

**Guidelines, Suggestions, and Best  
Practices for Alabama Circuit and  
District Judges During the COVID-19  
Pandemic**

**June 25, 2020**

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# **Guidelines, Suggestions, and Best Practices for Alabama Circuit and District Judges During the COVID-19 Pandemic**

## **I. Introduction**

*“While COVID-19 has tested us as individuals and as leaders in ways that could never have been anticipated, it has also brought out the best in people – thinking differently, moving quickly, and harnessing our skills, ingenuity and creativity to help communities confront the crisis.”*

Lawrence Bacow, President of Harvard University

On March 13, 2020, the Alabama Supreme Court acknowledged the declaration of a national public health emergency by the President of the United States, and thus suspended all in-person court proceedings. The order of March 13, 2020 also authorized the use of technology to conduct court proceedings remotely as long as core constitutional functions and rights were protected. See Appendix A I.

Said authorization was extended by the Alabama Supreme Court in Administrative Order No. 5 on April 2, 2020, Administrative Order No. 6 on April 30, 2020, and then indefinitely by Administrative Order No. 7 on May 13, 2020. See Appendix A I.

The latest order as of the time of this writing (Administrative Order No. 7, dated May 13, 2020) continues to authorize the use of remote hearings, but has granted presiding judges the authority to make decisions regarding the safety and welfare of court personnel in their circuit. The order further grants a presiding judge, in his or her discretion between May 15<sup>th</sup> and August 15<sup>th</sup>, to adopt policies and procedures to re-commence in-person proceedings within the parameters of Alabama’s general “safer at home” order. Administrative Order No. 7 contemplates the re-commencement of jury proceedings in the fall of 2020. See Appendix A I.

Administrative Order No. 7 maintains a presiding judge should consult with all court facility stakeholders in composing his/her local operating plan or procedure

order. See Appendix A I. Therefore, the purpose of this bench book is to provide the presiding judge, the other judges in the circuit, and all stakeholders with some considerations to take into account during the current public health emergency. It presents options that may help safely and effectively accomplish expanded courthouse operations going forward.

Policies, best practices, checklists, model orders, etc. have been gathered from numerous sources around the nation in putting this bench book together, including the National Center for State Courts and several states that have already addressed on these issues. There is also some case law regarding authority to fairly address the natural tension between individual rights and temporary safety procedures that may be necessitated by a declared public health emergency.

The contents are contained in various categories covering not only general court facility and personnel safety considerations, but also options on procedures for virtual hearings, in-person hearings, large docket scenarios, and both trial jury and grand jury proceedings.

**DISCLAIMER:** Readers and users of the guidelines and options contained herein are advised that due to the fast pace of events since the declaration of a national public health emergency in March 2020, there has not yet been a sufficient opportunity in many jurisdictions to fully test all of these guidelines in a real world context. As of the date of this writin the outcome of any potential legal challenges to these guidelines remains unknown.

While guidelines provided from other states contained herein appear well-sourced and appropriate in their context, there is no representation made by the Alabama Law Institute regarding the legal efficacy of any other states' guidance. Additionally, the Alabama Law Institute has not subjected these guidelines presented below to a full constitutional review.

The Alabama Law Institute is not responsible for the content on any linked or provided website, and no representation is made that any providers of court serviced listed in the content as examples to the reader are in any way superior to any other company that may provide those or similar services.

Finally, the COVID-19 pandemic has been a dynamic situation. These options and best practices may be current as of the date of its publication. However, changing circumstances or conditions and/or subsequent instruction by the authorities such

as the CDC, the Governor's office, and/or the Administrative Office of Courts obviously may obviate or preclude some or all of the suggestions presented herein.

## **II. Court Facility Premises and Employees - General Considerations**

### **2.1. General employee/court personnel procedures:**

1. Consider entry of an order requiring employees to regularly submit to temperature checks and complete the following screening questions, at least into Phase III of the phased reopening process (See Section V of this outline).
  - A. Do you have symptoms in the last 14 days of fever greater than 100.4 degrees, chills, repeated shaking with chills, muscle pain, headache, sore throat, or new loss of taste or smell? Yes or No.
  - B. Have you had close contact in the last 14 days with an individual diagnosed with COVID-19? Yes or No.
  - C. Have you traveled outside of Alabama in the last 14 days? Yes or No. If so, where?

The forms containing these questions (whether paper or digital format) should be confidentially maintained by the presiding judge or circuit clerk. A positive temperature screen and/or an affirmative response to any of these questions should result in immediate follow-up for follow-up testing and/or further inquiries on that employee's condition is completed.

2. Use of remote working arrangements for employees should be considered when feasible, if congruent with the phased reopening plans in Section V of this outline.
3. Flexible work shifts should be considered in areas where such would be necessary to maintain workplace social distancing, if congruent with the current phased reopening plan (See Section V of this outline).

Masking should be required for employees in the workplace wherever social distancing cannot be regularly maintained.

## 2.2. What to do if employee tests positive for COVID-19:

1. **Positive Employee Steps.** Require any employee who tests positive for COVID-19 to stay home from work and urge the employee to follow medical advice, remain home, and self-quarantine.
2. **Notifications.** Notify Human Resources and provide the employee information on leave options.
3. **Clean and Sanitize.** Arrange for a thorough cleaning/sanitizing and decontamination of the area where the employee(s) worked per guidelines issued by the Centers for Disease Control and Prevention (CDC) at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.
4. **Confirm Safety.** Confirm with decontamination specialist when it is safe to return to the space. Arrange this with your facilities staff if applicable.
5. **Contact Local Health Department.** Contact local health department and work to determine at-risk employees.
6. **Identify Employee Work Locations.** Identify all areas in the office where the COVID-19 positive employee was physically present during the two-week period before testing positive.
7. **Notify Employees.** Review CDC guidelines and notify exposed employees as soon as possible; urge them to seek medical care as necessary and to consult their own doctors.  
<https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>
  - **Close Contacts.** The CDC recommends that asymptomatic individuals who have been in “close contact” for a prolonged period of time with an individual “with symptomatic COVID-19 during [the] period from 48 hours before symptoms onset until [that symptomatic individual] meets criteria for discontinuing home isolation” stay home until 14 days after the last exposure to such individual.
  - **Confidentiality.** Healthcare information remains confidential under the ADA, so the employer should tell everyone who was possibly exposed at work to the positive employee *without* revealing that employee’s identity.

- **Sensitivity.** When communicating with those who have been in close contact, be aware that this is a sensitive topic and it is probably best to alert them individually by phone call. It is important to act quickly, so if you cannot reach them personally, it may be necessary to e-mail them, as well.
8. **General Notifications:** Issue a general notification to courthouse personnel, similar to the following: *“A person tested positive on a certain date and is now self- isolating. The close contacts have been told and were asked to leave the workplace and self- quarantine. If you were not already told you were a close contact, then you are not one. If you have questions about COVID-19, or your situation, please call your doctor and look at the CDC website. Once the work area has been cleaned and it is determined to be safe to return to work, you will be notified.”*
  9. **Notifications to Building Users.** Notify others who occupy the same building and/or interact frequently with the court or clerk’s office that an employee of the court or clerk’s office has tested positive for COVID-19. This notice should be provided without disclosing the name of the employee who tested positive.
  10. **Contact Tracing App.** One potential option regarding notification to those court employees that have been in close contact with someone who has tested positive for COVID-19 is through the use of a new contact tracing mobile app. Phones with the app will anonymously record any contact beyond a set period of time with another phone within the safe social distancing space (6 feet). Should the user of that other phone ever log a positive test for COVID-19, then anyone with the app that has been within social distancing range (6 feet) of that person beyond the set time period will receive a text notifying them of the date, time, and location of the contact.

The person receiving the text could then advise their appropriate court supervisor of the text and commence the testing and quarantine protocols discussed at length in these guidelines. While there are several companies currently working on contact tracing apps, the contact tracing app being built by the Birmingham-based company, MotionMobs, is being developed in conjunction with the University of Alabama System and uses a programming code released on May 20, 2020 by Apple, Inc and Alphabet, Inc. which helps ensure the non-disclosure of identity. See

Paresh Dave, *University of Alabama to Push Contact Tracing App, Require Online Health Checks*, *The New York Times*, May 21, 2020.

Anyone interested in obtaining more information regarding use and cost of this app may visit [motionmobs.com](http://motionmobs.com) and also read the article, *Why Privacy is a Must with Contact Tracing*, posted on the MotionMobs site on May 5, 2020.

11. **Have a Safety Plan for Continued Operations.** Before other employees return to work, the judges/circuit clerk should work in collaboration with the local health department to make a plan to remain operational, and take steps to limit the number of people in the courtroom or office at any one time. Some examples of steps to limit exposure include:
  - Locking doors and admitting one or two people at a time.
  - Posting notices with contact information and requiring customers/court users to schedule an appointment.
  - Using secure drop boxes to minimize in-person contact. Using telephone, e-mail, and two-way audio-visual communications as much as possible to minimize in-person contact.
  - Staggering shifts to minimize the number of employees in the court/office at any one time.
  - Reducing hours that the clerk is open to the public to process material submitted via drop box, e-mail, etc.
  - Placing physical markings such as tape on the floor to maintain six feet of distance from court staff and between customers.
  - Posting a public notice of how all matters will be handled to minimize in-person contact, and by carefully following precautions recommended by the CDC.
12. **Protective Gear.** Court employees may wish to follow CDC guidelines to wear cloth face coverings in public settings where social distancing measures may be difficult to maintain. A mask is not an alternative to social distancing, but an additional measure meant to protect other people in case the wearer is infected. The CDC offers recommendations at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

13. **Press Inquiries.** When responding to the press or others who inquire, do not reveal the employee's name, position, or any other details that would identify the person or the details of their health. If you need assistance with responding to the inquiries. Contact Scott Hoyem (AOC Public Information Officer) at (334) 954-5120 or [scott.hoyem@alacourt.gov](mailto:scott.hoyem@alacourt.gov).
14. **Hygiene Practices.** All court employees, including those who do not have symptoms of the COVID-19 virus and have not been in "close contact" with anyone who has tested positive, should continue to practice social distancing and hand washing. They should also routinely sanitize work surfaces and take other precautionary measures, and should continue to monitor themselves and their family or other household members for any symptoms of the COVID- 19 virus (including, but not limited to, a dry cough, high fever, and body aches).

### **2.3. General Facility Policies/Procedures Considerations:**

1. Courthouse Security/Personnel should establish an entry screening protocol to check those persons entering the court facility for COVID risk.
2. Specific and limited locations of entry should be identified. Waiting for entry should be socially distanced and entry for evaluation should be only one person at a time (unless an adult is tending to a minor or someone with physical needs).
3. Provide for exiting from the facility by way of a separate location.
4. Masking and if available, face shielding may be required by court personnel during entry screening procedures. The exact screening procedure at any given point should be established by the particular phased reopening order executed by the presiding judge in force and effect at the time. See proposed phasing orders in Section V.
5. Obtain contact information from all those entering the court facility should be considered for notification purposes in the event someone that has been on the premises tests positive for COVID-19.
6. Signs should be posted at entry points advising of entry/screening requirements.
7. Signage should be prevalent around the facility reminding occupants about social distancing, frequent hand-washing/sanitizing, and masking.

8. Coordination with county commissioners and the Sheriff's office will be required to set up screening procedures and proper signage.
9. Courthouse Security/Personnel are to have PPE (masks and sanitation). Plastic or glass shielding should be installed at the work station(s) of any court/security personnel with the appropriate level of risk category (See OSHA Job Exposure Classifications in Section 2.4) Coordination with Sheriff, county commission, and the Circuit Clerk on procedures and equipment advised.
10. Entry COVID screening should be a separate function and different/additional person(s) than personnel engaged in bag and weapons screening procedures. Proper PPE protection should be worn by bag and weapons screeners such as masks and/or face shields, and gloves. A separate door should be utilized for exiting of all facility visitors.
11. Social distance protocols for those awaiting screening procedures should be observed.
12. Public access to Judges' offices should be limited, and visitors in these areas should be masked.
13. All publicly accessed doors and door hardware, and any publicly accessible area surfaces, should be sanitized at least daily.
14. Hand sanitizer and masking should be offered to the public, if available, in every courtroom, restroom, and the clerk's office public reception area.
15. Consider propping courtroom public access doors open during hearings so that doorknobs/handles would not have to be touched.
16. Every courtroom is laid out differently, and with varying dimensions. Therefore, there is no one size fits all formula. However, a good rule of thumb is to limit occupancy to 50% of courtroom capacity. Courtrooms floors and furnishings should be marked or taped to space occupants accordingly.
17. If there is not enough room to safely social distance even at 50% of normal capacity, then cut back on the total number allowed into the courtroom until proper social distancing and personal protection protocols can be observed.
18. Dependent upon the current reopening phase (See Section V), hallways may be laned for one-way traffic in each direction, and stairwells may be designated one-way only. More than two persons at a time in an elevator



- should be avoided whenever possible. Masking should be required during elevator use, and all elevator equipment should be frequently cleaned/sanitized.
19. Signage should be placed at public restrooms regarding limiting access sufficiently to ensure social distancing. Every other sink, urinal and/or stall should be taped to ensure social distancing. Surfaces should be scheduled for regular and frequent sanitization/cleaning by maintenance. Coordination with the maintenance department encouraged.
  20. The use of special settings over general call dockets should be encouraged whenever feasible.
  21. Current dockets should be available on the Circuit Clerk's website, and also conspicuously posted in a public area of the court facility.
  22. Paper forms for typical pro se pleadings (domestic relations, small claims, etc.) should be available in public access kiosks in the court facility.
  23. The Circuit Clerk's website should contain instructions for accessing forms online from the Administrative Office of Courts electronic forms page.
  24. A video should be produced and posted on the Circuit Clerk's website explaining current court facility pandemic procedures, requirements, and expectations.
  25. Large in-person dockets should be time-staggered where possible. See more about large docket management in Section VI). Confer with the Circuit Clerk and the Administrative Office of Courts concerning trial notices employing a staggered time approach. Also, ensure there are sufficient courthouse personnel available to assist in the logistics of a time-staggered docket.
  26. Consider a texting or pager method for notifying litigants awaiting hearings outside the courtroom or outside of the court facility.
  27. Bond hearings should be conducted virtually whenever possible under current law and/or administrative order.
  28. Consider releasing those charged with low-level, non-violent offenses from pre-trial detention if satisfactory monitoring can be accomplished through cell phone monitoring applications. See such providers as [www.telmate.com](http://www.telmate.com), [www.guardianmonitor.com](http://www.guardianmonitor.com), or <https://osmnow.com>, or others. See also *Carpenter v. United States*, 138 S. Ct. 2206 (2018)

- for law on 4<sup>th</sup> Amendment limitations regarding gathering of data from cell phones without warrant or permission.
29. Virtual proceedings pre-trial and/or trial matters are to be encouraged whenever possible under current law and/or administrative order.
  30. If in-person proceedings are necessary, then bench trials are to be encouraged whenever possible.
  31. Non-court personnel congregating in groups of more than 10 persons in any single area of the court facility is to be discouraged.
  32. Six feet of social distancing should be observed by all employees and members of the public at all times and at all locations in the courthouse. All court facility litigants/visitors should be masked at all times in public/common areas and reception areas.
  33. During in-court in-person proceedings, any documents should be placed upon a table with that person then stepping back beyond six feet. The appropriate person may then approach the table to pick the document up, examine, sign, etc. as necessary
  34. As an alternative to document presentation for evidentiary and/or illustrative purposes, counsel should be encouraged to utilize digital/electronic display of documents/exhibits whenever possible (Electronic Visual Evidence Presenter, laptop, etc.).
  35. During an in-person proceeding or during a break in those proceedings, no one should approach within standard social distancing range (6 feet) the bench, court reporter, other counsel, litigant, clerk, attendant, juror, or any other court participant for any reason without being properly masked.
  36. A clean-pen cup and a used-pen cup should be utilized for documents that need to be signed when the signer does not have his/her own pen. Used-pens can then be appropriately disinfected and returned to the clean-pen cup prior to their next use.
  37. In the course of a proceeding, if counsel and litigant or witness must confer, or for any other reason need to be in closer proximity with each other than standard social distancing requirements (6 ft), then all such persons must be masked before engaging in that contact.
  38. Incarcerated persons should attend pre-trial matters remotely whenever possible unless constitutional issues may require otherwise. If inmates must be physically present, consider allowing only one inmate in the courtroom for one hearing at a time, assuming a location is available

where the inmates awaiting hearing will be properly socially distanced. If not, incarcerated persons should be socially distanced while waiting in the courtroom for their hearing. See more in Section VI, Considerations for Large Docket Scenarios.

39. Ensure that any transport procedure allows for all inmates and those transporting the inmates to appropriately socially distanced while in the transport vehicle. Seating will be limited as a result, so additional time considerations for the transport of inmates to court must be taken into account during the planning stages and also in scheduling of the hearing or docket. See more large docket considerations in Section VI.
40. Any furniture in the common/public areas or courtrooms that potentially interferes with or impedes proper social distancing practices should be properly distanced or removed.
41. Filtration of the court facility Heating Ventilation and Air Conditioning should be assessed to determine if it is adequate. Also, typical office buildings have only approximately 30% fresh air content. Assessing the feasibility of bringing a higher percentage of supply air into spaces should be considered.

Sources: <https://ncsc.org/newsroom/public-health-emergency/webinars>. (COVID19 and Courthouses: Planning to get Back to Business Inside the Courthouse, May 15, 2020; Expanding Court Operations II: Outside the Box Strategies: Administering the Courts While the COVID-19 Curve is Flattened, May 19, 2020).

## **2.4. Job Exposure Classifications and Engineering/Administrative Controls**

### **2.4.1. Job Exposure Classifications.**

The Occupational Safety and Health Administration has classified jobs depending upon the risk of exposure to known or suspected sources of COVID-19. The classifications are a) Very High Exposure Risk; b) High Exposure Risk; c) Medium Exposure Risk; and d) Lower Exposure Risk.

Most jobs classified as Very High Exposure Risk and High Exposure Risk are in the medical and mortuary fields. The typical court facility personnel employment positions is not likely to exceed the medium

classification. Therefore, for planning purposes, these guidelines will deal with the medium and low exposure categories.

- a. *Medium Exposure Risk* – Those jobs that require frequent and/or close contact with (i.e., within 6 feet of) people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. In areas where there is ongoing community transmission, workers in this category may have contact with the general public (e.g., schools, high-population-density work environments, some high-volume retail settings).
- b. *Lower Exposure Risk* – Those jobs that do not require frequent close contact (i.e. within 6 feet) of the general public. Workers in this category have minimal occupational contact with the public or other coworkers.

#### 2.4.2. Engineering Controls, Administration Controls, and Safe Work Practices

- a. *Engineering Controls* – Engineering controls involve isolating employees from work-related hazards. In workplaces where they are appropriate, these types of controls reduce exposure to hazards without relying on worker behavior and can be the most cost-effective solution to implement. Examples of engineering controls include:
  - Installing high-efficiency air filters.
  - Increasing ventilation rates in the work environment.
  - Installing physical barriers, such as clear plastic sneeze guards.
  - Installing drive-through windows.
  - Specialized negative-pressure ventilation in some settings, such as for aerosol generating procedures (e.g. airborne infection isolation rooms in healthcare settings and specialized autopsy suites in mortuary settings).
- b. *Administrative Controls* – Administrative controls require action by the worker or employer. Typically, administrative controls are

changes in work policy or procedures to reduce or minimize exposure to a hazard. Examples of administrative controls include:

- Encouraging sick workers to stay at home.
- Minimizing contact among workers, clients, and customers by replacing face-to-face meetings with virtual communications and implementing telework if feasible.
- Establishing alternating days or extra shifts that reduce the total number of employees in a facility at a given time, allowing them to maintain distance from one another while maintaining a full onsite work week.
- Discontinuing nonessential travel to locations with ongoing COVID-19 outbreaks.
- Developing emergency/communications plans, including a forum for answering workers' concerns and internet-based communications, if feasible.
- Providing workers with up-to-date education and training on COVID-19 risk factors and protective behaviors (e.g. cough etiquette and use/care of PPE).
- Training workers who need to use protective clothing and/or equipment how to put it on, use or wear it, and take it off correctly, including in the context of their current and potential duties. Training material should be easy to understand and available in the appropriate language and literacy level for all workers.

c. *Safe Work Practices* – Types of administrative controls that include procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to a hazard. Examples of safe work practices include:

- Providing resources and a work environment that promotes personal hygiene, e.g. tissues, no-touch trash cans, hand soap, alcohol-based hand rubs/sanitizers containing at least 60% alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
- Requiring regular hand washing or using of alcohol-based hand rubs. Workers should always wash hands after any

contact with the public or items that came from outside of the court facility and after removing PPE.

- Posting handwashing signs in restrooms.

#### 2.4.3. Controls for Medium Exposure Jobs.

##### a. *Engineering controls*

- Install physical barriers, such as clear plastic sneeze guards, where feasible.

##### b. *Administrative controls*

- Face masks
- Face Shields where feasible and where physical barriers (as noted above) have not been installed.
- Limit public access where possible.
- Consider strategies to minimize face-to-face contact
- Communicate the availability of medical screening or other worker health resources.

#### 2.4.4. Controls for Low Exposure Jobs.

##### a. *Engineering controls*

- Additional engineering controls not recommended for workers in the lower exposure risk group.

##### b. *Administrative controls*

- Monitor public health communications about COVID-19 recommendations and ensure that workers have access to that information. Frequently check the CDC COVID-19 website: [www.cdc.gov/coronavirus/2019-ncov](https://www.cdc.gov/coronavirus/2019-ncov).
- Collaborate with workers to designate an effective means of communicating important COVID-19 information.

Sources: [www.osha.gov/covid-19](https://www.osha.gov/covid-19). Guidance on Preparing Workplaces for COVID-19 (OSHA 3990-03-2020).

## **2.5. Supply Needs**

Non-exclusive list of resource Items to consider having available as re-opening phases transition (See Section V) are considered. Local, AOC (state), federal, and even grant-funding opportunities should be explored to address COVID-19-related equipment and supply needs.

### **Hygiene, Cleaning, and Disinfecting**

- Hand Sanitizer
- Dispensers for hand sanitizer (touchless preferred)
- Sanitizing or disinfecting wipes
- Dispensers for wipes (touchless preferred)
- Dispensers or storage containers for masks
- Gloves
- Face Shields
- Goggles
- Thermometers (touchless)
- Appropriate cleaning supplies (soap, cleaning or disinfecting spray, etc.)
- Handwashing or hand sanitizing stations outside of the facility
- Tissue/paper towels (in addition for use to cover sneezes, can be used to open doors, etc.)
- Cleanable or disposable covers for commonly touched or used items, such as microphones

### **Facilities, Security, Queuing, Social Distancing**

- Clip Boards
- Writing Utensils
- Barricades
- Stanchions
- Gaffer's or other type of tape to demark spacing
- Folding tables/chairs
- Radios or other communication devices
- Laptop/tablet for data collection
- Portable document scanners
- Large format monitors

- Medical grade or waterproof keyboards, mice and similar computer accessories (to allow proper frequent cleaning and disinfecting of shared accessories)
- Portable podiums (to limit sharing of existing podium during a proceeding)
- Acrylic partitions or other barriers in spaces like information desks or reception areas
- Wrist bands or other means for indicating a person has been screened (for example, to allow for them to leave for lunch and return without having to undergo a full screening process again)

### **Signage**

- Hygiene protocols (hand washing, hand sanitizer, etc.)
- Social distancing reminders
- Markings to notate distance
- Directional signage
- Instructions/reminders for new procedures
- Admittance/Health screening notice
- Requirement to wear mask

Source: State of Florida Court Operations Subgroup Requirements, Benchmarks, and Guidelines Governing the Transition to Limited In-Person Contact (May 14, 2020).

## **III. Case Management and Priority Triage**

### **3.1. In General**

All judges are to make a good faith effort to conduct proceedings remotely whenever possible under current law and/or administrative order, and adjournments are permitted when necessary so long as the court implement[s] measures to ensure all matters may proceed as expeditiously as possible under the circumstances, given the public health conditions of each locality and the technology resources and staffing situations in place at each court.



### **3.2. Virtual Hearings**

Two-way interactive video-conferencing technology or other remote participation tools may be used with the following factors taken into consideration:

- Authorization under current law and/or administrative order.
- The procedure is consistent with all parties' constitutional rights.
- The procedure allows for confidential communication between a party and the party's counsel.
- Where appropriate, the public is given access to the proceeding.
- The procedure allows for recording sufficient to enable the subsequent production of a transcript.
- Criminal defendants have the right to a speedy and public trial, to confront witnesses, and the assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20.
- Crime victims have a right to be present at court proceedings. Alabama – Const. §6.01 (Amendment 557). See Virtual Proceedings Guidelines, Section IV.

Daily dockets should be posted/displayed such that the public can find them easily online and/or at the court facility.

### **3.3. Process for Triaging (Prioritizing) Case and Docket Settings During A Public Health Crisis**

During any period of time that courts are unable to work full-time, significant backlogs are likely to occur as a result. There will be a backlog because of forced adjournments and other matters not being able to receive settings. Further, more cases continue to flow into the trial courts as legal and public health conditions/restrictions begin, and continue, to be relaxed.

With that in mind, the following is to assist courts in identifying cases most in need processing, while leaving lower priority work to be done as the courts build back to full capacity. While new filings are being accepted, it is important that courts continuously monitor and track all new and already pending cases to ensure that no case is without a future action date. This includes:

- Reissuing appropriate scheduling orders for existing cases. Courts may conduct remote scheduling conferences to obtain agreement from the parties on new dates.

- Rescheduling jury trials and notifying stakeholders of postponements.
- Providing stays of proceedings for case types that may require it. Very few cases should be stayed. There may be an exception in civil or domestic cases in which pre-trial matters cannot be completed in the current environment – even in light of state of emergency accommodations.
- Most pre-trial issues, such as those relating to discovery, can be completed remotely if pursuant to current law and/or administrative order.
- Temporarily activating retired judges, and/or temporarily shifting/re-assigning some active judges' responsibilities to assist with anticipated court backlogs should be considered, if feasible.

### **3.4. Model Case Triage System**

Below, are four suggested categories to help courts identify case priorities and to triage the necessary action to take for pending cases: The categories are Essential, High Priority, Medium Priority, and Low Priority.

#### **Essential includes:**

- A High Priority Case **plus** where an immediate liberty and/or safety concern is present, requiring the attention of the court as soon as the court is available.
- Examples of case and hearing types that may fall in the Essential category include: 1) Criminal court search warrants, arrest warrants, initial appearances, and bond reviews; 2) Protection From Abuse Petitions; 3) Juvenile Court delinquency detention hearings, neglect and abuse emergency removal matters; 4) Mental health commitment hearings; and 5) Emergency guardianship matters, including guardianships necessary to permit critical medical care or placement or to protect an individual from very significant and irreparable economic or other harm from abuse, neglect, abandonment, or exploitation.

#### **High Priority includes:**

- Statutory and/or court rule timeline is short, typically less than 30 days.

- Constitutional rights are primarily implicated (e.g. criminal, juvenile delinquency, neglect and abuse removals, commitments).
- Public safety concerns.
- Personal health or safety concerns (e.g. housing, custody, domestic abuse).
- Critical economic concerns coupled with any of the above (e.g. guardianship/conservatorship, objection to garnishment, retaining safe and stable housing, child support).

**Medium Priority includes:**

- Statutory and/or courts rule timelines are greater than 30 days.
- Constitutional rights are implicated, but yet not a primary concern (e.g. non-custody criminal trials).
- Public safety, personal safety, and economic concerns are implicated, but urgency is low (e.g. long-term foster care review, post-decree family hearings that do not impact safety of a child or parent, or critical economic concerns, contested probate, evictions other than health/safety hazard or for landlords with fewer than 5 units).

**Low Priority includes:**

- No statutory and/or court rule timelines are immediately applicable.

Source: Michigan State Court Administration Office  
<https://courts.michigan.gov/administration>

## **IV. Alabama Trial Courts Virtual Courtroom Guidelines**

In its original COVID-19 Administrative Order, the Alabama Supreme Court specifically noted that it did not prohibit “court proceedings by telephone, video, teleconferencing, or other means that do not involve in-person contact.”<sup>1</sup> In

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<sup>1</sup> Alabama Supreme Court “In re: COVID-19 Pandemic Emergency Response” Administrative Order, pg. 2 (March 13, 2020). Said order enabling virtual hearing procedures was extended indefinitely by Administrative Order No. 7 on May 13, 2020.

subsequent orders, virtual proceedings have been encouraged as a means to resume court business while minimizing risk of infection to courthouse personnel and interested parties.<sup>2</sup> Even the United States Supreme Court has resorted to virtual arguments to continue the operation of the Court through the pandemic.

These guidelines are based heavily on the *Michigan Trial Courts Virtual Courtroom Standards and Guidelines* promulgated by the Michigan judiciary. These best practices are not the only way to meet a standard, but they are examples of what may work and are offered to assist each court and judicial officer to develop their own procedures.

## **4.1 Virtual Hearing Basics**

### **4.1.1 Presence of the Parties**

At the start of each hearing, the court must verify with each participant that they are able to proceed and are aware of the procedure for participation, including the time and method of participating. Criminal defendants have a right to be present at the arraignment and at every stage of their trial and all procedures associated with remote hearings must be consistent with a party's Constitutional rights. *Neal v. State* 59 So. 2d 797 (1952). A defendant may waive the right to be present for a hearing. Ala. R. Crim. Proc. R. 9.1(b). Victims have a Constitutional and statutory right to be present. Ala. Const. § 6.01 (Amendment 557).

The court should address, on the record, that the parties are waiving any right they may have to be present in the courtroom for the proceeding. In addition, if there is a victim involved, the court must ensure that the victim's right to be present is addressed on the record.

### **4.1.2 Providing Zoom Meeting Information to Parties**

The court shall provide adequate notice to the parties and ensure that the parties are able to participate remotely.

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<sup>2</sup> See, e.g. Alabama Supreme Court "In re: COVID-19 Pandemic Emergency Response" Administrative Order #6, pg. 1 (April 30, 2020) "To limit in-person contact, trial courts should continue to conduct hearings by teleconference and video conference."

The court can provide the Zoom hearing information to parties in the following ways:

1. Court staff may phone the parties in advance and obtain the e-mail address to which the meeting code/invitation and any password can be sent;
2. If the party does not have e-mail or the ability to join by video, provide the telephone number to join the meeting and the meeting code so that they can participate via phone;
3. The court may design a new document that lists the court proceeding, court date, time of hearing, and the Zoom Meeting ID; or, modify an existing notice of hearing form to add the Zoom Meeting ID and information about accessing Zoom.

#### **4.1.3 Hiding Phone Numbers**

When using Zoom, participants should not have their phone number displayed on the screen. When a participant calls in by phone, the default setting in Zoom is for the phone number to be displayed on the screen. The court should change the phone number to the participant's name.

#### **4.1.4 Waiting Room**

When hosting hearings, the court should enable the "Waiting Room" function in Zoom. The "Waiting Room" allows the host to control who is admitted to the hearing and prevent participation by individuals who are not litigants in that case. This allows the court to keep the courtroom secure while still allowing the public to view proceedings via YouTube.

#### **4.1.5 Maintaining the Decorum of the Court**

Despite not being physically in the courtroom, the court should continue to remind participants of the following:

- a. Participants should find a quiet place with a stable Internet connection for the hearing to limit distractions. In order to further limit background noise, participants can keep their device muted when not speaking. If on home Wi-Fi, they may want to minimize other network usage to ensure connection quality.
- b. Whether presentation of evidence virtually requires advance notice.

- c. The proceeding is live. Anything said during the proceeding may be overheard by all of those observing.
- d. Courtroom decorum rules still apply. Those participating should continue to operate as if they were inside the courthouse. Standards, including decorum, demeanor, and dress code, still apply.
- e. Whether the proceedings are being recorded. Everything said will be captured and made part of the record just as in a physical courtroom.
- f. Staff participating in virtual proceedings should have a professional background. Courts are should consider using pictures of their courtroom as a virtual background.

## **4.2 Attorney/Client Communication**

The court must provide a method to enable confidential communication between a party and the party's counsel.

In Zoom, courts may allow an attorney to meet with their client in a “breakout room.” “Breakout rooms” will not be audio or video recorded under certain circumstances. If the meeting is being cloud recorded (recommended), it will only record the main room, regardless of what room the meeting host is in. If local recording is being used (not recommended), it will record the room the participant who is recording is in. The host can set a predetermined amount of time and bring them back into the Zoom Meeting. If the host does not want to put a time constraint on the “breakout room,” the host can send a time warning to the breakout room participants to notify them that they should wrap up. If selected as a “breakout room” option, participants in the “breakout room” can rejoin the hearing when they are done meeting.

However, due to the concerns with recording and the prejudice to defendants if attorney-client conversations inadvertently become public, it may instead be wisest to instruct attorneys to communicate with their clients separately by telephone or via private Zoom call initiated by the attorney. If defendant is in detention, the court should communicate with jail staff regarding attorney-client confidentiality.

## **4.3 Public and Press Access**

Under the Alabama Constitution, criminal defendants are guaranteed the right to a public trial. § 6. The Rules of Criminal Procedure clarify that all criminal proceedings must be open to the public. Ala. R. Crim. Proc. r. 9.3(b).

Courts have several options to provide public access to virtual proceedings. The Zoom link may be included in the order and made publicly available. However, opening a Zoom call to the public at large creates a risk of disruption. Some courts have required members of the public to request access in advance in order to observe virtual hearings. Then, provided no party successfully objects, the court sends them a link to the Zoom call. While this solution may work well for civil proceedings, the legal requirements for public criminal proceedings casts doubt upon the constitutionality of only allowing public access via advance request in those cases.

In other states, courts have created a live streaming channel for public access. Information about public availability of court proceedings via live streaming can be made accessible to the public and press. The court can work with its local court website administrator to post their daily dockets on the court's website, indicating on the docket any hearings that are being held virtually along with instructions on how to access them. If the court does not have a website, the court may develop another method to effectively communicate the availability of court proceedings.

Note, however, that some services automatically record and store content that is streamed on a channel per its licensing agreements. These recordings are not the official record of the court and need not be maintained on the court's streaming channel. Each court should review the Terms of Service for any streaming service so used, especially as regards their possible uses of court content, to decide whether recordings should be maintained there.

#### **4.4 Managing the Hearing**

These guidelines are intended to provide some instructions on how to ensure that the hearing is orderly and that the participants' statements are clear.

##### **4.4.1 Use Gallery View**

When multiple people talk at once, the Zoom system may have difficulty determining which participant is speaking because the default function is to shift

the screen to the person speaking. Using the “gallery view” (a “Brady Bunch-style” multi-boxed view mode) will prevent the program from continually shifting between participants and will allow the court to see all of the participants and the court reporter/recorder at all times.

#### 4.4.2 Advise Parties to Speak Slowly and to Wait Until Prompted

Judges and court staff must be vigilant in ensuring quality recording so an accurate transcript can be prepared. Because of a few second time delay when participating via telephone or video conferencing, parties may be more likely to overlap when talking. Judges or court staff should frequently remind parties to talk slowly and to not interrupt. If overlap occurs, courts should ask parties to repeat what they said and encourage parties to only speak when they have been prompted to do so, unless there is an objection or some other reason to speak out of turn. Parties participating by telephone should be instructed to identify themselves each time they speak.

#### 4.4.3 Courts Must Act as Zoom Host to Control Meetings

The judge is responsible for maintaining order and decorum just as they do in the physical courtroom. Zoom has a number of features that can control who may enter a virtual hearing and who may speak during it. These features are controlled by the meeting host. Zoom also allows the designation of a co-host; judges can be the host and a staff member, either a clerk or recorder/operator, can be the co-host and manage participants. The host of the proceeding has the ability to mute or unmute all participants in the virtual courtroom or to engage a feature that automatically mutes new participants upon entry into the virtual courtroom. Judges should advise participants if they are using that feature. Participants who want to speak may “raise their hand” by utilizing the hand raising feature, then the host can unmute them to speak.

#### 4.4.4 Allow or Limit Chat Functionality

The chat function allows participants to type text (comments) during the proceeding. The court, through the host (or co-host), can allow the host and participants to “chat” with everyone, with only the host, with everyone publicly or privately, or with no one. It is up to the court to allow or limit the function. However, several pitfalls exist: For example, a chat between the court and one



attorney could allow for ex parte communication or comments to be made that are not included in the official record, or while a private chat between an attorney and client may be desirable, parties may easily err and accidentally share such communications with the entire courtroom. For such reasons, it may be wisest to disable private chatting, at least.

If a court elects to enable the chat feature, public chats (not private chats) may be saved. When saving the chat, the court can save any chat messages that the host received privately or those chat messages that were sent to “everyone.” Messages sent privately between participants, not including the host, cannot be saved by the host.

#### 4.4.5 Remove Disruptive Participants

Zoom allows a host to remove a participant if needed. If the court is using the “waiting room” feature, a participant can be returned to the “waiting room.” That participant cannot rejoin the meeting on their own and can only be readmitted by the court host.

#### 4.4.6 Put a Participant on Hold

A host can temporarily remove a participant from the virtual courtroom, while the rest of the participants continue the meeting. When one or more participants are put on hold, the attendees’ video and audio connections will be disabled. This might be used when the judge wants to speak to the attorneys (without a witness hearing) or address an issue with only court personnel. Keep in mind, however, that this feature will not necessarily disable any public video stream.

#### 4.4.7 Play Sound when a Participant Enters or Leaves a Meeting

A host can configure settings to play a sound when someone enters or leaves a proceeding. This will help the court and the recorders and operators track the participants in the hearing.

#### 4.4.8 Troubleshooting an Audio Echo in a Meeting

There are generally three common causes of an audio echo, or feedback, during a Zoom meeting:

- 1) The participant called in by phone and is using his or her computer's audio at the same time;
- 2) There are participants with computer or telephone speakers that are too close together; or
- 3) There are multiple computers with active audio in the same conference room.

In each instance, the feedback can be eliminated if there is only one audio source. Zoom has step-by-step instructions on its website about how to address this issue.

## **4.5 Security**

Numerous security incidents have occurred nationwide involving the use of video and teleconferencing platforms. The following steps will help mitigate such hijacking:

- Do not make Zoom meetings open to the public.
- In Zoom, use the “waiting room” feature and control the admittance of guests.
- For a separate private meeting, use the scheduling options in Zoom to create a meeting for a specific time, and with a unique Meeting ID that is shared only with the invited participants.
- Do not share any Meeting ID on an unrestricted, publicly available social media post. Only provide the Meeting ID and password(s) directly to specific litigants.

## **4.6 Documentary Evidence**

Virtual hearings obviously present new difficulties in the presentation of documentary evidence. Courts may allow exhibits to be submitted to the court via e-mail to the proceeding so they can be marked and logged before the hearing. Courts can also consider other available technologies to accomplish this, such as Dropbox or WeTransfer. Use of the “share screen” feature in Zoom may facilitate its authentication by witnesses. However, if a question is to be raised as to the authenticity of a document, requiring introduction of the original under Rule of Evidence 1003, then the hearing may best be delayed until in-person proceedings are practicable.

## **4.7 Witnesses**

The Alabama Supreme Court has authorized witness testimony to be taken in virtual hearings. See Alabama Supreme Court Administrative Order dated March 24<sup>th</sup>, 2020 and extended indefinitely by Administrative Order No. 7 dated May 13, 2020. The court reporter must be able to see and hear the witness in order to administer the oath, and the reporter must be able to positively identify the witness. Cullman County has acted to facilitate this requirement by ordering witnesses to present a government-issued photo ID on camera before testifying. See Cullman County AO 2020-05 Courtroom Operations Beginning June 1, 2020, linked in Appendix A II. More information can also be found by consulting the Alabama Supreme Court's Order, "Administrative Order Approving Remote Administration of Oaths to Witnesses in Court Proceedings and Depositions" (March 24, 2020). See Appendix A I. Since subject to change, continue to monitor administrative orders to determine current permissive status.

#### **4.8 Addressing the General Right to Public Access of Criminal Proceedings When in a Virtual Setting**

Because Alabama law recognizes the existence of a general right of the public to have access to some criminal hearings, the court may order 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 hearing held 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 Co.* 478 U. S. 1 (1986) at 7; *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 clerk with the defendant's name, case #, if known, as well as the requestor's email address. Notice of the request shall be provided to the prosecutor and the defense and, if no objection, is filed within 14 days of the notice, the requestor 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 prescribed, the court shall schedule a hearing to determine whether the request for access should be denied and hearing closed to the public.

The court may determine a compelling reason to implement this special access rule due to the community safety threat posed by COVID-19 and 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.

Any needs for computing equipment, software, digital cameras, microphones, or other needs/upgrades required to fulfill the goals/purposes of the virtual hearings guidance should be addressed by a SHARK ticket to the Administrative Office of Courts Technology Division. Expense for same may be addressed by CARES Act appropriations for the Alabama courts, and should be explored.

#### **4.9 Self-Represented Litigant Technology Access**

Technology access for litigants/participants will be an issue in some virtual proceedings, most likely in the self-represented litigant context. The court, in conjunction with the circuit clerk's office, should consult with the technology division of the Administrative Office of Courts and/or the appropriate county commission regarding the feasibility of and funding possibilities for the installations of laptop stations/kiosks in the public areas of the court facility and/or access to tablets loaned by the clerk for use in a designated area of the court facility for members of the public who would not otherwise be able to participate in a virtual proceeding. Grant resources for SRL court access should be explored, along with the possibility for CARES Act reimbursement.

Source: Using Zoom and Virtual Courtroom Resource Center  
(<https://info.courts.mi.gov/virtual-courtroom-info>)

#### **4.10. Additional Considerations for Virtual Large Docket Proceedings – Traffic Court.**

The state of Arizona has initiated Zoom Court for large docket proceedings, including landlord-tenant and traffic court. Participation in the court process has been up as a result. For example, pre-pandemic participation by tenants in eviction matters was only around 10%. Now, with Zoom conferencing procedures, about 75% of tenants on the docket are now participating in Arizona's eviction virtual dockets.

As to traffic court specifically, analysis of the pre-pandemic innovation of Arizona's Online Dispute Resolution (ODR) for moving violations has revealed that about 40% of the participants in ODR would not have participated if the proceeding had been in person. Another interesting statistic at play in traffic/child support/evictions, etc. dockets is that up to 50% of the parties in these dockets are not formally in the banking system. Many persons before the court operate on a cash basis only, creating some unique challenges to payment every state experiences, but Arizona has attempted to address as provided in item number 3.

1. Follow all docketing, procedural, and equipment suggestions in other virtual court suggestions found in Section IV. of these guidelines, and also pursuant to current law or administrative order.
2. Provide alternative ways for defendants to pay (online payment options, extended time payment options, etc.)
3. **Pay Near Me.** For those not in the banking system, consider initiating a Pay Near Me system. When this is set up, a bar code specifically for that individual will be provided to them. Using that bar code, a party may go to any location across the country participating in the Pay Near Me program (convenience stores, pharmacies, grocery stores, discount stores, etc.), scan their bar code, and make their payments there. The money will then be routed to the correct court and credited to them. Payments can be made from anywhere in the United States under this system, which is very compatible with a virtual docket process, as long as under current law and/or administrative order. For more information regarding this option, see <https://home.paynearme.com/contact.us/>.
4. **Calendaring** – Historically, the ticketing officers de facto set large docket scenarios for traffic court since the time and date to appear is typically on the citation itself. Law enforcement's computer systems can be adapted to stagger the court start times to spread out the docket to make virtual or in-person court more manageable. Confer with ALEA and other law enforcement agencies.
5. Provide instructions on court notices about alternatives to coming to court discussed above, and applicable rules and procedures in place at the courthouse (masking, social distancing, etc.)

Source: www. June 2020 [www.ncsc.org/tinychats](http://www.ncsc.org/tinychats), discussing recent advents in Arizona Traffic Court procedures.

#### **4.11. Additional Considerations for Virtual Court Large Dockets -Child Support**

1. Although overall participation using a virtual format has been up, anticipate impatience with those in the virtual waiting room awaiting their hearing, especially since leaving the meeting/hearing is as easy as a button click. Therefore, inform all on the videoconference to expect a wait.
2. Consider staggering the docket times for participants to call in. Place the call-in time on the court notice along with the Zoom link information. Confer with the Circuit clerk regarding information content on the court notice.
3. Inform participants that if they become disconnected, to call back in.
4. Have additional personnel from the district attorney's office and/or DHR to work the cases ahead of time of it being call.
5. As people will be coming in and out of the videoconference continuously, periodically repeat your instructions.
6. Review the cases on the docket beforehand to check status (return of service, answer filed, DNA results filed, etc.) so that you may determine ahead of time which cases might not be ripe for hearing ahead of time.
7. Have good audio quality and video quality equipment (e.g. condenser microphone plug-in, HD Webcam, etc.). Contact Fred Lilly at AOC about technology equipment needs/issues at [fred.lilly@alacourt.gov](mailto:fred.lilly@alacourt.gov).
8. Play the Zoom program on one dedicated computer while accessing the court files on another computer (Zoom may slow computer operation, making attempting both applications on one computer less than optimal). Contact AOC regarding equipment needs. Contact AOC through [fred.lilly@alacourt.gov](mailto:fred.lilly@alacourt.gov). to initiate a discussion regarding any technology equipment needs.
9. Place all basic videoconference instructions on the court notice itself, while simplifying those instructions as much as possible. Also consider including a Spanish version of those instructions.

10. Ensure there is an alternative for those without digital data capacity. Provide a conference call-in number for phone participation, and/or provide a public kiosk or a tablet usage procedure at the courthouse.
11. Place on the hearing notice for the party NOT to come to the courthouse unless the party is having to resort to the device resources referenced in item number 10.
12. Consider alternative payment options/avenues for child support, court costs, GAL fees, etc. such as initiation of a Pay Near Me program. NOTE: For a more extensive discussion of this this, see Traffic Docket considerations (4.10). See also <https://paynearme.com/contact-us/>.
13. Before undertaking any new procedure, ensure it is allowed under current Alabama law and/or administrative order.

Source: June 2020 [www.ncsc.org/tinychats](http://www.ncsc.org/tinychats), discussing recent developments in Texas Child Support Court procedures.

## **V. Phased Re-Opening Plans**

The COVID-19 crisis is one where circumstances and conditions are quite dynamic and subject to rapid change. These changes and differing scenarios as a result are also dependent upon local conditions. As a result, the Alabama Supreme Court has placed the responsibility upon the individual presiding judges in each circuit to determine, based upon their situations, when and to what extent to open court operations. See Administrative Order No. 7, dated May 13, 2020, linked in Appendix A I.

Therefore, these phased plans are presented for consideration of a calibrated method to proceed. Moving from one phase to another requires the contemplation of the circuit meeting certain benchmarks that are detailed in the proposed orders. Determining the sufficient achievement of these benchmarks will require input from appropriate county and public health officials.

## **5.1 PROPOSED MODEL ORDER TO COMMENCE A PHASED REOPENING PLAN**

The courts have consulted with the local health department and determined the following: (Select all that apply)

1. [There have been no COVID-19 confirmed or suspected cases in the court facility within a 14-day period] OR [Confirmed or suspected cases have occurred in the court facility, but deep cleaning of exposed areas and applicable employee self-quarantine actions have been taken]; and,
  2. [There is a downward trajectory of documented cases within a 14-day period] OR [There is a downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests)]; and,
  3. State and local orders restricting movement and/or requiring shelter-in-place have been rescinded or limited and the presiding judge has determined that existing orders would not prevent the court from implementing Phase One; and,
  4. The courts have [consulted with local health authorities] AND/OR [obtained data (attached)] confirming that regional health care facilities are able to treat all patients without overwhelming crisis care. The courts have also consulted with the county commission.
- A. In order to protect the health and safety of employees and the public, the court(s) have enacted the following protections: (Select all that apply)
1. Employees will self-screen for COVID-19 symptoms. Employees who feel sick or have any COVID-19 symptoms will not report to work. Employees who feel sick or display symptoms at work will be sent home.
  2. Court employees have been surveyed and those employees who have self-identified as a vulnerable employee and unable to return to work have been offered appropriate accommodations, including the ability to work remotely if their job lends itself to remote work.



3. To the extent possible, court employees who are working remotely will be allowed the opportunity to work remotely.
4. Employees in court facilities will maintain social distancing of six feet at all times and wear masks when six-foot physical distance cannot be maintained. The court has taken the following steps to ensure proper social distancing and employee safety [select only those that apply]:
  - a. Placed physical barriers between workspaces that are not at least six feet apart.
  - b. Marked common spaces flooring to indicate six-foot intervals.
  - c. Required employees to wear masks while in public spaces.
  - d. Required employees handling mail to wear masks and gloves.
  - e. Implemented staggered shifts of employees to reduce crowd size and the risk of people gathering at start and close times.
  - f. [insert other applicable measures]
5. Employees will practice good hygiene through hand washing, frequent disinfecting of used items and surfaces, sneezing or coughing into a tissue or elbow, and avoiding touching their faces.
6. Employees will not travel for non-essential business.
7. Employees have been trained regarding COVID-19. The training included good hygiene practices, updated personnel policies, and safety controls at the court facilities.
8. Court facilities have posted signage emphasizing proper handwashing.
9. Shared equipment will be cleaned and sanitized before each use. Examples of shared equipment include copiers, fax machines, and telephones used by more than one employee during a single shift or in consecutive shifts. This equipment should be wiped down with disinfectant or a disinfectant wipe between uses.

10. The court is following the CDC guidance on cleaning and disinfecting if the facility is exposed to COVID-19.
  11. The court has developed a contact tracing policy and is prepared to implement contact tracing procedures after receiving notification that the court facility has had confirmed exposure to COVID-19. These procedures will help the court identify individuals who may have been exposed to COVID-19 and will identify exposure locations that need to be cleaned and disinfected pursuant to CDC guidelines.
- B. After consultation with the proper authorities, the court(s) is/are enacting the following measures related to public entry into court facilities: (Select all that apply)
1. The public will [be asked to self-screen using posted screening questions prior to entering the court building] OR [will be screened by court personnel or security prior to entering the court building].  
Screening questions will include, but are not limited to the following:
    - a. Do you have a fever greater than 100.4 degrees? [If a touchless/ contactless thermometer is available, a temperature check is strongly recommended in lieu of verbal confirmation.]
    - b. Do you have a cough or worsening cough (excluding chronic cough due to known medical reason)?
    - c. Do you have shortness of breath?OR
    - d. Do you have at least two of the following symptoms:
      - Fever
      - Chills
      - Repeated shaking with chills
      - Muscle pain
      - Headache
      - Sore throat
      - New loss of taste or smell

- e. Have you had any close contact in the last 14 days with someone with a COVID-19 diagnosis?
- f. Have you traveled internationally or outside of Alabama in the last 14 days?

Any individual responding “yes” to the screening questions will not be allowed to enter the courthouse until they can pass the screening questions. Screening personnel will notify the court of any individual that does not make it past screening. The court will accept documents for filing from the person. If the person was scheduled to appear as a party a court proceeding, the court will work to reschedule the hearing/trial to either a remote proceeding or to a future date when the person may pass courthouse screening. The court must provide appropriate personal protective equipment (PPE) to any personnel responsible for in-person screening.

- C. In order to facilitate the essential business of the court(s), the court(s) is/are enacting the following measures related to court proceedings: (Select all that apply)
- 1. Proceedings will be conducted virtually to the maximum extent possible under current law and/or administrative order.
  - 2. In-person court proceedings will be limited to no more than 10 people.
  - 3. Members of the public are required to wear face masks to the extent they can medically tolerate it. They will/will not be provided by the court prior to entry.
  - 4. Members of the public or staff who refuse to wear required face coverings or adhere to social distancing requirements may be asked to leave the court facility.
  - 5. Any member of the public who is asked to leave the court facility must be offered an opportunity to conduct court business virtually, attend court proceedings virtually, file documents in an alternative manner, or confer with court administration to determine alternate arrangements for accessing the court.

The court(s) is/are regularly meeting with local public health officials to monitor local public health conditions related to COVID-19 and/or is/are continuously

evaluating data to assess their readiness to proceed to Phase Two of court capacity, which is anticipated to be [Date].

Date: \_\_\_\_\_

Presiding Judge

*(Strike or add lines as needed)*

## **5.2 PROPOSED FORM ORDER FOR PHASE II IMPLEMENTATION**

The Courts have consulted with the local health department and determined that gating criteria for movement into Phase Two is satisfied as of [Date]. Specifically: (Select all that apply)

1. The court began Phase One of the Return to Full Capacity process on [Date].
2. [There have been no COVID-19 confirmed or suspected cases in the court facility within a 14-day period] OR [Confirmed or suspected cases have occurred in the court facility, but deep cleaning of exposed areas and applicable employee self-quarantine actions have been taken]; and,
3. [There is a downward trajectory of documented cases within a 14-day period] OR [There is a downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests)]; and,
4. State and local orders restricting movement and/or requiring shelter-in-place have been modified and the presiding judge has determined that existing orders would not prevent the court from implementing Phase Two requirements; and,
5. The presiding judge has [consulted with health authorities] AND/OR [obtained data (attached)] confirming that regional health care facilities are able to treat all patients without overwhelming crisis care; and,

6. The presiding judge has [consulted with health authorities] AND/OR [obtained data (attached)] confirming that there is no evidence of COVID-19 rebound within the local community and no need to implement additional social distancing measures based upon a resurgence of infections in the local area.
- A. In order to protect the health and safety of employees and the public, and after consultation with the proper authorities, the court(s) have enacted the following protections: (Select all that apply)
1. Employees will self-screen for COVID-19 symptoms. Employees who feel sick or have any COVID-19 symptoms will not report to work. Employees who feel sick or display symptoms at work will be sent home.
  2. Court employees have been surveyed and those employees who have self-identified as a vulnerable employee and unable to return to work have been offered appropriate accommodations, including the ability to work remotely if their job lends itself to remote work.
  3. Employees will be encouraged to work remotely where feasible to facilitate social distancing among on-site staff.
  4. Employees in court facilities will maintain social distancing of six feet at all times and wear masks when six-foot physical distance cannot be maintained. The court has taken the following steps to ensure proper social distancing and employee safety [select only those that apply]:
    - a. Placed physical barriers between workspaces that are not at least six feet apart.
    - b. Marked the floor in common spaces to indicate six-foot intervals.
    - c. Required employees to wear masks while in public spaces.
    - d. Required employees handling mail to wear masks and gloves.
    - e. Implemented staggered shifts of employees to reduce crowd size and the risk of people gathering at start and close times.

- f. [insert other applicable measures]
5. Employees will practice good hygiene through hand washing, frequent disinfecting of used items and surfaces, sneezing or coughing into a tissue or elbow, and avoiding touching their faces.
  6. Employees will not travel for non-essential business.
  7. The court has consulted with the local health department and developed policies regarding employee travel outside of Alabama. Any quarantine and/or isolation requirements will be implemented consistent with the most current guidance from the Centers for Disease Control and/or local public health officials.
  8. Employees have been trained regarding COVID-19. The training included good hygiene practices, updated personnel policies, and safety controls at the court facilities.
  9. Court facilities have posted signage emphasizing proper handwashing.
  10. Shared equipment will be cleaned and sanitized before each use. Examples of shared equipment include copiers, fax machines, and telephones used by more than one employee during a single shift or in consecutive shifts. This equipment should be wiped down with disinfectant or a disinfectant wipe between uses.
  11. The court is following the CDC guidance on cleaning and disinfecting if the facility is exposed to COVID-19.
  12. The court has developed a contact tracing policy and will implement contact tracing procedures after receiving notification that the court facility has had confirmed exposure to COVID-19. These procedures will help the court identify and notify individuals who may have been exposed to COVID-19 and will identify exposure locations that need to be cleaned and disinfected pursuant to CDC guidelines.
- B. After consultation with the proper authorities, the court(s) is/are maintaining the following measures related to public entry into court facilities: (Select all that apply)

1. The public will [be asked to self-screen using posted screening questions prior to entering the court building] OR [will be screened by court personnel or security personnel prior to entering the court building]. Screening questions will include, but are not limited to, the following:
  - a. Do you have a fever greater than 100.4 degrees? [If a touchless/ contactless thermometer is available, a temperature check is strongly recommended in lieu of verbal confirmation.]
  - b. Do you have a cough or worsening cough (excluding chronic cough due to known medical reason)?
  - c. Do you have shortness of breath?

OR

- d. Do you have at least two of the following symptoms:
  - Fever
  - Chills
  - Repeated shaking with chills
  - Muscle pain
  - Headache
  - Sore throat
  - New loss of taste or smell
- e. Have you had any close contact in the last 14 days with someone diagnosed with COVID-19?
- f. Have you traveled internationally or outside of Alabama in the last 14 days?

Any individual responding “yes” to the screening questions will not be allowed to enter the courthouse. Screening personnel will notify the court of any individual who does not pass the screening procedure. If the person came to the court to file documents, the court will accept those documents for filing. If the person was scheduled to appear as a party or witness in a court proceeding, the court will work to reschedule the hearing/trial as a remote proceeding or to a future date when the person may pass courthouse

screening. The court must provide appropriate personal protective equipment (PPE) to any personnel responsible for in-person screening.

C. In order to facilitate increased activity in the courthouse, the court(s) is/are using the following measures related to court proceedings:

1. Proceedings will be conducted virtually to the maximum extent possible pursuant to current law and/or administrative order.
2. In-person court proceedings will/will not be allowed on a limited basis. [If allowed, describe any restrictions: (e.g. limit the number of attendees, require masks of all attendees, separate viewing area for non-parties, etc.)].
3. Off-site visits with probationers and clients will/will not resume.
4. Large venues and common areas in the courthouse (e.g. waiting areas, sit-down dining, etc.) will/will not be open for use. Members of the public are required to wear facemasks to the extent they can medically tolerate it. They will/will not be provided by the court prior to entry.
5. Members of the public or staff who refuse to wear required face coverings or adhere to social distancing requirements may be asked to leave the court facility.
6. Any member of the public who is asked to leave the court facility must be offered an opportunity to conduct court business virtually, attend court proceedings virtually, file documents in an alternative manner, or confer with court administration to determine alternate arrangements for accessing the court.
7. The court(s) is/are regularly meeting with local public health officials to monitor local public health conditions related to COVID-19 and is/are evaluating data to assess readiness to proceed to the next phase of court capacity, which is anticipated to be [Date].

Date: \_\_\_\_\_

\_\_\_\_\_  
Presiding Judge



### **5.3 MODEL ORDER FOR IMPLEMENTATION OF PHASE III**

The courts have consulted with the local health department and/or has reviewed pertinent data/information and is satisfied as of [Date] that: (Select all that apply)

1. The court(s) began Phase One of the Return to Full Capacity process on [DATE].
  2. [There have been no COVID-19 confirmed or suspected cases in the court facility within a 14-day period] OR [Confirmed or suspected cases have occurred in the court facility, but deep cleaning of exposed areas and applicable employee self-quarantine actions have been taken]; and,
  3. [There is a downward trajectory of documented cases within a 14-day period] OR [There is a downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests)]; and,
  4. State and local orders restricting movement and/or requiring shelter-in-place have been rescinded or limited and the presiding judge has determined that existing orders would not prevent the court from implementing Phase Three requirements; and,
  5. The presiding judge has [consulted with health authorities] AND/OR [obtained data (attached)] confirming that regional health care facilities are able to treat all patients without crisis care; and,
  6. The presiding judge has [consulted with health authorities] AND/OR [obtained data (attached)] confirming that there is no evidence of COVID-19 rebound within the local community and no need to implement additional social distancing measures based upon a resurgence of infections in the local area.
- A. In order to protect the health and safety of employees and the public, the court(s) have enacted the following protections after consultation with the proper authorities: (Select all that apply)

1. Normal staffing will resume at worksites.
2. Vulnerable employees on temporary leave or working remotely may return to work and practice six-foot physical distancing, wearing masks when the distance cannot be maintained. Minimizing exposure to social settings where social distancing is not possible is encouraged.
3. Personal travel should take into account the necessary travel precautions and employees are fully aware of the potential for quarantine requirements upon return.
4. Employees in court facilities will maintain social distancing of six feet at all times and wear masks when six-foot physical distance cannot be maintained. The court(s) has/have taken the following steps to ensure proper social distancing and employee safety: [select only those that apply]
  - a. Placed physical barriers between workspaces that are not at least six feet apart.
  - b. Marked the floor in common spaces to indicate six-foot intervals.
  - c. Required employees to wear masks while in public spaces.
  - d. Required employees handling mail to wear masks and gloves.
  - e. Implemented staggered shifts of employees to reduce crowd size and the risk of people gathering at start and close times.
  - f. [insert other applicable measures]
5. Employees will practice good hygiene through hand washing, frequent disinfecting of used items and surfaces, sneezing or coughing into a tissue or elbow, and avoiding touching their faces.
6. Employees have been trained regarding COVID-19. The training included good hygiene practices, updated personnel policies, and safety controls at the court facilities.

7. Court facilities have posted signage emphasizing proper handwashing.
  8. Newly exposed areas (e.g. areas recently opened to the public or returning staff) and shared equipment will be cleaned and sanitized before use. Examples of shared equipment include copiers, fax machines, and telephones used by more than one employee during a single shift or in consecutive shifts. This equipment should be wiped down with disinfectant or a disinfectant wipe between uses.
  9. The court is following the CDC guidance on cleaning and disinfecting if the facility is exposed to COVID-19.
  10. The court has developed a contact tracing policy and is prepared to implement contact tracing procedures after receiving notification that the court facility has had confirmed exposure to COVID-19. These procedures will help the court identify individuals who may have been exposed to COVID-19 and will identify exposure locations that need to be cleaned and disinfected pursuant to CDC guidelines.
- B. [OPTIONAL in this phase if, after consultation with the proper authorities, screening is not recommended.] The [district/circuit/probate/trial] court(s) is/are enacting the following measures related to public entry into court facilities :
1. The public will [be asked to self-screen using posted screening questions prior to entering the court building] OR [will be screened by court personnel or security prior to entering the court building]. Screening questions will include, but are not limited to the following:
    - a. Do you have a fever greater than 100.4 degrees? [If a touchless/ contactless thermometer is available, a temperature check is strongly recommended in lieu of verbal confirmation.]
    - b. Do you have a cough or worsening cough (excluding chronic cough due to known medical reason)?
    - c. Do you have shortness of breath?
- OR

- d. Do you have at least two of the following symptoms:
  - Fever
  - Chills
  - Repeated shaking with chills
  - Muscle pain
  - Headache
  - Sore throat
  - New loss of taste or smell
- e. Have you had any close contact in the last 14 days with someone with a COVID-19 diagnosis?
- f. Have you traveled internationally or outside of Alabama in the last 14 days?

Any individual responding “yes” to the screening questions will not be allowed to enter the courthouse until they can pass the screening questions. Screening personnel will notify the court of any individual that does not make it past screening. The court will accept documents for filing from the person. If the person was scheduled to appear as a party a court proceeding, the court will work to reschedule the hearing/trial to either a remote proceeding or to a future date when the person may pass courthouse screening. The court must provide appropriate personal protective equipment (PPE) to any personnel responsible for in-person screening.

- C. In order to facilitate the essential business of the court(s), the court(s) is/are enacting the following measures related to court proceedings pursuant to current law and/or administrative order: (Select all that apply)
  - 1. Proceedings will be conducted virtually to the maximum extent possible.
  - 2. In-person court proceedings will be allowed on a limited basis. [Describe any restrictions]: (e.g. limit the number of attendees, separate viewing area for non-parties, six-foot social distancing still required, no more than 10 people in any space, etc.)
  - 3. Off-site visits with probationers and clients will/will not fully resume. [Describe any restrictions.]

4. Large venues and common areas in the courthouse (e.g. waiting areas, sit-down dining, etc.) will be open for use using limited six-foot physical distancing. [Describe distancing protocol these areas (e.g. limited the number of users, etc.).]
5. Members of the public or staff that refuse or adhere to social distancing requirements or other mitigation procedures may be asked to leave the court facility.
6. [If public screening protocols are discontinued under Section B, remove #6] Any member of the public who is asked to leave the court facility must be offered an opportunity to conduct court business virtually, attend court proceedings virtually, file documents in an alternative manner, or confer with court administration to determine alternate arrangements for accessing the court.

The courts are regularly meeting with local public health officials to monitor local public health conditions related to COVID-19 AND/OR are continuously evaluating data to assess their readiness to proceed to Phase Four, which is anticipated when a public health announcement is made that COVID-19 has been suppressed within the United States.

Date: \_\_\_\_\_

Presiding Judge

Source: *Returning to Full Capacity*. <https://courts.michigan.gov/News-Events/Pages/RTFC.aspx>.

## **VI. Considerations for Large Docket Scenarios**

1. When considering large docket settings, employ a time-spacing strategy. For example, rather than one time for everyone to appear in a courtroom, have each case set individually twenty minutes apart, or two every thirty minutes, over the course of a day or more). Or, the court, if social distancing requirements can be accommodated, can arrange for A-L alphabetized parties appear in the morning, and M-Z alphabetized parties appear in the afternoon, etc. The summons/hearing notifications should reflect the staggered starting time for the party. The court should coordinate with the

circuit clerk to make sure any specialized summons with individualized times can be accomplished.

2. Whenever the parties arrive, there should be a dedicated location in the courthouse to wait (jury assembly room, vacant courtroom, jury deliberation room, etc.) where parties/participants can safely socially distance from anyone else waiting in that location - with signage and/or sufficient supervision to direct persons to the designated location provided.
3. Temperature assessment, entry screening, sanitizing, and PPE protocols in effect at the time of the setting will apply to each person seeking ingress to the hearing facility for the docket. See Section II.
4. A party should plan for any witness(es) that party needs to testify at this hearing on their behalf should be notified by the party to appear at the time of the party's assigned time. The party may issue a subpoena, through the clerk's office, to the witness for that specific assigned setting. Any social distancing/personal protection protocols still in place at the courthouse at the time of this setting will apply to witnesses as well as parties and attorneys. Counsel for any represented party shall have discussed with witnesses all issues regarding contact information, facility accessing requirements, and a location to wait to be contacted by counsel about when and how to come to the facility where the hearing is to take place.
5. If sufficient court personnel are available, the court may wish to instruct parties/participants to wait in their vehicles when they arrive. Court personnel will come to the vehicle (with proper personal protective equipment) and obtain proper identification and contact information car side. As an alternative, the parties can come to the entrance of the court facility and provide the contact information to personnel at the door. The parties will then return to their vehicles and receive a text when it is time to come into the facility for the hearing. This instruction can be provided on the summons issued by the circuit clerk, and on any scheduling order entered by the court.
6. Personnel required to be a large docket settings (law enforcement, probation, DHR, Court Referral, Circuit Clerks, District Attorneys, shall have dedicated locations at the hearing facility to stand or sit where they will be able to practice safe social distancing during proceedings. The Judge presiding over the docket should enter an order establishing a floor plan with

the designated locations, appropriately marked and socially-spaced, of all essential personnel. Said order should be issued to any interested party/stakeholder, published in a way to afford easy access to the public.

7. For arraignment dockets, all waivers of represented defendants must be filed ahead of the docket. No one represented by counsel should need to appear for an arraignment unless there is a specific need to address the court.
8. For proceedings such as Probation Review, Drug Court, Wellness Courts, etc., consider the potential for reducing the need for in-person reviews by the usage of cell phone monitoring for low level, non-violent offenders as an alternative.. See more information from such providers as [www.telmate.com](http://www.telmate.com), [www.guardianmonitor.com](http://www.guardianmonitor.com), or <https://osmnow.com>, or others.
9. If the Judge presiding over the docket has determined that the existing court facility is not a large enough space to accomplish all the above requirements, or if time-spacing the docket is not feasible and a larger facility is required in order to be able to socially distance everyone in one setting, the judge may request the appropriate county commission to designate an adequate public space as an annex to the courthouse for the holding of the docket proceedings. See model language from a recent order/resolution of a county commission dedicating a building for court use at Section 8.6.2.
10. Any transport procedure should allow for all inmates and those transporting the inmates to appropriately socially distance while in the transport vehicle. Seating will be limited as a result, so additional time considerations for the transport of inmates must be taken into account during the planning and scheduling of the hearing or docket.
11. Consider the reactivation of retired judges and/or the temporary re-assignment/shifting of active judges' responsibilities to deal with anticipated caseload backlogs.
12. For additional considerations if large dockets are being conducted virtually/remotely, see 4.10 and 4.11 in **IV-Virtual Courtroom Guidelines**.

## **VII. In-Person Hearing Procedures**

1. Set hearings with time provided in-between for courthouse maintenance to do quick spray and wipe down. Admittance to the courtroom for a proceeding will be allowed only when the previous proceedings' participants have left the courtroom, and any necessary cleaning has been completed.
2. Court security will screen individuals pursuant to the protocols set out in Section V, Phased Reopening Plans.
3. The total number of cases set for a docket will be determined by the seating capacity of each courtroom, allowing for a minimum of 6 ft. of separation between everyone in the courtroom, this may have to be monitored by security/court staff at the door to the courtroom. Once capacity is reached, no one else should be admitted until someone leaves.
4. Retained attorneys will be asked to contact their clients the day before court or meet them outside the courthouse the morning of court to confirm with them that neither they, nor any witness has symptoms (fever, breathing issues, etc...) or has been exposed to someone with symptoms or are in a high risk group. In the event these issues exist, they shall notify the court and attempt to address the issue before the individual enters the courthouse. This policy should also encouraged for appointed counsel where practical.
5. Signs will be posted at the courthouse entrances directing anyone who has tested positive, has symptoms, or has likely been exposed, to **not** enter the courthouse but, to immediately contact their attorney or if self-represented to contact their judge's office for further instructions.
6. In each courtroom designate areas for parties, their witnesses and attorneys to stand that allow for their separation from each other and from court personnel. Use of signage and/or high visibility tape is encouraged where available.
7. Any documents should be placed upon a table with that person then stepping back beyond six feet. The appropriate person may then approach the table to pick the document up, examine, sign, etc. as necessary As an alternative to document presentation for evidentiary and/or illustrative purposes, counsel should be encouraged to utilize digital/electronic display of documents/exhibits whenever possible (Electronic Visual Evidence Presenter, laptop, etc.).



8. During an in-person proceeding or during a break in those proceedings, no one should approach within standard social distancing range (6 feet) the bench, court reporter, or any other counsel, litigant, clerk, attendant, juror, or any other court participant for any reason without being properly masked.
9. A clean-pen cup and a used-pen cup should be utilized for documents that need to be signed when the signer does not have his/her own pen.
10. In the course of a proceeding, if counsel and litigant or witness must confer, or for any other reason need to be in closer proximity with each other than standard social distancing requirements (6 ft), then all such persons must be masked before engaging in that contact.
11. Incarcerated persons should attend pre-trial matters remotely whenever possible unless constitutional issues may require otherwise. If inmates must be physically present, consider allowing only one inmate in the courtroom for one hearing at a time, assuming a location is available where the inmates awaiting hearing will be properly socially distanced. If not, incarcerated persons should be socially distanced while waiting in the courtroom for their hearing. See more in Section VI, Considerations for Large Docket Scenarios.
12. Excess courtroom chairs should be removed and those remaining will be spaced to comply with social distancing. Benches will be roped off or otherwise marked for social separation while persons are seated.
13. Presiding Judge should enter an administrative order that requires compliance with the then existing social distancing policies or protocols (**the order should provide an exception for adults supervising small children or assisting anyone with physical limitations**). Anyone intentionally violating the social distancing policies or protocols may be asked to leave the premises and is also subject to the contempt powers of the court.
14. Provide PPE to security and court personnel and where available use plastic or glass barriers.
15. Court security personnel should make regular rounds to ensure compliance with social distancing requirements.

Sources: *Returning to Full Capacity*. <https://courts.michigan.gov/News-Events/Pages/RTFC.aspx>.

<https://ncsc.org/newsroom/public-health-emergency/webinars>. (COVID-19 and Courthouses: Planning to Get Back to Business Inside the Courthouse, May 15, 2020; Expanding Court Operations II: Outside the Box Strategies: Administering the Courts while the COVID-19 Curve is Flattened, May 19, 2020).

## **VIII. Jury Management**

The COVID-19 crisis is likely to result in significant changes in juried proceedings and the public's perception of jury service. There are many considerations to keep in mind when developing plans to hold proceedings involving jurors.

### **8.1. Potential jurors in 2020 have concerns about the safety of jury service.**

A study presented by the National Center for State Courts reveals respondents indicated that if called for jury service in July of 2020, only one-half would consider it a safe thing to do. The response rate would be better in the fall of 2020. However, even then, a significant majority were still concerned about their health and safety.

The things the survey respondents indicated they would like to see to allay their concerns about jury service and thus increase the likelihood of their willingness to serve were as follows:

- Rapid-result testing
- PPE being readily available to them
- Limitation of access to them by others while serving

questionnaire to the jury venire by mail and requesting a return prior to the date of jury service.

Name\_\_\_\_\_ Juror Number\_\_\_\_\_

You have been selected as a potential juror. The court realizes that this is a very trying time in our nation's history and that many jurors have had their lives disrupted as a result of the COVID-19 pandemic. One of the core foundations of our freedom and democracy are trial by jury. Can you make the necessary sacrifice to assist the Court and serve as a potential juror?

☐ Yes

☐ No, and the reason is because: ☐ I am currently ill and have tested positive for the Coronavirus; ☐ I am currently ill and concerned I may test positive for the Coronavirus; ☐ I am caring for a family member or loved one who has tested positive for the Coronavirus; ☐ I am afraid to be in a room with a large group of people; ☐ I have a financial hardship that will make it impossible for me to serve as a juror (if this one is applicable, please briefly explain the circumstances); ☐ Any other reason why you cannot serve as a juror. If so, please explain. \_\_\_\_\_.

I affirm the information contained herein is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

4. Have a video available on the Circuit Clerk's website, or to play during in person qualification, explaining jury duty and the modified selection process during the pandemic. Also explain in the video the COVID-19 procedures being undertaken at the court facility to make jurors feel safer and more secure during the pandemic. If the video is on the Circuit Clerk's website, provide information on the summons encouraging jurors to view it. Provide this information to the media.
5. Expect smaller yields in juror summons during the pandemic. The National Center for State Courts estimates around a 15% reduction from the pre-pandemic national average yield of 53%.

6. Consider a reduction of days required to be physically at the court facility, and implementation of a call-in standby system. Consider limiting juror pool size according to the maximum allowed in the assembly area accounting for social distancing requirements - especially if no qualifying procedures can be performed remotely.
7. Target high-risk populations for the application of a more-relaxed excuse policy.
8. Anticipate more financial hardship, health concerns, and childcare requests/excuses.
9. For civil matters, explore with the litigants the possibility of obtaining their consent to try the case with less than 12 jurors. See Ala.R.Civ.P. 48. See also the Alabama Bench and Bar COVID-19 Task Force Model Orders and Stipulations in Appendix A III.
10. Initiate staggered starting times for groups of jurors during the voir dire process. Anticipate jury selection, considering entry protocols and staggered starting reporting times for voir dire, taking significantly longer than pre-COVID-19 procedure.
11. There have been pilot programs in other states (such as Texas) conducting qualification, voir dire, and even the trial itself remotely. However, anything done remotely and/or online at the time of this publication other than pre-qualification excuse process in Alabama is likely to require permission of AOC and/or a local Administrative Order from the Supreme Court.
12. Have a plan for limited (maximum of two persons per) elevator access of jurors going to the court room and/or the implementation of one-way stairwells for juror access to courtroom/other juror spaces. Daily clean/disinfect stairwell handrails and elevator buttons.
13. Plan social distancing arrangement/seating for voir dire and other proceedings.
14. Ensure the availability of enough PPE for all jurors and the proactive offering of that PPE to jurors.
15. Plan to have at least two alternate jurors. Make sure you can maintain them during deliberations in a properly supervised and socially distanced space.

- Adequate spacing
- Daily temperature checks
- Use of technology in the qualifying process

## **8.2. Prioritization of Jury Trials**

Once juried proceedings return in earnest, there will, in most jurisdictions and venues, be a backlog of matters awaiting adjudication. A recommended prioritization of jury proceedings is as follows:

- A. Criminal felonies and misdemeanors where defendant in custody.
- B. Violence/sex crimes
- C. Criminal felonies where defendant not in custody
- D. Criminal misdemeanors where defendant not in custody
- E. Civil matters

## **8.3. Some Safer Jury Practices/Procedures**

There are changes to the jury service process and procedure that will make jurors safer and feel more relaxed about jury service.

1. Adhere to a standard facility public health infection ingress/egress protocol Please see access protocol recommendations at Section II. See also phased plans in Section V.
2. Conduct some of the preliminary excuse process remotely (online) by having the juror provide the information in 8.3.3. Place a link to the questionnaire on the juror summons, along with a contact number for those who do not have connectivity to phone instead.
3. Have the following questionnaire online for the juror's responses before coming to any on site qualifying/voir dire process. NOTE: If online is not feasible, consider the Circuit Clerk sending the

- 16.** Take daily touchless temperature scans of the jurors. Anyone whose temperature exceeds that of the guidance provided in the Phased Plans. See Section V. Jurors with a temperature over 100.4 degrees should be excused from service and replaced with an alternate.
- 17.** Jurors should immediately report to the court (from home—no attempt should be made to come to the courthouse) the advent of a positive COVID-19 test result of themselves or anyone in their immediate family. Upon such occurrence, the court will immediately consult with local public health authorities on proper CDC notification, testing, and sanitization guidelines/procedures, and with counsel and litigants regarding whether a mistrial is necessary.
- 18.** Consider trial participants' use of PPE during jury selection process. NOTE: All courthouse personnel coming into regular contact with jurors (bailiffs, court attendants, clerks) should be required to use PPE at all times during the trial.
- 19.** After selection, ensure once the trial starts established social distancing policies and practices (see courtroom social-distancing protocols in Phased Plans at Section V) are followed throughout the trial process.
- 20.** Mark or tape hallways, waiting areas, and bathrooms to maintain social distancing. Establish lanes in the hallways/common areas. Have personnel assigned to monitor hallways, waiting areas, and bathroom access to assure social distancing and PPE orders are being observed.
- 21.** Space out seating at counsel tables that observe social distancing requirements. Require trial participants to use facemasks whenever they are conversing, conducting examination, or arguing the case.
- 22.** Determine alternatives to bench conferences during trials. Put another way, do not allow the litigants/counsel/court reporter to approach and congregate at or around the bench in violation of social distancing requirements at any time.
- 23.** Take out any chairs in the courtroom that impede social distancing and mark/designate the balance of the seating areas to maintain social distancing requirements. Establish areas/zones to stand in the

courtroom that will ensure social distancing while trial participants are not in their seats.

- 24.** Do not allow counsel or parties to physically approach the jury closer than that permitted by social-distancing guidelines. See Section II.
- 25.** Use technology (Electronic Visual Evidence Presenter, digital projector, etc.) to publish exhibits to the jury rather than handing them physical documents. Ensure there are adequate power sources available for any needed equipment.
- 26.** Do not use the juror box for all the jurors, but instead spread jurors into the gallery area as well to adhere to social distancing requirements. Mark/tape the juror designated gallery. Reduce gallery access to the public proportionally to the gallery space needed by jurors to maintain social distancing for everyone in the gallery – jurors and the public alike. NOTE: For a legal discussion regarding open-court considerations, see Section XI.
- 27.** Make sure a sufficient space is dedicated for the jury in which to take breaks in a location away from third parties that allows the jurors to socially distance. Provide sufficient PPE and sanitizer in the break area.
- 28.** Monitor jurors while moving from one space to another during the course of the trial to ensure social distancing protocols are being followed.
- 29.** Regularly clean/disinfect all trial/juror spaces and surfaces daily during the course of the proceedings.
- 30.** Allow the jury to have enough space to deliberate while maintaining safe social distancing. NOTE: After performing the measurements, this will not likely be the current space designated as the jury deliberation room.
- 31.** Debrief jurors after the trial on their perceptions regarding the effectiveness of the special trial/jury management procedures in order to alter or amend them as necessary.

## 8.4 Additional Considerations Re-Establishing Juror Pools

1. Consider greater use of deferrals, and set them 6-12 months out to deal with high-risk concerns, availability of vaccine anticipated, etc. Remember about 21% of the nation's population is currently over 65.
2. Make the rescheduling on a deferral automatic by selecting a deferred date at the time of the deferral.
3. Those who have tested positive, or have been around those who have tested positive, should be considered for a second deferral.
4. Remember that there are many child-care facility closures and enrollment freezes at this time.
5. As a resource in planning maximizing juror pool participation, remember that <https://www.census.gov/quickfacts/fact/table> allows you to view individual county demographics. Also, [www.countyhealthrankings.org](http://www.countyhealthrankings.org) reports the percentage of an individual county's population in poor health. These resources can be used to anticipate juror pool response for your county to allow for adequate planning for juror summons yields.
6. To help increase juror summons yields in the future, follow-up on failures to appear or to defer, at least until the average yield rate returns to pre-COVID levels. This can be accomplished by quickly issuing a 2<sup>nd</sup> notice to those jurors containing notification that their absence was noted and giving them information on how to obtain a deferral to a set date in the future. Alternatively, a show-cause docket could be set up and scheduled for those who failed to appear, be excused, or defer.
7. For those who fail to appear, consider the establishment of an amnesty program, providing that the recipient of the amnesty notice has an opportunity to call in to the court or circuit clerk and let the court know when they could appear for jury duty. Set up a date to appear for service for those that call in.
8. When addressing high-risk population issues, keep the cross-section of the community in mind. Elderly, African-American, and Hispanic populations have been most severely impacted by the COVID outbreak. So, if adjustments must be made for increased use of excuses in those populations, be prepared for contentions that jury pool community cross-section requirements may not have been met for the jury pool. See #9.



9. *Duren v. Missouri*, 439 U.S. 357 (1979), set up a three-pronged analysis of the community cross-section requirement. a) the group alleged excluded must be distinctive; b) the group's representation in the pool is not fair and reasonable in relation to the number of persons in the community, and c) any underrepresentation is due to systemic exclusion. If all three prongs are met, the burden of proof then shifts to the state to show a compelling justification.
10. First, regarding the *Duren* prongs, the argument could be made that the court has no control over the disease. Second, the court has no control over the increased health-risks of certain populations. Third, the exclusion is ad hoc-based upon exigent circumstances-and thus non-systemic.
11. Even if all three prongs of *Duren* could be argued to be present, the state could likely easily demonstrate that the COVID-19 crisis is a compelling justification for an enhanced excuse/deferral policy.
12. Do as much of the process on the front end as possible by getting pre-qualification excuses done before voir dire since *Duren* applies to the diversity of the pool, not the final venire.
13. Obtain contact information from jurors (email, cell phone, etc.) in the event of initiation of contact tracing.
14. Place questions about ability to appear remotely into routine qualification questions for a possible virtual qualification process in the future. See, e.g., the e-juror process with the Federal Southern District Court of Alabama at <https://ecf.alsd.uscourts.gov/ejuror>.
15. Ask jurors about their ability to access the internet. Do they have a smart phone or device with a web camera, is privacy available to them to respond to qualification questions, etc. online? If responding online, emphasize the need for answering qualification questions in a private setting.
16. Think through practical problems of the jurors being spread out throughout the court room, witnesses wearing masks, jurors being able to see and/or examine exhibits, etc.
17. Consider plexi-glass in some or all of these areas – the bench, the court reporter's position, the witness box, between jurors. This may alleviate some of the spreading/social distancing problems, and the need for all participants to keep masks on while court is in session. However, the plexi-glass may interfere with the ability to adequately hear the proceedings. In that instance, an upgrade in courtroom sound systems may become necessary.

In conclusion, keep in mind that the bottom line of the COVID-19 crisis is that all the traditional impediments to jury service are being compounded/magnified, especially in senior and minority communities. Therefore, get lots more information out to the public on court facility safety policies and procedures that will make jurors feel more safe and secure to serve on a jury.

Source: [www.ncsc.org/tinychats](http://www.ncsc.org/tinychats) – Jury Pools. (June 2020).

## **8.5 Specific Considerations Regarding Grand Juries**

Engaging in grand jury proceedings share many of the same concerns and caveats as petit jury proceedings. However, there are some distinctions to keep in mind for planning purposes.

1. The District Attorney may have the option of recalling an already convened grand jury – should the time limitations before the mandating of a new grand jury allow. See Ala. Code § 12-16-190, which requires two grand juries per year for counties with a population of less than 50,000, but four grand juries for counties with a population of more than 50,000. However, *Wyres v. State*, 29 So. 2d 155 (Ala.Ct. App.1947) interpreted the language of the statute to be “merely directory and not mandatory,” as long as “substantial compliance” of the statute is achieved. An Attorney General’s opinion from 2009 (Opinion No, 2009-070) opined that judicial officials have discretion to determine the number of grand juries to be empaneled and counties with more than 50,000 in population and may empanel less than four if there is substantial justification for doing so. Of course, being able to reconvene an existing grand jury would avoid the additional complications of convening an entire jury pool for qualifying and selection – as discussed elsewhere in this outline. See also *Petty v. State*, 140 So. 585 (Ala. 1932).
2. If, after taking the physical measurements, it is determined that the court facility’s usual grand jury space will not allow for 18 grand jurors, plus DA/assistants, and witnesses to all socially distance from one another during the proceedings. A location will have to be found not only large enough, but

also where the required secrecy and confidentiality can be maintained. This may be a more difficult search than where to place a regular juror pool.

3. Sufficient time should be placed into not only a suitable location, but in order to maintain secrecy, the logistical considerations as well. Space in the existing court facility may work if arrangements can be made to occupy an empty courtroom, or use could be made of the usual jury assembly area. However, secrecy requirements may result in hallways needing to be blocked, doors that should be locked, etc. during receipt of evidence and deliberation periods. Therefore, a logistical plan should be prepared and sufficiently communicated to the jurors and all involved courthouse/DA/law enforcement personnel. If using an empty courtroom, be mindful judicial personnel typically have non-public access that will need to be locked or posted during grand jury sessions.
4. If personal transportation for the grand jurors is not practical, ensure appropriate transportation has been arranged – with all PPE and sanitation practices discussed elsewhere – should proceedings need to be conducted at the alternative facility.
5. The District Attorney’s office and/or law enforcement should be prepared to provide adequate personnel to supervise grand jurors when not deliberating to ensure all COVID-19 protocols currently in place are being followed.
6. All District Attorney’s personnel in regular contact with grand jurors should always practice all social distancing and PPE requirements in place at the court facility.

## **8.6. Considerations in Implementation of Safer Jury Practices/Procedures**

Implementing changes in jury procedure requires the contemplation of several matters beforehand.

### **8.6.1. TIME.**

- a. Each day that a juror comes to the trial facility is a day that juror engages in increased risk of exposure/infection. So,

employ strategies to save juror time and exposure as much as possible.

- b. Require mediation to have been accomplished in all civil cases before trial.
- c. Before commencing trial, explore with the litigants approaches that may shorten or accelerate the process. For example, can certain matters/facts be stipulated?
- d. Are their evidentiary/admissibility foundations that can be established and/or stipulated to beforehand without having to usual process?
- e. Are there witnesses or at least portions of the witness' testimony that may not be critical to the case presentation and thus can be culled?
- f. Can time limits be set for each side on argument?
- g. Consider these and other ways to try the case in a quicker, more efficient manner in order to reduce potential exposure time.

NOTE: See the model Alabama Bench and Bar COVID-19 Task Force Standing Scheduling Orders and Stipulations in Appendix A III.

#### 8.6.2.SPACE.

- a. The first and most obvious consideration is the available space for qualification, trial, and deliberation. As a rule of thumb, 36'x48' is the minimum space for a deliberation room with adequate social-distancing availability.
- b. Take general inventory of the spaces at the court facility. Mark benches in order to space seating that will comply with social distancing requirements. If the hearing venue does not have benches, then take out enough seats for the seating to be arranged in a way that social distancing can be enforced.
- c. If, after performing these tasks, it is determined the facility will not allow for proper spacing at all the locations jurors will have

to be, then begin to target potential non-court public spaces where the various functions involving the jury could take place. This will likely require the county commission to dedicate space in another building. Minutes of a recent Limestone County Commission meeting containing the resolution for dedicating that space follows:

### **RESOLUTION**

Whereas, the \_\_\_\_\_ County Commission is the governing body of \_\_\_\_\_ County, Alabama (the “County”) and wishes to designate additional space as a temporary county courthouse annex; and,

Whereas, Alabama law provides that county commissions may locate county offices, including courthouses, to property outside the courthouse, provided the building is designated as a courthouse annex by order of the county commission at a regular meeting; and,

Whereas, the County Commission wishes to designate the property located at \_\_\_\_\_, as a temporary courthouse annex to accommodate judicial duties and court proceedings pursuant to, but not limited to. Ala. Code Sections such as 11-3-11 and 11-14-12; and,

Whereas, the Commission wishes to permit any duly appointed judge performing judicial duties in \_\_\_\_\_ county to conduct any and all court business as needed at the above-listed courthouse annex as if such business were being conducted in the \_\_\_\_\_ County Courthouse located at \_\_\_\_\_; and,

Whereas, upon motion having been duly made by \_\_\_\_\_, and seconded by \_\_\_\_\_, with discussion having been had thereon and a vote having been taken, upon which vote said motion carried by a vote of \_\_\_\_\_;

It is Hereby Resolved by the \_\_\_\_\_ County Commission as follows: 1) \_\_\_\_\_, located at \_\_\_\_\_, is hereby designated as a courthouse annex; 2) Duly appointed judges performing their duties in \_\_\_\_\_ County may conduct any and

all court business at \_\_\_\_\_ as if it were being conducted at the \_\_\_\_\_ County Courthouse located at \_\_\_\_\_;

3) The main entrance for such temporary courthouse annex shall be the entrance on the \_\_\_\_\_ side at \_\_\_\_\_; and, 4) This resolution shall take effect on the date it is approved and adopted and shall remain in effect until \_\_\_\_\_, unless extended by further order of this Commission.

ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
County Clerk/Administrator

- d. If other spaces than the traditional locations will be needed, especially if they are going to be remote, have a transportation plan.
- e. For the transport, assure there is PPE/sanitizer available for jurors, drivers, and court personnel, and have surfaces in the vehicle that jurors are likely to have to touch sanitized before and after each use.
- f. Ensure the seating in the transport vehicle is spaced to ensure appropriate social distancing during transport. Keep in mind this likely will require more time due to additional trips.

#### 8.6.3. PPE

- a. Is there sufficient PPE and hand sanitizer available for all jurors, litigants, and court personnel during the course of the trial?
- b. Take into account the anticipated length of the trial when assessing supplies.
- c. Identify sources for the equipment and the method of funding of same well prior to the scheduled arrival of the jury pool.

#### 8.6.4. TECHNOLOGY

- a. Take inventory of available technology.
- b. Is the equipment needed to digitally present evidence to the jury present?
- c. Is the Circuit Clerk able to specialize a jury summons establishing staggered appearance times?
- d. What sort of technology capability/tech support will be needed for automating the initial qualification process?

#### 8.6.5. PERSONNEL

- a. Are there sufficient personnel available to handle the increased load of persons coming to the court facility for jury duty so that the facility pandemic protocols can be maintained?
- b. Are there sufficient court personnel available to adequately monitor/supervise jurors at all locations and times?
- c. Have court personnel been adequately trained on all safer jury trials procedures being implemented?

NOTE: Expenditures required to make the modifications required above may be subject to reimbursement from the Administrative Office of Courts under the 2020 CARES Act allocation of funds to the courts. Also, SHARK tickets should be requested for necessary technology purchases.

Sources: CCJ/COSCA Pandemic Rapid Response Team.  
<https://ncsc.org/newsroom/public-health-emergency/webinars>. (How State Courts are Using Innovative Technologies and Responsible Health and Safety Practices to Resume Jury Trials, May 22, 2020; Juror Pools, June 4, 2020).

Alabama Bench and Bar COVID-19 Task Force Model Orders/Stipulations  
Minutes of the Limestone County Commission, January 21, 2020

## **IX. Special Considerations Regarding Juvenile Proceedings**

If in-person juvenile proceedings are to continue being conducted at the regular court facility, all transport, screening, hygiene, and social distancing protocols discussed elsewhere herein and in force and effect at the time of the proceeding are applicable.

However, in order to avoid exposure to additional risk to minors that could be caused by transporting them to the regular court facility, holding proceedings at the juvenile facility may be an option if dedicated court annex space is available. See Court Annex Model Resolution at Section 8.6.2.

Even if court annex space is available at the juvenile facility, courtroom size limitations inhibiting proper social distancing due to the number of attorneys, officers, family, etc. that often attend might mitigate against this being an optimum solution.

72-hour hearings were excepted by the Supreme Court from the general suspension of in person court proceedings. See March 13, 2020 Administrative Order in Appendix A. I. The option exists for individual circuit approval for 72 Hour hearings to be held remotely by obtaining authorization for such from the Administrative Office of Courts. See Appendix A III.

Videoconferencing equipment must meet certain legal requirements set out in the Supreme Court's Order of June 22, 2006 (See Appendix A III.), and the IT Division of the Administrative Office of Courts must approve that the hardware will satisfy the Supreme Court Orders and Guidelines Governing Videoconferencing Appearances in Juvenile Court. See Appendix A III.



The authorization will likely be for a limited time, so requests for extensions may be necessary.

## **X. Child Visitation and Support Considerations in the Event of Renewal of a Public Health Order Requiring a Lockdown**

In the event there is a renewal of a lockdown period in an order from the Governor/State Public Health Office, courts with domestic relations dockets/caseloads should consider entering the model order from Coffee County that establishes a default arrangement for custody and visitation during the lockdown period if the parties are unable to agree. See Appendix A III.

## **XI. Some Legal Considerations on Court Access**

Alabama has an open-court requirement in its Constitution at Section 13 – “*That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay.*”

Amendment VI to the United States Constitution affords a criminal defendant the right to a public trial without unnecessary delay.

Rule 26.1 of the Alabama Rules of Criminal Procedure requires the pronouncement of sentence in open court.

A crime victim has the state constitutional right to be present at sentencing and be heard on the record pursuant to Ala. Const. Section 6.01 (Amendment 557).

However, both federal and state appellate courts have addressed these issues through the years in order achieve a working balance of those rights with some practical limitations. As Justice Jackson noted in a dissent in the 1949 free speech

case of *Terminiello v. City of Chicago*, 337 U.S 1 (1949), “...if the court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.” This is a salient notion when attempting to structure practical, yet also fair and sufficiently open court proceedings in the midst of a public infectious disease emergency.

Probably the best place to start is *Rush v. State*, 253 Ala. 537, 45 So. 2d 761, 764. (1950), where the Alabama Supreme Court noted: “This Court has had occasion to define the meaning of the words ‘open court’ a number of times, and it is clear that open court means when the court is open for the transaction of business of the court, that is ‘the time when the court can properly exercise its functions.’ But, we think the expression open court means that the court must not only be open for the transaction of business, but also means that the court must be sitting openly, so that all persons who conduct themselves in an orderly manner may freely see and hear the proceedings of the court.”

However, the court went on to explain that “does not necessarily mean a judge must be acting in his courtroom.” *Id.* Thus, in *Rush*, the judge was upheld for drawing names for the grand jury—not in his courtroom but in the clerk’s office.

There have been many situations where a judge has been upheld for excluding people from a court facility. “An order excluding certain persons from the courtroom does not deny accused of a public trial where it appears to trial judge that a witness was being intimidated by certain persons in the courtroom.”

*Weatherford v. State*, 369 So. 2d 863 (Ala. Crim. App. 1979).

In *Clemons v. State*, 720 So.2d 961 (Ala. Crim. App. 1996), the court held that “Invocation and enforcement of rule excluding witnesses from a courtroom is a matter within sound discretion of the trial court.” *Clemons* went further to note that “a right to public trial was not violated by judge’s actions in closing courtroom after trial session began to preserve order and decorum,” saying that locking a courtroom to prevent disruption “does not prevent a public trial in the sense of constitutional requirements.” *Id.*

Finally, the court in *Clemons* held an “accused’s right to a public trial is not absolute in the sense that defendant has the right to have any particular person present under all circumstances during course of trial.” *Id.*

The defendant himself can occasion instances where even his own attendance is not necessary. *Harris v. State*, \_\_\_So.3d\_\_\_ (Ala. Crim. App. 2020), 2020 WL

597426 notes an exception when the defendant voluntarily waives his or her right to be present.

*Ex Parte Spruill*, 127 So. 3d 443 (Ala. Crim. App. 2013) provided that a defendant could voluntarily waive the right to a jury trial, and that waiver could either be in open court, *or in writing*. (Emphasis added).

In short, “the constitutional right to a public trial is not limitless.” *Weatherford v. State*, 369 So. 2d 863 (Ala. Crim. App. 1979). It is obviously balanced with the necessity of a judge to control his court and its environment.

The 11<sup>th</sup> Circuit weighed in on this in *Stevens v. Osuna*, 877 F.3d 1293, 1306 (11<sup>th</sup> Cir. 2017). “A judge’s authority to control his/her courtroom and necessarily the environment surrounding his/her courtroom stems directly from his/her duties as a judge.”

*Stevens* also provided that “[J]udges have an obligation to maintain control over the courthouse and over the conduct of persons in the courthouse. The issuance of an order removing persons from the courthouse in the interest of maintaining such control is an ordinary function performed by judges where, for example, a person might not be complying with a court order or might be impeding the judicial proceeding.” *Id.* at 1305.

“A judge’s express power of his/her courtroom implies necessarily the power to remove a person from the courtroom and court building, for example, when a person might be perceived to threaten the integrity of judicial proceedings.” *Id.* at 1307. NOTE: Issues of removal are separate from a consideration by the court of a finding of contempt. The court should adhere to a standard civil or criminal contempt analysis if such is merited – over and above the authority to merely remove or exclude persons to maintain order.

“In determining whether a judge’s act is one normally performed by judges in order to determine whether the act is judicial for purposes of absolute immunity, the court looks only to the nature and function of the act, not the act itself. *Id.* at 1305. See also *Mirales v. Waco*, 502 U.S. 9. 13 (1991).

“If absolute judicial immunity means anything, it means that a judge will not be deprived of immunity because the action taken was in error or was in excess of his authority.” *Stevens, supra* at 1305.

This absolute immunity has been extended to state court judges. See *Pierson v. Ray*, 386 U.S. 547 (1967).

*Stevens* is instructive on the extent of a court's control. "We decline to say – as a matter of law – a judge's authority and obligation to maintain control over his courtroom vanishes at the threshold of his courtroom door. We oppose such an impractical, sharp-edged rule. *Id.* at 1307.

However, perhaps some of the most significant language regarding the extent of a judge's authority over court procedures and even the premises come from the United States Supreme Court itself. In *Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966), the Supreme Court determined "A judge's authority to maintain control over his courtroom *extends* to the court building." (Emphasis added).

In its explanation, the Court noted that a carnival atmosphere around a trial could be easily avoided "since the courtroom and the courthouse premises are subject to the control of the court." *Id.* at 358.

This ruling is in line with the ancient legal maxim – "The grantor of anything to another grants that also without which the thing granted would be useless."

Pelobel, *A Collection of Legal Maxims in Law and Equity*, 43 (Rothman 1985) (1884).

## **Appendix A**

### **COVID-19 Specific Orders**

#### **I. Alabama Supreme Court Orders**

The Alabama Judicial System maintains an updated list and links to all Alabama Supreme Court Orders related to COVID-19. The orders can be found at the following website:

[https://judicial.alabama.gov/Announcement/COVID\\_19](https://judicial.alabama.gov/Announcement/COVID_19)

#### **II. Local Court Orders**

The Alabama State Bar maintains a webpage dedicated to local court information regarding COVID-19. The site provides links to county specific orders and information, organized by county. It can be found at the following website:

<https://www.alabar.org/alabama-state-bar-coronavirus-covid-19-safety-measures/>

#### **III. Model Orders**

##### **A. The Alabama State Bar Task Force.**

**IN THE CIRCUIT COURT OF [            ] COUNTY, ALABAMA**

JOHN DOE,	)	
Plaintiff,	)	
	)	
V.	)	Case No.            CV-2019-900000.00
	)	
ABC CORP.,	)	
Defendant.	)	

**STANDING ORDER DUE TO COVID-19**

The Court hereby enters this Standing Order Due to COVID-19 which is applicable to all civil actions in this Circuit until further notice:

**WHEREAS** COVID-19 continues to be present in this community;  
and,

**WHEREAS** the Court wishes to minimize the risk of transmission of COVID-19 to staff, attorneys, parties and witnesses; and,

**WHEREAS** the Court wishes to continue delivering the just, speedy, and inexpensive determination of every action and proceeding; and,

**WHEREAS** the presence of COVID-19 continues to cause ongoing interruptions in the normal functions of the Court system, and those interruptions are expected to continue for quite some time; and,

**WHEREAS** all Courts will soon be re-scheduling bench and jury trials which had to be continued due to COVID-19; and,

**WHEREAS** new cases continue to be filed and to be set for bench and jury trials on those same trial dockets;

**NOW THEREFORE** all lawyers and parties litigating civil cases in this Circuit are hereby

given notice as follows:

1. Civil cases in which the parties are willing to agree to a bench trial or a jury trial with less than 12 jurors are likely to be tried more promptly than those cases which require a 12-person jury.

2. If your case is set for a jury trial, a continuance will not be granted except under extraordinary circumstances, if at all, until the morning of trial so as to avoid wasting a precious jury week.

3. Cases will not be continued due to the absence of a witness caused by illness, travel problems or otherwise. All cases should be prepared in such a way as to allow for the presentation of key evidence by deposition as if a witness is unavailable for trial. All depositions taken from the date of this Standing Order forward should be taken as “trial depositions,” videoed if feasible, and all interested parties should ask questions of each witnesses in case that witness later becomes unavailable for trial.

4. In the event that witness depositions have not been taken as trial depositions because they either preceded the date of this Standing Order or are subject to an agreement among the parties about live presentation by video as set forth herein, then the parties will make arrangements for any witness, otherwise available in the jurisdiction, but who is unavailable due to illness or travel restrictions related to COVID-19, to be made available for live-feed video testimony at trial, subject to terms agreed upon by the parties and approved by the Court.

5. Absent a showing of very good cause, all cases must be mediated prior to trial.

6. Prior to the final pre-trial hearing, the parties will have to make a significant effort to narrow the factual, legal and evidentiary issues. To facilitate this process, new, detailed Pre-Trial Orders will be entered in all cases.

7. Counsel will be responsible for ensuring that all staff, parties and witnesses they bring into Court meet and observe CDC, and state and local health authority, COVID-19 safety guidelines for interacting with the public.

8. Counsel will also be responsible for ensuring that any documents or physical evidence which are presented to the Court are properly sanitized before presentation and are handled in such a manner at trial to minimize the risk of spreading

infection. Specific guidelines for such treatment of documents and other evidence may be issued and updated from time to time.

9. All courtesy copies of case materials shall be e-mailed to the Court, not sent in hard copy.

**DONE this \_\_\_\_ day of \_\_\_\_\_, 2020.**

/s/ [ \_\_\_\_\_ ]  
**CIRCUIT JUDGE**



**IN THE CIRCUIT COURT OF [ ] COUNTY, ALABAMA**

JOHN DOE,	)	
Plaintiff,	)	
	)	
V.	)	Case No. CV-2019-900000.00
	)	
ABC CORP.,	)	
Defendant.	)	

**PRE-TRIAL ORDER**

This civil action [is hereby set for trial/remains set for trial] on, \_\_\_\_\_ 2020.

Prior to trial, the parties shall either mediate the case or have a settlement conference with all parties, counsel, and applicable insurance carriers (if any) participating. The mediation/settlement conference may be conducted by teleconference or by videoconference, if necessary.

The Court will hold a Pre-Trial Conference on [ ] either in person or by Zoom videoconference. At the Conference, the Court will rule on all motions *in limine*, objections to witnesses and exhibits, requested jury charges, and any other pre-trial legal matters raised by the parties.

The parties shall, by no later than [2 weeks] prior to the Pre-Trial Conference, file a Joint Pre-Trial Report in the form attached hereto as Exhibit A. Counsel shall confer and jointly prepare a single Joint Pre-Trial Report. "Joint preparation" entails that counsel affirmatively and in good faith attempt to reach agreement on each of the matters required by this Order to be addressed in the Joint Pre-Trial Report. Matters of good-faith disagreement should be so noted in the Joint Pre-Trial Report and should be accompanied by a statement as to whether any specific rulings by the Court on those matters might facilitate the conduct of the trial or ongoing settlement negotiations.

The parties shall also, by no later than [2 weeks] prior to the Pre-Trial Conference, file a Joint Stipulation of facts in the form attached hereto as Exhibit B.

The parties shall also, by no later than [2 weeks] prior to the Pre-Trial Conference, file a Joint Stipulation of Agreed-Upon Evidence in the form attached hereto as Exhibit C, which identifies all exhibits and deposition (or portions of depositions) the parties agree will be admissible in Court. The parties shall jointly submit a binder of pre-approved exhibits.

**DONE this \_\_\_\_ day of \_\_\_\_\_, 2020.**

/s/ [\_\_\_\_\_] ]  
**CIRCUIT JUDGE**

## EXHIBIT

### JOINT PRE-TRIAL REPORT

The undersigned parties hereby submit this Joint Pre-Trial Report.

#### **I. Jurisdiction and Parties.**

A statement as to (1) the Court's jurisdiction over the subject matter and parties, (2) the propriety of parties, including correctness of identity of legal entities (*e.g.*, partnership, corporation or individual d/b/a trade name), and (3) the necessity of appointment of Guardian ad Litem or other representative, and validity of appointment if already made.

#### **II. For Each Remaining Claim**

(Statement of the legal claim to be tried, *e.g.*, negligence, breach of contract, etc.)

a. LEGAL ELEMENTS (To the extent available, the parties should use the format and elements provided in the Pattern Jury Instructions.)

b. AGREED FACTS (as to this legal claim).

c. DISPUTED FACTS (as to this legal claim) (Disputed facts should indicate which party contends the fact exists and what evidence supports all or a portion of the stated disputed fact. To the extent the opposing party disputes the fact, they should indicate what evidence it has to dispute the fact or facts.)

#### **III. For Each Remaining Affirmative Defense**

(Statement of the affirmative defense to be tried, *e.g.*, contributory negligence, statute of limitations, etc.)

a. LEGAL ELEMENTS (The same provisions that apply to the statement of legal claims apply to statements of affirmative defenses.)

b. AGREED FACTS (The same provisions that apply to the statement of legal claims apply to statements of affirmative defenses.)

c. DISPUTED FACTS (The same provisions that apply to the statement of legal claims apply to statements of affirmative defenses.)

#### **IV. Jury Charges**

A. Jury Charges [APJI or otherwise] which the Parties Agree are Applicable.

B. Jury Charges [APJI or otherwise] which the Plaintiff(s) Believe are Applicable but Defendant(s) Deny are Applicable.

C. Jury Charges [APJI or otherwise] which the Plaintiff(s) Believe are Applicable but Defendant(s) Deny are Applicable.

## **V. Damages**

### **A. Agreed Damages:**

1. Any medical bills the parties agree were reasonable and necessary as a result of the treatment
2. Any out of pocket expenses the parties agree were reasonable and necessarily incurred as a result of their medical diagnosis and treatment
3. Any damages the parties agree that are attributable to a claimed breach of contract (note the parties aren't agreeing that there was a breach of contract)

### **B. Disputed Damages**

## **VI. Composition and Number of Jurors**

- A. Do the parties agree to a jury of less than twelve (12) people?
- B. If so, how many? (the parties can agree to a jury of six or more)

## **VII. Bench Trial**

Do *all* parties agree to a bench trial?

## **VIII. Mediation/Settlement Conference**

Have the parties completed mediation/settlement conference? Attach mediation/settlement report.

## **IX. Impediments to trying the case on the appointed trial date**

- A. Plaintiff(s)?
- B. Defendant(s)?

## **X. Confirmation of Witness Health and Availability**

Counsel for Plaintiff(s) and Defendant(s) certify that they have made a sincere effort to speak with all anticipated trial witnesses and confirm that the witnesses have not been

exposed to or diagnosed with COVID-19 in the last fourteen days and do not cohabitate with anyone that has been exposed to or diagnosed with COVID-19 in the last fourteen days.

**XI. Confirmation of Party and Attorney Health and Availability**

Counsel for Plaintiff(s) and Defendant(s) certify that neither they nor their clients have not been exposed to or diagnosed with COVID-19 in the last fourteen days and do not cohabitate with anyone that has been exposed to or diagnosed with COVID-19 in the last fourteen days.

Jointly submitted, \_\_\_\_\_, 2020

/s/ [counsel for the Plaintiff(s)]

[name and firm name of counsel]

/s/ [counsel for the Defendant(s)]

[name and firm name of counsel]

## EXHIBIT

### JOINT STIPULATION OF FACTS

The following facts are hereby stipulated to by the parties:

- 1.
- 2.
- 3.
- ...

Jointly submitted, \_\_\_\_\_, 2020

/s [counsel for the Plaintiff(s)]

[name and firm name of counsel]

/s [counsel for the Defendant(s)]

[name and firm name of counsel]

## EXHIBIT

### JOINT STIPULATION OF AGREED-UPON EVIDENCE

#### I. EXHIBITS

The parties jointly stipulate that the following exhibits may be admitted (pre-admitted) into evidence at the trial of this case:

Plaintiff's Exhibits [list and identify by name and Exhibit Number all exhibits which the parties agree may be admitted into evidence in this case]

1.

2.

3.

...

Defendant's Exhibits [list and identify by name and Exhibit Number all exhibits which the parties agree may be admitted into evidence in this case]

1.

2.

3.

...

#### II. DEPOSITIONS

The parties jointly stipulate that the following depositions, or portions thereof, may be utilized at the trial of this case. Exhibits may be admitted (pre-admitted) into evidence in this case:

1. [name of deponent]

deposition portions which are admissible

2. [name of deponent]

deposition portions which are admissible

3. [name of deponent]

deposition portions which are admissible

...

Jointly submitted, \_\_\_\_\_, 2020

/s [counsel for the Plaintiff(s)]

[name and firm name of counsel]

/s [counsel for the Defendant(s)]

[name and firm name of counsel]

SAMPLE

EXHIBIT

**JOINT STIPULATION TO A NON-JURY (BENCH) TRIAL**

In accordance with Ala. R. Civ. P. 39(a)(1), the undersigned parties and their legal counsel hereby jointly stipulate to the withdrawal of the jury demand in this case and the trying of the case as a non-jury (bench) trial.

Jointly submitted, \_\_\_\_\_, 2020

*The use of electronic signatures on this document is allowed.*

/s [Plaintiff]

[name]

/s [counsel for the Plaintiff]

[name and firm name of counsel]

/s [Defendant]

[name and firm name of counsel]

/s [counsel for the Defendant]

[name and firm name of counsel]



## EXHIBIT

### JOINT STIPULATION TO less than 12 jurors

In accordance with Ala. R. Civ. P. 48, the undersigned parties and their legal counsel hereby jointly stipulate that the jury in this case shall consist of [specify a number less than 12] jurors. The venire panel for this jury will consist of [twice the above number] of potential jurors, from which the jury will be selected by the parties or their attorneys alternately striking one (1) from the list until [the above number] jurors remain. *See* Ala. R. Civ. P. 47(b). The party demanding the jury shall have the first strike. *See id.*

Jointly submitted,\_, 2020  
\_\_\_\_\_

*The use of electronic signatures on this document is allowed.*

/s [Plaintiff] [name]

/s [counsel for the Plaintiff]

[name and firm name of counsel]

/s [Defendant]

[name and firm name of counsel]

/s [counsel for the Defendant]

[name and firm name of counsel]

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM DIVISION**

JOHN DOE,  
Plaintiff,

V.

ABC CORP.,  
Defendant

)  
)  
)  
)  
)  
)  
)

Case No.: CV-2018-902490.00

**COMPLEX TRACK SCHEDULING ORDER AND TRIAL SETTING**

The Court Orders as follows:

1. This is assigned to the **Complex Track**.
2. The case is set for a **Jury Trial on April 13, 2020 at 9:00 a.m. in Courtroom 350 of the Jefferson County Courthouse in Birmingham**. The provisions of Exhibit A attached hereto apply to the trial of this action.

This case **shall be disposed of** on or before the trial date, unless the court grants a timely filed Motion for Continuance for good cause shown. The parties are advised that the fact that the trial setting is a first setting, that the parties have agreed to a continuance, that discovery has not been completed, or other such reasons will **not** be considered “good cause.”

Furthermore, cases **will not be continued** due to the absence of a witness due to COVID-19 related illness, travel problems, or otherwise. All cases should be prepared in such a way as to allow for the presentation of witness testimony by deposition. All depositions should be taken as “trial depositions,” videoed if feasible, and all interested parties should ask questions of each witnesses in case that witness later becomes unavailable for trial.

3. All discovery, including all fact and expert depositions, shall be initiated in time to be completed on or before **February 4, 2020, the discovery cut-off date**.
4. Plaintiff shall provide the names and Rule 26 information of any expert witness(es) expected to be used at the trial of this case on or before **July 26, 2019**. Said witness shall be made available for deposition by Defendant on or before **September 27, 2019**.
5. Defendant shall provide the names and Rule 26 information of any expert witness(es) expected to be used at the trial of this case on or before **November 1, 2019**. Said witness shall be made available for deposition by Plaintiff on or before **February 4, 2020**.

6. Any amendments to the pleadings which add parties or claims must be filed no later than **June 7, 2019**. Any amendments which do not add parties or claims, but rather streamline the Complaint/Answer to conform with the evidence and theories to be presented at trial, may be filed by no later than **January 17, 2020**.

7. The provisions of Exhibit B attached hereto apply to motions filed in this action. Motions for Summary Judgment or other dispositive motions must be filed on or before, **February 10, 2020**.

8. In accordance with Ala. Code § 6-6-20, the parties are hereby **ORDERED TO MEDIATE** this case prior to trial. This mediation must be completed by no later than **March 6, 2020**. Costs of mediation shall be evenly split between Plaintiff and the Defendants unless otherwise agreed at the mediation. Parties and their attorneys shall attend the mediation and shall be prepared and authorized to discuss all relevant issues

9. The parties shall file their **Joint Pre-Trial Report, Joint Stipulation of Facts and Joint Stipulation of Agreed-Upon Evidenced** by no later than **Wednesday, March 25, 2020**.

10. The Court will hold at Pre-Trial Conference on **Monday, March 30, 2020 at 10:00 a.m.** via the Zoom Audio/Video Conferencing Platform.

11. The *Birmingham Differential Case Management Plan* is incorporated into this Scheduling Order by reference. A copy of the *Birmingham Differential Case Management Plan* can be found at <http://10jc.alacourt.gov>.

**DONE this 7<sup>th</sup> day of May, 2019.**

\_\_\_\_\_  
/s/  
**CIRCUIT JUDGE**

## **EXHIBIT**

*The following provisions shall apply to the trial of this action:*

1. The parties are to exchange the following items so that each party has received the other's items no later than **35 calendar days** before the trial of this case:

(A) Itemizations of all damages claimed, showing the amount and, if applicable, the methodology used to compute all such damages.

(B) Witness lists stating the names and addresses of individuals who are expected to testify at trial. While identification of an individual does not obligate the party to call that individual as a witness, any individual not identified will be precluded from testifying at trial without leave of Court, which will be granted only for good cause shown. The obligations of this sub-paragraph do not pertain to rebuttal witnesses the identities of whom cannot reasonably be foreseen ahead of trial.

(C) Exhibit lists identifying or describing all writings, recordings and other tangible exhibits that the parties may use at trial. Documents so identified are to be made readily available to any party requesting the opportunity to review and copy. Any exhibit not identified will not be admitted into evidence without leave of Court, which will be granted only for good cause shown.

2. Unless objections are filed and served no later than **28 calendar days** before trial, each party shall be deemed to have no objection to the competence of every individual identified in witness lists to

testify and to the authenticity and admissibility of every document and other thing identified in the exhibit lists. Should any objection be filed and served, the party raising it shall state the basis of the objection.

3. In jury cases, no later than **21 calendar days** before trial, the parties shall file and serve any motions *in limine*. Further, by **21 calendar days** before trial, any proposed jury instructions and verdict forms shall be submitted to the Court. If requested instructions comport with *Alabama Pattern Jury Instruction* charges, the submitting party may simply file a list of the requested APJI charges without setting out the full text of each such charge.

4. The parties are to provide "courtesy copies" of all papers identified in paragraphs 1-3 above by delivering them to the chambers of the undersigned when the originals are filed with the Clerk of the Court. Parties may submit "trial briefs," although such briefs are not required. Any such brief should, in fact, be truly brief.

5. The parties are encouraged to consider using, and preparing, written stipulations of fact, so that a jury may focus on the actual factual dispute remaining for adjudication by trial.

6. All exhibits, properly identified and without objection (or with objections overruled), are to be pre-marked and will be admitted at the beginning of trial.

7. Counsel are reminded that a party desiring a court reporter in attendance at the trial of this cause must specifically

request a reporter by advising the Court's chambers no later than **4 days before the trial**. The party making such request must assume, and by this order agrees to assume, the responsibility for payment directly to the court reporter for all costs and expenses attendant to the reporter's services at trial, in the absence of an agreement by the parties to share this financial responsibility jointly.

## **EXHIBIT**

### **MOTION PROVISIONS**

*The following provisions apply to motions filed in this action:*

1. If a hearing is requested, the date and time for hearing all motions shall be obtained from the Judge's office **before** filing such motions. Notice of the hearing date and time shall be prominently shown on the first page of the motion, in the style of the case underneath the civil action number.

2. No materials electronically filed less than **3 calendar days** prior to a hearing date will be considered by the Court.

3. Proposed orders shall either be filed on AlaFile or submitted to the Court's designated email address in the format preferred by the individual judge. If the lines below are blank or

if the email address is no longer active, the pertinent information may be obtained by calling the Judge's office.

**Email:**  
**[JA]alacourt.gov**  
**Preferred format:**  
**Word**

4. Absent extraordinary circumstances, this case must be mediated prior to trial.

5. No pleading or motion shall be hand delivered to the Court or sent to the Judge by facsimile unless specifically requested.

## **B. Coffee County Domestic Relations Model Order**

The following Coffee County Administrative Order for COVID-19 Child Visitation and Support serves as a good model for when parties cannot agree on a custodial schedule in a lockdown period:

### **ADMINISTRATIVE ORDER** **(COVID-19 CHILD VISITATION AND SUPPORT)** **MARCH 24, 2020**

On March 11, 2020, the World Health Organization (WHO) characterized Coronavirus Disease 2019 (COVID-19) as a pandemic due to its severity and rapid global spread. President Donald Trump has declared a National State of Emergency. Governor Kay Ivey has declared a State of Emergency for Alabama. Several counties and cities have declared a State of Emergency. The State Health Officer has restricted large gatherings and has required many businesses to close. The State of Alabama has closed all schools and universities. The Supreme Court of Alabama has suspended all in-person court proceedings until April 16, 2020, with the exception of certain emergency issues involving the health and welfare of children, Protection Orders and essential constitutional duties of the court.

Due to the wide spread of the COVID-19 virus the Judges of the 12<sup>th</sup> Judicial Circuit have determined that an Administrative Order is necessary to address the issues of visitation of children with parents and others during this time of emergency to protect the health and welfare of the minor children that are the subject of Custody Orders issued by the courts of the 12<sup>th</sup> Judicial Circuit.

The paramount concern of the courts is the best interest of the minor children that are the subject of existing Custody and Visitation Orders/Judgments.

The court is aware that all persons should be complying with social distancing and that going back and forth between two (2) households creates a problem of children staying healthy. Each household is operated differently. Some parents may be required to continue to work outside the home in a high-risk area. The court is aware that certain minor children have existing health issues that creates additional risks to their health.

In consideration of the extraordinary circumstances that currently exist it is **ORDERED** as follows:

1. That the parties with existing Custody and Visitation Orders shall communicate "With each other in an effort to discuss 'visitation and access with the minor child and shall seek to make visitation and access decisions regarding the best interest of the minor children. The adult parties and parents are the people that should be the most willing to make decisions regarding the best interest of the minor children.
2. That in person visitation is stayed by either parent or party that is residing in an area that has been designated as "shelter in home" or similar designation due to Coronavirus.
3. That Spring Break is defined and means the break that is designated on the school system calendar where the minor children are enrolled.
4. That should the parties fail to agree on visitation and access while the Administrative Order is in place then all in person visitation is stayed.
5. That during the period of stay each party shall make every reasonable effort to allow access and visitation by telephone or other electronic means such as Skype, Facetime, Google hangout or Zoom. Many conferencing applications are available free of charge.
6. That if any party required to pay child support has been or becomes unemployed or unable to work due to sickness or business closings related to COVID-19 any requirement to pay child support is stayed until April 16, 2020 or if extended to a new date. In any action of contempt for failing to pay child support the person responsible to pay child support would be required to provide proof of unemployment or lack of ability to work due to sickness or business closing related to Coronavirus. The party responsible for maintaining medical insurance on the minor child shall maintain said coverage or risk of finding of contempt and a Judgment for all uninsured medical expenses.

In these unprecedented times the adult parties and parents are encouraged to work together and be the parents and/or custodians that will promote the welfare and safety of the minor children.

Done this the 24th day of March, 2020.

/s/Jeff W. Kelley  
Jeff W. Kelley  
Presiding Circuit Judge

/s/Shannon Clark  
Shannon Clark  
Circuit Judge



/s/Henry Reagan  
Henry Reagan  
Circuit Judge

/s/Josh Wilson  
Josh Wilson  
District Judge

/s/Steven Curtis  
Steven Curtis  
District Judge

### **C. AOC Guidance on Video Conferencing in Juvenile Courts**

The Administrative Director of Courts has provided some direction on video conferencing in juvenile courts:



ADMINISTRATIVE OFFICE OF COURTS  
300 Dexter Avenue  
Montgomery, Alabama 36104  
(334) 954-5000

Tom Parker  
Chief Justice

April 1, 2020

Rich Hobson  
Administrative Director of Courts

The Honorable Elizabeth Hamner  
Tuscaloosa County Juvenile Court  
714 Greensboro Avenue  
Tuscaloosa, AL 35401

Dear Judge Hamner:

I hope you are well. I understand that the staffs of our Information Technology (IT) Division and Family Court Division have been working with you and others in your county so that you can begin a pilot project using two-way interactive video-conferencing technology for conducting detention hearings and plea-entry proceedings and dispositions in your juvenile court.

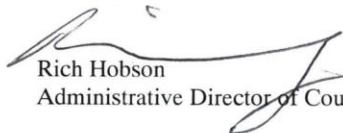
It has verified that the videoconferencing equipment meets the legal requirements set out by Order of the Supreme Court of Alabama dated June 22, 2006 (and extended by Orders dated June 3, 2008 and April 19, 2011), the Court's Guidelines for Videoconferencing Detention Hearings (Temporary), and the Alabama Judicial System Policies, Procedures and Guidelines Governing Videoconferencing Appearances in Juvenile Courts which was approved by memorandum dated September 4, 2009 (copies of which are attached).

In addition, Fred Lilly, Director of the IT Division, has approved of the videoconferencing equipment hardware being used in your county which will satisfy this requirement in the Supreme Court Orders and Guidelines referenced above. Since the equipment is not part of our computer system, we cannot attest to the connections and security of the equipment. These aspects would be under your direction.

Based upon the above information, I am satisfied that your equipment meets the technical and legal requirements of the I hereby authorize you to begin a pilot project to conduct detention hearings and plea-entry proceedings in your juvenile court **effective today, April 1, 2020, and continuing until September 30, 2020.**

If you need any further assistance with this pilot project after you begin conducting hearings, please contact Mr. Lilly or Ms. Cary McMillan, Director of the Family Court Division (334/954-5034, [cary.mcmillan@alacourt.gov](mailto:cary.mcmillan@alacourt.gov)).

Sincerely,

  
Rich Hobson  
Administrative Director of Courts



ADMINISTRATIVE OFFICE OF COURTS  
300 Dexter Avenue  
Montgomery, Alabama 36104-3741  
(334) 954-5000

Tom Parker  
Chief Justice

Rich Hobson  
Administrative Director of Courts

March 27, 2020

Hon. Will Clay  
Judicial Building, Suite 201, 801 Forrest Avenue  
Gadsden, AL 35901

Dear Judge Clay:

I hope you are well. I understand that the staffs of our Information Technology (IT) and Family Court Divisions have been working with you and others in your county so that you can begin a pilot project using two-way interactive video-conferencing technology for conducting detention hearings and plea-entry proceedings and dispositions in your juvenile courts.

It has been verified that the videoconferencing equipment meets 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 Policies, Procedures and Guidelines Governing Videoconferencing Appearances in Juvenile Courts which was approved by memorandum dated September 4, 2009 (copies of which are attached).

In addition, the videoconferencing equipment hardware being used in your county has been verified and approved which will satisfy this requirement in the Supreme Court Orders and Guidelines referenced above. Since the equipment at the detention facility is not part of our computer system, we cannot attest to the connections and security of the equipment. These aspects would be under your direction.

Based upon the above information, I am satisfied that the equipment meets the technical and legal requirements of the Orders and Guidelines above, I hereby authorize you to begin a pilot project to conduct detention hearings and plea-entry proceedings in your juvenile court **effective today, March 27, 2020, and continuing until September 30, 2020.**

If you need any further assistance with this pilot project after you begin conducting hearings, please contact Mr. Lilly or Ms. Cary McMillan, Director of the Family Court Division.

Sincerely,

  
Rich Hobson, Administrative Director of Courts



**ADMINISTRATIVE OFFICE OF COURTS**

300 Dexter Avenue  
Montgomery, Alabama 36104-3741  
(334) 954-5000

Sue Bell Cobb  
Chief Justice

Callie T. Dietz  
Administrative Director of Courts

**MEMORANDUM**

**TO:** Counties Implementing Pilot Project for Videoconferencing Juvenile Court Detention Hearings

**FROM:** Callie T. Dietz *CTD*  
Administrative Director of Courts

**DATE:** September 4, 2009

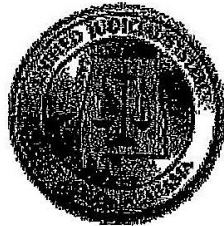
**RE:** Policies, Procedures, and Guidelines Governing Videoconferencing Appearances in Juvenile Courts

Pursuant to an Order of the Supreme Court of Alabama dated June 22, 2006, as extended by an Order of the same Court dated June 3, 2008, "[i]n order to fulfill the goals of this pilot project, the Administrative Office of Courts will implement detailed procedures and guidelines for implementing the pilot program, which shall be in addition to the Guidelines for Videoconferencing Detention Hearings (Temporary)."

I hereby approve of the attached Policies, Procedures and Guidelines Governing Videoconferencing Appearances in Juvenile Courts for use in this pilot project.

Attachments

# State of Alabama Alabama Judicial System



## Policies, Procedures and Guidelines Governing Videoconferencing Appearances in Juvenile Courts

September 2009

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## STATE OF ALABAMA

### ALABAMA JUDICIAL SYSTEM

### Policies, Procedures and Guidelines Governing Videoconferencing Appearances in Juvenile Courts

#### I. Introduction

Videoconferencing is a process by which participants in a judicial hearing can communicate with each other and with the court from separate locations. By orders of the Supreme Court of Alabama attached hereto as 'Appendix A', the Alabama Unified Judicial System has implemented a pilot project to test the practicality of using videoconferencing technology in the State's juvenile justice system. Videoconferencing has the potential to reduce travel requirements for law enforcement officers who are charged with the duty of transporting children in juvenile cases between juvenile detention facilities and courts. This practice has created a substantial expense to local governments and law enforcement offices. The objective of the videoconferencing project is to establish a reliable alternative to juvenile transportation, while ultimately increasing the efficiency of the juvenile justice process.

Videoconferencing will permit the child in a juvenile delinquency case to attend specified hearings without physically appearing in the courtroom. Instead, the child remains in the juvenile detention facility and "attends" the hearing over a two-way interactive communication system. The judge or referee, the district attorney, and the juvenile probation officer may be present in the courtroom, and the child's attorney will have the option to appear in the courtroom or to be present with the child at the juvenile detention facility while appearing via videoconferencing. Other persons may also be present in the courtroom or at the juvenile detention facility as necessary to conduct the hearing.

As an appendage to its order, the Supreme Court has approved and implemented temporary guidelines for videoconferencing in juvenile courts attached hereto as 'Appendix B'. These procedures have been established to assist judges, attorneys, and other participants to juvenile videoconferencing in facilitating the functionality of videoconferencing while remaining within the boundaries established by the temporary guidelines.

By memorandum, the Administrative Director of Courts (ADC) has approved these policies, procedures, and guidelines. The ADC is further authorized to modify these policies, procedures, and guidelines to ensure functionality of the videoconferencing system and to assure that the due process rights of the child involved in the juvenile case are protected.

#### II. Appearances by Videoconferencing

The juvenile court has the discretion to use videoconferencing technology to conduct detention hearings pursuant to Ala. Code 1975, § 12-15-207. Additionally, the court may receive pleas and enter dispositions on a juvenile delinquency case, but only upon receiving written consent from the child and the child's attorney. Attached as 'Appendix C' is the form through which the child and the attorney may provide written consent.

### III. Convening a Hearing by Videoconferencing

- A. Prior to commencing the hearing and formally acknowledging the parties, the juvenile court judge, referee, or designee must make certain that the videoconferencing recording device is turned on. All juvenile court hearings conducted by videoconferencing shall be recorded by stenographic reporting, by mechanical or electronic device, or by some combination thereof pursuant to Rule 20(A), Alabama Rules of Juvenile Procedure.
- B. The juvenile court judge or referee must identify the person appearing by remote testimony and then identify him/herself (i.e. I, am Judge/Referee STATE FULL NAME, JUVENILE COURT OF COUNTY NAME appearing to you by means of video conferencing).
- C. The juvenile court judge or referee must assess the quality of the videoconferencing connection by asking the participants at the juvenile detention facility the following:
  - "Are you able to hear me and can you understand what I am saying?"
  - "Are you able to see me and is the picture quality sufficient?"
  - If at any time you are not able to see or hear what is happening in court today, you shall immediately inform me of the issue."
  - Even though you are participating in this hearing by videoconferencing, you must conduct yourself in the same manner as if you were physically present before the court."
  - "Other than the child and the attorney, who else is in the room with you?"
- D. The juvenile court judge or referee must identify for those appearing from a remote location each individual located in the courtroom. During the identification process, the juvenile court judge or referee must verbally identify the location of each party as they appear on the monitor, so that all participants can distinguish the other participants.
- E. The juvenile court judge or referee must make a determination and make a record as to whether the equipment to be used and the remote location(s) meet the minimum standards for video appearances approved in writing by the Administrative Office of Courts. ("I have concluded that the quality of sound and audio meets the courts minimum standards for video appearances").
- F. At the commencement of the hearing, the juvenile court judge or referee must assure that only one person speaks at a time. Multiple individuals speaking at one time could potentially disrupt the quality of the audio equipment.



- G. Except as otherwise provided by the orders of the Supreme Court of Alabama attached hereto as 'Appendix A', the Supreme Court's temporary guidelines for videoconferencing in juvenile courts attached hereto as 'Appendix B', and these Policies, Procedures and Guidelines, juvenile courts participating in the videoconferencing pilot project must adhere to all laws and court rules applicable to the juvenile courts of Alabama.

#### IV. Location of the Child's Attorney

The temporary guidelines allow the child's attorney to appear in person before the court or to be present with the child at the juvenile detention facility and appear by videoconferencing. The intent of this subsection is to assist the attorney appointment process in jurisdictions with a limited number of attorneys from which the court may select. The juvenile court judge or referee in the county where the hearing is conducted may appoint counsel located in the jurisdiction of the juvenile detention facility. This subsection would permit the appointed counsel to be present with the child at the juvenile detention facility and appear at the hearing by videoconferencing.

#### V. Electronic Filing of Documents and Signature Issues

At the commencement of a hearing conducted by videoconferencing, the participants may transfer documents by electronic means. The juvenile court judge or referee may use any of the following means to accommodate the transmission of documents between individuals in separate locations:

- A. Fax - The juvenile court and the juvenile detention facility may be equipped with a fax machine. The court and the child and child's attorney can transmit pleadings, court documents, and other filings over the fax machine. A signature appearing on a faxed document shall be considered an original signature.
- B. Electronic Mail - Documents may be transmitted between the participants at the remote location and the juvenile court by electronic mail. Documents can be completed on a computer and transmitted between the participants. Additionally, paper documents may be scanned in.

The requirement that any court record or document be signed is met by use of an electronic signature. An electronic signature is considered to be the original signature upon the court record or document for all purposes under these rules and other applicable statutes or rules. Electronic signatures shall either: (1) show an image of such signature as it appears on the original document or appended as an image file or (2) bear the name of the signatory preceded by an "s/" typed in the space where the signature would otherwise appear, as follows: s/ Jane Doe, or (3) comply with any other requirements for electronic signatures as established by applicable law or ADC directive.

## **VI. Videoconferencing Equipment**

All videoconferencing equipment used by counties participating in the pilot project must be approved in writing by the Administrative Office of Courts.

IN THE SUPREME COURT OF ALABAMA  
June 22, 2006

ORDER

This Court hereby authorizes a pilot project to be conducted in certain counties using two-way interactive video-conferencing technology for conducting detention hearings and plea-entry proceedings and dispositions in the juvenile court. Because a detention hearing in a juvenile case must be held within 72 hours of the child's detention and because there are a limited number of juvenile detention facilities in the State, videoconferencing may facilitate conducting detention hearings where the child is transported from the county in which he or she is detained to the county where the detention hearing is conducted. The counties participating in the pilot project will be chosen based on need, willingness to participate, and available funding.

Those jurisdictions participating in the pilot project may, in the juvenile court's discretion, direct the child to appear at a detention hearing by videoconferencing technology. Upon the written consent of the child and the child's attorney, a plea and a disposition may also be entered. The child's appearance by use of videoconferencing equipment will be considered a personal appearance. At any detention hearing or proceeding held by videoconferencing, the child shall be afforded a means to confer confidentially with his or her attorney, and the communication between the child and the child's attorney shall not be recorded by the videoconferencing equipment. In addition, any off-the-record conferences should not be recorded unless all the participants to the conference agree that the off-the-record conference should be recorded. All proceedings must conform to the "Guidelines for Videoconferencing Detention Hearings (Temporary)" attached as an appendix to this Order and hereby adopted as temporary guidelines for use during the period of the pilot project.

The child's attorney may be present with the child at the detention facility at which the videoconferencing is conducted or may physically attend the hearing in the courtroom. Under the pilot project, the juvenile judge in the circuit where the hearing is being

held may appoint counsel in the vicinity of the facility at which the child is being detained. Appointed counsel in that situation may be present with the child at the detention facility and appear at the hearing on the child's behalf by videoconferencing.

In order to fulfill the goals of this pilot project, the Administrative Office of Courts will implement detailed procedures and guidelines for implementing the pilot program, which shall be in addition to the Guidelines for Videoconferencing Detention Hearings (Temporary). All videoconferencing equipment used by counties participating in the pilot project to implement this order must be approved by the Administrative Office of Courts.

The judges in the jurisdictions participating in the pilot project are excepted from the provisions of Canon 3.A(7) and (7A) of the Canons of Judicial Ethics as to the detention hearings and other proceedings that are videoconferenced in accordance with this order.

The pilot project shall last for two years from the date of this order. The court, in its discretion, may extend or cancel the pilot program.

Nabers, C.J., and See, Lyons, Harwood, Woodall, Stuart, Smith, Bolln, and Parker, JJ., concur.

IN THE SUPREME COURT OF ALABAMA  
June 3, 2008

ORDER

WHEREAS, on June 22, 2006, this Court issued an order authorizing a pilot project to be conducted using two-way interactive video-conferencing technology in certain juvenile courts; and

WHEREAS, the purpose of the project was to evaluate alternatives to transporting a child in custody for a hearing that must be held within 72 hours; and

WHEREAS, the pilot project was contingent upon funding to purchase the necessary equipment, and, despite the best efforts of the Administrative Office of Courts to obtain funding for the project, such funding has never materialized; and

WHEREAS, pursuant to the June 22, 2006, order, the pilot project was to last for two years from the date of the order, but the order allowed the Court to extend or cancel the pilot project, in its discretion; and

WHEREAS, the Court has determined that the pilot project has potential to yield favorable benefits to the juvenile justice system and to the law-enforcement offices of this State;

IT IS THEREFORE ORDERED that the juvenile video-conferencing pilot project shall be extended until September 30, 2011. The provisions of the June 22, 2006, order of this Court are incorporated herein. The Court, in its discretion, may extend or cancel the pilot program.

Cobb, C.J., and See, Lyons, Woodall, Stuart, Smith, Bolin, Parker, and Murdock, JJ., concur.

I, Robert G. Esdaile, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 3rd day of June, 2008.

*Robert G. Esdaile, Sr.*  
Clerk, Supreme Court of Alabama

**GUIDELINES FOR VIDEOCONFERENCING DETENTION HEARINGS**  
(Temporary)

**(A) Appearance of Child by Videoconferencing.** The court in its discretion may direct the child to appear at a detention hearing by videoconferencing technology. Upon written consent by the child and the child's attorney, a plea and disposition may be entered by videoconference. The consent form shall be promulgated by the Administrative Office of Courts. The child's appearance by videoconferencing shall be considered a personal appearance. The court in its discretion may order that the child physically appear in court for any hearing.

**(B) Confidential Communications.** If the hearing is held by videoconference, provision shall be made to preserve the attorney-client privilege and the confidentiality of attorney-client communications. In all proceedings conducted by videoconferencing, the child and the child's attorney shall be provided with a private means of communication when they are in different locations, and attorneys shall have a means of conferring with each other and with the court off the record.

**(C) Location of the Child's Attorney in Hearings Held by Videoconferencing.** During a hearing conducted by videoconferencing pursuant to these guidelines, the child's attorney may be present with the child at the detention center or the attorney may be physically present in the courtroom.

**(D) Other Persons in Attendance at Hearings Held by Videoconferencing.** Unless otherwise ordered by the court, other persons admitted to attend a hearing conducted by videoconferencing pursuant to these guidelines, other than the child and the child's attorney, shall appear in person before the court.

**(E) Electronic Filing of Documents.** Any documents filed during a hearing conducted by videoconferencing may be transmitted electronically, including but not limited to the following means of electronic transmission: facsimile, personal computer, host computer, other terminal device, and local, state, and national data networks. A document transmitted electronically may be served on or executed by the person to whom it is sent and returned in the same manner, with

the same force, effect, authority, and liability as any other original document. All signatures on a document transmitted electronically shall be treated as original signatures.

**(F) Technical Standards.** To facilitate the compatibility of equipment, all videoconferencing equipment used in implementing these guidelines must be approved by the Administrative Office of Courts. Moreover, subject to the provisions of subsection (B), the use of any videoconferencing equipment under these guidelines must conform to the guidelines and procedures established by the Administrative Office of Courts and to the following minimum requirements:

(1) All participants in the hearing must be able to see, hear, and communicate with each other simultaneously; and

(2) All participants in the hearing must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the hearing, either by video, facsimile, or other method.

**(G) Recording and Preservation.** The portion of the hearing conducted by videoconferencing shall be recorded by an audiovisual recording system, and that recording shall be part of the record of the case. The child or the child's attorney may obtain an audiotaped copy of the recording from the clerk upon payment of the costs of reproducing the copy. The costs for copies of recordings shall be established by the Administrative Director of Courts.



State of Alabama Unified Judicial System  Rev. 6/2006	<b>Consent and Stipulation to Disposition and/or Adjudication by Videoconferencing</b>	Case Number  JU
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In the Juvenile Court of \_\_\_\_\_ County, Alabama

In The Matter Of \_\_\_\_\_, a child  
Initials Only

Comes now the child to the above styled action and stipulates unto the Court as follows:

1. The above styled matter is scheduled for adjudication and/or disposition before the juvenile court.
2. Pursuant to Alabama law, the child has a right to physically appear before the court to enter a plea, to have the case adjudicated, and/or to have a disposition entered.
3. The child hereby waives the right to physically appear before the juvenile court for this hearing and hereby consents to appear before the court by videoconferencing.
4. The child understands that his or her appearance by videoconferencing shall be considered a personal appearance

Initials of Child or Signature of Child's Attorney

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**ORDER**

Having received the child's consent to appear by videoconferencing this Court hereby:

☐ **DIRECTS** and orders that \_\_\_\_\_ shall appear by videoconferencing for:  
(Initials of Child)

☐ **ADJUDICATION**                      ☐ **DISPOSITION**

on \_\_\_\_\_ at \_\_\_\_\_ AM/PM

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☐ **DISALLOWS** the use of videoconferencing and orders that \_\_\_\_\_ shall appear in person for:  
(Initials of Child)

☐ **PLEA**                      ☐ **DISPOSITION**                      ☐ **TRIAL**

on \_\_\_\_\_ at \_\_\_\_\_ AM/PM

Done and ordered on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Judge



IN THE SUPREME COURT OF ALABAMA  
April 19, 2011

ORDER

WHEREAS, on June 22, 2006, this Court issued an order authorizing a pilot project to be conducted using two-way interactive video-conferencing technology in certain juvenile courts; and

WHEREAS, on June 3, 2008, this Court issued an order extending the pilot project until September 30, 2011; and

WHEREAS, the purpose of the project was to evaluate alternatives to transporting children in custody for 72-hour hearings; and

WHEREAS, the commencement of the pilot project was contingent upon the acquisition of funding to purchase the necessary equipment, and despite the best efforts of the Administrative Office of Courts to obtain funding for the project, such funding never materialized; and

WHEREAS, pursuant to the order of this Court dated June 22, 2006, as extended by the order of this Court dated June 3, 2008, the Administrative Office of Courts implemented detailed procedures and guidelines for implementing the pilot program, which are in addition to the Guidelines for Videoconferencing Detention Hearings (Temporary); and

WHEREAS, the Court has determined that the pilot project has potential to yield favorable benefits to the juvenile justice system and law enforcement offices of this State;

IT IS THEREFORE ORDERED that the juvenile videoconferencing pilot project shall be extended until September 30, 2014. The provisions of the June 22, 2006, order of this court are incorporated herein. The Court, in its discretion, may extend or cancel the pilot program.

Cobb, C.J., and Woodall, Bolin, Parker, Murdock, Shaw, Main, and Wise, JJ., concur.

IN THE SUPREME COURT OF ALABAMA  
September 17, 2014

ORDER

WHEREAS, on June 22, 2006, this Court issued an order authorizing a pilot project to be conducted using two-way interactive video-conferencing technology in certain juvenile courts; and

WHEREAS, on June 3, 2008, this Court issued an order extending the pilot project until September 30, 2011; and

WHEREAS, on April 19, 2011 this Court issued an order extending the pilot project until September 30, 2014; and

WHEREAS, the purpose of the project was to evaluate alternatives to transporting children in custody for 72 hour hearings; and

WHEREAS, the commencement of the pilot project was contingent upon the acquisition of funding to purchase the necessary equipment, and despite the best efforts of the Administrative Office of Courts to obtain funding for the project, such funding never materialized; and

WHEREAS, pursuant to the order of this Court dated June 22, 2006, as extended by the orders of this Court dated June 3, 2008 and April 19, 2011, the Administrative Office of Courts implemented detailed procedures and guidelines for implementing the pilot program, which are in addition to the Guidelines for Videoconferencing Detention Hearings (Temporary); and

WHEREAS, the Court has determined that the pilot project has potential to yield favorable benefits to the juvenile justice system and law enforcement offices of this State;

IT IS THEREFORE ORDERED that the juvenile videoconferencing pilot project shall be extended until September 30, 2017. The provisions of the June 22, 2006, order of this court are incorporated herein. The Court, in its discretion, may extend or cancel the pilot program.

Moore, C.J., and Bolin, Parker, Murdock, Shaw, Main,  
Wise, and Bryan, JJ., concur.

I, Julia Jordan Weller, as Clerk of the Supreme Court  
of Alabama, do hereby certify that the foregoing is  
a full, true and correct copy of the instrument(s)  
herewith set out as same appear(s) of record in said  
Court.

Witness my hand this 17<sup>th</sup> day of September, 2014

*Julia Jordan Weller*  
Clerk, Supreme Court of Alabama

IN THE SUPREME COURT OF ALABAMA  
April 17, 2017

16-17/063

In re: Extension of Orders Authorizing Video-Conferencing Pilot Projects in Certain Juvenile Courts

ORDER

The Court, having considered the order proposed by the Administrative Office of Courts extending the juvenile court video-conferencing pilot project to September 30, 2020,

IT IS ORDERED that the order proposed by the Administrative Office of Courts extending the juvenile court video-conferencing pilot project to September 30, 2020, is approved.

Bolin, Parker, Shaw, Main, Wise, and Bryan, JJ., concur.

Stuart and Murdock, JJ., concur in part and dissent in part.

I, Julia Jordan Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 17<sup>th</sup> day of April, 2017

*Julia Jordan Weller*  
Clerk, Supreme Court of Alabama