

IN THE PROBATE COURT OF MORGAN COUNTY, ALABAMA

**ADMINISTRATIVE ORDER – COVID-19 RESPONSE PLAN FOR VIRTUAL COURT
HEARINGS**

WHEREAS, the Alabama Supreme Court has entered an administrative order that “[a]ll in-person proceedings in all state and local courts in Alabama, including, but not limited to, proceedings in the circuit court, district court (including cases on the small claims docket), juvenile court, municipal court, probate court, and appellate courts, are suspended beginning Monday, March 16, 2020 through Thursday, April 16, 2020, subject to [certain] exceptions”; and

WHEREAS, the Alabama Supreme Court has suspended until at least April 16, 2020 any rule that limits a judge’s ability to consider testimony by use of audio or video conferencing; and

WHEREAS, the Supreme Court of Alabama extended said date(s) pursuant to ADMINISTRATIVE ORDER #5: EXTENDING ORDERS AND DEADLINES CONCERNING THE SUSPENSION OF IN-PERSON PROCEEDINGS UNTIL APRIL 30, 2020

WHEREAS, the Supreme Court of Alabama further extended said date(s) pursuant to ADMINISTRATIVE ORDER #6: EXTENDING ORDERS AND DEADLINES CONCERNING THE SUSPENSION OF IN-PERSON PROCEEDINGS THROUGH MAY 15, 2020, and

WHEREAS, Alabama Supreme Court Chief Justice Parker has signed an order permitting court proceedings to be held using audio video conferencing technology; for court reporters to administer oaths to witnesses who are not physically present before the court reporter; and for trial courts to consider the testimony of those witnesses as evidence; and

WHEREAS, the following rules are deemed necessary for the local implementation of virtual court proceedings; It is therefore ORDERED that until May 15, 2020 or during any subsequent period of time the Alabama Supreme Court shall suspend or partially suspend in-court proceedings, the following rules and guidelines are hereby adopted and shall be followed by all parties appearing for any hearing or trial that is presently

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Greg Cain - Probate Judge
State of Alabama, Morgan County

pending or hereinafter filed in the Probate Court of Morgan County in which sworn testimony is taken by the use of audio/video conferencing equipment.

All virtual hearings will be conducted with Webex software unless the judge presiding over the hearing authorizes the use of a different software or technology that has been deemed trustworthy and reliable for court use.

1. Definitions:

The term "video conference" means the use of any interactive technology that sends and receives video, audio, and data so that two or more individuals can communicate with each other contemporaneously from different locations using cameras, microphones, speakers, and computer monitors or screens that allow the individuals participating to view and hear each other.

The term "audio conference" means the use of any interactive audio technology, including a cell phone or telephone, that permits two or more individuals to contemporaneously speak with each other from different locations.

2. The Probate Judge of Morgan County shall have the discretion to require that any non-jury court proceeding be conducted by audio or video conference. Every court proceeding conducted by the use of audio or video conference shall conform to the requirements of the administrative order entered by Alabama Supreme Court Chief Justice Parker on March 24, 2020 and the March 13, 2020 administrative order of the Alabama Supreme Court. Such proceedings shall hereinafter be referred to as "virtual hearings".
3. Virtual hearings may be scheduled and held in all non-jury cases, where in the Probate Court is the Court of proper venue and jurisdiction has been established.
4. Counsel of record and all self-represented litigants shall be timely notified of the date and time of a scheduled virtual hearing via email, mail or as otherwise allowed by the Alabama Rules of Court or by statute.

5. Subpoena's issued for the appearance of a witness at a virtual hearing shall clearly state the address that the witness will need to appear to offer sworn testimony. Typically, this will be the law office address of the attorney who requested the subpoena but may be any location designated in the subpoena. Notwithstanding the foregoing, a witness need not appear at a location other than his or her residence if, at the time of the scheduled virtual court hearing, the witness is: (1) running a fever, (2) is in quarantine due to possible exposure to someone testing positive for COVID-19, (3) is over the age of 60 years or has an underlying medical condition that would create a greater risk to the witness if exposed to COVID-19, (4) if sick, or (5) if a general State-wide shelter in place order has been issued by the Governor of the State of Alabama or if a similar shelter in place or quarantine order has been issued by a local governmental entity having authority to issue such orders. Further, each subpoena issued for a virtual hearing shall contain a prominently displayed notice that "all witnesses are required to bring to the virtual hearing a government issued photo ID." The government issued photo ID shall be shown to the court before the witness is administered his or her oath.

6. All counsel of record and all self-represented parties shall provide the court clerk with an email to be used to connect with the attorney or self-represented party in the event a virtual hearing is held in a case. All counsel of record and all self-represented litigants are hereby Ordered to provide written verification of their email address to the court clerk within 10 days from the entry of this order, if not previously provided. The clerk of the court shall provide a copy of this order to all attorneys of record and to each self-represented litigant who does not currently have an email listed in the case record.

7. In the event an attorney wishes to withdraw from a case, the motion to withdraw shall contain a certification that the attorney has notified his or her client of the requested withdrawal, that the client has been informed of all pending hearings or trial dates and that the attorney has notified the client that it is the client's responsibility to immediately contact the court clerk to provide a current address and email for future court hearings, including virtual hearings. If counsel is

unable to communicate with his or her client, the attorney shall provide a brief account of attempts made to notify the client of his or her intent to withdraw and of the client's responsibility to provide the clerk's office with a current mailing address and email.

8. All persons appearing for a virtual court hearing at an office or other location shall adhere to the protocols adopted by the CDC to limit the transmission of COVID-19, including maintaining a social distance of at least six feet, to the fullest extent practicable.
9. If a party wishes to request that a case be set for a virtual court hearing, counsel for the party making the request shall first confer with counsel of record for all other parties involved (or if a party is a self-represented litigant, then directly with the self-represented party) and determine whether all parties consent to holding a virtual hearing pursuant to the requirements mandated by the Order entered by Chief Justice Parker on March 24, 2020. Each party shall thereafter file a notice with the court clerk, giving consent to the virtual hearing or objecting to the hearing. In the event an objection is made to the virtual hearing, the party making the objection shall state specifically each and every basis for the objection and the judge presiding over the case shall make a determination whether the virtual hearing should be conducted. If any party fails to object or consent to the virtual hearing it shall be deemed that they have given their implied consent to the hearing being conducted as a virtual hearing.
10. With respect to all cases, a party filing a motion to schedule a virtual hearing shall first certify to the court in writing that he or she has made a good faith attempt to communicate with the opposing attorney or self-represented litigant in an effort to resolve the matters in dispute prior to filing a request to set for hearing and shall briefly describe the efforts made to communicate with opposing counsel or any self-represented party.
11. Procedure for Virtual Hearings. The Probate Judge will schedule a virtual hearing and notice of the date and time for the proceeding will be provided to all parties

by email and by mail pursuant to the Alabama Rules of Civil or Criminal Procedure, as applicable. Counsel shall contact his or her client and arrange for the client and all of the client's witnesses to appear at the attorney's office or other designated location AT LEAST 30 minutes before the proceeding is scheduled to commence. Counsel for the parties shall ensure that all necessary equipment and software are in proper working order prior to the time of the scheduled hearing and that bandwidth is adequate for video conferencing. Self-represented litigants shall contact the Probate Judge's office at least 7 days prior to the scheduled virtual proceeding, except when the times have been shortened due to the necessity of scheduling an emergency hearing, and notify the clerk in writing whether he or she has the ability, equipment, software and bandwidth required to participate in the virtual hearing and, if so, shall confirm that the clerk has the email he or she will use to connect with Webex. If a self-represented litigant notifies the clerk in writing that he or she does not have the knowledge, equipment, software or bandwidth necessary to proceed with the virtual hearing, the judge presiding over the case may hold an audio conference with all parties and counsel of record to determine the best way to proceed. The judge and parties shall explore other possible options for conducting a virtual hearing, including the use of the local access computer in the Morgan County law library and any other available local facilities that may be equipped with the appropriate technology for virtual hearings.

It is the responsibility of the parties, whether represented by counsel or representing themselves, to have all of their material witnesses present at a virtual hearing. Each witness who appears must have a government issued photo ID with them at the time of the proceeding or the witness will not be allowed to testify, except by consent of all parties or with another acceptable proof of identification. At least seven days prior to the scheduled virtual court hearing, each party shall file a list of witnesses who will be called to testify. The list shall include: (i) the name of each witness, (ii) telephone number where the witness can be reached at the time of the virtual court hearing and (iii) the e-mail address of each witness expected to be called as a witness. If the identity of a witness is unknown to a party seven days prior to the hearing, the identity, phone number and e-mail of the witness shall be e-filed as soon as it is ascertained the witness may testify.

At the time the virtual proceeding is scheduled to begin, the judge or a member of the judge's staff will connect with all parties using Webex software. Once it has been determined by the Judge that all necessary individuals are present and able to see and hear what is transpiring at the proceeding, the hearing shall progress as though the parties were physically present, subject to the rules specifically adopted for virtual hearings.

If a court reporter is utilized, the court reporter shall be present through-out the proceeding and able to see and communicate with every witness who appears remotely using Zoom software. Prior to a witness testifying, the Probate Judge shall ascertain the identity of the witness and administer the oath to the witness remotely. At all times during the witness's testimony, the Probate Judge and if present, the court reporter, shall be able to see, hear and communicate with the witness who is testifying. If utilized, the court reporter shall transcribe the virtual hearing just as though the hearing were being conducted with all parties and counsel appearing in person, but the reporters transcript shall reflect that the transcript was made with all individuals appearing remotely with video conferencing, except for the judge presiding over the proceeding.

If the Judge of Probate determines at any time that the audio or video connection is so poor as to interfere with the fair administration of justice, the hearing shall be postponed until such time as a better connection can be obtained or the matter can be set for an in-court proceeding. However, it shall be the responsibility of a party or counsel for a party to promptly inform the court if there has been a disruption at their end of the communication that substantially interferes with their ability to see or hear what is occurring during the video conferencing.

An objection to the quality of an audio/video conference will be deemed untimely if made after a court has entered an order or ruling on the matter that is the subject of the virtual hearing.

It is ORDERED that a copy of this Order be provided with each notice of hearing and a copy shall also posted on the Probate Courts official website.

Done this the 4th day of May 2020.

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Greg Cain, Probate Judge
State of Alabama, Morgan County
Greg Cain, Judge of Probate