

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
RICKY POLSTON
JORGE LABARGA
C. ALAN LAWSON
CARLOS G. MUÑIZ
JOHN D. COURIEL
JAMIE R. GROSSHANS
JUSTICES

JOHN A. TOMASINO
CLERK OF COURT

SILVESTER DAWSON
MARSHAL

MEMORANDUM

TO: Chief Judges of the Circuit Courts
Trial Court Administrators

FROM: Chief Justice Charles T. Canady 

DATE: February 17, 2021

SUBJECT: Requirements for Remote Criminal Jury Trials

Today, I issued *In re: Comprehensive COVID-19 Emergency Measures for Florida Trial Courts*, Fla. Admin. Order No. AOSC20-23, Amendment 9 (Feb. 17, 2021) (“AOSC20-23”), which authorizes the conduct of remote criminal jury trials subject to the requirements specified in Section III.B., and which amends the requirements for the conduct of remote criminal bench trials specified in Section III.E.(2)a.

Among other things, the requirements for the conduct of remote criminal jury trials include compliance with the requirements set forth in the report titled *Requirements and Evaluation Criteria, Remote Civil and Criminal Jury Trials*. Moreover, the requirements for the conduct of remote criminal jury and bench trials include obtaining certain statements identified by Sections III.B.(1)b. and III.E.(2)a. of AOSC20-23. The Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 developed potential colloquies that a trial judge may wish to consider when determining the questions to ask to obtain the statements.

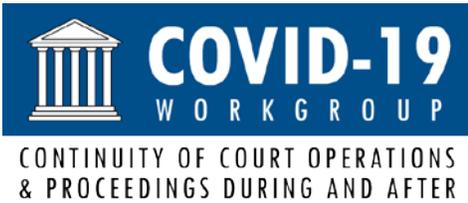
Chief Judges of the Circuit Courts
Trial Court Administrators
February 17, 2021
Page 2

The above-referenced report is attached. The potential colloquies for remote criminal jury trials are provided in Attachment A to the report. The potential colloquies for remote criminal bench trials are provided in a separate attachment titled *Potential Colloquies for Remote Criminal Bench Trials*.

If you have any questions, please contact Ms. Tina White, chief of the Innovations and Outreach Unit within the Office of the State Courts Administrator, by email at whitet@flcourts.org.

CTC:tw

Attachments



Requirements and Evaluation Criteria

Remote Civil and Criminal Jury Trials

Updated on February 17, 2021^{1, 2}

Overview

The Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 initially established the requirements in this document for the conduct of remote civil jury trial pilots by the five judicial circuits initially selected to participate in the pilot program created by Fla. Admin. Order No. AOSC20-31, Amendment 1. Since then authorization for all judicial circuits to conduct remote civil and criminal jury trials has been provided in Section III.B. of [Fla. Admin. Order No. AOSC20-23, Amendment 9](#) (“AOSC20-23”). Section III.B. requires a judicial circuit that elects to hold a remote jury trial to comply with the requirements specified in this document as well as with other standards and guidance for remote proceedings as adopted by the Chief Justice or Supreme Court. It also requires a judicial circuit, within 30 days after the remote conduct of a jury trial for the first time in the circuit, to present the results of the trial and report its findings and recommendations to the Chief Justice through the state courts administrator. This report should include a summary of the responses to the assessments required in 9., below, and address the issues listed under the sections titled “Trial Process Elements” and “Other Assessment Elements.”

Requirements

1. Each case selected for a remote jury trial must be conducive to a remote proceeding and the court must ensure compliance with the requirements relating to consent and all other matters addressed in Section III.B. of AOSC20-23.
2. If in-person proceedings are included as part of the remote jury trial, the circuit or county within the circuit, as applicable, must conduct the proceeding in a manner that is consistent with Section III.B.(5) of AOSC20-23.
3. For the remotely conducted portions of the jury process, consideration must be given to providing technology to potential jurors and trial jurors for participation if they do not have access to technology to fulfill their responsibilities as jurors.
4. Remote jury trials should not detract from the conduct of essential and critical trial court proceedings as defined in AOSC20-23.
5. The circuit must have the appropriate technology necessary to support the remote jury trial and must verify that participants have the ability to participate in the proceeding remotely. A practice session to verify access and test remote appearance features must be conducted before the trial.
6. For civil cases, the circuit should review the [Best Practices – Management of Evidence in Remote Hearings in Civil and Family Cases](#) guide and for criminal cases, the circuit should review the [Best Practices – Management of Evidence in Remote Pretrial Hearings in Criminal Cases](#) guide and may wish to consider the colloquies in Attachment A. The circuit should also ensure that it has established appropriate

¹ On November 23, 2020, this document was updated by the Office of the State Courts Administrator to address the requirements specified in Section III.B. of Fla. Admin. Order No. AOSC20-23, Amendment 8, for judicial circuits electing to conduct remote civil jury trials.

² On February 17, 2021, this document was updated by the Office of the State Courts Administrator to address the requirements specified in Section III.B. of Fla. Admin. Order No. AOSC20-23, Amendment 9, for judicial circuits electing to conduct remote criminal jury trials.

procedures for: the filing and management of exhibits; the taking of witness testimony; the pretrial resolution of objections to evidence; and other matters specified in the guides.

7. The court must hold a pretrial conference to address any logistical issues associated with remote conduct of the trial and must obtain agreement on jury instructions that will advise jurors on how they must conduct themselves in a remote environment.
8. The circuit shall take steps to ensure the security and integrity of the proceeding, including granting appropriate access to the proceeding, monitoring juror participation, and safeguarding the jury deliberation process.
9. The circuit shall assess participant perceptions and determine the effectiveness of the first remote jury trial proceeding conducted in the circuit by providing the survey links below to the appropriate participants. The circuit may wish to also use the surveys for subsequent remote jury trials. Following completion of the surveys, a report of the results from jurors, attorneys, and the presiding judge will be made available to the circuit through the Office of the State Courts Administrator (“OSCA”).³ Additional methods to determine the efficiency and effectiveness of the remote jury proceeding may also be used.

Juror Feedback

Survey jurors and ask them to rate the statements in 1. through 19., below, on a five-point scale⁴ and to answer question 20. The survey instrument is available at: <https://checkbox.flcourts.org/Juror-Feedback.aspx?u=bee25a13-b7dd-4b5d-9f71-7c736db90b56&test=true>

Remote Appearance Platform

1. Connecting to the remote proceeding was simple.
2. Using the features of the videoconferencing platform was simple.

Remote Jury Selection

3. I was able to easily participate in the remote juror selection process.
4. I was able to clearly hear and see the judge and attorneys during the remote jury selection process.
5. I was able to easily respond to questions from the judge and attorneys during the remote jury selection process.
6. I prefer remote jury selection over in-person jury selection.
7. I feel the remote jury selection process was fair to both parties.
8. I feel the remote jury selection process was efficient.
9. I feel the remote jury selection process was effective.
10. I feel that remote jury selection should be used in more cases.

Remote Trial

11. I was able to easily participate in the remote jury trial process.
12. I was able to clearly hear and see the judge, attorneys, and witnesses during the remote trial.
13. I was able to clearly see the evidence and exhibits presented during the remote trial.
14. I was able to easily ask questions during the deliberation process.
15. I prefer remote jury appearance over in-person jury appearance.
16. I feel the remote trial process was fair to both parties.
17. I feel the remote jury trial process was efficient.
18. I feel the remote jury trial process was effective.
19. I feel remote jury trials should be used for more cases.

General

20. What suggestions do you have for improvement (free response)?

Attorney Feedback

³ Contact Joshua Smith, OSCA’s Webmaster, at smithj@flcourts.org for a report of the remote jury trial survey results.

⁴ Scale: 5 - Strongly Agree, 4- Agree, 3 - Neutral, 2 - Disagree, 1 - Strongly Disagree, or N/A.

Survey attorneys and ask them to rate the statements in 1. through 19., below, on a five-point scale and to answer question 20. The survey instrument is available at:

<https://checkbox.flcourts.org/Survey.aspx?s=31af7c35b1024557b9a4a69851d6901d&u=bee25a13-b7dd-4b5d-9f71-7c736db90b56&forceNew=true&test=true>

Remote Appearance Platform

1. Connecting to the remote proceeding was simple.
2. Using the features of the videoconferencing platform was simple.

Remote Jury Selection

3. I was able to easily participate in the remote juror selection process.
4. I was able to clearly hear and see the judge and potential jurors during the remote jury selection process.
5. I was able to easily question potential jurors during the remote jury selection process.
6. I prefer remote jury selection over in-person jury selection.
7. I feel the remote jury selection process was fair to both parties.
8. I feel the remote jury selection process was efficient.
9. I feel the remote jury selection process was effective.
10. I feel that remote jury selection should be used in more cases.

Remote Trial

11. I was able to easily participate in the remote jury trial process.
12. I was able to clearly hear and see the judge and other attorneys during the remote trial.
13. I was able to easily call witnesses during the remote trial.
14. I was able to easily present evidence and exhibits during the remote trial.
15. I prefer remote jury appearance over in-person jury appearance.
16. I feel the remote trial process was fair to both parties.
17. I feel the remote jury trial process was efficient.
18. I feel the remote jury trial process was effective.
19. I feel remote jury trials should be used for more cases.

General

20. What suggestions do you have for improvement (free response)?

Presiding Judge Feedback

Survey the presiding judge and ask him or her to rate the statements in 1. through 19., below, on a five-point scale and to answer question 20. The survey instrument is available at:

<https://checkbox.flcourts.org/Survey.aspx?s=bdd049ff9ecd4fa899b232a55f0b3bed&u=bee25a13-b7dd-4b5d-9f71-7c736db90b56&forceNew=true&test=true>

Remote Appearance Platform

1. Connecting to the remote proceeding was simple.
2. Using the features of the videoconferencing platform was simple.

Remote Jury Selection

3. I was able to easily manage the remote juror selection process.
4. I was able to clearly hear and see the attorneys and potential jurors during the remote jury selection process.
5. I was able to easily question potential jurors.
6. I prefer remote jury selection over in-person jury selection.
7. I feel the remote jury selection process was fair to both parties.
8. I feel the remote jury selection process was efficient.
9. I feel the remote jury selection process was effective.
10. I feel that remote jury selection should be used in more cases.

Remote Trial

11. I was able to easily manage the remote jury trial process.
12. I was able to clearly hear and see the attorneys and witnesses during the remote trial.
13. I was able to easily manage witnesses during the remote trial.
14. I was able to easily manage evidence and exhibits during the remote trial.
15. I prefer remote jury appearance over in-person jury appearance.
16. I feel the remote trial process was fair to both parties.
17. I feel the remote jury trial process was efficient.
18. I feel the remote jury trial process was effective.
19. I feel remote jury trials should be used for more cases.

General

20. What suggestions do you have for improvement (free response)?

Trial Process Elements (to be answered by the attorneys and presiding judge as part of the surveys above)

Please indicate if the following were used during the pilot (Y or N) and the ease of managing each through the remote platform. Please use the following scale: Extremely Easy, Easy, Neutral, Difficult, Extremely Difficult, or N/A.

1. Evidentiary objections
2. Pre-trial motions
3. Pre-marked trial exhibits
4. Bench conferences
5. Remote witnesses
6. Jury polling

Other Assessment Elements (to be answered by the attorneys and presiding judge as part of the surveys above)

Thoughts on the overall process, including technical, logistical, and legal.

1. Were there significant unanticipated costs associated with the trial? If so, what were they?
2. Total time required to prepare for the proceeding. (Reported in half-hour increments.)
3. Total time required for the proceeding. (Based on metrics available from the video teleconference platform.)

Attachment A – Potential Colloquies for Remote Criminal Jury Trials

For purposes of conducting remote criminal jury trials when the defendant is represented by counsel, the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 developed potential colloquies for the prosecutor, defendant, and defense counsel. A trial judge who conducts a remote criminal jury trial may wish to consider and modify, as may be deemed appropriate, the following questions that the judge might ask in order to comply with the requirements of *In re: Comprehensive COVID-19 Emergency Measures for Florida Trial Courts*, Fla. Admin. Order No. AOSC20-23, Amendment 9 (Feb. 17, 2021) (*see* Section III.B.(1)b.) for certain statements.

NOTE: This following potential colloquies are based exclusively on recommendations made by the Workgroup. The Chief Justice and the Florida Supreme Court express no opinion regarding the correctness of these potential colloquies.

For the prosecutor, the trial judge’s questions should be:

- a. Does the state agree to all phases of this jury trial being held via Zoom (or other applicable remote technology)?
- b. What is the alleged victim’s position regarding the conduct of the trial via Zoom (applicable only in cases involving a victim)?

For the defendant, the trial judge’s questions should be:

- a. I have been given a written document that purports to have your signature. Did you read and understand this document before you signed it? Is the signature on this document your signature?
- b. What is the highest level of education you have received?
- c. Do you have any problems reading or understanding the English language?
- d. Have you had adequate time to think about whether you agree to the jury trial being held via Zoom (or other applicable remote technology)?
- e. Have you had an opportunity and adequate time to discuss having your trial via Zoom with your attorney?
- f. Do you need any additional time to speak with your attorney?
- g. Has anyone threatened, coerced, pressured, or promised you anything to agree to a Zoom jury trial?
- h. Do you understand that if the trial is not conducted via Zoom, the alternative would be an in-person jury trial at some point in the future?
- i. I want to make sure that you understand and have considered that there may be potential disadvantages with a jury trial conducted via Zoom. Participants in this trial, such as jurors, the prosecutor, you, your lawyer, and me [may/will] be in separate locations and reliant on technology to hear, see, and understand each other. Have you discussed with your attorney all questions and concerns you have about whether a Zoom trial may negatively affect the jurors’ ability to evaluate and understand the case and the witnesses?
- j. Have you discussed with your attorney all questions and concerns you have about whether you will be able to adequately communicate with [him/her] during the Zoom trial using the available technology?

- k. Have you discussed with your attorney all questions and concerns you have about whether the Zoom technology may negatively affect your ability to view or question the state's evidence and witnesses and/or present your own evidence and witnesses?
- l. Have you discussed with your attorney all questions and concerns you have about the way the jury will be managed and the rules of sequestration enforced?
- m. Have you discussed with your attorney all questions and concerns you have about any other potential disadvantages of conducting your trial via Zoom?
- n. After considering all the potential advantages and disadvantages and after fully consulting with your attorney, do you agree to the conduct of all phases of your jury trial via Zoom?
- o. Can you assure me that you are doing this freely and voluntarily?
- p. Have you been prescribed medication that you have failed or refused to take?
- q. Is there any prescribed medication that you have not taken that affects your ability to understand this decision?
- r. Are you under the influence of any substance, even if prescribed, that may affect your ability to understand this decision?
- s. Do you have any mental health or physical issue that affects your ability to understand this decision?
- t. Do you have any questions for me?
- u. After hearing my questions and giving the matter more thought, do you agree with conducting all phases of your jury trial via Zoom?

For the defense attorney, the trial judge's questions should be:

- a. Have you discussed the potential advantages and disadvantages of conducting the trial via Zoom with your client (or other applicable remote technology)?
- b. Have you concluded that your client is voluntarily, knowingly, and intelligently agreeing to conduct this jury trial via Zoom?

Potential Colloquies for Remote Criminal Bench Trials

For purposes of conducting remote criminal jury trials when the defendant is represented by counsel, the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 developed potential colloquies for the prosecutor, defendant, and defense counsel. These potential colloquies have been modified, where necessary, for use in remote criminal bench trials. A trial judge who conducts a remote criminal bench trial may wish to consider and modify, as may be deemed appropriate, the following questions that the judge might ask in order to comply with the requirements of *In re: Comprehensive COVID-19 Emergency Measures for Florida Trial Courts*, Fla. Admin. Order No. AOSC20-23, Amendment 9 (Feb. 17, 2021) (see Section III.E.(2)a.).

NOTE: This document is based on recommendations made by the Workgroup as modified by the Office of the State Courts Administrator to apply to remote criminal bench trials. The Chief Justice and the Florida Supreme Court express no opinion regarding the correctness of the potential colloquies below.

For the prosecutor, the trial judge's questions should be:

- a. Does the state agree to all phases of this trial being held via Zoom (or other applicable remote technology)?
- b. What is the alleged victim's position regarding the conduct of the trial via Zoom (applicable only in cases involving a victim)?

For the defendant, the trial judge's questions should be:

- a. I have been given a written document that purports to have your signature. Did you read and understand this document before you signed it? Is the signature on this document your signature?
- b. What is the highest level of education you have received?
- c. Do you have any problems reading or understanding the English language?
- d. Have you had adequate time to think about whether you agree to the trial being held via Zoom (or other applicable remote technology)?
- e. Have you had an opportunity and adequate time to discuss having your trial via Zoom with your attorney?
- f. Do you need any additional time to speak with your attorney?
- g. Has anyone threatened, coerced, pressured, or promised you anything to agree to a Zoom trial?
- h. Do you understand that if the trial is not conducted via Zoom, the alternative would be an in-person trial at some point in the future?
- i. I want to make sure that you understand and have considered that there may be potential disadvantages with a trial conducted via Zoom. Participants in this trial, such as the prosecutor, you, your lawyer, and me [may/will] be in separate locations and reliant on technology to hear, see, and understand each other. Have you discussed with your attorney all questions and concerns you have about whether a Zoom trial may negatively affect my ability to evaluate and understand the case and the witnesses?

- j. Have you discussed with your attorney all questions and concerns you have about whether you will be able to adequately communicate with [him/her] during the Zoom trial using the available technology?
- k. Have you discussed with your attorney all questions and concerns you have about whether the Zoom technology may negatively affect your ability to view or question the state's evidence and witnesses and/or present your own evidence and witnesses?
- l. Have you discussed with your attorney all questions and concerns you have about any other potential disadvantages of conducting your trial via Zoom?
- m. After considering all the potential advantages and disadvantages and after fully consulting with your attorney, do you agree to the conduct of all phases of your trial via Zoom?
- n. Can you assure me that you are doing this freely and voluntarily?
- o. Have you been prescribed medication that you have failed or refused to take?
- p. Is there any prescribed medication that you have not taken that affects your ability to understand this decision?
- q. Are you under the influence of any substance, even if prescribed, that may affect your ability to understand this decision?
- r. Do you have any mental health or physical issue that affects your ability to understand this decision?
- s. Do you have any questions for me?
- t. After hearing my questions and giving the matter more thought, do you agree with conducting all phases of your trial via Zoom?

For the defense attorney, the trial judge's questions should be:

- a. Have you discussed the potential advantages and disadvantages of conducting the trial via Zoom with your client (or other applicable remote technology)?
- b. Have you concluded that your client is voluntarily, knowingly, and intelligently agreeing to conduct this trial via Zoom?