

SAN JUAN COUNTY DISTRICT COURT

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Carolyn M. Jewett
Judge

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SAN JUAN COUNTY DISTRICT COURT REMOTE DISPOSITION PROCEDURE

Due to the COVID-19 global health emergency, for the past several months the San Juan County District Court has encouraged defendants to appear remotely for most pretrial hearings, whether by telephone or video appearance. For disposition hearings (i.e., change of plea, sentencing, entry of deferred prosecution, or entry of stipulated order of continuance), the Court still prefers the defendant and counsel to appear in person. However, the Court will now permit disposition hearings to be held by video **if the procedures below are followed.**¹ If the defendant and their counsel are not able to meet the requirements outlined here, or the Court finds good cause to require in-person appearance, the defendant and defense counsel will be required to appear physically at the San Juan County courthouse; other participants, including the judge, may still appear by video to increase social distancing.

1) Request the Court's permission to hold the disposition by video.

Counsel must request permission to hold the hearing by video the date *before* of the hearing. Currently, District Court is scheduling disposition hearings for the 2nd and 4th Tuesday of each month between 9:30 am and 12:00 pm, and may permit other specially set times and dates. Counsel may request the defendant's video appearance orally on the record, or in an email directed to the court clerk and prosecuting attorney on the case. A formal motion is not required.

If the defense requests permission orally in court, the State must state any objections at that time. The Court will hear brief argument on the objection, and if more time is needed, the Court will note a further hearing on the request. If the defense requests permission by email and the prosecutor objects to video disposition, the defense must note a hearing for oral argument in open court. In either occasion, the Court will hear from both sides and determine if there is good cause to permit video appearance of the defendant over the State's objection.

¹ Some of the instructions given here may seem obvious to counsel who are experienced with video proceedings. No offense is intended. These procedures have been developed in response to complications that have arisen during the first video dispositions we have permitted, and reflect the Court's desire to incorporate the lessons learned in our trial-and-error approach.

At the time of the request, the State must identify whether an immediate jail commitment will be sought. If the State will be recommending that the Court remand the defendant into custody, the defendant must appear in person for the disposition hearing unless the Court finds good cause.

At the time of the request, the defense must identify whether the defendant will be entering an *Alford* plea. If the defendant will be entering an *Alford* plea, the defendant must appear in person for the disposition hearing unless the Court finds good cause. An unexpected *Alford* plea (i.e., statements during the colloquy to the effect that the defendant is not guilty) could result in the Court stopping the disposition hearing and rescheduling for in-person appearance, depending on the circumstances.

If the request to appear by video is not timely (i.e., made on the day of the disposition hearing), the Court may deny the request. However, counsel may then request to reschedule the disposition to another day to be heard by video.

2) Prepare and sign any plea paperwork in advance.

Due to the emergency conditions of the pandemic, the Court allows court documents to be electronically signed through Adobe PDF. However, we do not have our own e-signature software or system. The Court prefers guilty plea statements to be signed physically by the defendant and scanned. If the defendant signs electronically, the electronic signature must be witnessed by another and the witness must provide their electronic signature on the document.

Whether signed electronically or physically, the parties must have the plea documents reviewed and signed by the defendant, defense counsel, and prosecuting attorney before transmitting to the Court. The documents may be emailed, mailed, or handed to the clerk; the Court does not need the original signed document if an electronic copy is being submitted.

During the disposition hearing, the Court will display the document, either sharing it electronically on Teams or holding it up to the camera, and ask the defendant to confirm their signature on the document.

3) Download and test Microsoft Teams with the defendant.

San Juan County Courts use the application Microsoft Teams for remote court appearances. Although anyone may call in telephonically to a Teams hearing by cell phone or landline, you will need to use the Teams app in order to appear by video. The app is free and can be downloaded here: <https://teams.microsoft.com/uswe-01/downloads> . Once you have the app, you can join the court hearing by clicking the link on the District Court website: <https://www.sanjuanco.com/231/District-Court> .

Microsoft Teams does not have “breakout rooms” or other ways to confidentially communicate with your client during the hearing. You must have another way to communicate with your client during the hearing, for example: if you are six feet apart in the same office, you can both mute your devices and speak with each other; if you are in different locations, you can mute Teams on your computer and call your client on your cell phone. At the start of the disposition hearing, the Court will ask the defendant if they know how to have a private conversation with you during the hearing. The defendant may affirmatively waive their right to constant confidential communication on the record. If the defendant is not comfortable waiving and does not know how to speak with you confidentially, the Court **will not hold the disposition hearing** and the hearing will be rescheduled.

The app can be used on a smartphone, tablet or computer, including Apple devices. However, any device that you use must be equipped with a camera, speakers and a microphone. If you or your client will be using phone or tablet, it will need to be set up in a **stationary position**, in a manner that shows defendant’s upper third of their body. **Do not** hold or carry the device during the hearing. Instruct your client that they will be expected to remain in their seat/position throughout the hearing.

Due to the number of participants, we have found that we have the best audio quality if you and your client both use headphones with a microphone attachment. Instruct your client on how to mute themselves in the event of background noise or other noise disruption.

4) Determine how your client will be providing any signatures needed during the hearing.

Although many documents can be prepared ahead, some disposition documents will need to be signed in the course of the hearing, such as a Judgment and Sentence, Order of Commitment, or No-Contact Order. As described in Item 1, the Court will accept either electronic signatures or hand-written signatures that are scanned and emailed to the Court. For either process, you must provide the defendant’s email address to the clerk **prior to the hearing**. If you will be in the same location as the defendant, you can ask the clerk to email the documents to your email address if that is more efficient.

For electronic signatures, the clerk will email the PDF to the defendant. The defendant must be able to electronically sign in Adobe PDF and email the document back to the clerk.

For hand-written signatures, the clerk will email the PDF to the defendant. The defendant must be able to print the document, sign it by hand, scan it and email it back to the clerk.

The clerk will then send the document to the judge, who will show the document on the screen and ask the defendant to confirm their signature on the record. Make sure that your client knows how they will be signing, and how to complete these steps with the devices they will be using during the hearing.

It is the Court's preference for the defendant to sign necessary documents before or during the hearing. If the parties encounter technical difficulties during the signature process, the defendant will be permitted to sign after the hearing and submit to the court after going off the record. In that event, a witness must observe the defendant sign the document and the witness must also sign the document.

5) Test your client's video capabilities and instruct them on court decorum.

Depending on your client's familiarity with video meetings, they may not be aware of how much their surroundings could impact their court hearing. Before the hearing, you must confirm that they are ready to appear by video, preferably by holding a "test call" on Teams. The defendant will need to have:

- **A good internet connection**, so that they can avoid audio and video glitches. Some smartphones are able to stream live video without a WiFi internet connection, but the quality varies widely. If your client plans to use a phone for their video connection, test the connection to ensure it will allow good video and audio.
- **A good source of light**, positioned so that their face can be seen well, even if the sun goes down during the hearing.
- **A quiet room indoors where they will not be interrupted**. If the defendant is outdoors, the Court will get significant noise from any wind or cars passing. Sitting in a car near the roadway is not advisable because the Court will get significant noise from traffic.

Additionally, the Court has found that some defendants are not aware of the behavior and/or dress expected of them during video proceedings. Please advise your client of the following (in your own words):

- Before the judge calls your case, we may have to wait on the line for a while. Just keep yourself muted and keep your video off until the judge calls your case.
- Even though this is a video hearing, you will be in court, and the video will be playing on screens in the courtroom. You should be respectful during the hearing and only speak when the judge calls on you. Be careful not to talk over other people, because on video it gets very hard to hear when two people are talking at once.
- You should dress like you are coming to the courthouse. While you are on the video, everyone in the courtroom and everyone on the video call will be able to see you. You should wear nice, clean clothes, even if you think they might not show on the video, and take off your hat before the hearing starts. [If needed, discuss with your client what is appropriate to wear to court.]

- If you have any pets or children who might come in the room during the hearing, figure out how to keep them out of the room during the hearing. Even if they're on their best behavior, they can be distracting, and they could interfere with the hearing if they get noisy or rambunctious.
- [If you are not in the same location as the defendant] If you have any problems hearing anybody or seeing anybody, it's okay to interrupt and let us know. It's important that you don't miss anything in the hearing, and we can take a break to figure out any technical difficulties.
- If the judge has any trouble hearing you or seeing you, she might have to reschedule the hearing.

NOTE: If either party intends to call witnesses during the hearing, this section is equally applicable to both State and defense witnesses. The Court understands that some members of the community may wish to address the Court without having contacted either counsel, but asks that the prosecuting attorney make every effort to discuss video hearing procedures with victims, witnesses, and other hearing participants who are anticipated to appear.

6) Join the court hearing on the date and time scheduled.

Other dispositions may be scheduled for the same calendar and may be called first. The Court will take a roll call at the beginning of the calendar to see who is present and ready. Join the call without video at the beginning of the hearing, and stay muted until you are called on. Once the case is called, unmute and turn your video on.

At the beginning of the hearing, the Court will confirm that the defendant agrees with proceeding by video and that the parties have provided the necessary signed documents. If defense counsel is in a separate location, the Court will confirm that the defendant understands their right to confidential communication and knows how to speak privately with counsel if needed.

The Court will then go through the guilty plea colloquy. As mentioned in Item 1, if the defendant unexpectedly makes statements to the effect of an *Alford* plea, or makes statements that raise concerns that they do not appreciate the gravity of the proceeding and the nature of the disposition, the Court may stop the hearing and reschedule for a time that the defendant can appear in person. This is not to "punish" the defendant, but to ensure that the Court has not diminished the seriousness of the proceeding by allowing the defendant to attend from home, and to ensure the defendant is making a knowing and voluntary decision with an understanding of the rights they are giving up during the proceeding.

If the hearing proceeds to sentencing, the Court will note counsel's acknowledgement of the sentencing documents electronically, and send the sentencing documents to the defendant for signature. The defendant will electronically or hand-sign the documents and send them back to the Court, as described above. The Court will display the documents and confirm the defendant's signature on the record. The Court will then adjourn, and send file copies of all the documents to the parties after the calendar is concluded.

If you have any questions about our remote disposition procedure, please contact us. We appreciate everyone's cooperation in making remote appearances possible during this unique time, while ensuring that the rights of the parties are respected.

Carolyn M. Jewett
District Court Judge

Melissa I. Derksema
District Court Administrator