

VIDEO-HEARINGS & WHAT WE'VE LEARNED - PERMUTATIONS AND FLEXIBILITY

LESSONS LEARNED: THE BENEFITS AND
CHALLENGES OF VIDEO-HEARINGS DURING THE
COVID-19 PANDEMIC

PRESENTERS:

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Susan Stewart, NAA



BEFORE THE DAY OF HEARING

SAMPLE CASE SCHEDULING
ORDER—CASE MANAGEMENT
ORDER

Arbitrator Homer C. La Rue, NAA

Purpose of the Case Scheduling Order

What's in the Case Management Order?

AGENDA:
CONSIDERATIONS
FOR THE PRE-
HEARING ORDERS

- ▶ Early notice to the parties of what to expect
- ▶ Instill confidence in the parties that the arbitrator has a *plan*.
- ▶ Allows the parties to begin thinking early about what they will need.
- ▶ Invites the parties to be a part of the planning for the hearing— What they need? What the arbitrator needs?
- ▶ Ensure fairness and efficiency

PURPOSE OF THE CASE MANAGEMENT ORDER (“CMO”)

CONSIDERING WHAT TO PUT IN THE ORDER



CONSIDERING WHAT TO PUT IN THE ORDER

In the Date-Setting or Scheduling Order

- ▶ Date offers for the videoconference hearing
- ▶ Arbitrator's cancellation/postponement policy

Option #1

- ▶ Parties choose the platform
- ▶ Counsel and witnesses may be in the same or separate locations
- ▶ Caveat—Arbitrator must be in control of the hearing to the maximum extent feasible

Option #2

- ▶ Arbitrator chooses the platform
- ▶ Counsel and witnesses may be in the same or separate locations
- ▶ Link to the platform provided to counsel only



WHAT TO PUT IN THE ORDER VIDEOCONFERENCE OPTIONS

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Access to the Virtual Hearing Space Upon Approval by the Arbitrator

WHAT TO PUT IN THE ORDER ... ACCESS TO PLATFORM



Appearance List:

- Email
- Cell phone
- Exchange 48 hours before hearing

WHAT TO PUT IN THE ORDER ... ACCESS TO PLATFORM

DOCUMENTS

- ▶ Indicate how documents are to be marked
- ▶ PDF format and Bates numbered
- ▶ Deposit in File-Sharing App. Folders in App. marked as Jt. Exs., Er. Exs., and Un. Exs.
- ▶ Impact of depositing documents in the Drop Box
 - ▶ Not necessarily in the record as evidence because they are in the File-Sharing App
 - ▶ Encourage pre-hearing stipulation of the authenticity of documents
 - ▶ Additional documents may be entered at the hearing



WHAT TO PUT IN THE ORDER... DOCUMENTS

WITNESSES—Suggested Topics

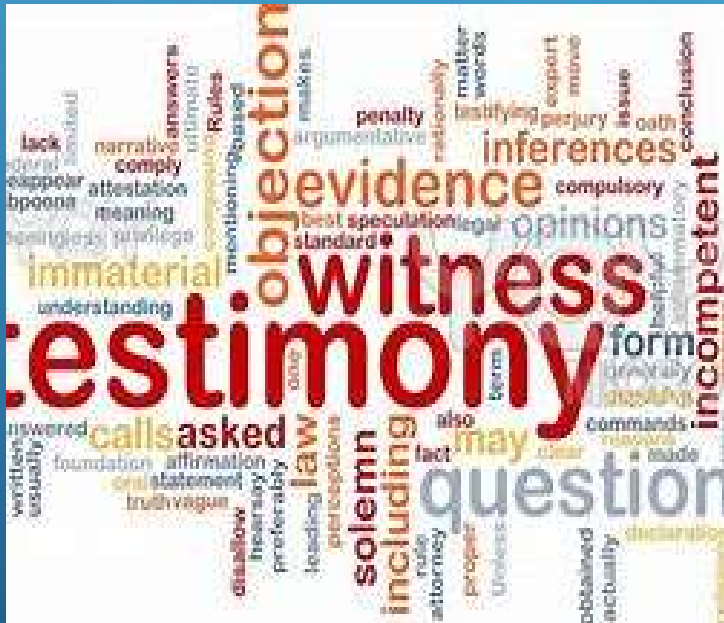
▶ Stipulations

- ▶ Issue
- ▶ Facts
- ▶ Unsworn Declaration Under Penalty of Perjury, 28 U.S.C. § 1746. Must include the following:

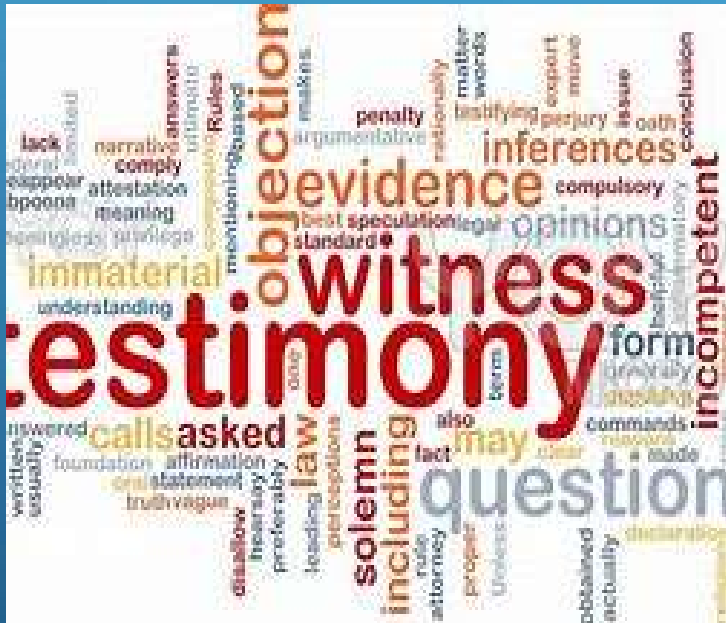
“I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).”

▶ “Will Say”—The Canadian Way

- ▶ Affidavit as to what the witness “will say” on direct examination
- ▶ Cross-examination of live witness based on the “will say”



PROVISIONS TO CONSIDER INCLUDING IN THE ORDER



WITNESSES—Additional Suggested Topics

- ▶ Witness space
- ▶ No virtual background
- ▶ What to do in the event of disconnection
- ▶ Equipment expectations and their use

PROVISIONS TO CONSIDER INCLUDING IN THE ORDER

HOMER C. La RUE, NAA VICE PRESIDENT

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EMERGENT *HYBRID* *MODELS OF VIDEO* *HEARINGS*



Descriptions and Special Challenges

Arbitrator Sylvia Skratek, NAA