

DEPENDENCY/EVIDENTIARY HEARING/TRIAL PROCEDURES
(Effective Date August 1, 2023)

JUDGE KELLY J. MCKIBBEN

Dependency Division

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These procedures are intended to simplify the dependency hearing process, not to make it more burdensome. Above all, attorneys, parents, participants and witnesses are expected to be flexible and reasonable. Counsel and self-represented parties are expected to keep themselves advised as to the requirements and status of attendance at dependency proceedings.

The Court prefers in person attendance at Court hearings except for very short, simple matters, as this helps facilitate better communication and avoids problems with technology. However, dependency courts have now been given guidance regarding proceedings via remote technologies. Pursuant to Rule 8.255, Florida Rule of Juvenile Procedure, **evidentiary hearings and trials must be conducted in person** unless the requirements under the rule have been met otherwise for a hybrid or virtual hearing/trial. All other Court proceedings will continue as hybrid proceedings with participants appearing in person or virtually as they deem appropriate via Microsoft Teams or unless otherwise ordered by the Court.

Parties are encouraged and required to discuss any stipulation for a hybrid or virtual hearing and ensure that an order is entered prior to such evidentiary hearing or trial. If no agreement is reached, pursuant to the rule, a motion must be filed setting forth good cause for the hybrid or virtual hearing. These motions should be heard in advance of the evidentiary hearing or trial.

If a hybrid or virtual hearing is approved by the Court, to ensure that virtual or hybrid evidentiary hearings or trials run smoothly, all participants shall abide by the following procedures:

TECHNOLOGY AND DEVICE REQUIREMENTS

Hearings will be conducted using Microsoft Teams. Participants shall download the free Microsoft Teams App from <http://teams.microsoft.com/downloads> (for a computer) or from the App Store for their smartphone or electronic device. All participants are expected to download the app/program in advance of the hearing and become sufficiently proficient to permit the hearing to proceed. Each participant shall ensure that he or she has sufficient bandwidth to permit the hearing to proceed.

Each participant shall also ensure that he or she has the proper equipment to fully participate in the proceeding and that any device being used is sufficiently/completely charged to ensure full participation.

ATTENDING THE VIRTUAL OR HYBRID HEARING/TRIAL

1. There is a permanent Microsoft Teams link and QR code designated for Judge McKibben's virtual courtroom. This information can be found on the next page (page 3). Counsel will be responsible for providing the link/QR code to the hearing to all parties and witnesses as needed.
2. Hearing participants will click on the meeting link invitation provided by the Court. **NOTE:** you may be entering a "lobby" that has many other attendees. After you enter, immediately mute your microphone and close your camera until your case is called or you are addressed by the Court. Unmute your microphone and open your camera when you are being addressed by the Court. To mute or unmute your microphone from a phone, press *6.
3. The Court **requires attendees to appear on camera/video** rather than simply by audio means. If at any time a participant has any technical issues with hearing or seeing anything, or if their screen freezes, please let the Court know immediately.
4. This is a virtual court proceeding and all attendees are expected to dress in a professional manner. Beverages are permitted, but no eating and no smoking.
5. Discovery, evidence, and other rules of procedure still apply.

JUDGE KELLY MCKIBBEN'S MICROSOFT TEAMS VIRTUAL COURTROOM

Please note:

Judge McKibben's remote video hearings are held via Microsoft Teams. The virtual courtroom is accessible via the link or QR code below, or by typing the link below into Microsoft Edge or Google Chrome web browser.

JUDGE KELLY MCKIBBEN'S VIRTUAL COURTROOM ACCESS IS:

<https://fl18.org/judgemckibben>



NOTE: Teams work best if you download the free application. The dedicated link listed above leads to a “waiting room” where you are to remain until the Court “lets you in” to the hearing. Any public hearings that would normally be conducted in the Courtroom are still public hearings when conducted virtually.

For emergency purposes only, if you cannot connect, the backup telephone line is

**United States, Daytona Beach (Toll) Phone (386) 310-1754 Conference ID:800 499 650
Be advised your hearing may need to be continued if you call in.**

At the designated time that your case is noticed for hearing, you will enter the virtual lobby by clicking the link or scanning the code. Please understand that multiple hearings are set for the same time. You will be called to enter the virtual courtroom once the Judge is ready for your hearing. For additional information or assistance, please email the judicial assistant Amanda Avalos at amanda.avalos@flcourts18.org

PREPARING EVIDENCE FOR THE VIRTUAL OR HYBRID HEARING/TRIAL

1. **No later than 5 business days before the hearing**, counsel shall exchange any and all exhibits and have a substantive, good faith telephone conference to address stipulations and objections to the admissibility of any exhibits. The parties are encouraged to reach an agreement as to the admissibility of all evidence. Exhibits to be entered via other witnesses shall be shared with those persons as well.
2. After the substantive, good faith telephone conference and **no later than 3 business days before the hearing**, the parties are to scan and email their exhibits to the Court. Each document shall be in .pdf format and compiled into a single file. The first document in the file shall be an index identifying each document by title. Documents do not need to be pre-marked or labeled. **NOTE**: After review, the Court may require that any voluminous evidence packages be printed by counsel and delivered to the courthouse in advance of the hearing or trial.
3. The proponent of any exhibit which will be entered without objection will note that on the index page.
4. If there are objections to the admissibility of any exhibits, the party raising the objection shall identify the exhibit and identify the ground(s) of any objection. Such objections shall be emailed to the Court with the opposing side and all parties copied on any such correspondence. All objections are preserved and will be ruled upon at the hearing/trial.
5. Identification of witnesses and the administration of an oath shall be governed by the rules of procedure.
6. In lieu of witness testimony, the parties may stipulate to the facts to be considered by the Court by emailing a signed stipulation, with said facts set forth therein, to the Court.
7. For any case that is scheduled for trial, counsel shall exchange witness lists that include the witnesses' names, email address, cell, and landline phone numbers, unless subject to confidentiality. The witness lists shall be filed and exchanged **at least twenty days prior to the trial date**.
8. Counsel shall identify any witness for whom an interpreter or an accommodation under the Americans with Disabilities Act will be required. To schedule a Spanish Interpreter, please email Alejandra Martinez (Alejandra.Martinez@flcourts18.org) and Marta Vittitoe (marta.vittitoe@flcourts18.org) to make necessary arrangements.

PREPARING WITNESSES FOR THE VIRTUAL OR HYBRID HEARING/TRIAL

NOTE: Counsel is responsible for providing these instructions to any witnesses and ensuring their compliance.

1. In the event the rule of sequestration is invoked, the witness may be instructed to leave the Teams video meeting. Counsel presenting the witness will be responsible for contacting the witness when it is time for their testimony.
2. The witness must be provided copies of all identified exhibits that pertain to that witness prior to the hearing/trial.
3. The witness shall be instructed not to look at or refer to any other document or electronic device during his or her testimony, nor have any communication of any kind to anyone that is not the lawyer questioning them or without authorization of the Court.
4. The witness may be required to use his or her camera to scan the room before and after testimony and may not use a virtual background.
5. The attorney or self-represented party may not assist the witness with answers in any way, including but not limited to gestures, notes, or facial expressions, or otherwise impact or influence the witness' testimony "off camera."
6. Having two participants in the same room using different devices is extremely discouraged as the "feedback" from the two devices will make most proceedings impossible. All participants using different devices should be in different rooms.

PROCEDURES DURING THE VIRTUAL OR HYBRID HEARING/TRIAL

1. At the beginning of the virtual hearing/trial, the Court will call the case and instruct all participants when to announce themselves for purposes of the record.
2. All participants shall place their microphone on mute unless they are speaking or wish to make an objection. Use of the "raised hand" feature can be used and is helpful so that the Court knows a participant wants to address the Court.
3. The use of technology requires a rigid rule of speaking one-at-a-time. These dependency proceedings are being recorded by Brevard Digital Court Reporters. Participants **MAY NOT** use the Microsoft Teams App or any other device to record the virtual or hybrid hearing/trial.
4. All efforts shall be undertaken not to interrupt other speakers during the virtual or hybrid hearing/trial, unless it is necessary to assert an objection. The attorneys are advised to instruct all witnesses that if they hear someone talking after the question they need to pause before answering so the Court can take up any objections.
5. If an interpreter is necessary, all participants shall speak slowly, in short complete sentences or questions, and allow time for translation. No one shall respond to a question posed by another participant until the question has been translated fully. Any case with interpreters must be designated as such in any request for hearing.

6. All participants are required to ensure that no children are able to hear or see the virtual or hybrid hearings/trials.
7. All participants are required to identify anyone that may be observing the proceedings with them. This is essential for the rule of sequestration to be effective and ensure the credibility of all witness testimony.

PROCEDURES FOR SCHEDULING A HEARING

1. All requests for hearing time should be e-mailed with an attached copy of the e-filed motion to the Judicial Assistant, Amanda Avalos (Amanda.Avalos@flcourts18.org).
2. You must copy all parties on your email.
3. Your email must indicate how much hearing time is being requested, and a statement that all parties have stipulated to the amount of hearing time requested.
4. As a reminder, any stipulated motions likely do not require a hearing. For stipulated motions, you can submit a proposed order via the e-portal for review by the judge.
5. After a hearing date and time is confirmed, the moving party must e-file the Notice of Hearing within 3 days noting the time allotted for the hearing.

PROCEDURES FOR SUBMITTING PROPOSED ORDERS

1. All proposed Orders shall be submitted via the e-portal within 15 days after a hearing, unless otherwise specified by the Court.
2. Effective immediately, all orders must include the nunc pro tunc date of the original hearing date. Example below:

DONE AND ORDERED in Viera, Brevard County, Florida on DDDD, **nunc pro tunc** (fill in date of original hearing here).

JJJJ