



WASHINGTON
COURTS

Resuming Dependency Fact Finding and Termination of Parental Rights Trials in Washington State

Guidelines for Operations during the COVID-19 Pandemic

June 2020

Table of Contents

INTRODUCTION.....	4
MODEL GUIDELINES AND BEST PRACTICES.....	6
DEPENDENCY FACT FINDING AND TERMINATION OF PARENTAL RIGHTS TRIALS	6
PROTOCOLS/TRAINING	8
PRE-TRIAL PROCESS	8
EXHIBITS	9
WITNESSES	9
PARENT/CHILD PARTICIPATION	10
ATTORNEY-CLIENT CONSULTATION DURING TRIAL	10
OPEN COURTROOMS	11
TECHNICAL ISSUES	12
RESOURCES	12
EXAMPLES	13
ATTACHMENT 1 – ORDER FOR REMOTE FACT FINDING HEARING – YAKIMA	14

RESUMPTION OF DEPENDENCY FACT FINDING & TERMINATION OF PARENTAL RIGHTS TRIALS WORKGROUP

Chief Justice Debra Stephens requested that Justice Barbara Madsen, Co-Chair of the Commission on Children in Foster Care, form a workgroup to develop model guidelines and best practices for resuming dependency fact finding and termination of parental rights trials. The following individuals were appointed to the Dependency Fact Finding & Termination of Parental Rights Trials Workgroup (Workgroup).

Justice Barbara A. Madsen
Washington State Supreme Court

Judge Elizabeth Berns
King County Superior Court

Judge Kitty-Ann van Doorninck
Pierce County Superior Court

Commissioner Shane Silverthorn
Yakima County Superior Court

Carissa Greenberg
Attorney General's Office

Jana Heyd
Office of Public Defense

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The Workgroup was supported by staff from the Washington State Administrative Office of the Courts.

Cindy Bricker
Court Improvement Program Director

INTRODUCTION

On March 20, 2020, the Washington State Supreme Court suspended all civil and criminal jury trials as a result of the novel coronavirus (COVID-19) pandemic. COVID-19 can lead to severe illness and even death, especially in those individuals over the age of 65 and those with certain underlying health conditions.

On April 30, 2020, the Washington State Supreme Court issued Order 25700-B-622 regarding Dependency and Termination Cases. Paragraphs 9 and 10 provided:

9. Exceptional reasons pursuant to RCW 13.34.070(1) exist to continue all dependency fact-finding hearings that are set between now and a reasonable time after courthouse-based operations resume, unless an agreed order of dependency is entered, or such hearings can be held by video, equally accessible to all parties, or in person provided that social distancing and other public health measures are strictly observed.

10. For hearings set between now and a reasonable time after courthouse-based operations resume, juvenile courts may find that the COVID-19 pandemic is a basis to find a good cause exception under RCW 13.34.145(5)(a) not to order the Department of Children, Youth, and Families to file a petition to terminate parental rights.

On May 29, 2020, the Washington State Supreme Court issued the Amended Third Revised Order 25700-B-626 determining court operations are essential, as recognized by the Governor's proclamations. The Court recognized the authority of all courts to conduct essential court operations including trials and hearings. In all court operations, courts should follow the most protective public health guidance applicable in their jurisdiction, and should continue using remote proceedings for public health and safety whenever appropriate. Courts are encouraged to move toward conducting as much court business as can be done consistent with public health and safety. The judicial branch's leadership is essential to maintaining court functions, protecting the health and wellness of court visitors, and navigating this unprecedented time.

On June 23, 2020, the federal Children's Bureau sent a letter to State and Tribal Child Welfare Leaders strongly urging agencies to carefully consider whether it is appropriate to terminate a parent's rights pursuant to the 15 out of 22 months requirement. Associate Commissioner Jerry Milner stated:

Additional consideration is particularly important when a parent's access to services that are necessary to work toward reunification (such as drug rehabilitation or ability to have parent-child family time) have been compromised as a result of the pandemic. Other challenges (such as illness, shelter in place requirements, lack of transportation, lack of suitable locations for family time, etc.) might further impede a parent's ability to progress, rendering it virtually impossible for a parent to have an opportunity to achieve goals related to reunification requirements. It similarly becomes far more challenging for an agency to assess accurately whether a parent continues to make appropriate progress toward reunification. A decision to file a TPR petition should be made in light of the impediments that a parent might face as a result of the pandemic. An agency should evaluate carefully whether parents have had a meaningful opportunity to demonstrate

that they have made the necessary efforts to reunify with their children before taking that step.

As such, I urge agencies to continue to consider the totality of each family's circumstances prior to filing a TPR petition. During the pandemic and its aftermath, agencies also may want to consider instituting protocols that provide an extra layer of review prior to filing a TPR petition.

How the Guidelines Were Developed

The guidance contained within this document was developed with input from stakeholders and with review of protocols individual courts had put in place and draft protocols that were being considered. The Workgroup convened on June 10, 2020, with the charge of creating guidelines for juvenile courts as dependency fact finding and termination of parental rights trials resume during the COVID-19 pandemic. The Workgroup considered the importance of timely permanency for children and families, due process rights for parents, current public health and safety recommendations, active executive and Supreme Court orders, and the diversity of resources available to meet the needs of dependency courts across the state.

How to Use the Guidelines

This guidance document provides guidance that address the following issues:

- When to move forward with virtual or in-person trials regarding Termination of Parental Rights
- How to conduct a virtual dependency Fact Finding Trial
- Developing protocols and training for virtual and in-person hearings to include:
 - Pre-trial process
 - Parent/child participation
 - Attorney-client consultation during trial
 - Exhibits
 - Witnesses
 - Open courtrooms
 - Technical issues

The guidelines also contemplate ongoing coordination among stakeholders impacted by the resumption of dependency trials, including but not limited to, judicial officers, courthouse staff, agency attorneys, parent attorneys, child attorneys, court appointed special advocates, child advocates, social workers, parent allies, tribes, etc. Courts should also maintain open communication with their local health departments and consider sharing their plans and trainings to resume in-person dependency trials.

The Washington State Supreme Court and Administrative Office of the Courts (AOC) continue to monitor the public health situation and follow recommendations from the Centers for Disease Control and Prevention and the Washington State Department of Health. Courts can anticipate additional support and guidance from the Court Recovery Task Force, a newly launched effort of the Board for Judicial Administration.

MODEL GUIDELINES AND BEST PRACTICES

DEPENDENCY FACT FINDING AND TERMINATION OF PARENTAL RIGHTS TRIALS

“The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.” RCW 13.34.020.

Recommendation: Dependency fact finding trials should proceed, with participation by a method or combination of methods that affords due process, as determined by application of the *Mathews v. Eldridge* balancing test. The decision whether to move forward with or continue a termination of parental rights (TPR) trial, and the method of participation if the trial proceeds, should be made on a case-by-case basis also determined by application of the *Mathews v. Eldridge* balancing test. 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). This test weighs three factors: (1) the private interests affected, (2) the risk of erroneous deprivation created by the procedures used and the probable value of additional safeguards, and (3) the government's interests. The best practice is for the court to weigh these factors on the record, after hearing from all the parties. This allows flexibility for each jurisdiction to take into consideration its unique factors that must be considered in determining its ability to provide access to justice in a safe manner.

The court must make reasonable accommodation for attorneys, parties, and other participants who, due to documented disability or high risk of infection, are determined unable to safely appear at the proceeding in person without compounding said risk, despite the precautions that court and court personnel may have taken. Reasonable accommodation shall include the ability to participate in the hearing virtually.

Recommendation for Fact Finding Trials

Parents have a right to a fact finding hearing no later than 75 days after the petition is filed, unless exceptional reasons for a continuance are found (RCW 13.34.070). Most fact finding trials will likely be able to proceed by video or a combination of video and in person appearances. Telephonic hearings are not appropriate for dependency and termination fact finding trials. For an incarcerated parent, if appearance by telephone is the only available means of communication, then a telephone appearance should be allowed.

Recommendation for TPR Trials

The preference is for in-person termination trials when the court has the ability to conduct them safely. If, after weighing the *Mathews* factors, it is determined that due process requires the TPR trial to be conducted in person, and the court cannot do so safely, a continuance of the TPR trial should be considered.

Considerations:

- Parents have a fundamental liberty interest in the care and custody of their child. “Few consequences of judicial action are so grave as the severance of natural family ties.” *Santosky v. Kramer*, 455 U.S. 745, 787, 102 S. Ct. 1388, 1412, 71 L. Ed. 2d 599 (1982).
- The ability of the court to conduct the trial in accordance with local, state, and federal recommended health guidelines.
- The complexity of the case, the court’s technology, the parties’ access to technology, the number of witnesses, the type of evidence, the nature of the contested issues, the court’s ability to safely provide access to justice, and the federal and state timelines for providing permanency for the child are relevant considerations.
- The ability of the court to conduct the trial in accordance with local, state, and federal recommended health guidelines; the Governor’s proclamations; and Supreme Court Orders.
- The infringement upon parents’ fundamental liberty interest in the care and custody of their child is less severe in a dependency fact finding trial than in a termination of parental rights trial.
- Protocols for entering exhibits and witness testimony need to be established and provided to the attorneys for the parties a reasonable time before trial. An example of protocols are provided in Attachment 1.
- Courts may find the following possible example questions helpful when conducting the *Mathews* balancing test:
 1. Are there health risks posed by conducting the trial in-person that cannot be reasonably mitigated?
 2. Is there an incarcerated parent who wishes to participate in a termination trial? Can he or she appear remotely by video or by telephone during the trial? Is there an ability for the incarcerated parent to confer with counsel privately?
 3. What is the likelihood any parent, guardian, or custodian will appear at trial and wish to contest and engage in the trial?
 4. What is the estimated length of the trial?
 5. How many witnesses need to testify? Are the parents calling witnesses or just the department?
 6. Will all the parties, attorneys, and witnesses be able to appear for a remote trial with a stable internet connection and reliable devices to connect to the trial?
 7. Does your remote platform allow for breakout rooms or some other mechanism for private attorney-client communication?
 8. Are there any interpreters needed, and can your platform allow for simultaneous translation and consecutive translation depending on the needs of the Court, attorneys and parties?
 9. If this is an ICWA case, does the Tribe support holding a remote trial?
 10. Is it in the best interest of the child to go forward due to the child’s legal or stated interest in permanency?

Examples are available in the Resource Section of this document.

PROTOCOLS/TRAINING

Recommendation: A Superior Court should promulgate rules and procedures governing video trials a reasonable time before commencing the trial by video and provide assistant attorneys general, defense attorneys, and other impacted parties the opportunity to provide suggestions and revisions. It is recommended that the court receive input from stakeholder groups before finalizing rules and procedures. As conditions change, which may require amendments of rules and procedures, the court should continue to seek advice from stakeholder groups.

Considerations:

- A reasonable time before holding a trial by video, a Superior Court should provide the parties access to the technology the court intends to use, training on the technology, and an opportunity to practice using it. Attorneys should be provided the opportunity to learn new skills for trial practice before taking on the important role of representing their client.
- Consider holding a mock trial.
- Trial etiquette, including naming conventions/identification through the video platform, use of the chat function, etc., should be addressed.

A link to sample instructions for professionals and parties to participate in dependency hearings is provided in the Resources Section.

PRE-TRIAL PROCESS

Recommendation: Assignment to a trial judge should occur a reasonable time before trial. If pre-assignment to a trial judge is not feasible, the court should consider holding a status conference or pre-trial hearing to address pre-trial issues relating to technology as well as other pre-trial matters.

Considerations:

- Consider using a case scheduling order or a pre-trial order that sets forth dates for the exchange of witness and exhibit lists, and instructions for how to provide exhibits to the court before trial.
- If the trial includes any in-person participation, as a pre-trial matter, the court should outline the safety and health protocols it has in place for complying with local, state, and federal health guidelines, such as social distancing, masks, sanitization, etc. The court should consider any individual's request to appear remotely if the individual is concerned about appearing in person. In addition, the court must make reasonable accommodation for attorneys, parties, and other participants who, due to documented disability or high risk of infection, are determined unable to safely appear at the proceeding in person without compounding said risk, despite the precautions that court and court personnel may have taken. Reasonable accommodation shall include the ability to participate in the hearing virtually.
- See Technology section for other items to consider.

EXHIBITS

Recommendation: Procedures should be developed to allow for the marking, publishing, offering, and admitting of exhibits remotely.

Considerations:

- Protocols and rules ensure that there is a process for witnesses to be able to see exhibits, while protecting privacy, HIPAA, etc.
- There should be a process to request the admission of documents that were not anticipated pre-trial, due to unforeseen testimony or other events that occur during the trial.

WITNESSES

Recommendation: Protocols should be in place with regard to the scheduling of witness testimony and objections to testimony.

Considerations:

- Consider getting phone numbers or email addresses of witnesses in order to communicate with witnesses who are waiting to testify. This may be useful in situations where, for example, a witness's testimony is no longer needed or the time for them to testify changes, so that the witness is not left in the virtual waiting room unnecessarily.
- Protocols should:
 - Ensure that a witness is located in a private space and where he/she cannot be influenced or prompted on what he/she is testifying about. Consider developing a script for all witnesses that asks the witness to affirm that they:
 - Are alone;
 - Not relying on extrinsic information (documents, notes, etc.) while testifying (to affirm that they have put away any documents), unless they have received permission by the court or it is otherwise allowed by the rules of evidence;
 - Not recording the proceeding on their device;
 - Have not watched other witnesses testify in this case;
 - Will alert the court if they are unable to hear questions; and
 - Will stop speaking once they hear the word, "objection."
 - Address non-party witnesses viewing the hearing before their testimony and witnesses' access to exhibits as needed during trial.
 - Address informing witnesses that they should be dressed and seated appropriately for someone appearing in court.

PARENT/CHILD PARTICIPATION

Recommendation: Permit a parent to elect to appear in person, or remotely, in accordance with local, state, and federal health guidelines and ensure that parents and children who appear remotely have meaningful access to technology, including devices to access remote proceedings.

Considerations:

- Ensure that the children have access to electronic devices.
- A parent should be allowed to attend a trial in person, if the parent so prefers or if the parent has no ability to connect remotely to the trial (for lack of a device, lack of internet connection or lack of a safe and quiet space to participate). Consider setting up a separate courtroom or room in the law library, etc., for a parent to connect to the trial, if the parent is not in the courtroom or participating remotely. Also, consider having equipment such as a laptop or tablet for a parent to use during the trial if a remote appearance is preferred, but the parent has no device.
- CR 43(a)(1) addresses testimony in open court by contemporaneous transmission from a different location.

ATTORNEY-CLIENT CONSULTATION DURING TRIAL

Recommendation: Attorney-Client consultations must be allowed to occur during the course of the trial. Rules and protocols must be in place so that parties can privately and timely consult with their attorney. There should be no ability to listen in or record these private consultations.

Considerations:

- Attorneys should be granted liberal recess opportunities to speak with their client.
- The use of video “break-out” rooms is a means to ensure the ability of attorney client confidential conversations. At minimum:
 - It should be clearly established that these rooms are not recorded, and
 - The court should periodically, affirmatively offer the opportunity for a private conversation, in light of the fact that an attorney can no longer lean over to check with the client.
- In situations where an attorney and client need to consult contemporaneously, a possible solution is for the client and attorney to have two devices so they can communicate by phone or video call during the proceedings.

OPEN COURTROOMS

Recommendation: “Justice in all cases shall be administered openly, and without unnecessary delay.” Wash. Const. Art. 1, Sec. 10. Each court must decide how it will satisfy this constitutional requirement for open courts, while striving to protect the privacy of children and families as permitted by law. See *Seattle Times v. Ishikawa*, 97 Wn. 2d 30 (1982). A possible approach is to provide information on the court’s website for interested parties to access the hearing, and provide an open courtroom with a monitor for those who appear in person to see and hear the participants appearing virtually.

Recording of Proceedings

RCW 13.34.115(5) states, “Any video recording of the proceedings may be released pursuant to RCW 13.50.100, however, the video recording may not be televised, broadcast, or further disseminated to the public.” Courts should consider the statutory intent regarding televising or broadcasting dependency and termination hearings. The subject matter of these proceedings is often sensitive and intensely personal.

Considerations:

- Review Paragraph 20 of the [Supreme Court Amended Third Revised and Extended Order Regarding Court Operations](#) issued May 29, 2020.
- The court should consider whether the physical courtroom is unlocked and accessible to the public.
- Both children and parents are very protective of their privacy, which is relevant to the court’s decision whether or not to live stream.
- Consider developing a protocol for exhibits that does not use screen share because dependency trials often address issues of domestic violence, children’s private medical information, and other sensitive issues.
- The courtroom must offer open access to video that allows the litigants to be made aware of who is watching on video, just as they would see a person walk into the courtroom, and must prevent those watching on video from recording the proceeding, just as the court would prevent a recording of a trial in open court. The court should provide video access that would permit the litigants to see who is watching on video. This would also help the court and parties make sure witnesses are not observing portions of trial before their testimony. In the alternative, the judicial officer can remain on the bench in the courtroom and leave the court open and the public can observe the trial by being physically present in the courtroom, so long as remote participants are aware of who is in the courtroom.

TECHNICAL ISSUES

Considerations:

- There should be a protocol in place if a party or witness is disconnected from the trial or is having technical issues, so that the technology interruptions can be quickly addressed and the record can be corrected.
- Video platforms often include a “chat” function. Consider whether this function may confuse the trial record and should be disabled. If “chat” is allowed, it must be preserved for the court record.
- Monitoring the technology is its own role. When the person running the technology is also actively participating in the proceeding, it is easy to accidentally leave a person in a “waiting room,” or fail to notice that someone’s connection has been disrupted. Court personnel should be trained to use this technology, and there should be a person, whether it is the clerk, bailiff, or someone else, who is only responsible for monitoring the technology. That person should also be available by phone if the technology has failed and should be empowered to interrupt the hearing to make a record of when someone has “left” the hearing.
- Procedures should require that the inability of a party to hear any other party is the basis for a continuance of the trial until the technology is again equally accessible. The failure of technology, including uneven internet access, can be frustrating for all involved; however, the ability to equally participate in trial is an aspect of due process and equal access to the courts.

RESOURCES

- [Letter from Children’s Bureau to State and Tribal Child Welfare Leaders regarding Termination of Parental Rights and Adoption Assistance](#) - June 23, 2020
- [Resuming Jury Trials in Washington State](#) – June 18, 2020
 - Open Court Issues to Consider in Any Venue
 - Procedures/PPE Based on Public Health Professional Recommendation
 - Protecting Health and Safety in the Courtroom
- [COVID-19 and Washington State Courts: Public Health Risk Reduction Recommendations from the Department of Health](#) – June 18, 2020
- [Court Interpreting Information and Resources during COVID-19](#)
 - **Guidance from the Court Interpreter Commission**
[Updated Guidance Memorandum](#) (dated 4/27/2020)
[Court Interpreter Forum \(COVID-19\)](#)
 - **Remote Interpreting**
[Remote Interpreting Best Practices](#)
[Telephone Interpreting - Best Practices](#)
[Zoom: Accessibility for Deaf and Hard-of-Hearing](#)
 - **Translation Resources**
[Translation Resources and Helpful Links](#)

- [Spokane Zoom Virtual Hearing Instructions](#)
 - Judicial Officers – provide detailed instructions with screen shots regarding share screen, breakout rooms, removing participants, file share, muting, sample hearing script and considerations
 - Courtroom Professionals
 - How to Attend Your Dependency Virtual Hearing

EXAMPLES

Potential Hybrid model of an in-person hearing:

- The parents and their attorneys, the AAG and social worker, and potentially the GAL can all appear in open court with proper social distancing. The witnesses appear remotely, via virtual technology. The attorneys can also sign into the hearing so that they can see the witnesses and others on the virtual platform, muting their speakers and microphones to reduce feedback. A large television monitor mounted on the courtroom wall can display all the parties including the testifying witnesses. In this way, the parents get the benefit of an in-person trial and the number of people is small enough to have proper social distancing and protect the parties, attorneys, the court and family and friends.

Hypothetical Example of decision to move forward with TPR trial:

- Mother previously relinquished and has an open adoption agreement with the prospective adoptive parents. Father was served with the petition for termination of parental rights and appeared at the first set hearing. He was appointed counsel and subsequently lost contact with his social worker and appointed attorney. In the underlying dependency he would appear from time to time and promise to engage in services but did not. He would occasionally visit his son and then disappear again for long periods of time. The child is in a stable and permanent home and is thriving.

Consider proceeding to trial. The child has a right to permanency, has the benefit of an open adoption agreement with the mother, and the father appears to be unable to address his parental deficiencies and is unlikely to resolve them in a timely fashion.

ATTACHMENT 1 – ORDER FOR REMOTE FACT FINDING HEARING – YAKIMA

Superior Court of Washington, County of Yakima, Juvenile Court

Dependency of:

No.

Order for Remote Fact-Finding Trial

Due to the current global coronavirus pandemic, the dramatic rise in cases of COVID 19 in our county and in consideration of our State Supreme Court's orders and our Governor's proclamations, this court finds that the fact-finding trial in the above captioned matter must be held remotely to ensure the safety of the parties, attorneys, witnesses, the court and the public. This court has considered the Mathews v. Eldridge factors and has applied them to ensure procedural due process for the parties. Because this will be a remote trial, the following additional rules will apply, in both the Juvenile Division and downtown Superior Court:

- 1) The parties are required to exchange exhibits and witness lists in accordance with the Court's status conference orders, including the time for filing and exchanging witness and exhibit lists. The exhibits themselves shall be delivered to each party by the time of the filing of the witness and exhibit lists, if they have not been previously disclosed during the discovery process.
- 2) The parties are required to meet, either remotely or in person with proper social distancing prior to the Fact-Finding Trial. At this meeting, the parties shall:
 - a. Determine which documents each party intends to offer at the Fact-Finding Trial. The parties are encouraged to offer only those documents necessary to prove or defend the claims at issue in the dependency.
 - b. Review the exhibits to ensure that there are no duplicates.
 - c. If each party is offering a portion of the same document, the parties should combine the portions into one exhibit, where feasible.
 - d. Create a master set of exhibits which includes all of the exhibits for all parties.
 - e. Consecutively number the exhibits.
 - f. Deliver to the Court one copy of all exhibits. This will be the master set of exhibits and will be treated as the original. Each party is responsible for

delivering his or her exhibits to the court. The petitioner shall create and deliver the coversheet listing the exhibits in consecutive order.

- g. Make copies of the master set of exhibits for all attorneys and parties. Witnesses must be provided a copy of all exhibits they might reasonably need to refer to during examination. Each party is responsible for the copying costs for that party, the party's attorney(s), and the party's witnesses and for providing copies of exhibits to their own witnesses. The exhibits provided to witnesses must be identical to the master set of exhibits and may not contain any notes, highlighting, post-its, or any other changes or additions from the master notebook. This does not preclude a party from offering an illustrative exhibit that emphasizes or highlights a portion of an already existing exhibit. Any such exhibits should be provided with the master exhibits and be numbered with a ".a" or ".b" that corresponds to the original exhibit such as Exhibit 4.a or Exhibit 8.b.
- 3) The Court's exhibits must be provided to the Court by noon one court day prior to trial.
- 4) Any party or attorney intending to make motions in limine shall do so in writing. Motions in limine shall be filed and served on all other parties by noon one court day prior to trial. The moving party shall also send a bench copy.
- 5) All parties are to appear by Zoom with audio and video. The daily court calendar with Zoom link can be found at <http://www.yakimaco.us/calendars/daily.pdf>. A party, witness, or attorney may appear by telephone only if he or she does not have the proper equipment or internet speed to appear on Zoom with audio and video. If a party is appearing by telephone only, his or her name and the phone number they are using shall be given to the court so that they may be renamed in the Zoom trial. A free download of the Zoom App may be found at <https://zoom.us/download>.
- 6) Anyone wishing to view the trial may enter the trial through the Zoom link on the daily calendar. However, only parties to the case, their attorneys, guardian ad litem, child advocates, and witness may speak or participate in the trial, unless the Court directs otherwise during the trial. ALL other persons attending the trial shall turn off their video feed and mute their microphone. Anyone who behaves in a manner that is disruptive to the trial will be removed.
- 7) The parties will refer to and use the exhibits as numbered in the master exhibit list. Moving for admission of agreed or stipulated exhibits at the beginning of trial is encouraged.
- 8) Because the Court, attorneys, parties and witnesses will have their own copies of the exhibits, the use of "screen sharing" in Zoom is largely unnecessary and will only be allowed with permission of the Court.
- 9) The Court is invoking ER 615. No attorney, party, or witness may communicate with another witness about any previous testimony in the case until after that witness has testified. Witnesses who are online in the Zoom trial will be placed in a waiting room until it is their turn to testify.
- 10) After a witness has testified and been excused by the Court, he or she may remain in the remote trial, but shall turn off their video feed and microphone..
- 11) During witness testimony the witness may not read or use notes, documents, text messages, instant messages or emails that have not been previously distributed to all the parties during the discovery process. Witnesses may not speak to or receive input or coaching from any other person during their testimony. This applies until the witness has

completed testifying and been excused by the court. Professional witnesses such as social workers, service providers and expert witnesses must have the ability to access their complete file for the case while they are testifying. This is to allow parties to refresh the witness's recollection and for purposes of cross examination. Social Worker case notes are an example of file material that is routinely referred to in trial during cross-examination. Access to the witness's file will guard against unnecessary delay. A professional witness may prepare notes for his or her testimony, but an exact copy of those notes shall be delivered to all other parties no later than 12:00 pm one court day prior to trial.

12) Zoom trial etiquette

- a. Either use an appropriate virtual background or be situated in a location with an appropriate background. Please avoid backgrounds/virtual backgrounds that are distracting. Also avoid backlighting, such as sitting with your back to a window.
- b. Please try to be in a place that is quiet and without distractions.
- c. If you are in an environment that has background noise you should use a headset or earbuds or mute your microphone when you are not speaking. Attorneys who use a headset or earbuds are more easily heard by the court and they may not need to mute themselves so that they can object as needed. If you are attending only via the telephone number you must press *6 to take yourself off of mute. Once you have done this you may feel free to use the mute function on your device.
- d. Please dress and act in a way that is appropriate for court proceedings; do not eat, smoke, chew gum or drink anything you would not be allowed to drink in court.
- e. Try to speak clearly, and at a slightly slower pace than you would normally speak. Consider the use of a headset or earbuds if noise or hearing is a concern;
- f. If more than one device (computer, phone or tablet) is used in the same room, feedback can be a problem. Frequently this can be fixed by having the microphone and speaker of only one device active at a time. Headsets or earbuds may also solve this problem.
- g. Please identify yourself in Zoom with your actual name rather than a "virtual" name. You may add your role to your name if you wish. Click on "participants" and then, in the column on the far right, find your name and click on "more" and "rename."
- h. Witnesses under the age of 18 may use their initials if they wish. If there are special concerns about a youthful witness's testifying through Zoom his or her attorney, GAL or child advocate is encouraged to raise that issue at the triage hearing or at an earlier status conference hearing.
- i. Attorneys, parties and witnesses with video capability shall have the video on, unless you have permission of the Court to proceed without video.

If an attorney needs to speak privately with a client, inform the Court and the Court will create a breakout room to allow private communications. Note that the timing of when a breakout room can be used, and for how long, is at the discretion of the Court. It is So Ordered.

Date

Judge/Commissioner