**Remote Civil Bench Trials and Evidential Hearings:**

**Outline of Relevant Topics**

 The following is intended to be a broad compendium of relevant topics and resources that judges and practitioners in any jurisdiction may wish to consider when preparing for a remote civil bench trial. The footnotes contain links to the cited materials.

1. **Governing Authority for Civil Proceedings.**
	1. **Legal Authorization for Remote Proceedings** (including consideration of any circumstances where remote proceedings are not appropriate).
	2. **Legal Standard for Obtaining Consent to Remote Proceedings** (including addressing the needs of any participants with disabilities, self-represented parties, *etc.*).[[1]](#footnote-2)
2. **Technology.**
	1. **Legal / Court Standard for Technology** (*e.g.*, local/state/court rules regarding technology and/or technology vendors, cybersecurity requirements, *etc.*).[[2]](#footnote-3)
	2. **Platform** (*e.g.*, Zoom, Microsoft Teams, WebEx, Bluejeans, GoToMeeting, *etc*.). At a minimum, the Platform must provide robust protections for the confidentiality and data security of the proceeding.[[3]](#footnote-4)
	3. **Management and Support** (*e.g.*, whether the Court, clerk, or any other entities—such as an outside vendor—will manage hearing participants, exercise control over technological settings, and/or support the technological needs of hearing).[[4]](#footnote-5)
3. **Facilitating and Controlling Public and Media Access to the Hearing.**
	1. **Legal / Court Standard for Facilitating and Controlling Public and Media Access to Hearing** (*e.g.*, proceedings for which public access must / may not be granted; ensuring access for persons with disabilities and limited technological capabilities; participants’ rights to privacy of certain information, *etc.*).
	2. **Guidelines for Facilitating Access.**
		1. Notice to the Public and Press (*e.g.*, where posted, what to post, when, how to access, *etc.*). [[5]](#footnote-6)
		2. Procedure for Granting Access (*e.g.*, during the proceeding—via a livestreamed YouTube account—or immediately after via access to a video recording; if YouTube is used, consider YouTube’s licensing terms). [[6]](#footnote-7)
	3. **Guidelines for Controlling Access.**
		1. Hearing Procedures.
			1. Controlling entry into hearing (*e.g.*, enabling “waiting room” function, which controls who is admitted to the hearing and prevents participation by individuals who are not litigants in the case; locking the hearing once it has begun; using password-protect or otherwise controlled meeting IDs). [[7]](#footnote-8)
			2. Whether participants from the public are to be on mute/video off and how to enforce this (if program does not allow for this function unilaterally).
			3. Phone numbers should not be displayed during hearing.[[8]](#footnote-9)
			4. Rules for enforcing confidentiality (*e.g.*, may not download / screenshot / record the hearing, *etc.*).[[9]](#footnote-10)
			5. Procedures for handling disruptions and/or security breaches.
			6. Other issues related to managing and addressing security risks.
		2. Post-Hearing Procedures.
			1. Deleting documents / feeds from vendor platform post-hearing.
			2. Return or destruction of any documents provided to witnesses, vendors, *etc.*
			3. Other issues related to managing and addressing security risks.
4. **Hearing Record.**
	1. **Legal / Court Standard for Creating a Record.** [[10]](#footnote-11)
		1. Standard Governing Hearings that Must / May be Recorded (*e.g.*, which hearings require recording, legal basis for such requirement, *etc.*).
		2. Standard Governing Quality and Content of the Recording. [[11]](#footnote-12)
		3. Standard for Courtroom Technology (*e.g.*, standards for recording equipment and format of recording (*e.g*., MP4), preferred / allowed technology, if any, *etc.*).[[12]](#footnote-13)
	2. **Guidelines for Creating the Requisite Record.**
		1. Procedures for Creating the Record (*e.g*., whether there will be a court reporter and/or actual recording; how it will be recorded, such as placement of a microphone near the speaker, special software such as Notewise that allows direct recording, use of Zoom to create a record of the proceedings combined with audio transcript feature for future transcribing, *etc*.).[[13]](#footnote-14)
		2. Procedures for Complying with Quality and Content Standards (*e.g.*, state case number and title at beginning of hearing; indicate start and end time of hearing; require each participant to state and spell name; remind all participants to speak slowly, clearly, and one at a time, *etc.*). [[14]](#footnote-15)
		3. Procedures for Stopping/Starting Recording.
		4. Procedures for Storing the Record (*e.g.*,where / how recording is to be saved stored, such as fed directly into court’s recording system and/or cloud when the hearing begins, and persons responsible for the same).[[15]](#footnote-16)
		5. Procedures for Corrections (*e.g.*,whether, when, and how corrections/clarifications to the transcript will be permitted, to the extent non-standard recording methods require a modified protocol).
5. **Hearing Schedule.**
	1. **Time Allocation.**
		1. Timekeeping Procedures.
		2. Specific Exclusions (*e.g.*, technical difficulties outside control of participants to be excluded, *etc.*).
	2. **Schedule. [[16]](#footnote-17)**
		1. Parties and Court to Agree Upon:
			1. Arrival times.
			2. Length of days (*e.g.*, shortened days may be desirable due to screen time).
			3. Scheduled breaks.
			4. Scheduled modifications required due to different time zones.[[17]](#footnote-18)
			5. Availability of individual witnesses, procedures for contacting and connecting witnesses when needed, *etc.*
6. **Pre-Hearing Procedures.**
	1. **Notice(s) to the Litigants** (*e.g.*, how / when / where notices, instructions on how to access the Platform, and procedures for participation will be posted and/or communicated, *etc.*).[[18]](#footnote-19)
	2. **Notice(s) to Witnesses.**
	3. **Disclosures.**
		1. Counsel required to disclose all authorized attendees (including witnesses, court reporters, interpreters) and any necessary, relevant information (*e.g.*, email addresses, phone numbers, whether person will be located with other attendees, *etc.*).[[19]](#footnote-20)
	4. **Exchange of Exhibits and Objections** (See Section V(F), below.)
	5. **Pre-Hearing Test Runs.**
		1. Court and Counsel (*e.g.*, planned test of technology between court and counsel to allow participants to assess the quality of their audio and video transmissions and to make necessary adjustments, as well as to experience key platform functions, including microphone muting, display options, transitions between the Waiting Room, Hearing Room, and Break-Out Rooms, and screensharing).[[20]](#footnote-21)
		2. Parties and Witnesses. [[21]](#footnote-22)
7. **Hearing Procedures and Etiquette.**
	1. **Technological Guidelines.** [[22]](#footnote-23)
		1. Legal / Court Standard (*e.g.*, parties shall make “best efforts” to ensure that there will be clear video and audio transmission during the hearing; required familiarity with the platform, division of responsibility as to who is responsible for ensuring witness familiarity with the technological systems, *etc.*).[[23]](#footnote-24)
		2. Guidelines for Participants.
			1. Internet requirements/reliability of connectivity and coverage (*e.g.*, high-speed internet connections, hard-wired vs. wireless).
			2. Knowledge of all requisite computer passwords (particularly if loaned) in case of lock-out.
			3. Hardware.
				1. Laptop or desktop, not phone or tablet.
				2. Headset and/or microphone.
				3. Camera.
				4. Charger and/or spare batteries.
			4. Software.
				1. Acquire required browser, programs, and operating system

 (*e.g.*, Windows, Flash Player, etc.).

* + - * 1. Enable required programs.
				2. Disable distracting programs (*e.g.*, external chat programs).

For witnesses, consider using a program that forces witness to use only platform and/or expressly require witnesses to affirm that they will not use any unauthorized programs during the proceedings.

* + - 1. Avoiding technological difficulties.
				1. Audio can be connected by phone to remain connected if there are internet connectivity issues, although this may create lag time between video and audio.
				2. Use of multiple monitors to ensure open windows (*e.g.*, exhibits, scrolling live transcript, videos, *etc.*) remain large enough to use.
			2. Location.
				1. Camera positioning and lighting (*e.g.*, avoiding windows; positioning lights in front of participant).
			3. Security.[[24]](#footnote-25)
		1. Guidelines for Interpretation.[[25]](#footnote-26)
		2. Handling Technological Difficulties (*e.g.*, procedure if dropped out of hearing; what happens if a witness’s “internet goes out” while being cross-examined; troubleshooting audio echo, *etc.*).[[26]](#footnote-27)
	1. **Arrival to and Location of Hearing.**
		1. Early Arrival Time.[[27]](#footnote-28)
		2. Court Control of Entry (*e.g.*, enabling “waiting room” function, which controls who is admitted to the hearing and prevents participation by individuals who are not litigants in the case; locking the hearing once it has begun).
		3. Determine Location of the Proceeding.[[28]](#footnote-29)
		4. Requirement to Maintain Appearance on Camera (and related issues).[[29]](#footnote-30)
	2. **Maintaining a Clear Record and the Decorum of the Court.**
		1. Legal / Court Standard for Maintaining the Decorum of the Court.

* + 1. Guidelines for Court.
			1. Courts to act as Zoom host to control meetings. [[30]](#footnote-31)
			2. Judges and court staff to ensure quality of recording with frequent reminders and, where speaking overlap occurs, asking parties to repeat themselves.
			3. Procedures for granting permission to speak and recognizing speakers.
			4. Muting participants that are not speaking.
			5. Appropriate background for court / staff (*e.g.*, picture of courtroom).
			6. Removal of disruptive participants (*e.g.*, return participants to the “waiting room”).
			7. Determine whether to allow or limit chat functionality.
			8. Playing a sound when a participant enters or exits the hearing.
			9. Use of gallery view in Zoom (or other similar feature) to prevent screen from shifting to the person that is speaking and allow the court to see all of the participants and the court reporter / recorder at once.

* + 1. Guidelines for Counsel.[[31]](#footnote-32)
		2. Guidelines for All Participants.
			1. Attire. [[32]](#footnote-33)
			2. Appropriate backgrounds (*e.g.*, court may use picture of courtroom as background, but witnesses likely should not use virtual background).[[33]](#footnote-34)
			3. Monitor facial expressions.
			4. No Food / Drink / Tobacco.
			5. Posture (sit up straight, don’t put feet up on a chair or table).
			6. Elimination of background noise / use of mute (*e.g.*, competing noises will impact quality of the transcript, including typing near device microphones or shuffling of papers and coughing into microphones).
			7. Rules for speaking (*e.g.*,judge will indicate when each person is to be heard; parties should identify themselves each time they speak, *etc.*).
			8. Elimination of distractions (*e.g.*, children, pets, cell phones, *etc.*).
	1. **Court’s Preliminary Remarks.**
		1. At the beginning of the hearing, court should:
			1. Confirm the participants present.
			2. Confirm ability to proceed and awareness of procedures for participation.
			3. If necessary, confirm waiver of right to be present in the courtroom for the proceeding (parties may wish to stipulate to this ahead of time).
	2. **Opening / Closing Statements.**
		1. Consider whether the parties anticipate screensharing PowerPoints and whether directions should be given for the advance exchange of such presentations or any other hearing demonstratives.[[34]](#footnote-35)
	3. **Presenting Exhibits.**
		1. Legal / Court Standard for Presentation of Exhibits.
		2. Pre-Hearing Guidelines for Facilitating Presentation of Exhibits.
			1. Special rules/exceptions regarding admissibility. [[35]](#footnote-36)
			2. Procedures for exchange of exhibits (whether electronic or in binders) beforehand, which could allow for pre-marking exhibits (unless real-time marking and/or stamping is available). [[36]](#footnote-37)
			3. Procedures for exchange of objections beforehand.[[37]](#footnote-38)
			4. Procedures for uploading of electronic exhibits to platform beforehand (*e.g.*, set forth party responsible (court or litigant); when; procedures for quality control checks; who will have access; procedure for raising concerns, *etc.*).
			5. Procedures for handling exhibits for cross-examination and/or impeachment (*e.g.*, keep in sealed envelope and require witness to open on screen, email or file transfer file in the moment, shared folder on shared file drive, *etc.*). [[38]](#footnote-39)
			6. Procedures when true “original” documents are necessary.[[39]](#footnote-40)
			7. Procedures for use of depositions.[[40]](#footnote-41)
			8. Exhibit Requirements.
				1. Document formatting requirements (*e.g.*, whether only pdfs; each exhibit accessible as an individual document, *etc.*).
				2. Whether hardcopy backups are necessary.
				3. Procedure for handling non-conforming documents and physical objects (*e.g.*, emailing large excel spreadsheets that do not pdf well).[[41]](#footnote-42)
				4. Whether technology can support audio or video files as exhibits.
				5. Standards for file naming convention (*e.g.*, ease of navigation; uploading requirements (need to avoid certain characters); fact that exhibit name will be publicized to witness/court/opposing counsel).
		3. Hearing Guidelines for Facilitating Presentation of Exhibits (*e.g.*, submission to the court via email or Dropbox to be marked / logged beforehand).
			1. Determine party responsible for controlling the exhibits (*e.g.*, selecting it, displaying it, marking it up, navigating through pages, etc.), and whether handing control over to another person (*e.g.*, witness) is possible or necessary.
			2. Procedures for documents created during testimony.[[42]](#footnote-43)
	4. **Presenting Testimony.**
		1. Legal / Court Standard for Presentation of Testimony.
		2. Pre-Hearing Guidelines.
			1. Before hearing, determine order of witnesses and when witnesses should make themselves available and how (*e.g.*, witnesses to join a “waiting room” in advance and court to control admission).
			2. Whether written testimony is preferable under the circumstances.
		3. Guidelines for Presentation of Testimony.
			1. Role of the Court.
				1. Witness affirmation / oath. [[43]](#footnote-44)
				2. Instruct the witness regarding what to do in the event of a disconnection or other technical failure; and (ii) the impermissibility of any unauthorized observers or recording of the hearing
				3. Court controls when witnesses will be joined.
			2. Protecting the integrity of the examination.[[44]](#footnote-45)
				1. At any time, Court may ask a witness to orient their webcam to provide a 360-degree view of the remote venue to confirm that no unauthorized persons are present.
				2. Counsel may not suggest answers, make gesturers, or otherwise coach a witness or a party, whether from on or off camera.
				3. Witnesses, including their faces, must be clearly visible while testifying. To the extent possible, a witness’s webcam should be positioned at face level, relatively close to the witness (*e.g.*, by positioning a laptop on a stack of books).[[45]](#footnote-46)
				4. Witnesses should speak directly to the camera while testifying and avoid making quick movements.
				5. Consider whether any procedural directions should be made regarding the (i) exclusion or sequestration of witnesses; (ii) communications with witnesses about the hearing prior to their testimony; and/or (iii) communications with witnesses during any breaks in testimony.
			3. Displaying exhibits and witness statements for witnesses.[[46]](#footnote-47)
			4. Consider whether additional directions are necessary to account for use of an interpreter.
	5. **Private Communications. [[47]](#footnote-48)**
		1. Co-Counsel Communications.
		2. Attorney / Client Communications.[[48]](#footnote-49)
			1. Legal Standard.
			2. Facilitating and Protecting Attorney / Client Communications.

Procedure (*e.g.*,use of “breakout rooms” in Zoom).

When participants will return / how breakout rooms will be closed.

* + - 1. Recording procedures.
		1. Sidebars.
1. **Court Business Processes in Support of Virtual Courtroom.[[49]](#footnote-50)**
	1. **Electronic Filing.**
	2. **Electronic Signatures** (*e.g.*, who is permitted to electronically sign, including for judge, and when electronic signatures are authorized).[[50]](#footnote-51)

**APPENDIX A**

1. *See, e.g.*, [CPR’s Annotated Model Procedural Order for Remote Video Arbitration Proceedings](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) (“CPR’s Annotated Model”), Section (“Sec.”) E (discussing desirability of stipulation by parties regarding use of remote hearings, the likely limits of such a stipulation in precluding parties from the challenging manner in which such proceedings were conducted, and the importance of vigilant monitoring by the Court to ensure no party experiences prejudice during the hearing); [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf) (“Michigan Guidelines”), Sec. A (1)-(2) (discussing standard and best practices for confirming participants’ consent to participate in remote hearing); Am. College of Trial Lawyers, Interim Guidelines on Conducting Nonjury Trials by Use of Remote Video, attached as **Appendix A**, ¶¶ 16-18. [↑](#footnote-ref-2)
2. *See, e.g.*, [ICCA-NYC Bar-CPR Cybersecurity Protocol for International Arbitration (2020](http://documents.nycbar.org/files/ICCA-NYC-Bar-CPR-Cybersecurity-Protocol-for-International-Arbitration-Electronic-Version.pdf)) for guidance about whether use of a virtual platform is reasonable under the circumstances. [↑](#footnote-ref-3)
3. *See, e.g.*, [CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.), Sec. A(1) (describing considerations for selection of an appropriate platform). [↑](#footnote-ref-4)
4. *See, e.g.*,[CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.), Sec. A(2)-(3) (describing options for remote video support, including cost division); Appendix A, ¶ 2 (“The Plan should identify the remote video platform and the identity of the court’s employee who will be (a) available to answer questions about how the platform works; and (b) responsible for managing the remote video component of the trial.”). [↑](#footnote-ref-5)
5. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. A(5) (setting forth suggested practices for giving notice). [↑](#footnote-ref-6)
6. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. A(5), Sec. C (discussing the use of YouTube to stream hearings); [Santa Clara Superior Court](http://www.scscourt.org/general_info/contact/pubaccess_phones.shtml) has set up public access phone lines. [↑](#footnote-ref-7)
7. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. A(4), D(2) (setting forth best practices to ensure security). [↑](#footnote-ref-8)
8. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. A(3). [↑](#footnote-ref-9)
9. *See, e.g.*, [CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec. C(7) (confidentiality and security measures); Sec. (C)(8) (prohibition on recording). [↑](#footnote-ref-10)
10. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. A(2) (describing various considerations for creation of requisite record). [↑](#footnote-ref-11)
11. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. E. [↑](#footnote-ref-12)
12. *See, e.g.*, [Michigan Trial Court Standards for Courtroom Technology](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/ct_stds.pdf#page=5). [↑](#footnote-ref-13)
13. *See, e.g.*,Appendix A, ¶ 4. [↑](#footnote-ref-14)
14. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. E. [↑](#footnote-ref-15)
15. *See, e.g.*, [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf), p. 9 (“If a recording or transcript will be stored in the Zoom cloud, the Order should: (i) provide that it will be password-protected and available only to the Court (see https://zoom.us/docs/doc/Zoom-Security-White-Paper.pdf); and (ii) give directions regarding post-hearing download and distribution of the transcript by the Court and for subsequent deletion of the file from the Zoom cloud.”). This draft order was published in Transnational Dispute Management (https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf). [↑](#footnote-ref-16)
16. *See, e.g.*,Appendix A, ¶ 3 (“The Plan should include (a) a time for starting the trial; (b) an earlier time for all counsel and video manager to be on-line and on-camera so that any technology issues can be identified and corrected before the official start time for the proceedings; and (c) instructions from the court concerning frequency and timing of breaks in testimony.”). [↑](#footnote-ref-17)
17. *See, e.g.*, [CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.), Sec. (C)(2). [↑](#footnote-ref-18)
18. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. G (setting forth procedures for ensuring participants can access meeting where Zoom ID is not publicly posted). [↑](#footnote-ref-19)
19. *See, e.g.*, [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf) (“If some participants expect to be in the same room, this should be raised at the pre-hearing conference so that any related concerns may be discussed and addressed and appropriate directions may be given regarding the positioning of cameras on each participant, avoiding audio feedback from the use of multiple devices, etc.”); [CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec. C(6) (“At the outset of the proceeding each Participant shall identify any other persons present at the Participant’s location. Each Participant has an ongoing obligation to alert the Tribunal and other Parties if any additional person joins the Participant, and shall represent at the beginning and end of each session that the Participant has fully disclosed all persons who have or had access to the proceeding or any portion of it. The Tribunal may request any Participant to use the Participant’s webcam to display on the screen the full extent of the room in which the Participant is located.”). [↑](#footnote-ref-20)
20. *See, e.g.*, [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf)¶ 8-9; *see also* [CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec. A(3)(B)(1)-(2) (discussing allocation of responsibilities and other matters related to use and testing of the proper equipment). [↑](#footnote-ref-21)
21. *See, e.g.*, [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf) ¶ 11 (setting forth specific language for requirement that parties test platform with witnesses); *see also* [CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec. A(3)(B)(4) (discussing procedures for test session). [↑](#footnote-ref-22)
22. *See, e.g.*,[CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec A(3)(B) (discussing in detail considerations for technological set up and procedures for ensuring a smooth hearing, including use of multiple screens, headphones with built-in microphones, reliable internet, use of virtual backgrounds, location and positioning of camera, *etc.*). [↑](#footnote-ref-23)
23. *See, e.g.*,[CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec A(3)(B)(3). [↑](#footnote-ref-24)
24. *See, e.g.*, [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf) ¶ 13 (“To safeguard the privacy of the Zoom hearing, no participant shall join from a public setting or use unsecured, public wifi. Consideration may also be given to connecting through an enterprise-grade virtual private network. [*Note that not all participants will have ready access to an enterprise-grade VPN and that use of a VPN could slow down a connection and interfere with Zoom performance.*]”). [↑](#footnote-ref-25)
25. *See, e.g.*,[CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec A(3)(B)(6). [↑](#footnote-ref-26)
26. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. D (setting forth steps for troubleshooting audio echo); [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf) ¶ 55-56 (for example, “In the event that a participant is disconnected from the videoconference or experiences some other technical failure and connection cannot be re-established within approximately [5-minutes]: (1) the Court may take steps to “pause” the hearing, which may include moving participants into the virtual Waiting Room or one or more separate Break-Out Rooms; (2) the participant suffering from technical failure should “reply all” to the Zoom hearing invitation circulated by the Court and monitor e-mail for any further instructions from the Court; and, (3) in the event the participant suffering from technical failure is unable to reach the Court by e-mail, they should call the clerk. If the Court deems it unfair to any Party to continue the Zoom hearing because of a technical failure, the Court may terminate the videoconference at any time and take such other steps as may be necessary to ensure the fairness and integrity of the proceedings.”); *see also* [CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec A(3)(C)(4), (5) (discussing where termination of proceeding may be appropriate); Appendix A, ¶ 10. [↑](#footnote-ref-27)
27. *See, e.g.*,[CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.) at Sec A(3)(C)(1). [↑](#footnote-ref-28)
28. *See, e.g.*,[CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.), Sec A(3)(C)(3) (“The proceeding shall be deemed to take place at the place of arbitration. The Tribunal may participate from a single location provided all members of the Tribunal are able to be present. No Party or counsel may be present at any location used by any member of the Tribunal. No ex parte communications may occur between any Party and any member of the Tribunal.”). [↑](#footnote-ref-29)
29. *See, e.g.*,Appendix A, ¶ 5(f). “Appearance on Camera: Each party or party’s representative and each attorney who has a speaking role in the trial should have an individual camera and should be “on camera” during the entire time court is in session. (In cases where multiple lawyers will be examining witnesses or otherwise addressing the court, the Plan should address which lawyers will be “on camera” on each day or for each segment of the trial). Absent sufficient evidence to the contrary, each party and each lawyer who is “on camera” is deemed to have heard and seen all proceedings as if they were conducted in a traditional courtroom. Each person (including each witness) who will be appearing on camera during the trial should be required to share with each other participant and the court the cell or telephone number where they can be reached during the course of the trial. Likewise, every person (including every witness) appearing on camera should be required to keep the telephone near them during the time he or she in on camera.” [↑](#footnote-ref-30)
30. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. D (setting forth procedures for ensuring clear record, including use of gallery view, advising parties to speak slowly and to wait until prompted, describing Zoom features court can and should use to control hearing, discussing removal of disruptive participants, *etc.*). [↑](#footnote-ref-31)
31. *See, e.g.*,Appendix A, ¶¶ 11, 15. [↑](#footnote-ref-32)
32. *See, e.g.*,Appendix A, ¶ 8. [↑](#footnote-ref-33)
33. *See, e.g.*,[CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.), Sec. B (“No Participant (other than the Tribunal, Tribunal secretary, or CPR) may substitute a ‘virtual background’ for the actual room in which the Participant is located without express approval of the Tribunal.”). [↑](#footnote-ref-34)
34. *See, e.g.*,Appendix A, ¶ 5(d). [↑](#footnote-ref-35)
35. *See, e.g.*,[CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.), Sec. D(1)-(2) (discussing, in detail, various procedures for ensuring participant and witness access to exhibits); [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. F (setting forth procedures for exhibits). [↑](#footnote-ref-36)
36. *See, e.g.*,[Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf) ¶ 17 (setting forth that no new exhibits shall be admitted at the hearing, except where necessary for the introduction of impeachment evidence); Appendix A, ¶ 5(a)-(b). [↑](#footnote-ref-37)
37. *See, e.g.*, [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf) ¶ 16 (requiring that exhibits shall be deemed admissible and authentic unless an objection is stated to a specific exhibit with brief reasons by a specific date, following which the Court will consider such further directions as may be appropriate). [↑](#footnote-ref-38)
38. *See, e.g.*,Appendix A, ¶ 5(f). [↑](#footnote-ref-39)
39. *See, e.g.*,Appendix A, ¶ 5(g). [↑](#footnote-ref-40)
40. *See, e.g.*,Appendix A, ¶ 5(g). [↑](#footnote-ref-41)
41. *See, e.g.*,Appendix A, ¶ 5(h). [↑](#footnote-ref-42)
42. *See, e.g.*,Appendix A, ¶ 5(e). [↑](#footnote-ref-43)
43. *See, e.g.*, [CPR’s Annotated Model](https://www.cpradr.org/resource-center/protocols-guidelines/model-procedure-order-remote-video-arbitration-proceedings#:~:text=NEW%3A%20CPR's%20Annotated%20Model%20Procedural%20Order%20for%20Remote%20Video%20Arbitration,to%20remote%20video%20arbitration%20proceedings.), Sec. D(3)-(4) (discussing testimonial safeguards and possibility of telephonic testimony); [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf) ¶ 36 (discussing contents of witness oath); Appendix A, ¶ 7 (setting forth matters to consider for witness oath). [↑](#footnote-ref-44)
44. *See* Footnote 33. [↑](#footnote-ref-45)
45. *See, e.g.*,Appendix A, ¶ 9. [↑](#footnote-ref-46)
46. [Draft Zoom Order](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Cohen%20Draft%20Zoom%20Hearing%20Order%20May%202020.pdf) ¶ 42 (consider, *inter alia*, (i) Will counsel use screensharing function (in which case participants may find it useful to use more than one screen during the hearing) and/or will witnesses be mailed or couriered hard copies? (ii) If hard copies are to be provided, should they be sent to witnesses in sealed envelopes that can be opened on camera, in order to verify that they are clean, unannotated documents? (iii) In addition or in the alternative, should the Court specify that it may ask a witness to display the set of exhibits and/or witness statement(s) at any time in order to verify that the documents do not bear any annotations? (iv) Should the Court specify that witness testimony shall not be aided by notes?). [↑](#footnote-ref-47)
47. *See, e.g.*,Appendix A, ¶¶ 13-14. [↑](#footnote-ref-48)
48. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. B(1) (“Breakout rooms’ will not be audio or video recorded under certain circumstances. If the meeting is being cloud recorded (recommended), it will only record the main room, regardless of what room the meeting host is in. If local recording is being used (not recommended), it will record the room the participant who is recording is in. The hose can set a predetermined amount of time and bring them back to the Zoom Meeting. If the host does not want to put a time constrain on the “breakout room,” the hose can send a time warning to the breakout room participants to notify them that they should wrap up. If selected as a ‘breakout room’ option, participants in the ‘breakout room’ can rejoin the hearing when they are done meeting.”). [↑](#footnote-ref-49)
49. *See, e.g.*, [Michigan Guidelines](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf), Sec. D (setting forth procedures for ensuring clear record). [↑](#footnote-ref-50)
50. *See* Electronic Signatures in Global and National Commerce (ESIGN) Act, 15 U.S.C. § 7001 et seq.; Uniform Electronic Transactions Act (1999). [↑](#footnote-ref-51)