



THE NEW YORK STATE ATTORNEY-CLIENT
FEE DISPUTE RESOLUTION PROGRAM

Starting up

Program administrators should poll their arbitrators to determine who is prepared to arbitrate remotely.

Technology

Note: The NYS UCS Division of Technology currently supports the Microsoft online platform Teams. Court employees may not initiate or schedule cases using Zoom, Webex, or any other online platform at this time. However, individual arbitrators, with secure professional versions of online platforms may offer these platforms to parties. Similarly, if Bar run programs have licenses for secure professional versions of online platforms, they may administer and schedule online hearings.

- Arbitrator, parties, witnesses, and counsel (All participants) must have a computer, laptop, tablet, or smartphone with a camera, microphone and speakers or headset.
- All security measures should be taken, including enabling a meeting password where applicable.
- All participants should use a secure password protected internet connection, not a public Wi-Fi connection.
- All participants should be in a private, quiet place and should try to limit visual distractions, including no use of virtual backgrounds without a clear need and approved by the arbitrator.

Pre-hearing considerations

Pre-hearing call. A pre-hearing call is not required, however, the arbitrator may hold one, to address use of the intended online platform and familiarize the parties with the online platform. Both parties must be on the call to avoid *ex parte* communication with the arbitrator.

Although a pre-hearing call is not required, the arbitrators should consider addressing the following in advance of the hearing:

- The timing and method of providing exhibits in advance to the parties, the arbitrator and, if applicable, the stenographer.
- Whether the parties plan to use a stenographer or if they plan to call witnesses. If so, the parties should provide contact information for each of such witnesses or stenographer to the arbitrator.

Many of the recommendations below can be addressed either on a pre-hearing call or when all participants join the scheduled online hearing:

- The arbitrator, or program administrator, and all parties and counsel may exchange back-up contact information prior to the call and include information on how to reconnect, in case the online hearing is disconnected, or other technical issues arise. This can be cell phone numbers or email addresses, and if appropriate, contact information for technology support should also be shared.
- The arbitrator may address document exchange and use of exhibits during the hearing with the parties, including the method of exchanging documents, e.g., email.
- The parties should discuss their plans for private discussions with counsel during the arbitration.
- The arbitrator should discuss with the parties the preferred method of receiving the award. The award may be emailed if the parties agree to having it emailed.
- The arbitrator may work through any technical issues using the online platform with the parties so that all participants can become familiar with the platform being used for the arbitration.
- The arbitrator, or the technical support person, should sign on prior to the scheduled time, should control the ability of the participants to enter the meeting, and when the parties and counsel, if any, are signed in, should allow them to enter the meeting.

The Remote Arbitration Hearing

Procedure

- Just as with in-person arbitrations, any issues concerning the remote arbitration process are within the sole discretion of the arbitrator and may not be appealed through the Part 137 program.
- The arbitrator should follow the same procedure as the arbitrator would if the hearing were in-person. The burden shall be on the attorney to prove the reasonableness of the fee by a preponderance of the evidence to present documentation of the work performed and the billing history. The client may then present his or her account of the services rendered and time expended. Witnesses may be called by the parties. The client shall have the right of final reply. See [Rule 137.7\(d\)](#)
- The arbitrator should administer oaths or affirmations to all parties present. If a witness will be added to the session, the arbitrator should administer the witness's oath when the witness is added to the session.
- At the end of the hearing, the arbitrator should explain how and when the award will be sent.
- When the proceeding is complete, the arbitrator should end the hearing and terminate the online call immediately as to all parties.

Recording the Hearing

- The arbitration may not be recorded other than by a stenographer unless permitted by the arbitrator. Unanimous consent by the parties is preferred but not necessary. For

example, if a party makes the request to record the hearing as an ADA accommodation, and the arbitrator grants the request, then the opposing party's consent is not necessary. Any personal or medical information presented by a party in making an ADA accommodation request may not be shared with other side and must be kept separate from the case file.

- If a non-stenographic recording is permitted, the arbitrator shall control the recording, using the recording mechanism of the online platform, and will ensure the entire hearing is recorded.
- [Section 137.10](#) Confidentiality states: All proceedings and hearings commenced and conducted in accordance with this Part, including all papers in the arbitration case file, shall be confidential, except to the extent necessary to take ancillary legal action with respect to a fee matter.
 - The arbitrator should remind parties that if a recording is made of the hearing, it is not useable in a subsequent court hearing.
 - No party or arbitrator who makes a recording shall disclose the recording except as required for administration by the local program in connection with a complaint about an arbitration.

Deliberating and Issuing the Award

- Deliberation by a panel of arbitrators should be held in a confidential online environment which cannot be viewed or heard by anyone other than the arbitrators.
- If a panel is issuing the award, the award may be signed in one or more counterparts, each of which shall constitute an original document, and when taken together, shall constitute a complete document.
- Digital/electronic signatures shall be deemed the equivalent of original signatures.