

**IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,  
IN AND FOR DUVAL COUNTY, FLORIDA**

**ADMINISTRATIVE ORDER NO. 2020-18**

**RE: CONDUCTING DEPOSITIONS IN CRIMINAL CASES DURING THE COVID-19 EMERGENCY**

**WHEREAS**, on March 9, 2020, Governor DeSantis of the State of Florida declared a state of emergency due to the outbreak of the Coronavirus in our State;

**WHEREAS**, on March 13, 2020, the Supreme Court of Florida entered Administrative Order No. AOSC20-13 regarding COVID-19 Emergency Procedures in the Florida State Courts, which ordered the temporary suspension of various court proceedings and noted that “mitigating the effects of COVID-19 is a high priority in the Florida State Courts System”;

**WHEREAS**, on March 18, 2020, the Supreme Court of Florida entered Administrative Order No. AOSC20-16 regarding COVID-19 Emergency Procedures for the Administering of Oaths Via Remote Audio-Video Communication Equipment which stated that “a public health emergency currently exists in Florida requiring mitigation including social distancing measures meant to reduce the increase in person-to-person transmission of the virus that causes COVID-19” and ordered that “[n]otaries and other persons qualified to administer an oath in the State of Florida may swear a witness remotely by audio-video communication technology from a location within the State of Florida, provided they can positively identify the witness”;

**WHEREAS**, AOSC20-16 further ordered that “[a]ll rules of procedure, court orders, and opinions applicable to remote testimony, depositions, and other legal testimony...that can be read to limit or prohibit the use of audio-video communications equipment to administer oaths remotely...are hereby suspended”;

**WHEREAS**, on May 4, 2020, the Supreme Court of Florida entered Administrative Order No. AOSC20-23 *Amendment 1* regarding Comprehensive COVID-19 Emergency Measures for the Florida State Courts that extended “previously enacted temporary remedial measures...until the close of business on May 29, 2020”;

**WHEREAS**, in order for the parties to be prepared for resuming jury trials on July 6, 2020, as currently ordered by the Supreme Court of Florida, depositions of witnesses must continue to be conducted by the Office of the State Attorney, the Office of the Public Defender, the Office of Criminal Conflict and Civil Regional Counsel, and members of the private bar;

**WHEREAS**, in order to comply with the instructions from Governor DeSantis and the Supreme Court of Florida, and in order to appropriately respond to the current public health emergency, this Court finds that it is in the best interest of all parties that are directly involved with conducting depositions in criminal cases that in-person contact be limited as much as possible during the current emergency;

**WHEREAS**, this Court has been provided with Attachment A entitled Deposition Procedures During COVID-19 Public Health Crisis that has been developed by a “working group of members of the Office of the State Attorney, the Office of the Public Defender, the criminal defense bar, and court reporters” to clarify their procedures for depositions during the emergency so that depositions may continue while limiting in-person contact as much as possible;


**WHEREAS**, in order to effectuate the deposition procedures outlined in the attachment this Court is suspending the requirements of Amended Administrative Order No. 95-4 which designates the location of depositions in criminal cases in Duval County so that depositions may be taken using video conferencing.

**NOW THEREFORE**, by the authority vested in me as the Chief Judge of the Fourth Judicial Circuit and pursuant to the Florida Rules of Judicial Administration, it is hereby

**ORDERED AND ADJUDGED** that:

1. As of the date of this order, the requirements of Amended Administrative Order No. 95-4 which designates the location of depositions in criminal cases in Duval County shall be suspended.
2. This Administrative Order shall be recorded by the Clerk of the Court, in the Official Records of Duval County, in the State of Florida, shall take effect immediately, and shall remain in full force and effect until further order of this Court.

**DONE AND ORDERED** in Chambers at Jacksonville, Duval County, Florida, this 14<sup>th</sup> day of May, 2020.

  
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**MARK H. MAHON**  
**CHIEF JUDGE**

cc: All Judges in the Fourth Judicial Circuit  
All Magistrates in the Fourth Judicial Circuit  
The Honorable Ronnie Fussell, Clerk of Courts, Duval County  
The Honorable Charles G. Cofer, Esq, Public Defender

The Honorable Melissa W. Nelson, Esq., State Attorney  
The Honorable Jason R. Gabriel, Esq., General Counsel  
The Honorable Mike Williams, Sheriff, Jacksonville Sheriff's Office  
Major Claude Colvin, Jacksonville Sheriff's Office, Courthouse Security  
Joseph G. Stelma, Fourth Judicial Circuit Trial Court Administrator  
Eve Janocko, Chief Deputy Trial Court Administrator  
Mike Smith, Court Technology Officer  
Steven Woodard, Emergency Preparedness Director  
Julie K. Taylor, Court Counsel  
Stephen Siegel, Esq., Office of the State Attorney  
Janet Abel, Circuit Director, Office of Criminal Conflict and Civil Regional Counsel  
Matthew Lufrano, President, Florida Association of Criminal Defense Lawyers,  
Jacksonville Chapter  
Official Court Reporters  
Fourth Circuit Court Law Library, Duval County  
Judicial Staff Attorneys, Fourth Judicial Circuit  
The Jacksonville Bar Association

# ATTACHMENT A

**Deposition Procedures During COVID-19 Public Health Crisis**

In accordance with the social distancing orders addressing the COVID-19 public health crisis from the Florida Supreme Court, the Governor of the State of Florida, and the Mayor of Jacksonville, the current framework for conducting depositions in criminal cases in the Fourth Judicial Circuit requires revision. Florida Supreme Court Administrative Order 20-12 directs Circuits to take mitigating measures necessary to address the COVID-19 outbreak. Mitigating measures include:

1. Prudent methods of social distancing to eliminate unnecessary face-to-face contact to the extent consistent with law;
2. Sanitary procedures designed to mitigate the spread of COVID-19; and
3. Use of technology, electronic documents, electronic communications, and other electronic means of conducting business when possible.

By local administrative order, the State Attorney's Office is a designated location for conducting depositions. A working group of members of the Office of the State Attorney, the Office of the Public Defender, the criminal defense bar, and court reporters created the following procedures for the taking of depositions in criminal cases while social distancing orders remain in effect.

Depositions taken pursuant to these procedures may be used for impeachment purposes in any future legal proceeding and a witness so deposed shall not be subject to a subsequent deposition in the same matter once these social distancing guidelines are lifted, without order of the Court.

**I. Cases and Witnesses to be Deposed**

Depositions may be taken in criminal matters. Until revised, preference will be given to the deposing of law enforcement officers.

**II. Method of Deposition**

- A. Depositions taken pursuant to these procedures shall be conducted through ZOOM (version 5.0 or later) video conferencing. Law enforcement officers who do not wish to use personal or department equipment to appear at the deposition will have the option of personally appearing at the

State Attorney's Office to participate in the video deposition via laptops dedicated for that purpose.

B. The State Attorney's Office will ensure the security of the virtual deposition by setting the appropriate video conferencing security measures to admit participating parties and "lock out" any non-participants to the deposition.

C. Virtual depositions shall be recorded at the request of the court reporter for the purpose of preparing a transcript. Otherwise, virtual depositions shall be recorded only by agreement between the Assistant State Attorney (ASA) and Defense Counsel. Witnesses shall not record the deposition by any electronic means, to include video or audio recordings.

### **III. Swearing of Witnesses for Deposition**

Florida Supreme Court Administrative Order 20-16 suspends any actual or implied requirement that notaries, and other persons qualified to administer an oath in the State of Florida, must be in the presence of witnesses for purposes of administering an oath for depositions and other legal testimony, so long as the notary or other qualified person can both see and hear the witness via audio-video communications equipment for the purpose of readily identifying the witness.

### **IV. Procedure for Scheduling Depositions**

A. All criminal depositions in the Fourth Judicial Circuit will be scheduled and conducted by agreement of Defense Counsel, the ASA, and the court reporter.

B. To initiate the scheduling of a deposition, Defense Counsel shall send the ASA assigned to the criminal case a list of witnesses they wish to depose. This list shall include the case name and number, any law enforcement witness's employing agency and badge number, the order in which counsel would like to depose the witnesses, the amount of time to be reserved for each witness, and a list of proposed dates and times for each deposition.

C. Defense Counsel shall provide at least three proposed depositions dates when making a request for depositions under these procedures unless the parties have already agreed to a date and time for the deposition.

D. The ASA will then provide Defense Counsel with the final dates for the depositions, a list of witnesses to be deposed, and the times those witnesses will be deposed. This will be in a format that can be easily copied and placed into a "Notice of Taking Deposition."

E. The ASA will prepare a ZOOM meeting invite and send it to defense counsel and Official Court Reporters. The standard protocol/settings for the ZOOM meeting invite shall be as follows:

- Topic shall be "Deposition in case of State v. [Defendant's Name], Case No. \_\_-202\_-CF/MM-XXXXXX"
- Meeting ID—Generated Automatically
- Password—Required
- Video—On for Host and Participants
- Audio—Telephone and Computer Audio
- Calendar—Outlook (other calendar)
- Advanced Options
  - Enable Waiting Room
  - Enable join before host
  - Mute participants on entry
  - Only authenticated users

The State Attorney's Office will seek a process for notifying law enforcement officers of the deposition and providing them with the invite information.

It will be permissible for the SAO, PDO or defense counsel to forward the invite information to others within their respective offices for the purpose of preparing subpoenas, calendaring, and other administrative tasks related to the taking of depositions.

F. Defense Counsel shall secure a court reporter for the deposition, provide the reporter with the login information for the remote technology, and also provide the reporter with a formal Notice of Deposition.

G. Defense Counsel will also be required to e-file this formal notice of depositions with the Clerk of the Courts and e-serve it on the Office of the State Attorney.

H. The State Attorney's Office and Public Defender's Office shall agree upon modification of the standard subpoena for depositions that will explain to witnesses the reason for taking the deposition via video, the process for attending the video deposition, and the invitation information.

**V. Procedure for Conducting Depositions**

A. All depositions will be conducted remotely with the ASA, Defense Counsel, the court reporter, and the witness all appearing via ZOOM (version 5.0 or later) video conferencing.

B. The witness shall be sworn in and a formalized script will be used to address why the deposition is being conducted in this manner and to ensure that the witness is following proper procedure.

C. The parties to any depositions conducted under these procedures agree that the only memorialization of such deposition content will be the transcription made by the court reporter.

D. Defense Counsel will instruct witnesses that the witness must be properly sequestered to ensure that the witness cannot visibly see or audibly hear or speak to another witness in this matter or any other person unrelated to the proceedings in this matter. Such witnesses may be asked general questions about this topic under oath or by an attorney to ensure that they are not in the presence of other potential witnesses.

STATE OF FLORIDA  
DUVAL COUNTY

I, UNDERSIGNED Clerk of the Circuit & County Courts, Duval County, Florida, DO HEREBY CERTIFY the within and foregoing, consisting of 8 pages, is a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit & County Courts of Duval County, Florida.

WITNESS my hand and seal of Clerk of Circuit & County Courts at Jacksonville, Florida, this the 14<sup>th</sup> day of May, 2020

**RONNIE FUSSELL**  
Clerk, Circuit and County Courts  
Duval County, Florida  
By [Signature]  
Deputy Clerk