

**IN THE DISTRICT COURT OF TETON COUNTY, WYOMING
NINTH JUDICIAL DISTRICT**

****,)	
	Plaintiff,)	
)	
v.)	Civil Action No. 1****
)	
****,)	
	Defendant.)	

ORDER SETTING PROTOCOLS FOR VIDEO HEARING

A hearing has be set to occur in this matter, by separate order. Due to the COVID-19 pandemic, the states of emergency declared by federal, state, and local governments, and the importance of social distancing measures, the hearing shall occur by video conference. This Order provides instructions, technical requirements, training opportunities, and the procedure to use for exhibits.

1. U.R.D.C. 802. Pursuant to U.R.D.C. 802, the Court, in its discretion, can use conference calls for civil matters and some criminal matters. During the COVID-19 pandemic, the Court finds it appropriate to hold hearings by telephone or video where possible, absent compelling circumstances to require in-person hearings. For evidentiary hearings and certain contested matters, the Court finds that video conferencing will be more appropriate than telephone conferences.
2. Appearing through Microsoft Teams. All Wyoming District Courtrooms are equipped with a Microsoft HUB which allows for, among other things, appearances by video conference. The videoconferencing platform used by the Wyoming district courts is Microsoft Teams. Use of this platform is free for all participants.
3. *Technical Requirements.* All parties, counsel, and witnesses in the hearing will need to be using a device with a camera, speakers, and a microphone, such as a laptop computer, desktop

computer with those features, an iPad or other tablet, a smartphone, or other similarly equipped device. Using a smartphone, tablet, or iPad for a Teams videoconference will have different features than using a computer.

4. Counsel are encouraged to use a laptop or desktop in order to have all features available to them during the hearing.
5. Counsel are advised that at this time, Apple devices are capable of presenting .pdf exhibits, such as documentary exhibits. To present video or audio files, a Microsoft device is required. Microsoft devices are able to present .pdfs, video files, and audio files.
6. An internet connection will be required. We recommend using an internet connection as opposed to wireless data. Some jurisdictions, including this one, have identified connectivity issues when using cellular data for the connection. The bandwidth limitations of the internet connection you are using may affect the quality of the video and audio during the conference.
7. Counsel (and the parties and the witnesses) may need to limit others' use of the internet at their location during the video conference to ensure their connection. Large uses of bandwidth include Netflix, Pandora, and similar video and music streaming services, gaming, YouTube, and other web-based video applications.
8. An email address is required to obtain the Team invitation.
9. Be familiar with your equipment and how to properly operate it (i.e., know how to turn on webcam, microphone, and speakers). If you are unfamiliar, request assistance from the Court Reporter during your training opportunity, discussed below.
10. *Environment.* Hearing participants should be indoors in a quiet location, preferably without others present. If that is not possible, others in that location may not speak or coach or

otherwise assist a witness or party in their testimony. Participants should also observe ordinary courtroom decorum and appear in appropriate courtroom attire while appearing by video.

11. *Getting Invited to the Hearing.* Counsel are responsible for contacting the Court’s Judicial Assistant to provide an email address for the parties, any witnesses, and any support staff who will appear at the hearing. Counsel should contact the Judicial Assistant not later than 12:00 noon two (2) days before the first day of hearing with those addresses.
12. The Court will then send counsel, the parties, and the witnesses a Teams invite to facilitate their appearance at the hearing. The invite will arrive by email. A separate invitation will be sent for each day of hearing.
13. That invitation includes a purple link (labeled as “Join Microsoft Teams Meeting”) to click on to join the hearing before that day’s proceedings begin. The link will connect the participant to the conference. Note that the invitation will identify a period of time longer than the hearing. That does not indicate the hearing time has changed. The Court recommends you join the conference ten minutes before the hearing begins to troubleshoot any difficulties and to familiarize yourself with the screen.
14. *Joining the Meeting.* Once you click on the link, please follow the prompts and directions. You will be asked to download the Microsoft Teams App. Please do so and direct all witnesses to do so as well. It takes only a minute or two and the download is free.
 - a. It may be prudent to download the Teams App a day or two before your hearing to avoid a technical delay the day of the hearing. The link can be found through the app store on mobile devices or directly at <https://teams.microsoft.com/downloads>.
 - b. To download the app, you will be prompted to enter a Microsoft-based email address.

That Microsoft-based email address is not required. Entering that information can be skipped.

- c. Without the Teams app, your options during the video conference will be limited, including a limitation on how many participants you will see on your screen.
- d. Once the app is downloaded, and after you have clicked the link to join the meeting, you will be prompted to proceed either through the Teams app or through your browser.

Select the option that uses the Teams App.

15. When you join the meeting, please check your sound and video settings. You will see a Camera button and a Video button at the bottom of your video screens (you can view these buttons if using a phone or tablet by touching your screen). Please make sure your Video button is enabled and your Microphone button is not set to mute. If your video camera still is not broadcasting, please check your computer or phone privacy settings and enable your video to operate while using Microsoft Teams.

16. *Video Is Required Unless or Until Exception Is Granted.* All parties, counsel, and witnesses shall use the video feature for appearance at the hearing (not the audio-only feature). Note that the Court's Staff Attorney or other court staff may appear as a conference participant on your screen but without video. Counsel's support staff may also appear by audio only during hearing.

17. *Exceptions.*

- a. On a case-by-case basis, parties unable to connect by video can use the audio call-in number that appears below the "Join Microsoft Teams Meeting" link.
- b. During the conference, if your video or audio quality begins to fail, you may be asked

- by the Court to turn off the video, in which case you will still be in the conference by audio and you will still be able to see the courtroom and other participants. This generally boosts your audio connection. Interference with the audio is often caused by low bandwidth, which can occur when another user in your location is using the same connection for large volume files such as streaming video or gaming.
18. *Mute Unless Speaking.* After confirming the microphones and audio are working, all participants should mute their microphone, through the mute icon on the Teams screen, until they need to speak.
19. *Using Pins.* The Teams screen does not always show all participants, particularly where there are more than nine participants. Participants should be able to see the courtroom and the participant who is speaking but might not see all other participants at the same time. Participants can pin other participants to their screen, such as counsel, the Court, and witnesses. One way to pin participants is to select “show participants” from the menu bar at the bottom of your screen (this icon looks like two heads adjacent to each other). Then, to the right of each participant’s name is an ellipsis, “...”. Click on the ellipsis for the participant you want to pin. Then select “pin.” The same process can be used to unpin a participant after their testimony.
20. Counsel are directed to pin the Judge, the Court Reporter, and the other attorneys(s) to their screens so that they can see each other, including any signals that may be used by opposing counsel to make objections or by the Court to stop the testimony or to address an objection.
21. Making Objections. Objections are made as in the courtroom, by speaking. As a video conference, this speaking over a witness interrupts the audio feed. Waving a hand during the objection will help the Court identify who is making the objection and the Court will then be

able to pause the testimony, ask for the objection to be repeated, and address the objection.

22. Public Access. Unless the hearing is a confidential proceeding, members of the public observing the hearing may also appear on your screen. This is consistent with in-person proceedings which are open to the public and the policy of open courts. If any parties have family members, supporters, or other members of the public who would like to attend, counsel shall forward their email addresses to the Judicial Assistant to receive an invitation.
23. Prohibition on Recording. Video or teleconference attendees and the public are prohibited from using any audio or video recording equipment to record proceedings. Violation of this is subject to contempt of court actions which could result in a criminal charge with penalties of jail time, fines, or both.
24. Training Options. In order to make sure this protocol works effectively, the Court Reporter, Lance Oviatt, will be available in advance of your hearing for training to make sure you are able to connect to our system. Mr. Oviatt can also demonstrate some of the advanced capabilities of Teams to display exhibits to the Court and to witnesses from your computer. The Court's Judicial Assistant can also set short test calls to confirm connectivity but without the training available through the Court's Reporter.
25. Exhibits shall be presented during hearing through the "share screen" function of Teams. Counsel shall be familiar with this feature prior to hearing and may work with the Court Reporter for a training tutorial. Failure to be familiar with this function impairs the efficiency of hearing and may limit counsel's time available to present evidence.
26. If you anticipate appearing in the District Court and need some free training, please contact Mr. Oviatt to make arrangements. He can be reached at loviatt@courts.state.wy.us. **You**

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should make arrangements to conduct your training not later than two (2) business days before the hearing. Sooner is preferable due to the Court's schedule which may limit the availability of the Court Reporter. Last minute requests may not be accommodated.

27. Witnesses and parties should not contact Mr. Oviatt directly but should reach out through the counsel they are appearing through.
28. Calling Witnesses. If a sequestration order is entered in your case, then witnesses subject to that Order may not attend the hearing until they are called. While the witnesses will have the e-mail invitation to attend the hearing before they are called, counsel shall advise witnesses not to click the link to enter the conference until they are contacted directly by counsel. The Court can accommodate short pauses between witnesses for counsel to contact witnesses to appear for hearing, just as the Court accommodates counsel during in-person hearings when witnesses must be collected from a lobby or waiting area.
29. If a sequestration order is not entered, then witnesses may attend any portion of the hearing. If counsel wish to notify witnesses directly when they are called to testify, in order to limit witness wait times during the hearing, counsel may do so at their discretion. The Court can accommodate short pauses between witnesses for counsel to contact witnesses to appear for hearing, just as the Court accommodates counsel during in-person hearings when witnesses must be collected from a lobby or waiting area.
30. Conferring with Clients During Hearing. Counsel and their clients may appear from separate locations or from the same location, at their discretion. If counsel needs a short recess to confer with their client, counsel may request a moment (or a recess), mute their audio line, and confer in person or by phone or other means with their client. If counsel and their client needs to exit

the conference to confer, they may do so by selecting the red “hang up” icon at the bottom of their Teams screen. They can rejoin the meeting by using the link previously provided.

31. Hearing Exhibits. Hearing exhibits shall be prefiled and shall be provided to the Court in two ways.

32. *Electronic.* First, all hearing exhibits and the final exhibit lists shall be filed electronically to Court staff. All exhibits shall be premarked. If there are a limited number of exhibits, they may be emailed. If the exhibits are voluminous, counsel may use Dropbox or a similar document delivery service. Those documents shall be sent to the Court’s Judicial Assistant and to the Court’s Staff Attorney at mdearing@courts.state.wy.us and mfredrickson@courts.state.wy.us. Or, counsel may deliver a thumb drive to the Court’s Judicial Assistant at the Teton County Courthouse. Regardless of which electronic delivery is used by counsel, the hearing exhibits shall be delivered not later than **5:00 p.m. two business days before the hearing.**

33. *Paper.* Second, all hearing exhibits and exhibit lists shall also be printed and provided to the Court in binders. Each binder shall not exceed three inches in width. Multiple binders may be used. All exhibits shall be premarked, identical to the electronic exhibits, and delivered to the Court not later than **5:00 p.m. two business days before the hearing.**

34. *Admission of Exhibits.* Third, the paper exhibits in the binders that were provided to the Court, if admitted into evidence, shall be considered the original exhibits when video hearings are held, unless a substitution is required and approved by the Court such as for certified copies, maps, high quality photographs, or similar documents where an electronic copy is not appropriate. In the event such originals are to be provided to the Court, counsel should contact the Court’s Judicial Assistant for appropriate protocols such as sending the envelope(s) of

exhibits by U.S. Mail or by some other means of physical delivery.

35. As with in-person hearings, counsel should be prepared to review the exhibits that were admitted into evidence with the Court Reporter (if a Court Reporter is requested) at the end of the hearing, before disconnecting from the video conference.
36. *Other Exhibit Requirements.* Hearing exhibits shall also be furnished prior to hearing to (1) the witness to be used for that evidence, and (2) opposing counsel. Failure to so provide any such exhibits may result in the preclusion of the exhibits. This includes rebuttal exhibits, except, on a case-by-case basis, for true rebuttal evidence if a party shows good cause for not disclosing in advance.
37. Do **not** file the hearing exhibits with the Clerk of District Court. As with exhibits at in-person hearings, the Clerk does not file proposed exhibits in the Court's files. Exhibits that are admitted will be part of the hearing record. Exhibits that are not admitted will be discarded.
38. Counsel shall show exhibits to witnesses and to the Court through Teams using the share screen option, which includes an option to share only a window instead of the entire screen. Counsel are solely responsible for protecting any other data (such as open notes, open emails, desktop views, chats with support staff and co-counsel, etc.) on their screen when using the screen-sharing feature. Counsel will likely use the more limited share window feature. If the share feature is problematic during hearing, then Counsel may instead refer to the paper exhibits previously provided to the court and the witnesses. Counsel are encouraged to use the training opportunities with the Court Reporter to become familiar with this option which may enhance their presentation of evidence.
39. Witnesses shall not alter or amend exhibits during their testimony without Court permission.

40. Stipulated Exhibit List. Not later than **5:00 p.m. two business days before the hearing**, counsel shall submit a list of stipulated exhibits, signed by counsel for all parties,.
41. Patience and Appreciation for Advancement in Courtroom Practice. The Covid-19 pandemic has accelerated rapid change in the practice of law. Court proceedings, evidentiary hearings, and bench hearings are now conducted regularly in this Court, and in courts around the country, as video hearings. Continuing Legal Education classes are being taught around the country to train attorneys how to effectively present their cases by video conference during the pandemic.
42. Video conferencing has been used by all sectors—except perhaps in the practice of law and the courts—for many years at great cost-savings to all involved and with greater productivity and efficiency. A silver lining of the current Covid-19 pandemic is the rapid expansion of such services in the practice of law and in courtrooms. The Court is optimistic that this marks a permanent evolution in the practice of law, with the support of the resilient, innovative, and talented bar.
43. Modern video conference technology allows counsel and their clients to appear from separate locations, but still have the ability to chat or otherwise speak to each other privately. Video conference technology also saves the litigants the costs of travel and provides counsel more time for either other matters or for personal time. In sum, the expansion of video conferencing to achieve some of the basic functions in litigation is rapidly expanding and is in accordance with W.R.C.P. 1, to secure the just, speedy, and inexpensive determination of every action.
44. Lawyers and all segments of the legal sector are essential to the rule of law and the continuity of the criminal and civil justice systems. Those systems continue during the pandemic—a time when in some ways those systems are needed the most—thanks to the innovation and resiliency

of all involved in implementing new solutions with technology.

45. Video conferencing is not an exact substitute for in-person hearings, but it is a necessary substitute to continue court operations during a pandemic and other emergencies that limit access to courtroom facilities. The technology is imperfect, but other jurisdictions who include video conferencing as part of Continuity of Operations Plans note that its efficacy generally improves with practice and with time. The Court appreciates all parties' patience and accommodation as these new protocols are implemented, practiced, and refined.
46. Protocols for video conferencing may be updated from time to time.

IT IS SO ORDERED.

DATED this ____ day of **** 2021.

Timothy C. Day
District Judge