

These guidelines have been posted primarily to assist litigants in preparing for virtual hearings before Judge Kaplan. Please be advised that other Judges may utilize her/his own Zoom Procedures at her/his discretion. Parties appearing before a Judge other than Judge Kaplan are encouraged to check the website and/or reach out to Chambers for specific instructions.

Generally

1. Courtroom behavior. Although held remotely, a Zoom hearing or trial is a judicial proceeding and therefore the formalities of a courtroom must be observed. Parties are expected to conduct themselves in the same way that they would if they were in person in the courtroom. This includes appropriate formality and attire.
2. “Public Proceedings.” Please be reminded that the hearing or trial is a “public proceeding.” Thus, the Court may allow any party interested in the case to “listen in” to the Zoom proceeding. Parties to the case should consult with Chambers before sharing the Zoom ID and passcode with interested parties who wish to “listen in.” Zoom connection information may be made publicly available on the Judge’s website. Parties who “listen in” must have their cameras off and their microphones muted at all times.
3. **Appearance by Zoom and CourtSolutions.** **Parties must appear through both CourtSolutions and Zoom.** The audio and recording will be provided through CourtSolutions, while only video will be provided through Zoom. The Zoom video may or may not be recorded at the Judge’s discretion.
4. Video/audio on. All video will be off upon entry into the meeting. Only parties who are expected to call witnesses or pose objections at the hearing or trial and the witnesses who are testifying should manually turn their cameras and microphones on during the trial. All others should turn their cameras off and mute their microphones via Zoom and CourtSolutions. Your computer or telephone must be on “mute,” except when you are speaking. The video feed will show only the parties who are actively participating—the Judge, the witness, the lawyer asking the questions, and any parties entitled to object. Other attorneys assisting in the case must have their cameras off and their microphones muted.

5. Identify yourself, slow down, and do not interrupt. Each time you speak, identify yourself for the record. Remember to speak slowly and distinctly. Do not interrupt others.
6. Participate from a quiet place with reliable reception. Do not use a speaker phone or call from a public place. Disruptions or background noise may cause the Judge to mute you or terminate your participation.
7. Breakout rooms. If any party wants to be placed in a breakout room so that he/she may speak separately to another participant, the party should ask the Court, and, if appropriate, a Court staff member will arrange for the breakout and place the parties in the correct breakout room. Breakout rooms must be set up in advance, so please advise the Court in advance of trial if this is a feature you would like to utilize. Court personnel may also have a chambers breakout room.
8. Technical information. The Court must be provided with a list of phone numbers at which parties can be readily reached for everyone expected to actively participate in the Zoom proceeding. Additionally, the Court may ask for descriptions of the types of technology (e.g., Mac, PC, iPad) that each party will be using. Such a list will assist Court personnel in quickly contacting and providing appropriate technical assistance to any party experiencing technical issues during the proceeding. If you are having trouble with the video, audio, or experiencing other technical difficulties, please speak up immediately and/or reach out to a designated contact person at the Court who will be identified in advance of hearing or trial. Though glitches are expected, they do not always occur on the Court's end, so we will not necessarily know if your Internet goes down until you inform us.
9. No Photographs or recordings. No photographs or recordings of the proceedings are permitted. No one except the assigned court reporter or another person that the Court directs may record the audio or video. You may have your cell phones or similar devices with you during the hearing or trial, but they must be muted, and you may not use them to take photographs or record any part of the proceedings. A court reporter will be present, and she will be preparing the only official record of the proceedings. Parties will not be provided access to that recording.

Zoom Hearing/Trial Preparation

10. Provide E-Mail Addresses. Parties are responsible for providing participant e-mail addresses to the Court, including a brief description of the role that each participant plays in the case. These e-mail addresses should include the e-mail address for any witness, expert or other interested, participating party. Please be reminded that, due to security clearance for each attendee, the Court may be unable to accept parties requesting late access to Zoom. For proceedings before Judge Kaplan, parties must complete and return to his Chambers a “Zoom Information Sheet,” which is available on the Court’s website under Judge Kaplan’s Info page in the “Trials” tab. Please contact Chambers with any questions.
11. Documents/Exhibits. All exhibits should be circulated to all attorneys, witnesses, and the Court in advance of hearing or trial. The Court will provide you with a deadline for submission of these documents. Please reach out to Chambers for specific instruction as to the required format for submission of exhibits—whether electronically in the form of PDFs or hard copies in binders submitted to Chambers. In either event, the exhibits must be clearly identified (either via PDF file name, or binder tab) so that the exhibits can be easily located during the proceeding. Parties should work with each other and the Court in advance of the hearing or trial in an effort to narrow the exhibit list, and the parties are encouraged to stipulate to facts and documents in evidence before the proceeding. *The Court may instruct the submission of direct testimony of a witness by written declaration as opposed to live question and answer.* This saves time and streamlines the process. If this procedure is utilized, the live Zoom testimony is for cross-examination only (and redirect and re-cross, as necessary).
12. Pre-trial/Pre-hearing Zoom Conference. The Court may conduct a Pre-hearing or Pre-trial Zoom Conference wherein the parties can familiarize themselves with the Zoom platform. Additionally, during the conference the Court may further explain the Zoom procedure, answer questions, and modify some of the dates/requests from the form Pre-trial Order.
13. Zoom Invitation and CourtSolutions. The Court will send an e-mail with the Zoom invitation (including Zoom Meeting ID and Password) to all approved parties whose e-mail addresses were provided in advance. As discussed above, **parties must appear**

through both CourtSolutions and Zoom. The audio and recording will be provided through CourtSolutions, while only video will be provided through Zoom. The video through Zoom may or may not be recorded at the Judge’s discretion. All attorneys/witnesses must attend from a different computer.

During the Zoom Proceeding

14. Logging in. Parties are encouraged to sign-in to the video conference at least ten minutes in advance. **All parties are required to join Zoom without audio or mute their lines in Zoom.** To appear telephonically, visit CourtSolutions <https://www.Court-Solutions.com/> to register your appearance. If you need assistance, contact CourtSolutions at 917-746-7476. Parties’ lines should be muted when they are not speaking.
15. Courtroom demeanor. Again, the parties are reminded that although held remotely by electronic means, the Zoom hearing or trial is a judicial proceeding and the formalities of a courtroom must be observed.
16. Speaking. Each time you speak, identify yourself for the record. Remember to speak slowly and distinctly. Do not interrupt others.
17. Independent attendance. As stated above, all attorneys/witnesses must attend the Zoom proceeding from a different computer so that the Judge can see all participants at all times and clearly identify who is speaking.
18. Breaks. If a party needs a break, ask for a break during a pause in conversation or use the “raise your hand” feature if someone else is speaking. Parties are reminded that the Zoom meeting is on-going and the CourtSolutions recording may not shut off. Therefore, in the event the parties want to have a private discussion, they must mute their microphones and/or turn off their video.
19. Technical Problems. If you are having trouble with the video or audio or other technical difficulties, please speak up immediately. Though glitches are expected, they do not always occur on the Court’s end, so we will not necessarily know if your Internet goes down until you tell us. The Court will provide a contact person—with phone number or e-mail—whom you can contact during the trial to immediately report issues.

Witnesses

20. Witness protocol. When a party is called to testify, the witness cannot accept “coaching” and, generally, must be in a room by himself or herself with no notes or other aids while testifying, other than the filed exhibits. The witness will be sworn in by the Court via Zoom video and CourtSolutions audio. While under oath, the witness may be asked to testify as to where the witness is located, who is in the room with the witness, whether the witness has any papers in front of him/her, and may be asked to use their camera to visually show that they are alone in the room. The witness will also be asked to tell the Court if, at any time, someone who was not initially there enters the room. If witnesses wish to have counsel with them in person, that fact must be disclosed to the Court, and the parties should maintain social distance in the room.
21. Violation of witness rules. If, during the course of a witness’s testimony or otherwise, it is discovered that (a) the witness is being coached or otherwise communicated to, (b) there is an undisclosed person in the room with the witness, or (c) the witness has notes in front of him/her that have not been disclosed, the Court may disqualify the witness from testifying, enter sanctions, or take other appropriate action within the Court’s discretion.
22. Excluding witnesses. At the start of the proceeding, the parties must inform the Court if they wish to have testifying witnesses excluded from the courtroom. If so, the Court will decide whether the request is appropriate pursuant to the applicable federal rules. Either excluded witnesses will be placed in a Zoom waiting room until it is time for them to testify, or they should be directed not to dial in to the Zoom proceeding until they are expected to testify.
23. Objections. If parties wish to object to questions during examination, they should state “objection” orally and physically raise their hand. When the word “objection” is stated and/or the hand is raised, all parties must stop talking. At that point, the Court will invite the objecting party to state the legal basis for his/her objection; may, at its discretion, solicit a response from the other party; and then rule.
24. Sidebar. If a lawyer needs a sidebar with the Court and opposing counsel during a witness’s testimony, the lawyer should ask. The Court can arrange for the witness to be placed in the waiting room while the sidebar takes place.

Exhibits

25. Advance Submission of Exhibits. As indicated, all exhibits must be exchanged in advance of the hearing or trial in the manner and format prescribed by the Judge.
26. Screen Share. In general, a member of the Court staff will serve as “host” for the Zoom proceeding and, thus, the Court will be the only entity that can “screen share.” As previously discussed, all exhibits must be clearly identified and marked with page numbers that will allow the Court to readily and quickly find the appropriate pages in each exhibit for sharing with Zoom proceeding participants.
27. Hardcopy exhibits. In addition to filing exhibits electronically, the parties may be instructed by the Judge to provide hard copies of the exhibits to each other and the witnesses. Please reach out to Chambers for specific procedures.
28. Confidential exhibits. If the parties designate as exhibits documents that are marked as confidential, a redacted set of the confidential documents should be filed on the public docket, and a separate, unredacted version of the documents should be filed under seal with the Court pursuant to Local Rule. During the Zoom proceeding, the Court will “screen share” only the redacted version of the confidential exhibits. The Court does not need hard copies of the redacted exhibits. In the hardcopy set of exhibits to be delivered to the Court, the confidential documents should be provided in separate sealed envelopes marked as confidential. Whenever witnesses are expected to testify on the record about confidential information, counsel must provide advanced notice so that the Court can determine whether arrangements need to be made to protect that information from anyone listening in during the Zoom proceeding.
29. Impeachment/rebuttal documents. If a lawyer wants to use a document that is not a marked exhibit for impeachment or rebuttal, he or she must send the relevant document via email to a member of the Court staff identified by the Court who will then share the document on the screen as directed by the lawyer.
30. Deposition transcripts. If a lawyer anticipates using a deposition transcript for impeachment, he or she may either designate the transcript as an exhibit and file it with the other exhibits ahead of the hearing or trial or have the transcript downloaded and readily available to provide to the Court for sharing during the Zoom proceeding.