

Armed Services Board of Contract Appeals
General Guidance for Proceedings Conducted Using Video-Conferencing
August 28, 2020

The Armed Services Board of Contract Appeals (ASBCA or Board) recognizes the importance of reducing the spread of the COVID-19 virus and is committed to ensuring the health and safety of all Board participants, including counsel, witnesses, court reporters, interpreters, and Board staff. The Board is equally committed to remaining accessible to parties during these extraordinary times and to resolving in a timely manner appeals pending before the Board. With these considerations in mind, the Board may conduct proceedings remotely using video-conferencing. As public health restrictions change, proceedings may be conducted in a hybrid fashion, combining the in-person appearance of some participants in a modified courtroom environment with the remote appearance of other participants in a manner tailored to their locations and circumstances.

The decision to conduct a virtual proceeding will be made on a case-by-case basis by the presiding judge considering the availability of all litigants to participate in a virtual proceeding and the suitability of the appeal for resolution through a virtual proceeding.

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, Microsoft Teams (MS Teams) is the only approved platform. This guidance will be updated should other platforms become available for use in Board proceedings. Instructions for accessing MS Teams can be found in the "User Guide for Participants in Virtual Proceedings," included as Attachment A to this guidance and available on the Board's website..

II. Preparation for Virtual Proceedings

Parties are ultimately 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 installed or have the ability to use the necessary software; (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.

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.

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 connection to the internet.

V. Proprietary or Otherwise Protected Information

Like any proceeding, a party must raise concerns regarding the protection of confidential information in the hearing of the appeal 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 representative 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, “break-out” rooms may be used to isolate witnesses.

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 does not intend to use its approved video-conferencing platform(s) in such a manner. Rather, all documents to be put to a witness shall be 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.

ATTACHMENT A

User Guide for Participants in Virtual Proceedings

I. 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 Microsoft Teams (MS Teams) meeting invitation from the Board.

II. How to Access MS Teams

Participating in a Board proceeding using MS Teams is free. Although participants may join a virtual Board proceeding using MS Teams by clicking the invitation link provided by the Board, the Board strongly recommends that participants download the MS Teams software/application. For the convenience of the parties, some guidance regarding accessing MS Teams is provided below. However, it is a participant's responsibility to access MS Teams and troubleshoot any problems. For further information, see <https://support.microsoft.com/en-us/office/join-a-meeting-in-teams-1613bb53-f3fa-431e-85a9-d6a91e3468c9> and the MS Teams Quick Start Guide (attached).

a) **Windows based device.** Participants can download the MS Teams software from the Microsoft website for free. Once the software is downloaded, the software will launch automatically when the user clicks the invitation link for the virtual proceeding. Alternatively, the proceeding can be accessed without downloading the software by clicking the invitation link in Microsoft Edge or Google Chrome web browsers.

b) **Mac/Apple Based Products.** Parties can download the MS Teams software from the Microsoft website for free. Once the software is downloaded, the software will launch automatically when the user clicks the invitation link for the virtual proceeding. Alternatively, the proceeding can be accessed without downloading the software by clicking the invitation link in Microsoft Edge or Google Chrome web browsers. The link will NOT launch with the Safari web browser.

c) **Android based mobile devices and tablets.** Parties can download the MS Teams application from the Google Play Store for free and install it on the device.

Parties should allow camera and microphone access. Once the software is downloaded, the software will launch automatically when the user clicks the invitation link for the virtual proceeding. Alternatively, the proceeding can be accessed without downloading the application by clicking the invitation link in any web browser.

d) **Apple/IOS based mobile devices and tablets.** Parties can download the MS Teams application from the App Store for free and install it on the device. Parties should allow camera and microphone access. Once the software is downloaded, the software will launch automatically when the user clicks the invitation link for the virtual proceeding. Alternatively, the proceeding can be accessed without downloading the application by clicking the invitation using the Google Chrome web browser. The link will NOT launch with the Safari web browser.

III. What To Do Once You Receive The Invitation Link

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

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

IV. What To Do If You Are Disconnected

Immediately contact the Board at (703) 681-8590. 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.

V. Best Practices And Tips:

- Ensure you have the meeting ID and password from the invitation.
- 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 in your home 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.
- Ensure you have a glass of water available.
- Mute yourself when not speaking to avoid background noise.
- Do not use the chat functionality in MS Team 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.
- Parties should consider, and test, the use of mechanisms outside of MS Teams, 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 (Attn: IT Department). Questions related to a specific proceeding/appeal, should be submitted to the presiding judge by email at asbca.recorder@mail.mil.

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 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 quiet, private space where there is little risk of interruption and where there is a stable connection to the internet. While you are testifying, please mute other electronic devices that might make unwanted sounds while you are testifying. Despite this instruction, the Board recognizes that interruptions from children, pets, or background noises are unavoidable at times.
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.
6. While you are testifying, you cannot 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 can 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, your first call is to counsel. If you cannot reach 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 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.

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.

Microsoft Teams

Quick Start Guide

New to Microsoft Teams? Use this guide to learn the basics.

Every team has channels
Click one to see the files and conversations about that topic, department, or project.

Start a new chat
Launch a one-on-one or small group conversation.

Use the command box
Search for specific items or people, take quick actions, and launch apps.

Add tabs
Highlight apps, services, and files at the top of a channel.

Manage profile settings
Change app settings, change your pic, or download the mobile app.

Move around Teams
Use these buttons to switch between Activity, Chat, your teams, Calendar & Files.

View and organize teams
Click to see your teams. In the teams list, drag a team name to reorder it.

See your calendar
Click to see your schedule and join meetings.

Access your apps
Find apps added for your teams or your personal use.

The screenshot shows the Microsoft Teams interface with several callout boxes pointing to specific features:

- Join or create a team**: Points to the "Join or create a team" button at the bottom left.
- Manage your team**: Points to the three-dot menu next to a team in the left sidebar.
- Move around Teams**: Points to the navigation icons (Activity, Chat, Teams, Calendar, Files) on the left sidebar.
- View and organize teams**: Points to the team list in the left sidebar.
- See your calendar**: Points to the calendar icon in the left sidebar.
- Access your apps**: Points to the "Apps" icon in the left sidebar.
- Every team has channels**: Points to the "Mark 8 Project Team" and its "General" channel in the left sidebar.
- Start a new chat**: Points to the "Start a new conversation" button at the top.
- Use the command box**: Points to the search bar at the top.
- Add tabs**: Points to the tabs (Posts, Files, Wiki, etc.) at the top of a channel.
- Manage profile settings**: Points to the user profile card on the right.
- Add files**: Points to a file attachment in a message.
- Reply**: Points to a reply button in a message.
- Compose a message**: Points to the text input area at the bottom.

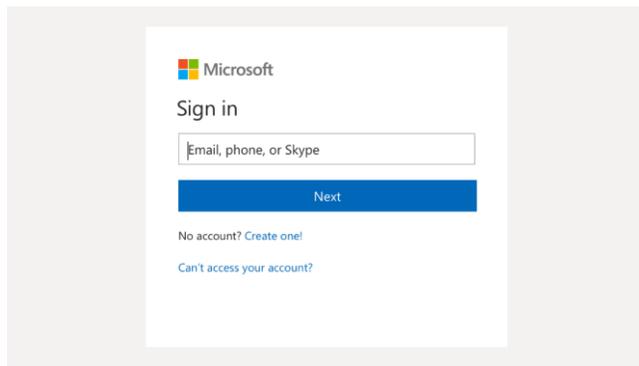
Microsoft Teams

Sign in

In Windows, click **Start**  > **Microsoft Teams**.

On Mac, go to the **Applications** folder and click **Microsoft Teams**.

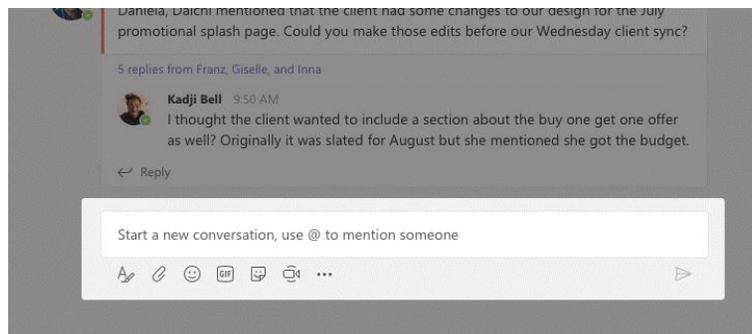
On mobile, tap the **Teams** icon. Then sign in with your Microsoft 365 username and password. (If you're using Teams free, sign in with that username and password.)



Start a conversation

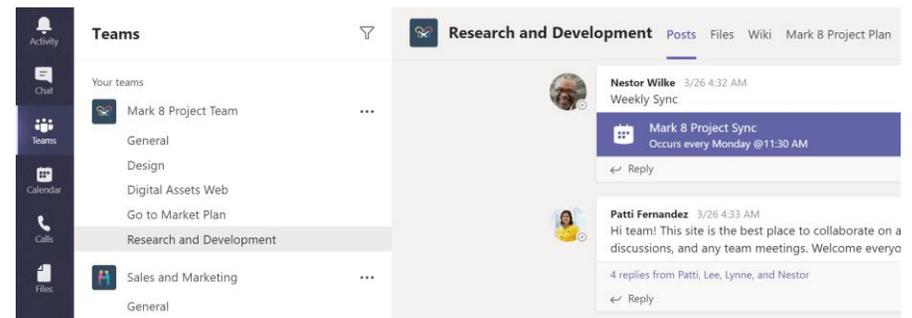
With the whole team... Select **Teams** , pick a team and channel, write your message, and click **Send** .

With a person or group... Click **New chat** , type the name of the person or group in the **To** field, write your message, and click **Send** .



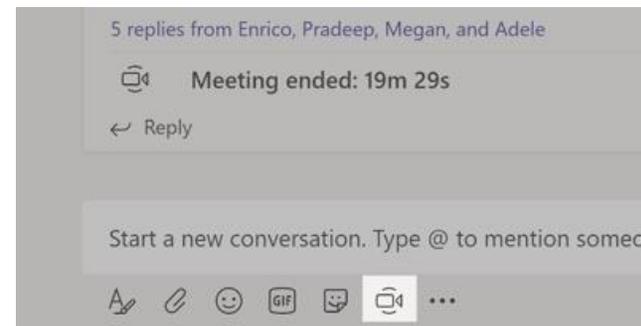
Pick a team and channel

A *team* is a collection of people, conversations, files, and tools—all in one place. A *channel* is a discussion in a team, dedicated to a department, project, or topic. Select **Teams**  and choose a team. Pick a channel to explore **Posts**, **Files**, and other tabs.



Start an impromptu meeting

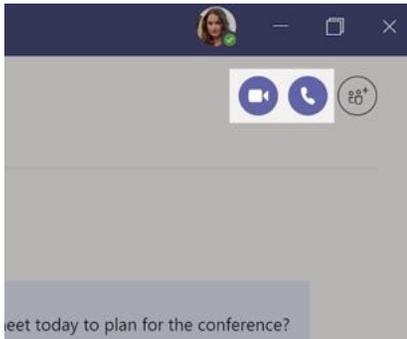
Click **Meet now**  under the area where you type a message to start a meeting in a channel. (If you click **Reply**, then **Meet now** , the meeting is based on that conversation.) Enter a name for the meeting, then start inviting people.



Microsoft Teams

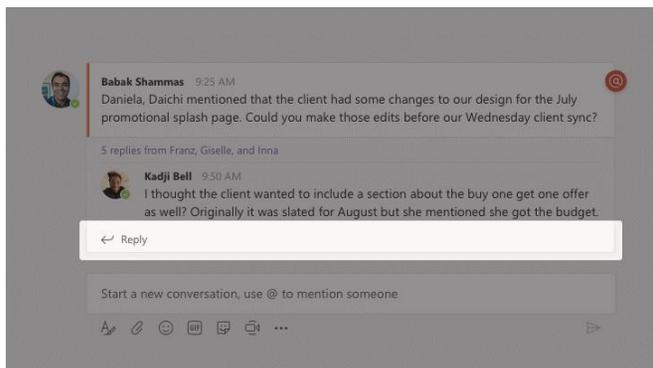
Make video and audio calls

Click **Video call**  or **Audio call**  to call someone from a chat. To dial a number, click **Calls**  on the left and enter a phone number. View your call history and voicemail in the same area.



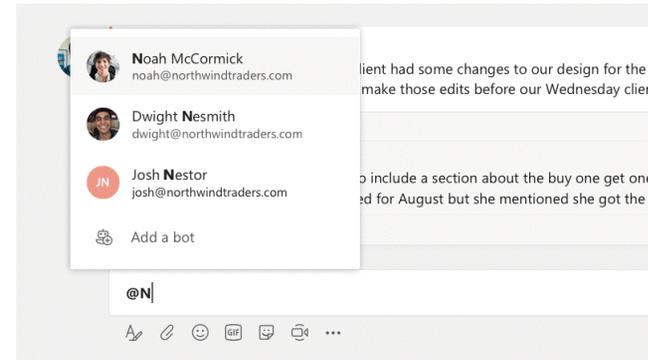
Reply to a post

Channel posts are organized by date and then threaded. Find the thread you want to reply to, then click **Reply**. Add your thoughts and click **Send** .



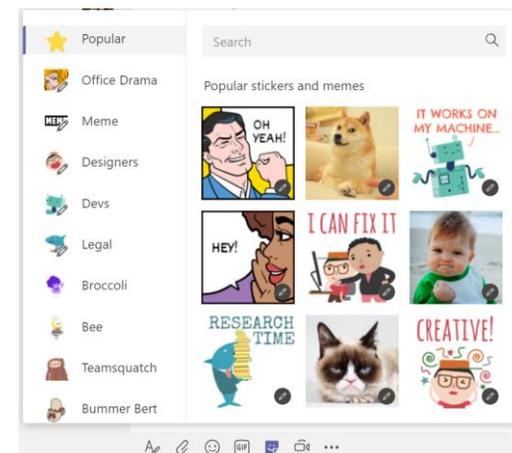
@mention someone

To get someone's attention, type **@**, then their name (or pick them from the list that appears). Type **@team** to message everyone in a team or **@channel** to notify everyone who favorited that channel.



Add an emoji, meme, or GIF

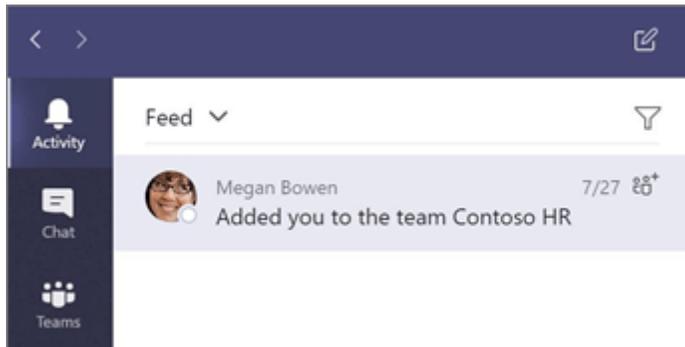
Click **Sticker**  under the box where you type your message, then pick a meme or sticker from one of the categories. There are also buttons for adding an emoji or GIF.



Microsoft Teams

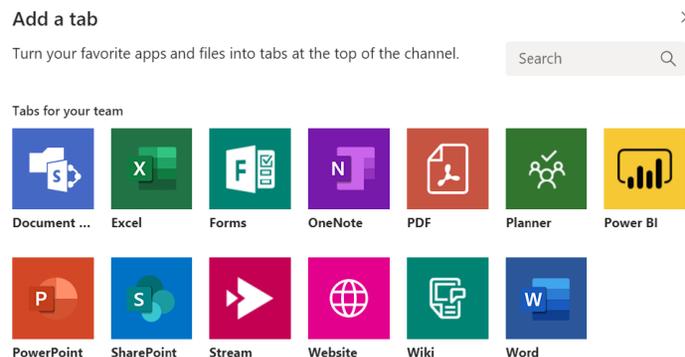
Stay on top of things

Click **Activity**  on the left. The **Feed** shows you all your notifications and everything that's happened lately in the channels you follow. To set up notifications for a channel, choose **...** next to the channel name, then **Channel notifications**.



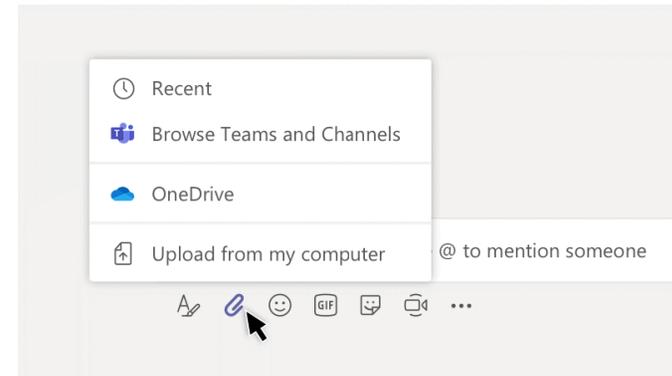
Add a tab in a channel

Click **+** by the tabs at the top of the channel, click the app you want, and then follow the prompts. Use **Search** if you don't see the app you want.



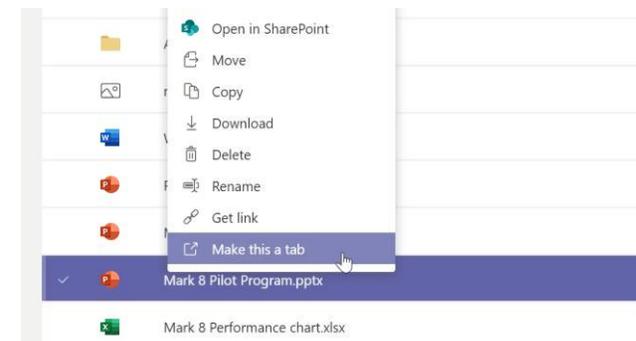
Share a file

Click **Attach**  under the box where you type messages, select the file location and then the file you want. Depending on the location of the file, you'll get options for uploading a copy, sharing a link, or other ways to share.



Work with files

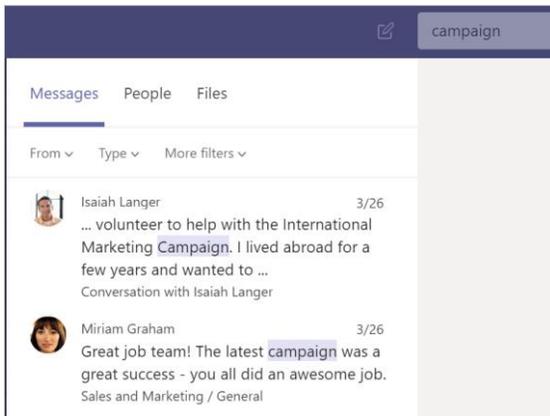
Click **Files**  on the left to see all files shared across all of your *teams*. Click **Files** at the top of a channel to see all files shared in that *channel*. Click **More options ...** next to a file to see what you can do with it. In a channel, you can instantly turn a file into a tab at the top!



Microsoft Teams

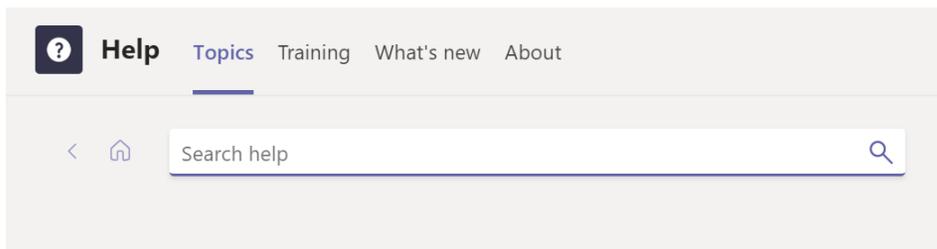
Search for stuff

Type a phrase in the command box at the top of the app and press Enter. Then select the **Messages**, **People**, or **Files** tab. Select an item or use the filters to refine your results.



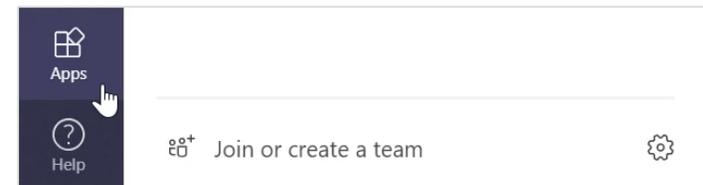
Get help in Teams

Click **Help** on the left, then choose **Topics**, **Training**, or **What's new**. In help, browse the tabs or search for a topic you're interested in.



Add apps

Click **Apps**  on the left. Here, you can select apps you want to use in Teams, choose the appropriate settings, and **Add**.



Next steps with Microsoft Teams

See what's new in Office

Explore the new and improved features in Microsoft Teams and the other Office apps. Visit <https://go.microsoft.com/fwlink/?linkid=871117> for more information.

Get free training, tutorials, and videos for Microsoft Teams

Ready to dig deeper into the capabilities that Microsoft Teams has to offer? Visit <https://go.microsoft.com/fwlink/?linkid=2008318> to explore our free training options.

Send us your feedback

Love Microsoft Teams? Got an idea for improvement to share with us? On the left side of the app, click **Help**  > **Give feedback**. Thank you!

Get other Quick Start Guides

To download our free Quick Start Guides for your other favorite apps, go to <https://go.microsoft.com/fwlink/?linkid=2008317>.