

GUIDANCE FOR IN-PERSON AND HYBRID DISCIPLINARY HEARINGS

March 23, 2022

The following protocols and guidelines are provided to assist participants in preparing for and participating in in-person and hybrid disciplinary hearings. Participants should be familiar with this document in advance of their hearing during the COVID emergency. This document supplements and should be read in conjunction with the Chief Hearing Officer's Administrative Order(s) in Response to Public Health Emergency in the State of Washington, and the Rules for Enforcement of Lawyer Conduct (ELC). This document may be updated from time to time.

PARTICIPANTS

Participants in the hearing may include but are not limited to: Hearing Officer, Disciplinary Counsel, respondent, petitioner, counsel for respondent or petitioner, witnesses, court reporter, and a remote hearing host ("Zoom host"). For purposes of this Guidance, "in-person participants" include any person appearing in the physical presence of a hearing officer during the conduct of the hearing or any person using Washington State Bar Association (WSBA) offices during the conduct of a hearing to appear remotely. In-person participants must follow this Guidance for In-Person and Hybrid Disciplinary Hearings.

OFFICIAL RECORD

The official record of the hearing shall be the transcript as generated by the court reporter.

PUBLIC PARTICIPATION

If the hearing is a public proceeding, the public will be able to access the hearing via telephone only. The hearing should not be recorded without prior written approval of the Hearing Officer.

COVID SAFETY PROTOCOLS FOR IN-PERSON AND HYBRID HEARINGS

GENERAL PROTOCOLS

All in-person participants shall comply with current local and state public health requirements for in-person events. Failure to abide by health requirements will result in the participant's denial of entry into the WSBA offices or into the location of the hearing, if different from the WSBA offices, and the participant shall be required to participate remotely until such time as they comply. Persons who are symptomatic, or who have recently been exposed, or who reside with persons who are symptomatic, must remain home. If signs of illness are detected, individuals may be asked to leave. In such cases, the hearing officer shall recess the hearing until such time as the hearing can switch to remote proceedings or shall continue the hearing to a later date.

PROOF OF VACCINATION OR NEGATIVE COVID TEST

Any in-person participant, prior to entry into the hearing, must either show proof of vaccination against COVID-19 or proof of a negative COVID-19 test administered within 72 hours of the hearing to a designated WSBA staff person in the Office of General Counsel. WSBA shall not

maintain physical records of such proof. Inquiries regarding how to show such proof should be directed to Assistant General Counsel Thea Jennings at thealj@wsba.org.

Acceptable proof of vaccination include: a CDC vaccine card or photo of vaccine card; documented proof of vaccine from medical record or vaccine provider; proof of vaccine from another state or county; printed certificate or digital record from MyIRMobile.com or other app. Please do not provide documentation of medical or religious exemptions.

Any type of COVID-19 test administered by a testing provider is acceptable. Testing providers are required to use FDA-authorized or approved COVID-19 tests. The negative result must be within the past 72 hours. Rapid tests used without the supervision of a testing provider will not be accepted.

A remote option must be provided for participants who do not provide accepted proof of vaccination or a negative COVID-19 test.

FACE COVERINGS AND MASKS

At the hearing officer's discretion after consultation with the parties, a hearing officer may order all in-person participants to wear masks. Where ordered by the hearing officer, unless a state-recognized exception applies, all in-person participants, regardless of vaccination status, shall at all times wear face masks that cover both the nose and mouth, except while seated and actively drinking. The hearing officer shall offer more frequent breaks as a result. However, masking requirements when ordered do not apply while an in-person participant is alone in an enclosed office space.

Witnesses may use clear face masks to testify. Clear face shields are not a substitute for wearing a mask. If issues with the functionality of an in-person participant's mask arise during the conduct of a hearing, it shall be in the hearing officer's discretion to determine how best to proceed given local and state public health requirements.

Accommodation requests should be directed to Assistant General Counsel Thea Jennings at thealj@wsba.org.

SOCIAL DISTANCING

The hearing officer shall enforce local and state requirements for social distancing. Where social distancing is not required, participants shall maintain six-feet of distancing at all times. In-person participants may sit or stand only in designated spaces.

CLEANING AND SANITATION

At each break, tables, work stations, and surfaces shall be sanitized and disinfected. After each witness concludes testimony, the proceeding shall recess until such time as the witness table can be sanitized and disinfected.

NOTICE REGARDING COVID EXPOSURE DURING THE CONDUCT OF A HEARING

In the event that an in-person participant is exposed to COVID or receives a positive COVID test during the conduct of a hearing, in the hearing officer's discretion, the hearing officer shall order a brief delay in the hearing to allow the hearing to convert to an entirely remote proceeding or shall continue the hearing to a later date. In making such a determination, the hearing officer shall consider the needs of the case and the preferences of the parties.

PROTOCOLS FOR TECHNOLOGY

TECHNOLOGY REQUIREMENTS

Remote portions of hybrid hearings will be held via the video conferencing platform Zoom (<https://zoom.us>). Parties are expected to prepare for the remote portion of the hearing by obtaining the necessary access to equipment and software well before the hearing begins. Whenever possible remote participants should use computers, laptops, or tablets, not mobile phones, to attend a remote hearing. Remote participants must ensure that their bandwidth is adequate for video conferencing. Mobile data use may incur cellular carrier charges which will be the responsibility of the remote participant.

Remote participants are responsible for their own technology and should become familiar with Zoom's controls well before the hearing. If you are unfamiliar with Zoom videoconferencing software, please review the Zoom Quick Start Guide, which explains how to register for a zoom account and how to join a test meeting to check your audio and video <https://support.zoom.us/hc/en-us/articles/360034967471-Quick-start-guide-for-new-users>. Additional Zoom training and support materials are available at <https://www.Zoom.us>.

Remote participants should test their device's video, microphone, and speaker controls to ensure compatibility with the Zoom platform (a headset with microphone is recommended). The Zoom host CANNOT provide support or assistance during the remote hearing. Directions for testing your device and networking prior to the proceeding can be found at <https://support.zoom.us/hc/en-us/articles/201362313-How-Do-I-Test-My-Video>. If you experience technical issues with your equipment please consult Zoom training and support materials at <https://support.zoom.us/hc/en-us>.

For hybrid hearings, the WSBA hearing room shall be equipped with adequate technology to capture in-person participants for remote participants.

PROTOCOLS PRIOR TO HYBRID HEARING

ZOOM HOST

Approximately seven days before a hybrid hearing, the Zoom host will email the parties (with a copy to the Clerk to the Disciplinary Board) a Zoom link, which will give the parties access to the hearing for the duration of the entire proceeding. Participants should monitor SPAM and/or junk folders for the Zoom host's email if they have not received it. Participants who have not timely received the Zoom host's email should contact the Clerk to the Disciplinary Board no less

than six days before the hybrid hearing; if the sixth day prior to the remote hearing falls on a weekend day or holiday, then the Participant must contact the Clerk to the Disciplinary Board by the following business day. The Zoom host's email will also include a unique meeting identification number and password, and the telephone number participants should call if they experience technical problems during the hearing. The link should not be shared with anyone not involved in the hybrid proceeding.

WITNESSES

Each party is responsible for sending the Zoom link and all other pertinent information to their remote witnesses. **Absent special circumstances, familiarizing a remote witness with the technology required to appear at the hybrid hearing is the responsibility of the party calling the witness.** If the remote witness is not able to participate in the hybrid hearing from the witness's own home using the witness's own technology, the party who calls or subpoenas the witness must, at the party's own expense, provide the witness a location with Zoom conference capabilities from which the witness can participate on the date(s) of the hybrid hearing. The location provided must comply with all applicable local and state requirements for social distancing and other COVID-19 safety precautions. If WSBA offices are used to host a remote participant, that participant using WSBA offices must follow this Guidance, including the requirement that in-person participants must either show proof of vaccination against COVID-19 or proof of a negative COVID-19 test administered within 72 hours of the hearing to a designated WSBA staff person in the Office of General Counsel.

PROTOCOLS DURING A HYBRID HEARING

For remote participants, the Hearing Officer will conduct the hearing as if all parties were present in a physical hearing room. The Zoom host will act at the direction of the Hearing Officer.

DECORUM

A hybrid hearing is a formal proceeding and therefore appropriate professional conduct, attire, and camera background are required at all times. The Hearing Officer has the same authority over the proceeding and the remote participants as if they were physically present in the hearing room. Remote participants are expected to behave with the same levels of courtesy and professionalism as those appearing in-person at the hearing.

Remote participants shall use a private and quiet indoor space that will be free of interruptions. Appearing for the remote hearing while outdoors, in a vehicle, occupying a public space, or performing personal functions is not permitted. Participants should place devices on a solid surface with the camera at eye level or slightly above eye level. Do not hold or carry devices and do not lay devices flat on a desk or tabletop. Choose a solid, neutral background if possible, and check the lighting to ensure that the camera does not face a window, which can blind the camera and obscure the Zoom image.

During the remote portion of the disciplinary hearing, participants should speak one at a time. Remote participants must use the mute feature when not speaking in order to avoid any potential background noise, and should disable notifications from other applications on their own devices. Participants may not use the chat feature of Zoom except to notify the Zoom host that they are experiencing technical problems.

JOINING THE HYBRID HEARING

All remote participants should configure their names to display correctly (i.e., your full name, not the name of your computer); a remote participant may not be admitted to the hearing room until their name is properly configured. Instructions for changing your display name are available at: <https://support.palcs.org/hc/en-us/articles/226794367-Changing-YourDisplay-Name-in-Zoom-Rooms>. All remote participants will initially be placed in a Zoom waiting room and will be unable to communicate with anyone. When the Hearing Officer is prepared to start the hearing, remote parties will be removed from the waiting room and brought into the hybrid hearing. The Hearing Officer will confirm with the parties that all necessary participants (including parties, counsel, and testifying witnesses) are present and that they can see and hear the proceeding.

Any Disciplinary Counsel or counsel representing a respondent who appears remotely should remember to speak one at a time (other remote participants should have their microphones and cameras off when not speaking). Each person's name, email address and phone number must be provided to the Zoom host in advance as noted above. Those who will be assisting a party remotely, but will not have a speaking role in the matter, should join the meeting but not share their video camera. Any remote participant with a speaking role shall keep their camera on throughout the hearing.

The hearing will then go forward as though the remote participants were physically present, subject to any rules specifically adopted for hybrid hearings. In-person participants should speak clearly and audibly during remote portions of the hearing to ensure remote participants can understand those in the hearing room.

The Hearing Officer may take more frequent but shorter recesses. When the hearing goes into recess, all remote participants will place themselves on mute and turn off their video. When the hearing resumes, all remote participants will turn their video back on and unmute as appropriate.

If the hearing is a public proceeding, it will be available to the public via Zoom conference call (i.e., public participants will call in by telephone). A court reporter will attend the hybrid hearing. Parties who fail to reasonably prepare to present their cases with remote participants by Zoom may nevertheless be required to proceed with the hearing. See e.g., ELC 10.12(d) and (g), ELC 10.13 (b) and (c).

WITNESSES

Witnesses must be available to testify at the time designated for their appearances at the hearing whether appearing in-person or remotely.

For remote witnesses, when a party is ready to call a witness, the party must instruct the witness to join the hybrid hearing, and the witness must then promptly connect using the Zoom link. Until called to testify, witnesses shall not observe or access the hearing other than to wait in the virtual waiting room where they will be unable to communicate with or observe other participants. When the witness is called to testify, they will be brought into the Zoom hearing room to verify appropriate audio and video connectivity, and to commence testimony.

For in-person testimony, prior to the testimony of each in-person witness, the Hearing Officer must ensure that adequate breaks are provided to allow for cleaning and sanitation procedures to be followed pursuant to these Guidelines.

EXHIBITS

Professionalism is expected when using the share screen function. Parties should be aware that the share screen function displays the entire device screen, including background pictures, app icons, pop-up notifications, and other open tabs. Parties should not have other applications open on their device when presenting exhibits.

ZOOM CHAT

The Zoom chat function should not be used to communicate confidential information.

TIPS FOR PARTICIPATION USING REMOTE TECHNOLOGY

All participants are encouraged to follow these tips for successful participation in the remote portion of a hybrid hearing on Zoom:

- You should participate from a private, quiet room that is free of disruptions. Silence other phones/computers. When not participating in the proceeding, please put your microphone on mute.
- Close all other applications on your computer (e.g. Microsoft Edge, Internet Explorer, Chrome, etc.), your email (e.g. Microsoft Outlook, Gmail, etc.), and calendar. This will prevent an application from inadvertently making sounds during the hearing (such as calendar or email alert chimes).
- If you have remote or virtual private network (VPN) access to any other system, ensure you are disconnected from such remote access to prevent technical difficulties.
- Use earbuds, headphones, or a headset with microphone to avoid feedback and ensure good audio quality.
- Be mindful of your behavior. On a video conference, you are visible at all times. If you wouldn't do something in a physical hearing room, don't do it during the remote hearing.
- Be respectful of others when talking. Participants should speak one at a time and pause briefly prior to speaking in the event of any audio or video lag.

- Locate your device's camera and make sure the lens is not blocked. Place the camera on your computer, laptop, or mobile device at eye level and at approximately an arm length's distance. If you use a mobile device, it should be mounted on a stationary, upright surface. Look at your camera, not your computer screen. Make sure your head and shoulders are visible on the screen.
- Check your lighting. Lighting in the room should be overhead or in front of you; warm-hued lights look best. Avoid side lighting, backlighting, and sunlit windows that illuminate surfaces unevenly.
- Connect your device to a wall outlet as battery use can adversely affect video quality.