama Supreme Court has entered an administrative order 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, the Alabama Supreme court has suspended until at least April 16, 2020 any rule that limits a judge’s ability to consider testimony by use of audio or video conferencing; and

WHEREAS, Alabama Supreme Court Chief Justice Parker has signed an order permitting court proceedings to be held using audio video conferencing technology; for court reporters 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 (see attachment); 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 proceedings;

It is further ORDERED that until April 16, 2020 or during any subsequent period of time the Alabama Supreme Court 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 Thirty-Eighth Judicial Circuit in which sworn testimony is taken by the use of audio/video 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, 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 audio or video conference. Every court proceeding conducted by the use of audio or video conference shall conform to the requirements of the administrative order entered by Alabama Supreme Court Chief Justice Parker on March 24, 2020 and the March 13, 2020 administrative order of the Alabama Supreme Court. Such proceedings shall hereinafter be referred to as “virtual hearings.”

3. Virtual hearings may be scheduled and held in all non-jury cases, including *pendente lite* hearings in domestic relations cases, domestic relations trials, contempt hearings, civil motion hearings, child support hearings, paternity hearings, hearings for injunctive relief, civil non-jury trials; all juvenile proceedings, including shelter care hearings, adjudicatory hearings, termination of parental rights hearings, all juvenile court review hearings; criminal proceedings, including initial appearance hearings, arraignments, preliminary hearings, motions to reduce bond, motions to revoke bond, probation hearings, probation revocation hearings, youthful offender hearings,

hearings on habeas corpus petitions and 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 video conferencing.

4. All virtual 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. Counsel of record and all self-represented litigants shall be timely notified of the date and time of a scheduled virtual hearing via AlacourtPlus, mail or as otherwise allowed by the Alabama Rules of Court or by statute.

6. Subpoenas issued for the appearance of a witness at a virtual hearing shall clearly state the address that the witness will need to appear to offer sworn testimony. Typically, this 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 virtual hearing shall contain a prominently displayed notice that "all witnesses are required to bring to the virtual hearing a government issued photo ID." The government issued photo ID shall be shown to the court reporter who is transcribing the proceeding before the witness is administered his or her oath.

7. All counsel of record and all self-represented parties shall provide the court clerk with an email to be used to connect with the attorney or self-represented party in the event a virtual hearing is held in a case. All counsel of record and all self-represented litigants are hereby ordered to provide written verification of their email addresses to the court clerk within ten (10) days from entry of this order, if not previously provided. The Circuit 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 email address 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 Circuit Clerk to provide a current mailing address and email address for future court hearings, including virtual 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 clerk's office with a current mailing address and email address.

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

9. If a party wishes to request that a case be set for virtual court hearing, 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) and determine whether all parties consent to holding a virtual hearing pursuant to the requirements mandated by the Order entered by Chief Justice Parker on March 24, 2020. Each party shall thereafter file a notice with the court clerk, giving consent to the virtual hearing or objecting to the hearing. In the event an objection is made to the virtual hearing, the party making the objection shall state specifically each and every basis for the objection and the judge presiding over the case shall make a determination whether the virtual hearing should be conducted.

10. With respect to all civil cases and domestic relations cases, a party filing a motion to schedule a virtual 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 Hearings. The judge assigned a case will schedule a virtual hearing and notice of the date and time for the proceeding will be provided to all parties by AlacourtPlus and by mail pursuant to the Alabama Rules of Civil or Criminal Procedure, as applicable. 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 clerk's office at least seven (7) days prior to the scheduled virtual proceeding, except when the times have been shortened due to the necessity of scheduling an emergency hearing, and notify the Clerk in writing whether he or she has the ability, equipment, software and bandwidth required to participate in the virtual hearing, and if so, shall confirm that the Clerk has the email address he or she will use to connect with Zoom. If a self-represented litigant notifies the Clerk in writing that he or she does not have the knowledge, equipment, software or bandwidth necessary to proceed with the virtual hearing, the judge 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 hearing, including the use of any other available local facilities that may be equipped with the appropriate technology for virtual hearings.

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

The official court reporter shall be present throughout the proceeding and able to see and communicate with every witness who appears remotely using Zoom software. Prior to a witness testifying the court report shall ascertain the identity of the witness and administer the oath to the witness remotely. At all times during the witness' testimony, the court reporter shall be able to see, hear and communicate with the witness who is testifying. The court reporter shall transcribe the virtual hearing just as though the hearing were being conducted with all parties and counsel appearing in person, but the reporter's transcript shall reflect that the transcript was made with all individuals appearing remotely with video conferencing, except for the judge presiding over the proceeding. No recordings shall be made of the hearing except by the official court reporter.

12. Criminal Proceedings. Virtual 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 hearing.

A defendant in any criminal case may waive his or her right to be present at a virtual hearing. However, if a defendant is incarcerated in the Jackson County Jail and does not waive

his or her right to be present, the defendant shall be brought into the Jackson County Jail's onsite audio video room before the hearing begins and shall be connected to the virtual hearing so that he or she is capable of hearing and seeing everything that transpires during the virtual proceeding. Further, the defendant shall be afforded an opportunity at any time during the virtual 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 hearing commences.

13. Procedure in Criminal Cases for Guilty Plea Hearings. If the State and defendant reach a plea agreement, the agreement shall be reduced to writing and signed by all parties and counsel of record. Defense counsel 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 hearing date and time and notice provided to all parties.

For Defendants on Bond at Time of Plea. If a defendant is not incarcerated, defense counsel 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. Defense counsel shall verify that all necessary equipment and software are in proper working order prior to the time of the scheduled hearing. Either the judge taking the guilty plea or a member of the judge's staff will connect with the defendant and the Jackson County 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, intelligently and voluntarily made and all other requirements for entry of the guilty plea have been satisfied. The official court reporter shall be

present throughout the proceeding and shall be able to see and hear the defendant who is entering a guilty plea at all times. The official court reporter shall transcribe the hearing just as though the hearing was conducted with all parties and counsel appearing in person. It shall be the responsibility of the district 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 hearing or in such other location approved by the judge accepting the guilty plea.

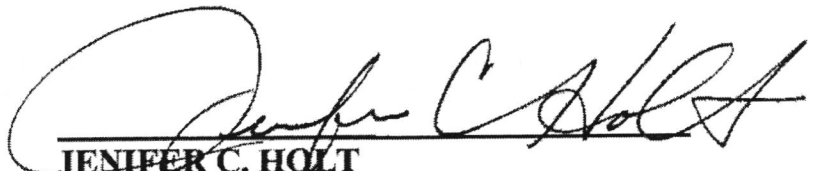
If a plea agreement calls for a defendant to serve a jail or prison sentence, the Sheriff shall be informed in advance of the date, time, and physical location of the defendant at the time the plea is entered so that a deputy will be on hand to take the defendant into immediate custody. If the plea agreement calls for probation or an application for probation has been made, the defendant shall immediately contact local State of Alabama probation officials and follow the directions provided by them.

For Incarcerated Defendants. The general procedure outlined above for taking guilty pleas by video conferencing shall apply when a defendant is incarcerated in the Jackson County Jail at the time of his or her guilty plea. The Jackson County Jail shall utilize Zoom software at its onsite 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 courthouse. Other video conferencing software may also 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 may appear from another location, provided, however, 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.

14. 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 an audio/video 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 hearing.

15. It is **ORDERED** that the Circuit Court Clerk shall provide the Alabama Administrative Office of Courts with a copy of this Order and a copy shall also be provided to members of the Jackson County Bench and Bar.

Done this 30th day of March, 2020


JENIFER C. HOLT
Presiding Circuit Judge

IN THE SUPREME COURT OF ALABAMA

**ADMINISTRATIVE ORDER APPROVING REMOTE ADMINISTRATION OF
OATHS TO WITNESSES IN COURT PROCEEDINGS AND DEPOSITIONS**

March 24, 2020

WHEREAS, an Administrative Order Suspending All In-Person Court Proceedings for the Next Thirty Days dated March 13, 2020, was issued by this Court providing that all in-person proceedings in all states 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;

WHEREAS, an Administrative Order No. 2 Pertaining to the Suspension of All In-Person Court Proceedings for the Next Thirty Days dated March 15, 2020 was issued by this Court providing that the March 13, 2020 Order has no effect on out-of-court activities in civil cases including, but not limited to, depositions and mediations, but these activities should be evaluated on a case-by-case basis;

WHEREAS, an Administrative Order Approving Exceptions to Administrative Order Suspending All In-Person Court Proceedings for the Next Thirty Days dated March 16, 2020, was issued by Chief Justice Tom Parker, approving termination-of-parental-rights proceedings and 72-hour detention and shelter-care hearings necessary to protection children who are alleged to be a delinquent child, a dependent child, or a child-in-need-of-supervision as exceptions to the requirement that in-court proceedings be suspended;

WHEREAS, an Administrative Order Concerning Workers' Compensation Cases During the Period of Suspension of In-Person Proceedings dated March 18, 2020, was issued by Chief Justice Tom Parker providing that any workers' compensation settlement hearing in any court may be conducted telephonically or by videoconferencing statewide through April 16, 2020;

WHEREAS, the Administrative Order dated March 13, 2020, expressly provides 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 provides that "... [t]his order expressly does not prohibit court proceedings by telephone, video, teleconferencing, or other means that do not involve in-person contact. . . .";

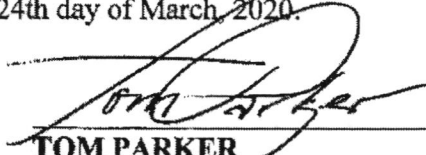
WHEREAS, a public health emergency exists around the world, including the United States of America and the State of Alabama, requiring social distancing measures to reduce the increase in person-to-person transmission of the virus that causes COVID-19, and these measures include the administration of oaths by court reporters in person to witnesses for the depositions and other legal testimony;

NOW, THEREFORE, IT IS ORDERED by the Chief Justice of the Supreme Court of Alabama on this date, March 24, 2020, **that the following be effective through April 16, 2020:**

- (1) Official court reporters, special roving court reporters, special court reporters, supernumerary court reporters, and freelance court reporters qualified to administer an oath in the State of Alabama to a witness in a deposition or court proceeding or trial may swear a witness remotely by audio-video communication technology if the deposition or court proceeding or trial is conducted by audio-video communication equipment that allows the court reporter and the witness simultaneously to view and orally communicate with each other, provided that the court reporter can positively identify the witness;
- (2) If a witness is not located within the State of Alabama, a witness may consent to being placed under oath via audio-video communication equipment that allows the court reporter and the witness simultaneously to view and orally communicate with each other by an official court reporter, special roving court reporter, special court reporter, supernumerary court reporter, or a freelance court reporter qualified to administer an oath in the State of Alabama, provided that the court reporter can positively identify the witness;
- (3) Courts shall consider as evidence sworn statements or testimonies made out of court in a deposition or court proceeding or trial conducted by audio-video communication equipment that allows the court reporter and the witness simultaneously to view and orally communicate with each other. Courts shall continue to consider these statements or testimonies as evidence beyond the effective date of this Order or the effective date of any subsequent extensions of this Order; and
- (4) All court rules, court orders, and opinions which expressly provide that oaths to witnesses must be administered in person or that may limit or prohibit the remote administration of oaths to witnesses or that may provide that courts may not consider as evidence sworn statements or testimony made out of court in a deposition or court proceeding or trial conducted by audio-video communication equipment that allows the court reporter and the witness simultaneously to view and orally communicate with each other are hereby suspended.

IT IS FURTHER DIRECTED that this Order be spread upon the minutes of the Court.

ORDERED at Chambers this the 24th day of March, 2020.


TOM PARKER
Chief Justice
Alabama Supreme Court

c: Honorable Julia Jordan Weller, Clerk of the Supreme Court
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