

ADMINISTRATIVE MEMORANDUM ON EVIDENTIARY HEARINGS DURING THE PANDEMIC

The Eleventh Judicial Circuit and the Circuit Civil Division and our staff and partners have worked tirelessly to resume all hearings electronically utilizing the Zoom platform. In addition to allowing such remote testimony and swearing in of witnesses as described in Supreme Court and Eleventh Judicial Circuit Administrative orders, as amended, it is necessary that courts and the parties have clear guidance as to how such evidence is presented to the court, the clerk and the parties.

This memorandum shall set forth procedures for introduction and use of documentary evidence through remote means in Circuit Court civil evidentiary hearings (including non-jury trials):

1. This procedure applies only to the electronic use and entry of documentary, photographic, audiovisual and other evidence reasonably able to be provided and shared electronically; and
2. This procedure does not apply to physical evidence not stipulated or agreed by the parties (parties should seek guidance before the hearing from the Court, if applicable); and
3. All Counsel or self-represented parties must meet and confer prior to an evidentiary hearing during which they should endeavor to stipulate to as much as practicable regarding authenticity and admissibility; and
4. At least five business days before an evidentiary hearing conducted by remote means, counsel shall file and serve as separate docket entries all evidence sought to be introduced. All exhibits should be pre-marked for identification. In addition, counsel shall file an index listing all proposed exhibits. Where an exhibit is stipulated to be admitted, counsel shall so indicate in the manner the exhibit is marked both on the exhibit and on the index; and
5. Nothing in this procedure limits the trial court's ability to designate supplemental procedures (for example, requiring copies to the Court in advance of the hearing); and
6. Similarly, nothing in this procedure limits the trial court's discretion to admit, admit for a limited purpose, or deny entry or use of such evidence, or fashion whatever relief is appropriate under the circumstances, based on lack of compliance with these procedures; and
7. After the hearing, counsel must work promptly to prepare a corrected index of exhibits which have been introduced in evidence marked in the manner designated by the Court or the Clerk at the hearing (unless the Clerk prepared an index during the hearing); and
8. To the extent exhibits were not filed before the hearing and were considered by the Court, counsel shall file such exhibits forthwith; and
9. In settings where the Court must review a document, but it is not being admitted as evidence (for example, showing a driver's license to verify identity) the party need not file the document in advance but may present the document to the camera for the Court's review during the hearing; and
10. If the parties comply in good faith with this procedure but technological issues prevent a meaningful review of the evidence through remote means, the Court may reset the matter.

IMPORTANT: TO ENSURE THAT DOCUMENTS WILL BE PROCESSED TIMELY, ALL PROPOSED EVIDENCE MUST BE UPLOADED AS EXPLAINED BELOW AT LEAST FIVE (5) DAYS BEFORE AN EVIDENTIARY HEARING OR TRIAL

e-Portal Process:

1. Filer must go to the eFiling Portal;
2. Click on “File Pleading in Existing Case;”
3. Enter Case Number;
4. Once Case populates, go to the documents tab;
5. Click on Add;
6. Once Search Bar appears, type Evidence and hit enter;
7. Check Off Evidence Submission;
8. Then hit Browse which allows you to select the respective document to be uploaded;
9. Click Save.

Prior to Hearing:

10. The Clerk’s Office will process all proposed Evidence Filed via the ePortal which will then be processed through EDP. Once processed, the proposed evidence will appear individually on the docket viewable via Odyssey and on the On-Line Case Search.

Process During Remote Evidentiary Hearing (Zoom):

11. Clerk will enter the Case Number in the EDP system which will populate all evidence submitted for the hearing;
12. During the hearing, the parties will identify the piece of evidence being introduced. The Clerk will then bring up the proposed evidence. The Judge and Parties will discuss admissibility of the proposed evidence and the Judge will make his or her ruling;
13. Once ruled upon, the Clerk will mark the same for identification;
14. If the document is admitted as evidence, the Clerk will affix the stamp on the evidence with the appropriate number or letter which signifies that it was admitted and then it is automatically accepted into Odyssey. If it is not admitted into evidence, no further stamp will be affixed (so only the identifying number will be on it) and it will be accepted into Odyssey. This ensures a complete record of all documents submitted to the Clerk of Courts.
15. The Clerk will also prepare an Exhibit List that corresponds to the evidence that has been admitted by the Judge and then docket the same in Odyssey.

Each Proposed Evidence must be submitted individually via the ePortal and no other pleadings should be filed via this process. For example, Exhibit A on its own, Exhibit B on its own, etc. up until e-Filing Portal size limit.