

Benchmark Checklist for Procedural Safeguards

During Hearings for a Judge

Prior to Hearing

- Ensure that Notice of Hearing was sent to all parties. Confirm service list included all parties and counsel (and any unrepresented party). Confirm notice gives parties contact information for the court if there is a problem attending or connecting
- Request a clerk (if you need one) at least 5 days before the hearing by emailing the head clerk in your division. Determine whether clerk's method for marking evidence is up and running or whether the parties will have to take on the responsibility for marking evidence
- Send out notice of requirements for evidentiary hearings contained in your division's Administrative Memorandum, which includes parties submitting proposed exhibits marked for identification with an index
- Ensure your own bandwidth, equipment functioning, proper attire and virtual background
- Ensure your own Zoom settings (waiting room, whether others join before you, camera settings, etc) are correct
- If your staff is assisting the hearing, ensure that they have logged on before you, are appropriately checking in parties, and communicating with you at start time

At Commencement of Hearing

- Make findings about who is present/ask that all parties/counsel announce presence for the record
- Ensure that observers or members of public who wish to observe are given access to proceedings
- Inquire whether all parties can see and hear. If there is a court reporter, ensure that reporter can see and hear.
- Instruct all participants to mute their microphone if not speaking/testifying so that reporter can take an accurate record and to limit distractions.
- Instruct participants that if an objection is made to stop speaking until the court can rule on the objection. Sometimes Zoom or other platforms do not

register the person speaking immediately. State that you will be carefully observing proceedings to ensure that objections are addressed immediately.

- Make findings that all participants have indicated for the record that they can all see and hear
- Make findings that counsel/parties/witnesses are visible, audible to the court
- If witnesses are being sequestered, first instruct them on sequestration, and get an acknowledgment that they understand the rule. Place witnesses in separate breakout rooms to ensure that they do not observe proceedings and instruct them not to communicate with any other witnesses during proceedings before or after they testify. Impress upon all witnesses the risk of contempt of court for failing to follow the rule of sequestration. In criminal proceedings, victim/witness coordinator may be placed in breakout room with witness(es).
- Inquire whether witnesses have had access to documents for purpose of their testimony. You may have to address screen sharing during testimony in order to allow a witness to be confronted with an exhibit or impeachment material.

During Hearing

- When swearing witnesses make finding that you are able to see and hear witness and positively identify witness on the screen
- During the presentation of witness testimony, make findings that you are fully able to see and hear each witness and able to observe the witness's demeanor. Make findings that witness was not relying upon notes or documents located outside of the camera's view.
- Instruct litigants to make contemporaneous objections. Make findings that during the presentation of witness testimony, all parties were able to contemporaneously raise objections. Immediately rule on objections before proceeding. Make finding that you were able to immediately rule on objections before proceeding.
- Ensure that all parties were afforded the opportunity to cross-examine witnesses before the witness was excused.
- Ensure that objections to the admission of exhibits were fully heard prior to admission.
- Ensure that all parties or witnesses if appropriate have had the opportunity to confer with counsel privately. This can be accomplished through the use of

breakout rooms or taking breaks and allowing the party/witness/attorney to confer privately before proceeding. If salient to the proceedings (i.e., a criminal defendant or plea bargaining or settlement or other), make findings that the parties had the opportunity to confer and you observed this to occur.

- Make findings that no issue with connectivity or bandwidth occurred during hearing. If such an issue occurred, make findings about how it was addressed and get the parties to acknowledge that they either object or are satisfied with how the matter was solved. For example, if audio is not working, instruct the party/lawyer to call in with their phone and mute their computer. Take a break and allow extra time to adjust for the interruption. Follow up with a finding.
- Ensure that court reporter, if ordered, was present or if proceedings are required to be recorded, that they have been recorded in full.
- Make a finding at the conclusion that nothing occurred during the hearing that would have caused the court to halt the hearing or render the hearing unreliable.