

FINRA Dispute Resolution Services Arbitrator Resource Guide for Virtual Hearings

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Introduction

The coronavirus disease 2019 (Covid-19) has increased the demand for effective virtual hearings to ensure that arbitration and mediation cases proceed without lengthy delays. Upon request of the parties or order of the Panel, FINRA Dispute Resolution Services is providing videoconferencing through the Zoom platform, accessible via finra.zoom.us. The Zoom platform has been tested and found to be a viable option for many parties and arbitrators.

FINRA Dispute Resolution Services is providing this Resource Guide to help arbitrators conduct effective virtual arbitration hearings via the Zoom platform.

Getting Started

What You Need

1. A desktop computer or laptop with a built-in camera (or a good quality external webcam) and microphone. Arbitrators are expected to have their cameras turned on for the entire duration of any Zoom prehearing conference and Zoom final evidentiary hearing, absent technical difficulties or extenuating circumstances. Arbitrators should have their cameras on while on the record. Arbitrators are welcome to turn off their cameras for breaks. If you have any questions about the Zoom hearing process, including any technology concerns, please contact your assigned case administrator.
2. If available:
 - a. A large screen is better, particularly for hearings with many participants.
 - b. Two monitors (or a single monitor and a laptop screen). This allows the virtual hearing participants to appear on one screen, while the other can be used for other purposes, such as viewing documents and taking notes.
 - c. If a desktop computer or laptop is unavailable, you may use an iPad, tablet or smartphone. However, FINRA discourages the use of iPads, tablets, and smartphones as they may limit your ability to view all Zoom participants and to fully utilize all Zoom platform features.
3. A high-speed internet connection. If available, a hardwired internet connection is preferable to a wireless internet connection.
4. A quiet, private location and neutral background. See **Effective Practices** for more information.
5. Notepad and pen as the screen you are using to participate in the virtual hearing may not be available for other purposes, such as taking notes or viewing documents through the DR Portal.

Additional Considerations for Virtual Hearings

Additional considerations that the Panel should be aware of when proceeding with virtual hearings include:

Fairness and Impartiality

1. The Zoom platform allows parties to present evidence and testimony, including direct and cross-examination of witnesses.

2. All persons in each videoconferencing location must be permitted to participate in the hearing and be clearly identified before the virtual hearing begins. See **Witnesses** below for more information.
3. Any relevant documents must be clearly identified, disclosed and provided to the Panel. Witness lists, exhibits, and other documents to be used during the virtual hearing, should be filed with DRS via the DR Portal for forwarding to the Panel at least 20 calendar days before the first scheduled hearing date. If the Panel wishes to receive hard copies of the exhibits, determine whether the hard copies should be sent directly to the Panel or to DRS staff for forwarding to the Panel and advise the parties of this in advance of the virtual hearing.
4. The Panel must postpone the virtual hearing until further notice if the Panel believes the virtual hearing will result in unfairness to any party.

Confidentiality and Security

FINRA has taken additional measures related to the security of virtual hearings held via Zoom. See **FINRA's Security Considerations** for more information.

In addition to FINRA's security measures, the Panel should:

1. Require that only the parties, party representatives, witnesses and other relevant individuals to the proceeding be permitted to participate in the virtual hearing.
2. Discourage the use of virtual backgrounds so that the Panel can clearly see the videoconference location and ensure that there are no unauthorized attendees.
3. Prohibit the recording of the virtual hearing (other than the official FINRA recording by the FINRA Host).

Technology Challenges

The seamless running of technology is vital to the success of a virtual hearing. Power outages and internet disconnections can limit the effectiveness of the videoconferencing platform. Accordingly, the Panel should have contingencies in place in the event the primary platform fails or otherwise becomes impractical to use. For example, if disconnected, a participant may dial-in to the hearing by telephone so that the parties and panel can discuss whether the hearing can proceed or should be postponed.

Preparing for the Virtual Hearing

FINRA Dispute Resolution Services provides training to neutrals on using Zoom and videoconferencing effective practices. See **Effective Practices** for more information.

Prior to a virtual hearing, FINRA Dispute Resolution Services will set up a Zoom "trial run" with the Panel to test the Panel's equipment, familiarize the Panel with the Zoom platform and ensure that the Panel understands the following functions:

- Overall Display
- Control Panel
- Participant List
- Muting/Unmuting
- Share Screen
- Passing Control
- Inviting a Participant
- Waiting Room/Breakout Rooms

- Locking the Hearing

During the "trial run," FINRA Dispute Resolution Services will:

1. Troubleshoot and assist to resolve any technical issues with the Panel's equipment.
2. Check the arbitrators' background and lighting conditions to ensure that they are appropriate for the virtual proceeding.
3. Discuss the responsibilities for hosting/co-hosting and recording.

Upon request, FINRA Dispute Resolution Services can also set up a Zoom "trial run" with the parties or party representatives. Note, however, that each party is responsible for setting up a "trial run" for its witnesses in advance of the virtual hearing.

Note to the Chairperson

Prior to the virtual hearing, the Chairperson may want to request that the parties provide a Virtual Hearing Participant List so that, on the day of the hearing, the Chairperson can ensure that only authorized individuals are admitted into the videoconference. The Virtual Hearing Participant List should provide the name, email address and phone number for each participant and should be submitted in addition to the witness list (which is required under Rules [12514\(b\)/13514\(b\)](#) of the Codes of Arbitration Procedure ("Codes")).

Commencing the Virtual Hearing

1. Prior to the commencement of the hearing:
 - a. The Panel should join the virtual hearing 15-30 minutes early to prepare, set up and discuss any technology or other issues.
 - b. The FINRA Case Administrator will be the Host for the virtual hearing, unless the Panel designates an arbitrator as the Host (see paragraph (c) below). The Host has access to additional functions such as recording, and managing participants, the breakout rooms and the waiting room.
 - c. If an arbitrator is comfortable with running the virtual hearing and wishes to do so, the Panel may designate that arbitrator as the co-host. The Host function can only be retained by FINRA staff or an arbitrator.
2. If an arbitrator chooses to be a co-host, FINRA staff will continue to be available during the virtual hearing for ongoing technical support. See **Technical Support** for more information.
3. At the commencement of the virtual hearing:
 - a. The Host will verify the participants as they are admitted into the videoconference and, as necessary, will set up breakout rooms (e.g. for executive sessions and for each represented party).
 - b. Once all participants have joined, the meeting will be locked to prevent any additional attendees from joining.
 - c. The Host will start the recording.

Chairperson's Opening

The Chairperson should add the following to his or her opening remarks:

1. Ask each participant to affirm that:

- a. No unauthorized individuals are present in each participant's videoconferencing location. The Chairperson may require participants to scan their videoconference locations with the camera to show that there are no unauthorized individuals in the room.
 - b. No one will record this virtual hearing (or any part of it) other than the official FINRA recording (per Rules [12606/13606](#) of the Codes), as controlled by the Host.
2. Advise that participants can share documents (e.g. exhibits) using the Share Screen feature, but that all documents must still be provided to the Panel in advance of the hearing in the previously designated format, including hardcopy if previously requested by the arbitrator.
 3. Advise the panel and parties to avoid sharing personal confidential information, unless such sharing is necessary for the proceedings.
 4. Create a back-up plan if a participant's power or internet is disconnected. For example, inform the parties that to get back into the videoconference, the participant can call or email the FINRA Case Administrator so that the Panel can be advised and a plan to resume the hearing can be made.

Recording the Virtual Hearing

FINRA records evidentiary and expungement virtual hearings in accordance with Rules [12606/13606](#) of the Codes. While both the audio and video of the virtual hearing is recorded, FINRA retains only the audio recording for the case file. Accordingly, the audio recording is the official FINRA recording under Rules [12606/13606](#) of the Codes. FINRA retains the recording of any evidentiary and expungement virtual hearings in accordance with FINRA's record retention obligations.

Upon the commencement of the evidentiary or expungement virtual hearing, the Host will:

1. Start the recording.
2. Clearly announce that the hearing is being recorded.

As with physical recorders, the Host should pause or stop the recording for breaks and remember to restart the recording upon return to session.

During the Virtual Hearing

Participant Etiquette

For the early part of the hearing, the Panel should ask that participants state their names before speaking so other participants can easily identify the speaker and to place themselves on mute unless they are speaking.

Breaks

Virtual hearings can be tiring. The Panel may want to consider allowing two shorter breaks in the morning and two shorter breaks in the afternoon.

Host Responsibilities

During the virtual hearing, the Host should:

1. Keep the participant list open and watch for participants who may be disconnected from the videoconference.
2. Monitor the waiting room.
3. Manage the virtual hearing by utilizing some of the following key features:
 - a. **Share Screen** – allows the Panel and parties to share documents (e.g. exhibits). Participants can also annotate documents if required (particularly helpful for witnesses).
 - b. **Breakout rooms** - for breaks, executive sessions with the Panel or to allow party representatives to convene with their clients.
4. Be aware of anyone who may need to join (e.g. witnesses) so that the videoconference can be unlocked to allow them access.

Witnesses

1. The Panel should advise party representatives to call their witnesses prior to the time that they need to testify so that they can be joined to the videoconference. The Host will need to unlock the videoconference to allow the witness entry.
2. The Panel may want to ask the witness to pan the room with the camera to show that no one else is present in the room.

Technical Support

The FINRA Case Administrator will be available during the virtual hearing to:

1. Control entry of the participants to the proceeding.
2. Facilitate the use of breakout rooms where required.
3. Troubleshoot any technical issues.

FINRA Dispute Resolution Services has trained staff to utilize the Zoom videoconferencing platform and has purchased Zoom Pro licenses for use in virtual hearings.

Effective Practices

The Panel should keep in mind the following effective practices for a successful virtual hearing:

Location and Background

1. Ensure your location is well-lit. Backlighting is not desirable.
2. Ensure that you and all parties have a neutral background free of clutter or any materials that are or may be distracting.

Audio Considerations

1. Ensure your location is quiet.
2. Mute your microphone when not speaking. This will avoid any background noise like construction, lawnmowers, barking dogs, televisions, etc. Be sure to turn your microphone back on before speaking.
3. If not muted, take notes quietly. If necessary, use pen and paper as opposed to using a keyboard.
4. Silence all other devices (e.g. cellphones/iPads).

Minimize Distractions

1. Position your camera at eye level. When a camera is angled too high or too low, it can be distracting. Also, ensure your computer is on a flat surface.
2. Turn off any pop-up computer notifications (e.g. emails) to prevent these from distracting you during the virtual hearing. This will also prevent notifications from appearing in the event you use the Share Screen function.
3. Close all windows other than Zoom, the DR Portal and any case-related documents — this helps with bandwidth and minimizes confusion/distraction.
4. Avoid multitasking. Reserve all outside activities, such as checking your cell phone or emails, for breaks or after the hearing session has concluded.

Dress and Etiquette

1. Always look professional and dress as if you are meeting in-person.
2. Do not turn off your video and always remain visible on camera to the parties during the virtual hearing. Don't walk around while on camera. If you need to leave the room, please announce it as you would if you were in-person.
3. Be conscious of your body language. Despite being on videoconference, the parties are still watching your engagement.
4. Do not eat during the virtual hearing. Ensure that enough breaks are provided accordingly.

FINRA's Security Considerations

FINRA implements the following security measures for all arbitrations and mediations conducted by Zoom:

- A unique, randomly-generated meeting ID;
- A unique, randomly-generated meeting password to be admitted to the meeting; and
- Use of the "waiting room feature" to ensure that only invited participants are admitted to the meeting.

In addition, FINRA-administered meetings are restricted to Zoom's US data centers.

For additional information on how Zoom maintains the security of its service, visit [Zoom's Privacy and Security Page](#) or consult [Zoom's Best Practices for Securing Your Zoom Meetings](#) or [Zoom's Security Whitepaper](#).

Technical Support and Resources

If you have further questions, you can contact your FINRA Case Administrator.

In addition, Zoom has some resources you may find helpful:

- For technical documentation or quick start videos: Visit the [Zoom Help Center](#)
- For free and interactive live training webinars on important topics hosted by Zoom experts: View [Live Trainings & Recordings](#)

There are a number of topic-specific [tutorials](#) on Zoom's website; the following are recommended for virtual hearings:

Zoom Meetings and Webinars

- Join a Meeting
- Meeting Controls
- Breakout Rooms
- Closed Captioning

Audio, Video and Sharing

- Recording a Zoom Meeting
- Joining and Configuring Audio and Video
- Sharing Your Screen

Disclaimers

FINRA notes that virtual hearings are conducted through Zoom, which is a third-party platform. The use of this platform for virtual hearings is subject to Zoom's terms and policies, for example: <https://zoom.us/privacy-and-legal>. FINRA arranges virtual hearings through Zoom for the Panel's and parties' convenience. FINRA does not endorse any one platform over another nor does FINRA guarantee the suitability or availability of any platform. Any concerns regarding the use of a third-party videoconferencing platform should be raised by copying correspondence to all parties in the case