

JUDICARY REMOTE COURT PROCEEDINGS (“RCPs”) GUIDELINES

TO ENSURE THE COURTS CONDUCT REMOTE COURT PROCEEDINGS TO THE BEST OF THEIR ABILITIES, CONSISTENT WITH SPECIAL ORDER NO. 8 AND THE CONSTITUTION, AND THAT RCP PARTICIPANTS HAVE A SATISFACTORY EXPERIENCE, THE FOLLOWING GUIDELINES ARE PROVIDED.

Context

In these guidelines, “Remote Court Proceeding,” or “RCP,” means any Court proceeding at which a judge, party, counsel, or witness appears via video or telephone conference application. “Court point” means the courtroom or any other place where the Court is sitting, and “remote point” is the place where the person appearing via video or telephone conference application is located.

RCPs are to be conducted as normal court proceedings, and participants largely observe the same courtesies and protocols. No adverse implications are drawn from a person’s remote appearance, nor does evidence given remotely have any greater or lesser weight than evidence presented “live” in a courtroom.

Scheduling an RCP

The parties must inform the Court that an RCP is necessary by filing a request for an RCP with the Clerk of Courts, using court-prepared forms to be made available. For proceedings before the Appellate Division, counsel must move the Court for leave to appear remotely. Such requests must be made well in advance of any scheduled proceeding, barring extraordinary circumstances.

If the Court determines on its own initiative that an RCP is necessary, the Clerk of Courts shall inform the parties well in advance of the scheduled proceeding.

Once scheduled, the chambers clerk shall coordinate with the Clerk of Courts and calendar the proceeding in the Judicial Information System (“JIS”) to reflect it will be an RCP—e.g., “Jones vs. Smith (RCP).”

The following information will be provided at least one day in advance to those attending an RCP:

- URL (weblink);
- Phone number of the RCP coordinator to contact if problems/questions arise;
- Information to access the video or telephone conference application via smartphone/tablet;
- Minimum technical requirements, e.g., a laptop or desktop computer with audio/video capability and access to the internet; and
- Guidelines for conduct during the RCP.

General Protocols

1. Before the commencement of an RCP, the courtroom clerk/RCP coordinator shall check the weblink and ensure that it is functioning properly.
2. When adjusting cameras, the courtroom clerk/RCP coordinator shall try as much as possible to focus the camera on people rather than furniture. They will also position any camera to be at eye level, or slightly above.

3. Once connected to the RCP, participants must mute the audio settings on their devices to prevent any unintended interruptions.
4. Participants should speak to the camera, not the computer or device screen.
5. When participants use videoconferencing software via a phone, their phone number might be displayed. This should be changed to display their name.
6. If there is audio echo or feedback during the RCP, the courtroom clerk/RCP coordinator shall troubleshoot by checking that there is not more than one device (phone, computer, or tablet) with unmuted audio.
7. The Court shall reflect formality by including in the video frame the Court seal, and judges shall wear robes.
8. All normal court etiquette and protocols (e.g., calling the docket, addressing judges as “your Honor”) shall be maintained, where practicable.
9. Judges should clearly command when a specific participant is to speak.
10. Self-represented parties are expected to conduct themselves to the same standard as required in a physical courtroom.

Commencement of Proceedings

At the commencement of an RCP, the courtroom clerk/RCP coordinator will confirm that the remote conferencing link is operational.

The judge should confirm the identities of those present at the Court point, and those participating from remote points. The judge should also identify any third-parties present (e.g., a probation officer) and have them state the reason for their presence.

The judge should assess the quality of the conferencing connection by asking the participants the following:

1. “Are you able to hear me and can you understand what I am saying?”
2. “Are you able to clearly see me and the other participants?”

The judge should then inform the participants of the following:

1. “If, at any time, you are not able to clearly see or hear what is happening in court today, you must immediately inform me of the issue.”
2. “If the internet drops out, please remain in the same place and turn on your mobile phone. Someone from the Court will contact you by phone if this happens. Alternatively, you can phone this number: XXXXXXXX.”
3. “Please wait to speak until I ask you to do so. If you need to speak while someone else is speaking, including to alert me to a technical issue, you can ‘raise hand’ [or engage in any other agreed-upon

prompt] in lieu of standing and interjecting. Parties must refrain from speaking over each other as much as possible.”

4. “When you speak, please announce yourself, and speak slowly and clearly. Say ‘over’ when you have finished speaking.”

The judge should also address on the record:

1. That the parties waive any rights they may have to be present in the courtroom for the proceeding.
2. That the Court has made the requisite findings supporting the necessity of a remote appearance if the remote appearance is by a victim or witness who is in Palau.
3. That the parties’ consent to the proceeding being conducted as an RCP.
4. That all court rules of evidence and procedure apply.
5. That there are no unmet disability or accessibility needs.
6. That an interpreter is present, if necessary.
7. Whether the participants have caretaker responsibilities (e.g., for a baby) or privacy issues (especially for domestic violence matters) at the location from which they are participating.
8. Whether witnesses will be sequestered (prevented from joining the RCP) before giving testimony.

Administering the Oath and Warning Witnesses

Before the Court takes remote testimony:

1. The witness shall take the oath/affirmation in the usual fashion.
2. The witness shall be advised of the operational logistics of the RCP.
3. The witness shall be warned that, although this is an RCP, it is an offense to commit perjury or contempt of court.
4. The witness shall be asked to turn off all electronic devices, except for the device enabling participation.
5. The witness shall confirm that he or she will refrain from exchanging any messages with anyone while testifying, or from recording the proceeding.
6. The witness shall confirm that he or she is alone at the remote point.
7. The witness shall be asked to remove any virtual background, as the judge needs to be assured that there is no one prompting or interfering with the testimony.

Managing the Proceedings

In managing the proceedings, the judge should:

1. Keep within view of the camera and refrain from turning away from the camera too often, as this can be unsettling for participants, especially victims and vulnerable witnesses.
2. Use “waiting room” functions to allow individuals into the RCP. The judge should announce when someone is joining the RCP, such as a witness. No other persons should be allowed to join the RCP while it is in progress without knowledge and approval of the Court, counsel, and the parties.
3. Place disruptive participants into the “waiting room,” if necessary.
4. Use “breakout rooms,” or “chat” or “raise hand” functions, for sidebar conversations that others should not hear.
5. Ensure the means for confidential attorney-client discussions are managed by counsel, not the Court.
6. Ensure that no one coaches, interrupts, or intimidates any witness.

At the RCP’s conclusion, the judge or courtroom clerk should confirm email addresses, mobile telephone numbers, or the preferred means of communication with the parties.

Connecting and Disconnecting Conferencing Links

RCP participants will be provided with a link to the “VC Room” (videoconference room) of the court hearing the matter.

Upon adjournment of the RCP, participants will be asked to exit the “VC Room,” as instructed by the courtroom clerk.

If a link is interrupted during the RCP (for technical reasons), the proceeding will be suspended until such time as all necessary participants are reconnected. In no event will a proceeding continue in the absence of a criminal defendant.

Confidential Communications

Virtual facilities will be provided to enable private communications and the transmission of documents between parties and their counsel. In general, all RCP participants will have the ability to share documents and files.

Document Visibility

Copies of documents can be shared between the Court point and any remote point, or between remote points, during the RCP, as directed by the Court. This is referred to as “document sharing” and is a feature of the Court’s “VC Room.”

For any exhibits handed up during the proceedings, a scan will be made by the courtroom clerk and made available during the RCP such that any remote participants will be able to see the newly handed-up exhibit via the “share screen” feature.

Cameras

There are two cameras strategically located within each courtroom, allowing remote participants to see both the judge/courtroom clerk and the counsel table/courtroom audience.

The judge or courtroom clerk will at all times have the ability to control the camera view within the courtroom.

Those participating remotely will ensure that their camera is focused clearly on themselves but is able to show the room in its entirety, if requested.

Even if the video and/or audio unit is not activated at the remote point, parties and witnesses should assume that they will be visible to the Court at all times during the RCP.

All persons participating via video link will be able to see the person speaking at the time in addition to the judge/courtroom clerk and the counsel table/courtroom audience.

Microphones

Microphones used in video link hearings are sensitive. Persons appearing before the Court by video link should assume from the time the video link is activated until the time the link is disconnected that microphones are "live" and that all remarks may be audible to the Court and the other participants. That said, all participants who are not presently speaking before the Court (e.g., participants other than counsel and witnesses during the taking of testimony) will be asked to mute their microphones. If any participants need to confidentially confer (e.g., counsel conferring with his or her client), the Court should be informed that the participants are muting their microphones for this purpose.

Recording Proceedings

Audio recordings of RCPs will be made using FTR software, per normal Court procedure.

Video recordings, when made, will be stored to the laptop used to conduct the RCP and will be copied to the designated Files Server folder in the Judiciary Network immediately after the proceedings have ended.

The courtroom clerk will make sure that all records for the case include not only log notes and exhibits but the audio and video recordings as well, and will indicate in the log notes and on JIS that recordings are part of the record.

Tracking RCPs

The use of RCPs to assist with the delivery of justice will be tracked and monitored regularly. It is the responsibility of the courtroom clerk/RCP coordinator to log all RCPs with the following information:

- Proceeding type, e.g., bench trial;
- Case type, e.g., Criminal;
- Division, e.g., Trial Division;
- Date, time, and location, e.g., 10th August, 10 am, Koror;
- Length of proceeding, e.g., 30 minutes;
- Judge, e.g., Presiding Justice Salii;
- Identity of participants appearing remotely, e.g., witness X and plaintiff's counsel; and

- Reason for RCP, e.g., witness located outside the Republic.

Reports summarizing the above information are to be provided to all justices and judges.

RCP Etiquette and Best Practices

Observing good remote conferencing etiquette can greatly improve the quality of the proceeding. The following tips should be used by all participants to help ensure a successful RCP experience.

Video tips

- Light pastels and muted colors look best on screen; avoid wearing bright colors or busy patterns.
- If there are windows in the Court point or remote point, close the blinds. Daylight is a variable light source and can conflict with the interior room lighting.
- Use natural gestures when you speak.
- Set your camera at, or just above, your eye level. When speaking, address the camera, not your device's screen.
- When adjusting the camera, try to fill the screen as much as possible with yourself rather than your surroundings.
- Be sure to "allow access to camera/microphone" on your device when prompted.

Audio tips

- Speak in a normal voice without shouting. The microphones used are sensitive and are designed for normal speech.
- Wait until you are told that it is your turn to speak by the judge. Say "over" when you have finished speaking.
- Do not interrupt other speakers. If you need to interject, signal the judge using the agreed-upon signal or feature of the conferencing application.
- When commencing to speak, ask the other participants if they can hear you clearly.
- Avoid coughing, whispering, tapping objects on tables, or rustling paper near microphones, as this will disrupt the sound levels and affect court recording equipment. When it is not your turn to speak, mute your microphone, unless directed otherwise by the judge.

Vulnerable Witness Procedures

When a vulnerable witness is giving testimony remotely, the court should make a finding, if it has not done so in a previous order, **addressing the findings that should be made on the record before RCP is used and other considerations regarding a criminal defendant's right to face the accuser.**

When a vulnerable witness is giving testimony remotely, a court staff member will be present at the remote point in order to:

- Make sure the remote point laptop is open and ready to connect (via the Court's wi-fi);
- Login to the court network, and access the conferencing link;
- Demonstrate to the witness how the process will work;
- Mute the vulnerable witness room and make sure the witness cannot hear the courtroom, and vice versa;

- Show a document on the document viewer to confirm that documents can be clearly seen in the vulnerable witness room;
- When ready, instruct the witness to connect via the link and join the RCP; and
- Remain with the witness during his or her testimony.

*** THESE GUIDELINES ARE SUBJECT TO REVISION AT ANY TIME AND DO NOT, AND ARE NOT INTENDED TO, CREATE ANY SUBSTANTIVE RIGHTS IN PARTIES, WITNESSES, OR THE PUBLIC.**