

## NEW COURT PROCEDURES IN THE SUPREME COURT

This Practice Direction addresses a number of new procedures and processes which have been introduced into the Supreme Court system and is to be read together with the Court Coronavirus Mitigation Protocols 2.0 set out in Notice # 8 dated 1 July, 2020 (“*the Protocols*”). Some of the changes are consequential to the Covid 19 pandemic restrictions and others are part of the ongoing implementation of the Court Reform and Modernization Programme.

Except as otherwise defined in this Practice Direction, capitalized terms used herein have the same meaning as set out in the Protocols.

### *Email addresses*

1. Every attorney-at-law who has dealings with the Supreme Court is directed to provide the Registrar of the Supreme Court with a current email address and telephone number as soon as possible and in any event by 17 July, 2020. The email addresses provided will be used by judicial officers and court officials to communicate with attorneys-at-law on their matters before the courts. Email addresses sent pursuant to this paragraph should be directed to [info@courts.gov.bs](mailto:info@courts.gov.bs) for the attention of the Registrar of the Supreme Court.

### *Court Divisions*

2. The Supreme Court (Divisions of Court) Order, 2020 establishing the new Divisions of the Court will be signed next week and Gazetted and will be posted on the Judiciary’s website at [www.bahamasjudiciary.com](http://www.bahamasjudiciary.com) (“*the Website*”). All judges have been assigned to specific Divisions and, going forward, the general practice will be for judges to hear cases only within those assigned Divisions except part heard matters and when he/she is sitting as the Duty Judge. The List of Judicial Assignments to the Divisions will also be posted on the Website on the Home Page under the Useful Links section.

### *Remote Hearings*

3. The Covid 19 pandemic necessitates the wider use of remote hearings whenever possible. Accordingly, the Court accelerated the implementation of its remote platforms and since 14 May, 2020 has increased its use of Remote Hearings for applications and, where appropriate, Videoconferencing for trials under the relevant statutory provisions. You are specifically directed to paragraph 11 of Notice # 8 with reference to these modes of proceedings. Attached hereto as Annex 1 is a copy of that paragraph. Additionally, counsel should ensure that his/her face is visible on camera at all times during a Videoconferencing hearing in front of a neutral background and that all incoming audible notifications to their computer are muted or turned off.

4. The method by which all hearings, including Remote Hearings, are conducted is always a matter for the presiding judicial officer, operating in accordance with applicable law, Rules, Protocols and Practice Directions. In determining whether there should be a Remote Hearing, the judicial officer must have regard to the interests of justice, public health issues and the ability to maintain appropriate physical distancing attendance in courtrooms. Further, when considering the suitability of a Remote Hearing, judicial officers must consider issues such as the nature of the matters at stake during the hearing, any issues which the use of video/audio technology may present for participants in the hearing, the individuals'/witnesses' needs and any issues around public access to or participation in the hearing.

5. In any case where the parties or their counsel disagree with the court's proposed Mode of Disposition, then, within the time frame specified by the court, they may make submissions in writing by email to the court and copied to the other parties, as to what other mode of disposition would be more appropriate in the circumstances. On receipt of submissions from all parties, the judicial officer will make a determination as to the way in which the hearing will take place, and give all other necessary directions.

6. It will also be open to the court to fix a short remote case management conference in advance of the fixed hearing to allow for directions to be made in relation to the conduct of the hearing, the technology to be used, and/or any other relevant matters.

Nothing in this Practice Direction or the Protocols derogates from the judicial officer's duty to determine all issues that arise in the case judicially and in accordance with applicable principles.

7. All 'open court' hearings (as opposed to hearings in chambers) and trials shall be conducted either through In-Person Hearings or Videoconferencing. Unless otherwise ordered by the judge, the proceedings, whether civil or criminal, heard before the Court (and any evidence adduced during the hearing or trial) shall be recorded mechanically with or without a court appointed reporter. The recording (and, if it exists, the transcript thereof) or the transcript produced by the appointed court reporter shall constitute the official record of the proceedings before the court.<sup>1</sup> Where the 'open court' hearing or trial is conducted by Videoconferencing, no counsel/party is entitled to be physically present before the Court unless the Court gives permission after considering submissions on the point by all counsel/parties.

8. In the case of Videoconferencing for an 'open court' hearing or trial, an officer of the court, who will be in the courtroom, will log in to the remote hearing on a court computer and broadcast the audio and video of the hearing on the flat screen television in that courtroom or on computer screens clearly visible to persons in the courtroom. Members of the public will be allowed to enter the courtroom subject to wearing a face mask, sanitizing their hands and physical distancing requirements and limitations.

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<sup>1</sup> See section 77 of the Supreme Court Act.

9. With the court's permission, parties may use privately paid-for transcribers in any hearing but in no event shall the transcript produced by such a transcriber constitute the official record of the proceedings.

***Electronic hearing bundles***

10. Hard copies of all hearing/trial bundles must continue to be filed in the usual way under the Rules and Practice Directions unless expressly dispensed with by the presiding judicial officer.

11. If electronic bundles are ordered or requested by the court the bundle must be prepared as follows and be suitable for use with software that can read and access information contained within PDF files, such as Adobe Acrobat Reader:

1. There must be an electronic bundle of documents and, if applicable, a separate electronic bundle of authorities.
2. Electronic bundles should contain only documents and authorities that are essential to the Remote Hearing.
3. An electronic bundle must not contain more than 200 pages per volume and each electronic bundle must be a single PDF.
4. Each electronic bundle must be numbered in ascending order regardless of whether multiple documents have been combined (the original page numbers of the document will be ignored and just the bundle page number will be referred to).
5. Index pages and authorities must be numbered as part of the single PDF document (they are not to be skipped; they are part of the single PDF and must be numbered).
6. The default display view size of all pages must always be 100%.
7. Texts on all pages must be selectable to facilitate comments and highlights to be imposed on the texts.
8. Bookmarks, where used, must be labelled indicating what document they are referring to (best to have the same name or title as the actual document) and also display the relevant page numbers.
9. The resolution on the electronic bundle must be reduced to a range of 200 to 300 dpi to prevent delays whilst scrolling from one page to another.
10. The index page must be hyperlinked to the pages or documents they refer to.
11. You are encouraged to use hyperlinks in submissions.
12. Electronic Bundles, if ordered or requested under paragraph 11 above, should, whenever practicable, be sent to the court at least two (2) business days before the hearing by uploading the documents to **the eDocument Delivery Form** posted on the Website as explained below in paragraphs 27 & 28. It should be noted that the maximum file size for a single upload is 25MB and there can be multiple uploads to the form. If there are difficulties with transmitting the form,

counsel/parties can email the eBundle to the official email address of the judicial officer. The court may in any case also require the parties to provide (i) by email electronic copies of specified court documents to the court reporter assigned to the hearing; or (ii) a hard copy of the hearing bundle.

### ***Preparation***

13. When the Court has scheduled a matter for a Remote Hearing, counsel/parties must ensure that they are adequately prepared. In this regard, counsel will be expected to be familiar with the relevant Rules of Court, Practice Directions, Protocols and guidance from the Judiciary. ***At all times, Remote Hearings are to be conducted with the same decorum and formalities as an in person hearing and governed by the same dress code and conduct as apply to such hearings.*** Where relevant, counsel/parties should have agreed a core bundle in accordance with the directions set out above and ensured that the court and all parties are in possession of an indexed electronic core bundle prior to the hearing. This will make it unnecessary to share any documents on the screen or to have hard copies of physical documents. Counsel are strongly encouraged to make reasonable concessions and formal admissions whenever possible in order to focus judicial consideration on matters in issue.

14. Counsel should be able to find documents quickly and all references in the skeleton argument/submissions and oral submissions should be to the pages in the electronic bundle, not an earlier paper version.

**15. As an alternative to in-person hearings, the remote platform of the Court will continue to be of vital significance to the good administration of justice as part of the implementation of the Court Reform and Modernization Programme.**

### ***eScheduling – Listing Office***

16. The procedure for requesting hearing dates in all Court Divisions except the Criminal Division has changed and will now be processed through online Forms accessed through the Website.

### ***Hearing dates before a Judge***

17. Prior to the first Case Management Conference in an action, **ALL** applications for hearing dates before a judge (except adjourned dates given by the judge hearing an application assigned through the Listing office) must be made by using the ‘**Listing Office: Hearing Dates before a Judge**’ Form on the Website which is on the Useful LINKS section of the Home page and also under the Courts link on the Home page in the drop down menu.

18. Once that Form is completed (preferably with uploaded scanned copies of the filed court documents) it is sent to the Listing Office by pressing the Submit box. The applicant for the court hearing date will receive an automated receipt by email. Subsequently, the applicant will be

notified by email from the Listing Office of the hearing date and the judge who will hear the application.

19. When completing the Form for a hearing date, the applicant is required to give the estimated time of the hearing for the application. The Court will hold the applicant to this time estimate with reasonable but limited extensions.

20. Whenever possible, the Upload feature under the section headed Supporting Documents should be used to provide the Listing Officer with **scanned copies of court documents filed in respect of the application. Documents in Word format SHOULD NOT be uploaded to the Form.**

21. In cases of extreme urgency, counsel may communicate directly with the Listing Officer by email or telephone to obtain a hearing date before the Duty Judge.

22. After the first Case Management Conference, all further requests for court hearing dates or a trial date in the action must be made by letter or email directly to the Clerk of the judge who is assigned to the action and copied to the judge and the Listing Officer.

#### ***Hearing dates before Registrar/Deputy Registrars/Assistant Registrars***

23. **ALL** applications for hearing dates before a registrar (except adjourned dates given by the registrar hearing an application assigned through the Listing office) must be made by using the ‘**Listing Office: Hearing Dates before a Registrar**’ Form on the Website which is on the Useful LINKS section of the Home page and also under the Courts link on the Home page in the drop down menu.

24. The other procedures and practices relating to obtaining dates before a judge in paragraphs 18 – 20 above apply, *mutatis mutandis*, to registrars.

25. In cases of extreme urgency, counsel may communicate directly with the Listing Officer by email or telephone to obtain a hearing date before a registrar.

There is a short tutorial on the use of the Hearing Dates Forms for Judges and Registrars posted on the Website.

#### ***Hearing Lists***

26. Weekly Hearing Lists for judges and registrars will be posted on the Website and on the door of the chambers of each judicial officer.

#### ***The eDocument Delivery Service Form***

27. Once a judicial officer has been assigned to hear a matter, **scanned copies of filed court documents** can be sent directly to the judge/registrar by uploading them to the **eDocument Delivery Service Form** after it is completed. **This Form must not be used to apply for a hearing date before a judicial officer has been assigned to hear the matter through the Listing Office.**

28. This form is on the Website on the Useful LINKS section of the Home page and also under the Courts link on the Home page in the drop down menu. It should be noted that the maximum file size for a single upload is 25MB and there can be multiple uploads to the form. There is a short tutorial on the use of the eDocument Delivery Service Form posted on the Website.

### ***Duty Judge – Urgent court applications in all Court divisions except Criminal Division***

29. A Duty Judge has been appointed for every week of the year to hear urgent court applications in all Court Divisions except the Criminal Division. The Duty Judge Roster is on the Website under the Useful LINKS section on the Home page.

30. All urgent applications for court hearings before the Duty Judge **MUST** be made to the Listing Office using the ‘**Listing Office: Hearing Dates before a Judge**’ Form on the Website. Whenever possible, scanned copies of filed court documents should be uploaded to the form. **Documents in Word format SHOULD NOT be uploaded to the Form.**

Subsequent to the disposition of the urgent application by the Duty Judge, all further hearing dates in the case must be sought through the Listing Office and will be assigned to a judge in the appropriate Division for the case.

### ***Urgent applications in the Criminal Division***

31. An Urgent Bail Application Judge has been appointed for every week of the year. The Urgent Bail Application Roster is on the Website under the Useful LINKS section on the Home page.

32. All urgent bail applications **MUST** be made to the Deputy Registrar in the Criminal Registry and must satisfy at least one of the criteria for urgent bail applications as certified by the Deputy Registrar. The Criteria for Urgent Bail Applications is on the Website under the Useful LINKS section on the Home page.

33. Other urgent applications in the Criminal Division **MUST** be made to the Deputy Registrar in the Criminal Registry who will process such applications in accordance with paragraph 4 of the Protocols.

### ***The Website***

34. All lawyers and other court users are encouraged to regularly view the Website which is the primary portal for the dissemination of public information by the Judiciary. Currently, in addition to the Forms mentioned above in this Practice Direction, Judgments and Rulings are being posted on the website, usually within 2 days of when they are delivered.

35. As of 22 June, 2020 electronic Hearing Lists for judges and registrars will be posted on the Website during the last week of each month for the upcoming month. Changes in hearing dates will be posted when they occur in an attempt to keep the Hearing List current and accurate.

36. During the period of the public emergency, public access to the Registries will be allowed by appointment made through the **eAppointment Request** Form on the Website.

**Brian M. Moree**  
**Chief Justice**

1 July, 2020.

**ANNEX 1**

## NOTICE # 8

### THE COURT CORONAVIRUS MITIGATION PROTOCOLS 2.0

#### Paragraph 11

#### ***Definitions:***

For the purpose of these Protocols:

“***Application on the Papers***” refers to an application to be decided by the Court without an oral hearing on the written submissions of the parties;

“***BDOCS***” refers to The Bahamas Department of Corrections;

“***Disposition Mode***” refers to an In-Person Hearing, an Application on the Papers or a Remote Hearing;

“***Expiration Date***” means the date when these Protocols shall cease to have effect pursuant to the direction of the Chief Justice by Practice Direction;

“***hearing***” includes a trial or any hearing fixed for the consideration of an application or matter before the Court;

“***In-Person Hearing***” refers to a hearing carried out in strict compliance with physical distancing requirements where the parties, their respective counsel and if applicable witnesses are physically required to be present in court unless otherwise ordered by the Judge;

“***Remote Hearing***” refers to a hearing by teleconference, video-link, live television link, internet link, any other means that will allow the Court and the parties or accused, as the case may be, to engage in simultaneous visual and oral communication or any other manner of instant communication between the Court and the parties or accused, as the case may be, facilitated through the use of technology by the Court;

“***Videoconferencing***” means one type of a Remote Hearing where the hearing is by video-link, live television link, internet link or any other means that will allow the Court and the parties or accused, as the case may be, to engage in simultaneous visual and oral communication facilitated through the use of technology by the Court.

#### **REMOTE HEARINGS:**

11. (i) The current COVID-19 pandemic requires the Courts to augment traditional In-Court Hearings with the use of Remote Hearings wherever possible. Such technology is currently used for receiving evidence of distant witnesses in non-criminal cases and for certain criminal procedures conducted between the Supreme Court and BDOCS using video-technology.

(ii) Order 31A(1)(k) of the Rules of the Supreme Court Rules provides for the court to actively manage cases by “*making appropriate use of technology*” and Order 31A r18(2)(n) provides that the Court may hold a hearing by “*...electronic means or use any other method of direct communication: Provided that where evidence is received by telephone or other electronic means, all persons participating must be able to hear each other and to identify each other so far as practicable.*”

(iii) Section 78C (2) of the Evidence Act as amended by section 2 of the Evidence (Amendment) Act, 2013 provides that in criminal proceedings “*...the court may, at any time during any proceedings relating to an offence other than at a time when the evidence of a witness is being taken, direct that the accused appear by live link or by any other means that will allow the court and the accused to engage in simultaneous visual and oral communications.*”

(iv) This protocol is only intended to provide basic guidance on Remote Hearings. Practitioners and parties are encouraged to familiarize themselves with the technical features of the various methods available for remote hearings, including Skype, Zoom and Webex. Currently, the preferred methods for Remote Hearings to be conducted by the Court is Webex and Zoom.

(v) The provisions for Remote Hearings are intended to be read subject to paragraphs 2-10 of these Protocols, and it will always be in the discretion of the individual judicial officer to determine which matters are suitable for Remote Hearings.

#### Conduct of hearing

(vi) The presiding judicial officer and/or judicial staff will coordinate the arrangements for Remote Hearings and will send out the necessary invitations to counsel, the parties and any other necessary attendees at least twenty four (24) hours in advance of the hearing. In those matters which would ordinarily be recorded by court reporters, arrangements will be made for a court reporter to attend the Remote Hearings and make a record.

(vii) A Remote Hearing shall be conducted as if counsel and/or the parties are physically appearing before a judicial officer of the Supreme Court in accordance with the Rules, practice, procedures and decorum applicable to an in-person hearing. Procedural propriety must be observed at all times and the normal ways of addressing judicial officers and counsel in court proceedings shall apply.

(viii) When the Court has scheduled a Remote Hearing, counsel and the parties must ensure that they are adequately prepared for the hearing and have the necessary equipment in place for the duration of the hearing. Where the Remote Hearing is by Videoconferencing, this will include access to a reliable internet connection.<sup>2</sup>

(ix) Counsel and pro se litigants (subject to the Proviso below) are responsible for ensuring that (a) the presiding judicial officer and the other parties have electronic copies of all relevant filed court documents and the parties submissions and authorities at least three (3) days prior to the Remote Hearing by using the relevant eDelivery Form on the Judiciary’s website; and (b) where practicable hard copies of all filed court documents and other documents for the hearing are served

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<sup>2</sup> It is suggested that your internet connection has a minimum download and upload speed of 20Mbps.

on the other parties involved in the Remote Hearing. PROVIDED that pro se litigants who do not have access to the technology to comply with sub paragraph (a) above should, where practicable, deliver hard copies of the above mentioned documents to the office of the presiding judicial officer.

(x) All counsel and/or parties attending a Remote Hearing by Videoconferencing must be seated and attired in a manner customary to that which is adopted when physically appearing before the Court. Judicial officers and attorneys must wear bands and wing collars without robes when attending a Remote Hearing by Videoconferencing which would normally be heard in open court.

(xi) When attending a Remote Hearing all counsel and/or parties shall be at premises that are private and professional. In the case of Videoconferencing, they must have a stationary neutral backdrop away from open windows and sources of noise or distractions.

(xii) Counsel and parties should log in or call in to the Remote Hearing facility at least ten minutes before it is due to start in order to confirm that there are no connectivity issues.

(xiii) At the commencement of the Remote Hearing, the presiding judicial officer will give such directions as may be necessary for the conduct of the hearing. The applicant shall give the appearances and each participant shall state on the record the name of anyone else who is in the room with him/her. The presiding judicial officer will decide whether such person or persons are allowed to attend the Remote Hearing.

(xiv) Unless granted permission by the presiding judicial officer, counsel and/or parties shall not move out of range of the telephone, the camera and/or the microphone, as the case may be, while a Remote Hearing is in progress.

(xv) Counsel and parties participating in a Remote Hearing are not permitted to record the hearing or photograph or take a screen shot of the screen without the consent of the presiding judicial officer. Unless such permission is granted, counsel and the parties will be required to give an undertaking to that effect at the start of the hearing.

(xvi) A Remote Hearing in proceedings held *in camera* must not be broadcast, recorded or reported by counsel or a party in any manner.

(xvii) Participants in a Remote Hearing should mute their microphone when not addressing the Court and unmute it when they are speaking.

(xviii) In Remote Hearings it is particularly important that counsel do not cross talk or unnecessarily interrupt each other. As far as possible only one person should speak at a time. The court should establish protocols in advance for speaking, and most of the remote platforms have a feature which allows a party to 'raise his hand' or otherwise indicate a desire to be heard.

(xix) Where these Protocols or subsequent Practice Directions are silent on any issue, the Court may give directions or make any order, which is necessary in the circumstances, for the fair and efficient conduct of the Remote Hearing.

(xx) The Court may terminate a Remote Hearing at any time in the event of any non-compliance with these Protocols (or any subsequent Practice Directions made to govern Remote Hearings) by counsel or a party, or where it is otherwise necessary in the interest of justice.