

Guidance for Conducting Virtual Hearings

Pre-hearing preparation is key

1. **Set up technology:** Research the video conferencing platform used so you are familiar with it prior to the proceeding. You will need to determine if your camera and microphone are working properly. Those with tablets will need to be familiar with the settings to ensure the front facing camera, not the rear facing camera, is activated.
2. **Witness Preparation:** Identify and prepare your witnesses for the remote hearing.
 - a. You and your witness must understand how to use the video platform your court is using.
 - b. The witness should set up their camera in a way the court can fully view the witness to ensure they are not using notes or other documents.
 - c. Make sure the witness is aware they are not to refer or have any documentation on hand. Inform the witness that if you need to refresh their recollection, you can share the document on your screen and ask the witness to read it or ensure they have it available ahead of time so they can refer to it.
3. **Pre-Hearing Submission:** Provide the court and the parties with any writings prior to the hearing/trial.
 - a. Provide the court and parties with a trial notebook. At a minimum, your trial notebook should include exhibits, applicable statutes and case law, a list of witnesses, documents for possible impeachment, any stipulations, and a copy of your petition.
 - b. You may highlight statutes and case law to draw the Court's attention to certain sections so long as you also highlight copies to opposing counsel. (This can easily be done in Adobe Pro or Nitro with the highlight text tool.)
 - c. Index the notebook so that it is clear what document you are referencing. You can also add hyperlinks so the court/counsel can click on the section and be taken directly to that page in a PDF, if the trial notebook is communicated electronically.
4. **Stipulations:** Speak with opposing counsel beforehand to agree to as many aspects of your case as possible. Prepare a written stipulation and obtain the parties' signatures. Consider stipulating to:
 - a. The authenticity of business records.
 - b. An outline of the undisputed facts. For example, when the shelter occurred, when the adjudication occurred, the parent's court-ordered case plan tasks, results of drug screens, hospital admissions, diagnosis, and/or therapy dates.
 - c. Admission of exhibits.
 - d. The qualifications of experts.
 - e. Time limits for presentations
5. **Evidence:** Prior to the hearing, establish how the Court would like to mark and receive exhibits. Remember that the clerk needs a physical copy to submit into the evidence room. While e-mail submissions to the parties or the Court may be accepted, someone must print copies to physically enter them into evidence.
 - a. Consider using reports, photographs, timelines, maps, charts, diagrams, etc.
 - b. Put your exhibits into a PowerPoint and share your screen so parties can view it.
 - i. Many platforms allow you to share your screen with the meeting attendees.
 - ii. Make the Exhibit PowerPoint in the order you wish to admit the exhibits.
 - iii. Provide your witness with the Exhibit PowerPoint in advance so that they may review it and know the order in which you will ask questions.

Options for submitting your evidence: Make sure you coordinate with your judge, JA, and clerk to determine which options are more ideal. Options include E-file, email, or mail a CD or thumb drive for the judicial assistant or court case manager to print. Remember all opposing counsel must receive the same documents ahead of trial.

6. **Motions in Limine:** Submit a written motion *in limine* to the court articulating any unresolved evidentiary issues ahead of the hearing.
7. **Agree to Process at Pretrial Hearing when possible or at Beginning of Hearing:** First, determine how the record will be made.
 - a. If a court reporter is not present, the proceeding will need to be recorded electronically. Zoom permits a host to save the recording to her local hard drive. That method is preferred over saving on the Zoom server for confidentiality purposes.
 - b. All conversations the court has on the process to be used need to be on the record. Discuss the order attorneys will present evidence and question witnesses. Ensure the Court has established on the record during the hearing how the parent's attorney and the parent will communicate during the hearing.
 - c. Reach an agreement of how the parties will assert their objections.
 - d. Discuss how the court will control who is admitted into the virtual courtroom. Ensure other procedural safeguards are met (See sample findings handout.)
8. **Procedural Safeguards**
 - a. The court and counsel were able to see and hear all parties throughout the hearing.
 - b. The court is able to positively identify the witness to administer the oath.
 - c. All counsel/parties were able to privately confer with their clients during the hearing.
 - d. The court is fully able to see and hear each witness and was able to observe the witness's demeanor. The court also confirmed that the witness was not relying upon notes or documents.
 - e. All parties are afforded the opportunity to cross-examine witnesses before the witness was excused.
 - f. The rule of sequestration is invoked. The court monitored the participants in the hearing to ensure that a witness did not improperly observe another witness's testimony. The court also impressed upon all witnesses the risk of contempt of court for failing to follow the rule of sequestration.
 - g. The court confirmed that all parties had access to the exhibits admitted into evidence. Any objections to the admission of exhibits were fully heard prior to admission.
 - h. The hearing was recorded in full and connectivity was not lost.

Private Communications During Hearings

1. Some platforms such as Zoom allow you to send "private" messages to whomever you intend during your meeting, and have chat rooms.
2. Opposing counsel must have a method to speak to their client privately. Be sure the process is addressed prior to the hearing. Scheduled short breaks may be advisable to allow the private conversations.
3. One option is to request a brief recess to call to address any issues. Another may be texting. Make sure you mute your microphone during this time.

Glitches: There are matters that will need to be addressed as they occur such as slowing down the hearing, continually asking if the participants and parties are still present, asking during the hearing if anyone is experiencing difficulties, or even resetting the matter for an additional day.

What to do during a remote video hearing

You should present yourself professionally online and ensure your technology is set up appropriately.

Presenting Yourself Online

1. Ensure your webcam is at eye level. This will prevent it from appearing that you're looking down on the Court.
2. Sit so the parties can see your face, shoulders, and upper arms.
3. Look at your webcam, not the screen.
4. Set the scene behind you. Have more lighting in front of you or the side in order to make things look more professional.
5. Smaller spaces work better for audio. If you are in a big open space, find a corner to prevent an echo and/or use a towel under your laptop to muffle the echo.
6. Close background applications that you are not using during your hearing.
7. Interruptions do not work during remote hearings, due to the possibility of audio delays. Parties should not speak over each other.
8. Reduce movement and distractions by muting your line when you are not talking and alerting other members in your household to your current hearing.
9. Identify yourself each time before speaking, except during direct and cross examinations.
10. Do a test run before the actual hearing, to ensure you can operate everything correctly.