16B Hearing Room to Zoom: Meeting the Challenges of Virtual Hearings

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Virtual hearings can create problems from the uncomfortable to the unconstitutional. In this interactive session led by experienced hearing officials, participants will learn strategies to deal with these and other issues presented by moving hearings online and how/ why they need to be met. In addition to technology frustrations, the panel will cover the effectiveness of online versus in-person testimony, assessing witness and expert credibility, and how to manage the cases of non-English speaking or disabled participants. The panelists will share how they have handled these issues and will note successful strategies. Audience facilitators will encourage attendees to ask questions and share their experiences.

1. *Technicalities -*
    a. *Selecting a suitable technology*
        a. *Do you have a choice?*
        b. *Is there a "best" technology?*
        c. *Considerations (bandwidth, cameras, scanners, printers, audio equipment)*
    b. *Ensuring access - parties, participants, public – who hosts the hearing?*
    c. *Connectivity during the proceeding – what if contact is lost?*
    d. *Sharing and storing videos, recordings*
    e. *"Zoom bombers" and other uninvited guests*
    f. *Video or phone? Both?*
2. *Due Process Considerations – Procedural Fairness*
    a. *Notice – of virtual hearing, of procedures*
    b. *Opportunity to be heard*
        a. *Can we compel parties to participate in a remote hearing? (During v. after COVID)*
        b. *Accommodating parties/participants/public with disabilities or language issues*
        c. *Public pre-hearing conferences – webinars or open format with public as participants?*
        d. *Public comment hearings – receiving public comment (sign up by registering, hand-raising?), webinars v. standard Zoom meeting format with public*
3. *Conducting a Hearing*
    a. *Staying in control -setting rules, sticking to them*
    b. *Proving clear explanation of process – including what happens after the hearing*
    c. *Overcoming practical problems (i.e., sharing evidence and other documents, dealing with different technologies of parties, other participants)*
    d. *Assessing witness credibility*
    e. *Ensuring all parties have full opportunity to present case*
    f. *Use of chat rooms – impacts on witness coaching, segregation*
4. *Post-Hearing Considerations*
    a. *Recordings of proceedings*
    b. *Distribution of decisions*
    c. *Maintaining boundaries between parties and hearing officials*
5. *A Permanent Situation?*

Resources

NAHO Virtual Library
www.naho.org

Administrative Conference of the United States, Virtual Hearings in Agency Adjudication.
https://www.acus.gov/recommendation/virtual-hearings-agency-adjudication

American Bar Association
https://www.americanbar.org

National Center for State Courts
https://www.ncsc.org

National Judicial College
https://www.judges.org

New York Workers Compensation Board
www.wcb.ny.gov/virtual-hearings

Online Video Hearings at the Social Security Administration
https://go.opus2.com/virtual-hearing

Reading

Lederer, Fredric I. and Center for Legal & Court Technology, "Analysis of Administrative Agency Adjudicatory Hearing Use of Remote Appearances and Virtual Hearings" (2021). *Faculty Publications*.
https://scholarship.law.wm.edu/facpubs/2040

Leslie Birnbaum, *Due Process and Administrative Hearings in the Time of COVID-19: Help, I Need Somebody!*, 41 J. Nat'l Ass'n Admin. L. Judiciary 140 (2021)
https://digitalcommons.pepperdine.edu/naalj/vol41/iss1/3

Remote Hearing Guide for Participants, Office of Administrative Law Judges, Department of Energy, Federal Energy Regulatory Commission, July 13, 2020
https://www.ferc.gov/sites/default/files/2020-07/Remote%20Hearing%20Guidance%20for%20Participants.pdf

Ready-to-use Guides

Bench Guide or Checklist for Remote Hearings

Representing Yourself in a Remote Administrative Hearing

Top 10 Tips for Participating in Virtual Hearings

Testifying in a Remote Hearing