

# **Armed Services Board of Contract Appeals General Guidance for Virtual Proceedings**

June 22, 2021

In appropriate circumstances, the Armed Services Board of Contract Appeals (ASBCA or Board) may conduct virtual proceedings utilizing online video conferencing capabilities. This includes proceedings conducted in a hybrid fashion, combining the in-person appearance of some participants in a courtroom environment with the virtual appearance of other participants. The decision to conduct virtual proceedings will be made on a case-by-case basis by the presiding judge, considering the suitability of the appeal for resolution through virtual means.

The following instructions outline the Board's general approach to virtual proceedings and are intended to provide guidance to parties participating in such proceedings. At all times, however, the presiding judge has discretion to depart from this guidance as circumstances require and the parties are advised to consult the order(s) issued by the presiding judge for further guidance and instruction.

## **I. Video Conferencing Platforms**

Only Department of Defense-approved platforms will be used by the Board. Currently, these proceedings will be conducted using Zoom for Government (ZoomGov), the Board's authorized virtual platform.

## **II. Preparation for Virtual Proceedings**

Parties are responsible for familiarizing themselves and their witnesses with the technology and for resolving all technical issues encountered during virtual proceedings. Thus, parties shall take reasonable steps to ensure that they have suitable technology to participate in virtual proceedings, including internet and audio-visual connections, and that they have tested their technology.

Prior to the virtual proceeding, parties shall ensure that all participants: (i) have the necessary software or application installed or have the ability to use the necessary software or web browser; (ii) can appropriately use the video conferencing platform that will be used for the proceeding; (iii) have the necessary hardware to permit reliable communication; and (iv) can open and display any documents necessary for the proceeding. Parties shall conduct appropriate testing before the virtual proceeding, including rehearsals with all testifying witnesses. Parties should practice reviewing documents with witnesses and using features such as the screen-sharing functionality.

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Further, parties shall review the “User Guide for Participants in Virtual Proceedings” (Attachment A) and the “Witness Preparation Guide” (Attachment B), included as attachments to this guidance, as well as any orders issued by the presiding judge.

III. Conduct of the Proceeding

The Board will “host” the virtual proceeding and will provide an invitation link to approved participants. Generally, during witness examinations, the video feed will be restricted to the presiding judge, the witness, the examining counsel/party representative, and the opposing counsel/party representative. All other participants will be muted and will not have their video feed activated, or will be sequestered in separate virtual waiting rooms.

Participants are prohibited from using the chat functionality in the video conferencing platform during the proceeding, unless permitted by the presiding judge. To the extent permitted, any use shall be restricted to the exchange of information intended to be disseminated to all participants. At no time will participants use the chat functionality to conduct private discussions.

During breaks, participants shall mute their audio and visual feeds, rather than disconnect from the session. At the appointed time, participants shall turn on their audio and visual feeds to signal that they have returned from the break.

IV. Courtroom Decorum

Although a virtual proceeding may seem less formal, typical courtroom decorum and procedure continue to apply. Professional, respectful attire and behavior is expected from all participants. A participant’s selected background should be consistent with the decorum of the Board and, ideally, should be neutral. The usual restrictions regarding eating and drinking in the Board’s hearing rooms apply.

Participants should select quiet, private spaces where there is little risk of interruption and where there is a stable internet connection.

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V. Proprietary or Otherwise Protected Information

Like any proceeding, a party must raise concerns regarding the protection of business-confidential information in the virtual proceeding to the attention of the presiding judge. The Board will work with parties to ensure that any business-confidential information discussed during a video conference is appropriately protected.

As these virtual proceedings will be rated “Unclassified” for security purposes, no “Classified” information may be discussed, displayed, or shared during the hearing.

VI. Transcripts and Other Recordings

Transcripts will be prepared as in the normal course of Board proceedings and will be the certified record of the hearing. The presiding judge will determine whether the court reporter participates in the hearing through audio and visual means or through audio means alone.

If the presiding judge determines that recording other than by a court reporter is appropriate, the presiding judge will inform the parties. Such a recording will not result in the creation of a certified record. If a recording is made, the Board will notify the parties. Except by leave of the Board, participants may not record, live-stream, or otherwise capture the hearing.

VII. Witness Preparation and Testimony

In advance of the virtual proceeding, counsel/party representatives shall provide each individual they intend to call as a witness with a copy of the “Witness Preparation Guide” (Attachment B). At the commencement of a witness’s testimony, the presiding judge may require that the witness affirm that they have read and understand the “Witness Preparation Guide,” and that they will abide by its terms.

While a witness is testifying, the witness shall not communicate with any persons about the substance of the examination and shall not refer to or rely on a script. At the discretion of the presiding judge, separate waiting rooms may be used to isolate witnesses.

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VIII. Document Management

Documents to be used in virtual proceedings will be managed in accordance with orders issued by the presiding judge. The Board is aware that many video conferencing platforms permit the real-time transmission of documents between participants. The Board is strictly prohibited from using its approved video conferencing platform in such a manner. Rather, all documents to be presented to a witness shall be separately transmitted to all participants via email or a file transfer system as set forth in the Board's prehearing order. Upon request, the Board may allow participants to share their screens to display a previously exchanged document.

IX. Troubleshooting

In the event that there is a loss of an internet connection to a degree that a "key participant" cannot meaningfully participate in the proceeding, the proceeding shall be adjourned until all key participants have sufficient internet connection to be able to meaningfully participate. Key participants will be determined by the presiding judge. As an example, during the examination of a witness, key participants typically would include the presiding judge, the court reporter, the witness, any interpreter required for that witness, counsel or party representative conducting the direct examination of that witness, the counsel or party representative conducting the cross examination of that witness, and appellant's representative. If participants or observers, apart from key participants, are unable to connect to their internet, reasonable efforts will be made to restore access. It is within the discretion of the presiding judge, however, whether to adjourn the proceeding.

Although Board staff may be able to provide some assistance during the hearing, the parties are ultimately responsible for familiarizing themselves and their witnesses with the technology and for resolving all technical issues encountered during the hearing.

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**ATTACHMENT A**

**User Guide for Participants in Virtual Proceedings**

1. What You Need

To participate in a virtual proceeding before the Board, the following is necessary:

- a) A computer, tablet, or smartphone.
- b) A stable non-public secure internet connection.
- c) Speakers or headphones.
- d) A webcam and microphone.
- e) The meeting invitation from the Board.

2. How to Access ZoomGov

Participating in a Board proceeding using ZoomGov is free. Participants may join a virtual Board proceeding by clicking the invitation link provided by the Board. ZoomGov is a web-based application (web client) that is accessible at [Zoomgov.com](https://zoomgov.com). Additionally, users can download the Zoom desktop client or mobile app, as some features and functionality are limited using the web client. Parties are advised to familiarize themselves with the ZoomGov-specific features. It is recommended that parties access the proceedings using Google Chrome. For further information, please refer to the Zoomquick start guide at:

<https://support.zoom.us/hc/en-us/articles/214629443>

3. Minimum Technical Requirements

- a) **Windows-based devices:** Windows 7 or higher.  
(Note: Devices running Windows 10 must run Windows 10 Home, Pro, or Enterprise. S Mode is not supported.)
- b) **Mac/Apple-based products:** macOS X with mac OS 10.9 or later.
- c) **Linux:** 6.4 or higher.

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d) **Android-based mobile devices and tablets:** Parties can download the Zoom for Government app from the Google Play Store for free and install it on the device. Parties should allow camera and microphone access. Once the app is downloaded, it will launch automatically when the user clicks on the invitation link for the virtual proceeding. Alternatively, the proceeding can be accessed without downloading the application by clicking on the invitation link in any web browser, however, Google Chrome is preferable.

e) **Apple/iOS-based mobile devices and tablets:** Parties can download the application from the App Store for free and install it on the device. Parties should allow camera and microphone access. Once the app is downloaded, it will launch automatically when the user clicks on the invitation link for the virtual proceeding. Alternatively, the proceeding can be accessed without downloading the app by clicking on the invitation link using the Google Chrome web browser.

4. What to Do Once You Receive the Invitation Link

Prior to the scheduled virtual proceedings, participants need to test their audio and visual equipment to ensure functionality.

Participants should also check their surroundings to ensure that they comply with the Board's guidance to maintain a neutral background and minimize the risk of interruptions.

5. What to Do if You Are Disconnected

Immediately contact the Board at the designated number provided prior to the proceeding. The Board will cease the proceeding in order to ensure that the situation can be resolved and all parties are present in the virtual space. Additionally, try reconnecting using the same steps you use to join previously.

6. Best Practices and Tips

- Ensure you have the meeting link, ID and password from the invitation.
  
- If you are calling in to the meeting via phone while simultaneously accessing the meeting via computer, you must mute the audio on your computer to avoid feedback.

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- Check your surroundings. What will other participants see behind you? Consider closing doors to minimize interruptions.
- Position the camera at eye level or slightly above eye level. When speaking, look directly at the camera, rather than the screen.
- Position yourself so that you are facing a light source, such as a window or lamp.
- Whenever possible, use headphones with a microphone instead of the computer's built-in microphone for better sound quality.
- Whenever possible, use a hard-wired internet connection instead of a wireless connection. If using a wireless connection, use a secure connection.
- Ascertain the bandwidth of your internet connection. If it is poor quality, consider whether there is anything you can do to increase your bandwidth. Consider asking others at your location to not use applications that might place a significant drain on the available bandwidth (*e.g.*, streaming video services).
- Consider how you will set up your space to have access to the screen and documents. If possible, have a separate screen to display documents.
- Ensure you have a power source available in the event the battery of your computer, tablet, or device begins to run low.
- Have a glass of water available.
- Mute yourself when not speaking to avoid background noise.
- Do not use the chat functionality unless instructed to do so by the presiding judge. Never use the chat functionality for private conversations.
- Parties should conduct practice sessions with all testifying witnesses. Practice sessions should mirror the technical procedures that will be used in virtual proceeding, such as screen-sharing functionality.

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- Parties should consider, and test, the use of mechanisms outside of ZoomGov, such as conference lines, to communicate privately during breaks.
  
- Mute all cell phones and disable other alert systems on personal laptops and devices.

If you have any comment or suggestion regarding this guide, please send them by email to [asbca.recorder@mail.mil](mailto:asbca.recorder@mail.mil) (Attn. IT Department). Questions related to a specific proceeding/appeal, should be submitted to the presiding judge by email at [asbca.recorder@mail.mil](mailto:asbca.recorder@mail.mil).

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**ATTACHMENT B**

**Witness Preparation Guide**

You are going to be a witness at a hearing that will be conducted remotely using a video-conferencing platform. You may hear this referred to as a “virtual” hearing. This guide is intended to help you understand your role and responsibilities as a witness. Please read the document carefully. If you have any questions, you should raise them to your counsel.

1. Your counsel will provide the Board with your email address and the Board will email you a link to join the virtual hearing. You may not share this link. You should click on the link when instructed to do so by your counsel.

2. Your obligation as a witness is to testify truthfully. Although you might be physically located at home or another location during your testimony, you are fulfilling the same role that you would if you were sitting before a judge in a courtroom. You should approach virtual testimony with the same degree of seriousness as you would in-person testimony. Professional, respectful attire and behavior is expected from all participants.

3. While you are testifying, you must keep your camera and microphone on unless instructed otherwise by the judge. Your camera should be positioned so that everyone can clearly see your face, hands, and the table in front of you. Ideally, you should position yourself facing a light, such as a window or lamp, with a neutral background behind you. You may not use a virtual background.

4. You should select a quiet, private space where there is little risk of interruption and where there is a stable connection to the internet. While you are testifying, mute other electronic devices that might make unwanted sounds. Despite this instruction, the Board recognizes that interruptions from children, pets, or background noises are unavoidable at times. If you are calling in to the meeting via phone while simultaneously accessing the meeting via computer, you must mute the audio on your computer to avoid feedback

5. While you are testifying, you are not permitted to review any documents, other than: (i) documents counsel directs you to review during your examination; (ii) documents you request to review during your examination and are permitted to review by the judge; and (iii) if you are an expert witness, your own expert reports and other expert reports submitted in this matter provided that those reports do not contain any notes or annotations made by you or anyone else.

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6. While you are testifying, you may not refer to a script or any notes.

7. While you are testifying, you are not permitted to communicate by any means, including, but not limited to, email, text, and in-person discussions, with any persons about the substance or subject-matter of your examination, nor may you access electronic information on your computer, smartphone, or via the internet if the information relates to your testimony or the appeal. As in an in-person hearing, you may request your counsel to provide you with any documents you may need to refer to in order to clarify your testimony or refresh your recollection.

8. If, at any time, you are unable to hear or see clearly the information that is being communicated to you through the video-conferencing platform, you must immediately indicate that this is the case.

9. Before you begin your testimony, your counsel will provide you with an email address and a phone number to allow you to reach counsel and the Board in the event you lose internet connectivity. Once you begin testifying, if there is an issue with connectivity, first call your counsel. If you cannot reach your counsel, you should alert the Board.

10. The video-conferencing platform is intended for real-time connection only. You are prohibited from recording, live-streaming, or otherwise capturing the hearing.

11. To minimize technical problems during your testimony, you should consider the following:

- a. Appropriate hardware for a lengthy examination is required, including a computer, tablet, or smartphone. You may also need a headset if your device does not have built-in speakers or a microphone of sufficient quality. You may also need a webcam if your device does not have a built-in camera or a camera of sufficient quality.
- b. Ascertain the bandwidth of your internet connection. If it is poor quality, consider whether there is anything that you can do to increase your bandwidth. Consider connecting your computer to your modem or router by an Ethernet cable, rather wireless connection.
- c. Close any unnecessary programs on your computer before you begin testifying. Refrain from being connected to the internet through a virtual private network (VPN) as this can cause interruptions.

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- d. If you are testifying from your home, consider asking others in your home to not use applications that might place a significant drain on the available bandwidth (*e.g.*, streaming video services).
  
- e. If you have concerns or questions about your hardware or software set up, immediately discuss this with the counsel who is calling you as a witness.