

27th Judicial District of Kansas

INSTRUCTIONS FOR ATTORNEYS SPECIAL VIDEO CONFERENCING PROCEDURES IN RESPONSE TO WORLDWIDE COVID-19 PANDEMIC

In response to the worldwide COVID-19 pandemic, the courts within the 27th Judicial District of Kansas are reducing the number of “in person” hearings. Many hearings will be held by video conference. To increase the effectiveness of these hearings, these procedures are in effect pending further notice. They may be modified and updated without advance notice. Individual courts and divisions may deviate from, amend, or dispense with these procedures. Attorneys and litigants should address questions to the relevant court.

PLEASE READ AND COMPLY WITH ALL PROCEDURES

Counsel, parties, and witnesses are expected to appear by video. Generally, **appearing by audio only is not acceptable** but may be allowed for first appearances and low-level hearings.

Zoom App

1. All video conferences will be conducted using the **Zoom video conferencing app**. The free app is available in the Apple or Android app stores or at <https://zoom.us/download>. Zoom downloads automatically when you join your first meeting. It works on desktops, laptops, tablets and smartphones with video and audio capability. When a participant joins a video conference initiated by the court, there is no cost to the participants.
2. When a video hearing is scheduled, you will receive an **invitation** in your email that includes instructions and a link to join the meeting. You must **accept the invitation**. Failure to accept may cause the hearing to be cancelled or continued. Upon acceptance, it will disappear from your inbox and an entry will appear on the calendar associated with that e-mail account. If you don't accept the invitation it will not automatically show up on your calendar. At the appropriate time, double-click the calendar entry and follow the directions and hyperlinks to enter the hearing.
3. To use Zoom, you must have a device that supports audio and video. **You need a camera, speakers, and a microphone**. While desktop computers may require added equipment, most laptops, tablets, and mobile phones include the necessary equipment standard. System Requirements are found at <https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux>.
4. Some participants find it useful to have **multiple devices** available such as a laptop for accessing documents and calendars and another smart phone, tablet, or other device for video.
5. **DO NOT WAIT UNTIL JUST BEFORE THE HEARING TO DOWNLOAD THE APP AND TO TEST YOUR EQUIPMENT**. A link is in the invitation to test your connection. You may need to adjust security and firewall settings and/or allow permissions/access to cameras, microphones, and speakers. Technical support is available at Zoom support: <https://support.zoom.us>. Spend a few minutes familiarizing yourself with the program before your first video conference.

6. **Break out** rooms are available for private conversations between attorneys and clients, for settlement discussions, and for witnesses to wait. If you want a break out, please advise the meeting organizer in advance.

Video Conferencing Etiquette

7. **Find an appropriate place to conduct your video hearing.** All participants should be in a space free from distractions and interruptions. Remember, **this is a formal hearing, just as if you were present in the courtroom.**
8. **Sit or stand** still during the proceeding. Walking around or moving the camera can cause issues with those watching with connectivity.
9. The court will generally **digitally record** the hearing unless otherwise advised. Just as in the courtroom, participants must not talk at the same time or interrupt one another. All **independent recordings of the video conference are prohibited.** This includes recordings made by any participant including but not limited to lawyers, parties, and witnesses.
10. At the beginning of the conference, **all persons in the video conferencing space must be identified,** including counsel, parties, witnesses, and spectators. If you are able, properly identify yourself on screen. Do not identify yourself as "Guest" or by phone or room number.
11. Unless otherwise directed, **you may forward the invitation** to clients or witnesses so that they can appear from another location. Unless otherwise advised, you do not need advance permission. Unless permission is granted in advance, forward the invitation or link **only to those participating** in the hearing.
12. If **more than one person is in the room,** position the camera so that all persons can be seen. Maintain proper social hygiene and social distancing. This might make it difficult for everyone to be visible on camera.
 - a. The best practice is for each participant to **log in separately.**
 - b. You must **advise the court if witnesses are in attendance** as they may be required to wait in break out until called to testify.
13. Try not to have two Zoom **applications running in the same room** at the same time. If two or more active microphones are operative there will be feedback that makes hearing all participants very difficult.
 - a. Please mute the microphone on all but one of the devices running Zoom.
14. Do not place **papers, folders,** or anything else that creates noise near your microphone. Shuffling papers and files creates ambient noise that will make it nearly impossible to hear the speaking party.
15. **Dress** in a soft solid color. Avoid busy patterns and narrow stripes. T-shirts, sweatshirts, and similar attire is generally inappropriate.
16. When speaking, try to **look directly at the webcam,** not at the screen.
17. **Position the camera** at your eye level or slightly above eye level.
18. Be mindful of **what is behind you,** choose a solid neutral wall if possible - or use an appropriate virtual background.
19. **Check the lighting.** Light from a window behind you might blind the camera, making you look dark. Light above you in the center of a room might cast shadows. Ideally, position a lamp, or sit facing a window, where light is directly on your face. Also be aware that your monitor casts light that can make you look blue.
20. Remember to **speak one at a time.**
21. **Pause prior to speaking.** Video conferencing often has audio/video lag.

22. If there are **more than three participants everyone should mute** themselves. The judge might mute individuals or the entire participant group. If there is too much background noise or participants are unable to speak one at a time, the court may impose "mute all" on the conference, individually unmuting individuals when it is their turn to speak. In large docket sessions the session may be configured so that everyone is automatically muted upon entry.
23. Because audio tends to lag behind video, for **evidentiary objections**: simply say "Objection" and make a visible signal such as waving or raising a hand to draw the court's attention, and allow the court to stop the witness, recognize the objecting party and then allow the objecting party to make their objection.
24. In video hearings, counsel need not stand when addressing the court or witnesses.

Exhibits

25. **Exhibits** or other submissions must be provided to the court at least **24 hours before the hearing**.
26. Exhibits must be marked before being emailed to the court. **Do not make the exhibit file too large**. Name the file by exhibit number. For example, Petitioner might send a file that is named "Smith 20CV1234 Exhibits 1-3." You are encouraged to bookmark each exhibit.
27. When emailing exhibits to the court they must be **copied to all opposing parties/ counsel**.
28. **Rebuttal exhibits** need not be produced in advance but should be prepared in advance so to be easily transmittable to the court and opposing party/counsel if needed.
29. If exhibits are not provided to the court or to opposing parties as stated herein, the court may decide to **exclude the exhibit** and not consider it for any purpose.

Witnesses

30. **Witnesses**, including parties must identify where they are, physically. They should be alone but may be in their attorney's office or any other video space with a separate Zoom connection. If a witness must be subpoenaed to appear, please contact the court at least seven days prior to the hearing.
 - a. Please be aware that if you and the witness are in the same office on separate devices, the speakers and microphones for each device will **cause an echoing affect** and the devices need to be separated or use of only one speaker will cut down on the echoing.
31. Pursuant to 2020-RL-037 the **court may administer oaths by remote means** including videoconferencing or teleconferencing. Your witnesses should be prepared for an oath similar to the following:

"We are conducting this hearing pursuant to K.S.A. 60-243. The witness is not located in the court room but is appearing through electronic means. I am allowing this testimony based on the good cause of (state good cause) and with the following safeguards:_____. (to the witness) Do you swear or affirm under the penalty of perjury to tell the truth, the whole truth and nothing but the truth? (assuming yes, next question) Do you submit to the jurisdiction of the State of Kansas and the United State of America for the purposes of your testimony today, and any further proceeding as it relates to your testimony, including, but not limited to an action for perjury arising out of your testimony today? Based on the witness' answer in the affirmative, I find that adequate safeguards have been put in place and I will allow this hearing to proceed with the presentation of evidence electronically.
32. When a party or witness is testifying, he or she may not have anything in their hand and **may not refer to notes**, papers, phones, computers, or anything else without permission

from the court.

33. All electronic **devices** other than the device facilitating the testimony must be **turned off** unless the court gives permission otherwise.
 - a. All testimony must be from memory.
34. **No one** other than those identified to the court may be **in the same physical space** or room with the witness or in communication with the witnesses at any time.
 - a. The court may require all persons to leave the room during the witness testimony.
35. The witness may be required to wait in a **break out room or waiting room** until his or her testimony is needed.
 - a. The court controls who will be allowed in the break out room.
36. The **"witness sequestration rule"** is invoked in all remote proceedings.
 - a. Witnesses should be advised that counsel and the court may ask at any time to see anything the witness sees or to adjust cameras to ensure compliance with all court orders and directives.
37. **No program or window other than Zoom** will be open on any computer or electronic device in the witness' presence during testimony unless allowed by the court.
 - a. No one is allowed to pass the functional equivalent of **notes** by electronic means to or from the witness during the time the witness is testifying.
38. **Interpreters.** If you, a client, or a witness needs an interpreter, please contact the court at least seven days in advance to facilitate.
39. Cases needing **interpreters** need special attention when heard by video.
 - a. When on video, **interpretation is done sequentially**, not in "real time."
 - i. **Real time** is what we are used to. The interpreter uses a head set and interprets in real time.
 - ii. **Sequential** requires one person to speak at a time.
 1. The **judge will indicate** when each person may speak.
 2. No one can **respond/reply** until **after the interpreter has finished** and the judge has indicated that it is that speakers turn.
 3. No one should speak for **more than 30 seconds** without stopping to allow the interpreter to interpret. Tell them that you will stop them if they start to talk too long.
 - b. The judge may use **verbal cues and hand** or other physical **gestures** to indicate when a speaker should start or stop.
 - c. **Audio lag** can cause the interpreter to miss words. Wait a second between when the interpreter stops and when you (judges) give permission to the speaker to resume.
 - d. Please **review this information** with clients and witnesses before the hearing.