

In-Person and Virtual Hearing Comparison Chart (New York City Housing Court)

A Practical Guidance® Chart by Donna Chiu, Mobilization for Justice



Donna Chiu
Mobilization for Justice

This comparison chart highlights basic key differences between an in-person and virtual trial in New York City housing court.

In response to the COVID-19 pandemic, the New York State Office of Court Administration (OCA) suspended most court operations in March 2020. As New York's public health conditions evolved, OCA then resumed court operations gradually, shifting to virtual hearings. Initially these proceedings were only available to deal with emergencies, such as illegal lockout proceedings and Housing Part (HP) proceedings seeking emergency repairs. Slowly, the courts reopened and in-person trials were conducted even on nonemergency landlord-tenant matters. These matters generally included evictions authorized prior to the eviction moratorium issued in March 2020 and evictions for reasons other than the nonpayment of rent. However, on November 13, 2020, OCA issued Revised Pandemic Procedures in the Trial Courts again suspending all in-person trials effective November 16, 2020.

Representing a client at a virtual hearing or trial entails more than simply doing what you would normally do in court, except from home or another remote location via computer. Numerous issues that are not present at an in-person trial can arise during a virtual hearing—everything from internet and equipment issues to the potential for unlawful witness coaching. In addition, acceptable protocol, tone, and demeanor shift when the parties meet virtually.

This chart is intended as a quick, basic guide to help an attorney who is new to virtual court hearings anticipate and prepare for issues that might arise. The chart compares common in-person procedures to their virtual counterparts and provides key takeaways for dealing with the differences between an in-person and a virtual hearing.

Legal authority for virtual trials or hearings includes the following:

- Judiciary Law § 2-b(3) allows a court to “devise and make new process and forms of proceedings, necessary to carry into effect the powers and jurisdiction possessed by it.” *People v. Wrotten*, 14 NY3d 33, 37 (2009); see also *Madonna Ciccone v. One West 64th Street Inc.*, 2020 NY Slip Op 20220 (Sept. 4, 2020); *A.S. v. N.S.*, 2020 NY Slip Op 20161 (Sup. Ct. 1st Dep’t.); *Winston & Lola Real Estate LLC v. Headly*, LT-58486/18-NY (Civ. Ct. NY Cty. Oct. 1, 2020).
- On August 13, 2020, Chief Administrative Judge Marks issued [AO 160A/20](#) allowing trials to be conducted remotely whenever appropriate.
- For the virtual trial, a court may “fashion procedures during the virtual trial to preserve the traditional elements of a fair trial, including testimony under oath, the opportunity for contemporaneous cross-examination, and the opportunity for this Court and the parties to view the witness’s demeanor as he or she testifies.” *Wyona Apts LLC v. Ramirez*, 2020 NY Slip Op 20309 (Civ. Ct. Kings Cty. Nov. 22, 2020), citing *Sawant v. Ramsey*, 2012 U.S. Dist. LEXIS 64384, at *9–10 (D. Conn. May 8, 2012).
- On November 13, 2020, OCA issued [Revised Pandemic Procedures in Trial Courts](#), suspending all in-person trials.

For guidance on residential tenants' rights during the COVID-19 pandemic, see [Coronavirus \(COVID-19\) Resource Kit: Residential Tenants' Rights](#).

Issue/Process	In-Person Trial	Virtual Trial	Key Takeaways
<p>Courtroom Formalities</p>	<ul style="list-style-type: none"> • There is a court officer who makes sure no one is talking in the courtroom and hats are removed. • When a witness is on the witness stand, the attorney asking the questions will stand up and make eye contact with the witness. • Parties to the case are allowed to be in the courtroom at all times. Witnesses must wait outside the courtroom. 	<ul style="list-style-type: none"> • A member of the court's staff, typically the presiding judge's court attorney, will be assigned the tasks of issuing invitations to a trial via email and allowing or denying people access into the virtual trial using the Microsoft Teams application. Attorneys should let the judge know upon first opportunity who else will be joining so the court can grant them access to the virtual trial. • Witnesses must remove masks once their testimony starts. • The court will likely tell the parties that it is important to start promptly. • Witnesses will have their cameras on and can also see other people present in the virtual trial on their computer screens. • Generally, the judge prefers parties to be visible with their camera on. Co-counsel and permitted observers may choose to keep their cameras off. • A client who is testifying and their attorney will likely be in different rooms in front of separate laptops. • Even though the trial is virtual, no eating is permitted on camera. Parties must eat off camera. • Parties to the case are allowed to be in the virtual 	<ul style="list-style-type: none"> • You will need to remind parties in the virtual trial to mute themselves upon entering the virtual room. • Be aware that in one case, the judge had an issue with too many people unrelated to the case attending the virtual trial. She suggested there might be limited space for attendees, but the parameters were unclear. Thus, if you are having people observe the trial, you may need to let the judge know to expect them and "let them in" upon entering the virtual trial. • All attorneys should be in a quiet room and keep their microphones on so there will be no delays in speaking. • It's least distracting to simply sit in front of a white wall and have that as your background instead of detailed virtual backgrounds, etc. • Because the judge will be able to see and hear you up close on their computer, it's very important to watch your tone and demeanor. Avoid the usual annoyed behavior like huffing and puffing at the witness and reverting to informal language like "What do you mean?" • It's important for parties to appear on camera so witnesses can identify who they are referring to during testimony as the witness may do during an in-person trial.

<p>Interpreters</p>	<ul style="list-style-type: none"> • An interpreter is called to be on standby. • The interpreter appears in the part in person. 	<ul style="list-style-type: none"> • Interpreters are stationed at the “Interpreter’s Desk” at the courthouse. • Interpreters join the virtual trial via the Teams link. • The court typically asks the interpreter to be on standby and join later. • The interpreter may be using consecutive interpretation and will ask the witness to pause after their statement so the interpreter can interpret it. 	<ul style="list-style-type: none"> • In one recent case, Judge Wang addressed the issue of interpretation in a virtual trial. Respondents in that case sought an indefinite stay of the trial pursuant to N.Y. C.P.L.R. § 2201, claiming among other things the difficulty the respondent experienced while listening to the Spanish interpreter translate simultaneously while others were talking. • To resolve this, the court proposed that the court-approved interpreter to translate to respondent by phone while being muted. This was rejected by the respondent, who worried the quality of the interpretation off-record. • Finally, the court decided to order sequential or consecutive interpretation. The court noted that it will lengthen trial time but will also better ensure litigants have language access. <i>Wyona Apts LLC v. Ramirez</i>, 2020 NY Slip Op 20309 (Civ. Ct. Kings Cty. Nov. 22, 2020).
<p>Equipment</p>	<p>The parties are all in one place and there is no necessary equipment.</p>	<ul style="list-style-type: none"> • Parties connect through Microsoft Teams or Skype for Business. (You can read OCA’s instructions to appear virtually using one of these two applications here.) Your client may not have the resources to appear virtually at home. They may not have a laptop or internet access at home. You may need to consider alternatives like providing your client with equipment that has videoconferencing technology or, if possible, having your client travel 	<ul style="list-style-type: none"> • Recently, courts have addressed the issue of an indigent tenant’s inability to afford videoconferencing technology by balancing the equities. The court in <i>Wyona Apts LLC v. Ramirez</i> allowed for a virtual trial despite this claim because the respondent had already appeared at virtual court conferences with the technology she already possessed—her cell phone. However, acknowledging the limited data available in respondent’s cell phone plan, the court postponed the trial

		<p>to your office to use the videoconferencing equipment there.</p> <ul style="list-style-type: none"> • Each party needs a computer/device with an adequate microphone and camera as well as a reliable internet connection. 	<p>for two months to allow respondent more time to prepare for trial with counsel. 2020 NY Slip Op 20309 (Civ. Ct. Kings Cty. Nov. 22, 2020).</p> <ul style="list-style-type: none"> • In another recent case, <i>Coolidge Riverside LLC v. Notbom, et. al.</i>, the court stayed the trial where the 81-year-old respondent claimed she is not technologically savvy and did not know how to use the videoconferencing equipment. The court stayed the trial partly because the complaining witness was presently not in New York and partly because the respondent is elderly with severe underlying medical conditions. LT-61411-16/ NY (Civ. Ct. NY Cty. Nov. 10, 2020). • Parties need to test their equipment and internet connection; make sure their witnesses and client can “enter” the virtual trial. • Attorneys must make sure their witnesses have been captured by the camera so that the whole face/head appears (and not just the forehead or one side). • It’s important that the fact finder can see the witness’s face when testifying to observe facial expressions and assess credibility. • Make sure all other attendees are muted.
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<p>Unauthorized Coaching during the Hearing</p>	<ul style="list-style-type: none"> • Witnesses would sit outside the courtroom so they do not observe the trial and cannot be coached. 	<ul style="list-style-type: none"> • The court utilizes safeguards to ensure a fair trial. These include: <ul style="list-style-type: none"> ○ Witnesses are put in the virtual waiting room and not allowed into the virtual trial until they are needed. ○ Witnesses are put in the virtual waiting room and not allowed into the virtual trial until they are needed. • The court and attorneys need to see where a witness is looking while testifying. For example, are they looking down and consulting notes? • The court or any party—at any time—may direct the witness to show the room from where the witness is testifying—to prevent witness from reading an exhibit. 	<ul style="list-style-type: none"> • Prior to the court taking testimony, establish on the record whether or not this witness was in the same room or had an opportunity to listen in on another witness testifying. For example, ask an agent of the landlord where they were when another witness for the landlord was testifying moments ago. • One challenge with virtual trials is you have a limited view of the testifying witness's space. Everything in front of the witness is out of your view.
<p>Court Asks about the Witnesses</p>	<p>The court notes the number and order of witnesses from each side.</p>	<p>The court notes the number and order of witnesses from each side.</p>	<ul style="list-style-type: none"> • If you are having more than one witness testify, you need to ensure any witness who has not testified yet has a place to wait out of the earshot of the virtual trial. • Likewise, the testifying witness who is not a party must be in a different room than the party—to be out of earshot of the ongoing trial. • Thus, a virtual trial requires the attorney to think about these space issues as part of trial preparation.
<p>Admitting Documents into Evidence</p>	<ul style="list-style-type: none"> • The court asks the parties to exchange proposed documentary evidence prior to the hearing. • The parties stipulate to the admission of documents prior to the hearing. • The court has access to the original document at trial. 	<ul style="list-style-type: none"> • The court will ask the parties to exchange proposed documentary evidence prior to the hearing. • You should pre-mark and paginate all exhibits. • The judge will postpone the questioning or 	<ul style="list-style-type: none"> • If the judge's copy of the document is very poor or not legible, making the writings hard to see, ask for an extension of time or opportunity to provide the offer of proof later. • Your adversary will likely oppose the admission of

		<p>admission of a document not sent to your adversary “timely” (i.e., sent on the day of the virtual trial because adversary does not have the equipment to review it). (For example, if someone does not have a printer at home while working remotely.)</p> <ul style="list-style-type: none"> • The court will ask to be emailed a scanned copy of the original document, so make sure it is legible to the judge. • Despite this, a virtual trial does not limit the time a party has to object to the admissibility of a document or eliminate a party’s right to object on the record (during the virtual trial). • You may leave copies of the documents with the witnesses right before their testimony is about to begin. • You may use the share screen function of the Teams application to show an exhibit to the witness. 	<p>your document. To move the hearing along, you can ask the court to review the document for authenticity and if the court finds the document is authentic, ask opposing counsel to accept that determination.</p> <ul style="list-style-type: none"> • In other words, in a virtual trial, where your adversary is printing copies of proposed documentary evidence that you emailed to them, that will be an opportunity for your adversary to oppose the admission of your document claiming it’s illegible. You will need to think outside the box and ask the court to be the arbiter of what is acceptable. • You can ask the court beforehand to use the share screen function or other MS Teams application. Admittedly, that will require the attorney to prepare the exhibit for that purpose. For certain hearings like illegal lockout proceedings and those for emergency repairs, there may be very little time to prepare for the hearing.
<p>Conclusion of the Trial</p>	<ul style="list-style-type: none"> • Attorneys submit a written closing statement or verbal closing statement at that moment. 	<ul style="list-style-type: none"> • Attorneys submit a written closing statement or a verbal closing statement at that moment. 	<ul style="list-style-type: none"> • If you are providing a verbal closing statement at that moment, make sure you are not testifying. • Since your closing statement will follow shortly after the witnesses’ testimony, you may inadvertently “sum up” or paraphrase the testimony, which may amount to testifying. This is one reason submitting a written closing statement may be more advantageous.

Donna Chiu, Managing Attorney, Mobilization for Justice

Donna Chiu is a Managing Attorney for Housing Administration in MFJ's growing housing unit. Aside from helping to manage administrative tasks, she supervises attorneys practicing landlord-tenant law in New York. Ms. Chiu returned to MFJ where she started her legal career as a housing attorney. Prior to returning to MFJ, she was the Director of Housing and Community Services at Asian Americans for Equality (AAFE), a non-profit, community-based organization. At AAFE, Ms. Chiu led a team comprised of attorney, organizer, and housing advocate to provide legal representation, organize, and empower non-English speaking immigrants in Queens and Chinatown to stand up to their predatory equity landlords and fight back against tenant harassment. Ms. Chiu is an immigrant from Hong Kong, China and a native Chinese-Cantonese speaker. She takes great pride in leveraging her lived experiences growing up in Chinatown as an immigrant to provide linguistically and culturally appropriate services to some of New York's most underserved tenants.

In 2015, Ms. Chiu received the Community Partner Award from Manhattan Legal Services and the Community Ally Award from the Committee Against Anti-Asian Violence. In 2016, Ms. Chiu was the recipient of the Association of the Bar of the City of New York's Legal Services Award.

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