



In the Supreme Court of Bermuda

A/50

14 April 2020

CIRCULAR NO. 08 OF 2020

TO ALL ATTORNEYS

RE: UPDATED COVID-19 MEASURES

**TEMPORARY PROTOCOLS AND PROCEDURES FOR ELECTRONIC COURT HEARINGS VIA VIDEO
AND/OR AUDIO PLATFORMS**

This Practice Direction is issued further to Circular 07 of 2020.

This Practice Direction establishes the protocols and procedures for the implementation and use of holding Court hearings in both the Supreme Courts and the Magistrates' Courts of Bermuda (collectively referred to as "the Courts") electronically via video or audio conferencing ("Temporary Electronic Court Attendance Protocols and Procedures") **with immediate effect**.

The Temporary Electronic Court Attendance Protocols and Procedures are implemented strictly for **temporary use** for conducting hearings electronically and align with the Criminal Procedure Rules 2013, The Emergency Powers Act 1963, The Emergency Powers (Covid-19 Shelter in Place) Regulations 2020, Practice Directions and Circulars of the Court, and any other Bermuda Government legislation and guidelines as it relates to the COVID-19 pandemic.

This continues in line with the Courts' paramount concern being the health, safety and welfare of the Members of the Public as well as Court Administrative Staff.

Further, the purpose of the Temporary Electronic Court Attendance Protocols and Procedures is to establish guidelines and security measures for all users of the Courts during electronic Court hearings to guarantee continued rule of law, the proper administration of justice, the jurisdiction of the Courts to control its own procedures, efficiency of the Courts, access to justice, legal representation and press access in a safe and trustworthy environment.

1. SCOPE

- 1.1 This Temporary Electronic Court Attendance Protocols and Procedures covers the provision for Court hearings to take place electronically across audio and video means.
- 1.2 The presiding Judge or Magistrate retains the sole discretion in respect of the electronic platform used for Court hearings.
- 1.3 The presiding Judge or Magistrate shall have the sole discretion, after consultation with Counsel or the parties, in determining whether a Court hearing can take place by electronic means and reserves the power to require Counsel, the parties, or any witness to attend Court in-person.
- 1.4 The Senior Magistrate, in relation to matters held in the Magistrates' Court, has confirmed generally the nature of the hearings which may be conducted electronically. These may include: Plea Court; Case Management Hearings; bail hearings; sentencings; urgent Family Court and Civil Court applications; or any other application/hearing deemed necessary by the presiding Magistrate (see paragraph 3 above).

- 1.5 The Temporary Electronic Court Attendance Protocols and Procedures applies to all parties who are invited by the Courts to participate in any Court hearing electronically.
- 1.6 The Chief Justice has the sole discretion to amend, withdraw, revoke or terminate the Temporary Electronic Court Attendance Protocols and Procedures at any time that the Chief Justice considers appropriate.
- 1.7 Criminal trials shall not be conducted by electronic means. If during the hearing of an application (not a trial) the presiding Judge or Magistrate deems that in the interests of justice that a witness should give their evidence electronically then the presiding Judge or Magistrate may order such.
- 1.8 The electronic hearings are, except insofar as this Temporary Electronic Court Attendance Protocols and Procedures otherwise provides, to be conducted according to the normal rules and procedures of the Courts.

2. RESPONSIBILITY

- 2.1 **Judge or Magistrate and Court Staff:** The presiding Judge or Magistrate will be in charge of the proceedings and may be assisted by Court staff. The Record of the hearing in the Supreme Court will be the electronic recording of the video/audio session along with CourtSmart. In relation to Magistrates' Court, the Magistrates' Notes will stand as the official record which may be supplemented by CourtSmart and the recording generated by the electronic platform.
- 2.2 **Consent:** The presiding Judge or Magistrate shall explain the use of the video platform to the parties at each hearing to ensure the parties understand the reason the hearing is being conducted via this medium and shall obtain the Defendant's consent to proceed in the virtual platform. In the event all the parties do not consent, the Judge or Magistrate shall consider whether the matter shall be adjourned after hearing from Counsel and consider the matter being listed for a later date where the parties may be able to appear in person.
- 2.3 **Electronic Administrator:** The Courts, Counsel, the DPP's Office or the Court Liaison Unit ("CLU") of the Bermuda Police Service ("BPS") may be the electronic administrator or host which will set up the hearing, grant access to the hearing, end the hearing, and, they may record the hearing at the direction of the presiding Magistrate or Judge.
- 2.4 **Counsel:** Only the assigned Crown Counsel, Legal Aid Counsel or other Counsel will be invited to join in the Court hearing and they shall leave the Court hearing once their case has completed.
- 2.5 **Criminal Matters - Defendants and BPS:** Defendants, whether in police custody or not, shall appear electronically from the designated BPS Custody Suite area or any other area designated by the BPS. A police officer will be present in the designated room with the Defendant. It is anticipated that the Defendant will have taken advice from Counsel (whether Duty Counsel or otherwise) prior to the Court commencing. If the Defendant has not had the opportunity to give instructions to Counsel then he/she may request that their matter not proceed until such time that they have had the opportunity to do so.
- 2.6 **Criminal Matters – Corrections:** Any Defendant in the custody of Corrections will appear electronically from a Corrections facility. One or more Corrections Officers will be present in the room with the Defendant. It is anticipated that the Defendant will have taken advice from his counsel prior to the Court commencing. However, if the Defendant has not had the opportunity to give instructions to Counsel then he/she may request that their matter not proceed until such time that they have had the opportunity to do so.
- 2.7 **Department of Court Services ("DCS") and/or Department of Child & Family Services ("DCFS"):** DCS and DCFS personnel shall submit their name(s) to the administrator/host at least thirty (30) minutes prior to the hearing requesting that they be granted permission to join the hearing. It is suggested that no more than three (3) DCS and DCFS personnel will request to join the hearing.

- 2.8 **Media:** Media may be allowed to attend hearings electronically with the normal restrictions to apply. A representative of the media outlet shall submit their name to the administrator/host at least thirty (30) minutes prior to the hearing requesting that they be granted permission to join the hearing. It is suggested that only one (1) representative from each media outlet will request to join the hearing.
- 2.9 **Members of the Public:** Unless a Defendant or a party in a matter, members of the public will not be allowed to join the Court hearings electronically.
- 2.10 **Documents:** Some documents may be displayed on screen (if not provided in advance of the hearing). They are not to be copied in any way by Media or otherwise posted to social media or broadcast
- 2.11 The presiding Judge or Magistrate or the Electronic Administrator has the power (i) to decline any request by any person to join the hearing, (ii) require that any person leave the hearing, or (iii) mute the audio or video of any person in the hearing.

3. GOVERNING RULES AND REGULATIONS

- 3.1 Court hearing attendees must be authorized, required or invited. All attendees must be in attire which is presentable and in keeping with the decorum of the Courtroom.
- 3.2 A designated Host will facilitate the meeting electronically.
- 3.3 Notice of a Court hearing may be given in advance by email.
- 3.4 Notice of the electronic hearing may be given just prior to the start of the hearing by email.
- 3.5 Any password or other security provisions available on an electronic platform shall be utilized to the fullest during each hearing so as to diminish the possibility of any hackers/unauthorized persons entering the video link.
- 3.6 The Court hearing may be recorded using the platform recording feature if available.
- 3.7 Attendees must be on time so that the Court can start on time. Should a party not appear at the Court listed time, he/she/they run the risk of not being joined in the hearing. When all attendees are present, the presiding Judge or Magistrate will join the meeting on notice by the Court staff.
- 3.8 Attendees must be alone in order to retain privacy and confidentiality in a quiet, isolated environment conducive to having no background noise interference.

4. PARTICIPATION IN THE HEARING

- 4.1 Audio mute buttons should be engaged unless speaking. The presiding Judge or Magistrate may also require an Attendee to turn off his or her video stream.
- 4.2 Persons wishing to speak should raise their hands (physically and/or electronically) to get the attention of the presiding Judge or Magistrate who will then grant permission to address the Court.
- 4.3 Backgrounds should be bland and conducive to the dignity and decorum of the Court.
- 4.4 Attendees may use the "Chat" feature to communicate with each other about case related matters but not with the presiding Judge or Magistrate. The Media are not to use the "Chat" feature to communicate with others in the hearing.
- 4.5 During the Court hearing, the presiding Judge or Magistrate may check in from time to time to verify all parties are present.
- 4.6 Attendees shall speak one at a time.

5. TECHNOLOGY FAILURE (INTERNET OR ELECTRONIC DEVICE MALFUNCTION)

- 5.1 Should an attendee experience technical difficulty during the meeting, the presiding Judge or Magistrate will decide whether the Court hearing can continue.
- 5.2 If the Judge's or Magistrate's audio and/or video connection is lost, then the hearing may be stood down or adjourned until such time that any connection or technology issues are resolved.

6. MEDIA RULES

- 6.1 Media agree to be bound by the rules and regulations of the Media Council.
- 6.2 Media, in accordance with normal practice, are not allowed to address the Court, unless called upon to speak by the presiding Magistrate or Judge.
- 6.3 Media are not allowed to record any Court Hearing in any form using any device whatsoever. Media are not allowed to post to social media or broadcast any electronic recording of an electronic Court hearing.
- 6.4 Any breaches of this Temporary Electronic Court Attendance Protocols and Procedures by media members will be addressed by the Courts.

Dated the 14th day of April 2020.



REGISTRAR

CC: The Attorney-General's Chambers
Department of Public Prosecutions
Hamilton Police Station
Commissioner of Police
Commissioner of Corrections
Magistrates Court
Bermuda Bar Association
Legal Aid Office

ANW