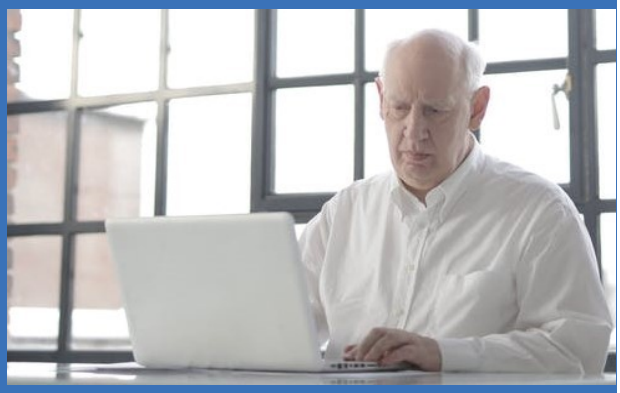
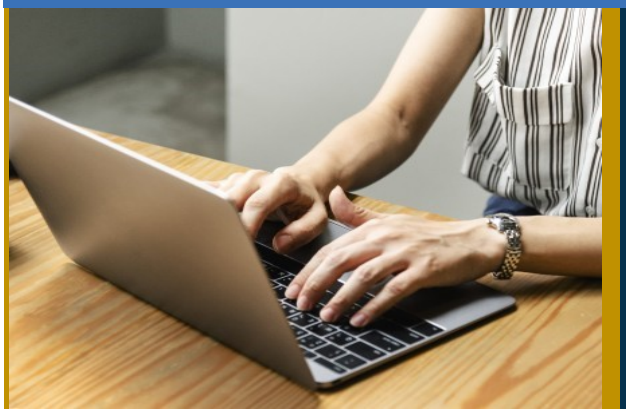
FMCS | FEDERAL MEDIATION & CONCILIATION SERVICE

VIDEO ARBITRATION:

A GUIDE FOR LABOR AND MANAGEMENT ADVOCATES





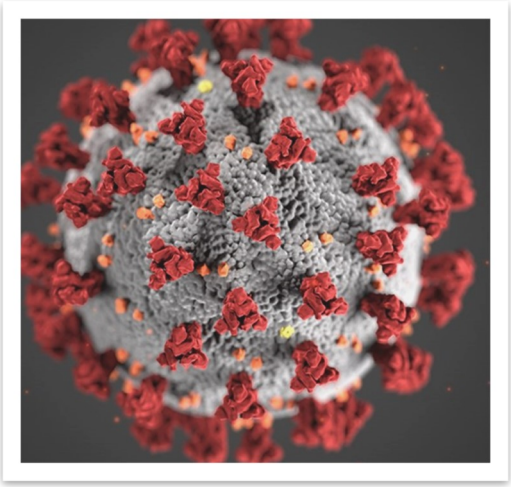
Introduction

This Guide provides an overview for labor and management advocates who may be considering the use of video for arbitration hearings. It explores potential advantages and disadvantages, provides preparation tips, highlights certain technical issues, and lists some available video platforms and general features. In addition, the Guide provides links to some excellent resources that were among those drawn upon in the preparation of these materials, and that we recommend to those interested in examining the video option in greater depth. Where these materials are directly quoted or paraphrased, a reference to the source is shown by the number in [brackets] corresponding to its number on the reference list that appears at the end of the Guide.

Even before the outbreak of the coronavirus (COVID-19), FMCS was exploring ways to facilitate the use of video arbitration in appropriate cases for parties who might find it appealing. While the Agency takes no position on whether video arbitration should be used in any given case, it appeared to us that interest in video labor arbitration was increasing and there was mounting evidence of many potential advantages. Quite a few labor arbitrators had reported the successful use of video to conduct entire hearings and/or to take testimony from one or more witnesses. Since the onset of the pandemic, FMCS has placed a high priority on supporting those among our customers who determine that video arbitration may prove beneficial.

Videoconferencing in Hearings and Mediation

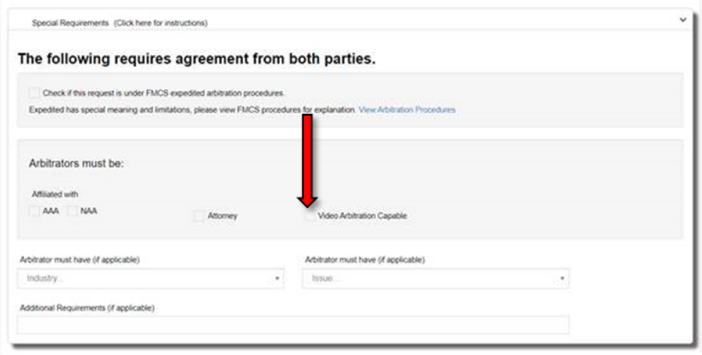
There is broad and meaningful experience in the conduct of hearings by video outside the context of labor arbitration. A growing number of courts across the country are using video for the conduct of hearings in a wide variety of contexts, including arraignment hearings, emergency hearings, receiving testimony from remote witnesses, and appellate hearings, among others. Video is increasingly being used for the conduct of hearings by federal and state administrative agencies **[1]**. The Social Security Administration, "probably the largest adjudicative agency in the western world" according to the Supreme Court (*Barnhart v. Thomas*, 540 U.S. 20, 28 (2003)), conducts many tens of thousands of disability hearings by video every year. Video also is widely used in other arbitration contexts, such as in international commercial arbitration and in arbitrations under the auspices of the Financial Industry Regulatory Authority (FINRA) **[2]**.



Since a state of emergency was declared with the outbreak of the COVID-19 pandemic, FMCS has successfully conducted an increasing number of mediations of labor-management negotiations and disputes. Mediators and parties have reported positive experiences with the use of video. Indeed, video arbitration and mediation may be seen in the broader context of the growing use of online dispute resolution, often referred to as "ODR" in the context of conflict management.

Requesting a Video Arbitration Panel

To facilitate the use of video arbitration by parties who desire it, FMCS has added a feature to its online arbitration request system (also available "manually"): parties may check a box to receive a panel consisting only of arbitrators who have self-certified as ready and able to conduct video arbitration. This choice is available along with other special requirements for arbitrators that the parties may agree on, such as being an attorney or a member of the NAA. Below is a screenshot showing approximately where to find this request selection in our online request system.

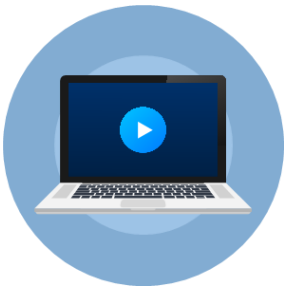


Remember that parties, even in a case where a video-ready panel had not been requested, may agree to request the arbitrator to hold the hearing by video. If the arbitrator originally selected is not comfortable with the video option, FMCS can provide a new panel to the parties consisting of only of arbitrators who have indicated they are video-capable and/or appoint such an arbitrator as a replacement.

Working with the National Academy of Arbitrators

FMCS has also collaborated with the National Academy of Arbitrators in hosting a webinar for arbitrators on the use of video arbitration and in reviewing and drawing attention to materials developed by the Academy for the benefit of arbitrators wishing to offer video arbitration services. Parts of these materials may also be very helpful to advocates, and they are listed among the resources provided at the end of this Guide.

Webinars



From time to time, to the extent parties may express interest, FMCS will offer webinars for advocates who desire further guidance in the use of video arbitration.

✓ **Before looking at video arbitration in further detail, the most important takeaway from what follows is that advocates should treat a video hearing, in most ways, as closely as possible to the way they would an in-person hearing, but prepare themselves and their witnesses for the special features, requirements, and hurdles of videoconferencing.**

Potential Advantages +

Those experienced in video arbitration and those who have conducted research, have identified multiple potential advantages. These include:

- **Social Distancing** During a pandemic, this is the most obvious benefit. The conduct of a video hearing need not require any in-person contact.
- **Cost savings** It has long been widely accepted that the use of videoconferencing offers major financial benefits **[1]**. Foremost among these is the savings on travel expenses. This includes arbitrator invoicing for both travel time and costs (for hearings and cancellations), as well as that of advocates and both expert and lay witnesses. "It seems clear that the cost of traveling to the arbitration site is increasing with little indication that those costs will reduce in the future."**[2]**
- **Greater Convenience** Video arbitration affords greater scheduling flexibility and the ability to accommodate those otherwise unable to participate in a hearing. In a country of great mobility, where corporations, unions, and other institutional parties, as well as law firms, often have widely dispersed worksites, offices, and employees, and where many of the disputes themselves may involve more than one location, the ability for parties, advocates, experts, and court reporters to fully participate in arbitration proceedings in real time from remote locations may confer advantages on participants from a convenience perspective in addition to lowering costs. Time constraints resulting from different time zones and travel issues such as flight times are considerably relaxed.
- **Speed** Because of the efficiencies obtained in such aspects as scheduling and travel along with reduction in logistical complexity and advocate down time, the timespan for hearing and disposition may be considerably reduced in many cases.
- **Improved Advocacy** Gains in cost, convenience, and efficiency may also make it possible for parties to better match advocates with cases that fit with their experience and expertise.
- **Greater Civility** In general, civility is something parties should aspire to in every case; in a time of crisis such as we are experiencing with the pandemic, it is especially important to maintain mutual respect and be sensitive to what others

may be going through. There is at least some evidence that "videoconferencing sometimes forces civility on all the participants in a hearing." This may be due in large measure to the frequency of even slight audio delays inherent in video- conferencing, causing participants to "be particularly polite and cognizant that they may be interrupting."**[1]**

- **Improved Access to Interpreters and Court Reporters** In many cases, when there are one or more witnesses for whom English is a second language, a foreign language interpreter may be required; sign language interpretation is also necessary in some cases. There is far greater ease of access to interpreters online than in any given physical location, especially one that is not near a major urban area. Access to court reporters can also be facilitated with online platforms.
- **Witnesses May Feel More at Ease in Their Own Surroundings** While witnesses often feel anxious and uncomfortable when they must travel and attend an arbitration hearing in a new setting, being able to testify in the comfort of their own home or other familiar location may allow for clearer and less agitated testimony.

Potential Disadvantages -

There are downsides to video arbitration that should not be overlooked. These include:

More Difficult Credibility Determinations Perhaps the most frequently heard reason for pushback on video hearings is that the arbitrator's ability to properly assess witness credibility via videoconferencing is diminished because observing demeanor in person is a key part of determining the truthfulness of testimony. There is, however, substantial debate on this point. Many studies suggest that with the right technology these days, video testimony may give nearly as much chance for the arbitrator to carefully observe demeanor **[1]**. The NLRB has found that a witness's "testimony by video may be evaluated on an equal footing with the testimony of witnesses appearing in person at the hearing" and the DC Court of Appeal affirmed that finding. (EF International Language Schools, Inc. and Andrea Jesse, 201 L.R.R.M. (BNA) September 15, 2014, affirmed in EF International Language Schools, Inc. v. NLRB, 673 Fed. Appx. 1 (DC Cir. 2017)). And that is not the only counterargument: demeanor is notoriously unreliable as a test of credibil-

ity. "There is a growing body of empirical research to support the proposition that 'the long-standing confidence in the principle of demeanor evidence is unfounded.'"**[2]** Meanwhile, an extensive study of the Social Security Administration disability hearings by the Chicago-Kent College of Law found only a very small difference in outcomes between video and in-person hearings. (Harold Krent and Scott Morris, *Achieving Greater Consistency in Social Security Disability Adjudication: An Empirical Study and Suggested Reforms* 2013). It will be up to each party to determine whether having witnesses testify by video will be a detriment in any specific case.

- **Technical Frustrations, Glitches, and Breakdowns** There are a variety of potential technical problems that should be considered before deciding whether to participate in video arbitration. Further along in this Guide is a discussion of ways to overcome these difficulties, but it is important to be aware of them. Problems frequently mentioned include:

  - **Frustration with Technology in General** There is no hiding the fact that many people, particularly among those who did not grow up with the internet in their pockets, have trouble dealing with applications they have not previously used. A lack of familiarity can create anxiety that can in turn generate more difficulties. This may be a problem for some advocates, but even when it is not, witnesses must be considered.

  - **Network, Hardware, and Software Glitches** Stuff happens with technology. Network connections can be disrupted; computer hardware such as the webcam and microphone can stop working; power outages sometimes happen; and glitches in software can occur, especially working over the web.

  - **Complete Technology Breakdown** The possibility of a major technical failure that will completely stop a hearing or prevent it from starting cannot be overlooked.

  - **Problems Inherent in Videoconferencing** There is no way to prevent some degree of sound or video delay, and difficulty hearing a participant can occur at any point in the process.

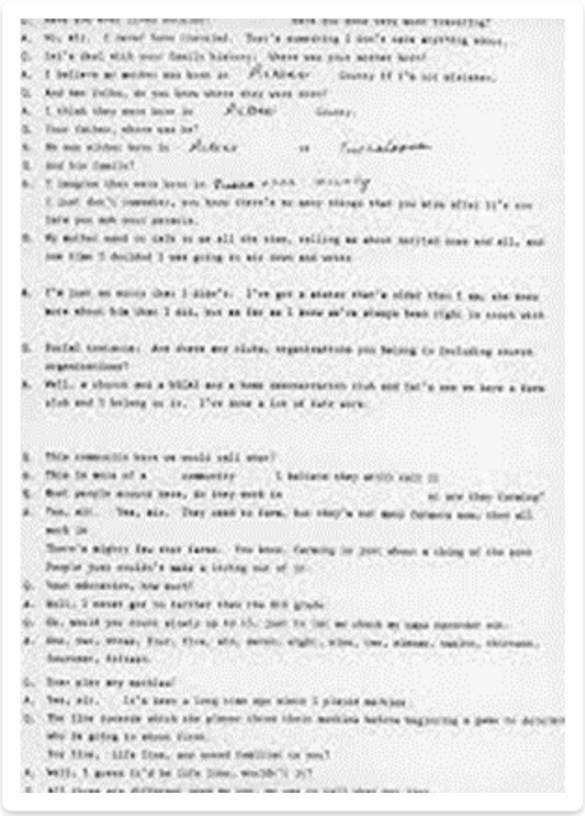
- **Privacy/Security concerns** Videoconferencing platforms are all subject to potential security vulnerabilities. The pandemic has brought examples of such concerns to light. Such vulnerabilities are shared well beyond the arbitration community: myriad video meetings are conducted by corporate boardrooms, bankers and exchanges, law firms, and courts. Video platform providers cannot afford the damage to their reputation if security violations become a significant risk; they must address these issues and it appears they are racing to do so. In any event, parties should also be aware of the potential for actual participants in arbitration to misuse the video. There are ways of minimizing risk that will be addressed later in this Guide; however, nothing is foolproof. A good overview of security in videoconferencing is offered in an article in the ABA Journal (Nicole Black, *It's Now a Trekkie World: Top Videoconferencing Tools for Lawyer*s, July 26, 2019) available on the web at **https://tinyurl.com/udevyzj.**

Other Considerations

There are additional factors to think about; ones that may not be viewed as pros or cons but may make a difference as to whether and how to select arbitration by video. These include:

- **Who Will Provide the Video Platform?** After deciding to use videoconferencing in arbitration, the first determination is whether the arbitrator or one of the parties will provide the platform. The National Academy of Arbitrators notes that "most large entities, including law firms, have sophisticated technologies and tech support in house." The Academy recommends to arbitrators that such technologies offered by one of the parties should be the "first recourse when circumstances dictate the use of videoconferencing procedures."**[3a]** Of course, if one of the parties is to provide the platform, the other party would have to agree on it and arrangements would need to be made for the arbitrator to access and manage the meeting. FMCS arbitrators offering video arbitration should all have a platform they can offer for the hearing if neither party can make one available. Whatever platform is used, of course, it is completely up to the arbitrator to manage the hearing just as would be the case in a proceeding held in-person.
- **A Wider Net for Arbitrators** When seeking a panel of video-capable arbitrators, parties do not necessarily have to be limited by the same geographical constraints as they normally would: an arbitrator can hold a video hearing from anywhere

in the country. In some cases, parties desire arbitrators in closer proximity to increase the chances that they will "know" those on the panel. However, because far from all arbitrators offer the video option, if restrictions are too tight there may not be a full panel available. For example, a request for video-capable arbitrators who are also attorneys and within a 125-mile radius of a dispute location (one type of "metropolitan" request), there may be only four arbitrators who meet those criteria. Parties who seek video arbitration might consider casting a wider geographical net.



- **Use in *Discipline* vs. Contract *Interpretation* Cases** There are those who suggest that video arbitration is especially appropriate in contract cases since they tend to focus less on witness testimony and credibility determinations. However, consider (1) that some contract cases do involve a fair amount of witness testimony and (2) the discussion of testimony and demeanor above under the heading "Disadvantages." Many discipline or discharge cases may be appropriate for hearing via videoconference.
- **Transcripts** The use of video for arbitration easily allows for a court reporter who is not physically present at the hearing. The reporter can see and hear the proceedings; in some cases, a reporter can provide a transcript in real time. In addition, some video platforms can provide automated transcripts of a hearing without need for a court reporter. These may not, however, be as reliable as a transcript prepared by a professional court reporter and may involve less secure cloud recording.
- **Document Handling** There are many factors to consider when it comes to the use of documents/exhibits **[3b]**.
  - **Simplify the Arbitrator's Work** Advocates are well advised to make the arbitrator's job as easy as possible and maximize efficient use of exhibits.
  - **Variety of Document Applications** There are different platforms for document handling and this will be up to the arbitrator if the parties have not provided him/her with the platform of their choice; email is a possibility if

document files are not too large; other options include Dropbox, Google Drive, and Microsoft products, among others.

- **Joint Exhibits** Ideally, the parties should agree on a set of joint exhibits that can be shared with arbitrators prior to the hearing.
- **Sharing Exhibits** If unable to agree to present documents as joint exhibits, the parties should discuss the remaining exhibits and be prepared to share them with opposing advocates and the arbitrator. Preferably, the parties will share exhibits pending admission into the record (with password protection if desired).
- **Exhibits for Witnesses** If witnesses will not be with the advocates, arrangements should be made to get exhibits to them and let them know how they will view the exhibits during the hearing.
- **Number of Exhibits** To the extent possible, it is recommended that the parties minimize the number of exhibits that will not be exchanged until the hearing day.
- **Saving and Labelling Exhibits** Each exhibit should be saved in a separate electronic file and identified as it would be on the record (e.g., "Joint Exhibit 1- collective bargaining agreement") or all in one searchable file with bookmarks.
- **Exhibit List** The arbitrator may request a comprehensive exhibit list and, in any event, it is good practice to provide it if possible.
- **Introducing Exhibits** During the hearing, it may be possible to introduce exhibits formally through a screen share function on the video platform or through email. Exhibits not planned for may also be exchanged in one of these ways.

- **Witness Preparation and Handling** There are various aspects of video hearings that should be considered when preparing and handling witnesses. It is important that witnesses have access to a solid internet connection and gain some familiarity with the video platform and what to expect. Because of potential time lag, witnesses should also be instructed to pause for a few seconds before answering a question and to stop answering when an objection is made until the arbitrator has ruled. More information on witness preparation is provided below under the heading "Dealing with Technical Issues." Witnesses should also be instructed as to what to do if they lose connection to the video platform.

Be Prepared for Surprises!

Other Considerations cont'd

- **No Cheating** A video environment should not be used to give an advantage to a witness that would not be available during a live hearing. "Remote witnesses are subject to the same limitations as live witnesses in the hearing room. They may not consult with anyone during testimony, and they may not consult documents that are not in the record, or about which they are not being questioned... The parties must agree to advise their witnesses of these limitations…"**[3a]** Expect the arbitrator to ask the witness to confirm that there is no one else present in the room, and that they are not consulting any documents without the knowledge of the arbitrator and advocates for both sides.

Dealing with Technical Issues

- **Selecting and/or Deciding to Approve a Videoconferencing Platform** FMCS does not endorse or recommend any specific platform. There are quite a few of them that have potential use for a video hearing, and they all have pros and cons. An important consideration is whether, and to what extent, a platform allows for proceedings that are substantially similar to a normal hearing. Also, during the oversized demand being experienced by all such platforms during the pandemic, it is crucial to get the most up-to-date information on any service interruptions or security issues that have surfaced with any platform under consideration. Below, in alphabetical order, are some of the videoconferencing platforms in widest use along with links to the website of each. Bear in mind that these are not the only platforms that exist. Moreover, some institutions will have their own customized platforms. There are also highly sophisticated, purpose-designed hearing platforms not listed below, though these tend to be very expensive.
    - **Cisco Webex Meetings** https://www.webex.com/
    - **Google G Suite Hangouts Meet** https://gsuite.google.com/products/meet/
    - **GoToMeeting** https://www.gotomeeting.com/
    - **Intermedia AnyMeeting** https://www.intermedia.net/anymeeting-video-conferencing
    - **Microsoft Teams** (replaces Skype for Business Online as Microsoft's videoconferencing platform for business) https://products.office.com/en-us/microsoft-teams/online-meeting-solutions
    - **RingCentral Meetings** https://www.ringcentral.com/online-meetings/overview.html
    - **StartMeeting** www.startmeeting.com
    - **Zoom Meetings** https://zoom.us/meetings
- **Getting Assistance** If you have trouble becoming familiar with a video platform or need technical assistance, you always have options. Most videoconfer-

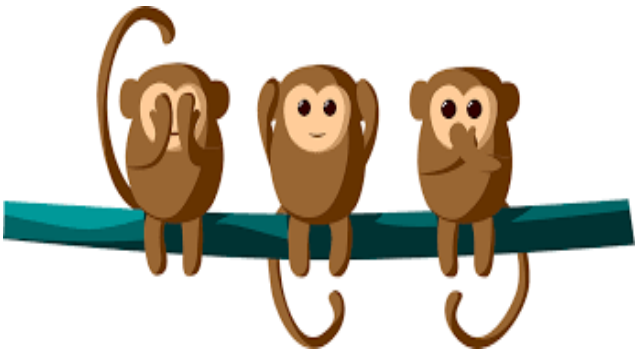
encing applications have online tutorials and help menus; some even have detailed training on video. By using a search engine such as Google, you should be able to find detailed guides and even YouTube videos by private individuals very experienced with a platform; these can provide tips and, in some cases, walk you through everything you need, step-by-step. You should also not hesitate to get direct help from a live assistant who is "native" to web-based technology, even from a family member or friend.

- **Make Sure You/Witnesses have a Good Internet Connection** Potentially, video conference calls can take place over any internet connection. However, for reasonable quality, a stronger internet connection is needed; 2Mbps (Megabits per second) upload and download bandwidth is a good minimum benchmark but check on the requirements of the platform to be used. Be aware that what a carrier offers as the speed capability is not necessarily what one gets. The strength of any internet connection can be tested; one easy test is available by going to https://www.speedtest.net/. Broadband internet is the best choice if available. Wi-fi or ethernet connections are both fine, provided the speeds are high enough and not being split between too many other devices. If wi-fi is being used, it is best to avoid a public connection as it is not as reliable; it also creates greater privacy risks. Cell phones may work for videoconferencing, but they tend to be less consistent than broadband internet. Any witnesses planning to use cell phone data for the transmission should be instructed to stay in an area with a strong 4G, LTE, or 5G signal and ensure they have enough data to last the entire call.
- **Audio and Video out of Sync** Audio and Video have slightly different transit times through intermediate routers, and this can lead to the loss of synchronization between moving lips and the sound you hear (also known as "latency" or "lag"). A small amount of latency is to be expected in any videoconference, and it may barely be noticeable. However, only a small amount of lag can result in two people inadvertently talking over one another at the same time. Everyone should be reminded to pause longer than usual before speaking after someone else has finished speaking.

Minimizing Security Risks While it is impossible to guarantee security/privacy online, if the arbitrator and the parties take

appropriate steps, it should be possible to keep risk relatively low in most circumstances. All participants should check the web for the latest information on any security issues with the platform to be used; advocates should weigh any risk against the relative benefits. Security/privacy is primarily up to the host. All should make sure that they are using the latest version of whatever video platform has been selected. The arbitrator should have the ability to govern who can enter the meeting. The host should: provide each participant with unique meeting ID links, use meeting passwords to the extent possible and, if the platform has a "waiting room" type feature, vet the list of people in the waiting room to make sure no unexpected participants are in.

- **Equipment** Make sure in advance that you and your witnesses have a working webcam, microphone and speakers in, or attached to, your computer or other device. Advocates may want to consider purchasing a separate webcam, headphones and microphone for better sound and visual quality. Even before testing a videoconferencing platform, it is easy to check your equipment and see and hear what comes out by using any of a dozen or more free online tests that do not require signing up for anything. (Simply google "test webcam" or "test microphone" to find these tests). Keep in mind that wired equipment tends to be more reliable than Bluetooth.
- **Audio Choice** Some platforms will offer participants a choice between getting the audio feed through the computer or getting it by calling in on the telephone. If you or your witnesses decide to use the telephone for the audio portion, a landline is always preferable to a cellular connection. The constant refrain of "can you hear me now?" is not desirable.



Can you hear me now?

- **Special Features** Each platform has its own special features that the arbitrator and parties may or may not wish to use. These may include:
  - **Screen Share** Many video platforms provide for the ability of participants to share their screen; this can be used, as mentioned earlier, to introduce exhibits or share them with witnesses. If it there is a selection available to share only the document on the screen and not the entire actual screen, that is best. Otherwise, remember that notifications, pop-ups, and emails may appear on your screen and become visible to all.

- **"Breakout Rooms"** Breakout Rooms are useful for any time when certain participants want to be able to discuss something without others listening in (for example, the advocates with their respective clients, or the arbitrator in a sidebar with just the advocates). Note that if this feature is not available, it should be possible to use a separate channel for private communications such as cell phone or by setting up a separate video call.
- **"Waiting Rooms"** These can be used so that participants know they are connected properly but that they are not yet needed in the "hearing room." The feature can be used to sequester witnesses, for example.
- **Recordings and Transcripts** Most of the platforms allow for the host to record the hearing; some even provide automated transcripts, although not the earlier cautions. Each participant should know in advance if they are being recorded, and there should be an agreement on whether an automated transcript is to be used as an official transcript of the hearing.

- **Test, Test, Test—Practice, Practice, Practice** It is impossible to overstate the importance of ensuring that (1) everyone is familiar and reasonably comfortable with the technology to be used and (2) everything is working as expected. "Don't assume that it will work with everyone every time. Assume that it won't work. There are issues with multiple devices, operating systems, apps, and especially network capacity that can affect how things work."**[4]** Among the steps we recommend:
  - **A thorough review of the video platform** with all witnesses, providing or referring them to step-by-step instructions and preparing them for what is unique to a video hearing in addition to any other witness preparation you would normally do.
  - **A complete check of connections** for each location where you and your witnesses will appear. Run tests in advance to ensure that the signal is strong enough to provide for uninterrupted service from all computers/other devices to be used.
  - **Run tests on the actual platform** with each participant before the hearing day so that everyone is familiar with how the platform works and to check that equipment (webcam, microphone, speakers) are functioning properly. This is also a good time to test lighting and other environmental factors and to test functions of the platform from muting to special features.
  - **Encourage practice** with the platform: colleagues, family and friends can also be used for practice and double-checking on sound and video quality.

Other Preparation Tips

- **Professionalism** Remember to treat the video proceedings as you would an in-person hearing and maintain as much professionalism as always if not even to a greater degree. This includes being prompt and respectful. If something goes wrong, reach out to your adversary and the arbitrator promptly.
- **Dress** Attire for you and the witnesses should be no different than for an in-person hearing, except it is a good idea to emphasize solid colors and avoid patterns.
- **Camera** Remind witnesses to look directly at the webcam, not the screen; it is best to position the webcam at least at eye level or slightly above, with everyone centering themselves and avoiding awkward angles. This is something to be practiced. Everyone should also remember that they may be on camera even when they are not speaking and that every gesture and facial expression may be directly observed.

- **Microphone** Most video platforms will have a "mute" button. It is best to have your microphone muted when you are not speaking; any background noise, including taking notes on your laptop or rifling through papers, will be picked up. If you are on mute while the advocate for the other side is questioning a witness, make sure you identify, and have your finger on, the "unmute" trigger, in case you want to interpose an objection.
- **Surroundings/background** It is always critical for all to be aware of their surroundings, fully appreciating what, besides each person, will appear on the camera. You should test and check for each of these elements with all your witnesses:
  - **Setting** A neutral, hearing-appropriate solid background without distracting objects tends to be best, though use your best judgment as to what will cast each of your witnesses in the best light.
  - **Virtual Background** Some platforms allow for a "green screen" effect to create a virtual background that replaces the entire scene behind the person speaking. If you decide to use one, make sure to test it well in advance. The visual effects can often be very distracting or annoying, especially if the individual speaking does not have an actual, purpose-made green screen right behind his/her chair.
  - **Lighting** Natural, overhead, or side lighting is usually best—the key is getting light directly on your face without blinding the camera. Avoid backlighting as much as possible, as it tends to cast shadows.

- **Background Noise** It is important to appear for arbitration proceedings from as quiet a setting as possible. Anticipate interruptions from dogs, children, household appliances, and elsewhere; find the best spot to avoid interruptions. If you or a witness anticipates disruption, it is appropriate to advise the arbitrator up front.

- **Breaks** As in any in-person hearing, people will need to take breaks. The arbitrator will be calling breaks and you should not hesitate to ask for one when necessary and appropriate.

Conclusion

FMCS expects video arbitration will prove to be very beneficial alternative in many kinds of cases. The choice of whether to use video arbitration in any instance is, of course, up to the advocates and the arbitrator. FMCS is not recommending the use of video in any specific case and cannot (and would not) require an arbitrator to use it or refrain from doing so. Our Agency does encourage parties to become aware of the possibilities and consider the pros and cons based on the circumstance surrounding each case and we hope this Guide is a valuable resource toward that end. We very much welcome feedback from parties as well as arbitrators on lessons learned from actual experiences with video arbitration.

For information about how to request a video arbitration panel, email or call the Office of Arbitration at **arbitration@fmcs.gov** or **202-606-5111**.

To inquire about or discuss FMCS policy or the world of video arbitration, contact Arbitration Director **Arthur Pearlstein** at the above number or email him at **apearlstein@fmcs.gov**.

Resources

Several valuable resources were drawn upon in the preparation of this Guide; each is recommended as a source of further, detailed information.

1. Center for Legal and Court Technology, *Draft Report to the Administrative Conference of the United States, Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings*, October 8, 2014, available at: https://www.acus.gov/sites/default/files/documents/Draft_Best%2520Practices%2520Video%2520Hearings_10-09-14_1.pdf. The Center for Legal and Court Technology (CLCT), based at William and Mary College of Law, is a non-profit research, education, and consulting

organization that works to improve the administration of justice by applying technology. It aims to assist members of the legal profession, from courts and government agencies to judges and lawyers. Frederic Lederer, Director of CLCT and Chancellor Professor of Law, along with his colleagues have been involved in many projects regarding the use of video in hearings, including the one for ACUS referenced above; they also host conferences, conduct training, and run the "Court Affiliates Program," an information exchange designed to share and obtain legal, technical, and practical information on the use of technology by courts and administrative agencies. FMCS is a member of the Court Affiliates Program.

2. Homer C. La Rue, *A Short Paper on the Existing and Future Use of Videoconferencing in Labor-Management and Employment Arbitration*, National Academy of Arbitrators, Fall Education Conference (Sept. 22, 2019), Available at: https://law.missouri.edu/arbitrationinfo/?s=La+Rue. Homer LaRue is a Professor of Law at Howard University, Vice President of the National Academy of Arbitrators, an arbitrator on the FMCS Roster, and a leader in arbitration and dispute resolution, including as a pioneer in the use of video in arbitration.

3. The National Academy of Arbitrators (NAA) is an elite association of labor arbitrators in the U.S. and Canada with an ongoing mission of establishing and fostering the highest standards of integrity and competence in the profession. FMCS has partnered with the NAA on many projects, effort to raise awareness and provide information on the use of video in labor arbitration. The NAA, through its President Barry Winograd and its President-elect Dan Nielsen, empaneled a Videoconference Task Force (VTF) that have developed important and useful materials for arbitrators, referenced below and used in the preparation of this Guide. Advocates will also find much in these materials to be very valuable. FMCS hosted a webinar where a panel of arbitrators from the VTF provided information and training for labor arbitrators on the use of video in hearings. Over 430 arbitrators on the FMCS Roster participated in the webinar. The panelists included Jeanne Charles, Chair of the VTF, Homer LaRue, Joan Dolan, and Keith Greenberg. A recording of the webinar is available at https://www.youtube.com/watch?v=dXmSQn1vNkI. Below are recommended NAA materials also relied upon in preparation of this Guide:

   a. NAA Videoconferencing Task Force, Videoconferencing Procedures: A Primer, March 2020, available at: https://naarb.org/wp-content/uploads/2020/03/VideoconferencingProcedures.pdf.

b. NAA Videoconferencing Task Force, Frequently Asked Questions About Videoconferencing for Arbitrators, April 2020 (and being updated on an ongoing basis), available at https://naarb.org.

4. National Center for State Courts, Court Technology Bulletin, Court Web Conferencing Tips, March 27, 2020, available at: https://courttechbulletin.blogspot.com/2020/03/court-web-conferencing-tips.html. The National Center for State Courts (NCSC) is an independent, non-profit organization that provides research, information services, education, and consulting aimed at helping courts plan, make decisions, and implement time- and cost-saving improvements. NCSC has done considerable work in the area of video hearings and its "Court Technology Bulletins," available at https://courttechbulletin.blogspot.com/, provide information on video technologies among other matters. Their main web page at https://www.ncsc.org/ provides updates on Court responses to the pandemic, including information on software platforms being used for hearings.

Notes: