



COLLOQUY FOR PROCEEDINGS CONDUCTED BY AUDIO AND VIDEO TRANSMISSION

Approved by the Remote Proceedings Task Force on August 5, 2022

NOTE TO PRESIDING OFFICIAL: *This colloquy is intended for use in criminal proceedings conducted by audio and video transmission when the defendant's right to be present or confront witnesses is implicated. See G.S. 7A-49.6(e) ("Except as otherwise permitted by law, when the right to confront witnesses or be present is implicated in criminal or juvenile delinquency proceedings, the court may not proceed by audio and video transmission unless the court has obtained a knowing, intelligent, and voluntary waiver of the defendant's or juvenile respondent's rights.").*

Part 1 - Establish that Audio and Video Transmission is Functioning for All Parties

[Defendant], please state your name for the record.

[Defendant], please tell me where you are located at this time.

[Defendant], are you able to see and hear me?

NOTE TO PRESIDING OFFICIAL: *The next several questions apply only for represented defendants. Ensure that counsel has an opportunity to consult with the defendant privately and that counsel can see and hear all participants before proceeding.*

[Defendant], is your attorney present in the same room with you?

If the answer to the previous question is no, ask the following question:

[Defendant], are you able to see and hear your attorney through the audio and video transmission?

[Defendant], have you had an opportunity to talk to your attorney in private?

[Defendant], do you understand that you can ask to speak privately with your attorney at any time during this proceeding?

[Defense counsel], please state your name for the record.

[Defense counsel], where are you located at this time?





[*Defense counsel*], are you able to see and hear [*the defendant*]?

[*Defense counsel*], are you able to see and hear me?

[*Defense counsel*], have you had an opportunity to talk with [*the defendant*] in private?

[*Defense counsel*], are you able to speak privately with [*the defendant*] while participating in this audio and video proceeding?

NOTE TO PRESIDING OFFICIAL: *The next several questions apply to the attorney for the State.*

[*Attorney for the State*], where are you located at this time?

[*Attorney for the State*], are you able to see and hear me?

[*Attorney for the State*], are you able to see and hear [*the defendant*]?

[*Attorney for the State*], are you able to see and hear defense counsel?

[*Defendant*], are you able to see and hear [*the attorney for the State*]?

[*Defense counsel*], are you able to see and hear [*the attorney for the State*]?

[*To all parties*], if at any time you realize that you are unable to see or hear any of the other people participating in this proceeding, please let me know immediately and I will stop the hearing so that we can address the issue.

NOTE TO PRESIDING OFFICIAL: *Once you have determined that all of the parties can see, hear, and speak with one another, and that the defendant can confidentially communicate with counsel (if represented), make appropriate findings on the record regarding the method by which the proceeding is being conducted, the location of the defendant, counsel, and the judge, and the ability of each party to see, hear, and speak with one another. Sample language follows:*

Let the record show that this proceeding is being conducted by remote audio-video technology.

- The court is participating from [*insert location of presiding official*].
- [*Attorney for the State*] is participating from [*his/her*] location at [*insert location of attorney for the State*].
- [*Defendant*] is participating from [*his/her*] location at [*insert location of defendant*].
- (*If defendant is represented*) [*Defense counsel*] is participating from [*his/her*] location at [*insert location of attorney*].





The court is satisfied that all of the participants just identified can see, hear, and speak with each other and therefore finds that the audio-video technology is working properly. *(If defendant is represented)* The court further finds that the defendant is receiving the assistance of counsel and is able to communicate privately with counsel.

Part 2 - Establish Valid Waiver of Defendant's Rights to In-Person Appearance and Confrontation

Before moving forward, I want to advise you about the rights you will be giving up if you agree to have this proceeding conducted through audio and video transmission.

(If right to presence is implicated) You have the right to appear and be present physically for this proceeding. You are not required to waive the right to be present. If you do not agree to having this proceeding by audio and video transmission, this proceeding will be rescheduled to be conducted in person without unreasonable delay.

(If right to confrontation is implicated) You have the right to confront and cross-examine any witnesses who may testify in this proceeding. This means that you have the right to face physically anyone who testifies against you, and to question that person. You are not required to waive the right to confront in person the witnesses against you. If you do not agree to waive this right, this proceeding will be rescheduled to be conducted in person without unreasonable delay. If you do waive this right, [you; your counsel] still can cross-examine the witnesses against you and present your own witnesses. That simply would occur over this audio-video connection rather than in person.

[Defendant], do you understand these rights?

(If right to presence is implicated) [Defendant], do you waive your right to be present physically for this proceeding?

(If right to confrontation is implicated) [Defendant], do you waive your right to confront and cross-examine in person the witnesses who testify at this proceeding, and consent that any such confrontation and cross-examination may be conducted by means of this audio and video transmission?

[Defendant], is there anything about this proceeding or the rights you are waiving that you do not understand or that you would like to discuss with your attorney?

[Defendant and defense counsel], if you need to confer privately at any time during this proceeding, please let me know, and you will be given the opportunity to do so.

[Defendant], are you satisfied with having this proceeding today by means of this audio and video transmission?





NOTE TO PRESIDING OFFICIAL: *If you are satisfied that the defendant has made a knowing, intelligent, and voluntary waiver of the right to physical presence and the right to confront witnesses, enter appropriate findings on the record. A sample statement follows:*

Let the record show that [defendant] has consented to [his/her] participation in this proceeding by way of audio and video technology. [Defendant] has knowingly, intelligently, and voluntarily waived any right to (*select one or both*: be present physically; confront in person the witnesses in this proceeding).

Instruct the defendant to execute the form, Waiver of Rights and Consent to Audio-Video Proceeding, presented by the custodian or counsel co-located with the defendant. Once executed, direct the custodian or counsel to sign the waiver form as a witness to the defendant's execution and then deliver the form to the clerk's office for your subsequent execution of the court's certification on that same form.

