



NATIONAL ACADEMY OF ARBITRATORS
VIDEOCONFERENCING TASK FORCE

PRE-HEARING CONFERENCE AGENDA FOR VIDEOCONFERENCE HEARING

GENERAL ARRANGEMENTS

- Confirm agreement to proceed by videoconference hearing.
- Confirm agreement that arrangements made during prehearing conference will serve as ground rules for the hearing.
- Determine which platform will be used for the hearing.
- Determine whether the hearing will be transcribed or recorded, and if so, by whom. If the hearing is to be recorded digitally, determine whether the hearing is to be recorded via the platform software, whether the recording is to include both audio and video, where the recording is to be stored, and who will have access to it.
- Identify host and determine whether there will be an IT Assistant.
- If hearing is to be recorded, inform the parties that consent of all participants will be required as a condition to entry (be mindful of wiretap laws in your jurisdiction).
- Discuss whether to make special provision for privacy of hearing materials, not only any recording but also exhibits shared electronically.
- Obtain agreement that no participant will record any portion of the hearing – audio or visual – by any means other than those discussed above, i.e., no background recording, no screen grabs, no cell phone recordings.

CONNECTIVITY

- Discuss how participants will maintain a reliable connection.
- Remind participants that it may be necessary to limit others' use of their internet connection.

HEARING SETTING

- Discuss hearing setting, e.g., replicate in-person environment to extent possible.

- Discuss how to address any technical interruptions, e.g., by exchanging telephone numbers for use in reconnecting with all participants.
- Discuss avoidance of distractions. All participants should inform “officemates” that they will be on a call; consider use of a “Do Not Disturb” sign in prominent place(s) as a reminder.
- Remind all participants to be mindful of their physical background and environment to avoid causing distractions and potential embarrassment to themselves and others.
- Remind participants to ensure that all notifications are turned off on their computer.
- Remind participants to turn off all peripheral devices within hearing range, e.g., landlines, videogames, etc.
- Obtain counsel’s agreement that each will review these matters with their team (including non-witness observers) prior to hearing.

AT-HEARING ISSUES

- Obtain agreement that all participants will be admitted entry to the virtual hearing room via a waiting room, to which they may be returned during breaks or caucuses. Remind parties that individuals in a waiting room cannot converse with each other.
- Provide method for participants to regain access to hearing if disconnected.
- Discuss whether to mute all participants except the Arbitrator, the advocates, and the live witness.
- Provide that Arbitrator reserves the right to address any interruptions via muting and/or removal of participants from hearing room.
- Discuss how a participant should signal a need to contact their advocate.
- Identify mechanisms for caucusing among members of each participant group, e.g., breakout rooms or separate conference call or SMS.
- Identify mechanism for “hallway” conversation between Arbitrator and counsel, e.g., others sent to waiting room.

- Remind participants when returning to hearing room not to click “Leave Meeting.”

WITNESSES & OBSERVERS

- Identify all hearing participants, and their roles.
- Obtain necessary day-of-hearing contact information including telephone number for voice or text in case of interruption:
 - Arbitrator
 - Advocates
 - Party Representatives
 - Witnesses
 - Observers
 - Court Reporter, if applicable
- Discuss any special witness issues, e.g., technical limitations, need for interpreter.
- Discuss sequestration and method for providing it, e.g., use of waiting room.
- Discuss need to announce restrictions on communication to/from and between sequestered witnesses, if applicable.
- Obtain agreement that there will be no coaching of witnesses during the hearing – including via off-camera means – by anybody and by any means.
- Discuss how to address any need to refresh a witness’s memory, e.g., may a witness access documents not previously shared with counsel.
- Review Witness Instructions document (separately provided) and obtain parties’ agreement to its use at hearing.

EXHIBITS

- Remind counsel of importance of advance identification of all documents needed for evidence and/or refreshing a witness’s memory to avoid disruptions and delay.
- Discuss whether the hearing can be streamlined by pre-submission of joint and party exhibits and/or stipulations, with the understanding that objections to admissibility may be raised at hearing notwithstanding advanced sharing.

- If documents are to be pre-submitted, agree on:
 - file type, e.g., pdf;
 - naming convention, e.g., JX1, CX1, UX1
 - pagination
- Identify the method for document submission, e.g, email or secure cloud storage such as Dropbox.
- Establish due dates for document submission and sharing.
- Provide for submission of unanticipated exhibits at hearing, e.g., will advocates be able to screen share, or should the document be sent to the Arbitrator for sharing.
- Discuss any anticipated need for a sketch or drawing and potential need for in-hearing annotation. Consider having one created and shared electronically in advance for demonstrative purposes.
- If video evidence is anticipated, discuss how it will be shared at hearing, e.g., will Arbitrator screen-share it, or will the advocate. Ensure that whoever will be doing the screen-sharing has the software necessary to display the video effectively.
- Discuss what documents will be provided to witnesses in advance, and how documents in possession of a witness may be shared at hearing if necessary, e.g., notes.
- Discuss if there is likely to be any confidential or unusual evidence requiring special handling, e.g., physical evidence, and if so, make appropriate arrangements.
- If the hearing will be transcribed, discuss method of distribution of documents to reporter.

CONCLUDING MATTERS

- Obtain parties' agreement that they will review these matters with their respective teams prior to the hearing.
- Remind parties that the Arbitrator will be confirming these arrangements at the start of the hearing as they will serve as the basic ground rules.