

PROTOCOLS FOR CONDUCT OF VIRTUAL TRIALS IN THE RESIDENTIAL FORECLOSURE
TRIAL PART FOR WESTCHESTER COUNTY

Trials in the Residential Foreclosure Trial Part shall be conducted virtually on the Microsoft Teams platform under the control of court personnel. An email, with a link to join the Teams meeting will be sent to counsel and any unrepresented party. It is the responsibility of counsel to forward the email and link to her/his client and any witnesses she/he intends to call.

It is also the responsibility of counsel to instruct her/his client and any witnesses she/he intends to call as to the content and requirements of these Protocols.

A virtual trial is a formal proceeding, to which the same evidentiary, procedural and disciplinary rules, and requirements of courtroom decorum, that apply to in-person proceedings also apply. The general rules set out in the Trial Scheduling Order which was entered in the action remain in effect: including that absent unforeseen and exigent circumstances, the trial date may not be adjourned, and that requests for adjournment will be entertained only if made by trial counsel when the case is called on the scheduled virtual trial date.

An official Court Reporter shall join the Teams meeting and shall take the minutes of the trial.

Any recording of the trial by any individual other than the official Court Reporter is strictly prohibited.

Pre-Trial

Counsel are encouraged to stipulate to factual and evidentiary matters to the extent possible.

At least 15 days prior to the trial date, counsel shall confer with each other and make a good faith effort to agree on whether documentary exhibits that they intend to offer into evidence may be admitted without objection, whether a certified copy may be admitted in lieu of an original, and whether any redactions are necessary. Regardless of whether an agreement has been reached, no less than 14 days prior to the trial date counsel shall upload to the New York State Courts E-Filing (hereafter, "NYSCEF") system copies of any Exhibits he/she intends to offer into evidence. The Exhibits shall be pre-marked – Plaintiff's counsel shall use alphabetical notations and Defendant's counsel shall use numerical notations – and shall be referred to by both the Exhibit number and NYSCEF DOC. NO. during the trial. Official exhibit labels should be used where possible, but a simple handwritten notation – e.g., "Plaintiff Ex. A for I.D." – in a blank corner on the first page of an exhibit is also acceptable.

No less than 14 days prior to the trial date, counsel shall also upload to NYSCEF a list of witnesses she/he intends to call at trial. If the witness is a non-party, counsel shall include the witness's corporate affiliation and job title.

If a witness will be testifying from a location outside the State of New York counsel should consider waiving the requirement, where appropriate, that the witness be sworn by an official located in the State in which the witness is present.

Counsel shall not submit marked pleadings, nor include copies of previously filed pleadings as part of an Exhibit.

Counsel shall not submit pre-trial or trial memoranda unless requested by the Court.

The Virtual Trial

Decorum

All participants – i.e., attorneys, witnesses and parties – shall be dressed appropriately, and there shall be no consumption of food or drink, or smoking, during the proceedings.

All participants shall appear via both video and audio, with their cameras on and operational unless otherwise directed by the Court.

All participants shall attend from quiet, visually neutral locations with no visual or auditory distractions. Only one person may appear on any single Microsoft Teams screen, from any single location. Thus, counsel and their clients or witnesses shall use different devices, from different locations, but those locations may, for example, simply be different rooms in the same office. Non-participants shall not appear on the same Microsoft screen, nor be present in the same location, as a participant.

The use of virtual backgrounds is prohibited. The actual background shall not include anything from which any personal confidential information may be discerned, or from which any favorable or adverse inference may be drawn, or the appearance of which may be adversely prejudicial to another participant.

Only one person shall speak at a time. All other participants shall mute their own microphone while another is speaking. Except for objections by counsel, a participant who wishes to be heard shall physically raise his/her hand or activate the "raise hand" function in Microsoft Teams, and wait for the Court to recognize them before speaking.

At any time, counsel may request that the trial be interrupted to allow them to speak privately with her/his client. If counsel and the client are in non-adjacent locations, so that it would be burdensome to communicate, the Court shall utilize the "breakout room" function on Microsoft Teams to allow them to speak confidentially. During such period all other participants shall remain on mute and disable their video function until the Court directs them to rejoin.

Witness Testimony and Documentary Evidence

The Court will swear in the witness.

Restrictions on communications between the witness and counsel are the same as they would be for an in-person proceeding.

Witnesses are not permitted to testify from a cell phone.

Witnesses shall testify only by using suitable computer equipment of sufficient audio and video quality to allow the Court and counsel to evaluate credibility.

The room from which the witness is testifying shall be displayed to the Court and counsel prior to the start of testimony and as the Court may direct thereafter.

During his/her testimony, a witness shall have in front of him/her only that specific Exhibit as to which he/she is testifying, or that specific document or writing to which the witness is permitted to refer. Such Exhibit, document or writing shall be published to the witness' camera and must be clearly visible to the Court and counsel during the testimony.

It is counsels' responsibility to provide to their witness in advance of his/her testimony, images of any Exhibit as to which said witness will testify as the Exhibit appears on NYSCEF – i.e., including that part of the uploaded Exhibit which bears the NYSCEF DOC. NO. and time and date of filing.

In those instances where a pre-trial agreement could not be reached and there is an objection to the admission of an Exhibit, the Court will hear argument and make a ruling during the testimony of the witness through whose testimony the Exhibit is offered.

Counsel shall make objections by unmuting their microphone and saying "Objection." The witness shall immediately stop speaking and mute her/his own microphone until the Court has ruled on the objection.

Whether admitted per stipulation or over objection, the Court will state for the record that the Exhibit is "deemed admitted." The Court Reporter will not physically mark Exhibits.