

MOAHR MTT Guide for Participating in Video Hearings Via *Zoom* Platform

This Guide is designed to provide direction for participating in and observing video hearings in contested cases pending before the Entire Tribunal of the Michigan Tax Tribunal (MTT).

A video hearing is a proper and permitted MTT proceeding conducted through electronic means rather than in a courtroom (i.e., in-person).¹ The usual rules, procedures, courtesies, and formalities applicable to an MTT courtroom hearing are applicable to an MTT video hearing and are expected to be complied with. The decision as to how a hearing will be conducted (i.e., electronic or in-person) will be decided by the MTT. In making such decisions, the MTT will consider issues such as the nature of the case; the technological facilities available to the parties; the number of witnesses to be called; the parties' ability to effectively participate in a video hearing (i.e., separate computers in separate rooms, etc.); and how best to uphold the interests of justice.²

In all video hearings, it is essential that a reliable and continuous audio and video connection is maintained with the judge and the participants (i.e., attorneys, agents, witnesses, and court reporter) to ensure the integrity of the record. All video hearings conducted in the Entire Tribunal shall be transcribed by the court reporter engaged by the parties, as provided in the order scheduling the hearing. Participants and observers (i.e., the viewing public) will be directed **not** to utilize the *Zoom* "chat function" for any purpose other than the authorized submission of documents and will be cautioned as follows:

Comments made by participants or observers utilizing the "chat function" will **not** be considered or included as part of the transcribed record of the hearing **and could result** in the removal of that participant or observer from the hearing for cause, which will be indicated in the record.

I. Video Conference Options

The MTT will be conducting video hearings through the *Zoom* platform, which allows invited participants and observers to join a video hearing using audio and video from a desktop, laptop, tablet, or smartphone. Although video hearings via *Zoom* are generally set up using email addresses, the MTT will be posting a link in the order scheduling the hearing as follows:

¹ See R 792.10121 and R 792.10201.

² Microphone quality differs from computer to computer and can also be impacted by connection issues and the use of separate computers in the same room (i.e., feedback, etc.). Two possible solutions to improve poor audio are the use of headsets or earbuds with microphones or the use of telephones. The use of telephones would be in conjunction with video streaming on the computer. A participant would utilize the provided telephone number and Conference ID to connect for audio purposes. Finally, the *Zoom* app allows you to test your audio connection prior to joining a hearing, as indicated below.

HEARING DATE:	September 17, 2020
HEARING TIME:	9:00 a.m.
ZOOM HEARING LINK:	https://zoom.us/j/95669123716 USA 8886363807 (US Toll Free) Conference code: 397342
PARTICIPANTS' GUIDE:	https://bit.ly/3gWLDJJ

If a hearing must be continued on a subsequent date, two separate hearing information tables may be included in the scheduling order or another scheduling order issued. The parties or their attorneys or agents are required to provide the “Zoom Hearing Link” to their participants so that they can “join” the hearing.

Open Meetings Act Compliance

To ensure compliance with the Open Meeting Act, the scheduling order for each hearing will include a “Zoom Hearing Link” that can be utilized by observers wishing to attend a hearing.³

The scheduling orders can be accessed through our website by clicking on the “Virtual Hearings” tab and the docket number of the applicable case.

Participants and observers who need assistance with speech or hearing issues may also participate in a video hearing by dialing 7-1-1 and using the Michigan Relay service. More information about this service may be found at https://www.michigan.gov/mpsc/0,9535,7-395-93308_93325_93425_94040_94041---,00.html. For other disability accommodations, please contact the MTT in advance of the hearing.

Note: Observers will be directed to turn off or mute their microphones to avoid interrupting the hearing. Observers will also be cautioned as follows:

If an observer does **not** turn off or mute their microphone **and repeatedly or intentionally interrupts** the hearing they will be removed from the hearing **for cause and denied** the ability to re-join the hearing. Said removal and the reason for that removal will be **noted on the record**.

II. How to Access the Zoom app

The downloading of the free **Zoom** app is required for participating in a **Zoom** hearing.

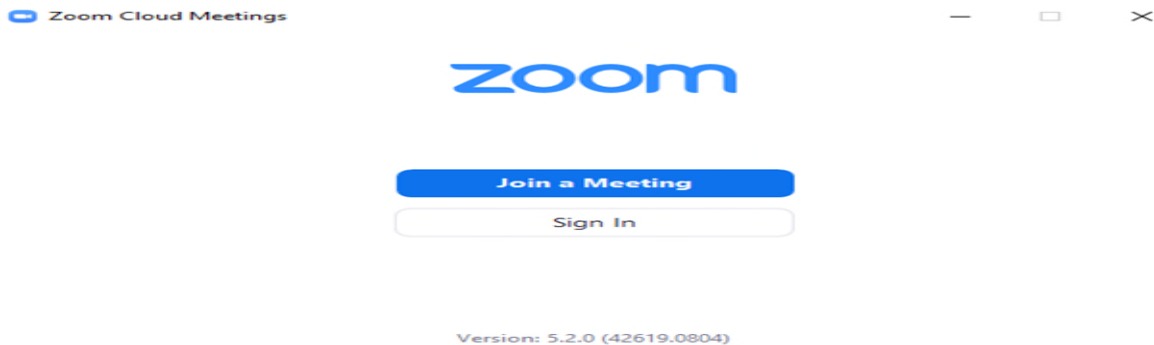
³ See MCL 15.264.

The app can be downloaded in advance of the hearing by going to <https://zoom.us/download> (the Zoom Download Center) and clicking on the “Download” button under “Zoom Client For Meetings.” The app will then download when you start your first **Zoom** meeting or MTT **Zoom** hearing.

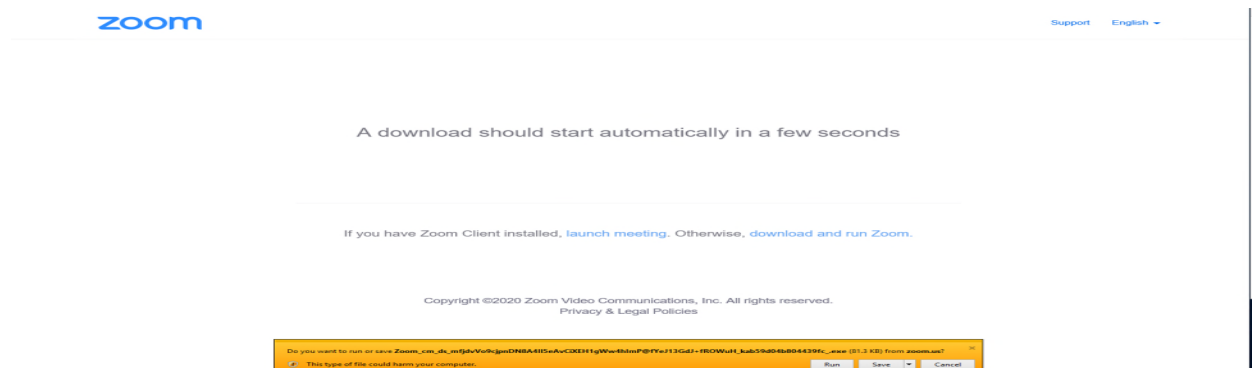
If the app is **not** downloaded in advance of the hearing, you will be asked to install the app after you click on the “Zoom Hearing Link,” as indicated below.

Joining a Video Hearing

To join a scheduled video hearing, you click the “Zoom Hearing Link” link in the order scheduling the hearing.⁴ After clicking the “Zoom Hearing Link,” you will be directed to the following page:

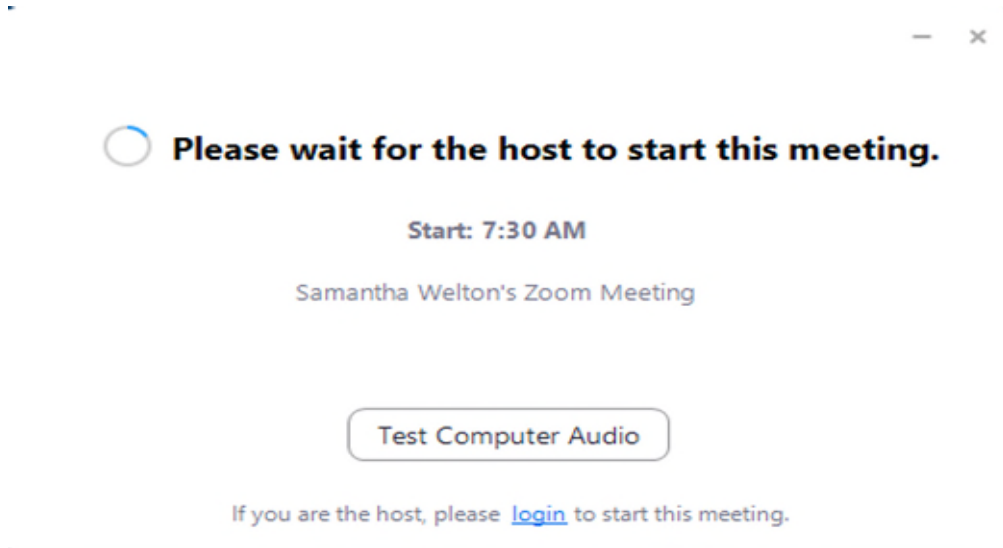


Although you can click “Sign In”, if you have already downloaded the **Zoom** app, it is **recommended** that you click on “Join a Meeting,” as clicking “Sign In” will require you to input a “Meeting ID” number and password to join the hearing and that information is **not** provided as part of the “Zoom Hearing Link.” By clicking on “Join a Meeting,” you will be taken to the following page:

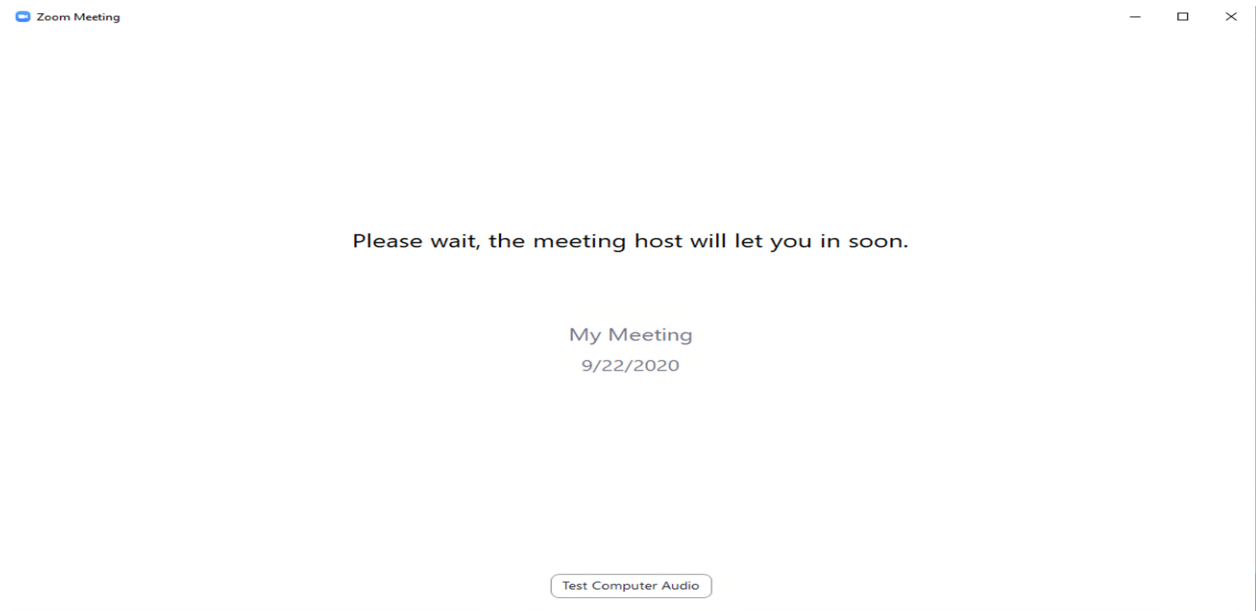


⁴ Although observers can call into a hearing to listen to the hearing by utilizing the provided telephone number and Conference ID in the “Zoom Hearing Link,” participants **must** “join” the hearing for both video and audio.

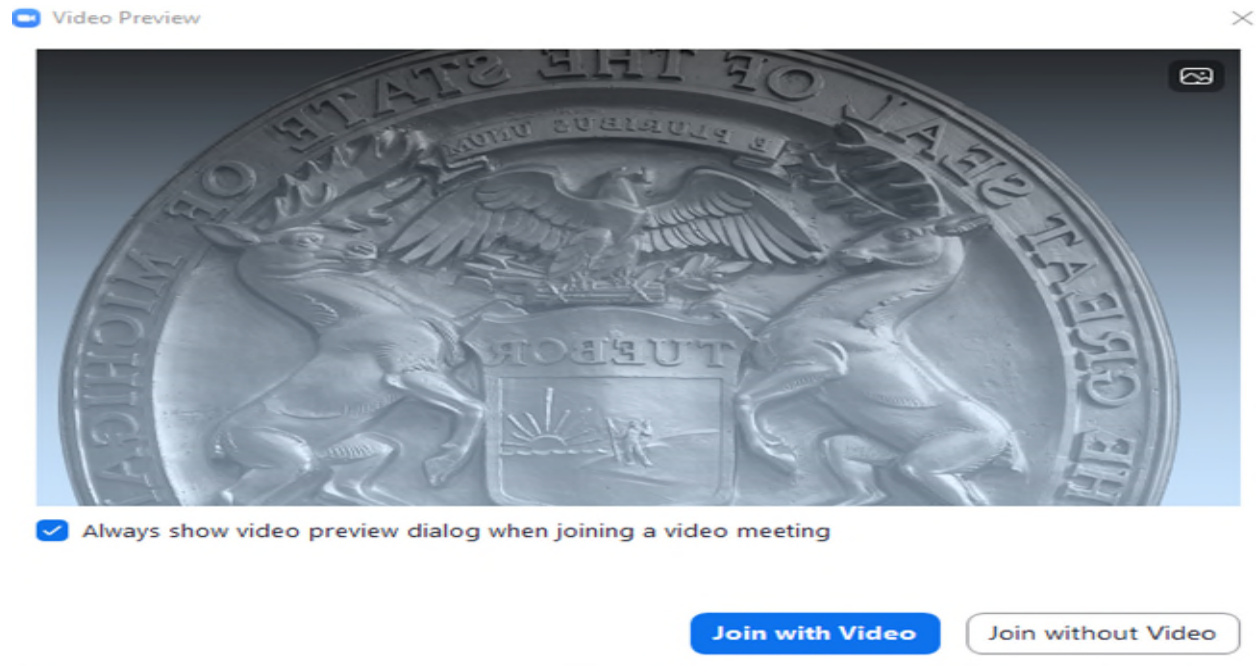
If you have already downloaded the **Zoom** app, click on “launch meeting” and “run,” which will direct you to the waiting room for admission into the hearing by the host judge:



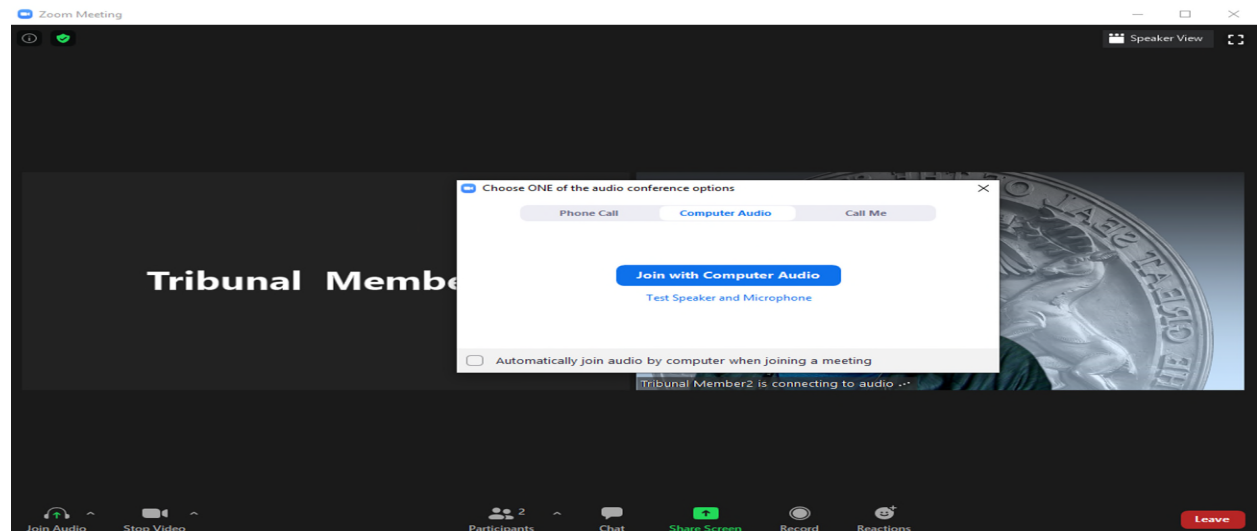
or



Once the host judge has started the hearing and admitted you into the hearing,⁵ you will be directed to the following screen with a different background:



After you click either “Join with Video” or “Join without Video,” you will be directed to the hearing, as follows:⁶



⁵ The MTT will join the hearing at least 15 minutes in advance of the scheduled start time to admit participants and observers in the waiting room into the hearing.

⁶ The above screen shows the host judge with video toggled off and the participant labelled for purposes of this Guide as “Tribunal Member2” having joined with video.

Once you have clicked on “Join with Computer Audio,” you will enter the hearing. The toggles on the bottom left of the screen will allow you to mute or unmute your audio or microphone and turn on and off your video.⁷

The audio or microphone and camera for the lead attorneys or agents, the witness testifying, and the court reporter must always be turned on during the hearing unless otherwise directed by the judge.

Participating Through Zoom

Once you have been entered the hearing, you will see other participants and observers, if any, on the screen, as “Gallery View” is the default view. In that regard, you have the option of “Speaker View” or pinning a single participant. To select “Speaker View,” you would place your cursor on the screen and click on the “Speaker View” icon located at the top right of the screen to view whoever is speaking. To pin a participant, you would either right-click on the participant’s video and select “Pin” or place your cursor on the participant’s name in the “Participants” list and click on “More” and “Pin.”

It is **important** to note that the pinning of a participant will **limit** your ability to see anyone else who is speaking. To the extent other **non-pinned** participants speak, their video would be reduced in size and located along with the other participants and observers at the top of the screen.

III. Prior to the Start of a Video Hearing

A. Entire Tribunal Hearing

1. Parties shall submit their exhibit lists and exhibits, with the exception of rebuttal exhibits, to the MTT by **e-filing or email** and all other parties by **email on or before** the date specified for the filing and exchange of exhibits lists and exhibits in the order scheduling the hearing (i.e., prehearing conference or status conference summary). **Exhibits submitted by email shall be submitted as PDF documents.**

- Exhibits shall be **separately** marked (i.e., P-1, P-2, R-1, R-2, etc.) and **properly** paginated to facilitate their review during the hearing.⁸

⁷ The control bar at the bottom appears if you move your mouse around in screen (it may disappear after time with no activity). In the **Zoom** control bar, from left to right, are the following options: audio or microphone on/off, video on/off, participants list, chat, record, reactions, and leave.

⁸ Parties have in the past either **not paginated** their valuation disclosures **or re-paginated** their valuation disclosures when they are submitted as exhibits. Both the failure to paginate and the re-pagination of valuation disclosures causes issues with respect to the review of those exhibits during the hearing. As a result, parties are **required to paginate** their valuation disclosures prior to their initial filing and exchange **and are precluded from re-paginating** those exhibits when they are **e-filed or emailed** to facilitate their review during the hearing.

- Exhibits shall be submitted separately (i.e., separate e-filings or separate email attachments) or in a single PDF document. If a party submits a **single PDF document** with multiple exhibits, the party **shall bookmark each** separate exhibit within the PDF document. If a party **neglects to bookmark** each separate exhibit in the PDF document, **it will not be considered until** that party bookmarks each separate exhibit in the PDF document (i.e., a revised and bookmarked PDF document) except upon a finding of good cause by the Tribunal.

If the exhibit list and exhibits are e-filed, the exhibits shall be designated as “Exhibits (proposed) for Hearing,” as provided in the e-filing site’s drop down for filing designations.

If the exhibit list and exhibits are emailed, the parties **shall utilize** the following email address for the MTT: taxtrib@michigan.gov **unless** a different email address is provided in the order scheduling the hearing. **As for the parties**, each party shall provide an email address to all other parties for use in the emailing of exhibit lists, exhibits including rebuttal exhibits, if any, and other documents indicated herein. The email address or addresses shall be provided **in advance** of the date specified for the filing of exhibit lists and exhibits in the order scheduling the hearing.

The docket number of the case (i.e. MOAHR Docket No. 19-001234, etc.) **and the name of the Presiding Judge** shall be included in the subject line of the emails with a reference to the filing of an exhibit list and exhibits.

Parties shall, **in advance of the hearing**, provide their witnesses with copies of all exhibits that each witness would need for his or her direct testimony.

2. Parties are **encouraged** to stipulate to facts and the admissibility of exhibits and expert witnesses and submit those stipulations to the MTT by email utilizing the above-noted email address **in advance of the scheduled hearing date**. **The docket number of the case (i.e. MOAHR Docket No. 19-001234, etc.) and the name of the Presiding Judge** shall be included in the subject line of the emails with a reference to the filing of stipulation of facts.
3. With respect to rebuttal exhibits, the rebuttal exhibit or exhibits, if any, shall be marked (i.e., P-1, P-2, R-1, R-2, etc.), properly paginated, and emailed to the MTT and all other parties prior to the offering of the rebuttal exhibit or exhibits for admission.

The rebuttal exhibit or exhibits shall be submitted as PDF documents and emailed to the MTT and all other parties utilizing the above-noted email addresses for the MTT and the email address or addresses provided by those parties.

If the rebuttal exhibit or exhibits are admitted, the attorney or agent that offered the witness testifying with respect to the rebuttal exhibit or exhibits **shall** email the exhibit or exhibits to that witness.

The docket number of the case (i.e. MOAHR Docket No. 19-001234, etc.) and the name of the Presiding Judge shall be included in the subject line of the emails with a reference to the filing of rebuttal exhibits.

The emailing of such exhibits **may require a brief recess** to facilitate the receipt of the rebuttal exhibit or exhibits by the Presiding Judge, the opposing party or parties, and, if appropriate, the witness that will be testifying with respect to the exhibit or exhibits.

IV. **Conducting a Video Hearing**

Entire Tribunal Hearing

It is the MTT's intent that such hearings will be conducted like all other hearings previously conducted by the MTT with some slight modifications to facilitate both the conducting and transcribing of the hearings.

1. Depending on the case, the MTT may, **upon the request of a party or upon its own initiative**, schedule a test **Zoom** hearing prior to the date of the scheduled hearing to reduce the need for adjournment or any delay on the day of the scheduled hearing. Such tests are intended to benefit the parties and the MTT and the MTT expects the parties and/or their attorneys or agents will make themselves available to participate in any scheduled test.
2. The attorneys, agents, and the court reporter) **must** "join" the hearing at least 15 minutes before the scheduled start of the hearing so that the attorneys and agents can identify themselves for the court reporter and provide the court reporter with the names of any witnesses to be offered for testimony.⁹
3. The hearing shall be called to order by the judge, who shall make certain pre-hearing inquires and opening remarks including directions necessary for the commencement, conducting, and adjournment, if necessary, of the hearing. Necessary directions would include, but are not limited to:
 - a. Directing observers to turn their audio or microphones off (i.e., mute) to avoid interrupting the hearing and cautioning them that they may be removed if they interrupt the hearing.

⁹ The MTT will, as also indicated above, admit participants and observers in the waiting room into the hearing no later than 15 minutes before the scheduled hearing time.

- b. Directing participants to:
 - (i) Have their cell phones on silent.
 - (ii) Use their cell phones during the hearing only for purposes of participating in the hearing or communicating with co-counsel or other identified participants excluding witnesses when that witness is testifying.
 - (iii) Mute their microphones when cell phones are being used for purposes of communicating to avoid any interruptions with the conducting of the hearing.

- c. Indicating that participants, including the judge, may be required to repeat statements, questions, and testimony if a statement, question, or testimony is, **as indicated by the court reporter**, unclear because parties were speaking over each other or for technical reasons (i.e., freezing, unclear audio, etc.). To avoid or, at least, reduce the need for repeated statements, questions, or testimony, it is recommended that:
 - (i) Everyone stop speaking when the judge and court reporter are speaking.
 - (ii) Attorneys or agents note their objections by stating “Your Honor” and then wait for the judge to recognize them before making their objection.
 - (iii) Witnesses stop testifying when they hear an attorney or agent state “Your Honor” for purposes of making an objection.
 - (iv) Opposing attorneys or agents wait until they are recognized by the judge for purposes of making a response to the objection.
 - (v) Witnesses only begin testifying when the attorney or agent asks a question of the witness or the witness is recognized by the judge after an objection for purposes of responding to a question.

- d. Indicating that the hearing may be adjourned if the judge, court reporter, or a participant is unavailable to continue the hearing for technical reasons as follows:
 - (i) If the judge is unavailable, the court reporter should go off the record until the judge is available at which time the judge will indicate that the hearing is back on the record. If the judge is unable to return, the judge or Tribunal will contact the attorneys or agents and court reporter by telephone to indicate that the hearing is adjourned and will be rescheduled.
 - (ii) If the court reporter is unavailable, the hearing will be recessed until the court reporter is available. If the court reporter is unable to return, the court reporter shall contact the Tribunal by telephone

and the judge will inform the participants that the hearing is adjourned and will be rescheduled.

- (iii) If a lead attorney or agent is unavailable, the hearing will be recessed until the attorney or agent is available. If the attorney or agent is unable to return, the attorney or agent shall contact the Tribunal by telephone and the judge will inform the court reporter and other participants that the hearing is adjourned and will be rescheduled unless that party has a co-representative and that co-representative is available and able to continue the hearing.
- (iv) If the witness testifying is unavailable, the hearing will be recessed until that witness is available. If the witness is unable to return, the witness shall contact the Tribunal and the judge will inform the court reporter and other participants that the hearing is adjourned and will be rescheduled unless that party has another witness that can be offered to testify and said offering and testimony will not prejudice the opposing party or parties given the inability to complete the examination of the unavailable witness prior to said offering and testimony.

Upon completion of any necessary comments, the judge will commence the hearing by resolving any prehearing issues (i.e., the placement of a witness in the waiting room subject to recall prior to that witness being offered for testimony, the playing of audio or video exhibits, etc.) and then asking Petitioner's lead attorney or agent to make their opening statement.¹⁰

4. With respect to the offering of witnesses, the judge will ask the offered witnesses to identify themselves and swear them in before questioning begins.
5. Upon the conclusion of all testimony, the judge will provide for oral or written closing statements limited to arguments only (i.e., no proposed findings of fact or proposed conclusions of law). The judge may, if written closing statements are to be submitted, provide limits on the length of the closing remarks.

¹⁰ Participants wishing to play audio or video exhibits during the hearing should, as indicated above, notify the presiding judge prior to the commencement of the hearing.