

Plan for Virtual Preliminary Hearings

Pre-hearing:

At the essential consolidated part appearance / arraignment the Court will schedule the preliminary hearing for a date and time within the applicable CPL §180.80 timeframe as tolled by Executive Orders 202.8 and 202.14. Preliminary hearings will be scheduled to occur each hour on the hour starting at 9am. Lengthy preliminary hearings shall be scheduled, upon a specific request, to be held in a two hour time period. Town and Village Justices who conduct virtual after hour arraignments will schedule the preliminary hearing, within the applicable CPL 180.80 timeframe, returnable before the essential consolidated part at 10:00 am.; the Town or Village Justice shall provide the essential consolidated part clerk at least two days notice of the hearing.

At least one day before the hearing is scheduled, each attorney shall submit electronic copies of all proposed and possible exhibits to the Court and their adversary. Non-electronic exhibits will not be received in evidence. Such submission shall be by email to the essential consolidated part clerk, with copies to their adversary and the court reporter. All exhibits provided shall be pre-marked. Prior to submission the attorneys shall discuss all objections to the exhibits, and seek to resolve all disputes concerning admissibility prior to the hearing. With the pre-hearing submission of the exhibits, objections shall be noted and ruled on at the hearing. For all difficult or lengthy evidentiary disputes, both attorneys shall provide a one page brief of their respective positions. Rosario material shall also be provided in the same manner as hereinbefore set forth. A list of all Skype participants/witnesses and their respective emails shall be provided to the essential consolidated part clerk at least one day before the hearing.

Hearing:

The essential consolidated part clerk will create the Skype meeting on the scheduled date and time. Said clerk will invite the assistant district attorney, defense attorney, the defendant, the court reporter and any designated witnesses to the Skype meeting. [Any witnesses shall be placed in the virtual Skype lobby until they are called to testify. Persons placed in the virtual Skype lobby cannot speak in the meeting until they are invited in from the lobby, cannot converse with one another or anyone else in the meeting until invited in from the lobby and cannot hear any testimony of other virtual witnesses who have been invited in from the lobby. After a virtual witness testifies they shall be dismissed from the meeting by the essential consolidated part clerk.] No electronic recording of any electronic appearance may be made, viewed or inspected except as may be authorized by the rules issued by the Chief Administrator of the courts. CPL §182.20(4).

Defense counsel and defendant shall have access to each other via a private telephone during the hearing, with both having the ability to mute their Skype link microphones for confidential communication.

Before a witness shall testify the Court will initiate the questioning by swearing the witness in virtually.

The attorney and their witnesses shall appear at the hearing from two different physical locations. That way the Court can ensure that the witness is not in the same room when other witnesses are testifying. The attorney who seeks to call a witness that is in a different physical location shall provide an email address for each such witness to the essential consolidated part clerk at least one day before the hearing. Upon the attorney's request to call a witness, the essential consolidated part clerk shall invite the proposed witness to the Skype meeting from the virtual Skype lobby. At the conclusion of each witness' testimony the essential consolidated part clerk will remove them from the meeting; said clerk will then invite the next called witness to the Skype meeting from the virtual Skype lobby. No witness may observe or hear the testimony of any other witness.

Before commencing the hearing the Court will on the record, and in writing, ascertain whether the defendant, after consultation with counsel, waives his/her right to be present for the preliminary hearing pursuant to CPL §180.60(2), his/her right not to have the hearing conducted virtually pursuant to CPL §182.20, and if the Court holding the preliminary hearing was not the arraigning Court, that he/she consents to the jurisdiction of the Court pursuant to CPL §§10.20(3)(a) and waives the requirements of CPL §180.20.

If, for any reason, the Court determines on its own motion or on the motion of any party that the conduct of an electronic appearance may impair the legal rights of the defendant, it shall not permit the electronic appearance to proceed. If, for any other articulated reason, either party requests at any time during the electronic appearance that such appearance be terminated, the Court shall grant such request and adjourn the proceeding to a date certain. Upon the adjourned date the proceeding shall be recommenced from the point at which the request for termination of the electronic appearance had been granted. CPL §182.20(2).