

# How to Conduct a Fair and Just Remote Hearing: REFERENCE GUIDE



A Pandemic Resource from NCSC

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*This reference guide is a companion piece to [Conducting Fair and Just Remote Hearings: A Bench Guide for Judges](#). It offers additional materials and reading suggestions for those interested in a more in-depth exploration of the recommendations in the bench guide.*

## **Core Elements of Procedural Fairness and Their Application to Remote Hearings**

Research shows that the perception of fairness based on court proceedings, surroundings, and treatment of the parties and participants can produce a number of positive outcomes in both litigant perceptions of the justice system and compliance with court orders. While not developed specifically for use in remote hearings, research in this area can be adapted for use in videoconferencing environments to maintain the integrity and perception of fairness within courts. Key concepts can be used to guide judicial conduct during remote hearings as well as prehearing preparation.

### [Center for Court Innovation, Procedural Fairness/Procedural Justice: A Bench Card for Trial Judges \(2018\).](#)

Drawing on the guidelines presented in *Procedural Justice: Practical Tips for Courts*, this short bench card provides a judge-focused overview of how procedural fairness/justice is defined, why it is important, and some practical tips and applications specifically for judges. A handful of these tips are easily adapted for use in remote hearings, including the use of eye contact as a sign of respect (looking into the camera instead of at the screen in remote hearings) and staying on task by avoiding to appear distracted by reading or completing paperwork during the hearing.

### [Emily Gold LaGratta, Procedural Justice: Practical Tips for Courts \(2015\).](#)

A list of tips for courts to utilize in efforts to achieve procedural justice. Recommendations address the areas of courthouse environment, courtroom management, court proceedings, and addressing special populations. Specific applications to remote hearings include accessibility, both technological accessibility and physical accessibility, décor (the use of culturally neutral images in the background or use of an official teleconferencing background), and the clear communication of courtroom rules conveyed in a respectful tone of voice.

[Kevin Burke & Steve Leben, Procedural Fairness: A Key Ingredient in Public Satisfaction, 44 CT. REV. 4 \(2007-2008\) \(an AJA White Paper\).](#)

This AJA White Paper presents key research findings as they relate to procedural justice, in particular, the overall perception of courts and the perception of fair treatment received by litigants and participants. Recommendations for change are provided for judges, courts, court administrators, researchers, judicial educators, and court leaders. Two notable applications to remote hearings include the need for litigants to express their experiences and opinions and also the role that a judge's body language can play in the perception of "concern for the litigants, fairness and impartiality, and competence."

As applied to videoconferencing platforms, verifying that the technology is working as expected before the hearing starts ensures that litigants will have the opportunity to be heard. Specific recommendations presented in the White Paper for the individual judge also highlight the importance of being a good listener (allowing litigants to finish speaking during remote hearings so as not to talk over them) and practicing patience. New technologies can be confusing for those who are unfamiliar, requiring patience from all parties.

[Pamela Casey, Kevin Burke & Steve Leben, Minding the Court: Enhancing the Decision-Making Process, 49 CT. REV. 76 \(2013\) \(an AJA White Paper\).](#)

This AJA white paper discusses the process of decision making as well as the outside influences that can affect that process. Specific recognition is given to the importance of mindfulness in judicial decision making and how that can affect procedural justice. Key takeaways include recognizing the unintended impact that outside influences can have on decision making and how to take note of these influences and adjust, as necessary.

While this white paper discusses fatigue in a literal sense, the same concepts and unintended consequences can occur with "Zoom fatigue" making it important to recognize if/when this occurs. Conducting remote hearings can also introduce a number of influences and considerations not applicable to a physical courtroom, making the practice of mindfulness and "reading the dials" equally important during remote hearings. The use of decision aids or checklists is presented as a simple, yet effective, tool that can be used in an effort to be more mindful.

[Brian MacKenzie, The Judge Is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Court, 52 CT. REV. 8 \(2016\) \(an AJA White Paper\).](#)

This AJA white paper applies four principals of procedural fairness – voice, neutrality, respectful treatment, and trustworthy authorities – to the specific area of drug treatment courts, highlighting the importance of the relationship between the participant and the judge and its impact on positive outcomes. Specific recommendations are given for drug court judges, courts, researchers, judicial educators, and judicial leaders. The white paper reiterates concepts and recommendations presented in Procedural Fairness: A Key in Public Satisfaction and builds on those to provide new and specific recommendations relating to drug courts.

Within the recommendations to promote trust, the suggestion is given to attend staffing sessions prior to a status hearing in order to improve judicial interaction and relay a sense of trust in the judge. The underlying point here is preparation which can be applied to remote hearings as a way to show respect and familiarity with individual litigants.

[Tom R. Tyler, Procedural Justice and the Courts, 44 CT. REV. 26 \(2007-2008\).](#)

In this article from Court Review Tom Tyler, a key researcher in the area of procedural justice, presents his findings relating to evaluations of procedural justice by litigants. Tyler introduces four key components of procedural justice – voice, neutrality, respect, trust – putting forth his findings that neutrality, respect, and trust all have a direct impact on the perception of procedural justice. The fourth component, voice, while not directly shaping evaluations, exhibits an indirect effect through its influence on the previously mentioned components.

Tyler offers general guidance that supports a number of the specific suggestions presented in Conducting Fair and Just Remote Hearings: A Bench Guide for Judges, which include providing evidence of listening to litigants and allowing them to speak and express their viewpoint, paying attention to people while they are speaking, and explaining decisions in personalized way by accounting for a person’s needs and concerns.

### **Prehearing Preparation**

Circumstances unique to the remote setting will require that new policies and procedures be enacted to prevent delays and disruptions during the hearing. Efforts made to address these possible delays or disruptions through prehearing preparation can help mitigate any issues that may arise and give legitimacy to the process and bolsters the perception of procedural fairness.

[National Center for State Courts, Considerations for High-Volume Dockets During the Pandemic \(2020\) \(a CCJ/COSCA pandemic resource\).](#)

A CCJ/COSCA pandemic resource providing guidance on the handling of high-volume dockets. Guidance includes recommendations of judicial actions to support procedural justice while using teleconferencing platforms, including calendaring cases in smaller batches and understanding the effect that new technologies may have on participation rates.

[National Center for State Courts, SRL One-Page Remote Hearings Sample Instructions \(2020\) \(Transcend Adaptation of Michigan Legal Help Resource\).](#)

An example information page for self-represented litigants to ensure access to all necessary information and requirements when participating in remote hearings. While developed specifically for litigants, a number of the steps recommended can apply to all participants. These Recommendations include looking into the camera, ensuring the surrounding area is appropriate, and pausing before speaking to avoid interruptions.

[National Center for State Courts, Twelve Essential Steps to Tackle Backlog and Prepare for a Surge in New Civil Cases \(2020\) \(a CCJ/COSCA pandemic Resource\).](#)

A set of specific steps to help courts efficiently and effectively utilize resources to address the backlog and surge in civil cases brought about by the COVID-19 pandemic. The first step, “Providing information for litigants – early, often, and in an accessible way”, applies directly to prehearing preparation for remote hearings and is essential to ensuring the remote hearing provides a fair and just process. Webinar available [here](#).

### **Fair and Effective use of Videoconferencing Platforms**

With the implementation of remote hearings and teleconferencing platforms, a number of new considerations, not otherwise applicable to in-person court hearings, should be considered in order to uphold a fair and just process. The references included below offer court specific examples of guidance developed for videoconference use in efforts to maintain a fair and just process.

[California Commission on Access to Justice, Remote Hearings and Access to Justice: During Covid-19 and Beyond \(2020\) \(adapted for use by CCJ/COSCA\).](#)

A resource guide presenting issues and suggestions garnered from the most comprehensive guides currently available. The guide provides information for court leadership on determining which proceedings to conduct remotely, the selection and implementation of the technology, recommendations of general procedures and practices to ensure open and equal access, and providing the necessary information and training to court staff and litigants.

A number of the recommendations align with those presented in the Bench Guide including easily accessible and understandable information about the hearing, confirmation that litigants have access to needed technologies to allow for effective participation, the use of designated court staff who coordinate remote proceedings, and consideration and adjustments to calendaring practices.

[State of Connecticut Judicial Branch, Connecticut Guide to Remote Hearings: For Attorneys and Self-Represented Parties \(2020\).](#)

A comprehensive guide for attorneys and self-represented litigants to participate effectively in remote hearings. Specific courtroom procedures are covered to ensure that participants understand all the rules and procedures, as well as confirming that there are no current or anticipated difficulties to participating in the hearing.

[Illinois Supreme Court, Remote Court Proceedings – Guidance Document \(2020\).](#)

A set of guidelines and best practices developed to aid Illinois courts. The four major topics covered are public access to court proceedings, general considerations, conducting the hearing, and the electronic record. Understanding of a litigant’s access to technologies used for the hearing is given as a consideration, as well as pre-hearing considerations to make sure the audio and video are working properly. Additional guidelines are given for conducting the hearing with the same level of decorum as courtroom proceedings and the use of court staff to help facilitate and monitor activity to ensure that all parties are able to meaningfully participate.

## Judges' Conduct During Hearings

Videoconferencing platforms have been in use long before the COVID-19 pandemic of 2020. Insights and tips from those successfully using these technologies can be helpful. While not specific to the court environment, the references listed below give general tips and best practices for participating in and using videoconferencing. Many of the same points mentioned in previous references are reiterated here.

### [Meredith Hart, Videoconferencing Etiquette: 10 Tips for a Successful Video Conference \(2020\).](#)

Presents a list and brief descriptions of general etiquette to employ while videoconferencing with a focus on maintaining professionalism. A number of tips center around visual presentation and considerations that can help avoid the appearance of unprofessionalism.

### [Compiled by Louise Franck Cyr, Tips for Conducting and Participating in Both Telephone and Video Conference \(n.d.\) \(from materials in The Complete Guide to Facilitation by Tom Justice and David Jamieson\).](#)

Recommendations are given for both audio and videoconferencing, as well as recommendations for facilitators. Specific suggestions relating directly to remote hearings include a means of tracking participation, since it can be more difficult to identify those participating when all parties are not in the same room, and setting ground rules such as pausing before speaking and refraining from doing things that may be distracting.

### [Institute of Transitional Health Science, Video Conferencing Best Practices \(2020\).](#)

A resource providing video conferencing etiquette and tips reiterating the need for preparation, considering what is in view of the camera and if the participant and surroundings are portraying a professional image, and effectively engaging in the video conference by appearing receptive and attentive.