

**PROTOCOL FOR
EVIDENTIARY HEARINGS AND NON-JURY TRIALS
CONDUCTED BY VIDEO AND TELEPHONE**

Division 39

Judge Vincent Falcone

General Considerations:

- 1- Where will the witnesses be when they are remotely testifying?
- 2- Will there be a notary present to swear them in as the witness? See AOSC 20-16. The witness must be placed under oath prior to testifying.
- 3- Will the rule of sequestration be invoked and, if so, how will that be accomplished?
- 4- The Court will be using *Zoom* as the platform. You will be advised by the judicial assistant as to which platform will be used and how to access at the time the hearing is confirmed.
- 5- If you need assistance, contact the Judicial Assistant at 39orange@ninthcircuit.org

At least a week prior to the hearing:

- 1- Arrange for all witnesses who will appear telephonically or by video to have the appropriate Court contact information and equipment (computer with camera and platform) to attend the hearing. Remember witnesses are not allowed in the courthouse at this time. Witnesses should be afforded the opportunity for social distancing while testifying.
- 2- Coordinate when the witnesses' testimony will be given, and have a contact telephone number in case of a problem.
- 3- Remind the witness that they will need:
 - a. To have a driver's license or photo identification to be sworn.
 - b. If by video, they will need to eliminate any outside noise in the room.
 - c. The witness should be alone at in the room from which they are giving testimony.
 - d. That witness will need to terminate the call or video, and sign off when their testimony is concluded when directed to do so by the judge.
 - e. That they should not "talk over," or speak at the same time, as someone else.

Five days before the hearing:

- 1- Make certain all exhibits that have been listed and will be used at trial are Bates-stamped on each page.
- 2- Provide a copy of the exhibit, with the Bates-stamp on it, to opposing counsel, *pro se* litigants and **the Court**. The copy with the Court, if admitted, will become the actual exhibit.
- 3- Objections and agreements to exhibits should be discussed prior to the start of the trial/hearing. Any objections to the exhibits must be submitted to the Court prior to the day of the hearing.
- 4- Provide an updated witness list of only those witnesses that will actually be called to testify at the hearing, to opposing counsel, *pro se* litigants and **the Court**.
- 5- Make certain the Court has an accurate estimate of the length of time needed for the hearing.

At the hearing:

- 1- Log on or call in early to confirm that a connection can be made. You may be placed in a virtual waiting room.
- 2- Check your video or audio equipment and that your platform is compatible with the Court's.
- 3- Check as to what is in the background of the video field as it will be visible to all watching.
- 4- Make sure the court reporter has been ordered and is set up and ready to go. Many Court reporters like to be able to see the witness as well as hear them.
- 5- Make sure you have a copy of your Bates-stamped exhibits ready for use with each witness, and the witness has a Bates-stamped copy with them at their location.
- 6- Have witnesses "lined up" and ready to proceed.
- 7- Make sure a phone is available if somebody loses connection and you need to contact them.
- 8- Microphones should be muted, and only turned on, when speaking.

VF – 1/5/2021