

CHECKLIST FOR ADVICE TO CLIENTS RE: VIRTUAL HEARINGS AND ADVOCACY PREPAREDNESS

Setting and Technology

1. Will it make a difference that there will be no eye contact between the judge and the client? How close will the client be to the camera during a virtual hearing?
2. What is the virtual court setting? Does it dehumanize the client by having a hostage-like look? Does it reflect the formality and seriousness of the court proceeding?
3. Will your client be shackled during a virtual hearing?
4. What are the computer skills that are required to participate in the virtual hearing?
5. Are there language barriers which are made worse by a virtual hearing?
6. How good will the sound and other technology be during the virtual hearing? How good will the lighting be in the setting from which your client will be making an appearance?
7. Will other defendants and/or detention facility staff be in the room during the proceedings, or able to overhear the proceedings?
8. Will there be conflicting sounds from the detention facility interrupting or interfering with the virtual hearing?
9. Will your client be wearing a mask?
10. For clients who are not in custody:
 - a. Does the client have a reliable device and connection to participate in a virtual hearing? Has the client tested the device and connectivity prior to the hearing?
 - b. Does the client have a distraction-free space at home or at work appropriate for the formality of the court proceeding?
 - c. Is the client able to appear from your office to ensure a reliable connection, a formal setting, and/or to minimize distractions?

Individual Client and Court

1. What is your assessment about the judge's attitude toward virtual hearings?
2. Is the client prepared for the virtual hearing?
 - a. Does the client understand how to control the video and audio (including the mute) functions?
 - b. Does the client understand how the participants, including the client, will be displayed and viewed on screen?
 - c. Do you and the client have a plan in case the client loses connection due to device or connectivity failure?
 - d. Has the client been advised about appropriate dress and decorum for virtual hearings if not in custody?

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3. Will the client feel abandoned because he is by himself? Does the client trust the arrangements, such as his ability to talk to his attorney?
4. Do you and your client have a plan for how the client will express a desire to privately consult with you during the hearing?
5. Is there a way for the attorney and client to have confidential conversation, not just in a “breakout” video connection, but without others present in the room where the client is held during the virtual hearing?
6. Will the virtual hearing cause inconveniences for the client?
7. Does the client have a disability (e.g., mental or physical) that should be considered?
8. When advising the client re: consenting to a virtual hearing, are there other issues to be aware of when assessing the voluntariness of the client’s decision, such as the effect of language barriers, cultural differences, mental health, and/or education level?
9. How long has the client been incarcerated?
 - a. Will consenting to the hearing expedite the client’s release or address the client’s desire for finality to the proceedings?
 - b. What happens to the client if they are removed from the jail and taken to court? Quarantined? Under what conditions?
10. What type of hearing will be held?
 - a. Will there be witnesses? Experts? Exhibits?
 - b. Is it a contested hearing?

Additional Big Picture Concerns

1. Will the client’s family be able to participate?
2. Is this a hearing where the judge should be able to see the family or community support? Can you make arrangements so that the client’s family and witnesses are present and observed by the judge during the hearing?
3. Will the public be able to attend?
4. Will the press be able to attend?

Considerations for Specific Types of Hearings

Initial Appearance:

1. Does the client have a likely chance of immediate release?
2. Will a request for an in-person hearing delay an otherwise likely release?
3. Do you have sufficient time to meaningfully review consent/waiver forms with the client?

Preliminary Hearing or Detention Hearing

1. Will your witnesses be more effective in-person?
2. Will video or in-court setting allow better access to observe/present evidence?
3. Studies have shown that bail hearings conducted virtually generally result in higher bond amounts than bail hearings conducted in person; will an in-person hearing increase your client’s chances of release?

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4. Are sureties and family/community support available? Will their in-person support affect the likelihood that your client will get released by the particular judicial officer conducting the hearing?

Arrestment

1. What is the nature of your client's indicted charge?
2. Does the client have concerns about public knowledge of their charges? Will video or in-court proceedings permit any desired limitation on public awareness of charge?

Pretrial Status Conferences, Motion, and Evidentiary Hearings

1. Is evidence being presented at the hearing?
2. Will your witnesses be more effective in-person?
3. Will video or in-court setting allow better access to observe/present evidence?
4. Will you have the court's full attention during a video versus in-person hearing?

Trial

Do not consent to a virtual trial.

Sentencing:

Generally, do not consent to a virtual sentencing hearing, unless an in-person hearing will result in substantial delay. Consider also that live victim impact statements may be greater in number and length if the hearing is virtual.

Additional Advocacy and Presentation Preparedness Considerations

1. Does the client have difficulty regulating behavior? Would an in-person hearing allow for more effective "client control" and a better overall defense presentation?
2. In your experience, does advocacy before the presiding judicial officer require you to be able to "read the room" and adjust your arguments according to the judicial officer's responsive body language, demeanor, and similar factors? Will a virtual hearing stymie your ability to identify a need to adapt/amend your arguments?
3. Will potentially hostile witnesses, such as victims, or complex witnesses, such as experts, be participating? Would an in-person hearing allow more control over the witnesses and result in a better examination?
4. Have you reviewed the specific judicial officer's rules or general orders re: virtual hearings, including re: exhibit presentation?
5. If you are displaying exhibits:
 - a. Have you familiarized yourself with the "screensharing" function of the videoconference service that will host the hearing?
 - b. Have you organized exhibits in a manner that permits easy identification, access, and display?

6. Are you presenting witness testimony?
 - a. Does the witness have a reliable device and connectivity?
 - b. Is your witness cooperative, or will a virtual hearing create witness management and control issues that may prejudice your case?

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