

ADMINISTRATIVE MEMORANDUM

TO: All Circuit Criminal Division Judges

FROM: Nushin G Sayfie, Administrative Judge, Criminal Division

DATE: April 27, 2020 

SUBJECT: Procedure for Admitting Evidence in Remote Hearings

The Florida Supreme Court entered *In Re: COVID-19 Emergency Procedures for the Administering of Oaths VI Remote Audio-Video Communication Equipment*, Fla. Admin Order No. AOSC20-16 (March 18, 2020) and also entered *In Re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts*, Fla. Admin. Order No. AOSC20-23 (April 6, 2020), which authorizes the chief judge of each judicial circuit to establish temporary procedures for the use, to maximum extent feasible, of communication equipment for the conducting of proceedings by remote electronic means, as are necessary in their respective circuits due to the public health emergency.

To allow the testimony of witnesses as described in AOSC20-16, in order to conduct evidentiary hearings remotely, it is necessary that courts and the parties have clear guidance and authority permitting the admission of documentary and other physical evidence through remote means where such evidence is not stipulated as authentic or admissible by the parties. The following procedure will be followed to allow for the introduction of evidence in hearings conducted remotely:

1. Counsel shall provide an electronic copy or image of any item of evidence it will seek to be introduced into evidence to the Court, and opposing counsel at least 48 hours before the hearing; and
2. Counsel shall provide an electronic copy or image of any item of evidence it will seek to be introduced into evidence to the witness or counsel for the witness, that the party intends to admit such evidence through, at least 48 hours before the hearing; and
3. Counsel must electronically file any item of evidence it will seek to be introduced into evidence through the e-filing portal at least 48 hours before the hearing; and

4. In addition to providing the items the party will seek to introduce into evidence, Counsel must provide an exhibit list describing each item, along with columns that can help all parties identify whether a particular item was admitted into evidence or not; and
5. The Court may require that non-documentary evidence be submitted physically to the Clerk's office for preservation of the record. In appropriate circumstances, the Court may require an image of the physical item be filed with Clerk in lieu of the original item; and
6. Nothing in this order otherwise changes the Court's discretion to admit or deny entry or use of such evidence, or fashion whatever relief is appropriate under the circumstances, based on surprise (or lack of surprise), failure to provide evidence in advance, impossibility of review of such evidence through remote means, or similar circumstances; and
7. After the hearing, the parties must review all exhibits, and the exhibit list or index, and verify the accuracy of all exhibits and exhibit designations of items that were identified and/or admitted, to ensure that the record of the Clerk of Courts is correct; and
8. In settings where the Court must review documents or items, but such item is not being admitted as evidence to prove or disprove a claim or issue, e.g., taking notice of a witness's driver license to verify identity, the party need not provide the document in advance and the Court may use an abbreviated procedure such as requiring the witness to present the document to the camera for the Court's review.

This Administrative Memorandum shall be effective on April 27, 2020.