

**VIRTUAL/VIDEOCONFERENCE EVIDENTIARY HEARING/TRIAL PROCEDURES
(Effective Date January 19, 2021)**

JUDGE KELLY J. MCKIBBEN
Dependency Division

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Due to the COVID-19 pandemic and administrative orders from the Florida Supreme Court and Eighteenth Judicial Circuit, the following updated procedures are being put into place until further notice. There is limited court access as set forth in various administrative orders. Counsel and self-represented parties are expected to keep themselves advised as to the status of attendance at dependency proceedings.

Courts have been encouraged to conduct proceedings via remote technologies where available and appropriate. The following guidelines are for use at evidentiary hearings and trials. These procedures are intended to simplify the virtual/videoconference process, not to make it more burdensome. Above all, attorneys, parents, participants and witnesses are expected to be flexible and reasonable.

To ensure that your virtual/videoconference hearing runs 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 ensure that he or she has the proper equipment to properly participate in the proceeding.

Additional information and training regarding Microsoft Teams is available on the Eighteenth Judicial Circuit website.

ATTENDING THE HEARING/TRIAL

1. Prior to the hearing or trial, the Court will send the Teams link to the attorneys of record. This will likely be sent the business day before the hearing or trial. Counsel will be responsible for providing the link to the hearing to all parties and witnesses.

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.
3. The Court prefers attendees to appear on camera 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, unless suspended or amended by the Florida Supreme Court. See Florida Supreme Court AOSC 20-23, Amendment 1, and its successive administrative orders.

PREPARING EVIDENCE FOR THE VIRTUAL/VIDEOCONFERENCE HEARING

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.
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.
5. Identification of witnesses and the administration of an oath shall be governed by AOSC20-16 or any successive administrative order.
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. Counsel shall identify any witness for whom an interpreter or an accommodation under the Americans with Disabilities Act will be required. The witness lists shall be filed and exchanged **at least twenty days prior to the trial date.**

PREPARING WITNESSES FOR THE VIRTUAL/VIDEOCONFERENCE HEARING

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

1. Pursuant to current COVID-19 CDC guidelines and orders from all levels of government, all participants must abide by social distancing requirements and limit in-person contact. As such, if all parties stipulate, the witnesses do not need to be present with the attorneys during the videoconference hearing and it is preferred that such witnesses participate in the videoconference hearing remotely from their own home or office.
2. 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.
3. The witness must be provided copies of all identified exhibits that pertain to that witness prior to the hearing.
4. 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.
5. 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.
6. Witnesses are discouraged from being in the same physical space as the attorney or self-represented party. However, in the event a witness or party testifying is in the same physical space as the attorney questioning the witness, the witness must be at least 6 feet away from any other person in the room and the camera shall be directed at the witness. 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."
7. 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/VIDEOCONFERENCE HEARING

1. At the beginning of the videoconference hearing, 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 proceedings are being recorded by Brevard Digital Court Reporters. You will see the name of the court recorder in the list of participants. Participants MAY NOT use the Microsoft Teams App or any other device to record the virtual/videoconference hearing.
4. All efforts shall be undertaken not to interrupt other speakers during the virtual/videoconference hearing, unless it is necessary to assert an objection. Please 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. Everyone needs to understand that, although everyone will get their turn to talk, this process may need to be slowed down.
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/videoconference hearings.
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.