




**Note: All attendees will be muted during this webinar**




## Videoconferencing for Arbitrators

Thurs., April 2, 2020






Barry Winograd, NAA  
NAA President



Jeanne Charles, NAA  
Videoconference Task Force, Chair



Arthur Pearlstein  
Director of Arbitration, FMCS

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## WEBINAR AGENDA

- ▶ Webinar Introductions
  - ▶ Barry Winograd, NAA President
  - ▶ Arthur Pearlstein, Director of Arbitration, FMCS
  - ▶ Jeanne Charles, Chair, NAA Videoconference Task Force

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## WEBINAR AGENDA

- Managing the Delivery of Our Service in a New Era
  - Joan Dolan, NAA
- Discussion of the *Primer*
  - Jeanne Charles, NAA
  - Homer C. La Rue, NAA



Joan Dolan, NAA



Homer C. La Rue, NAA

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## WEBINAR AGENDA

- Making Your Videoconference Hearing Work – A Use Case with Zoom



Keith Greenberg, NAA

**Note:** The demonstration of **ZOOM** is not intended to be a recommendation of it over other platforms nor an endorsement of **ZOOM** by the Academy or the FMCS.

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## MANAGING THE DELIVERY OF OUR SERVICE IN A NEW ERA



Take It Easy . . .

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## HOW TO INCORPORATE VIDEOCONFERENCING INTO YOUR ARBITRATION PRACTICE

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## STEP 1: IDENTIFY A VIDEO INTERFACE TO USE

- Zoom
- Go To Meeting
- WebEx
- FreeConferenceCall.com
- Skype/Skype For Business
- Government Facilities



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## STEP 2: IDENTIFY WHEN TO USE THE VIDEOCONFERENCING TOOL

- Travel Cost Reduction
- Scheduling Convenience
- Witness(es) Unavailable To Appear In Person
- Social Distancing



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## STEP 3: OBTAIN AGREEMENT FROM THE PARTIES

- Introduce the Idea as Part of Your Case Intake Process
- Suggest It as Part of Effective Case Management
- Be Ready if the Parties Request It

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## STEP 4: SET HEARING DATE AND COMMUNICATE CONNECTION INSTRUCTIONS

- Set Hearing Date
  - A best practice is to use the videoconference tool for scheduling calls
- Set up the videoconference
- Send notice to the parties with the instructions



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## SAMPLE NOTICE OF HEARING

Videoconference Hearing on December 13, 2020  
 10:00 a.m. Central Time, 11:00 a.m. Eastern Time  
 Union and Employer (Grievant Name and/or Case #)  
 Meeting ID: 311 778 252

The video conference hearing is conducted via Zoom's web-based software that comes at no cost to the parties. The parties simply need to have a desktop or laptop computer with a webcam. All parties and witnesses may be in the same location or separate locations. The arbitrator will be able to see all attendees at the hearing, and the parties will be able to see the arbitrator.

Join from PC, Mac, Linux, iOS or Android: <https://zoom.us/j/311778252>

Click the link or copy/paste to your browser. The download/connection process should start automatically in a few seconds. Then click the download to join the hearing.

\*It is recommended that you access the Zoom site 30-60 minutes before the hearing start time to ensure your organization does not have a firewall prohibiting access to the site. If it does, please contact your IT department and request the firewall be removed or adjusted.

If you have any problems, do not hesitate to contact my office.

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## MAKING YOUR VIDEOCONFERENCE HEARING WORK

- **Note:** The demonstration and discussion of **ZOOM** or other software or hardware is not intended to be a recommendation of those products and services over others nor an endorsement of those products and services by the Academy or the FMCS.

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## BASELINE KNOWLEDGE



Today's webinar assumes that you have watched an introductory video for Zoom or have otherwise taken some time to become familiar with the platform

If you have not, please refer to  
<https://tinyurl.com/NAAFMCSZOOMINTRO>

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## SETTING EXPECTATIONS

- ▶ What we are not doing:
  - ▶ Reviewing how to sign up for Zoom
  - ▶ Reviewing how to install Zoom (or any other software)
  - ▶ Reviewing how to schedule a Zoom meeting

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## IS THIS CASE RIGHT FOR VIDEOCONFERENCING?

- ▶ What considerations affect the comfort level of the Parties and the Arbitrator with a video hearing?
  - ▶ Can the Arbitrator make determinations to resolve a credibility dispute?
  - ▶ Will the essential components of the proceedings be “awkward” or unwieldy?
  - ▶ Will the technology be reliable?
  - ▶ How will we create a record of the proceedings?
  - ▶ Inertia – (e.g., we have always done it this way, or will my client be unhappy with me for agreeing to a video hearing?)

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## IS THIS CASE RIGHT FOR VIDEOCONFERENCING?

- ▶ Consider the views and capabilities of the Parties and the Arbitrator’s assessment of his/her/their own capability in determining whether to proceed via videoconference
  - ▶ Are there unique issues that make an in-person hearing essential?
  - ▶ Are there deadlines that cannot be met with an in-person hearing?
  - ▶ Are there legal restrictions (e.g., an open meetings law)?
  - ▶ Are there contractual restrictions?

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## IS THIS CASE RIGHT FOR VIDEOCONFERENCING?

- ▶ Consider the views and capabilities of the Parties and the Arbitrator's assessment of his/her/their own capability in determining whether to proceed via videoconference
  - ▶ Can the Arbitrator, via videoconference in a given case, provide effective service and provide a fair and adequate hearing, consistent with our obligations under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes?

The decision to use videoconferencing is a compromise that may not be right for every case or every set of parties

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## EQUIPMENT – WHAT YOU MAY NEED

- ▶ What you need to hold a videoconference hearing:
  - ▶ A computer
  - ▶ A webcam (HD or better quality)
    - ▶ Set your camera at eye level
    - ▶ Choose a location that allows you to look at both your screen and the camera
  - ▶ A headset with a microphone (preferably wired), or a full-duplex speakerphone

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## EQUIPMENT – WHAT YOU MAY NEED

- ▶ What you need to hold a videoconference hearing:
  - ▶ You should be able to find a decent webcam and headset for less than \$200 total
    - ▶ Look at unbiased (or less biased) reviews, like [thewirecutter.com](http://thewirecutter.com), based on your individual needs and preferences
  - ▶ A reliable internet connection

## EQUIPMENT – WHAT YOU MAY NEED

- ▶ What you need to hold a videoconference hearing:
  - ▶ A quiet space
  - ▶ Access to a videoconferencing platform
  - ▶ A quiet keyboard

## EQUIPMENT – WHAT YOU MAY NEED

### ► Internet considerations

- An internet connection to your home or office of sufficient bandwidth (at least 1.5 Mbps upstream and downstream)
- A reliable connection within your office location from your internet service provider to your computer
- A wired connection is better

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## EQUIPMENT – WHAT YOU MAY NEED

### ► Consider how you will review exhibits

- On your main screen next to the videoconference and your notes?
- On a second monitor?
- On a tablet?
- In hard copy?

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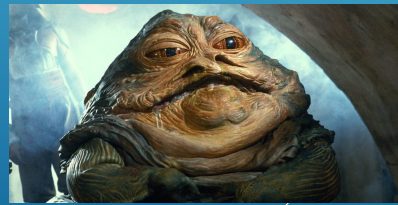
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## CONSIDERATIONS IN SETTING UP YOUR EQUIPMENT

- ▶ Think about lighting
  - ▶ Choose a well-lit space
  - ▶ If possible, keep light sources overhead and in front of you
- ▶ Camera placement
  - ▶ Position the camera so you are looking up to minimize the appearance of a double chin
  - ▶ Be able to look directly into the camera



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## CHOOSING A VIDEOCONFERENCING PLATFORM

- ▶ There are many videoconferencing services available with similar features
- ▶ What does the platform need to do?
  - ▶ Provide reliable audio and video connections
  - ▶ Provide control over who is in the hearing “room”
  - ▶ Allow the Arbitrator to have sidebars
  - ▶ Be accessible to all participants

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## CHOOSING A VIDEOCONFERENCING PLATFORM

- ▶ Sometimes, the Parties may want – or need – to use a particular system or service provider
  - ▶ IT security/firewall issues (particularly for public and federal sector cases)
  - ▶ Preference and familiarity
  - ▶ Availability of dedicated IT support
- ▶ Be flexible, but do not be shy about asking for help or a tutorial if the Parties want you to use a particular system
  - ▶ Confirm that your home or office system is compatible (e.g., can your Mac run the necessary software?)

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## CHOOSING A VIDEOCONFERENCING PLATFORM

- ▶ If you do not believe that you can effectively preside using a particular platform chosen by the Parties, be upfront and explain why
  - ▶ Come back to the essential questions:
    - ▶ Can everyone see and hear each other when connected?
    - ▶ Can the Arbitrator exercise control over who is in the room?
    - ▶ Can the Arbitrator speak with just the advocates?
    - ▶ Can everyone access the system?

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## THE BASICS OF ZOOM

We are focusing on – but not endorsing – Zoom

### ► Zoom User Plans

- For most of us, Zoom’s “Pro” level will be enough
- It runs about \$15 per month

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## THE BASICS OF ZOOM

### ► The Zoom Environment

#### ► Host

- If you are making arrangements for the meeting from your account, you are the Host
  - Co-Host/Assistant
- You will likely not be the Host if you are using a Party’s videoconference platform

#### ► Rooms

- The Waiting Room
- The Meeting Room (for us, the Hearing Room)
- Breakout Rooms (like an empty caucus room)

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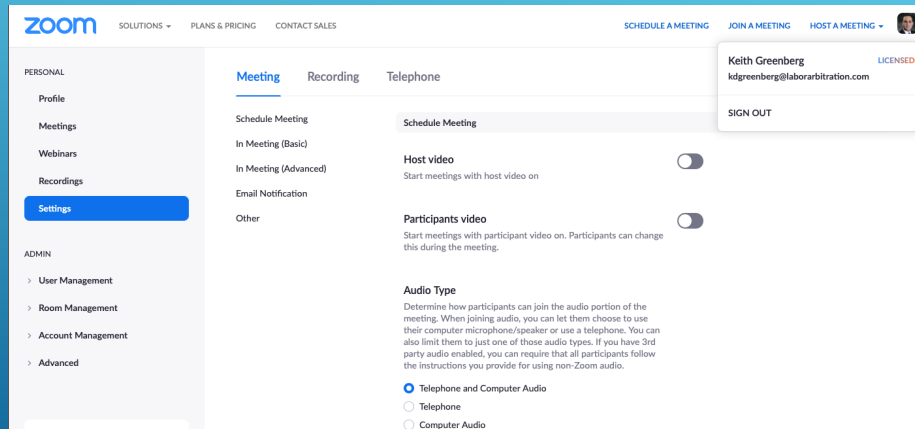
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## THE BASICS OF ZOOM

### ► Find your settings:



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## THE BASICS OF ZOOM – SUGGESTED SETTINGS

### ► Suggested Settings for your Zoom account:

- Turn off host video and participant video at start
- Allow telephone and computer audio
- Turn on Waiting Room
- Turn on “Allow host to put attendee on hold”

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## THE BASICS OF ZOOM – SUGGESTED SETTINGS

### ► Suggested Settings for your Zoom account:

- Turn on Recording Consent
- Turn off Private Chat
- Turn on Breakout Rooms
- Add a profile photo

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## THE BASICS OF ZOOM – KEY FEATURES

- There are lots of “cool” features on Zoom for meetings and webinars
  - Not all are appropriate for a hearing

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## THE BASICS OF ZOOM – KEY FEATURES

- ▶ Save Meeting Templates
- ▶ Review the Participant List
- ▶ The Mute Button
- ▶ Screen Sharing
- ▶ Gallery View vs. Speaker View
- ▶ Breakout Rooms
- ▶ Virtual Background
- ▶ Setting a Password

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## KEY FEATURES – MEETING TEMPLATE

Manage "Zoom Rooms Training" [Start this Webinar](#)

Topic	Zoom Rooms Training	
Description	Learn how to configure Zoom Rooms	
Time	Feb 28, 2017 1:00 PM Pacific Time (US and Canada)	
Add to	<a href="#">Google Calendar</a> <a href="#">Outlook Calendar (.ics)</a> <a href="#">Yahoo Calendar</a>	
Webinar ID	980-616-466	
Video	Host	Off
	Panelists	Off
Audio	Both Telephony and VoIP	
Webinar Options	<input checked="" type="checkbox"/> Disable Q&A <input checked="" type="checkbox"/> Enable Practice Session	
<a href="#">Save this Webinar as a Template</a>		<a href="#">Edit this Webinar</a> <a href="#">Start this Webinar</a>

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Poll 1: Experience (1 question) [Add](#) [Edit](#) [Delete](#)

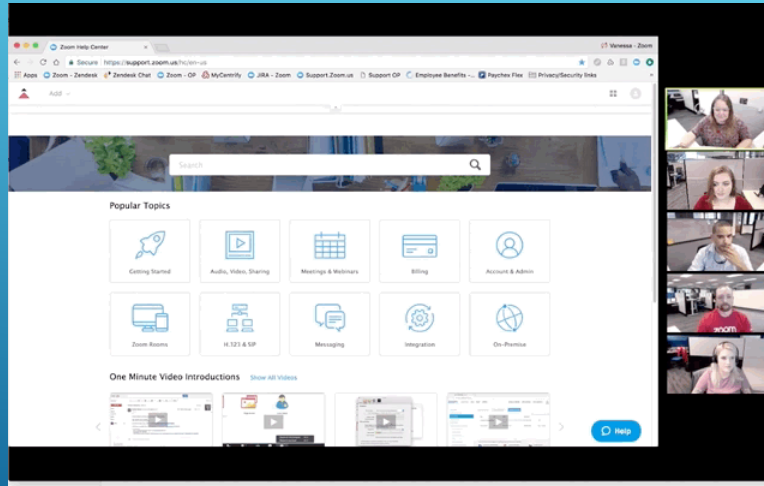
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## KEY FEATURES – SCREEN SHARING



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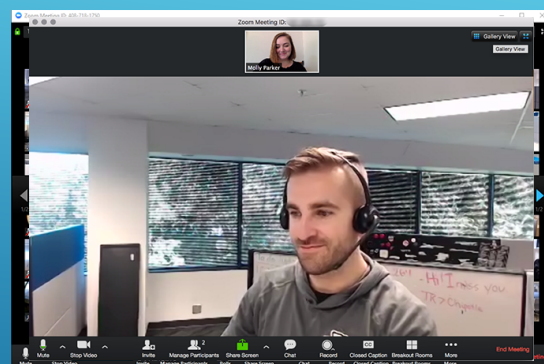
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## KEY FEATURES – GALLERY VIEW

- ▶ Gallery View can be demanding for slower computers
  - ▶ Using Active Speaker View instead may be helpful
- ▶ Don't forget to look at your own camera



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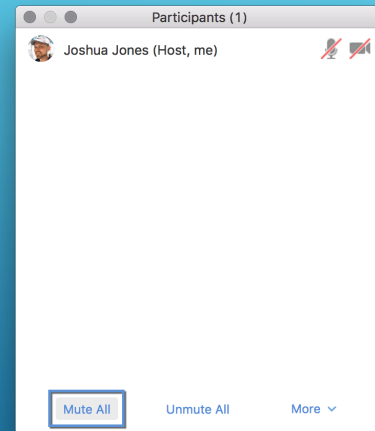
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## KEY FEATURES – PARTICIPANT LIST & MUTE BUTTONS

- ▶ The participant list tells you who is in the Meeting Room (Hearing Room) now
  - ▶ It does not include participants who have left
- ▶ You can mute one, some, or all participants
  - ▶ If you mute a participant or turn off their camera feed, they can still hear and see everyone else
- ▶ If you do not enable chat, a muted participant cannot communicate at all
  - ▶ Hand raise feature



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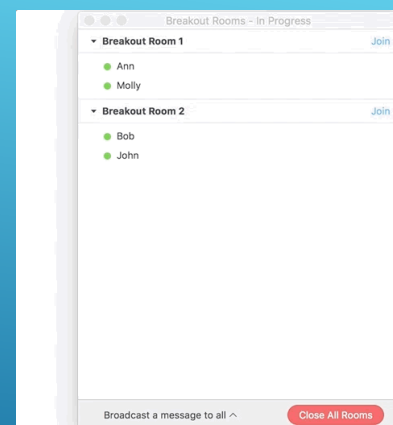
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## KEY FEATURES – BREAKOUT ROOMS

- ▶ You can create up to 50 breakout rooms
- ▶ These are separate meeting rooms that you, as the Host, can populate
  - ▶ Outside of Zoom, keep your own sign-in sheet to know and track who should (and should not) be grouped together



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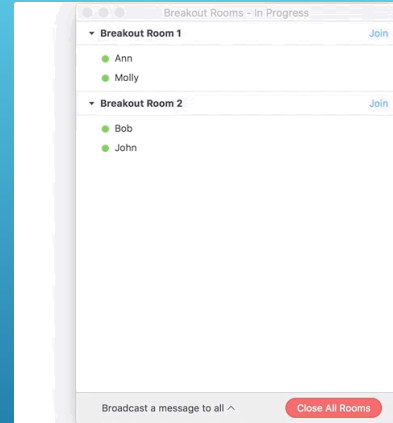
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## KEY FEATURES – BREAKOUT ROOMS

- ▶ Use breakout rooms to:
  - ▶ Have sidebars and hallway chats with the advocates
  - ▶ Sequester witnesses
  - ▶ Separate participants during breaks
  - ▶ Mediate, if appropriate
- ▶ Communicate to the participants how you are using the breakout rooms
  - ▶ Don't whisk participants away
- ▶ Utilize the broadcast feature



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## KEY FEATURES – VIRTUAL BACKGROUND

- ▶ Masking your actual background
  - ▶ Can use a green screen to improve effect
  - ▶ Can be choppy and distracting to others
  - ▶ Can strain a slower computer
- ▶ Regardless of whether you are using a virtual background, be aware of what (or who) is behind you

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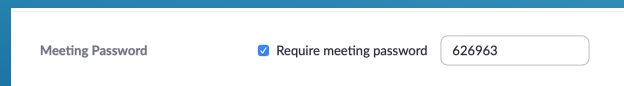
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## KEY FEATURES – SETTING A PASSWORD

- ▶ Why do you need a password when you have an access code?
  - ▶ Zoom bombing
- ▶ Another option – locking the meeting
  - ▶ Benefits and downsides
- ▶ Open/public meeting issues



Meeting Password ☒ Require meeting password 626963

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## BEFORE THE HEARING – CREATING A RECORD

- ▶ Discuss with the Parties when you schedule the videoconference hearing
- ▶ Options for Creating a Record
  - ▶ The Arbitrator's notes and recollection
  - ▶ Transcript
    - ▶ Consider including court reporting firm in discussions and test runs
  - ▶ Audio or visual recording features on videoconferencing platform

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## CREATING A RECORD USING ZOOM

- ▶ The Host controls whether a recording is made
- ▶ Recording Options on Zoom
  - ▶ Video
  - ▶ Audio
  - ▶ Automated Transcript
    - ▶ Zoom can perform automated transcription of meetings, but only on certain subscription plans that, currently, exceed \$199 per month

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## CREATING A RECORD USING ZOOM

- ▶ Types of recording storage on Zoom
  - ▶ Cloud Recording
    - ▶ Not available on local devices
    - ▶ Space may be limited, depending on plan
  - ▶ Local Recording
    - ▶ May be more difficult to distribute recording
    - ▶ The “camera” will follow anyone making a local recording, including into breakout rooms

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## CREATING A RECORD USING ZOOM

- ▶ Keep it simple
  - ▶ The goal is to emulate an in-person hearing
  - ▶ Be cautious about taking on responsibility for creating a record for the Parties
- ▶ Wiretapping law issues
  - ▶ Recording consent feature

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## BEFORE THE HEARING – A TEST RUN

- ▶ If anyone is not familiar with the videoconferencing platform, schedule an orientation for everyone to practice accessing the platform in the same way that they will on the hearing day
- ▶ Timing
  - ▶ Schedule the practice call for well in advance of the hearing date
    - ▶ Even for arbitrators comfortable with videoconferencing, there is likely to be a significant amount of handholding for advocates to whom this is new

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## BEFORE THE HEARING – A TEST RUN

### ► Including Witnesses in the Test Run

- Discuss with the Parties whether, at the hearing, witnesses will be with advocates or other Party representatives, or on their own
- Discuss with the advocates how they would like to make documents available to witnesses, particularly those participating from a different location than the advocates
- If needed, start the test run with everyone on a conference call and shift to the videoconference as participants successfully log on so that no one gets lost

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## BEFORE THE HEARING – EXHIBITS

- Consider having the Parties exchange Bates-stamped (pre-numbered) exhibits in advance without prejudice to arguments or objections as to admissibility or weight
- Consider how (and when) the exhibits will be exchanged
  - Can they fit in email, or will a file download tool be needed?
  - Will the Arbitrator be exchanging the documents between the Parties?
    - When?

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## BEFORE THE HEARING – EXHIBITS

- ▶ Consider permitting last-minute or rebuttal exhibits via email (or via file transfer on Zoom) on the day of the hearing
- ▶ Exhibits can be shown on Zoom via screen sharing
  - ▶ Have the Parties exchange new exhibits before putting them on the screen

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## DURING THE HEARING – PRACTICE POINTS

- ▶ Look at yourself (and your background) on camera before starting
- ▶ Make sure you have quiet and privacy
- ▶ Dress like you are at an in-person hearing
  - ▶ Don't be this guy →
- ▶ Ask participants to sign on 20 minutes early



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## DURING THE HEARING – PRACTICE POINTS

- ▶ Don't forget to make time for breaks
  - ▶ Consider putting participants in the waiting room or into separate breakout rooms during breaks
- ▶ Explain to the Parties what you are doing with the videoconferencing platform when you use it
  - ▶ Avoid surprises
- ▶ Something will go wrong; have a plan for how to respond



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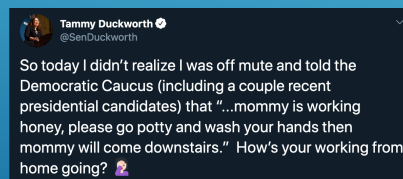
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## DURING THE HEARING – PRACTICE POINTS

- ▶ BE KIND
  - ▶ Keep in mind that participants may be working in an other-than-ideal environment and that a videoconference hearing may be a significant change in their usual practice



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## DURING THE HEARING – PRACTICE POINTS

- ▶ Be aware that others may be watching or recording the proceedings without your knowledge or permission
- ▶ You will have to develop rapport with others differently than you would in-person
  - ▶ Eye contact and attentiveness are important – look into the camera
  - ▶ There will be less body language that can be expressed or read (for you and for the Parties)

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## DURING THE HEARING – PRACTICE POINTS

- ▶ Lags in audio/speaking can matter
  - ▶ Can lead to inadvertent contentiousness
  - ▶ Slow technology or internet connections can exacerbate this issue
  - ▶ Consider acknowledging when this is happening to diffuse tensions
- ▶ Consider developing an explanation/introduction for remote witnesses about how the process will work and what to do if something goes wrong

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## DURING THE HEARING – WITNESS ISSUES

- ▶ A videoconference hearing requires, even more than in the in-person context, trust in the candor of witnesses
  - ▶ If there is reason to believe, based on past experience or the particular circumstances of a dispute, that a witness may not be truthful or candid, a videoconference hearing will pose unique challenges

## DURING THE HEARING – WITNESS ISSUES

- ▶ Preliminary Questions for Witnesses
  - ▶ Ask the witness who, if anyone, is with them
  - ▶ Ask what materials are currently in front of the witness (electronically or otherwise)
  - ▶ Ask the witness to put any materials away until directed to review them
  - ▶ Ask the witness, when testifying, to wait a moment before answering
  - ▶ Direct the witness to stop answering if an objection is posed

## DURING THE HEARING – WITNESS ISSUES

### ▶ Witness instructions

- ▶ The Arbitrator and advocates should have discussed in advance and be ready to answer the following questions for each witness before the witness's testimony begins:
  - ▶ How should the witness access the exhibits?
  - ▶ When should the witness access the exhibits?
  - ▶ Who should the witness contact if there is a technological problem?
  - ▶ What can and can't the witness do while actively testifying?
    - ▶ (e.g., no checking email or chatting even though using the computer)
  - ▶ What can and can't the witness do during a break?

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## DURING THE HEARING – WITNESS ISSUES

- ▶ Let witnesses know if the hearing is being recorded
- ▶ Where to put your witness during objections
- ▶ Where to put your witnesses during breaks
  - ▶ Waiting Room vs. Breakout Room
- ▶ Asking the Witness to “Step out” for Objections
  - ▶ Use the Participant List to briefly put the witness on hold

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## DURING THE HEARING – HANDLING UNRULY PARTIES

- ▶ Use a firmer or more direct approach in controlling discussions
- ▶ Ask the advocates to use the hand raise feature (on Zoom)
- ▶ Take a break
  - ▶ Send participants to the waiting room or to breakout rooms
    - ▶ Separate witnesses into breakout rooms, if appropriate
- ▶ Break Glass in Case of Emergency (more forceful measures)
  - ▶ Rather than shouting, if you cannot be heard, briefly mute all participants
  - ▶ Take a walk (move yourself to your own Breakout Room for a few minutes)

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## DURING THE HEARING – TECHNICAL ISSUES

- ▶ Give some thought about how to re-establish contact for all participants if there are technical issues
- ▶ The Arbitrator must have direct telephone numbers for the advocates
- ▶ At the end, use the “End Meeting” button



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## RECAP – CONSIDERATIONS

- ▶ What considerations affect the comfort level of the Parties and the Arbitrator with a video hearing?
- ▶ The essential questions for using a videoconferencing platform

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## RESOURCES

- ▶ Materials from videoconference platform provider
  - ▶ Find the “Help” section on the platform’s website
- ▶ Work with colleagues, family, and friends to practice before your videoconference hearing
  - ▶ You should not be trying anything out for the first time in front of the Parties
  - ▶ At least to start, keep things simple

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## CLOSING THOUGHTS

- ▶ This is not an easy way to conduct a hearing, and most parties and arbitrators would rather meet in person
- ▶ Something is likely to go wrong
  - ▶ Arrange with the advocates – ahead of time – to have a backup plan
  - ▶ Keep a cool head and a sense of humor, and work with the Parties to get through it

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## CLOSING THOUGHTS

- ▶ This is a challenge; an adventure; and client service in the best sense
- ▶ The Parties are still looking for what you have always provided them
  - a fair, efficient, well-run hearing and your good judgment

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## WHAT'S NEXT?

### ► Send us your thoughts and suggestions about:

- How to practice these skills (among arbitrators and advocates) at the regional and local level
- Future topics for webinars on videoconference hearings
- Any other ideas

Share your ideas through the Q&A feature today  
or email [NAAVideoTaskForce@gmail.com](mailto:NAAVideoTaskForce@gmail.com)

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## THANKS TO THE NAA VIDEO TASK FORCE MEMBERS

*Jeanne Charles, Chair, Florida*  
*Joan Dolan, Co-Chair, Massachusetts*  
*Homer La Rue, Co-Chair, Maryland*  
*Christopher Albertyn, Ontario*  
*Christopher Cameron, California*  
*Brian Clauss, Illinois*  
*Tia Schneider Denenberg, New York*  
*Keith Greenberg, Maryland*  
*Lisa Salkovitz Kohn, Illinois*  
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*Kenneth Perea, California*  
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*Kathryn VanDagens, Michigan*  
*Jeanne Vonhof, Illinois*

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## Questions and Answers from Today's Program

Please continue to submit questions through the Q&A box on the webinar interface

For questions that you want to submit to the FMCS, please email: [apearlstein@fmcs.gov](mailto:apearlstein@fmcs.gov)

For questions that you think of **after** the webinar, please email: [NAAVideoTaskForce@gmail.com](mailto:NAAVideoTaskForce@gmail.com)

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## CLOSING REMARKS

- ▶ Barry Winograd, President, NAA
- ▶ Arthur Pearlstein, Director of Arbitration, FMCS

*A link to the recording of this webinar will be sent to all participants*

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