

**GUIDELINES FOR VIRTUAL COURTROOM
PROCEEDINGS OF THE
TWENTIETH JUDICIAL CIRCUIT**



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Guidelines for Virtual Courtroom Proceedings of the Twentieth Judicial Circuit

In an effort to address the unique needs created by the current pandemic, and in an effort to ensure that the administration of justice can continue during this time, the Virtual Courtroom Task Force has compiled the following guidelines and recommendations. These guidelines are intended to assist judicial officers in conducting proceedings remotely, whether they are physically in the courtroom or elsewhere. While there are several platforms for conducting virtual judicial proceedings, these guidelines are suggested with the employment of Zoom, which is the platform used by the 20th Judicial Circuit. Views may be different if a participant is accessing Zoom from a smartphone or iPad.

Zoom Accounts

1. Each Judge shall be given a Zoom account through which he/she will conduct virtual court. Each Judge will be the “host” of the Zoom meeting (Judge/host). Litigants, defendants, and other participants will provide an email address to the clerk’s office in order to be sent an invitation to the Zoom proceeding. If a participant does not have access to Zoom, he/she shall be allowed to participate by conference call. The Judge/host will call the litigant and place him/her on speaker during the virtual proceeding. If preferred, the Judge/host can designate a “co-host” to assist in managing the participants. If the Judge/host chooses to have a “co-host,” he/she will notify the participants that he/she is using this feature.
2. The Judge can access Zoom through the app or through an Outlook account. “Schedule a Meeting” will allow a future meeting, while “Start Instant Meeting” will allow an instant meeting previously unscheduled.
3. Scheduling the hearing: Use the caption of the case and case number in the line for Meeting Topic.
4. The Judge/host should enable the Waiting Room feature in Zoom. This will allow the Judge/host to control who is admitted to the hearing and prevent participation by individuals who are not participants in the case. This also allows the Judge/host to keep the courtroom secure while still allowing the public to view the proceedings.
5. The telephone number of a participant may be displayed on the screen. The Judge/host should change the phone number to the participant’s name. The Judge/host may do this while the participant is in the Waiting Room. This will facilitate moving participants into Breakout Rooms or into the Waiting Room.
6. Use the “gallery view” to see all of the participants at once.
7. The Judge/host can choose to mute all or some of the participants. The Judge/host can allow all or some of the participants to self-unmute or to control access to mute. For

example, the Judge/host might mute everyone but allow the attorneys or parties if they are self-represented to unmute themselves when they need to speak. For those accessing via a smartphone or iPad, the participant may use the microphone at the bottom of the smartphone screen or the space bar on an iPad to unmute.

Decorum

The Judge/host shall make every effort to maintain the same level of decorum as if physically present in the courtroom. The Judge/host shall remind those participating that the call is an extension of the Court and they are participating in a court proceeding. The same rules regarding dress codes, demeanor, language, and respect for the staff apply. The staff participating in the virtual proceeding should have a professional background displayed. A photograph of the courtroom should be used whenever possible.

Notice to Parties

The Court shall provide adequate notice to the parties and ensure that the parties are able to participate remotely. Notice shall be provided to the parties in one of the following ways:

1. Court staff may telephone the parties before the hearing to obtain their email addresses. The invitation to the Zoom hearing and password shall then be emailed to the parties.
2. If the party does not have an email address or the ability to join by video, the party shall provide a telephone number to join the meeting via telephone.

Virtual Hearing

At the beginning of the hearing, the Judge/host shall state the case number, case name, start and time of the hearing, require each participant to state and spell their name, and each participant to indicate in what form they are participating in the virtual hearing.

Oath

The oath may be administered by the courtroom clerk, or by the individual Judge. This procedure would remain the same as during a physical court appearance if all parties appear by Zoom. If there is any question as to the identity of a participant appearing by Zoom, the Judge/host may require identification through a driver's license or another form of identification.

If a party is unable to appear by Zoom and is present by telephone only, the Judge/host must verify that the participant is the person he/she claims to be. This can be accomplished by asking other participants if they recognize the voice to be the person indicated. If verification is established, the oath can be administered as set forth above.

Admonishments

The following admonishments will be given by the Judge/host prior to the commencement of the proceeding:

1. The court proceedings are on the record and are being recorded. All conversations can be heard by all of the other parties present and will become a part of the record.
2. Remember that this is a formal proceeding and treat it as if you were present in the courtroom.
3. There are multiple participants in this proceeding. If you are not speaking, mute yourself so we do not pick up background noise or unwanted audio feedback. Please take a moment to locate the mute button on your screen. Clicking the microphone will enable you to mute and unmute. If the Court mutes you, I will let you know that I will be doing so.
4. When you want to speak, unmute yourself and identify yourself by stating your last name. Identify yourself each time we change who is speaking, otherwise, the court reporter may have a difficult time determining who is speaking. If you have an objection, state the objection followed by your name or other identifying title. Wait until questions are completed before announcing an objection. The court reporter may interrupt from time to time to clarify who is speaking.
5. When you speak, please make sure that you speak slowly and clearly. Please do not speak over one another or interrupt one another.
6. The Court will admit witnesses into the virtual Courtroom from the Waiting Room one at a time. Do not communicate with the witness through any format during the proceeding. Witnesses may not hold any notes or paperwork in their hands while they are testifying.
7. Verbal responses are essential in order for the court reporter to take down what the speaker said.
8. Video or audio recording of this proceeding by any party through any device or format is strictly prohibited. Failure to comply with this admonishment may result in the imposition of sanctions or in a finding of contempt.

Other considerations during proceedings:

- Before concluding, the Judge/host should reaffirm that the participants were present for the entire virtual proceeding and that they were able to hear the entire proceeding.
- In criminal proceedings, the Defendant has a constitutional right to be present in court at every stage in the proceedings. The Judge should make a record at the beginning of the proceeding and inquire whether the Defendant is aware of his/her right to be physically present in court and whether he/she is waiving that right.

- Best practice would be to terminate the hearing if the Defendant waives his/her right to be physically present in court but changes his/her mind during the proceeding.
- Victims also have a statutory right to be present in court. The Judge should likewise admonish any victims regarding this right and the Judge should obtain the waiver of that right on the record.

Exhibits

A courtroom clerk will be present either by video or in the courtroom with the Judge where applicable. The courtroom clerk is responsible for the exhibits. Parties shall send all exhibits, including documents, photographs, and videos, to the Judge, opposing counsel, and the courtroom clerk in advance of the hearing. Parties may submit unanticipated rebuttal evidence or impeachment during the hearing through the Share Screen feature. All exhibits should be numbered and labeled accordingly and include an exhibit list describing each item, along with columns that can help all parties identify whether a particular item was admitted into evidence. At the request of either side, or in the event of a technological malfunction, the courtroom clerk can display the requested exhibit on the party's behalf through the Share Screen feature.

Tangible exhibits will require the proponent to be present in court. If that is not possible, stipulations and photographs may be useful substitutes by agreement. The parties may also agree to deliver tangible exhibits to the courtroom clerk for preservation of the record. In appropriate circumstances, the Judge may require counsel to file an image of the physical item with the courtroom clerk in lieu of the original item. Parties may show tangible exhibits on video to or by a witness through Share Screen and should be viewable by everyone present in the virtual courtroom. Agreements regarding tangible evidence must be discussed in advance of the virtual proceeding.

Exhibits can be shown to witnesses by use of Share Screen on Zoom. Share Screen can be used to lay foundation, refresh recollection, and authenticate signatures. The Court should not allow an exhibit to be shown on Share Screen without permission. The Court can disable file sharing and then only enable it after the participant receives permission to show the exhibit. This also ensures no one improperly or accidentally uses exhibits.

For impeachment or rebuttal exhibits, the exhibit can be emailed to the appropriate participant or uploaded in the Share Screen feature in Zoom. The Chat feature can be used between parties and their attorneys. Attorneys and their clients may message one another privately using the Chat feature. The Court should remind a witness before he/she begins testifying that they may not communicate with their lawyer using the private Chat feature while they are testifying. The Judge shall admonish the parties that they cannot communicate with any other witness before, during or after the witnesses' testimony. The Judge shall further admonish

witnesses that they are not allowed to hold notes or paperwork in their hands while testifying. Witnesses should look into the camera while testifying.

Once the Court has ruled on an exhibit, the courtroom clerk will mark the exhibit list accordingly. The Judge will provide rebuttal or impeachment exhibits that were not previously included by email to the courtroom clerk who shall record the exhibit as part of the record.

For best practice, it should be noted that although the Chat feature does have upload capabilities, the uploaded items are only accessible by those on a computer, not by those using Zoom on an iPad or smartphone. Therefore, Share Screen is recommended over Chat for purposes of sharing exhibits during a hearing or trial.

Breakout Rooms

The Judge/host is able to move participants to separate Breakout Rooms for privacy when appropriate. The Judge/host can create Breakout Rooms during the hearing or assign Breakout Rooms in advance of the hearing when scheduling the meeting. The Judge/host can create one or multiple Breakout Rooms. The Judge/host can message the separate participants and can also be part of a breakout session. For example, a Judge/host may use the Breakout Room with the attorneys for a side bar to rule on objections or may be used by an attorney to consult with their client. Interpreters and court reporters should be included in the Breakout Room when appropriate. Otherwise, the Breakout Room is not recorded. The Judge/host should remind participants to hit "return to main session" to exit the Breakout Room. Do not use "leave meeting."

Waiting Rooms

The Judge/host has the ability to create and manage Waiting Rooms. The Judge/host can utilize a Waiting Room to keep people out of the virtual courtroom until their case is called. The Judge can return participants to the Waiting Room even after the Judge has admitted them. During a hearing or trial, the Judge can use the Waiting Room to exclude witnesses during testimony. Only the Judge/host is able to place people in and out of the Waiting Rooms. It is important that the Judge/host be mindful of the Waiting Room for participants who arrive late or of the participants the Judge/host has placed in the Waiting Room. While in a Waiting Room, a person is unable to see or hear anyone else involved in the proceedings.

Drafting and Signing of Orders

Orders entered after court hearings will be signed by the judge and submitted to the clerk's office for dissemination to the litigants.

Interpreter

The Judge/host of the Zoom Court proceeding has the ability to enable language interpretation to designate a participant(s) as the interpreter(s) in the proceeding. When the proceeding begins, the Judge/host can start the interpretation feature which will give the interpreter(s) access to their own audio channel(s). Participants can select an audio channel to hear their language of choice. Participants will hear the translated audio and can choose if they want to hear the original audio at a lower volume.

The Judge/host should ensure that the language interpreter has identified himself/herself for the record and that the record includes for whom the interpreter is present. The Judge/host should also administer the oath to the interpreter at the start of the proceeding.

Court Reporter

Only a court reporter can prepare an official record of a virtual court proceeding. A court reporter can attend the proceeding as a Zoom participant and must be invited by the Judge/host, or the court reporter may transcribe the hearing at a later date by utilizing the recording made of the hearing. The court reporter is the only person authorized to record the remote Court proceeding by electronic means, stenography, or any other method. Any recording by a party or other person of a remote Court proceeding without the permission of the Court is not allowed. An admonishment regarding the use of recording devices has been included above, but best practice would be to remind witnesses and parties throughout the hearing that recording of the proceedings is strictly prohibited.

A Judge/host should keep the following guidelines in mind to assist the court reporter and help ensure a good record:

- Use of the Gallery View setting on Zoom so that the Judge/host and the court reporter can see all of the participants and more clearly know who is speaking.
- A Judge/host should make sure to unmute a participant's microphone when that participant is ready to speak; then mute the microphone when finished speaking.
- If a participant has his/her telephone number listed as their profile, change the profile to the participant's name and their role in the pending litigation, i.e. Plaintiff John Doe. Do not allow participants to display their telephone numbers as their profiles.
- Ask the participants to state and spell their first and last names for the record at the beginning of the proceeding. Ask the participant to reintroduce himself or herself by restating their title or their first and last name each time they speak.
- A participant should face the camera when speaking.
- Make sure that a participant waits until another speaker is finished before beginning to speak; one-at-a time is even more critical in a remote video setting.

- Remind participants to speak slowly.
- The court reporter has the same ability to interrupt and clarify if needed as if all participants were physically present in a courtroom.

Status Calls

A Judge/host may conduct status calls via Zoom. An invitation will be sent to the participants in advance by e-mail as outlined in the Notice to Parties section. The invitation will have the meeting code and password. Any participant not able to access Zoom shall be allowed to participate by telephone. Status calls may involve only the attorneys of record if the Judge waives the presence of the litigant(s). The Judge/host should follow the procedures regarding profile names on Zoom to ensure that no one's telephone is disseminated to the public. Status calls would proceed in the same manner as if the parties were physically present in court. The Judge/host may have other status matters in the Waiting Room and should decide whether to set status matters in increments of time, i.e. groups in half hour increments. The Judge/host would take cases out of the Waiting Room and bring them into the courtroom as he/she called the cases. The Judge/host may choose to have the courtroom clerk as a co-host to assist with bringing cases into the courtroom from the Waiting Room. During the proceeding, the Judge/host should be mindful of whether participants are able to hear the entire proceeding. Orders regarding the status cases will be entered and signed by the Judge.

Pleas/Judgments/Orders

In advance of the Court proceedings, attorneys must obtain all signatures required and prepare all necessary paperwork. Attorneys should number all pages and should also have the parties initial each page. The responsible attorney will then email all documents to the Judge. Once entered by the Court, the documents will be filed by the clerk's office. The Judge/host should only enter a plea or judgment with participants that have video capabilities to be able to see the documents referenced by the Judge. A court reporter must be present either in person or by Zoom for entry of the orders or judgment.

The Judge/host would conduct the hearing as outlined above, utilizing Share Screen to show the party the document and affirm all initials and signatures. The Judge/host would give admonishments as if in the physical courtroom and should proceed only after the participant acknowledges the proper waivers on the record. If a court reporter is not present at the virtual proceeding, the Judge/host should enter an additional order following the proceedings to indicate all who were present, including the name of the interpreter, as well as the start time and end time of the proceeding.

If the Judge/host and courtroom clerk were present in the courtroom, the Judge/host can print the documents, sign the documents, and give them to the Deputy Circuit Clerk for entry. If the

Judge/host and courtroom clerk are not in the same room, the Judge/host will have to print the documents, sign them, and forward them to the clerk's office to file.

Concluding a Zoom Proceeding

At the end of the Zoom proceeding, the Judge/host should conclude the matter in the same manner as if physically in court. The Judge/host should then end the Zoom proceeding by clicking on "End Meeting." The Judge/host should be careful to not click "Leave Meeting," as this would allow the Zoom proceeding to continue without the Judge's presence.

Scheduling a Zoom Proceeding

The Committee on Judicial Education conducted a webinar entitled "Remote Hearings 101" which addressed the procedures for scheduling a Zoom proceeding. The webinar can be found at this location:

https://www.pathlms.com/aoic/courses/18376/video_presentations/157566. When you click the link, you will have to sign in, but after you sign in, the link should take you straight to the webinar recording.

Running a Zoom Proceeding

The Committee on Judicial Education conducted a webinar entitled "Remote Hearings 101" which addressed the various tools that can be used for conducting a Zoom hearing. That webinar can be found at the following location: https://www.pathlms.com/aoic/courses/18376/video_presentations/157566.

When you click the link, you will have to sign in, but after you sign in, the link should take you straight to the recording.