

*****MEMORANDUM TO BE POSTED ON THE CIRCUIT COURT CLERK'S WEBSITE AND APPROVED FOR GENERAL RELEASE TO THE PUBLIC*****

TO: Circuit Court Clerk, Office of Conservatorship Management, Probate Attorneys, Pro Se Litigants and Other Interested Persons

FROM: Judge Andra Hedrick, Seventh Circuit (Probate) Court

RE: Amendment to TENN. R. CIV. P. 43.01 and Change in Seventh Circuit (Probate) Court ZOOM Policy

DATE: June 24, 2024

The Tennessee Supreme Court has amended Tenn. R. Civ. P. 43.01. A copy of the Supreme Court's order is attached and should be reviewed in its entirety by all lawyers and parties who are pro se litigants. Also attached is the Tennessee General Assembly's resolution approving the amendment.

This amendment will affect and limit the use of ZOOM and similar audiovisual platforms for testimony of witnesses. In Davidson County Probate Court, the current policy is to make ZOOM available for all proceedings so that the lawyers, parties, interested persons, witnesses and observers can choose for themselves whether to attend the proceedings in person or by ZOOM. The amendment to Tenn. R. Civ. P. 43.01 requires a change in that policy – **effective July 1, 2024** - as it applies to testimony of witnesses.

The amendment allows for audiovisual platforms¹ to be used for witness testimony only ***“for good cause shown in compelling circumstances, and with appropriate safeguards in accordance with subsection (b)”*** of the rule. Subsection (b) requires a timely motion with opportunity to object/respond, a finding and order of the court after consideration of a long list of factors, and a written consent by the witness if the witness is located out of state.

As amended, Tenn. R. Civ. P. 43.01 permits but does not require the court to allow witness testimony by audiovisual platform. Under the rule, the burden to make a timely request for permission and to make all logistical arrangements for such testimony is on the party wishing to offer the testimony by audiovisual platform. Failure to ensure that the courtroom or facility where the trial or hearing is to be held – and the location where the witness would testify – are properly set up for such testimony will preclude the offering of testimony by audiovisual transmission, and will not constitute grounds for a continuance sought by the party attempting to offer such testimony.

¹ The rule is not specific to ZOOM only but rather applies generally to “presentation of testimony in open court by contemporaneous audiovisual transmission from a different location using simultaneous audiovisual transmission equipment.” Tenn. R. Civ. P. 43.01(a).

Effective July 1, 2024, and with only limited exceptions,² the use of ZOOM or other audiovisual platforms will not be available for witness testimony in Probate Court unless permission has been granted by order following the process and with the safeguards required by Tenn. R. Civ. P. 43.01. However, ***ZOOM will remain generally available for use by attorneys³ and pro se litigants for the presentation of legal argument only (but not witness testimony). ZOOM will also remain generally available to other persons who wish to observe (but not participate in) the court proceedings from a remote location.*** Such persons may log on to the court's ZOOM and observe with their video and audio turned off so as not to disrupt or distract from the proceedings.

Given this required change of policy, it is even more important than ever for attorneys and pro se litigants to make sure their filings are statutorily compliant and address the pertinent questions without the need for additional witness testimony. Filings should be complete, accurate, clear and concise. Petitions should be verified by oath of the petitioner. Motions should be supported by affidavits (notarized) or declarations (signed under penalty of perjury) which set forth the facts upon which the relief requested in the motion can be granted.

When any interested person is opposed to a petition or motion, a timely written response should be filed that sets forth the reasons for opposition. Interested persons or parties who fail to file a written response and instead simply appear by ZOOM will not be permitted to testify via ZOOM unless permission has been granted pursuant to Tenn. R. Civ. P. 43.01. Absent such permission, ***interested persons or parties who are opposed to a petition or motion should come in person to the hearing if they desire to testify.***

When all interested persons are in agreement about the relief to be granted, consider filing consents/waivers so that it is clear from a review of the record that the matter is uncontested. Uncontested petitions and motions are sometimes granted upon a review of the record and without the necessity of a hearing, depending on the circumstances and completeness of the filings. For

² Testimony of witnesses will be allowed by ZOOM in certain hearings that are deemed administrative in nature. These include fiduciary bond review hearings, status review hearings, case management hearings, and hearings for show cause set upon notice by the Circuit Court Clerk that a required item has not been timely filed. Any type of hearing not listed as part of the limited administrative exceptions as outlined herein requires compliance with Tenn. R. Civ. P. 43.01. ***If you have a matter that requires witness testimony but are unsure about whether the testimony will be permitted by ZOOM, you should assume that ZOOM testimony will not be permitted and should take the steps required by Tenn. R. Civ. P. 43.01 or make arrangements for all necessary witnesses to appear in person to testify. Please do not call or e-mail staff or the clerks to ask whether witness testimony will be allowed by ZOOM in your particular matter as they do not have the time or authority to answer that question. Instead, review Tenn. R. Civ. P. 43.01 and the list of limited administrative exceptions and take whatever action you determine is needed to comply with the rule.***

³ Notwithstanding the general rule that an attorney may appear by ZOOM to make legal argument, an attorney who seeks to offer his or her own testimony in support or in opposition to a dispute over fees and expenses should attend the hearing in person unless ZOOM testimony has been permitted by order pursuant to Tenn. R. Civ. P. 43.01.

matters which are not expected to be opposed, remember to file a proposed order⁴ in advance of the hearing.⁵

Finally, the amendment of Tenn. R. Civ. P. 43.01 and required change in the Probate Court's ZOOM policy will require attorneys to change the information they customarily include when noticing a matter for hearing. The notice should not cause the recipient to believe that the hearing is by ZOOM only or that they will be permitted to testify or offer the testimony of others via ZOOM. Please update your forms accordingly. A sample notice of hearing form is attached in Word format and may be used as a guide. If incorporating the notice of hearing into the Petition or Motion (and not as a separate document), suggested language for the notice of hearing is as follows:

A. Notice of hearing for matters set before **Judge Hedrick**.

NOTICE OF HEARING

THIS _____ IS EXPECTED TO BE HEARD BY **JUDGE ANDRA HEDRICK** ON _____, 2024, AT ____:____ M IN COURTROOM 608 OF THE HISTORIC METRO COURTHOUSE, 1 PUBLIC SQUARE, NASHVILLE, TENNESSEE 37201.

THE HEARING MAY BE OBSERVED VIA ZOOM CODE FOR COURTROOM 608 FOUND ON THE WEBSITE OF THE DAVIDSON COUNTY CIRCUIT COURT CLERK. **WITNESS TESTIMONY SHALL NOT BE PERMITTED BY ZOOM EXCEPT IN CERTAIN ADMINISTRATIVE MATTERS AND AS PERMITTED BY COURT ORDER IN COMPLIANCE WITH RULE 43.01 OF THE TENNESSEE RULES OF CIVIL PROCEDURE.**

PARTIES AND INTERESTED PERSONS WHO ARE IN OPPOSITION TO THE RELIEF REQUESTED SHOULD FILE A TIMELY WRITTEN RESPONSE AND APPEAR IN PERSON AT THE HEARING UNLESS THE COURT HAS ENTERED AN ORDER DIRECTING OTHERWISE. PARTIES AND INTERESTED PERSONS WHO ARE NOT IN OPPOSITION TO THE RELIEF REQUESTED ARE NOT REQUIRED TO FILE A RESPONSE OR APPEAR AT THE HEARING UNLESS REQUIRED TO APPEAR BY SUBPOENA OR COURT ORDER.

B. Notice of hearing for matters set before **Special Master Lojek**.

NOTICE OF HEARING

THIS _____ IS EXPECTED TO BE HEARD BY **SPECIAL MASTER JUDITH LOJEK** ON _____, 2024, AT ____:____ M IN COURTROOM 608 OF THE HISTORIC METRO COURTHOUSE, 1 PUBLIC SQUARE, NASHVILLE, TENNESSEE 37201.

⁴ Proposed orders are not required to be filed for hearings on small estate petitions or adult name change petitions. The orders on those matters are prepared by the Circuit Court Clerk.

⁵ Proposed orders are required to be filed in Word format so that edits can be made by the court if necessary. The relief granted in the proposed order should be consistent with the relief requested in the petition or motion.

THE HEARING MAY BE OBSERVED VIA ZOOM CODE FOR COURTROOM 608 FOUND ON THE WEBSITE OF THE DAVIDSON COUNTY CIRCUIT COURT CLERK. **WITNESS TESTIMONY SHALL NOT BE PERMITTED BY ZOOM EXCEPT IN CERTAIN ADMINISTRATIVE MATTERS AND AS PERMITTED BY COURT ORDER IN COMPLIANCE WITH RULE 43.01 OF THE TENNESSEE RULES OF CIVIL PROCEDURE.**

PARTIES AND INTERESTED PERSONS WHO ARE IN OPPOSITION TO THE RELIEF REQUESTED SHOULD FILE A TIMELY WRITTEN RESPONSE AND APPEAR IN PERSON AT THE HEARING UNLESS THE COURT HAS ENTERED AN ORDER DIRECTING OTHERWISE. PARTIES AND INTERESTED PERSONS WHO ARE NOT IN OPPOSITION TO THE RELIEF REQUESTED ARE NOT REQUIRED TO FILE A RESPONSE OR APPEAR AT THE HEARING UNLESS REQUIRED TO APPEAR BY SUBPOENA OR COURT ORDER.

C. Notice of hearing for matters set before **Probate Master Johnson.**

NOTICE OF HEARING

THIS _____ IS EXPECTED TO BE HEARD BY **PROBATE MASTER ELIZABETH JOHNSON** ON _____, **2024**, AT ___:___ M IN **COURTROOM 510** OF THE HISTORIC METRO COURTHOUSE, 1 PUBLIC SQUARE, NASHVILLE, TENNESSEE 37201.

THE HEARING MAY BE OBSERVED VIA ZOOM CODE FOR COURTROOM 510 FOUND ON THE WEBSITE OF THE DAVIDSON COUNTY CIRCUIT COURT CLERK. **WITNESS TESTIMONY SHALL NOT BE PERMITTED BY ZOOM EXCEPT IN CERTAIN ADMINISTRATIVE MATTERS AND AS PERMITTED BY COURT ORDER IN COMPLIANCE WITH RULE 43.01 OF THE TENNESSEE RULES OF CIVIL PROCEDURE.**

PARTIES AND INTERESTED PERSONS WHO ARE IN OPPOSITION TO THE RELIEF REQUESTED SHOULD FILE A TIMELY WRITTEN RESPONSE AND APPEAR IN PERSON AT THE HEARING UNLESS THE COURT HAS ENTERED AN ORDER DIRECTING OTHERWISE. PARTIES AND INTERESTED PERSONS WHO ARE NOT IN OPPOSITION TO THE RELIEF REQUESTED ARE NOT REQUIRED TO FILE A RESPONSE OR APPEAR AT THE HEARING UNLESS REQUIRED TO APPEAR BY SUBPOENA OR COURT ORDER.