

Conducting Effective Remote Hearings in Child Welfare Cases



The COVID-19 pandemic and social distancing requirements have required courts to be flexible and creative in continuing to carry out essential functions. The Children's Bureau has encouraged, and many courts have adopted, the use of technology to conduct child welfare hearings remotely when they cannot take place in-person. Although there are some challenges to holding a hearing via technology, these hearings are essential to address important issues affecting children and families, to litigate and allow the court to make key decisions impacting safety, permanency and wellbeing, and to ensure due process and access to justice for families. The following guide distills some best practices and other recommendations for remote or "virtual" hearings. Please note that courts across the country are using several programs and platforms for video conferencing. This guide provides general guidance without regard to the specific platform being used.

Tips for Court Administrative Staff, Clerks, or Others Coordinating the Hearings

- If resources allow, choose a video conferencing platform that includes audio, video, and text (i.e. "chat"), "breakout" rooms, screen-sharing, and file transfers. Ensure that hearings can be recorded. Each of these functions can be helpful in hearing a case. If possible, choose a platform that can be accessed via computer, tablet, or phone (both video and audio-only).
- Make sure that your subscription level allows an adequate number of participants. Child welfare cases sometimes have more participants than criminal or civil matters, as case participants may include attorneys, social workers, parents, children, resource parents, service providers or other witnesses as well as the judge and any court support staff.
- Consider holding "virtual office hours" or other training sessions so that all users (i.e. judges, attorneys) can log in, try out, and ask questions about remote platforms. Some platforms have free versions that participants can download to familiarize themselves in advance.
- Remote hearings do not need to be conducted from the courthouse. All participants, even judges, can access hearings from home. Work with judges and court personnel to ensure that they have the technology needed to access hearings remotely.
- Consider whether to modify how hearings are scheduled. If your court traditionally docket multiple hearings at the same time, you may need to switch to individual, time-certain scheduling.
- Provide extra notice of hearings. Have a court staff person email all attorneys several days in advance of the hearing to ensure that all parties have log-in information. Offer to answer questions or troubleshoot issues in advance. Provide judges a list of participants in each case in advance if possible, so the judge knows who to expect.
- Abide by all state and local statutes and rules regarding access to hearings. If child welfare hearings are open to the public in your jurisdiction, consider ways to make the hearings accessible to non-party participants. If child welfare hearings are confidential in

your jurisdiction, take steps to control access (such as ensuring that only participants receive the link or by using a password).

- Determine how will the hearing be recorded or transcribed. Will an audio file be saved in the court's electronic docket? Can the recording be accessed later for the purposes of transcription?
- Consider how to use settings on the video conferencing platform to make the process go more smoothly. Is there a "host" function? Decide who will perform this function (perhaps the judge or a courtroom clerk/bailiff), which can be helpful in allowing participants into the hearing, muting participants if needed, screen-sharing documents such as exhibits or court reports, etc.
- Document that the hearing took place remotely in the docket or case management system. Child welfare cases sometimes take years to resolve, and this information may be useful in the future if parties or the court need to remember why certain case events occurred the way they did (i.e. for the purposes of creating an appellate record).

Tips for All Hearing Participants

- Determine in advance what device you will use to access the hearing (i.e. computer, smart phone, tablet). Make sure your device's camera and speakers are working properly. If possible, log in to the platform before a scheduled remote hearing to practice using it.
- Wear solid colors that are easily viewed on camera, avoid patterns.
- Be aware others can see what's behind you. Consider using a solid background instead of full camera view if that is an option on your platform. Pay attention to lighting—sitting in front of a window can make you look "washed out" or difficult to see.
- Minimize noises and distractions to the extent possible. When you are not speaking, mute your microphone. Turn your phone on silent and minimize or close other windows on your computer screen to avoid sounds and notifications (this may also help the program run more smoothly).
- Consider confidentiality limitations. If your communications are confidential, ensure that others in your home can't hear you.
- Look at the camera when you are speaking. Position the camera at about eye level if possible.
- Speak slowly and clearly. There may be an audio lag, so pause before and after speaking to account for this.
- Be flexible but remember professional decorum. Things may go wrong, and all participants may need to be extra patient and forgiving. Accept that these hearings may be less productive than in-person hearings. Despite the inevitable hiccups, the rights and experiences of children and parents are still at stake in remote child welfare hearings. Treat an online hearing with the seriousness with which you would treat an in-person hearing.

Special Considerations for Judges

- Start each hearing by laying the ground rules. Describe how you will conduct the hearing, how you will "call on" participants to speak and in what order, and how you will use the platform. Admonish attorneys to speak one at a time. Even if you would not provide an agenda or overview of the hearing in person, this can be helpful for a remote hearing.

- If there is a document that parties would review during an in-person hearing, such as a court report or proposed order, make sure these are shared in advance, via email, if possible. Hold the agency and other parties accountable to submit reports well in advance. Consider sharing your screen (or having an assistant do so) or uploading the document in the videoconferencing platform for discussion during the hearing.
- If a witness is testifying, ensure you can see the witness clearly. For objections, consider asking attorneys to either type “objection” in the chat box or raise a hand, as these may be more reliable than listening for cross-talk on an online platform.
- Admonish witnesses to be alone and to avoid using notes. Consider whether you will allow witnesses to testify by telephone only (i.e. no video). This may make it more difficult to administer a witness oath, receive assurances that the witness is alone and speaking from memory, and judge credibility.
- If the platform allows “breakout” rooms, these can be very useful to allow for sidebar conversations that others cannot or should not hear (i.e. bench conferences, attorney-client discussions, or judicial interviews of children if traditionally done one-on-one). The private chat function can also work well.
- As always, abide by the applicable Code of Judicial Conduct. Avoid ex parte communications. If communicating by email, ensure all attorneys are included.

Special Considerations for Attorneys

- Continue to zealously advocate for your client and protect your client’s interests. If your client is tangibly disadvantaged by having a remote hearing, file for a continuance. If your client’s case is continued and she is disadvantaged by not having a hearing, file a motion requesting a remote hearing (or an in-person hearing under appropriate circumstances). Make these strategic determinations based on the individual needs of clients.
- Client counseling is crucial during this time. Walk your client through how the hearing might go and what to expect. Make a plan for the hearing with your client in advance. This is particularly true for child clients.
- The closure of courts means that attorneys are not engaging in “hallway conversations” and other informal in-person communications that can move cases forward. Attorneys should coordinate conference calls and emails prior to the hearing to resolve issues and enter the virtual courtroom well-prepared.
- Where possible, negotiate stipulations and other areas of agreement to efficiently resolve matters (i.e. the return of a child to her parent) where all parties agree.
- File written reports and motions liberally. Written pleadings not only can resolve issues for your client, they also create a clear record.
- Take special care with witness testimony. As always, make a record via objections. The file-transfer or screen share functions can be used to submit exhibits, impeach witnesses, or refresh a witness’s recollection.
- Hold the child welfare agency accountable to make reasonable efforts to prevent removal and finalize permanency. Even during difficult times, the agency must make efforts that are reasonable under the circumstances.
- There are numerous ways to communicate directly and confidentially with your clients during a virtual hearing. These include, but are not limited to:
 - Some platforms have a “private chat” function which can only be viewed by two participants.

- Text your client during the hearing. Explain to the court that you are texting your client and ask for breaks if needed.
 - Ask for a break to call your client. Step away from the camera and mute your microphone when you do so.
 - Some platforms have “breakout rooms.” Ask to be placed in a breakout room with your client, and then rejoin the main hearing.
- Help your client navigate the “digital divide.” Does your client have access to the technology needed to participate in remote hearings? Some tips:
 - Many video conferencing platforms have smartphone apps. These can be helpful where clients don’t have access to computers.
 - Smartphone apps also work via WiFi, which can be helpful when clients don’t have cellular data plans but can access a wireless internet network.
 - Research community resources that may be helpful. Is there a broadband internet provider that is offering free or low-cost internet access (ex. Comcast, Cox and Spectrum all have these programs)? Are there local charities or other resources for free or low-cost phones or computers?
 - Brainstorm with clients about their potential personal resources for technology access, such as supportive family members or mentors or friends who could lend them a phone or computer.
 - Consider asking (informally or via motion) the child welfare agency to provide technology or otherwise help your client access technology. This may be a reasonable efforts issue.
- As always, comply with all applicable ethical standards and Rules of Professional Conduct. Zealously advocate for your clients, engage with other parties with civility, make representations with candor, maintain client confidences, and avoid engaging judges in ex parte contact.

Resources

Children’s Bureau COVID-19 page: <https://www.acf.hhs.gov/cb/resource/covid-19-resources>

Children’s Bureau legal/judicial guidance:

https://www.acf.hhs.gov/sites/default/files/cb/covid_19_childlegalandjudicial.pdf

Texas Zoom page: <http://txcourts.gov/programs-services/electronic-hearings-with-zoom/>

State Bar of Texas, Family Law Section, Remote Hearings Training:

<https://www.youtube.com/watch?v=ayaENNMKSqs>

National Center for State Courts (NCSC) pandemic resources, including recent webinar recordings: <https://www.ncsc.org/pandemic>

NCSC videoconferencing resources: <https://www.ncsc.org/Topics/Technology/Video-Technologies/Resource-Guide.aspx>

Remote Advocacy: Representing Your Client During the COVID-19 Pandemic (free NITA webinar) <https://www.nita.org/webcasts/s71LEC116>