



VIDEO ARBITRATION PROTOCOLS AND PROCEDURES

The following protocols and procedures have been adopted by Henning Mediation & Arbitration Service, Inc. (“HMA”) for the conduct of video arbitrations. These protocols and procedures are a supplement to published HMA Rules for Arbitration.

Counsel must provide their clients, witnesses, and any retained court reporter with a copy of these Protocols and Procedures to prepare them for participation in the arbitration hearing. Counsel must also provide them with the Zoom meeting invitation to enable them to connect to the arbitration hearing, which will be sent to counsel at a later date by email.

Video Platform

HMA will conduct video arbitrations utilizing the Zoom platform. All counsel, parties and witnesses that will be in separate locations should download the free client version of Zoom¹. Counsel are strongly encouraged to become familiar with the basic features of the Zoom software such as the ability to mute, hand raise and screen share.

System Requirements

Each participant – counsel, parties and witnesses – will need a device with camera and audio capability and a stable internet connection capable of streaming audio and video via the Zoom platform. Headphones or earbuds are perfectly acceptable to improve audio. While cell phones can work as a Zoom device, they are highly discouraged.

Location Requirements

During the arbitration hearing all participants must be able to see and hear each other. To ensure that you can be seen clearly, there needs to be adequate lighting, preferably positioned in front of you. Back lighting will cause the face to be obscured. It is best to have a neutral, non-distracting background. Participants must have a private, quiet location where they will not be disturbed during the hearing. The camera should be positioned at, or just above, eye level.

Commencement of Arbitration Sessions

Parties and counsel should log on to a daily hearing session at least ten minutes in advance of announced start time. Witnesses should log on at least ten minutes in advance of a scheduled appearance time. Advance log in will not apply during breaks since the Zoom sessions will remain active.

On logging in each day scheduled for arbitration hearings, counsel and parties will be in a virtual “Waiting Room.” An HMA host will individually move each counsel and party (or party representative) to the “Main Session” room where they will be assigned their respective private “Breakout Rooms.” When all are present the Arbitrator or an HMA host will move individuals into a joint hearing room. Upon joining the meeting, witnesses will also be placed in a “Waiting Room” until their scheduled testimony.

Conduct During Hearings/Professionalism

Virtual hearings which may find parties and their counsel in different physical locations, including homes and home offices, require new and heightened considerations of professionalism.

- During hearing sessions parties and counsel should conduct themselves in the same manner as if in a courtroom – remain seated, no moving around, no audio interruption except by counsel to make objections per the process set out below.
- Video hearings require increased diligence to allow witnesses to fully answer questions. Making a record is a difficult process for a court reporter under any circumstances but interruptions during video sessions result in audio cacophony. All participants should speak toward the computer speaker to

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reduce the possibility of missed words. Microphones should be muted by every person who is not speaking.

- Witnesses under examination shall be subject to the same rules as an in-person hearing - no communication by any means other than counsel conducting the examination. Witnesses may not consult with anyone during testimony, and they may not consult documents that are not in the record, or about which they are not being questioned irrespective that the document may be in the record.
- No person shall be present during the hearing except for disclosed participants. At the outset of the proceeding each participant shall identify any other persons present at the participant's location. Counsel will represent that anyone present in a room with a party or witness during the hearing is on camera at all times.
- The arbitration hearing is a confidential proceeding and may not be recorded by counsel, the parties, or witnesses.

Documents

Counsel shall provide Exhibits to be used during the hearing to the Arbitrator per case management order or the arbitrator's instruction. Counsel shall provide Exhibits to be used during witness examination to any witness at a remote location in advance of the witness' appearance with clear instructions as to whether the material may or may not be viewed in advance of hearing testimony. If the instructions on the envelope/container state that it may not be opened until examination of the witness at the hearing, the witness will open it at the direction of counsel conducting the examination while being viewed by counsel and the arbitrator. The envelope containing the documents should be clearly marked as "Direct Examination" or "Cross Examination."

Counsel are encouraged to consider utilization of the "screen share" function on the Zoom platform during witness examination and argument when specific provisions of a document are under consideration.

Witness Sequestration

Witnesses will be sequestered either in their private "Waiting Room" or a separate "Breakout Room" by an HMA host upon logging in and during breaks in an examination.

Objections

Counsel wishing to make an objection during a witness examination should simply raise a hand or use the "hand raise" feature on the Zoom tool bar. The Arbitrator will stop the examination to inquire regarding the basis for the objection. The Arbitrator will have the discretion to move counsel and any court reporter to a separate room for bench conferences. Counsel are reminded that rules of evidence are significantly relaxed in arbitration.

Emergency Notifications

At the beginning of the arbitration hearing the Arbitrator will provide the participants with a phone number so that any participant who has temporarily lost an adequate connection to the Zoom platform may promptly notify the Arbitrator of that event. An HMA employee will be available to provide technical support, if needed, during the hearing.

1 – Zoom client can be downloaded from <https://zoom.us/>