

A Guide to Virtual Hearings for Family Law Practitioners

Purpose of these Guidelines

- In the wake of the COVID-19 pandemic and the significant restrictions on in-person hearings in the Probate and Family Court, more and more hearings are being conducted via virtual means, including telephone hearings and Zoom hearings.
- Each division of the Probate and Family Court will likely set their own procedures for noticing and scheduling a virtual hearing. These guidelines are meant to set forth best practices for practitioners and litigants during a virtual hearing.

Practitioner's Preparation for a Virtual Hearing

- Familiarize yourself with the filing and contact information for the Court in which you are appearing:
 - ◇ Court Department Emails can be found here: <https://www.mass.gov/guides/court-department-emails#-probate-and-family-court->
 - ◇ Court addresses and phone numbers can be found here: https://www.mass.gov/orgs/probate-and-family-court/locations?_page=1
- Make sure the Court has the necessary and correct contact information for you and your client (e.g. cell phone number if you are not using your office line, email addresses, etc.).
- Well in advance of the hearing, file with the Court and serve on the other party all pleadings, affidavits, financial statements, exhibits and all documents you wish the Court to review during the hearing. Keep in mind the timing and service requirements set forth in Rule 6 of the Massachusetts Rules of Domestic Relations Procedure, as well as the requirements for email service of documents as set forth in Standing Order 4-20.
- Keep a record of all documents you have filed with the Court (e.g. documents you want the Court to review in relation to the hearing). Prior to the hearing taking place, confirm with the Clerk that the Court has received these documents and the documents are easily accessible to the presiding judge.
- To the extent the Court supports electronic filings, electronic filings have been the Court's preferred way to ensure that documents are timely received and filed. Be prepared to send to the Court clerk any filings that may be missing from the Court file by electronic mail at the start of the hearing.
- Mark documents with identifying characteristics on each page so that the Court can readily identify and review those documents during the hearing (e.g. Headers/footers on each page indicating document title and page number or Bates stamps).
- Coordinate a plan with your client for how you will interact and communicate with each other during the virtual hearing.
- The best practice for you and your client is to be in the same room for the virtual hearing, following safety guidelines. However, if you and your client are appearing in separate locations, consider setting up a "back channel" for in-hearing communications such as e-mail, text message, Slack, Google Chat.



- Remain flexible with timing. Clear out your schedule and your client’s schedule at least a half hour prior to the hearing start time and an hour after the anticipated hearing end time.
- Well in advance of the virtual hearing, set expectations for your client’s conduct and contributions during the hearing.
- Make sure your necessary technology is ready to go without incident (e.g. internet is fully functioning, Zoom app is updated, cell phone charged).
- Have all documents filed with the Court in relation to the virtual hearing easily available for your use during the hearing.
- Check your email regularly leading up to the virtual hearing in the event of a change relating to the hearing.
- When preparing your argument, assume that not every piece of information you wish to convey will be heard perfectly or will register. To that end, create a list of major points you think the Court will need to hear to rule in your favor and emphasize those points during the virtual hearing.

Guidelines for Practitioners and Litigants During a Virtual Hearing

All hearings:

- This is still a hearing in a court of the Commonwealth of Massachusetts. Serious issues are heard and determined during these hearings. No matter what format a hearing takes, treat the hearing with the same respect as if you and your client were appearing in person.
- Be aware of your surroundings and find a quiet location without distractions where you and your client can take part in the hearing. Turn off all TV’s, radios, and limit noise and “guests” in the hearing.
- When not talking, place yourself on mute.
- Remember that hearings are recorded. You and your client should not speak to any third parties during a hearing.
- Non-parties to a case (e.g. children, friends, other family members) should not be present on any virtual hearings. This is especially true with regard to children who are the subject, or may become the subject, of any virtual hearings.
- When announcing yourself for the record, defer to the Court with respect to the order of introductions. In the absence of guidance, Plaintiff’s counsel should introduce him or herself first, followed by Plaintiff, then Defendant’s counsel and Defendant.
- At the start of any virtual hearing, make sure all attorneys and parties state on the record that they are alone and that no third parties are within earshot of the hearing proceedings. If a third party must be present for the hearing, identify that individual and the reasons why that individual must be present for the hearing.
- At the start of a hearing be sure to list out all the matters scheduled for hearing and confirm on the record that the Court has all the documents and materials necessary for you to move forward with the hearing.
- If there is no way to avoid a child being present for a hearing (e.g. no child care available or the child is very young and cannot be left alone) then the client should make sure that the call is not on speaker phone and should otherwise place the hearing on mute.



Telephonic hearings:

- Given the nature of telephonic hearings, practitioners should not speak over one another. If at all possible, limit the individuals speaking at a telephonic hearing to the Court and the lawyers involved in the action.
- Whenever an individual speaks during a telephonic hearing, that person should introduce themselves each time they speak (e.g. “Your Honor, this is Attorney Jones. In response to Attorney Smith’s statement, my client’s position is as follows...).
- Do not call in to the Court’s phone line early. You might join the call of a hearing already in progress. Joining a call creates a notification sound that can be distracting
- Do not go on too long without taking a pause. Because of the nature of the phone system in use, if you are speaking, you might not be able to hear the Court attempting to get your attention.
- Sometimes the phone line will be unclear or the call may drop. Be prepared to restart the call and pick up where the hearing stopped.

Zoom hearings:

- Take online tutorials about Zoom so you become comfortable with all the technological capabilities Zoom has to offer.
- You and your client should dress as though you are appearing before the Court in person.
- Be aware of your background. If your background is distracting, consider using a neutral digital background on Zoom.
- Be careful with your use of Zoom chat and make sure if you do use Zoom chat that you are directing your messages to the correct recipients.

Where can I go for more helpful information?

- The court has some helpful information here: <https://www.mass.gov/guides/court-system-response-to-covid-1>

These guides were created in collaboration with the Massachusetts Access to Justice Commission.

