

FENSTERMACHER V. 3M RG19036847
VIRTUAL JURY TRIAL TECHNOLOGY PROCEDURES

I. PRE-TRIAL AND TRIAL ARRANGEMENTS.

- A. Remote Platform.** The Court will designate the remote platform to be used for the conduct of the trial.
- B. Court Management of Platform.** The Court will manage and control the proceedings, including being designated the “Host” of the video conference, and will exercise control over the various technological settings.
- C. Preparing to Meet Technological Requirements and Adequate Equipment.** Parties and their counsel appearing remotely shall use best efforts to ensure that there will be clear video and audio transmission during the trial, including adequate familiarity with the designated platform and related software and hardware, *e.g.*, microphones, webcams, headphones, multiple monitors, *etc.* All participants appearing remotely must provide the trial department with an email address.

The Parties are responsible for ensuring that each attorney, party, witness, and the court reporter appearing remotely is familiar with the designated platform and has the equipment to participate in the remote proceeding without undue delays, including the following: speakers, microphone, webcam, laptop, or monitor. Counsel may wish to ensure that each witness is able to participate in the videoconference with one device (or screen) and review exhibits on another.

The Court shall ensure that each juror appearing remotely is familiar with the designated platform and has the following equipment to participate in the remote proceeding without undue delays: speakers, microphone, webcam, laptop, or monitor.

In addition, to facilitate successful remote video proceedings, parties and counsel should do the following before the proceeding begins:

- Ensure that their device has a functioning camera, as strong an Internet connection as possible, and an adequate source of power as videoconferences quickly drain batteries.
- Sit close to the Wi-Fi router or connect via Ethernet cable.
- Attempt to limit other office or household streaming during the hearing.
- Where possible connect with computer audio rather than speakerphone to reduce the likelihood of feedback.

During the proceeding, parties and counsel should:

- Mute the microphone when not speaking.

- Be positioned directly in front of the camera and use appropriate lighting to insure visibility to other participants.
- Wait to speak until called on by the bench officer; do not interrupt.
- Speak slowly and clearly
- When participating via audio only, identify yourself each time you speak.
- Ensure that only participants recognized by the Court appear on the video feed.
- Prohibit prospective witnesses from being within hearing distance or visual range of the proceedings.
- In confidential proceedings, ensure that no one except parties and their counsel are within hearing distance or visual range.
- Maintain the same decorum as would be expected in a courtroom.
- Dress appropriately.

D. Camera/Remote Venue Set Up. The faces of each participant in the trial must be clearly visible while speaking. No masks shall be worn for any participant in the trial appearing remotely. To the extent possible, each participant’s webcam should be positioned at face level relatively close to the participant. The use of virtual backgrounds is not permitted.

E. Multiple Participants in the Same Room. If some participants appearing remotely expect to be in the same room, this should be raised at the pretrial conference so that any related concerns may be discussed and addressed, and appropriate directions may be given regarding the positioning of cameras on each participant and avoiding audio feedback from the use of multiple devices.

F. Party Identification. All participants shall use their full first and last name when signing on to the designated platform.

G. Scheduling. If participants are located in materially different time zones, the proceeding will be scheduled to be reasonably convenient for all, which may require a shorter than normal trial day.

H. Procedure for Sidebars. Sidebars shall be conducted in “breakout rooms.” The Court will be responsible for moving participants in and out of a breakout room. (See VI.C. below.)

II. MAINTAINING THE DECORUM OF THE COURT.

Participants appearing remotely must observe rules and procedures related to court appearances, including, without limitation, rules related to attire and the consumption of food or drink during

the proceedings. Participants shall eliminate all visual and auditory distractions if appearing remotely.

III. PROHIBITION ON RECORDING AND PUBLIC ACCESS

Unless authorized by the Court, recording of a court proceeding held by video or teleconference, including “screen-shots” or other visual or audio copying of a hearing, is prohibited. However, all trial proceedings will be live-streamed and available for listening by the public. The general public must not be provided with access codes provided to court participants.

IV. DEMONSTRATIVES

The Court may permit counsel to use the “share screen” function in the designated platform to display demonstratives. Counsel must meet and confer to exchange any visuals or exhibits to be used. Any disputes regarding the demonstratives sought to be used by a party shall be addressed with the Court. Counsel may not screen share any visual with the jury unless counsel has stipulated or until the court has ruled on any objection.

V. WITNESSES, EXHIBITS AND PRESENTATION OF TESTIMONY.

- A. Joining the Trial.** Witnesses must access the trial proceedings using the credentials provided by the Court at least 10 minutes before the scheduled start time for their examination. The witness will be directed to the virtual waiting room where he or she will remain until the Court is ready to admit the witness to the virtual courtroom. Nonparty witnesses are only permitted in the virtual courtroom while they are testifying; unless the court orders otherwise, a nonparty witness is not permitted to view or listen to the testimony of other witnesses prior to their testimony.
- B. Conduct During Testimony.** The attorney calling the witness is responsible for ensuring the witness has a separate video and audio feed. Attorneys should not attempt to “share” a connection with a witness. Witnesses may not have any notes or documents with them at the time of the remote appearance, other than the trial exhibits exchanged by the parties or notes or documents that have been shown to opposing counsel at least twenty-four (24) hours in advance of the witnesses’ testimony. Witnesses may not do any research, review any materials, or communicate with anyone else in any manner, including by text, cell-phone, chat, or other means when virtually “on the stand.”
- C. Exhibits.** The Parties shall meet and confer with the Court in advance of the trial to discuss a protocol for use of exhibits at trial. The Court suggests that:

c.1. Exhibits Generally Electronic and Paper: (a) Electronic copies of exhibits be exchanged in advance so that they are easily accessible to all parties; (b) Paper copies of any exhibit *admitted* in evidence be provided to the Court; and, (c) Witnesses have access to a copy of any exhibit to which he or she may refer.

c.2. Original Documents. If a true “original” document needs to be entered into evidence, the original should be submitted to the Court. Such a document should

be clearly identified as a true “original.” If the document is ultimately admitted into evidence, the court and court reporter can coordinate the inclusion of the true “original” into the record.

- C.3.Impeachment Exhibits.** If counsel wishes to use a document for impeachment purposes that was not previously disclosed as an exhibit, counsel must make available via email, the platform’s chat function or by other secure document depository, an electronic copy of the document to the Court, trial counsel, and the witness at the time counsel seeks to use the document with the witness.
- D. Objections.** The witness must stop speaking when either counsel objects. After the objection is made, the Court will be the first to speak and will instruct counsel how the Court wishes to proceed.
- E. Juror Questions.** If the trial judge permits jurors to submit questions to a witness on the stand, before the witness is excused the Court will request jurors submit their questions to the judge using the chat function or by email directly to the Court.. The Court will use a virtual breakout room to discuss the questions posed by the jurors and shall determine whether the question will be asked or, a modification of the question will be asked.

VI. OTHER TECHNOLOGICAL CONSIDERATIONS DURING THE HEARING.

- A. How to Join.** Each attorney, witness, party, and juror who plans to attend any portion of the trial will be a “case participant” and will receive login credentials from the Court. Case participant login information is not public and must not be shared with anyone other than counsel of record and the Court. Everyone who is not a “case participant” will be an “attendee” (*i.e.*, a member of the press or public). Attendees will be able to hear the court proceeding by live stream from the court’s website and will not be able to participate in it beyond observing. As stated in Section V.B. above, nonparty witnesses may not see or hear the court proceeding until they are called to testify.
- B. Chat Features.** The chat function allows participants to type text (comments) during the proceeding and also allows participants to send files to other participants. The Court will determine whether the use of the chat function will be allowed during trial after discussion with the Parties. If allowed, the Court will enable the chat function for case participants only and the following rules shall apply: (i) counsel may not initiate *ex parte* “chats” with the Court; (ii) counsel may not “chat” with a witness at any time while the witness is “on the stand” for any purpose unless authorized by the Court. Except juror questions submitted to the Court via the “chat” feature, messages relayed through the “chat” feature will not become a part of the Court record unless ordered by the Court. Documents transmitted through the chat feature, such as a document to be used for impeachment purposes, will be made part of the Court record but the text of the message transmitting them will not. If counsel transmits a document through the chat feature, counsel must so state on the record and must identify the document for the record and ensure that the court reporter has a copy of it.

- C. Break-out Rooms.** The Court may use virtual break-out rooms for “side bar” discussions with counsel during trial, to discuss proposed juror’s questions to witnesses, for witness waiting rooms, for hearings outside the presence of the jury, or for any other proceedings as needed. The Court will determine if discussions that take place in the break-out rooms are to be made part of the record.

- D. Addressing Technological Difficulties.** If a participant is disconnected from the videoconference or experiences some other technical failure, the participant shall use best efforts to promptly re-establish the connection and shall take no action which threatens the integrity of the proceeding (*e.g.*, communications with a third party related to anything other than resolving the technical issue). If the connection cannot be re-established within approximately five – ten minutes, the Court may take steps to “pause” the trial, which may include moving participants into the virtual waiting room or one or more separate break-out rooms, at which time counsel shall meet and confer in good faith to develop a joint proposal regarding how to proceed.

VII. JURY DELIBERATIONS (TO BE DETERMINED)

VIII. JURY DISCHARGE

Upon discharge of the jury, the Court shall provide instructions to remotely appearing jurors regarding notes jurors may have taken during the course of the trial. These instructions may include an instruction that juror notes taken during the trial shall be destroyed.