

The Civilian Board of Contract Appeals Virtual Proceeding Protocol

Due to circumstances related to the COVID-19 pandemic, the Civilian Board of Contract Appeals (CBCA) is conducting all proceedings, including hearings, arbitrations, and mediations, virtually. These proceedings will be conducted using Zoomgov, the CBCA's preferred platform.¹ By participating in these proceedings, the parties consent to the use of this platform. All participants agree not to challenge the finality of any award, decision, or settlement on the basis that the proceeding was held virtually. Counsel or the party representative is responsible for ensuring that the parties comply with this protocol.

The parties must familiarize themselves and their witnesses with Zoom. All participants should be able to communicate clearly during the proceedings, and the participants should readily be able to access and view any exhibits used in the proceeding.

1. Parties to the proceeding must prepare themselves and their witnesses for the technical requirements of a virtual proceeding.

1.1 Technical Preparation Session

In advance of the proceeding, parties and all testifying witnesses should participate in a technical preparation session to familiarize all participants with using Zoom.

- a) Participants should practice connecting by video and audio, muting, sharing documents, chatting, turning off the video, and disconnecting.
- b) Participants should establish and test an internal mechanism (texting or calling) to communicate among themselves during the proceeding.
- c) Counsel or a party representative should arrange for all relevant documents to be transmitted to each testifying witness in advance.

1.2 Conference

The presiding judge² may hold a conference in advance of the proceeding

¹ The parties may request the use of a virtual platform other than Zoomgov. This proposed platform must be secure and stable in order to protect the integrity of the proceedings. In proposing a different platform, parties should consider the level of encryption a platform offers, the types of security measures in place, and examine the potential cyber risks presented by the platform. All security features of the platform should be utilized to ensure that the platform is secure.

² The term "presiding judge" may also refer to a judge/mediator or a Panel of three judges in an arbitration.

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to ensure that the parties are familiar with and able to connect to Zoomgov.

- a) During the conference, participants will practice using the technical features of Zoomgov, such as sharing documents and conducting break-out sessions.
- b) Interpreters and court reporters may participate in the conference to ensure that they are able to connect virtually.

2. The proceeding will be conducted in accordance with these guidelines.

2.1 Participants

Zoomgov invites will be limited to attendees identified in advance by the parties. If a party wishes to add an attendee not previously invited to a proceeding, the party will alert the presiding judge to request approval.

2.2 Time zones

The proceedings will be scheduled with every attempt to accommodate witnesses in different time zones.

2.3 Technical support

Each party should identify one person with adequate technical knowledge to be present (virtually or otherwise) at the conference and the proceeding to assist with any technical issues. This person should be familiar with the technology, Zoomgov, systems, and devices to be used at the proceeding.

2.4 Communication

- a) The parties should identify a means of communicating internally and with the Board (e.g., by text or phone) during the proceeding in the event there is a service interruption of Zoomgov.
- b) An open chat window will remain active during the proceedings. The chat window can be used to allow all participants (including the court reporter) to communicate with all participants at the proceeding. There will be no ex parte chat window communication with the presiding judge or between testifying witnesses and counsel or a party representative.

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2.5 Technology

It is the responsibility of the parties' counsel or party representatives to familiarize themselves and their witnesses with the technology that will be used.

2.5.1 Audio/Video

- a) The CBCA prefers that all parties, witnesses, counsel, and party representatives appear by video. However, in the event that video is not possible, the presiding judge can permit a participant to appear by audio only.
- b) Participants should mute their devices when others are speaking.
- c) Participants should mute all cell phones and disable other alert systems on their devices.
- d) Participants should shut down all background browsers and applications and disable pop-up notifications on the device in use.
- e) It is in the parties' discretion as to whether they and/or their witnesses wish to appear together from a single venue. However, parties will endeavor to have no more than two individuals in the camera frame at once.

2.5.2 Connection

- a) A wired network connection is preferred over wireless connections.
- b) The connection must be stable and reliable.
- c) Where a wired connection is unavailable, parties should not use public WiFi networks but should instead use a password-protected, secure wireless connection.

2.6 Recording

- a) If the presiding judge determines that a recording other than by a court reporter is appropriate, the presiding judge will inform the parties.
- b) Breakout room discussions cannot and will not be recorded.
- c) With the exception of court reporters, the proceeding participants are

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not separately to record, tape, or otherwise capture the proceedings.

2.7 Court Reporters

- a) If a court reporter is used in the proceedings, the reporter will attend the proceedings virtually.
- b) The court reporter's transcript will be the certified record of the proceedings.

3. Witness examination will be conducted in the manner prescribed below.

3.1 Appearance of the witnesses

- a) Witnesses need not be in attendance at the same venue as the parties. The venue should be devoid of distractions to the extent possible and physical appearance should be professional. Witnesses should comport themselves as if they were in a physical courtroom.
- b) When providing witness testimony, party representatives or counsel and the witness will identify any individuals present in the room where the testifying witness is present and will confirm that the witness is not receiving communications of any sort during the testimony.
- c) Participants may use a "virtual background" provided the virtual background is professional and appropriate.
- d) At no point during witness testimony should counsel, a party representative, or the parties communicate with the testifying witness without the permission of the presiding judge.
- e) If the witness experiences technical difficulty during his or her testimony, the proceeding will be stopped to allow counsel and the witness to resolve the issue.

3.2 Use of documents

- a) All exhibits and documents used in the course of a witness direct and/or cross-examination will be made available to the witness, the opposing party, and to the presiding judge.
- b) Each party should designate someone to assist with the exhibits and to

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facilitate locating and sharing the documents with the presiding judge, witness, and participants during the witness testimony. All participants should be familiar with the document sharing platform prior to commencement of the proceedings.

3.3 Objections

- a) Parties and witnesses are to be mindful during examinations that the other party may object to questions.
- b) All parties and witnesses will allow additional time for such objections to be made.
- c) Participants should make every effort not to speak at the same time. If a judge is speaking, participants should stop talking until the presiding judge permits testimony to continue.
- d) A virtual breakout room will be designated for the purpose of conducting side-bar conversations, if necessary.

3.4 Interpreters

In the event that interpretation services are needed for witness examinations, the counsel or party representative will arrange for any interpreters to appear virtually.