

Colloquy for Proceedings Conducted by Audio and Video Transmission

NOTE TO PRESIDING OFFICIAL: *This colloquy is to be used in proceedings conducted by audio and video transmission pursuant to the Chief Justice's April 2, 2020, order authorizing remote proceedings. Note that Part 2, the defendant's waiver of the right to personal appearance, is not necessary in order to conduct statutorily authorized audio and video transmission proceedings under G.S. 15A-511 (initial appearances), 15A-532 (bail hearings, unless defendant objects), 15A-601 (first appearances), or 15A-941 (arraignments for "not guilty" pleas).*

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. If counsel is appointed during the remote proceeding and appears on defendant's behalf during that proceeding, ensure that counsel has an opportunity to consult with the defendant privately and that counsel can hear and see all parties before proceeding.*

[Defendant], is your attorney present 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?

[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 to your client, the defendant, in private?

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

[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 you have any problem hearing or seeing at any time during this proceeding, let me know immediately.

[To all parties], if at any time a technological problem occurs, please let me know immediately and the hearing will be stopped and the difficulty corrected.

NOTE TO PRESIDING OFFICIAL: *This portion of the colloquy should follow the advisement of a defendant's right to counsel and the appointment of counsel or waiver of counsel in appropriate cases.*

If you determine that the defendant is able to see and hear you, see and hear counsel (if represented), confidentially communicate with counsel (if represented), and see and hear the attorney for the State, you should make appropriate findings on the record regarding the method by which the proceeding is 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 [*specify type of proceeding*] is being conducted by remote audio-video technology. [*Defendant*] is participating from [*his/her*] location at [*insert name of jail facility*]. [*Defense counsel*] is participating from [*his/her*] location at [*insert location of attorney*]. [*Attorney for the State*] is participating from [*his/her*] location at [*insert location of Attorney for the State*]. The court is participating from [*insert location of judge*]. This court is satisfied that [*defendant*], [*defense counsel*], [*attorney for the State*], and this court can see, hear, and speak with each other and that the defendant is able to communicate privately with counsel. This court therefore finds that the audio-video technology is working properly and that the defendant has received and is receiving the assistance of counsel.

Part 2 - Establish Valid Waiver of Defendant's Right to In-Person Appearance in Court

Before proceeding, 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.

You have the right to appear in a courtroom and be personally present for this proceeding. That includes the right to appear in court and confront and cross-examine any witnesses who may testify in 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 you will be afforded the right to appear in person in court for this proceeding without unreasonable delay.

[Defendant], do you understand those rights?

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

[Defendant], do you waive your right to be personally present for this proceeding and consent to conduct it by means of this audio and video transmission?

[Defendant], do you waive your right to appear in court to confront and cross-examine witnesses who testify at this proceeding?

[Defendant], do you consent to conducting any such confrontation and cross-examination 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.

[Attorney for the State], do you consent to holding this proceeding by audio and video transmission?

NOTE TO PRESIDING OFFICIAL: *If you are satisfied that the defendant has made a knowing, voluntary, and intelligent waiver of the right to personal 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 or her] participation in this proceeding by way of audio and video technology. [Defendant] has waived any right to be physically present and to personally confront witnesses in this proceeding. [Attorney for the State] also has consented, on behalf of the State, to conduct this proceeding by audio and video transmission.

Instruct the defendant to execute the copy of the form, Waiver of Personal Appearance 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.