

**MISCELLANEOUS DOCKET NO. 20-03**

**THIRD TEMPORARY EMERGENCY ORDER REGARDING PROCEEDINGS BEFORE  
THE DISTRICT COURTS AND STATUTORY COUNTY COURTS  
OF MIDLAND COUNTY, TEXAS**

**ORDER ON REMOTE PROCEEDINGS IN FELONY CRIMINAL CASES**

The Governor has declared a state of emergency and the Texas Supreme Court (Misc. Docket No. 20-9042) has suggested that all in-person non-essential court proceedings should be suspended. However, technology and state law allow options not previously available, thereby enabling Texas courts to conduct both essential and non-essential court proceedings through teleconference or videoconference. The Texas Office of Court Administration has facilitated the implementation of Zoom, a platform that is extremely effective for court proceedings.

The District Courts will be conducting court proceedings using this platform. Any requests for an in-person courtroom hearing will be considered but likely postponed. Further, in some instances, a case will not be appropriate for a virtual court proceeding, thus necessitating postponement of the case.

THEREFORE, IT IS ORDERED that in all proceedings in felony criminal cases, the parties, attorneys, witnesses, and any other persons attending proceedings remotely shall comply with following procedures:

**A. General Requirements for Remote Hearings in Felony Criminal Proceedings**

**1. Notification of Information for Remote Proceeding.**

When the court proceeding is scheduled, the Court will e-mail the parties (through their attorneys if represented) the information needed to attend the proceeding by Zoom.

Each attorney shall communicate this information to the attorney's clients and witnesses, including any witnesses the attorney subpoenaed for the proceeding, and shall provide each such person with a copy of this order.

Each self-represented party shall communicate this information to the party's witnesses, including any witnesses the party subpoenaed for the proceeding, and shall provide each such person with a copy of this order.

To comply with the open courts provisions of the Texas Constitution, the Court may create a public link through the Court's YouTube channel to permit members of the public to view the proceedings and will publicize that link in the scheduling order and on the Court's website.

## **2. Use of Real Names.**

In all communications with the Court and during the court proceeding, including when joining a Zoom meeting, each party, attorney, witness, or other persons attending the proceeding shall use that person's real name when identifying him or herself.

## **3. Interpreter.**

A self-represented party or attorney acting on a party's behalf shall contact the court coordinator as soon as possible after the court proceeding is scheduled if an interpreter will be needed.

## **4. Necessary Hardware and Software.**

At least 48 hours before the proceeding, each party, attorney, witness or other person attending the proceeding shall create a Zoom account at <https://zoom.us/home>.

The person shall create the account using the person's real name and the person's real e-mail address. For each attorney, that e-mail address shall be the same as the one described in Rule 21(f)(2) of the Texas Rules of Civil Procedure.

At least 48 hours before the proceeding, each person shall download and install the Zoom app on the device (e.g., computer, tablet, smartphone) the person will use to communicate with the Court during the proceeding.

The device must have functional speakers, a video camera, a microphone, and a reliable Internet connection.

If a person, including a witness, knows he or she cannot attend the proceeding by video, that person or that person's attorney, if represented shall contact the Court as soon as possible before the proceeding. The person or that person's attorney, if represented, shall show good cause for failure to appear by video at the proceeding.

## **5. Waiver to be Signed by Defendant.**

As a prerequisite to any felony criminal proceeding conducted through Zoom, the defendant shall be required to execute a waiver of the defendant's right to appear in court in-person and with counsel. Waiver forms shall be included in the plea documents. For all other proceedings, the waiver form is available from the court upon request.

## **6. Submission of Exhibits to Court Coordinator and Parties.**

To be potentially admissible into evidence, all exhibits, except rebuttal exhibits, must be e-mailed to the court coordinator and all parties not later than 1:00 p.m. the day before the court proceeding in the manner required in subsection (7) herein.

If the day of the proceeding is a Monday or a court holiday, the deadline will be 1:00 p.m. on the weekday which is not a court holiday and that immediately precedes the day of the proceeding.

The subject line of the e-mail shall state the full cause number of the case and the name of the party, as well as the date of the court proceeding, e.g., "Cause No. 12345; Defendant's Exhibits; May 8, 2020."

#### **7. Format of Exhibits.**

Each exhibit shall be in PDF format, unless it is an image file or audio or video recording file. The title of each exhibit file shall state the name of the exhibit, for example "Petitioner Ex. 1). Each image file shall be either in PDF format or JPG format.

A party wanting to offer any audio recordings or video recordings shall upload the duly labeled recordings files to a folder in Dropbox or a cloud storage service acceptable to the Court and include a link to the folder in the party's exhibit e-mail. All audio recordings and video recordings shall be in MP4 format.

A party wanting to offer any exhibits that contain any unredacted "personal identifying information" or "sensitive personal information," as those terms are defined in Section 521.002 of the Texas Business & Commerce Code, shall upload the duly labeled files to a password-protected folder in Dropbox or a cloud storage service acceptable to the Court with a link to the folder in the party's exhibit e-mail. The party offering these exhibits shall not include the password in the e-mail, but shall communicate the password to the court coordinator and each of the other parties by telephone or text message by the deadline to provide the exhibits. Unless critical to an issue in the case, a party may redact personal identifying information and sensitive personal information from an exhibit before submitting it.

#### **8. Exhibits with Rebuttal or Unanticipated Evidence.**

During a proceeding, with the permission of the Court, a party may offer an exhibit with rebuttal evidence or an exhibit with evidence that the party could not have reasonably anticipated or submitted prior to the proceeding through the Chat/File feature in Zoom.

#### **9. Submission of Orders, Pleadings and Other Documents.**

The parties shall confer before the court proceeding, and at least 48 hours before the proceeding shall e-mail to the court coordinator, copying each of the other parties, an electronic copy of all orders, pleadings, returns of citations, and other documents filed with the district clerk that are relevant to the proceeding. If the documents are too voluminous to attach or organize in an e-mail, the parties shall upload the documents to a folder in Dropbox or a cloud storage service acceptable to the Court and include a link to the folder in the e-mail. Each document shall be in PDF format with a file name that reflects the title of the document.

#### **10. Submission of Late Responses and Replies.**

Each party shall e-mail to the court coordinator and each of the other parties any responses or replies the party e-filed with the district clerk less than 48 hours before the court proceeding. E-mailing such a document to the court coordinator is not a substitute

for e-filing the document with the district clerk. No party shall include the judge or court coordinator as a service contact when e-filing a document.

**11. Submission of Case Law, Statutes, Regulations or Similar Documents.**

If a party wants the Court to consider any case law, statute, regulation, or similar document, the party shall e-mail the document to the court coordinator and the other parties the day before the court proceeding. Failure to comply with the procedures in this order for submitting proposed exhibits, information required by the Court's local rules, responses and replies, or supporting statutes, case law, regulations, or similar documents without good cause, may result, as applicable, in the exclusion of the exhibits, the documents not being recognized by the Court, or other sanction as provided by the Court's local rules or inherent powers.

**12. Dress Code.**

Unless the Court orders otherwise for a proceeding, attorneys shall dress in the attire described in the Midland County Local Rules. Parties and witnesses shall dress in the attire described in the Midland County Local Rules. Each attorney shall ensure that the attorney's clients and witnesses are aware of and comply with this dress code.

**13. Opening in Zoom App.**

Before the proceeding begins, when a person attempts to join the court proceeding from the Zoom webpage, the webpage will ask whether to open the Zoom app. Each person shall instruct Zoom to open in the Zoom app and allow it to install the program and not rely on the web browser. In this way, the attorneys and parties will have the means to communicate confidentially in private breakout rooms which are unavailable on the plug-in version of Zoom.

**14. Joining Proceeding Before Scheduled Start.**

The parties, attorneys, witnesses, and all other persons attending the proceedings shall join the proceeding on Zoom by clicking on the Zoom link sent by the Court at least five minutes before the proceeding is scheduled to begin.

**15. Virtual Waiting Room.**

When each person joins the meeting, the person will appear in a virtual waiting room with all other parties, attorneys and witnesses. There may be several cases set on the docket at the same time. When the case is called, the Court will bring the attorneys and clients into the virtual courtroom. When the Court brings the attorneys and clients into the virtual courtroom, their video will automatically be on and their audio muted, until the proceeding begins. The attorneys shall appear on video at all times during the proceeding, except when the Court recesses the proceeding.

## **16. Witnesses.**

When taking the oath to testify and when testifying, each witness shall appear on video, unless the witness is in the presence of a notary public, identified to the Court, who can verify the identity of the witness, in which case the witness may testify through Zoom only on audio. Otherwise, all other potential witnesses who are not on video through Zoom may not testify.

Unless permitted by the Court or as provided below, a witness may not have access to any electronic information or physical notes while testifying, just as if the witness were on the witness stand in a courtroom. Except during a recess in the proceeding, no person shall communicate, verbally or non-verbally, with a witness through any method other than the video or audio means shared with all the participants in the proceeding who are present in the virtual courtroom. If "The Rule" (Rule 267 of the Texas Rules of Civil Procedure and Rule 614 of the Texas Rules of Evidence) is invoked, no one may communicate in any manner, including by telephone, text message, or e-mail, with any witness placed under the Rule, except as permitted by the Rule and then only during a recess in the proceeding. While placed under "The Rule," witnesses are prohibited from viewing the proceeding through the Court's YouTube channel and from communicating with anyone who is viewing the proceeding in that manner.

## **17. Muting of Microphone.**

All persons participating in the proceedings except the judge, the witness, and the questioning attorney or questioning self-represented party shall keep their Zoom microphone on mute unless speaking. The Court recognizes that there may be a slight delay in an attorney or party unmuting their microphone to make an objection.

## **18. Communication Between Attorneys and Clients During Proceeding.**

The attorneys may communicate with their clients using the private chat feature by using the "Chat" button, and at the bottom of the chat window, pulling down the recipient arrow and selecting the client's name. Attorneys shall not privately communicate with their clients while the clients are testifying, including through text message, e-mail, or the Zoom chat function. All communications between an attorney and a testifying client shall be through Zoom in a manner that all participants can hear and a record may be made.

## **19. Recesses.**

The Court may recess the proceeding for breaks or to allow attorneys to confer with their clients. If an attorney wishes to confer with a client, the attorney shall make that request to the Court, identifying the client by name. The Court will send those video streams into a confidential breakout room to confer for a period set by the Court. In a similar manner, attorneys or self-represented parties may ask the Court to confer privately with one another. An attorney or self-represented party may ask the Court to allow them to confer privately with a witness.

**20. No Circumvention of Order.**

No attorney, party or witness may circumvent the terms of this order by having another person perform a task prohibited for that party or attorney. For example, if an attorney is prohibited from communicating with a witness during a proceeding, the attorney's legal assistant or other agent of the attorney may not communicate with that witness.

**21. UNDER PENALTY OF CONTEMPT OF COURT, NO PERSON, OTHER THAN THE COURT REPORTER, MAY RECORD A COURT PROCEEDING. THIS PROHIBITION APPLIES TO MEMBERS OF THE PUBLIC VIEWING THE PROCEEDINGS ON THE COURT'S YOUTUBE CHANNEL AND TO PERSONS WITH THE ABILITY TO RECORD THE ZOOM VIRTUAL PROCEEDING. THE COURT REPORTER'S RECORD SHALL BE THE ONLY RECORD OF A COURT PROCEEDING.**

**B. Plea Proceeding Procedures**

**1. Plea Deadline Docket.**

The court coordinator shall e-mail the plea deadline docket to the following persons:

- a. the designated clerk in the District Clerk's Office;
- b. the designated jail officer in the Midland County Sheriff's Office;
- c. the attorneys for the State and the defendant; and
- d. the designated probation officer in the Community Supervision and Corrections Department.

**2. Acceptance or Rejection of State's Plea Offer.**

Not later than 3:00 p.m. on the plea deadline date, the defendant's attorney shall e-mail the court coordinator notice of the defendant's acceptance or rejection of the State's plea offer. If the plea offer is accepted by the defendant, the notice shall include information regarding any requirement of a device, including a GPS monitor, SCRAM unit or Drug Patch as a plea condition.

**3. Telephone Number for Defendant on Bond.**

If the defendant is bonded, the defendant's attorney shall also provide a working telephone number for the defendant in order that the Community Supervision and Corrections Department may contact the defendant and conduct an presentence interview and prepare a presentence investigative report in advance of the plea proceeding.

**4. Preparation of Bill of Costs.**

The District Clerk's Office shall prepare the Bill of Costs and provide it to the prosecuting attorney assigned to the case for inclusion in the plea documents.

## **5. Submission of Plea Documents.**

Not later than 12:00 noon on the third business day prior to the plea hearing, the prosecuting attorney assigned to the case shall prepare the documents for the plea hearing, sign the paperwork where indicated, and upload same to Techshare for review by the defendant's attorney. If there is an error in the plea documents, the defendant's attorney shall contact the prosecuting attorney as soon as possible to resolve the error.

## **6. Signing of Plea Documents by Defendant in Custody.**

If the defendant is in custody, the defendant's attorney shall email the designated jail officer and schedule an appointment to meet with the defendant in a visitation room at the jail. The email shall state the date and time the appointment is requested, and an estimate of the time needed. The defendant's attorney shall take the plea documents to the appointment to discuss the documents with the defendant and obtain the defendant's signature. The defendant's attorney shall provide the defendant with a copy of the fingerprint certification form. An authorized jail officer shall obtain the defendant's thumbprints on the certification form and return the completed plea documents to the defendant's attorney.

## **7. Signing of Plea Documents by Defendant on Bond.**

If a defendant is bonded, the defendant's attorney shall discuss the plea documents with the defendant and obtain the defendant's signature where required on the documents.

The defendant's attorney shall provide the defendant with a copy of the fingerprint certification form. The defendant shall appear at the courthouse security station in the foyer of Midland County Courthouse between 9:00 a.m. and 12:00 noon on the Wednesday immediately prior to the date of the plea proceeding for the purpose of obtaining the defendant's thumbprints on the fingerprint certification form. Courthouse security officers shall obtain the defendant's thumbprints on the certification form and place the same in an envelope for the court in which the case is pending.

## **8. Submission of Completed Plea Documents.**

When the plea documents have been signed by the prosecuting attorney, the defense attorney and the defendant, and not later than 1:00 p.m. on the first business day preceding the date of the plea proceeding, the defendant's attorney shall deliver the executed plea documents to the courthouse security station in the foyer of the Midland County Courthouse and place same in an envelope for the court in which the case is pending. A designee of the court will retrieve the envelope from the courthouse security station in advance of the plea proceeding.

This Order shall continue in force until May 8, 2020 or until further order of the court.

SIGNED on April \_\_\_\_\_, 2020.

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**HON. DAVID W. LINDEMOOD**  
Local Administrative District Judge