

## Virtual Proceeding Protocols – Family Court

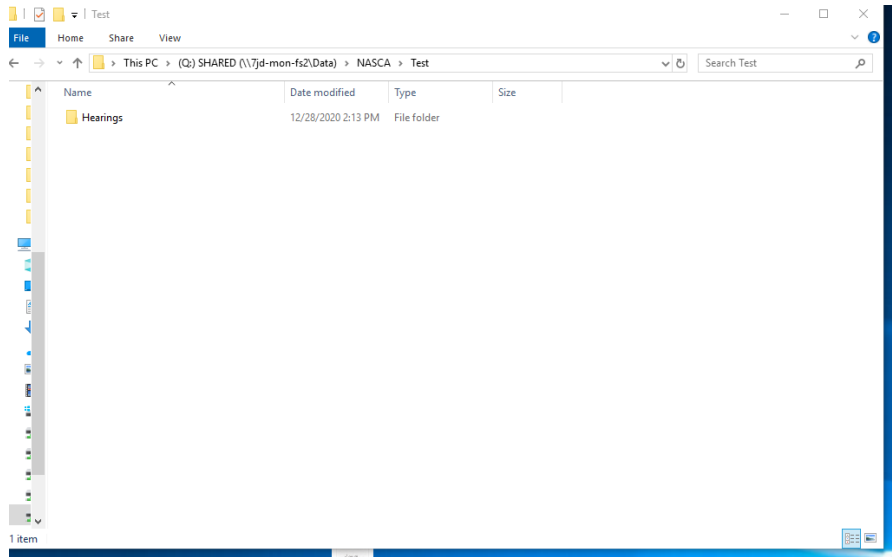
### **I. Platform options for housing electronic exhibits:**

- a. UCMS: Monroe County Family Court’s practice regarding exhibits has been to not house them in UCMS to avoid any potential issues with breach of confidentiality or improper release. Other Counties, such as Cayuga, are able to house exhibits in UCMS. Steuben and Livingston counties are paperless.
- b. Court Network: Family Court exhibits are exchanged between Attorneys/Pro-Se Parties via email, with same provided to the Court by email, and housed in the respective Chamber’s shared drive (“Q”), with Received Exhibits being stored in a subfolder as described below.
- c. Hard Copy File: As an alternative to storage of Received Exhibits in the Court Network, some judges print out Received Exhibits and maintain them in the court file or separate trial file; the majority of Monroe County Family Court printing out the Received Exhibits. Some judges request that a hard copy of Received Exhibits be provided to chambers after the virtual hearing concludes and Received hard copy exhibits are maintained in the court file or separate trial file.

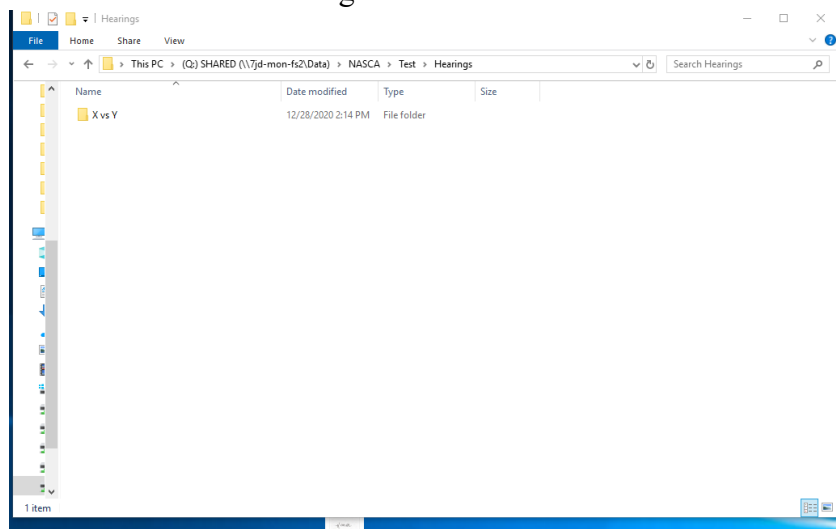
### **II. Pre-hearing considerations:**

- a. Procedure for Attorney/Pro-Se Party review of subpoenaed documents returnable to the Court.
  - i. Attorney/Pro-Se Party to contact chambers by phone to arrange a specific date and time to review documents.
  - ii. Attorney/Pro-se Party to review the documents at the courthouse in a public/supervised location, preferably chambers, or a courtroom supervised by the court deputy.
  - iii. Chambers to document the date/time of review by the Attorney/Pro-Se Party by keeping a log of subpoenaed documents and logging dates and times subpoenaed documents are provided for review, as well as time of return of subpoenaed documents.
  - iv. Photocopying/photographing of documents not permitted.

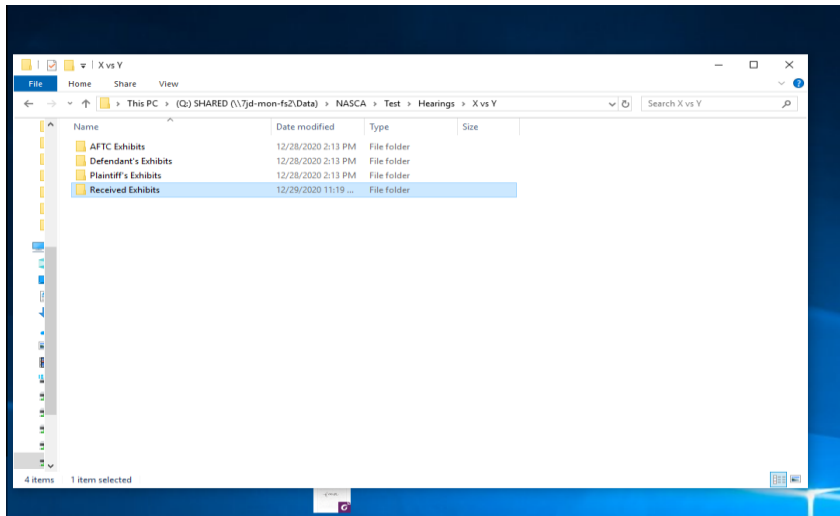
- b. Pre-hearing procedure for where and how to house electronic exhibits until hearing.
  - i. Attorney/Pro-Se Party to mark electronic copies of exhibits to be used during hearing: Petitioner's exhibits using numbers (Petitioner's Exhibit 1, etc.) and Respondent's exhibits using letters (Respondent's Exhibit A, etc.). Attorney for the Children exhibits will use numbers (AFC Exhibit 1, etc.)
  - ii. Each exhibit shall also be provided as a PDF document. The filename for each exhibit will contain the party and exhibit number ( i.e. Petitioner's Exhibit 1.pdf, Respondent's Exhibit A.pdf etc., AFC Exhibit 1.pdf, etc.).
  - iii. For multiple page exhibits, all pages must be numbered. Handwritten page numbers at the bottom of each page are acceptable.
  - iv. Electronic copies of each proposed exhibit will be provided to the court by email or secure messaging, at least 10 days prior to the hearing.
  - v. At least 10 days prior to the hearing, each Attorney/Pro-Se Party will exchange and provide the Court with an electronic Trial Exhibit List, in Word/WordPerfect and PDF formats, containing the list of proposed exhibits with a brief description of each exhibit.
  - vi. The Court will provide a copy of each party's Exhibit List to the Court Assistant and Court Reporter prior to the first day of trial.
  - vii. If the Family Court Act or other statute mandates an immediate hearing (ex. JD probable cause or in-detention fact-finding hearing, 1027 hearing, 1028 hearing) the 10 day requirement for exchange of Trial Exhibit List shall be modified or eliminated.
  - viii. Utilizing the particular judge's shared network ("Q" drive) to house electronic exhibits:
    - 1. a "Hearings" folder will be created for each judge that will be accessible by Chambers and the Court Assistant assigned to the Judge or matter.



2. Within the “Hearings” folder, a subfolder will be created by Chambers for each hearing.



3. For each hearing, separate subfolders will be created for “Petitioner’s Exhibits”, “Respondent’s Exhibits”, “AFC/Third Party Exhibits”, and Received Exhibits.



- c. If an exhibit to be presented is something other than a document in electronic form (i.e. a physical object) the proffering party will retain custody and control of the items of physical evidence until the item is offered and received into evidence during the trial. Prior to trial, the opposing party shall be able to inspect and photograph the item where it is being stored by the proffering party. Once the item is received into evidence, the proffering party shall deliver the item to Chambers. Upon receipt, the Court will physically mark the item as Received.
- d. Pre-hearing procedure for circulation of exhibits between counsel and to witnesses.
  - i. At least 10 days prior to the hearing, the Attorney/Pro-Se party will exchange electronic copies of their exhibits by email or secured messaging.
  - ii. At least 10 days prior to the hearing the Attorney/Pro-Se party will provide each of their witnesses with copies of the exhibits that are relevant to the witnesses testimony and role in the case. The relevant exhibits provided to the witnesses must be identical to the exhibits contained in the complete set provided to the Court and may not contain any notes, highlighting, post-its, or any other changes or additions from the complete set.
- e. Pre-hearing procedure for submission of witness list with contact information for witnesses.
  - i. At least 10 days prior to the hearing, the Attorney/Pro-Se Party will exchange and provide to the Court a PDF document entitled “Witness

List” that contains a list of the names, telephone numbers, and email addresses of each witness they intend to call during the hearing.

- ii. The Court will provide a copy of each party’s Witness List to the Court Assistant and Court Reporter prior to the first day of trial.
- f. Procedure for providing witnesses with MS Teams invitations and instructions for witness etiquette during the hearing.
- i. It is the responsibility of each Attorney/Pro-Se Party to provide the MS Teams invitation to each witness in advance of the hearing and to ensure that the witness has the understanding and ability to appear virtually for their testimony. It is strongly recommended that the Attorney/Pro-Se Party/Witness install MS Teams AND run a test prior to the scheduled trial date.
  - ii. Prior to the hearing the Attorney/Pro-Se Party will instruct all their witnesses on the following procedures and hearing etiquette:
    1. Witnesses are not to log onto the conference until prompted to do so; the Court will allow each party time to telephone their witness to prompt them to log in when it is time to give their testimony.
    2. Witnesses shall refrain from speaking to anyone about what is occurring in the hearing until after they have testified and been excused from further testimony.
    3. Witnesses shall have available for reference any exhibits that have been provided to them prior to the hearing; but will not review them unless directed by the Court to do so.
    4. Witnesses shall have a separate video feed from any attorney or party.
    5. Video and audio taping of the proceedings is strictly prohibited.
    6. During their testimony, witnesses:
      - a. should be in a location that is quiet and without distractions;
      - b. shall dress and act in a manner that is appropriate for court proceedings; and

- c. shall refrain from eating, smoking, chewing gum, or consuming alcoholic beverages during their testimony.

g. Pre-hearing Exhibit Stipulations

- i. In matters where all parties are represented by counsel, the Attorneys shall review the exhibits and provide the Court with a list of exhibits that will be stipulated into evidence.
- ii. For matters where one or more parties are not represented by counsel, the assigned Judge or her/his law clerk will conference the matter to determine what, if any, exhibits can be stipulated into evidence. This conference will be conducted on the record, using a Court Reporter (Family Court Judges) or FTR device (Referees/Support Magistrates).

h. Procedure for handling Pro-Se parties or Attorneys who do not have the ability to digitize exhibits.

- i. In matters where Pro-Se parties or counsel are unable to digitize exhibits, hard copies of marked exhibits shall be provided to Chambers and opposing party/Attorney at least ten days before trial.

i. Review of 1034/RFI:

- i. Documents are uploaded to UCMS and marked as confidential. Judges can review through UCMS/NY Bench. Hard copies are not made available to Attorneys due to the confidential nature of the documents.
- ii. Judge can summarize document on the record.
- iii. Law clerk may read document in its entirety to all counsel and any Pro-Se Parties in a Teams call.
- iv. Possible review of RFI by Attorneys through secure email and attestation that document will be kept confidential, will not be disseminated and will be destroyed after review.

III. **During the hearing considerations:**

- a. All Attorneys, Pro-Se Parties and witnesses must participate in the hearing via MS Teams, by video and audio.
- b. The Judge/Referee should begin every case with a colloquy that includes:

- i. The case caption, docket number and date;
  - ii. An identification of the parties and their attorneys;
  - iii. Confirm with each participant that there is no one else in the room or present;
  - iv. Instruct attorneys and parties to mute microphones when not speaking;
  - v. Remind attorneys and parties that courtroom rules apply - speak one at a time and do not interrupt other speakers, including the judge; and
  - vi. Unauthorized recording of the virtual proceeding is strictly prohibited.
- c. No Witness shall join the virtual trial until prompted/invited to do so.
- d. All Attorneys/Pro-Se Parties/Witnesses shall participate in the virtual trial from a quiet environment (no background noise or other distractions – cell phones off, no children, no pets, etc.).
- e. Witnesses shall refrain from eating, smoking, chewing gum, or consuming alcoholic beverages during their testimony.
- f. Third-Party (Non-Party) Witnesses shall not communicate with anyone about what is occurring at the trial until their testimony is complete.
- g. Third-Party (Non-Party) Witnesses, who may be called to testify, may not be present or located where they could overhear the proceeding.
- h. Any recording of the virtual trial is strictly prohibited.
- i. Coaching, signaling or assisting any witness are strictly prohibited.
- j. Courtroom rules apply. Attorneys/Pro-Se Parties/Witnesses will speak one at a time and not interrupt other speakers.
- k. Witnesses may not testify using a virtual background or a blurred background.
- l. The Third-Party (Non-Party) Witness shall testify from the Third Party (Non-Party) Witness' office/home or other location arranged by the attorney calling the Third-Party (Non-Party) Witness to testify. The Third-Party (Non-Party) Witness shall not testify from the attorney's office or at a location with another witness.

- m. No one else may be present with the Third-Party (Non-Party) Witness during their testimony.
- n. Procedure for marking new exhibits for identification.
  - i. For exhibits that were not provided in the pre-trial submission of documents, the Attorney/Pro-Se Party will email a PDF copy of the proposed exhibit to Chambers and other counsel.
  - ii. The Attorney/Pro-Se Party will advise the Court, on the record, of the proposed exhibit number/letter.
  - iii. The Court will mark the exhibit with the appropriate party (Petitioner/Respondent/AFC) and number or letter next in sequence, while the Court Reporter will simultaneously note the same on the Trial List.
- o. Procedure for marking exhibits as received into evidence.
  - i. When an exhibit that has been marked for identification has been received into evidence, the Judge/Referee will audibly indicate that the exhibit is received into evidence.
  - ii. If a hard copy has been printed (**platform c**), the Judge/Referee will mark the hard copy “Rec’d” below the exhibit number/letter.
  - iii. The received exhibit will be placed in the court file/trial file in the usual fashion.
  - iv. If using the Court network (**platform b**) the Judge would “virtually” mark the exhibit “Rec’d” and may also use the Foxit Phantom PDF Typewriter tool to type “Rec’d” below the exhibit number/letter. Court assistants are not always present for hearings.
- p. Procedure for redacting/modifying new exhibits before being received into evidence.
  - i. For PDF documents –Redactions will be made by the party offering the document after the Court has ruled on any objections.
- q. Procedure for making a record of the proceedings (Court Reporter, FTR, SoundTap).



- i. Depending on the protocol in place for each type of hearing, a record of the virtual proceedings will be made by a Court Reporter, FTR or SoundTap.
- r. Swearing in witnesses: If a notary, the Court Reporter will swear in witnesses. If a deputy/court security officer is present, he/she shall swear in witnesses. At times, the Court will swear in witnesses.
- s. Technical difficulties: Attorneys and Pro Se Parties should be advised that in the event of technical difficulties/extreme feedback, they should first mute their phones in an attempt to alleviate the problem, but that if the problem is not resolved, they are to hang up and call back in using the same phone number and conference ID or using the same email link.

#### **IV. Post-hearing considerations:**

- a. Procedure for separating admitted exhibits from non-admitted exhibits and providing access to admitted exhibits to the fact finder.
  - i. Admitted Exhibits will be found in the Received Exhibits network subfolder (**platform b**) or in the court file/separate trial file (**platform c**). The Judge (or Referee), Law Clerk, and Secretary will have access to this subfolder or file.
- b. Procedure for return/elimination of non-admitted exhibits post-hearing.
  - i. After the filing of the decision resulting from the hearing, the Law Clerk (or Referee) will delete/destroy exhibits that were not received into evidence during the hearing.
- c. Procedure for retention or return of admitted exhibits after issuance and filing of decision.
  - i. Exhibits received into evidence shall be retained or returned pursuant to the Court's current procedures for retention/return of hard copy exhibits, bearing in mind the need to keep admitted exhibits for sufficient time to exhaust possible appeal timelines.