



# **IMPROVING AND STREAMLINING THE PRESENTATION OF EVIDENCE: COURT HEARINGS**

**Report of the Trials Subgroup on Improving  
and Streamlining the Presentation of Evidence,  
Commission to Reimagine the Future of New  
York's Courts**

## EXECUTIVE SUMMARY

As with many other government services, the COVID-19 pandemic has presented unprecedented challenges to the New York state court system. Among those challenges has been ongoing efforts to restart court proceedings effectively and safely. New York's courts have been meeting those challenges with innovation, including through the use of virtual and remote court proceedings.

Drawing on experiences of courts and practitioners across the country, this report seeks to identify key factors and considerations for courts and practitioners to ensure that remote and virtual evidentiary proceedings are conducted safely, effectively, and fairly, as well as considerations for in-person evidentiary proceedings while the COVID-19 Pandemic persists. Recognizing the diverse nature of New York's unified court system and the varying demands and resources available, these factors are not intended to be exhaustive or prescriptive. Instead they are meant to provide a roadmap for courts and practitioners in New York to develop effective procedures for their caseloads.

This report consists of four primary sections: (I) Applicable Authority for Holding Virtual/Remote Evidentiary Hearings; (II) Considerations for Remote/Virtual Evidentiary Proceedings," (III) "Considerations for In-Person Evidentiary Proceedings in Light of COVID-19," and (IV) "Special Considerations for "Hybrid" Proceedings (with Both In-Person and Remote Participants)."

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## I. Applicable Authority for Holding Virtual/Remote Evidentiary Hearings

This section provides an overview of current legal authority to conduct a virtual/remote evidentiary hearing in New York state courts. The overview of legal authority set out below is also relevant for in-person and “hybrid” proceedings.

Courts and judges should keep apprised of the fast developing law in this area. The below list constitutes an overview of the some of the law governing courts’ ability to conduct virtual/remote evidentiary hearings.

### *General powers of the courts to hold remote hearings:*

- The Judiciary Law authorizes courts in New York, at their discretion, “to devise and make new process and forms of proceedings, necessary to carry into effect the powers and jurisdiction possessed by it.” N.Y. Judiciary Law § 2-b (3) (McKinney).
- The Guide to New York Evidence notes that “[i]n the exercise of the court’s responsibility to supervise and oversee the conduct of a hearing or trial, the mode and order of presenting evidence and examining witnesses is committed to the sound discretion of the court.” Guide to New York Evidence § 1.07(1).<sup>1</sup>
- In the context of the ongoing COVID-19 pandemic, New York courts have recognized that remote hearings are “safe ... feasible, fair, and preferable to further postponing trial.” See *Cicccone v. One W. 64th St., Inc.*, 2020 WL 5362065, at \*4 (N.Y. Sup. Ct. Sept. 4, 2020) (ordering remote hearing in civil matter over objections from one party), citing *A.S. v. N.S.*, 68 Misc. 3d 767 (N.Y. Sup. Ct. 2020); *Bonilla v. State*, 2021 WL 318406, at \*2 (N.Y. Ct. Cl. Jan. 22, 2021) (collecting cases, and observing that “[g]iven the authority the Court to adopt remote procedures under section 2-b, and the extraordinary equities weighing in favor of the use of such procedures to address our current predicament, all courts confronted with the question during the past year have found it both permissible and advisable to compel a party to participate in virtual proceedings.”).
- Courts are currently considering whether, and to what extent, party consent is required for specific types of remote or hybrid proceedings. At least one New York court has overruled a party’s objections to virtual proceedings, holding “there is no judicial prohibition on this Court continuing the ongoing evidentiary hearing on the issues presented, including criminal contempt, by virtual means.” *C.C. v. A.R.*, 2020 WL 5824118 (N.Y. Sup. Ct. Sept. 30, 2020). The Court went on to note that “[t]here is no doubt that all of our lives have been impacted by the events around us” but that “there are viable alternatives,” namely proceeding trial virtually, which “provides additional safeguards to all involved.” *Id.*

## **Statutory limitations in criminal matters and recent Executive Orders modifying those provisions:**

- CPL 182.20 permits remote appearances by criminal defendants upon the defendant's consent, "except an appearance at a hearing or trial," in courts of 27 enumerated counties, as long as doing so will not "impair the legal rights of the defendant." § 182.30 places limitations on what may occur at a remote hearing, prohibiting defendants from appearing electronically, for example, to plead guilty to or be sentenced upon conviction of a felony.
- On March 12, 2020, Governor Cuomo signed Executive Order 202.1, which broadened the scope of CPL 182.20 to all counties in New York State, among its other emergency provisions.
- On May 7, 2020, Governor Cuomo signed Executive Order 202.28, which, among other provisions, (i) suspended the limitations of CPL 182.30 to authorize remote appearances for the kinds of proceedings that are typically not permitted, and (ii) authorized remote appearance for any party or witness at CPL 180.60 preliminary hearings.
- On May 8, 2020, the Chief Clerk for the City of New York published a procedural directive for scheduling and conducting virtual preliminary hearings in the City of New York.<sup>2</sup>
- On July 6, 2020, Governor Cuomo signed Executive Order 202.48, which (among other provisions) authorized remote appearances by criminal defendants at grand jury proceedings "to waive immunity and testify in his or her own behalf, provided the defendant elects to do so." Executive Order 202.67, signed by Governor Cuomo on October 4, 2020, extended the Orders affecting §§ 182.20 and 182.30 for an additional 30 days, through November 3, 2020.
- Effective July 17, 2020, CPL 180.65 codifies as law the provision of Executive Order 202.28 that authorizes remote appearances at preliminary hearings on felony complaints. The newly-adopted §180.65 provides that "[d]uring the COVID-19 state disaster emergency," parties and witnesses may make electronic appearances at preliminary hearings, whenever the court finds that "a personal appearance by such party or witness would be an unreasonable hardship to such person or witness or create an unreasonable health risk to the public, court staff or anyone else involved in the proceeding."
- CPL 180.65 and these Executive Orders are limited to the COVID-19 emergency, and both the CPL and case law strictly curtail the ability of remote hearings or testimony in criminal matters in the ordinary course, save for the limited proceedings generally permitted in 27 of New York's counties by CPL 182.20.
- In the context of grand jury proceedings, proposed legislative amendments to Section 190.30(8)(a) of the criminal procedure law would add a new subdivision 4-a permitting

a witness located out of state or more than fifty miles from the grand jury proceeding, the person may provide live testimony by closed circuit video or videoconferencing in the same manner as if the witness had testified in person.

### **Remote testimony in criminal matters:**

- In *People v. Wrotten*, 14 N.Y.3d 33 (2009), the Court of Appeals discussed the propriety of two-way video testimony, and concluded that remote testimony is permitted as “an exceptional procedure to be used only in exceptional circumstances.”:
  - “Live two-way video may preserve the essential safeguards of testimonial reliability, and so satisfy the Confrontation Clause’s primary concern with ‘ensur[ing] the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.’” *Id.* at 39.
  - Video testimony procedures must ensure that “‘all of the other elements of the confrontation right’ [are] preserved, including testimony under oath, the opportunity for contemporaneous cross-examination, and the opportunity for the judge, jury, and defendant to view the witness’s demeanor as he or she testifies.” *Id.* at 39.
  - “Live televised testimony is certainly not the equivalent of in-person testimony, and the decision to excuse a witness’s presence in the courtroom should be weighed carefully. Televised testimony requires a case-specific finding of necessity; it is an exceptional procedure to be used only in exceptional circumstances.” *Id.* at 40.<sup>3</sup>

### **Remote Proceedings in Civil Matters:**

- As of October 22, 2020, the Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Commercial Division Advisory Council (“CDAC”), to create a new Commercial Division rule (22 NYCRR § 202.70(g)) permitting virtual evidentiary hearings and non-jury trials, at the discretion of the judges and upon consent of the parties.<sup>4</sup> This proposed rule would be a permanent rule change, and not limited to the duration of the COVID-19 pandemic.<sup>5</sup> According to the CDAC, “[b]ased on the advances in technology and positive experiences of courts throughout New York State, this country and many parts of the world, the next logical step is virtual evidentiary hearings and non-jury trials, on consent.”<sup>6</sup> The text of the proposed rule provides:
  - If the requirements of paragraph (3) are met, the court may, with the consent of the parties, conduct an evidentiary hearing or a non-jury trial utilizing video technology.

- If the requirements of paragraph (3) are met, the court may, with the consent of the parties, permit a witness or party to participate in an evidentiary hearing or a non-jury trial utilizing video technology.
- The video technology used must enable:
  - (i) a party and the party’s counsel to communicate confidentially;
  - (ii) documents, photos and other things that are delivered to the court to be delivered to the remote participants;
  - (iii) interpretation for a person of limited English proficiency;
  - (iv) a verbatim record of the trial; and
  - (v) public access to remote proceedings.



## II. Considerations for Remote/Virtual Evidentiary Proceedings

Remote evidentiary hearings—like all remote court proceedings—present the judicial system with a host of novel challenges. The recommended checklist of considerations that follows aims to provide a roadmap for courts and practitioners to ensure that remote evidentiary hearings are conducted effectively, drawing from “best practices” from courts and practitioners across the United States. These factors are not meant to be an exhaustive or prescriptive list, as considerations may vary depending on the nature and scope of individual proceedings.

### *Internet Connectivity & Audio-Visual Testing:*

- ✓ Ensure that solutions are in place to avoid internet connectivity and bandwidth issues, including by providing judges and staff with access with devices that can use mobile data, where necessary.<sup>7</sup>
- ✓ Ensure that judges are not using personal devices to conduct court proceedings.<sup>8</sup>
- ✓ Encourage test-runs of participants’ audio-visual capabilities with court staff in advance of hearing.<sup>9</sup>

### *Platform for Remote Proceedings*

#### **Videoconferencing Software:**

- ✓ Work to ensure provision of judicial education on technology where necessary.<sup>10</sup>
- ✓ Ensure technology platform being used (e.g., Microsoft Teams) is reasonably available to litigants and witnesses who need to appear and can facilitate presentation of documentary evidence (e.g., minimum bandwidth requirements, free access to particular software).<sup>11</sup>
- ✓ Ensure that technological support is available to assist litigants with technological issues as necessary.<sup>12</sup>
- ✓ Create easy-to-follow reference guides for how to install and use Microsoft Teams (including encouraging participants to mute themselves when not speaking during the hearing), and what to expect in a virtual hearing.<sup>13</sup>
- ✓ Consider using closed-caption features or live transcription to assist those with hearing impairments and those with English comprehension limitations.<sup>14</sup>

#### **Evidence Repository:**

- ✓ Ensure effective storage for electronic evidence (e.g., either through e-filing system, email, separate database).<sup>15</sup>

- ✓ Create protocols to ensure that the integrity of electronic documents is maintained and that documents are not inadvertently or improperly altered (e.g., encouraging documents to be submitted in a “locked” or “flattened” PDF/A format).<sup>16</sup>
- ✓ Discourage the practice of holding mobile devices to the computer camera to share electronic evidence. If the native format of such evidence is unavailable, then print-outs, or screenshots should be used.<sup>17</sup>
- ✓ Determine where the official court record will be stored, and provide clear guidance on how the file can be appropriately accessed by interested parties in a remote environment. This includes controlling access to the file (e.g. using electronic audit logging when files are accessed and by whom).<sup>18</sup>
- ✓ If needed, develop policies for the safe transfer of physical evidence where the physical evidence must, by law, be surrendered to the court, and policies for the safe access to this evidence, where necessary.<sup>19</sup>
- ✓ Discourage the transmission of evidence by facsimile.<sup>20</sup>
- ✓ Provide training on presentation of audio and visual evidence, and encourage participants to do a test run with the court staff in advance of the hearing.<sup>21</sup>

### **Procedures for Hearings**

**Access to Proceedings.** Consider measures that need to be put into place with respect to:

- ✓ Providing access to the public to view proceedings where appropriate,<sup>22</sup> and controlling access for participants (via password or private link) to exclude members of the public where necessary.<sup>23</sup> Courts should also communicate rules for viewers/participants recording virtual proceedings.<sup>24</sup>
- ✓ Ensuring a physical space for the use by litigants or witnesses to use during a hearing in the event that they do not have access to a private, quiet space.<sup>25</sup>
- ✓ Protecting non-public or confidential information during virtual proceedings.<sup>26</sup>

**Special considerations for the litigants:**

- ✓ Ensure that parties can confer privately with counsel during remote proceedings (e.g., either through videoconferencing “break-out” room or permitting separate communication via text messaging between attorney and client).<sup>27</sup>
- ✓ Consider whether, based on the type of matter, consent of the parties is required or advisable to hold a remote hearing.<sup>28</sup>

**Special Considerations for Witness Examinations:**

- ✓ Establish protocols for testifying witnesses before, during, and after their testimony (e.g., sequestration, decorum) and provide counsel and witnesses with instructions in advance.<sup>29</sup>
- ✓ Ensure that testimony is free from influence, coaching, or coercion (e.g., requiring witnesses to confirm no one else is with them off camera).<sup>30</sup>
- ✓ Establish protocols for conducting direct and cross- examinations, including urging lawyers to speak slowly and instructing witnesses to pause before answering questions to allow for objections and/or using electronic form of objection (e.g., hand raising function).<sup>31</sup>
- ✓ Consider written direct examinations, where appropriate.<sup>32</sup>
- ✓ Monitor, and consider use of, technology developments that would permit witnesses to be observed throughout the course of a hearing.<sup>33</sup>

**Conduct of the Hearing.** Consider, depending on the matter, whether protocols are needed and in place for the following:

- ✓ Holding a pre-hearing status conference before remote hearings for the purpose of addressing the protocol for, and specific concerns on particular matters.<sup>34</sup>
- ✓ Submitting and marking of documentary evidence electronically in advance and during the hearing (e.g., requiring all evidence be submitted in advance or shortly after hearing by email or filed where e-filing is available).<sup>35</sup>
- ✓ Allowing the parties and court to access electronically stored evidence prior to, during and after hearing.<sup>36</sup>
- ✓ Recording proceedings for the purpose of creating a reliable transcript (by live reporter or recording for post-hearing transcription).<sup>37</sup>
- ✓ Establish protocol to be followed where an interpreter is required, or translation is needed.<sup>38</sup>
- ✓ Commence each proceeding with a colloquy that includes: (i) an identification of all participants; (ii) instructions to lawyers and litigants to mute microphones when not speaking; (iii) an instruction for each speaker to identify themselves before speaking (including by displaying names on video screens); (iv) a reminder to all participants that courtroom rules apply (including that participants must speak one at a time); (v) an admonishment against unauthorized recording of the virtual proceeding; and (vi) general permission for a party or lawyer to call into a virtual proceeding if they certify that they are unable to communicate by video, or video becomes unavailable during the course of the proceedings.<sup>39</sup>
- ✓ Establishing protocols for resolving objections to admissibility (e.g., encouraging stipulations and considering objections during a pre-hearing conference).<sup>40</sup>

### **Special Considerations for Criminal Matters:**

- ✓ Create policies that ensure that the rights of criminal defendants are not compromised through the use of virtual proceedings (e.g., obtaining consent for modified procedures whenever necessary and ensuring that defense counsel and the defendant are able to privately confer at all times).<sup>41</sup>
- ✓ Implement policies to ensure compliance with CPL 180.65.<sup>42</sup>
- ✓ Monitor developments in case law.
- ✓ Ensure that criminal defendants and their counsel are able to submit and access evidence (both physical and electronic), with particular attention to in-custody defendants.<sup>43</sup>
- ✓ Ensure that policies are in place to maintain and permit the confidentiality of electronic evidence, where necessary.<sup>44</sup>
- ✓ Consider special issues arising from incarcerated defendants (e.g., access to counsel and ability to participate meaningfully in proceedings).<sup>45</sup>

### III. Special Considerations for In-Person Evidentiary Hearings in Light of COVID-19<sup>46</sup>

Where in-person evidentiary proceedings occur during the COVID-19 pandemic, courts must ensure that procedures are put in place to ensure the health and safety of all participants, and that these measures permit workable hearings. The checklist of considerations that follows aims to provide a roadmap to ensure that in-person evidentiary hearings are conducted effectively, drawing from “best practices” identified by courts and practitioners from across the United States. Courts should, however, consult appropriate state and local health officials on health and safety measures.

#### *Consider Safety Recommendations and Background Rights of Parties to Hearing*

- ✓ Stay up to date on state and local recommendations/guidelines on appropriate safety measures, and consider how those measures impact the court’s current hearing procedures.<sup>47</sup>
- ✓ Monitor developments in case law concerning COVID-19-related restrictions on court proceedings to ensure compliance with prevailing precedent, particularly in criminal cases.<sup>48</sup>
- ✓ Consider alternatives to masks for witnesses to allow trier of fact to fully assess credibility, where appropriate (e.g., transparent face shields and/or plexiglass barriers around witness stands).<sup>49</sup>
- ✓ Consider practical limitations on specific proceedings, including where identification of criminal defendants is contemplated, and implement procedures for witnesses to make appropriate identifications.<sup>50</sup>
- ✓ Consider, where identification may be an issue, stipulating as to an appropriate method in advance, or asking if the witness “sees” the perpetrator in the courtroom as a middle ground.<sup>51</sup>
- ✓ If masks are necessary, and a jury is the trier of fact, consider whether additional instructions are warranted to ensure jurors do not take into account the need for unique safety measures in determining credibility or other facts.<sup>52</sup>
- ✓ Ensure that witnesses and lawyers speak clearly and slowly when masked to ensure trier of fact and other participants can hear sufficiently well.<sup>53</sup>
- ✓ Consider accommodations to ensure access for participants with disabilities (e.g. masks for speakers may be problematic for those with hearing loss).<sup>54</sup>
- ✓ Consider for accommodations for interpreters, including American Sign Language, interpreters, where necessary, as special masks may be required.<sup>55</sup>

## Maximizing Efficient Use of Courtroom Time

- ✓ Require exhibit lists and exhibit marking in advance of any hearing, and deposition designations and objections thereto to be exchanged and addressed in advance (with good cause exception).<sup>56</sup>
- ✓ Encourage stipulations on facts and evidentiary issues (e.g., foundation objections) to reduce the need for witnesses.<sup>57</sup>
- ✓ Consider written submissions or telephone/video conference to resolve as many evidentiary disputes as possible in advance of hearing.<sup>58</sup>
- ✓ Require the parties to disclose their witness lists to the Court as early as possible and adhere to an agreed schedule. Avoid delays in calling scheduled witness in order to minimize time in the courthouse and the possibility of contact with other witnesses.<sup>59</sup>
- ✓ Use evidence in electronic forms to the extent possible in order to reduce the use of hard copy documents and other physical evidence, and using technology to share and present documentary and demonstrative evidence.<sup>60</sup>
- ✓ Where paper exhibits are required, use multiple copies of exhibits so that one document is not passed around among numerous participants.<sup>61</sup>
- ✓ Establish procedures for live witnesses that accommodate the need for any social distancing or other protections while in courtroom (e.g., designate an area for each witness to wait before they testify, while ensuring effective sequestration where necessary; provide guidelines for appropriate PPE before and during testimony; designate areas for counsel and prohibits lawyers from approaching a witness).<sup>62</sup>

## IV. Special Considerations for “Hybrid” Proceedings (with both in-person and remote participants)

Proceedings that involve a mix of in-person and remote participants also present unique procedural and fairness issues for parties and the courts. The below checklist, drawing from the prior two sections, provides a roadmap to ensure that hybrid evidentiary hearings are conducted effectively, drawing from “best practices” identified by courts and practitioners across the United States. Courts should consider these factors together with the “Considerations for Remote/Virtual Evidentiary Proceedings” and “Considerations for In-Person Evidentiary Hearings in Light of COVID-19” above, where applicable. And courts should always consider the relevant authority for holding virtual or remote proceedings, as also noted above.

### *Physical Evidence*

- ✓ Encourage stipulations as to authenticity.<sup>63</sup>
- ✓ Consider continuing to rely, to the extent possible, on electronic evidence that preserve parity between in-person and remote participants.<sup>64</sup>
- ✓ Ensure that all participants have the similar access to any exhibits. If physical documents are being used, consider creating an electronic version that can be accessed remotely.<sup>65</sup>

### *Witnesses*

- ✓ Consider whether witnesses or parties appearing remotely must be on video or telephone.<sup>66</sup>
- ✓ Where a jury is trier of fact, consider appropriate instructions to direct jurors that witnesses may be equally credible or not credible regardless of whether they are testifying remotely or in-person, and that credibility should not be assessed in relation to whether or not a participant or witness is testifying remotely or in person.<sup>67</sup>
- ✓ Consider available technology to ensure that remote testifying or participating parties and witnesses are visible and/or audible in person, and in-person testifying parties and witnesses are visible and/or audible to remote participants.<sup>68</sup>

## ENDNOTES

- <sup>1</sup> See [https://www.nycourts.gov/judges/evidence/1-GENERAL/1.07\\_Court\\_Control\\_Over\\_Presentation\\_of\\_Evidence.pdf](https://www.nycourts.gov/judges/evidence/1-GENERAL/1.07_Court_Control_Over_Presentation_of_Evidence.pdf).
- <sup>2</sup> See [https://cdn.ymaws.com/www.nysda.org/resource/resmgr/covid-19\\_pdfs/nyc\\_courts\\_virtual\\_prelimina.pdf](https://cdn.ymaws.com/www.nysda.org/resource/resmgr/covid-19_pdfs/nyc_courts_virtual_prelimina.pdf).
- <sup>3</sup> Note that CPL § 65 provides a statutory basis for the use of video testimony in certain child sexual abuse cases where there is a finding by “clear and convincing evidence that it is likely, as a result of extraordinary circumstances, that such child witness will suffer severe mental or emotional harm if required to testify at a criminal proceeding without the use of live, two-way closed-circuit television” and the “the use of such [television procedure] will help prevent, or diminish the likelihood or extent of, such harm.” N.Y. Crim. Proc. Law § 65.10 (McKinney); *People v. Cintron*, 551 N.E.2d 561 (N.Y. 1990).
- <sup>4</sup> Memo from Eileen D. Millett to All Interested Persons re: Request for Public Comment on a Proposed New Commercial Division Rule to Allow Virtual Evidentiary Hearings and Non-Jury Trials on Consent.
- <sup>5</sup> *Id.* at 4.
- <sup>6</sup> *Id.* at 5.
- <sup>7</sup> See, e.g., Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 4, 6-7.
- <sup>8</sup> See, e.g., Remote Judging Survey, First Report, at 6-8.
- <sup>9</sup> Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 12.
- <sup>10</sup> Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 9.
- <sup>11</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 7; Memo from Chief Justice Canady (Florida Supreme Court) to Chief Judges of the Circuit Courts, Trial Court Administrators re: Guidance and Best Practice Materials, “Management of Evidence in Remote Pretrial Hearings in Criminal Cases,” at 2; American Bar Association: Tips for Remote Video Hearings and Trials: Technology, Witnesses, Evidence, and Etiquette, at 1-2.
- <sup>12</sup> See, e.g., Connecticut Guide to Remote Hearings, Appendix A (example of public tech support guidance); The California Commission on Access to Justice: Remote Hearings and Access to Justice During COVID-19 and Beyond, at 14; Conducting Effective Remote Hearings in Child Welfare Cases, at 1.
- <sup>13</sup> See, e.g. Memo from Edward Friedland to SDNY Bar re: Court Reporter Tele/Videoconferencing Best Practices, at 1; Connecticut Guide to Remote Hearings, (example of easy-to-follow guide to Microsoft Teams); Illinois Remote Hearing FAQs, (example of tips for attending court remotely).
- <sup>14</sup> See, e.g., Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 11.
- <sup>15</sup> See, e.g., JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 5.
- <sup>16</sup> See, e.g., JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 2-3.
- <sup>17</sup> See, e.g., Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 19.
- <sup>18</sup> See, e.g., The California Commission on Access to Justice: Remote Hearings and Access to Justice During COVID-19 and Beyond, at 8; JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 3, 5-6.
- <sup>19</sup> See, e.g., JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 2; Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 7; Best Practices Tips: Conducting Court Proceedings during the Coronavirus Pandemic, at 2.
- <sup>20</sup> See, e.g., Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 19.
- <sup>21</sup> See, e.g., Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 20.
- <sup>22</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 4; Memo from Chief Justice Canady (Florida Supreme Court) to Chief Judges of the Circuit Courts, Trial Court Administrators re: Guidance and Best



## ENDNOTES *(continued)*

- Practice Materials, “Jury Management Considerations,” at 4; National Center for State Courts: Checklist for Judges in Virtual Proceedings, at 2.
- <sup>23</sup> See, e.g., The California Commission on Access to Justice: Remote Hearings and Access to Justice During COVID-19 and Beyond, at 15.
- <sup>24</sup> See, e.g., National Center for State Courts: Checklist for Judges in Virtual Proceedings, at 2.
- <sup>25</sup> See, e.g., JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 6; Conducting Effective Remote Hearings in Child Welfare Cases, at 4; Addressing the COVID-19 Public Health, Eviction and Economic Crisis in our Justice System (Memo in Support), The New York Legal Services Coalition, at 4.
- <sup>26</sup> See, e.g., JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 3-4.
- <sup>27</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 4; Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 10.
- <sup>28</sup> See, e.g., Remote Hearings and Access to Justice During COVID-19 and Beyond, at 17.
- <sup>29</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 7-8; Florida Management of Evidence in Remote Hearings in Civil and Family Cases Best Practices, at 3-4.
- <sup>30</sup> See, e.g., Florida Domestic Proceedings Best Practices, at 4; Suggested Protocols for Fact Finding Hearings, at 3.
- <sup>31</sup> See, e.g., American Bar Association: Tips for Remote Video Hearings and Trials: Technology, Witnesses, Evidence, and Etiquette, at 3-4.
- <sup>32</sup> Rule 32-a of the Rules of the Commercial Division of the Supreme Court (permitting direct testimony by affidavit).
- <sup>33</sup> See, e.g., Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 12.
- <sup>34</sup> See, e.g., Florida Management of Evidence in Remote Hearings in Civil and Family Cases Best Practices, at 1; Memo from Chief Justice Canady (Florida Supreme Court) to Chief Judges of the Circuit Courts, Trial Court Administrators re: Guidance and Best Practice Materials, “Management of Evidence in Remote Pretrial Hearings in Criminal Cases,” at 1.
- <sup>35</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 7; Florida Domestic Proceedings Best Practices, at 3; Florida Management of Evidence in Remote Hearings in Civil and Family Cases Best Practices, at 1; Memo from Chief Justice Canady (Florida Supreme Court) to Chief Judges of the Circuit Courts, Trial Court Administrators re: Guidance and Best Practice Materials, “Management of Evidence in Remote Pretrial Hearings in Criminal Cases,” at 2; The California Commission on Access to Justice: Remote Hearings and Access to Justice During COVID-19 and Beyond, at 16; Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 19.
- <sup>36</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 7. Arizona Jury Management Subgroup Best Practice Recommendations during the COVID-19 Public Health Emergency, at 21; The California Commission on Access to Justice: Remote Hearings and Access to Justice During COVID-19 and Beyond, at 6.
- <sup>37</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 4-5; The California Commission on Access to Justice: Remote Hearings and Access to Justice During COVID-19 and Beyond, at 8; Email from Hon. Judge Craig Doran, re: Virtual Proceedings/Court Reporters, July 10, 2020; Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 15-17.
- <sup>38</sup> See, e.g., Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 17-18; Initial Report on the Goals and Recommendations for New York State’s Court System, at 16.
- <sup>39</sup> See, e.g., Email from Hon. Judge Craig Doran, re: Virtual Proceedings/Court Reporters, July 10, 2020; Remote Judging Survey: Experiences With Virtual Proceedings, Second Report - February 2021, at 8, 11.
- <sup>40</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 8; Western District of New York Plan for Jury Trials During the Phased Return to Onsite Operations, at 18; Report of the Jury Subgroup: Conducting Jury Trials and Convening Grand Juries during the Pandemic, at 11, 12; JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 2, 5-6; Best Practices Tips: Conducting Court Proceedings during the Coronavirus Pandemic, at 2, 3-4.

## ENDNOTES (continued)

- <sup>41</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 2; Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings; Court Appearances in Criminal Proceedings Through Telepresence, (generally); Best Practices Tips: Conducting Court Proceedings during the Coronavirus Pandemic, at 3-4.
- <sup>42</sup> See I.B.5, *supra*.
- <sup>43</sup> See, e.g., Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings, at 6-7.
- <sup>44</sup> See, e.g., Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings, at 5.
- <sup>45</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 4; Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings, at 4-5.
- <sup>46</sup> These materials overlap, to a large degree, with the Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings document previously published by this Commission.
- <sup>47</sup> For a discussion of some potentially relevant safety measures, see, e.g., Arizona Jury Management Subgroup Best Practice Recommendations during the COVID-19 Public Health Emergency, at 10-12, 26; Western District of New York Plan for Jury Trials During the Phased Return to Onsite Operations, at 18; Report of the Jury Subgroup: Conducting Jury Trials and Convening Grand Juries during the Pandemic, at 5. Best Practices Tips: Conducting Court Proceedings during the Coronavirus Pandemic, at 4.
- <sup>48</sup> See, e.g., *United States v. Crittenden*, 2020 WL 4917733 (M.D. Ga. Aug. 21, 2020).
- <sup>49</sup> See, e.g., Arizona Jury Management Subgroup Best Practice Recommendations during the COVID-19 Public Health Emergency, at 18-19; Western District of New York Plan for Jury Trials During the Phased Return to Onsite Operations, at 19.
- <sup>50</sup> See, e.g., Washington Association of Prosecuting Attorneys Memorandum, at 8-9.
- <sup>51</sup> See, e.g., Washington Association of Prosecuting Attorneys Memorandum, at 10-11; Conducting Jury Trials and Convening Grand Juries during the Pandemic, at 14; Best Practices Tips: Conducting Court Proceedings during the Coronavirus Pandemic, at 4.
- <sup>52</sup> See, e.g., Arizona Jury Management Subgroup Best Practice Recommendations during the COVID-19 Public Health Emergency, at 18; Conducting Jury Trials and Convening Grand Juries during the Pandemic, at 14; Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings; Court Appearances in Criminal Proceedings Through Telepresence, at 5.
- <sup>53</sup> See, e.g., Western District of New York Plan for Jury Trials During the Phased Return to Onsite Operations, at 18.
- <sup>54</sup> See, e.g., Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings, at 5.
- <sup>55</sup> See, e.g., Western District of New York Plan for Jury Trials During the Phased Return to Onsite Operations, at 19; Washington Association of Prosecuting Attorneys Memorandum, at 4-5.
- <sup>56</sup> See, e.g., Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings, at 8.
- <sup>57</sup> See, e.g., Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings, at 8.
- <sup>58</sup> See, e.g., Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings, at 8.
- <sup>59</sup> See, e.g., Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings, at 8.
- <sup>60</sup> See, e.g., Federal Judges Reinventing the Jury Trial During Pandemic, at 2; Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings, at 8; Best Practices Tips: Conducting Court Proceedings during the Coronavirus Pandemic, at 4.
- <sup>61</sup> See, e.g., Ohio Judicial Conference, Continuing Jury Operations, at 7; Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings, at 8.
- <sup>62</sup> See, e.g., Goals and Checklist for Restarting In-Person Jury Trials and Related Proceedings, at 8.

## ENDNOTES (continued)

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- <sup>63</sup> See, e.g., Michigan Trial Courts Virtual Courtroom Standards and Guidelines, at 8; Western District of New York Plan for Jury Trials During the Phased Return to Onsite Operations, at 18; Report of the Jury Subgroup: Conducting Jury Trials and Convening Grand Juries during the Pandemic, at 11, 12; JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 2, 5-6; Best Practices Tips: Conducting Court Proceedings during the Coronavirus Pandemic, at 2, 3-4.
- <sup>64</sup> See, e.g., JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 2.
- <sup>65</sup> See, e.g., JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, at 2.
- <sup>66</sup> See, e.g., The California Commission on Access to Justice: Remote Hearings and Access to Justice During COVID-19 and Beyond, at 5; Conducting Effective Remote Hearings in Child Welfare Cases, at 3.
- <sup>67</sup> See, e.g., Court Appearances in Criminal Proceedings Through Telepresence, at 5-6, 7-8; Court Operations During the COVID-19 Pandemic, at 753.
- <sup>68</sup> See, e.g., Remote Judging: The Impact of Video Links on the Image and the Role of the Judge, at 509, 511.