



Prosecutors' Center for Excellence

Preparing for In-Person Jury Trials in the Time of COVID

The following is a list of considerations for prosecutors trying an in-person jury trial during the pandemic. It contains input from members of the Best Practices Committee of the District Attorney Association of the State of New York and members of the weekly PCE National calls. ADA Eric Rosenbaum of the Queens District Attorney's Office (NY) was instrumental in gathering all the many ideas included in the list. Please send any additional items for the list to Kristine Hamann at khamann@pceinc.org.

Pre-trial Walk-Through Checklist

- Path to witness stand from witness area
- How attorneys approach the court for sidebars
- Set up for on-the-record side bars
- How attorneys approach witnesses, if permitted
- How defense and defendant will be able to confer
- Voir dire of jurors requesting private colloquies
- Bathroom arrangements for parties and jurors
- Physical set up for juror meals during trial and deliberations

Ventilation

- Windows
- A/C and heat
- Filters in the system?

Courtroom Equipment and Exhibits

- Who is the court technologist? Who can troubleshoot technical issues?
- Is there sufficient Wi-Fi capability?
- Equipment availability (number of sound system carts per courthouse)
- Electrical outlets
- Placement of microphones
- Equipment placement/use (easels, TVs, audio players, projectors)
- Equipment audibility/visibility checks
- How to publish exhibits
- Jury requests for evidence during deliberations



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Acoustics and Line of Sight

- Placement of plexiglass partitions
- Check plexiglass reflections from perspective of jurors, parties, court
- Placement of microphones for judge, parties, witnesses and jury
- General acoustics check (lawyers, judge, witnesses) after plexiglass partitions are in place
- Test the sound levels.

Making and Preserving the Record

- Permission to photograph set up
- Making the photos of set-up part of the record for appellate proceedings (e.g. along with court exhibits and other filings by the People)
- Defense objections to set-up and procedures placed on record (giving court opportunity to cure and preventing later unpreserved complaints)

Cleaning and Masks

- Who does the cleaning?
 - Between witnesses (including microphone)
 - Between trials (e.g. plexiglass and surfaces)
 - Who pays for the cleaning?
- Mask requirements:
 - What are the rules about wearing a mask and when?
 - Shield allowed? If so, when can it be used?
 - Masks worn during testimony by witnesses
 - Are the rules different dependent on what the lawyer is doing?

Hybrid Trial – Part In-Person and Part Remote

- What can be allowed remotely?
 - Appearances by one or more of the parties
 - Appearances by witnesses
 - Appearance by the defendant; if so, how will the defendant communicate with defense counsel?
 - Participation by court personnel or court reporter?
- Is there sufficient equipment and Wi-Fi for remote appearances?



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Other Considerations

- Jury Selection – where will it occur and how?
- Procedure for in-court ID of defendant
- Who is in charge of supplying PPE?
- Is someone designated to know the COVID procedures and to make sure they are followed?
- Where can the jury get to know each other, so they are not strangers at the time of deliberation?
- Public access
 - Where do family members of victim or defendant sit/view?
 - How does the rest of the public/media view the proceedings?
 - Adjoining courtroom?
 - Remote access?