

IN THE 32<sup>ND</sup> JUDICIAL CIRCUIT

STATE OF ALABAMA

ADMINISTRATIVE ORDER 2020-07

An Order Relating to 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, 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, after consultation with all other judges of this judicial circuit, the following rules are deemed necessary for the local implementation of virtual court proceedings;

It is therefore ORDERED that until April 16, 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 pending or hereinafter filed in this 32nd Judicial Circuit in which sworn testimony is taken by the use of audio/video conferencing equipment.

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. Each judge of this judicial circuit 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, including pendente lite hearings in domestic relations cases, domestic relations trials, contempt hearings, civil motion hearings, child support hearings, paternity hearings, hearings for injunctive relief, civil non-jury trials; all juvenile proceedings, including shelter care hearings, adjudicatory hearings, termination of parental rights hearings, all juvenile court review hearings; criminal proceedings, including initial appearance hearings, arraignments, preliminary hearings, motions to reduce bond, motions to revoke bond, probation hearings, probation revocation hearings, youthful offender hearings, hearings on habeas corpus petitions and petitions for post-conviction relief.

The above list is not intended to be an exclusive or exhaustive list but is offered merely as examples of the kinds of proceedings that may be conducted by use of video conferencing.

4. All virtual hearings must be conducted with Zoom 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.

5. Counsel of record and all self-represented litigants shall be timely notified of the date and time of a scheduled virtual hearing via Alacourt, mail or as otherwise allowed by the Alabama Rules of Court or by statute.

6. 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. 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 reporter who is transcribing the proceeding before the witness is administered his or her oath.

7. 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 Circuit Clerk 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.

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 circuit 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.

10. With respect to all civil cases and domestic relations 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 judge assigned a case will schedule a virtual hearing and notice of the date and time for the proceeding will be provided to all parties by Alacourt 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 Clerk'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 Zoom. 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 Cullman 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 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 Zoom 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.

The official 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 court reporter shall ascertain the identity of the witness and administer the oath to the witness remotely. At all times during the witness's testimony, the court reporter shall be able to see, hear and communicate with the witness who is testifying. 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.

12. Criminal Proceedings. Virtual hearings in criminal cases shall proceed in a manner consistent with the procedures described in the above paragraphs, subject to the additional safeguards provided herein when a defendant is not physically present in the same room with his or her attorney during a virtual hearing.

A defendant in any criminal case may waive his or her right to be present at a virtual hearing. However, if a defendant is incarcerated in the Cullman County Detention Center and does not waive his or her right to be present, the defendant shall be brought into the Detention Center's on-site audio video room before the hearing begins and shall be connected to the virtual hearing so that he or she is capable of hearing and seeing everything that transpires during the virtual proceeding. Further, the defendant shall be afforded an opportunity at any time during the virtual hearing to communicate privately with his or her attorney either in person or by use of a phone or video software that ensures confidentiality of the communication and the defendant shall be informed by the court of this right before the virtual hearing commences.

13. Procedure in Criminal Cases for Guilty Plea Hearings. If the State and Defendant reach a plea agreement, the agreement shall be reduced to writing and signed by all parties and counsel of record. Defense counsel shall submit the signed agreement to the judge assigned to hear the case, along with all other properly executed forms required for the court to accept the Defendant's guilty plea. Once it has been determined that all necessary paperwork has been submitted, the judge will schedule a virtual hearing date and time and notice provided to all parties.

For Defendants on bond at time of Plea. If a defendant is not incarcerated, defense counsel shall contact his or her client and arrange for the client to appear at his or her attorney's office AT LEAST 30 minutes before the scheduled time for the hearing. Defense counsel shall verify that all necessary equipment and software are in proper working order prior to the time of the scheduled hearing. Either the judge taking the guilty plea or a member of the judge's staff will connect with the Defendant and the Cullman County District Attorney's Office using Zoom 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 plea hearing, the judge shall proceed to take the Defendant's plea after first determining that the plea is freely, intelligently and voluntarily made and all other requirements for entry of the guilty plea have been satisfied. The official court reporter shall be present through-out the proceeding and able at all times to see and hear the defendant who is entering a guilty plea and shall transcribe the hearing just as though the hearing were conducted with all parties and counsel appearing in person. It shall be the responsibility of the district attorney to contact any victim that may require notification of the plea hearing and arrange for the victim to appear at the district attorney's office for the virtual hearing or in such other location approved by the judge accepting the guilty plea.

If a plea agreement calls for a defendant to serve a jail or prison sentence, the Sheriff shall be informed in advance of the date, time and physical location of the defendant at the time the plea is entered so that a deputy will be on hand to take the Defendant into immediate custody. If the plea agreement calls for probation or an application for probation has been made, the Defendant shall immediately contact local State of Alabama Probation officials and follow the directions provided by them.

For Incarcerated Defendants. The general procedure outlined above for taking guilty pleas by video conferencing shall apply when a defendant is incarcerated in the Cullman County Detention Facility at the time of his or her guilty plea. The Cullman County Detention Center shall utilize Zoom software at its on-site audio video room, which the court hereby designates as a temporary courtroom, so that pleas can be taken without the Defendant being transported to the courthouse. Other video conferencing software may also be used at the discretion of the judge accepting the guilty plea. The attorney for the Defendant may appear with the defendant at the detention center or may appear from another location, provided that the defendant's right to

communicate privately with his or her attorney is preserved. Each defendant entering a guilty plea shall be afforded an opportunity at any time during the plea to communicate privately with his or her attorney either in person or by use of a phone or video software that ensures confidentiality of the communication.

14. If the judge presiding over a virtual court proceeding 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.

15. It is ORDERED that the Circuit Court Clerk shall provide the Alabama Administrative Office of Courts with a copy of this Order and a copy shall also posted on the Cullman Courts official website.

Done this the 27th day of March, 2020.

/s/ Gregory A. Nicholas  
Gregory A. Nicholas  
Presiding Circuit Judge  
32<sup>nd</sup> Judicial Circuit  
State of Alabama

IN THE 32<sup>ND</sup> JUDICIAL CIRCUIT **FILED IN OFFICE**  
STATE OF ALABAMA

MAR 17 2020

LISA McSWAIN CIRCUIT CLERK  
CULLMAN COUNTY

ADMINISTRATIVE ORDER 2020-03

Local Court Response Plan to Contain COVID-19

This judicial circuit previously adopted a local court response plan to contain COVID-19 and as a part of that plan envisioned that amendments and additions would, from time to time be needed. Because inmates at the Cullman County Detention Center are confined in close proximity to one another, transmission of the virus becomes more likely. Therefore, visitors and inmates reporting for sanctions are more likely to contract any virus that may be present and then upon release contaminate other members of the community. It is therefore ORDERED as follows:

1. All Defendants who have been ordered by the District or Circuit Court of Cullman County to report to the Cullman County Detention Facility to serve a misdemeanor sentence on weekends or for some similar incremental period of time shall have imposition of their sentence temporarily suspended until the first Friday in May, 2020. Beginning on the first Friday of May 2020, each Defendant previously ordered to report to the Cullman County Detention Center on weekends or for some similar incremental period of time shall resume reporting as previously ordered.
2. All Defendants arrested only for technical probation violations during the next 30 days shall be released on an unsecured bond of \$2,500.00 and given a date to appear in court, which shall be after May 1, 2020. All such Defendants shall also be instructed at the time of their release to contact his or her probation officer within 24 hours of release and shall comply with all

reporting and other requirements imposed by their probation officer. The provisions of this paragraph two shall NOT apply to those Defendants who have also been arrested for committing new criminal offenses while on probation.

3. For all new non-violent misdemeanor offenses committed, the Sheriff may wish to utilize the procedures set forth in Rule 3.1 of the Alabama Rules of Criminal Procedure, which allow the use of a summons in lieu of arrest for non-violent misdemeanor offenses.

4. It is ORDERED that the Circuit Court Clerk shall provide the Alabama Administrative Office of Courts with a copy of this Order and a copy shall also posted on the Cullman Courts official website.

5. Amendments to this Order may subsequently be made, as deemed necessary or desirable.

Done this the 17<sup>th</sup> day of March, 2020.

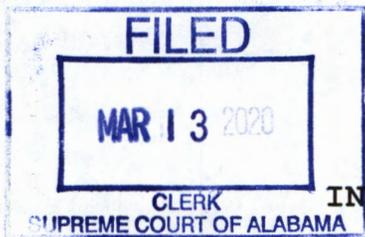
/s/ Gregory A. Nicholas

Gregory A. Nicholas  
Presiding Circuit Judge  
32<sup>nd</sup> Judicial Circuit  
State of Alabama

FILED IN OFFICE

MAR 17 2020

LISA McSWAIN CIRCUIT CLERK  
CULLMAN COUNTY



IN THE SUPREME COURT OF ALABAMA  
IN RE: COVID-19 PANDEMIC EMERGENCY RESPONSE

March 13, 2020

**ADMINISTRATIVE ORDER SUSPENDING ALL IN-PERSON COURT  
PROCEEDINGS FOR THE NEXT THIRTY DAYS**

The President of the United States having declared a national emergency and the Governor of Alabama having declared a state of emergency for the State of Alabama amid the Coronavirus Disease 2019 ("COVID-19") pandemic, the Supreme Court of Alabama, pursuant to the authority vested in it under Article VI, §§ 139, 140, and 150, Ala. Const. 1901, hereby declares a state of emergency for the entire Judicial Branch of the State of Alabama.

The local and state courts of the State of Alabama are open and will remain open under all circumstances, subject to the provisions of this order.

Under the constitutional, statutory, and inherent authority of the Supreme Court, we adopt the following provisions. All 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 the exceptions below.

Exceptions to this suspension of in-person court proceedings include, but are not limited to:

- Proceedings necessary to protect constitutional rights of criminal defendants, including bond-related matters and plea agreements for incarcerated individuals.
- Civil and criminal jury trials that are in progress as of March 13, 2020.
- Proceedings related to protection from abuse.
- Proceedings related to emergency child custody and protection orders.
- Department of Human Resources emergency matters related to child protection.

- Proceedings related to petitions for temporary injunctive relief.
- Proceedings related to emergency mental health orders.
- Proceedings related to emergency protection of elderly or vulnerable persons.
- Proceedings directly related to the COVID-19 public health emergency.
- Any emergent proceeding as needed by law enforcement.
- Other exceptions as approved by the Chief Justice.

The presiding judge or the designee of the presiding judge of each judicial circuit is authorized to determine the manner in which in-person court proceedings for the exceptions listed above are to be conducted. Other exceptions to the suspension of in-person court proceedings must be approved by the Chief Justice. Any permitted in-court proceedings shall be limited to attorneys, parties, witnesses, security officers, and other necessary persons, as determined by the trial judge.

Judges are charged with the responsibility of ensuring that core constitutional functions and rights are protected. Additionally, court clerks are charged with ensuring that court functions continue. Nevertheless, all judges and court clerks are urged to limit in-person courtroom contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing. Any Alabama state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended until April 16, 2020.

This order expressly does not prohibit court proceedings by telephone, video, teleconferencing, or other means that do not involve in-person contact. This order does not affect courts' consideration of matters that can be resolved without in-person proceedings.

Any deadlines that are set by or subject to regulation by this Court that are set to expire between March 16, 2020 and April 16, 2020, are hereby extended to April 20, 2020. This Court cannot extend any statutory period of repose or statute of limitations period.

Orders of protection and temporary injunctions that would otherwise expire between March 16, 2020, and April 16, 2020, are hereby extended until April 16, 2020, unless the trial court elects to enter an order to the contrary.

This order is subject to modification, revision, or rescission by the Supreme Court at any time during the time periods stated herein.

Parker, C.J., Bolin, Shaw, Wise, Bryan, Stewart, and Mitchell, JJ., concur.

Witness my hand and seal this the 13<sup>th</sup> day of March, 2020.

  
Julia Jordan Weller  
Clerk, Supreme Court of Alabama

IN THE 32<sup>ND</sup> JUDICIAL CIRCUIT  
STATE OF ALABAMA

ADMINISTRATIVE ORDER 2020-02

An Order Adopting A Local Court Response Plan to Contain COVID-19

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, certain court proceedings, which are identified in the Supreme Court’s administrative order, are deemed so essential that in-person proceedings must be timely held even during times of pandemic, natural disaster or other similar crisis; and

WHEREAS, the Alabama Supreme Court administrative order authorized the presiding judge in each judicial circuit to determine the manner in which in-person court proceedings for essential court services are to be conducted; and

WHEREAS, the Centers for Disease Control have adopted certain guidelines to mitigate the spread of disease within communities;

It is therefore ORDERED that the following rules and guidelines are adopted and shall be followed by all courts and court staff operating within the 32<sup>nd</sup> judicial circuit during the present partial suspension of in-court proceedings, as authorized by the Alabama Supreme Court:

1. All court pleadings, court orders and similar court documents shall be filed electronically to the fullest extent possible. In the event it is necessary to file a paper document with the Court Clerk, all filings shall be made at the counter with a glass barrier between the person filing the document(s) and the clerk receiving the document(s).

2. The Alabama Supreme Court having suspended, until April 16, 2020, any court rule that limits a judge's authority to order telephonic or video conference hearings, it is hereby ORDERED that each judge of this judicial circuit shall have the discretion to require that any essential court proceeding be conducted by telephone or video conference. If a judge determines that a video or telephonic conference is not practicable, only the parties, their counsel, material witnesses and such others as the judge hearing the case determines to be necessary to the proceeding shall be permitted in the courtroom, with the exception of any minor or incapacitated person that is a party. In such cases, the minor or incapacitated adult may be accompanied by a parent or legal guardian during the court proceeding. During every in-court appearance, all individuals who are present shall adhere to the protocols adopted by the CDC, including maintaining a social distance of at least six feet, to the extent practicable.

3. All initial appearance hearings for individuals arrested, who have not been released on bond within 48 hours of their arrest, shall be conducted by video conferencing only.

4. All requests by law enforcement officials or by others for warrants or to execute criminal complaints before a judge or magistrate shall be conducted electronically or by video conferencing, where practicable. Where telephonic or video conferencing is not practicable and it

is necessary to execute documents in person, all CDC protocols adopted to limit the transmission of the COVID-19 virus shall be followed to the fullest extent possible, including maintaining an appropriate social distance.

5. Any individual wishing to obtain and cast an absentee ballot for the upcoming runoff election may obtain a ballot and other necessary documents from the office of the Cullman County Circuit Court Clerk. However, all communications between the clerks and the individual voting by absentee ballot shall occur with the glass barrier erected at the Circuit Court Clerk's counter separating them.

6. All requests for leave by employees during the period that in-court proceedings have been partially suspended shall be governed by the rules adopted by the Alabama Supreme Court, as may be amended during the period of time the partial in-court suspension is mandated. Special consideration shall be given to those employees with younger children who are not in school as a result of any school cancellation of classes.

7. All individuals, including judges and court staff, who are running a fever, or have other symptoms associated with the COVID-19 virus or who have recently traveled to an area where there has been a documented outbreak of the COVID-19 virus, or who fall within one of the categories listed in the attached Exhibit "A", shall not enter the courthouse and shall be denied entry to the courthouse by courthouse security. In the event an affected person is barred from the courthouse due to the risk of COVID-19 transmission, video or telephone conferencing shall be employed by the judge presiding over the person's case to insure that any essential court hearing is timely held to prevent irreparable harm, to preserve the constitutional rights of a person or for any of the other exceptions listed in the March 13, 2020 administrative order entered by the Alabama Supreme Court.

8. Except as otherwise herein provided, all judges and court staff shall continue to work at the courthouse during the temporary partial suspension of in-court proceedings to make sure that all essential court services are provided to the public without interruption.

9. Nothing herein shall be construed to limit or abridge the right of an individual to waive his or her right to a hearing outside of a timeframe otherwise required by statute or rule of court, to the extent that such timelines may lawfully be waived by an individual.

10. It is ORDERED that the Circuit Court Clerk shall post, at each public entrance to the Cullman County Courthouse, a copy of the notice provided by the Alabama Administrative Office of Courts forbidding courthouse entry to certain persons. A copy of this notice is attached to this Order as Exhibit "A".

11. It is further ORDERED that the Circuit Court Clerk shall post, at each public entrance to the Cullman County Courthouse, a notice to all individuals who are not permitted entry under the provisions of this order. The notice shall state: "If you are unable to enter this facility and have an attorney, please contact your attorney." The notice shall also provide the name, job title, phone number, mailing address and email address of each person assigned the responsibility of responding to questions concerning the filing of pleadings and other documents relating to the essential court functions listed in the March 13, 2020 administrative order of the Alabama Supreme Court.

12. It is ORDERED that the Circuit Court Clerk shall provide the Alabama Administrative Office of Courts with a copy of this Order and a copy shall also be posted on the Cullman Courts official website.

13. Amendments to this Order may subsequently be adopted, as deemed necessary or desirable.

Done this the 14<sup>th</sup> day of March, 2020.

/s/ Gregory A. Nicholas  
Gregory A. Nicholas  
Presiding Circuit Judge  
32<sup>nd</sup> Judicial Circuit  
State of Alabama