

OFFICE OF ATTORNEY ETHICS

OF THE

SUPREME COURT OF NEW JERSEY

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October 13, 2020

**Re: DIRECTOR'S SECOND MEMORANDUM ON REMOTE HEARINGS  
and OAE REMOTE HEARINGS MANUAL (2d Ed.)**

Dear Special Masters, District Ethics Committee Members and Officers, and OAE Ethics Counsel:

On June 19, 2020, I had issued a first memorandum setting forth procedures for virtual hearings, following from the orders and directives of the New Jersey Supreme Court for the resumption of hearings in attorney disciplinary cases. On July 24, 2020, the OAE had issued the *Office of Attorney Ethics Manual on Conducting Virtual Remote Proceedings* (the "*OAE Remote Hearings Manual*"), as a resource for the volunteers and staff assigned to such hearings, and for the parties in those matters. Since that time, the Court has issued additional orders and directives that apply to disciplinary proceedings.

The OAE is issuing the Director's second memorandum and the second edition of the *OAE Remote Hearings Manual*, to provide further guidance on the procedures to be implemented for virtual hearings during the COVID-19 pandemic. Both of these resources are attached here.

All DEC officers and members, including all who serve on DEC Hearing Panels, and all Special Ethics Masters, are on continuing notice of their obligation to comply with these directions. See R. 1:20-6(a)(4)(D). All presiders must make sure that they have conducted one or more Case Management Conferences (after June 19, 2020) to address the relevant issues, and that they have issued Case Management Orders following from those conferences. See Appendix H (templates for Case Management Orders); R. 1:20-5(b). All presiders are on continuing notice that no hearing can commence until all prehearing issues will have been addressed and resolved by the presider. In scheduling hearing dates, the presider and the parties are expected to have considered and factored in the time that it will take to submit and to resolve all prehearing or *in limine* motions, objections, and/or other applications. The presider should issue a ruling, either in the form of a written decision or a Case Management Order, or other form of Order, setting forth the reasons upon which the presider has based the decision as to each and all of the parties' prehearing motions, objections, and/or applications. All hearings must conform with the directions set forth in the two OAE memoranda.

Very truly yours,

*Charles Centinaro*  
Charles Centinaro

Attachments: OAE Director's Second Memorandum, Oct. 13, 2020  
*OAE Remote Hearings Manual* (2d Ed.), with Appendix A to Appendix K (.pdf)  
Editable **Word** versions of **Appendix H** (templates for Case Management Orders),  
**Appendix J** (templates for opening and closing procedures for Hearing Panel  
Chairs), and **Appendix K** (templates for opening and closing procedures for  
Special Ethics Masters)

# **Office of Attorney Ethics Manual on Conducting Virtual Remote Proceedings**



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Office of Attorney Ethics  
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**Second Edition**

Charles Centinaro, Director

October 13, 2020

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## **1. Introduction**

This manual is designed to assist the volunteer members of the District Ethics Committees (DECs) and the District Fee Arbitration Committees (DFACs), as well as the presiders at attorney disciplinary and fee arbitration hearings, and the professional staff at the Office of Attorney Ethics (OAE), in fulfilling the obligation of the disciplinary system to conduct disciplinary and fee arbitration hearings consistent with the Court Rules and the Omnibus Orders of the Supreme Court arising from the COVID-19 pandemic.

Every hearing, trial or proceeding is unique. This manual cannot and does not cover every possible issue or circumstance that may arise. This manual addresses the basic responsibilities of the fact-finder, presenter, and OAE administrative staff with regard to the conduct of pre-trial events, and conducting a virtual disciplinary hearing. It also addresses issues relating to fee arbitration proceedings conducted remotely. Moreover, the manual will introduce the parties to the basic features of Zoom -- the software to be utilized for many of the initial virtual hearings -- and will introduce best practices to ensure the effective and fair disposition of matters in a virtual setting. Please be advised these procedures may be amended as circumstances change with regard to the COVID-19 pandemic.

## **2. Mandate of the Court that No Ethics or Fee Arbitration Hearing May Be Conducted In-Person Until Further Order of the Court**

The Omnibus Orders of the Supreme Court addressing the need for hearings to be conducted only remotely, using virtual formats, are included in full in **Appendix A**. The individual Orders, and where they appear in Appendix A, are listed in the Table of Contents at the beginning of this Manual (pages iii to v). The Court Orders make clear that no disciplinary hearing or fee arbitration hearing can be conducted in-person at the present time. The two memoranda of the OAE Director included in **Appendix B, Parts 1 and 2**, further explain how the Court Orders and directives make clear that no hearing in an attorney ethics or fee case can be conducted in-person at the present time, and until the Court shall direct otherwise.

### 3. General Procedures for Virtual Disciplinary Hearings

#### a. Director's Memorandum of June 19, 2020 to the Special Ethics Masters and Hearing Panel Chairs

Hearing Panel Chairs and Special Ethics Masters need to be fully familiar with the steps and procedures laid out in the June 19, 2020 Memorandum from OAE Director Charles Centinaro, entitled "Procedures for the Recommencement of Hearings before the District Ethics Committee Hearing Panels and Special Ethics Masters via Video or Phone." (June 19 Director's Memo). The memorandum is included in **Appendix B, Part 1**. The version addressed to Hearing Panel Chairs is at pages **B1 to B9** of Exhibit B; the version addressed to the Special Ethics Masters is at pages **B10 to B18** of Exhibit B.

The June 19 Director's Memo lays out – and puts the parties and the presider on notice of – the following:

1. The Court Orders providing the authority and the direction for the presiders to proceed only by remote technology (Zoom, Teams, or phone), and only through virtual hearings, with no hearings to be conducted in-person unless and until the Court shall authorize such hearings to proceed for attorney disciplinary matters;
2. The mandatory nature of the pre-hearing conference, which must be scheduled and conducted by the presider for all hearings which remained pending as of June 19, 2020;
3. The specific issues to be addressed at the pre-hearing conference;
4. The requirement that the presider should address and resolve all prehearing issues and applications before the hearing can commence, with a Case Management Order to be issued within seven days of when the pre-hearing conference was conducted;
5. The requirement that all issues relating to
  - a. the admissibility of evidence;
  - b. the marking, redaction, and preservation of evidence; and
  - c. the dissemination to the parties and to the hearing panel of the evidence,must be addressed and resolved at the pre-hearing conference or prior to the start of the hearing;
6. The requirement that the technology to be used at the hearing must be through the Judiciary's Zoom or Teams<sup>1</sup> account (or by phone, as allowed by the Supreme Court Orders), as moderated by OAE staff, with the parties on notice of that particular technology, and of the obligation borne by the individual party to become

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<sup>1</sup> At the present time, the OAE is using the Judiciary Zoom account (and not Teams) as the platform for attorney disciplinary hearings.



sufficiently familiar with the particular technology to be able to proceed on the hearing date, with the appropriate hardware and software in place;

7. The requirement that CourtSmart, as monitored by the DEC Unit of the OAE (Jan Vinegar: contact person; 609 403-7800, ext. 34172), be used for the official record of the proceedings (official record in audio, only);
8. The notice to be given to all who participate in or attend the hearing as to the obligation that they comply with Supreme Court guidelines for recording any part of the proceedings, and the penalty for unauthorized recording;
9. The mandate that the presider and parties must have in place protective orders where necessary or appropriate to “prohibit the disclosure of specific information to protect the interests of a grievant, witness, third party or respondent,” R. 1:20-9(h);
10. The mandate that the presider and parties must ensure (e.g., through redaction or sealing orders) that they preserve the confidentiality of all categories of information that must be protected against public disclosure, including, but not limited to the categories specified in paragraph 14 on pages 4 and 5 of the June 19 Director’s Memo (**B4-B5; B13-B14**);
11. The timeline for the events in the hearing stage, and the notice to be given by Court Rule to the parties and to the grievant;
12. The procedures for ensuring that the presenter has given adequate and timely notice to the grievant of the hearing;
13. The procedures to be followed with regard to protecting the right of the public to attend all public portions of the proceedings;
14. The obligation of each party to have notified the presider prior to the hearing of any issue relating to disability or language barriers as to the respondent or any witness that would need to be accommodated at the hearing;
15. The specifications for hardware and software for any case to proceed on Zoom.

### **b. Director’s Second Memorandum of October 13, 2020 to the Special Ethics Masters and Hearing Panel Chairs**

The OAE Director has issued a second memorandum on remote hearings, dated October 13, 2020, which all DEC officers and members, and all Special Ethics Masters and Hearing Panels, are required to follow. The memo appears at **Appendix B, Part 2**.

The second Director’s Memo lays out – and puts the parties and the presiders on notice of – the following:

1. The additional Orders and directives of the Supreme Court addressing how disciplinary hearings must be conducted during the present health emergency;

2. The procedures to be followed by presiders for case management or pre-hearing conferences, with templates provided (**Appendix H**) for such orders, and with the orders spelling out in detail for all participants (and the public) the procedures and policies in place for the hearing;
3. The specific steps taken by the OAE to implement the Court's directives that attorney disciplinary cases should proceed at present only through virtual technology (Zoom or phone), and guidelines for determining which cases should proceed before others (how the presider should assess the suitability of a particular case to be in the earliest group of cases for which hearing dates should be set, or whether additional pre-hearing conferences would be needed before the hearing may proceed);
4. The procedures relating to the Zoom Connection Test, which all presiders and parties must attend prior to the hearing date (see **Appendix G**);
5. The templates and resources made available by the OAE to presiders and parties, including the opening and closing remarks which the presiders should read into the record to open and close the hearing (**Appendix J and K**);
6. The additional steps to be taken by the presider and/or the parties to make sure that technical issues relating to the hearing will be anticipated and addressed before the hearing will proceed; and
7. A chart that addresses in summary form many of the issues that a presider may need to address before or during the remote hearing, with citation to legal resources relevant to the specific issues.

The parties and the presiders are alerted to pay particular attention to the *templates for the Case Management Orders* (**Appendix H, Parts 1 and 2**), which spell out in detail the procedures to be followed in hearings conducted on Zoom, for the benefit of the parties *and* the public. These Orders should be issued by presiders well in advance of the hearing date, and they would be part of the public record of the hearing. They memorialize why the proceedings are being conducted in the manner directed by the Supreme Court, and implemented by the presider for the specific hearing.

Because the Case Management Orders are so detailed, the introductory statements that the presider would otherwise need to give in detail on the record -- for the benefit of grievants and the public, in these public proceedings -- is accordingly shortened (as shown in the templates in **Appendix J** and **Appendix K**). Accordingly, it is recommended and expected that presiders will use the templates that appear as **Appendix H**, and either **Appendix J** (Hearing Panel Chairs) or **Appendix K** (Special Ethics Masters) during all hearings for the duration of the COVID-19 Pandemic, and until the Supreme Court authorizes the use of court facilities for in-person hearings.

### **c. Formality of the Proceedings, and Instructions for All Hearing Participants**

A remote hearing is a court proceeding and therefore an extension of the courtroom. Appropriate professional conduct, attire, and camera background are always required. The Special Master or Hearing Panel Chair has the same authority over the proceeding and the participants as if they were physically present in the courtroom. Participants are expected to behave with the same levels of courtesy and professionalism as at an in-person hearing.

As in an in-person disciplinary hearing, participants should speak one at a time. Participants must use the mute feature when not speaking, in order to avoid any potential background noise, and should disable audio notifications from other applications on their own devices and cell phones. Participants must always have their video cameras enabled unless designated to appear by phone.

Participants must use a private and quiet indoor room that will be free of interruption. Participants should place devices on a solid surface with the camera at eye level or slightly above eye level. Do not hold or carry devices and do not lay devices flat on a desk or tabletop.

Participants should be mindful of their surroundings and verify that their background is appropriate before joining the hearing. The presider should make sure that a party or witness is not attending a remote hearing while outdoors, in a vehicle, or in a public place. Those appearing on camera or who will be called to testify should be alerted to choose a solid, neutral background, if possible, and to check the lighting to ensure that the camera does not face a window, which can blind the camera and make the image look dark.

The OAE has made available a general instruction sheet (**Appendix E**) which should be provided to each witness called by the DEC presenter or the OAE prior to their testimony. This resource guide should also be provided to Respondent or Respondent's counsel for their use with their witnesses if they so choose.

### **d. Technology, and the Zoom Connection Test (Mandatory)**

In accord with the guidelines set in place by the Judiciary, remote attorney disciplinary hearings will be held via the video conferencing platform Zoom (<https://zoom.us>) or Microsoft Teams.<sup>2</sup> Parties are expected to prepare for the hearing by obtaining the necessary equipment and software well before the hearing begins. Whenever possible, participants should use computers, laptops, or tablets -- *not* mobile phones -- to attend a remote hearing. Participants must ensure that their bandwidth is adequate for video conferencing and should use an appropriately-cabled LAN, WiFi, or substantial LTE Mobile connection. (*Note*: Cabled network connections are preferred. Mobile data use may incur cellular carrier charges which are the responsibility of the remote participant.)

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<sup>2</sup> See footnote 1, above.

*Parties are responsible for their own technology* and must become familiar with Zoom's controls well before the hearing. The parties must also test their device's video, microphone, and speaker controls to ensure compatibility with the Zoom platform. The OAE can only provide limited support or assistance prior to or during the remote hearing. Directions for testing your device and networking prior to the proceeding can be found at <https://support.zoom.us/hc/en-us/articles/201362313-How-Do-I-Test-My-Video>. If you experience technical issues with your equipment, please consult Zoom training and support materials at <https://support.zoom.us/hc/en-us>.

The OAE has published a guide entitled, "The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing," which appears at **Appendix G** of this manual. All parties (presenter, respondent, and respondent's counsel), as well as the full hearing panel or the Special Ethics Master, are required to attend a Zoom Connection Test, which is conducted by OAE technical support staff. The purpose of the Zoom Connection Test is to make sure that all participants in the hearing will have tested out their capability to connect on Zoom through their equipment, software, and bandwidth during a practice Zoom session. It is recommended that all participants in the same proceeding should attend the same Zoom Connection Test, if that can be arranged, and each presider is expected to cover the scheduling of the Zoom Connection Test at the pre-hearing conference. Whenever possible, the participants should complete the Zoom Connection Test at least seven days before the scheduled hearing.

Jan Vinegar at the OAE is the coordinator of virtual hearings at the OAE, and she schedules Zoom Connection Tests (as well as hearings). Ms. Vinegar may be reached by email at both of the following addresses: [Janice.Vinegar@njcourts.gov](mailto:Janice.Vinegar@njcourts.gov); and OAE Mailbox [oea.mbx@njcourts.gov](mailto:oea.mbx@njcourts.gov). Please list the following in the subject line: "Zoom Test Scheduling for [name] hearing." Ms. Vinegar may be reached on her office line at 609 403-7800, ext. 34172. No Zoom Connection Test registration will be considered complete until the registrant will have received an email from the OAE confirming that the individual participant is registered for the session, and the OAE will send the invitation to the Zoom session (including log in information) to the specific participant prior to the scheduled session. The participants must remain onscreen for the duration of the Zoom Connection Test.

If the parties waive the opportunity to attend the Zoom Connection Test, the presider may deem that a waiver of any objections at the time of the hearings as to any technical matters that they had notice and opportunity to address in advance, but declined to do so. Prior to the date of the scheduled hearing, each party must provide the presider and Ms. Vinegar with a telephone number and an email address at which the party can be reached during the remote hearing, in the event telephonic contact during the remote hearing becomes necessary.

Prior to the hearing (usually at least two business days before), Ms. Vinegar will email the parties a Zoom link, which will give the parties access to the hearing for the duration of the entire proceeding. The email will also include a unique meeting identification number and password.

The parties must inform the presider of any witnesses whose testimony will be sought at the hearing, and the presenter must inform the presider of the contact information of any grievant, who has the right to view the proceedings. The presider would need to provide that list of names and email addresses to Jan Vinegar of the OAE, so that the OAE will send the Zoom invitation for the hearing to each individual recipient. Only the OAE may send the Zoom invitation, and the OAE will not send the Zoom invitation to the recipient unless authorized and asked by the presider. ***No unidentified participant will be admitted by the OAE Zoom moderator to the Zoom Connection Test or the hearing on Zoom.*** All participants in these proceedings must be identified.

The OAE has made available to the participants in the proceedings a 14-page instruction packet on using Zoom for disciplinary hearings. The instruction packet, entitled “How to Join and Participate in a Zoom Virtual Courtroom,” is included in these materials as **Appendix C**.

### **e. General Information Concerning Witnesses and Subpoenas**

Consistent with the Supreme Court’s Omnibus Orders and R. 1:20-7(i) and R. 1:20-6(c)(2)(A), all witnesses’ testimony shall be taken virtually until further notice. A subpoena issued for the appearance of a witness at a virtual court hearing shall clearly state that the witness will be required to appear from the remote location of their choice, provided the witness has: (i) a computer, smartphone, tablet, or other device with video conference capabilities (camera, microphone and monitor), (ii) free Zoom video conference software, (iii) an e-mail address, and (iv) internet service with sufficient broadband for a video conference.

The subpoena also shall instruct the witness that the witness must immediately contact the person requesting his or her appearance to provide an email address and telephone number where the witness can be reached during the scheduled virtual court hearing. It is the responsibility of the party requesting or issuing the subpoena to confirm the ability of each of their witnesses to participate in the hearing through remote technology.

If needed in the circumstances, it is the responsibility of the party requesting the issuance of the subpoena to make arrangements for the witness to appear at a location (remote; not in-person) having sufficient video conference or audio conference capabilities. It is also the responsibility of the person calling the witness to have instructed the witness to be sure to be located in an appropriate location at the time they are called to testify. It is expected, for example, that no witness will be walking or jogging while testifying, or walking a dog, or playing with children simultaneously, or traveling or even just sitting in a car or on public transportation. Unusual circumstances (such as a global health emergency) may present unusual challenges, but it is expected that the parties will have taken the appropriate and necessary steps ***prior to the hearing*** to make sure that the witnesses whom they intend to call will have been prepared properly as to all issues -- including those relating to technology, location, ambient noise, and surrounding circumstances and distractions -- that may arise at the time of their testimony.

Consistent with R. 1:20-6(c)(2)(A), all witnesses must testify under oath or affirmation, which should be administered by the presider. The party calling the witness should make sure that the witness has previously been provided with the information in **Appendix C** and

**Appendix E.** Presenters are encouraged to have prepared for the hearing using Zoom in advance of the hearing, and to have included the prospective witnesses in that preparation, to ensure each witness understands the technology and is prepared to appear via remote video.

#### **f. Self-Education on the Use of the Virtual Technology, Including Its Use with Regard to Exhibits in Remote Hearings**

As already noted, the instructions for using Zoom for attorney disciplinary proceedings are included as **Appendix C** in these materials. The requirement that the parties participate in the Zoom Connection Test has already been addressed above. In addition, the parties are expected to have availed themselves of the opportunity to test out the virtual platform to be used for the hearing prior to the start date of the hearing. They are also expected to have taken reasonable and timely steps on their own to make sure they are familiar with how to log in and participate in the hearing.

The parties are on notice of the need for them to determine well before the hearing date how they will use virtual technology with regard to their reliance on exhibits or any items of physical evidence during the hearing. The hearing should not stop for any party to become educated on what it means to “screen share.” If a party seeks to use such technology, or to use any means to allow a witness to view or review an exhibit, that party needs to have taken the appropriate steps to have gained that familiarity with the relevant technology prior to the hearing. Neither the OAE, the OAE staff Zoom moderator, IT support staff from the OAE, the presider, nor any other participant or attendee at the hearing will be able to assist a party who comes to the hearing unfamiliar with the relevant technology. The following information is intended to assist any party in undertaking the appropriate steps of self-education, prior to the hearing.

Remote hearings necessitate additional preparation for the effective use of exhibits. They also present unique opportunities for parties to literally see the same thing.

The OAE strongly encourages presiders to require all of the following *from both* parties, to be completed by a date certain, prior to the start of the hearing:

1. service of hard copy exhibits on the presider;
2. a complete and descriptive exhibit list of all those documents marked for identification, to include exhibit number, short narrative description of the content of the exhibit, and the specification of how many pages are contained in the exhibit (or the specific Bates numbers of the exhibit pages);
3. whenever possible, every page of a party’s exhibits should be Bates-stamped, or otherwise marked with page numbers. This means that, *in addition to* numbering

exhibits, parties should sequentially and continuously number the individual pages of their documents;<sup>3</sup> and

4. service of a .pdf of the Bates-stamped exhibit book upon the Special Master, Hearing Panel members, and both parties.

As noted above, parties should be liberal in their inclusion of marked exhibits (for identification) to avoid logistical difficulties during the hearing. It is easier to refrain from moving a document into evidence than to propose a document for consideration when the parties are miles apart.

*The presider will need the hardcopy set of all exhibits during the hearing*, since the presider will be responsible for maintaining the original hearing record, and providing that complete record physically, in document form, to the OAE at the time that the hearing report is issued. The presider may ask the parties, in addition, to provide copies of all exhibits in electronic form. Those issues should be addressed and resolved by the presider at the pre-hearing conference.

Remote hearing technology presents a unique *supplemental* opportunity to ensure that all parties and witnesses are literally “on the same page.” The parties will need to keep in mind that the witness may not be able physically to handle the exhibit, and the parties will need to have planned in advance how a witness will have access to an exhibit while testifying. By “presenting” or “sharing” an exhibit through virtual technology, one may show all present (the finder of fact; the parties; the witness; and any public viewers) individual pages of an exhibit, and thereby directly focus the group’s attention on particular words or images.

Use of this capability requires forethought and preparation. When planning to display evidence, think of the .pdf of your evidence as a separate evidence book that is seen simultaneously by all participants. **There can be no variation between physical and digital evidence books. Nor should any document be screen-shared which is not also physically marked for identification and/or evidence.**

Here are two helpful videos on how to share your evidence .pdf in Teams and Zoom:



Helpful video on Screen Sharing in Zoom:

<https://www.youtube.com/watch?v=YA6SGQIVmcA>



Helpful video on Screen Sharing in Teams:

<https://www.pei.com/portfolio/microsoft-teams-share-desktop-program/>.

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<sup>3</sup> Many photocopier machines can be programmed to Bates stamp existing hard copy documents through the page-numbering features of the particular copy machine. Additionally, there are software products available online (some at no cost) that apply Bates numbers to .pdf (scanned) documents

Please note that it is recommended that a party **only** share the individual program or window in which the evidence document appears to avoid indiscreet sharing of unrelated and/or confidential material.

The tactical decision of **when** to share your evidence on screen is separate from the issue of **how** to use technology to share your screen. Unless otherwise directed by the presider, screen sharing should be used only for documents which have already been admitted into evidence.

Do not wait until the time of the hearing to find out how to use screen-sharing features. The techniques are not complicated, but any attorney who seeks to use the techniques needs to be on notice of the obligation to have become familiar with the techniques **before – not at** – the hearing. The individual attorney needs to seek out training before the hearing, because neither the adverse party nor the presider will spend any time during the hearing educating a party who declined to undertake this technological self-education prior to the hearing. The OAE staff member moderating the hearing (on Zoom, Teams, and/or CourtSmart) will **not** be involved in how a party chooses to present their case, including any issues as to the publication or display of any exhibit or item of evidence.

Beneficial use of the screen sharing tool might work like this:

Presenter:	I am calling your attention to what has already been admitted into evidence as exhibit P-6. In particular, I am calling your attention to what has been pre-marked as Bates Stamp Number 00000452 which is the fourth page of exhibit P-6. At the top of that page appear the words “Green v. Gray Disbursement Sheet.”
	May I have the Panel Chair’s permission to share my screen to ensure that we are all looking at the same page together?
Chair:	Granted.
Presenter:	[shares screen]
	I am showing the fourth page of P-6 with Bates Stamp ending 452. Mr. Gray, are you able to see that document on your screen?
Witness:	Yes.
Presenter:	Please compare the screen to your physical exhibit book. Do they match?
Witness:	Yes.



Presenter:	Do you see any signatures on that page?
Witness:	Yes.
Presenter:	Do you recognize that signature?
Witness:	Yes, I recognize that signature as my own signature dated January 1, 2019.

While use of this tool is optional, one can quickly perceive how it may be useful to elicit stark visual testimony, for example, to have a witness confirm or deny applying a particular signature. Once that planned purpose has been served, the screen-sharer should return to the view of the participants' faces.

### **g. Hearing Templates for the Presider**

The OAE has provided to the presiders the Preliminary Remarks, to be read in full by the presider into the record at the start of the hearing (**Appendix J, Part 1** [Hearing Panel Chairs]; **Appendix K, Part 1** [Special Ethics Masters]), and the Closing Remarks, to be read into the record at the close of the hearing (**Appendix J, Part 2; Appendix K, Part 2**). These two sets of Remarks are important parts of the hearing record, because the presider will confirm formally at that time the information about what is or is not part of the hearing record. The presider must make sure, at the close of the hearing, that the presider has the original set of all hearing exhibits, which will have been marked into evidence. The presider will be responsible for maintaining and preserving the hearing record, so that it will be delivered intact to the OAE when the hearing panel issues its hearing report. The presider must also confirm on the record that the presider has completed the hearing Checklist (**Appendix J, Part 3; Appendix K, Part 3**), which must be provided to the OAE, along with the hearing record, when the hearing record is issued.

The OAE has also provided templates for Case Management Orders, which are recommended for use by the presiders to address by way of order all prehearing issues for virtual proceedings. The two Case Management Orders are printed in **Appendix H, Parts 1 and 2**.

### **h. Court Rules Regarding Hearings**

The **text of the Court Rules** relating to attorney discipline (R. 1:20) is available online on the NJ Judiciary website at <https://njcourts.gov/attorneys/assets/rules/r1-20.pdf?c=mQG>.

The OAE publication, "Selected Court Rules, Including on Attorney Discipline and Fee Arbitration [and] Rules; Rules of Professional Conduct" (revised as of May 9, 2019), is available in **Appendix F**.

Please see the OAE summary document on hearings entitled, “Issues Related to Hearings and Hearing Panels in Attorney Disciplinary Cases,” which provides a detailed overview of the Court Rules relating to hearings. That summary guide is available in **Appendix D** at **D1 to D36**. Appendix D also includes the Table of Contents of “Forms, Templates, and Basic Resources for DEC Members Assigned to Cases in the Hearing Stage” (**D37 to D44**). These forms are available on request (by Form Number, as listed on the table of contents) from the OAE (contact [Isabel.McGinty@NJCourts.gov](mailto:Isabel.McGinty@NJCourts.gov)).

## 4. General Procedures for Virtual Fee Arbitration Hearings

Remote Fee Arbitration Hearings for the District Fee Arbitration Committees (DFACs) are proceeding with more variation under a decentralized model, in which the technology utilized is provided by the particular volunteer DFAC Secretaries and volunteer DFAC Members in the local districts. Such variation is permitted because there is no need to make CourtSmart recordings of fee arbitration proceedings. Rule 1:20A-3b(2)(4) (“no stenographic or other similar record shall be made except in exceptional circumstances at the direction of the Board or the Director”).

Different DFACs have chosen to proceed with systems such as Teams, Zoom, or WebEx. These choices are driven entirely by the available resources adopted by the all-volunteer members of the DFACs. When there is no volunteer-provided software membership, DFAC Secretaries have utilized the free version of Zoom, which ends after 40 minutes. If necessary, the moderator (generally the DFAC Secretary) creates a second meeting when the first meeting has expired. Consistent with Rule 1:20-3(b)(4), the trier of fact may still accept testimony of a witness or party by telephone when no videoconferencing is available. Put another way, the advent of the COVID-19 pandemic is a “special circumstance” that places the discretion to accept telephone testimony into the hands of fee arbitration panel chairs.

Regardless of which platform is used, Notices of Hearing must explicitly state that the hearing is proceeding remotely and concisely explain how to join in to a remote proceeding.<sup>4</sup> Such notices should also direct the parties to complete their submissions by a date certain well in advance of the hearing. See R. 1:20A-3(b)(2) (“[n]othing in this section shall preclude the panel or arbitrator in its discretion from refusing to consider evidence offered by the attorney which would reasonably be expected to have been disclosed on the Attorney Fee Response”).

Although the Fee Arbitration Program strives to be inexpensive, confidential, and fast, it should not be informal. All participants must be mindful of their comportment, manner of dress, and backgrounds.

Likewise, it is essential that participants maintain confidentiality during virtual hearings in accordance with Rule 1:20A-5. Any panel chair noting the attendance of individuals whose presence has not been approved pursuant to that rule should stop the hearing from proceeding. Likewise, any panel chair noting that a participant is participating in his or her fee arbitration hearing in a public place should require that party to relocate to a private location before continuing.

As always, each Fee Arbitration Determination must memorialize the manner in which the Fee Arbitration Hearing was held. Likewise, each Fee Arbitration Determination should note any objection raised by either party to proceeding with a remote hearing. However, a party must raise more than a conceptual objection to remote fee arbitration proceedings. See generally,

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<sup>4</sup> For New Jersey Judiciary resources on how to join online hearings using Teams, Zoom, and Scopia click here: <https://njcourts.gov/attorneys/remote.html>.

“Notice and Order – Continuation of Remote Court Proceedings; Public Access; Sentencing” (April 20, 2020) (viewable at: <https://njcourts.gov/notices/2020/n200420a.pdf?c=L01>) (“The Order reinforces that most court events that can be conducted using video or phone options will proceed, even over the objection of an attorney or party”).

## 5. Contact Information for OAE Personnel

The email address for all OAE attorneys and other staff members consists of their first and last names, separated by a dot, followed by @NJCourts.gov. The main phone number for the OAE is 609 403-7800.

Any Hearing Panel Chair or Special Master who seeks to reserve a hearing date must first contact Jan Vinegar, the CourtSmart and Hearings Coordinator at the OAE. Ms. Vinegar will then proceed with all arrangements so the hearing date can be finalized. Ms. Vinegar may be contacted as follows: [Janice.Vinegar@NJCourts.gov](mailto:Janice.Vinegar@NJCourts.gov), phone 609 403-7800, ext. 34172

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