

# **Protocol for In-Person Hearings In the District of Minnesota**

*Revision 9/15/21*

This draft protocol for in-person criminal hearings is intended to apply to all proceedings in which the defendant is not consenting to video hearings during the pendency of the emergency declared by the Judicial Conference. We intend to carefully monitor in-person hearings and make any necessary changes to the protocol to ensure the health and safety of all participants. Once courtrooms are outfitted with plexiglass dividers, other hearings can take place, but we are discouraging in-person hearings when the hearing can be held by video conference.

Before the hearing, counsel will receive the information provided in sections I and II, below.

## **I. Building-Wide Health and Safety Precautions**

- A. All persons entering the courthouse must wear a mask or face covering in the common areas of the courthouse and when moving from one location to another.
- B. We will ensure there is appropriate signage through weapons screening to encourage social distancing.
- C. There will be markings on the floor in the elevator lobbies and elevators to ensure 3 ft social distancing and a maximum of two people per elevator.
- D. Courtroom galleries will be marked to indicate where members of the public, press, or other attendees can sit. Observers will be advised that they must sit at least 3 feet apart; if necessary, an overflow room will be provided.

## **II. Courtroom Health and Safety Precautions**

- A. Case participant seats will be marked in advance to ensure appropriate social distancing. If an interpreter is needed, the interpreter will be located at a separate table.
  
- B. Plexiglass separators will be installed in each courtroom according to the model plan developed for each style courtroom. Locations will include counsel tables, lectern, and witness stand when other case participants will be within 3 feet of the speaker. Separators will be consistent with, although less extensive than, separators planned for jury trials so they will not have to be relocated for a jury trial.
  - 1. A plexiglass separator will be installed between counsel and client at each table used. Additional separators will be available upon request (e.g., when there is more than one attorney appearing for a party).
  
  - 2. A plexiglass separator will be placed around the witness stand when the witness stand is closer than 3 feet from any case participant.
  
- C. At each counsel table, a sanitation basket will be provided that includes gloves, face shields, masks, microphone covers, disinfecting wipes, hand sanitizer, and tissues. Instructions for how to use and dispose of the sanitation items will be placed at each counsel table.
  - 1. Disinfecting wipes will be available for cleaning. Counsel is required to disinfect their area before and after the proceedings. Counsel must also disinfect the headsets before and after they are used.
  
  - 2. A sanitation basket will not be placed on the table within reach of an in-custody defendant; the defendant's counsel is expected to disinfect the defendant's side of the table before and after the hearing.
  
  - 3. Containers will be placed at the courtroom exit for courtroom participants to safely dispose of any used PPE or other safety gear (one for garbage and one for face shields that can be sanitized and reused).

D. Water will not be provided at counsel tables, except that the court will provide in-custody defendants with a small bottle of water.

E. Protocol During the Hearing:

1. Everyone must wear masks in the common areas of the courthouse and when moving from one location to another. In the courtroom, everyone, except a witness who is testifying, must always wear a mask, unless the presiding judge directs otherwise.
2. Parties must sit in designated marked locations in the courtroom.
3. All plexiglass separators must remain in place and must not be moved, unless permitted by the presiding judge
4. **At any point before the scheduled proceeding, counsel must immediately notify the courtroom deputy if they or any other case participant: exhibits symptoms of possible COVID-19 infection; were in close contact with anyone who exhibits symptoms of possible COVID-19 infection; or if they or someone they were in close contact with tests positive for COVID-19.**
5. Counsel must notify the courtroom deputy at least 24 business hours before the proceeding if they expect more than 10 observers to be present for the proceeding.
6. **Water will not be provided at counsel tables; counsel may bring their own bottle of water in the courtroom which must be removed by counsel.**
7. Counsel is required to disinfect their area, including the area assigned to their client, before and after proceedings. Disinfectant supplies will be provided. Instructions for using sanitation supplies in the courtroom are available on the court's website <https://www.mnd.uscourts.gov/person-hearings>.
8. Counsel may address the court while seated at counsel tables unless the presiding judge directs otherwise.
9. Counsel may speak in private with criminal defendants during the hearing through a headset system that will be provided. The headsets may also be used with an interpreter. The presiding judge may also determine it is necessary to clear the courtroom to facilitate private discussions. Counsel must clean the headsets before and after the hearing. Instructions on how to use and clean

the headsets are available on the court's website <https://www.mnd.uscourts.gov/person-hearings>.

10. If needed, the court will allow a criminal defendant to privately communicate with his or her attorney with the assistance of an interpreter.
  11. If the hearing includes testimony, the attorneys will also receive instructions for where the witnesses may wait until they are called to testify.
  12. Exhibits must be converted to PDF, pre-marked, and shared by email with the court and opposing counsel before the proceeding so that no paper is used in the courtroom. In the courtroom, exhibits must be presented to the witness electronically. In addition, any demonstratives must be displayed and shared electronically.
    - For large electronic exhibits that cannot be easily shared by email, courtesy copies of the exhibits should be submitted by DVD to the court and opposing counsel before the hearing. The official exhibit should be played or shown from a DVD during the proceeding and then deposited in a designated place in the courtroom for retrieval by court staff after the hearing.
    - Physical exhibits may be displayed at the hearing and placed in a designated location for retrieval after the hearing by court staff. If counsel wishes to have the court to examine a physical exhibit during a hearing, they must present the exhibit consistent with social distancing guidelines and with appropriate means to sanitize the exhibit.
  13. The witness must use a microphone cover when testifying and this cover will be removed and disposed after each witness testifies.
- F. For the five days immediately following any in-person proceeding, counsel, parties, witnesses, and court staff must immediately notify the court if either they or a person with whom they have had close contact

has exhibited symptoms of possible COVID-19 infection or tested positive for COVID-19.

### **III. Suggested Safety Script for Court Staff**

- A. Instruct participants about the sanitation baskets at counsel tables and ask them to follow the instructions provided on the tables for each item.
- B. Instruct attorneys to stay seated and use the microphone at the counsel tables to reduce movement and sharing of microphones; OR instruct that it is the judge's preference that attorneys address the court by standing and speaking at the lectern.
- C. Provide instructions for how masks and microphone covers should be used during the proceeding.
- D. Confirm that the parties have tested the headsets and are able to confer privately with the defendant during the hearing.