

REMOTE HEARING PROTOCOL
DURHAM COUNTY FAMILY COURT
27 May 2020

1. Types of Hearings Permitted Remotely by Webex (Domestic Matters Only):

**Time limits* (in parentheses) are total time per matter/case for parties to divide equally.

- a. Summary Judgment Divorce (as set by the Court) (3 min.)
- b. Pre & Post-Trial Motions *not* requiring testimony (excluding Contempt), *including but not limited to*: PC Motions & Appointments; Discovery Motions including Motions to Compel; Motions to Appoint a GAL; 12(b)(6) Motions; Motion for DSS Records (15-30 min., as set)
- c. Judicial Settlement Conferences (1 hour)
- d. Testimonial Divorces (10 min.)
- e. SIJS Hearings (15 min.) – set in a special session to provide for interpreter by the Court.
- f. Pre-Trial Conferences & EOO (*only* those unable to be submitted outside of court) (10 min.)
- g. Other Matters (TBD, as set by the Court).

The following matters will be permitted upon the approval of the presiding judge:

- h. Temporary Custody; Temporary Child Support; Post-Separation Support (1 hour)
- i. Permanent Custody Hearings, Equitable Distribution, Alimony, Attorney's Fees, etc. (TBD)

Note: Parties are permitted to file an Objection To Remote Court Hearing, using form DUR-DOM-37 for any matter set remotely.

2. Scheduling

- a. Remote Hearings Request (except those set by the Court, e.g. SJ Divorces) - If a party would like to request a remote hearing, they shall submit the Request for Remote Hearing form (DUR-DOM-34) to the Family Court Case Coordinator (FCCC). This form can be submitted by email and should include email addresses (see "c." below), the matter or issue(s) to be heard, and potential dates for the hearing.

If the request is by consent of all parties, the FCCC will coordinate the scheduling of the remote hearing and the moving party shall file and serve a Notice of Remote Hearing (DUR-DOM-35) to all parties. The Webex link will be emailed to all parties at 5 days prior to the hearing.

If the request is a request by one party only, the FCCC, after consultation with the assigned judge if necessary, will schedule the remote hearing. The party requesting the remote hearing shall file and serve a Notice of Remote Hearing on all parties in this instance.

- b. Email Addresses – The requesting party should provide a list of emails for all parties, attorneys, witnesses and those who need to be invited to the hearing upon submitting the Request for Remote Hearing form (DUR-DOM-34) to the FCCC. For those parties where the email is unknown at the time the request is submitted, upon receipt of the Notice of Remote Hearing, all attorneys and self-represented parties must contact the FC within 5 days to report an email address for the Webex invite or to advise if they have no email access or other issue.
- c. Objections - Within 5 days of receipt of the Notice of Remote Hearing, all attorneys and self-represented parties objecting to a remote hearing must timely file form DUR-DOM-37 (Objection to Remote Court Hearing &/or Motion to Continue) stating the specific basis for the objection. The objecting party should, before filing the form, consult with the opposing party about their position on the objection &/or Motion to Continue and indicate the same on the form upon filing. Upon receipt of the objection, the moving party has 2 days to submit, in writing, any further response to the objection. The judge, after considering the submissions of both parties (or the elapsed 2 days after the filing of the objection) will rule on the objection without further hearing or may, in the judge's sole discretion, schedule a pretrial conference by Webex or phone conference with the parties to discuss the objection and any potential solutions before ruling.
- d. Continuances - Any request for a continuance of a remote hearing shall be submitted in accordance with our existing Local Family Court Domestic Rules *other than* those requested on form DUR-DOM-37 (Objection to Remote Court Hearing &/or Motion to Continue).
- e. Thereafter, the FCCC will send the Webex invite to counsel of record and self-represented litigants. Attorneys are responsible for forwarding the link to their clients and to all necessary witnesses for the hearing. Self-represented litigants are responsible for forwarding the link to any witness they desire to have testify. Attorneys and self-represented litigants may also forward the link for the hearing to people they desire to observe the hearing. A list of any person who the link has been provided to, their role in the hearing (party designation, counsel, witness, observer for Plaintiff/Defendant) and e-mail address should be provided to the FCCC by e-mail at least 5 days in advance of the hearing date otherwise those parties may not be recognized by the Judge hosting the Webex session who will be permitting entry of persons attempting to enter the Webex session.
- f. If authority to conduct remote hearings ends, all scheduled hearings will be converted to in person hearings which will take place on a date and time set by the Court. If the date can remain the same as the remote hearing date, it will be honored. An update from FC will be forthcoming if remote hearing options end.

3. Attendance

- a. All parties must access the hearing at the start time of the hearing. If a party is late to the hearing, it will be in the court's sole discretion whether to permit entry and the hearing to be held or continued. One factor will be the extent of the tardiness and whether other cases are

in the cue to be heard for that Webex session or time period. All parties and counsel must be able to be seen and heard by all other parties, unless the judge waives this requirement for good cause, and must enable both audio and video while using Webex. All spectators (nonparties/attorneys/witnesses) must have accessed the hearing at the start time of the hearing, or they won't be able to join the hearing after it has begun.

- b. **Spectators:** All members of the public who have accessed the hearing must have their video ON in order to view the hearing. All spectators must have their microphone muted and they shall not speak or otherwise communicate with any party or witness during the hearing. They shall further not utilize the chat feature or in any way interfere with the hearing. Spectators shall be seated and still. If a spectator violates these rules, they are subject to expulsion from the hearing and also to being held in contempt of court.

4. Exhibits.

- a. Exhibits must be served on the opposing party two business days prior to the hearing and will be limited to *5 exhibits* per party unless prior approval of the Court has been sought and given (an excess of 5 per side will not be regularly permitted). All exhibits must be marked (i.e. Plaintiff's Exhibit 1,2,3 or Defendant's Exhibit 1,2,3). No unmarked documents will be accepted. **Further, each party must deliver a sealed envelope (case number on the outside of the envelope) containing hard copies of their proposed exhibits to the Clerk's office two business days prior to the start of the hearing (which must be marked as set forth above, e.g. Plaintiff's Exhibit 1, 2, 3). Failure to comply with these procedures may result in a proposed exhibit not being admitted into evidence, at the discretion of the presiding judge.**
- b. An exhibit does not have to be displayed on the screen in order to be introduced into evidence. If a party wants to display an exhibit on the Webex screen during the hearing, they must have access to a saved copy on their computer. However, the Court will be provided with the physical copy of the exhibit from the sealed envelope and a virtual copy is not necessary.
- c. Remote hearings are generally not appropriate for cases involving voluminous records and the presiding judge has the discretion to decline a remote hearing for the same or pause it while in progress and resume in person if documents become too cumbersome and frustrate the process.
- d. Cases involving DSS records, sensitive mental health or medical records may not be appropriate for remote hearings. The presiding judge, after consultation with counsel and parties in a pretrial conference (if requested), has discretion to determine that a remote hearing is not appropriate. Any Motion for a DSS Record or other record will be heard in a pre-hearing session and the issue of appropriateness of a remote hearing can be raised at that time, if desired.

- e. Just because an exhibit is produced correctly, does not mean it is admissible. The Rules of Evidence still apply and parties are free to object to exhibits during the hearing, which will not be reviewed in advance of admission into evidence by the Judge.

5. Recording

- a. All hearings will be recorded through Webex. Webex recordings will be immediately sent to the assigned courtroom clerk and will be maintained by the Durham County Clerk of Court. Attorneys, parties, and spectators are **not** permitted to record the proceeding and can be held in contempt for violation of this rule. Requests for recordings can be made through the Durham County Clerk's office with the existing form/procedure.

6. Miscellaneous

- a. All other pertinent rules of Civil Procedure and Local Rules will apply to the hearing not otherwise amended by this remote hearing protocol.
- b. Business casual or business attire is appropriate dress for parties and counsel.
- c. All participants must be able to be seen and heard by all other participants (unless the judge waives this requirement for good cause shown). Lack of access to video/audio by a party may be a reason for the judge to waive this requirement for that party. During the hearing, parties that are not testifying should have their microphones muted or the judge will mute them without notice. Attorneys may have their microphone on at all times but shall work to limit background noise or they will be asked to mute their microphone and unmute themselves for any objections.
- d. Witnesses should be in a room alone during testimony, when feasible. Parties may be in a room with their attorney if the attorney and party so choose. If a person will be in the room with a testifying witness, the witness shall advise the judge prior to the witness' testimony. No person, including an attorney, may communicate with a witness about their testimony during the testimony.
- e. If they are in separate locations, attorneys and parties may communicate privately via text or email during the hearing, **provided however, parties may not communicate with counsel while they are testifying. No one may communicate with witnesses privately during the hearing without court permission. No one other than attorneys participating in the hearing shall utilize the chat feature of Webex during the hearing.**
- f. **Testimony of Children and Chamber conferences with children will not be allowed.** Testimony by a child shall not be permitted remotely in order to limit the potential for trauma to a child already experiencing a pandemic and an ongoing custody dispute between their parents or guardians. No child should be called as a witness during the hearing. If this is a concern, the parties should not request a remote hearing or file an Objection on the approved form DUR-DOM-37 (Objection to Remote Court Hearing &/or Motion to Continue).

- g. Minor children (especially who are the subject of the hearing, but any children) shall not observe or listen to the hearing. Parties and witnesses shall not share the invite link with children and shall not have a child in the room (other than an infant) while testimony is ongoing. If it is necessary to take short breaks for parties to address the needs of minor children given that they are not in school, said breaks will be provided and should be allotted for in any request for a remote hearing with an additional time request made to the Court well in advance of the hearing date being set.
- h. If an interpreter is needed, please notify the FCCC at the time of scheduling. Advance coordination with Maria Stafford is required.