

Remote Court Proceedings – Guidance Document

The Supreme Court’s March 17, 2020, order in response to the COVID-19 pandemic directed Illinois courts to hear “essential court matters and proceedings” and further authorized courts to conduct both essential and nonessential matters and proceedings remotely, subject to constitutional and practical limitations. On May 22, 2020, the Supreme Court entered an order authorizing circuit courts to return to hearing court matters, whether in person or remotely, according to plans adopted by the chief judges. This order instructs that “Local plans should continue to promote the use of remote hearings where appropriate.”

In support of these orders, the following guidelines and best practices are provided to aid Illinois courts operating virtual courtrooms as a method of serving the public during the COVID-19 pandemic and beyond. These guidelines are not intended to apply to the operation of closed-circuit court communication systems.

Much already has been learned by early adopters in Illinois and some Illinois courts have created excellent resource documents that further detail effective use of remote video hearings. In seeking to provide instruction and guidance, particularly to those courts just starting to use remote hearings, it is readily apparent that this document cannot anticipate every situation that will arise when a court conducts a remote hearing, particularly during a public health crisis. Additional study will continue to inform and allow for improvements and additional best practices not covered herein, and this document will be periodically updated, as needed, to reflect these system improvements.

I. Public Access to Court Proceedings

Courts should make all reasonable efforts to ensure and accommodate public access to non-confidential court proceedings. To that end:

- Any court hearing conducted over Zoom, WebEx, Teams or other video conferencing platform should be capable of livestreaming in a static format, such as YouTube or other similar service. YouTube is preferable, as the user can enable a “Do Not Record” watermark to be placed over the live video. Livestreaming by the courtroom host is permissible under Supreme Court Rules and policies, but video or audio recording by any party, attorney, or any member of the public is strictly prohibited. The court should make this prohibition clear and inform that failure to comply may result in the imposition of sanctions or a finding of contempt.
- Account names displayed on YouTube should identify the Judicial Officer holding the hearing via videoconferencing technology and be formatted in the following way: Judge _____, _____ Judicial Circuit, _____ County.

II. General Considerations

- a. Consider the capabilities of court patrons to participate via video conference or telephone and whether the selected method is accessible for persons with disabilities. Consider that some litigants may have no access to internet or wi-fi.
- b. When using video conferencing services, use meeting specific passwords (sent to participants in an invitation) to aid in preventing unauthorized participants from

joining the remote hearing. This will enable better overall security for the court and all case participants involved.

- If possible, determine if the video conferencing service uses end-to-end encryption for all remote hearings. Information technology personnel should be able to assist with this assessment and help identify additional security features.
 - Use a Waiting Room for hearings that allows the judge or designated staff to preview and admit only those parties necessary to the case at hand. This prevents participants from joining a remote hearing before the host has joined and is ready to begin.
- c. Pre-Hearing Considerations:
- In advance of any remote hearing, test the remote video hearing and include as many participants as possible.
 - Test audio and video recording.
 - Preview the lighting, background, camera location, and screen name for the judge and court officials.
- d. Do not share or post the meeting details publicly.
- e. At the outset, only allow the Host to be a presenter in a remote hearing/meeting.
- f. If recording a hearing, notify all participants that the remote hearing is being recorded and the procedure for accessing it or the official record.
- g. Create a process for informing case participants how they can participate in remote hearings and how the public may observe the remote hearings. Consider drafting plain language instructions about how to participate or observe and have a plan for disseminating that information.

If Zoom accounts are centrally managed, Zoom's managed portal allows security settings to be configured for all or a subset of managed Zoom accounts. If not centrally managed, the same security settings can be configured for individual Zoom accounts to secure meetings / hearings that would limit participant actions. For example, some of the following security settings may be useful for all or individual Zoom accounts.

- Waiting Rooms – to review participants seeking to join a hearing and admit those to specific court hearings.
- Lock and Unlock meetings - after all participants are admitted.
- Require meeting password length limits - minimum of 9 characters. The default is 6 characters but Zoom recommends increasing the password length.
- Turn on or off the ability for participants to Chat.
- Prevent participants from sending files through an in-meeting Chat.
- Limit who can Share Content: Host or All Participants or no one.
- Disable desktop / screen sharing for users.
- Disable Remote Control.
- Prevent participants from renaming themselves.
- Prevent users from using videos for virtual backgrounds
- Prevent users from uploading custom backgrounds.

III. Conducting the Hearing

- a. All efforts should be made to keep the same measure of decorum in your remote hearings as in your courtroom proceedings.
- b. The court or clerk should provide an email to counsel/parties of record for submitting documents and exhibits prior to or during the hearing. In this way, if the judge wishes to share a screen with counsel/parties of record, it is in the judge's control.
- c. Begin with a simple admonishment about the following:
 - i. Counsel and all case participants should behave as if they were present in the courtroom;
 - ii. Recording the proceeding is not allowed by anyone except the Official Court Reporter or the court through the approved recording system;
 - iii. A violation of either of these rules constitutes contempt of court.
 - iv. Additional admonishments to ensure a quality record are attached below.
- d. Remind all participants that they are beginning the hearing in Mute status and that they may unmute themselves to respond to questions, etc.
- e. Ask the case participants if they can hear what is being said and to indicate immediately if they cannot. Inform how to adjust volume or address other audio issues.
- f. Add a staff member as a Co-Host, if possible, in order to have someone to admit people from the waiting room (if using Zoom), monitor screen activity, send offensive participants into the waiting room, mute and unmute individuals, etc.
- g. Be certain to allow time for responses to questions and clarify discussion that may have been subject to overlapping speakers due to bandwidth or a delay in transmission. This will help to ensure a clean recording.
- h. Provide a method to enable confidential communication between a party and the party's counsel. A defendant in a criminal case must have the ability to confer privately with counsel during a remote hearing. As an example, an attorney can meet confidentially with his or her client in a Zoom "breakout room" then the host can move the parties back to rejoin the hearing when they are finished meeting. Defendants in custody should be able to participate in a setting that allows for private conversations with counsel without others present.
- i. When using a video remote interpreter, the hearing should be conducted in the consecutive mode with pauses in between each statement. The simultaneous mode of interpretation can be used if the court is using a videoconferencing platform with that feature (such as Zoom business or enterprise), but consecutive interpretation is preferable and makes a better record.

IV. The Electronic Record

Supreme Court Rule 46 (Official Record of Court Proceedings) allows for recording of court proceedings by "stenographic means or by an electronic recording system, including video conferencing services, approved by the Supreme Court." The following describes approved use of recordings made by video conferencing services under Rule 46.

- At all times during the making of the record, the court shall be in total control of the means of recording, regardless of platform, and may not delegate that control to any attorney, party or witness to the proceeding.

- If Court Reporting Personnel as defined under SCR 46(c) are available to take the record of a remote hearing via stenographic means or by means of an electronic recording system approved by the Supreme Court, they shall do so under the direction of the judge.
- Only if the record is not taken by stenographic means or hard-wired digital recording system:
 - The judge may use an approved video conferencing service selected from a list compiled and maintained by the AOIC.
 - The service used for video conferencing must be capable of making a recording that produces a reliable verbatim record of the proceeding.
 - The electronic recording produced by the court should be saved and secured locally, on a computer or server that provides a secure storage platform. The recording should not be archived and left on the video conferencing service's cloud. Security should be used to prevent access to the electronic recordings, thereby allowing access to only the judge and court reporting personnel.
 - Consistent with Supreme Court Rule 46, the electronic recording from an approved video conferencing service may be used in the preparation of the transcript that serves as the official record of court proceedings.

- Judges and Court Reporting Personnel should work together to determine the best configuration of technology at the courthouse or other locations that will produce the most clear and reliable verbatim record of the proceedings.

SUGGESTED SAMPLE ADMONISHMENTS TO PARTICIPANTS FOR VIDEOCONFERENCES AND CONFERENCE CALL HEARINGS (FOR HEARINGS WITH COURT REPORTER PRESENT)

Ask all participants to identify themselves before going on the record. Ask each individual if they can hear the other participants.

THE COURT: This hearing is being conducted via [VIDEOCONFERENCE/ TELECONFERENCE], and there are some things to go over to ensure a good record. A court reporter is in attendance, and the transcript of this proceeding is the official record. The record will only be as good as you make it, so here are the things you should keep in mind:

- We have multiple participants on this line. If you are not speaking, mute yourself so we don't pick up background noise or unwanted audio feedback. Take a moment to locate your mute button now.
- (For hearings with an interpreter) We have multiple participants on this line, including an interpreter for the litigant(s) (pause). To allow the interpreter to do their job in the consecutive mode, all speakers must pause after each statement (pause). Be prepared to be interrupted by the court interpreter or what you say will not be accurately communicated to the litigant (pause). If you are not speaking, mute yourself so we don't pick up background noise or unwanted audio feedback. Take a moment to locate your mute button now.
- 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 you are. If you have an objection, you may want to state "Objection by [Name or other identifying title/party/etc.]."
- Be prepared to be interrupted by the court reporter for clarification or you will appear in the transcript as "unidentified speaker."
- When you do speak, stay close to and face your microphone. If you cannot be heard, you are going to have a poor record.
- If the court reporter must consistently interrupt to ask to repeat something, you will not have a good flow of this hearing.
- Verbal responses are essential. Do not nod your head to respond.
- Speak slowly and pause before and after responses.
- Be careful about talking over another speaker. Even in-person, it's much harder for the court reporter to take down what's being said if people speak at the same time or interrupt one another. In this case, competing audio may cause a complete loss of what is being said. Please be very mindful of that.
- Lastly, this is a formal proceeding. Treat it as if you are present in the courtroom.