

GUIDANCE FOR REMOTE DISCIPLINARY HEARINGS
Revised March 23, 2022

The following protocols and guidelines are provided to assist participants in preparing for and participating in remote disciplinary hearings. Participants should be familiar with this document in advance of their hearing. This document supplements and should be read in conjunction with the Disciplinary Board Chair and 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 the 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. The hearing should not be recorded without prior written approval of the Hearing Officer.

PROTOCOLS FOR TECHNOLOGY

TECHNOLOGY REQUIREMENTS

Remote hearings will be held via the video conferencing platform Zoom (<https://zoom.us>). Parties are expected to prepare for their hearing by obtaining the necessary access to equipment and software well before the hearing begins. Whenever possible participants should use computers, laptops, or tablets, not mobile phones, to attend a remote hearing. 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.

Parties 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>.

The parties 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>.

PROTOCOLS PRIOR TO HEARING

ZOOM HOST

Approximately seven days before a remote 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 remote 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 remote proceeding.

WITNESSES

Each party is responsible for sending the Zoom link and all other pertinent information to their witnesses. **Absent special circumstances, familiarizing a witness with the technology required to appear at the remote hearing is the responsibility of the party calling the witness.** If the witness is not able to participate in the remote 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 remote 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 the Guidance for in-Person and Hybrid Disciplinary Hearings, 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 THE HEARING

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 remote 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 participants as if they were physically present in a hearing room. Participants are expected to behave with the same levels of courtesy and professionalism as at an in-person 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.

As in an in-person disciplinary hearing, participants should speak one at a time. 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 HEARING

All participants should configure their names to display correctly (i.e, your full name, not the name of your computer); a 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 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, parties will be removed from the waiting room and brought into the remote 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 may participate in the remote proceeding, but only one may speak at a time (the others should have their microphone and camera 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, but will not have a speaking role in the matter, should join the meeting but not share their video camera. Any participant with a speaking role shall keep their camera on throughout the hearing.

The hearing will then go forward as though the parties were physically present, subject to any rules specifically adopted for remote hearings. The Hearing Officer may take more frequent but shorter recesses. When the hearing goes into recess, all participants will place themselves on

mute and turn off their video. When the hearing resumes, all 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). As with in-person disciplinary proceedings a court reporter will attend the remote hearing. Parties who fail to reasonably prepare to present their cases remotely 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 remote hearing. When a party is ready to call a witness, the party must instruct the witness to join the remote 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 remote hearing room to verify appropriate audio and video connectivity, and to commence testimony. After the witness has testified, the Hearing Officer will confirm with the parties whether the witness is excused; if so, the witness will be asked to leave the remote hearing (**after** a witness is excused from the hearing, and if they are not subject to recall, they may call in to the hearing as a member of the public).

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 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.