

IN

08:02 am, Mar 20, 2020

DEBORAH A. MYERS

CLERK OF COURTS

ASHLAND COUNTY, OHIO

**IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO
GENERAL DIVISION**

IN RE:

**COVID-19 EMERGENCY
DECLARATION TEMPORARY
HEARING PROCEDURES**

CASE NO. _____

**JUDGMENT ENTRY
SPECIAL PROCEEDINGS**

This matter is before the Court *sua sponte* as a result of the recent, extraordinary situation involving the current pandemic involving COVID-19, and the measures mandated by the State of Ohio to protect public health.

Due to public health concerns, ***effective Monday, March 30, 2020*** all proceedings in the Ashland County Court of Common Pleas, General and Domestic Relations Divisions shall be conducted remotely by telephone or video conference with the **following exceptions**: all Criminal Jury Trials, Civil Jury trials that cannot be rescheduled to a later date, and all *Ex Parte* Civil Protection Order Hearings. Additional exceptions may be granted **as determined on a case-by-case basis by the Court** such as (for example only): a time-urgent *pro se* dissolution hearing with video capability unavailable; a criminal change of plea hearing that requires the presence of the defendant to facilitate the execution of plea paperwork; a sentencing hearing that requires the presence of the Defendant at the Courthouse under circumstances which otherwise preclude the use of video conferencing; and/or a blended criminal hearing for which the Defendant may be tasked to be present at the Courthouse to utilize video-capable hardware, with counsel and/or the presiding judge or magistrate still

participating remotely through video. Video hearing links for hearings already scheduled in a courtroom will be issued approximately one (1) week in advance so as to not schedule too far into the future should circumstances change.

The Court encourages all civil and domestic litigants and their attorneys to consider contacting the Court to reschedule their case proceedings, motion hearings, status conferences, mediations, final hearings, and trials to a future date on and after June 1, 2020.

When a hearing is conducted by use of a *Skype for Business* video hearing, a digital record of the hearing shall be recorded.

To facilitate the use of *Skype for Business* for a hearing by video, hypertext links for logging on to the video conference shall be emailed by court staff to all counsel at the earliest date and time reasonably possible, with an attempt to do so no later than four days prior to the hearing. In civil and domestic cases, it shall be the responsibility of counsel to provide for the participation of their respective clients, if required, either through participation with counsel at a single site, or by providing a functional copy of the hypertext link to their client for their client's personal use. If a functioning link is provided for a client's separate log-on, counsel shall remain responsible to the Court for their client's functional capability to participate (including the availability of adequate, vetted hardware and internet connection necessary for participation). Should any counsel require technical assistance with the *Skype for Business* application, they should contact court staff no later than 48 hours prior to the scheduled hearing if

possible, and shall at that time, be prepared to log on to the *Skype for Business* video location with appropriately configured equipment.

The following general guidelines will apply to all remote hearings whether through teleconferencing or video:

HEARINGS INVOLVING COUNSEL ONLY

1. In situations involving counsel only and the Court, the proceeding may be conducted by either telephone conference or video conference.
2. TELEPHONE CONFERENCE:
 - a. No record shall be made. The Court will provide counsel with a call-in number to utilize for the telephone conference.
 - b. Counsel shall call-in and be present in the telephone conference at least one minute prior to its scheduled start time.
3. SKYPE FOR VIDEO:
 - a. Counsel is advised to log-on to the video hearing site at least five (5) minutes prior to the time scheduled for the hearing and shall make certain their microphone is muted when the judge or magistrate log in and begin the hearing. The advance time prior to the hearing, shall be used to verify the functionality of their microphone, speakers and camera.
 - b. All counsel shall activate their camera, including the secondary selection to display their video as soon as the judge or magistrate log in, if not already providing a live video feed.

- c. If, during the course of the hearing, consultation with co-counsel or another is required, or if participating counsel wish to speak without the active participation of the judge or magistrate, they shall make an appropriate request to mute their microphone or temporarily excuse the judge or magistrate, and receive approval, before proceeding.

HEARINGS INVOLVING COUNSEL AND PARTIES

NO EVIDENCE PRESENTATION

4. All hearings involving both counsel and their clients shall be subject to the guidelines set forth above for counsel-only hearings, as well as the additional requirements set forth in the following paragraphs located beneath this heading.
5. TELEPHONE CONFERENCE:
 - a. If the proceeding is a **Civil or Domestic Relations Division** proceeding, **or a Mediation** for which no formal record is to be kept, it may be conducted by telephone conference, with clients/parties joining the phone conference directly, or by participating from the office of their attorney. Criminal proceedings shall *not* be conducted by telephone conference call (CrimR. 43).
6. VIDEO CONFERENCING (SKYPE FOR BUSINESS):
 - a. Parties shall be expected to participate either through a shared location with their legal counsel, or by direct log-in utilizing the hypertext link provided by the Court. Parties who choose to log-on

directly shall connect with equipment or a device that is equipped with a camera, microphone and speakers, and shall make sure they utilize an internet band width (a strong 4G Wi-Fi signal or wired internet connection). Multiple connections should *not* utilize a single Wi-Fi router connection.

- b. Parties and counsel that wish to communicate privately during an active video hearing shall mute their microphone (if both sharing the same location) after asking for permission by the judge or magistrate. Parties and counsel located in separate locations that wish to communicate privately, shall do so either by a separate communication device not connected to the video hearing, or shall ask permission of the judge or magistrate to speak privately for a moment, during which time all other parties and counsel shall temporarily suspend their active connection to the video hearing (hang up).
- c. Parties and counsel asked to temporarily disconnect from active participation in the video conference (hang-up) shall, if intending to reconnect, remain connected to video conference website that displays a “reconnect” or “rejoin” button, and shall open and monitor their chat window at the website for additional communication from other participants, whether actively connected or not (the chat functions remains active for even those not actively participating in live video).

- d. All parties and counsel shall comply with any additional instructions given by the presiding judge or magistrate.

HEARINGS INVOLVING COUNSEL AND PARTIES
WITNESS PARTICIPATION AND EVIDENCE PRESENTATION
-BENCH TRIALS-

7. All hearings involving the presentation of evidence (bench trial), and potentially both counsel and litigants, shall be subject to the guidelines set forth under the initial two headings set forth above, as well as the additional requirements set forth in the following paragraphs located beneath this heading.
8. During a video hearing, each party and their attorney shall be visible at all times. If witness testimony is being offered, the party proffering the testimony and their attorney shall remain visible throughout the course of the testimony. This can be accomplished through the use of a single, wide-angle video feed, or through the use of multiple video feeds.
9. All exhibits (documents and/or images) to be utilized during the video bench trial shall be pre-marked and shall be converted to Adobe Acrobat PDF format to the extent possible. **Physical/Tangible Exhibits** shall be photographed. The photograph(s) shall thoroughly depict the identifying features of the physical exhibit and shall be collectively marked with the same exhibit identifier as the physical exhibit. The feature identifying photograph(s) of the tangible exhibit included in the PDF file exhibit collection or packet of the proponent. For any audio or video exhibit, a

copy of the audio/video file, formatted in a readily available playback format (.avi, .mp3, .mp4, or .wmv) shall be provided to the court in advance of the hearing on a CD, DVD, or flash drive, or by providing a download link from which **both** the Court and opposing counsel can download and obtain identical copies of the audio/video file.

10. The entire collection of a party's PDF-formatted exhibits may be maintained in separate, individual PDF files which each possess an individual identifying file name such as, for example only, "Plntf Ex 1" or "DEF Ex A" so the exhibits can be identified by file name as well as any marking on the face of the exhibit itself. In the alternative, a party's collection of PDF exhibits can be contained entirely in a single PDF file, appropriately identified with a file name identifying the proponent such as, for example only, "Plaintiff Exhibits" or "Defendant Jones Exhibits." For a single-file collection of exhibits, each exhibit **shall** start on a new, separate page and the single file **shall** be bookmarked to allow for immediate location of a specific exhibit within the collection. Failure to comply to subject counsel to sanctions, including the denial of exhibits. It is the responsibility of counsel to make their exhibits in a format easy which allows for easy location and identification of a specific exhibit. If counsel lacks the technical ability to index and bookmark multiple individual exhibits contained within a single PDF file, then they must provide their individual exhibits as separate and distinct files.

11. PHYSICAL EVIDENCE:
 - a. During a video hearing or bench trial, physical evidence, including but not limited to drugs, weapons, money or other tangible items shall be displayed by holding the item up to the offering party's camera and rotating or manipulating it so that at some point, the exhibit label is displayed.
 - b. Additional testimony **shall** be proffered that the photograph(s) included in the PDF exhibit packet provided in advance of the hearing, truly and accurately represent the tangible/physical evidence as displayed.
 - c. Audio or video files proffered to the magistrate or judge as trier of fact may, by consent of the parties, be played by the magistrate or judge following the video hearing if the exhibit has been admitted into evidence.
12. Copies of each party's PDF exhibit collection or packet, and all audio/video exhibits shall be transmitted to all opposing parties and the Court by appropriate means and pursuant to any additional instructions contained in a pretrial procedural order issued by the judge or magistrate. This may include but not be limited to attachments to email, CD's, DVD's, flash drives, or download link, and do so at least three (3) days prior to the hearing or bench trial.
13. Unless there is a stipulation as to the authentication of an exhibit, publication of an exhibit to witnesses and/or the Court shall be facilitated

by counsel, the presiding judge or magistrate, or by supporting court staff, through desktop sharing during the testimony of a witness or by the display of tangible evidence as noted above. Counsel should make themselves familiar with the desktop-sharing capabilities of Skype for Business.

14. If a witness is providing testimony as to a particular exhibit, the exhibit may be removed from the desktop-sharing function **once authenticated**, desktop sharing may be closed, and the video view of all participants will be restored to the judge's and/or magistrate's video screen for capture of the participants, provided all counsel have (during the authentication process) verified that the exhibit displayed on the desktop sharing application is the same document provided to counsel, *and* provided the witness also has physical access to an accurate copy of the exhibit for any additional testimony.
15. Upon the conclusion of the hearing, all exhibits shall be delivered to the Court, including tangible exhibits, for comparison by the Court to the PDF exhibit packet delivered prior to the hearing. Unless there is an objection, the authenticated photographs of physical evidence displayed during the video hearing, including but not limited to drugs, weapons, money or other tangible items shall be substituted as evidence in the matter. The original tangible evidence shall be returned to the party proffering the evidence or to other such person or entity as the Court, in the interest of justice, shall

order. If no party objects, and all parties are satisfied that the pre-hearing exhibit packet constitutes a true and accurate representation of all identified exhibits, then a party will not be required to submit their exhibits following the hearing, and the Court shall retain and preserve a copy of the party's pre-hearing PDF exhibit packet as the official hearing exhibits for record purposes.

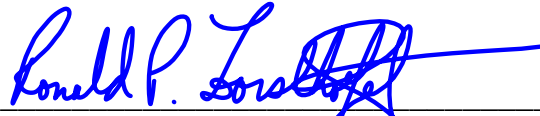
16. Counsel shall also provide the Court, either as a separate PDF file or as the first page of any PDF collection of exhibits, a completed exhibit index form, similar in format to the Plaintiff/Defendant index forms attach to this procedural order.
17. If any party intends to offer a video file as an exhibit, that video file shall be separately provided to all parties and the Court in .wmv, .mp4 or .avi formats with an appropriately identifying file name the same as for other exhibits.
18. WITNESSES:
 - a. Each party shall be responsible for their own witnesses' connectivity and ability to appear by video.
 - b. If any counsel anticipates a difficulty in producing a witness through video (either by having them available in the same room as counsel or remotely connected with sufficiently capable computer hardware and internet connection), counsel may make arrangements with the Court for the witness to appear at a separate computer terminal at the

Ashland County Courthouse, adequately isolated from other persons, and to provide testimony from the terminal operated by the Court.

- c. It is dependent upon counsel to contact the Court sufficiently in advance of the hearing to assure that adequate arrangements to ensure a witness's ability to testify by video at the time of the hearing or bench trial.

If counsel require technical assistance, they shall contact the Court prior to the scheduled hearing if appropriate time is available and if possible, at least two weeks prior to trial.

It is so ordered.



Ronald P. Forsthoefel, Judge

