

PROTOCOL FOR CONDUCTING HEARINGS AND TRIALS
BY USE OF REMOTE VIDEO (“REMOTE HEARINGS”)

Judge Nancy V. Alquist
(Updated March 10, 2021)

These Protocols shall govern the conduct of and participation at Remote Hearings.¹

Attorneys, witnesses, and parties that need to participate in the Remote Hearing, shall participate by video-conference. Individuals who wish to attend the hearing, but will not otherwise participate, may join the hearing by audio **only**.

Any person who wishes to participate in or attend the Remote Hearing must register at <https://usbcmd.wufoo.com/forms/z1t9dcdo11c2n5v/> at least 48 hours before the scheduled Remote Hearing.

The information to join the Remote Hearing will be provided to registered participants by the Courtroom Deputy approximately three (3) hours prior to the Remote Hearing.

I. Audio Participation

Individuals listening to the Remote Hearing by audio must call in **at least 15 minutes prior** to the scheduled start time.

II. Video Participation

The Remote Hearing will be held using the Court’s Zoom for Government platform (“Zoom”). Prior to the Remote Hearing, all parties shall familiarize themselves with Zoom, ensure that they have Zoom downloaded on the device that they will use to attend the hearing, and ensure that the device they will use is charged or that they have access to an electrical outlet.

Each party must connect to the Remote Hearing **at least 30 minutes prior** to the start time of the Remote Hearing. Each party and their counsel will remain in the waiting room until their matter is called by the Courtroom Deputy. After the Courtroom Deputy has called the case, the Court will take a roll of the parties participating by video-conference. At that time, counsel will enter their appearance. Each party who has connected to the Remote Hearing must announce their participation, providing their full name, affiliation, and the names of any other individuals watching or listening to the Remote Hearing through the participant’s connection.

¹ Federal Rule of Civil Procedure 43(a) (made applicable by Federal Rule of Bankruptcy Procedure 9017) permits witness testimony remotely for good cause in compelling circumstances and with appropriate safeguards.

All participants must mute their audio during the Remote Hearing, unless they are speaking or about to speak. At the conclusion of their specific matter at the Remote Hearing, the party and their counsel will be excused and shall leave the Remote Hearing.

Direct testimony shall be provided by way of affidavit or declaration only. The parties shall file all affidavits and/or declarations at least 24 hours prior to the Remote Hearing. Cross-examination and/or rebuttal will be conducted via live testimony. The witness must attend and be prepared to testify. Witnesses should attend by video-conference. If a witness is unable to attend by video-conference, the attorney calling the witness must notify the Court at least 48 hours prior to the Remote Hearing and request permission for the witness to appear by audio.

The witness must be alone in a room during his or her testimony, with the exception, if appropriate, of the witness's attorney or court-approved translator. If the attorney or a translator will be present in the same room, the attorney presenting the witness must notify the Court at least 24 hours prior to the Remote Hearing. The witness may not be given assistance or "coached" in the substance of his or her testimony, whether via email, text messaging, notes, or any other form of assistance. The witness should be prepared to present a valid form of government issued photographic identification, such as a driver's license or passport, at the Remote Hearing. All participants appearing by videoconference must wear appropriate Courtroom attire and present themselves as if they were present in the physical Courtroom.

Participants should email the Court at hearings_NVA@mdb.uscourts.gov if they experience any technical issues during the Remote Hearing, including if they are disconnected or cannot enter the Remote Hearing.

III. Evidentiary Remote Hearings

A. Stipulations

The parties are *strongly encouraged* to stipulate to any uncontested facts and the admissibility of evidence and are directed to confer regarding such stipulations prior to the Remote Hearing. **At least 24 hours prior to the Remote Hearing**, the parties shall file a Stipulation of Uncontested Facts and the Admissibility of Exhibits. The stipulation must identify the exhibits and mark them in accordance with Section III(B) of these protocols.

If the parties are unable to stipulate to uncontested facts and/or the admissibility of exhibits, the parties must file a Line containing a certification that, despite a good faith conference, the parties were unable to stipulate to any uncontested facts and/or the admissibility of any exhibits. Such Line must be filed **at least 24 hours prior to the Remote Hearing**.

B. Exhibits

All exhibits must be clearly marked and organized as follows:

1. Exhibits offered jointly by the Parties shall be marked "Joint Exhibit ___"
2. Exhibits offered solely by a party shall be marked "[Party's Name] ___"

All exhibits, EXCEPT FOR REBUTTAL OR IMPEACHMENT EXHIBITS, must be filed and electronic copies circulated to all parties and their counsel at least 24 hours prior to the Remote Hearing. Further, every party, counsel, and witness is responsible for having copies of all filed exhibits available to himself or herself during the Remote Hearing.

Counsel need not include documents to be used solely for impeachment in exhibit lists and pre-filed exhibits. If the exhibit is not included in the pre-filed exhibits, prior to using the document at a virtual hearing, examining counsel must submit by email an electronic copy of the impeachment exhibit to participating counsel and to the courtroom deputy at hearings_NVA@mdb.uscourts.gov, identified with the party's next exhibit number. Alternatively, if instructed by the presiding judge, counsel must file the document on CM/ECF. The judge will require verification that participating counsel have obtained the document before the examination may proceed. Counsel are encouraged to send the document at least several minutes before the planned use, where feasible.

C. Witnesses

At least 24 hours prior to the Remote Hearing, any party wishing to call a witness must file a witness list and supply the following information for each witness:

1. Name and title
2. The location (of the witness (city, state, country)
3. The place from which the witness will testify (e.g., home, office – **no addresses**)
4. Whether anyone will be in the room with the witness during his/her testimony, and if so, who (name/title/relationship to witness) and for what purpose
5. Whether the witness will have any documents with him/her other than the exhibits filed with the Court in accordance with this protocol, and if so, what documents

Every witness must have available to himself or herself all exhibits which have been submitted to the Court for the purposes of the Remote Hearing.

IV. Compliance

Remote Hearings with multiple participants are only feasible when there is compliance with every procedural requirement. Sanctions may be imposed when there is any deviation from these protocols or the Court determines that an individual's conduct is inappropriate.

END OF PROTOCOL