

Virtual Court Procedures and Preferences During Public Health Emergency

The Honorable Judge Wayne M. Durden
Polk County Civil Division/Section No. 11

I. GENERAL

A. There are many platforms providing the capability to conduct virtual court proceedings. The Court is prepared, equipped, and prefers to conduct such hearings effectively using the **Microsoft Teams** platform. Virtual Court proceedings may be conducted by phone or video conferencing using the **Microsoft Teams** platform. If you wish to use a different platform, please contact the Court in order that it may assess whether the proceeding may be conducted effectively using another proposed platform.

B. The procedures and preferences detailed herein apply to all virtual court proceedings, regardless of the technology or platform utilized, but are subject to modification on an as needed basis.

II. SCHEDULING HEARINGS

A. The Court prefers that hearing time be reserved by email to the judicial assistant at **chess@jud10.flcourts.org**. Such requests must include the case number, party names, matter(s) to be heard, and time required. The party scheduling a hearing is responsible for contacting all other parties to determine how much time each party will require.

B. After obtaining available hearing times, do not include the court in any electronic communications with other parties relating to the coordination of hearing time.

C. After all parties have agreed upon a hearing date and time, email the judicial assistant with the agreed upon date and time, along with the time each party will require to present his or her position during the hearing.

D. The parties, or counsel for the parties, will receive electronic confirmation from the Court of the hearing date and time. Confirmation emails will provide the hyperlink and teleconference information for appearing.

III. SUBMISSION OF COURTESY COPIES, CASELAW, PROPOSED ORDERS AND OTHER PREHEARING MATERIALS

A. No later than **five (5) days** in advance of any hearing, all parties must submit to the court courtesy copies of notices of hearing, motions, memoranda, caselaw, and any other materials the party intends to rely upon or refer to during the hearing.

B. Counsel for the parties should **NOT** rely upon the Court to print copies of such materials for them, nor should such items be sent by facsimile for later use during Court proceedings.

C. The submission of proposed orders and judgments, however, may be submitted in Word (.docx) format and such submission of orders or judgments is encouraged.

D. Please contact the court before using a method other than email to transmit prehearing materials.

IV. NOTICING HEARINGS

A. A party calling a case up for hearing shall provide the Court and all other parties a Notice of Hearing or Order Setting Hearing which includes the hyperlink for appearing by videoconference as well as the telephone number and conference ID for appearance by telephone only. The hyperlink will be included in an email from the Court confirming the hearing date and time.

B. Hyperlink and teleconference information should be **copied and pasted into the notice of hearing**. A sample Notice of Hearing will be included in an email from the Court confirming the hearing date and time.

C. All parties capable of receiving email should be provided with the Notice of Hearing by email. Hyperlinks remain active and “clickable” when served by email directly or through Florida’s E-Filing Portal.

D. Parties unable to receive email may be served by first class, U.S. Mail.

E. A party providing a court reporter or inviting an observer shall be responsible for providing the court reporter or non-party observer the hyperlink and teleconference information.

V. APPEARANCES

A. Appearance through **Microsoft Teams** may be either audio only or audio/video. When necessary for evidentiary purposes, videoconferences of counsel, parties, and other court participants is preferred. Those appearing by video shall keep their cameras activated throughout the hearing unless otherwise directed.

B. Non-testifying court participants and observers may, if necessary, appear by telephone.

C. The Court may utilize a virtual **Microsoft Teams “lobby”** when calling a docket. Please be patient while waiting in the lobby.

D. Persons appearing by videoconference in virtual proceedings shall accurately enter their first and last name digitally if prompted to do so before being admitted to a virtual courtroom.

E. The Court may not be able to determine the identity of persons appearing by telephone only. No later than 48 hours in advance of the hearing, the party or counsel for the party responsible for the attendance of persons appearing by telephone only shall provide the Court with the first and last name of such persons, including attorneys appearing only by telephone, along with the telephone number from which the person will be connecting to the virtual court proceeding. The phone number provided must be the phone number that would appear on a caller ID display. Therefore, if calling from an extension, the main telephone number should be provided.

VI. WITNESSES AND TESTIMONY

A. Persons authorized to administer the Oath of Witness, including judges, must have audio-visual communication with the witness (except as noted below).

B. Credibility of witnesses usually cannot be effectively assessed without audio-visual communication.

C. Witnesses appearing in virtual court proceedings are strongly encouraged to appear by videoconference technology. (In some limited circumstances, to be determined on an as-needed basis, it may be permissible to receive testimony from a witness telephonically only if in the presence of a disinterested notary public or other person capable of administering oaths, who can verify the identity of the witness and insure the witness is testifying free of influence).

D. A party calling a witness is responsible for providing the witness the hyperlink for accessing the virtual courtroom. The hyperlink will be provided to the parties in the email confirming hearing time. The hyperlink may be copied and pasted into an email forwarded to the witness.

E. Consistent with prevailing social distancing recommendations of public health authorities, parties are strongly discouraged from allowing witnesses and observers to appear from the same location as any other party, witness, observer, or attorney.

F. When “the rule of sequestration of witnesses” is invoked counsel and witnesses should be prepared to demonstrate via video link or otherwise that witnesses will be testifying free of potential influence from others.

VII. EVIDENCE

A. Hard copies of documentary, photographic, or other audio-video evidence (such as digital storage media) must be pre-marked and submitted to the Court in advance of any evidentiary proceedings. Counsel must consult with each other prior to any evidentiary hearing to discuss the labelling and submission of agreed upon exhibits, and to discuss the labelling of exhibits for identification if submission is not agreed upon prior to the hearing. Physical objects must be pre-marked and provided in advance. Arrangements must be made in advance for delivery to the Court. However, by agreement of the parties a pre-marked digital image of physical objects may be submitted instead.

B. A copy of all pre-marked evidentiary exhibits should be provided to each attorney prior to the hearing. A copy of each pre-marked evidentiary exhibits to which a witnesses’ testimony will relate should be provided to each appropriate witness prior to the hearing for reference purposes and use during evidentiary hearings.

C. Counsel for the parties should **NOT** rely upon the Court to print copies of documentary or other evidentiary items for them, nor should such items be sent by facsimile for later submission to the Court during hearings.

D. Microsoft Teams does provide “screen-sharing” capabilities which may be available to assist in sharing or reviewing documents during virtual court proceedings. A party who has “screen-sharing” capability or another method of publishing evidence or refreshing memory on his or her own will be permitted to do so if the Court determines the party can do so effectively, taking into consideration fairness to opposing parties and, if applicable, the witness.

VIII. CLIENT CONSULTATION

- A. Client consultation is permitted during virtual court proceedings.
- B. Client consultation must occur through a separate connection such as telephone, email, or text. Attorneys and their clients may mute their microphones and cancel their cameras when engaging in attorney client consultation. With permission, attorneys and their clients may temporarily disconnect from the virtual hearing space, if necessary, to engage in consultation.

IX. ATTENDANCE OF OBSERVERS

- A. Unless otherwise ordered, family members, friends, and other observers are permitted to attend and observe. However, observers will not be permitted to speak except upon request of a party with permission of the Court. Observers who speak without permission or engage in unruly, disruptive, or disrespectful conduct will be removed from the virtual hearing space and not allowed to rejoin.
- B. Children are not permitted to attend and observe except upon request of a party with permission of the Court. Children and those with children on the line will be removed from the virtual hearing space and not permitted to rejoin.
- C. It is the parties' obligation to provide the hyperlink and teleconference information to persons wanting to observe virtual court proceedings. Other persons not affiliated with a party may contact Tenth Circuit Court Technology for access to the virtual hearing space.

X. VIRTUAL COURTROOM ETIQUETTE

- A. Dress appropriately for court.
- B. Eliminate distractions as much as possible. Appearances should be made from an interior location free from excessive background noise.
- C. To minimize distractions, log in or call a few minutes before the scheduled hearing begins. Identify yourself when in the virtual meeting with your real name, and if you are appearing by phone, please disclose your identity immediately upon inquiry.
- D. Mute your microphone before entering the virtual courtroom. Keep your mic muted when not speaking and do not speak out of turn.
- E. When appearing by video, do not deactivate your camera unless authorized by the Court.
- F. Court-provided remote technology includes a "chat" feature. The chat feature shall not be utilized without express authorization from the Court.
- G. If asked to unmute your microphone, activate your camera, or otherwise identify yourself, do so. Participants who refuse to comply with instructions will be removed from the virtual hearing space and not allowed to rejoin.

H. Do not engage in other business or activity while participating or observing a virtual court proceeding, such as reading the newspaper, smoking, chewing tobacco, or eating. Non-alcoholic drinks will be permitted.

I. If you are required to care for a small child who cannot be left unattended during the virtual hearing, please inform the Court ahead of time and do your best to minimize distractions.

J. Participants or observers who engage in unruly or disrespectful conduct will be removed from the virtual hearing space and not allowed to rejoin.

K. In general, show the same courtesy and respect you would in an in person setting