

# ARBITRATOR'S GUIDE TO REMOTE EDNY ARBITRATION

**Last Revised August 25, 2020**

Below is a set of guidelines for conducting remote EDNY arbitrations via a remote video conferencing platform.

## TECHNICAL REQUIREMENTS

- 1) You need a computer with the following features:
  - a. Camera
  - b. Microphone
  - c. NOTE: You cannot mediate via Zoom on an iPhone because the Zoom App for iPhone doesn't offer breakout sessions.
- 2) Strong, secured (password protected) internet connection (DO NOT USE PUBLIC WIFI)
- 3) A video conferencing service. (If you plan to use Zoom it is recommended that you use Zoom Pro. Basic Zoom will limit meetings to forty minutes.)
- 4) A private, quiet space with a simple background.

## PRE-ARBITRATION CONFERENCE CALL

Within **14 days** after your selection as an arbitrator, you should schedule a joint conference call with the parties to discuss the following:

- 1) Remote Procedures for Arbitration using the remote platform
  - a. Privacy Settings
  - b. Security Features
    - i. Waiting Room
    - ii. Lock Meeting
  - c. Breakout Rooms
    - i. Explain how these rooms will be used.
  - d. Chat Function
    - i. Arbitrator should inform parties that this feature will be turned off.
  - e. Muting/Unmuting
  - f. Screensharing
    - i. How will this be managed and utilized during the hearing?
  - g. No Recording Policy
  - h. Video/Telephonic participation
  - i. Schedule for Arbitration including Breaks, lunch and recess
  - j. Technical Difficulties
    - i. Instruct counsel that they should have a second device such as a phone available in the event of technical difficulties.
  - k. Schedule any desired practice sessions or "tech checks" with counsel.
    - i. Explain to counsel this will help streamline the actual arbitration hearing.
- 2) Discovery and outstanding issues
- 3) Deadlines for pre-hearing submissions
- 4) Arbitrator preferences regarding exhibit exchange
  - a. Hard copy v. electronic document server

- 5) Arbitrator preferences regarding opening statements
  - a. Written submission v. at hearing
- 6) Arbitrator preferences regarding testimony
  - a. Written submission in advance v. at hearing
- 7) Preferences regarding court reporter (Counsel are responsible for booking their own court reporter if they wish to have the hearing transcribed.)

## **INVITATION TO HEARING**

The Arbitrator must generate the meeting invitation on the virtual meeting platform. The meeting ID should be unique, and should require a password to access the meeting.

The Arbitrator is responsible for sending the meeting invitation via e-mail to the counsel of record. Counsel will then be responsible for circulating the meeting invitation to any parties or witnesses.

## **BEGINNING THE HEARING**

Once all individuals have arrived at the joint session of the video conference, be sure to lock the meeting so that no one else may enter.

At the start of the session:

- Admit each individual from the waiting room, and be sure they are muted to avoid any *ex-parte* communications.
- Introduce yourself and ask all present to introduce themselves. As the host of the session you can re-name individuals as they enter the session. Be sure that everyone uses their full name, so that they are easily identified. Individuals who do not have access to video may participate via telephone, but be sure to identify and re-name anyone who is participating via telephone.
- Affirm that you are not recording the session and you are alone in the room. Ask each person to affirm they are not recording the session and that there is no one else in the room. You may ask parties to turn their camera in a 360 angle to confirm this;
- Review the video conferencing platform and explain how you will conduct caucus through breakout rooms;
- Instruct participants that they should show their full, unobstructed face throughout the hearing.
- Ask parties to mute themselves when they are not speaking;
- Inform parties that in the event of technical failure, they will be muted until the party with the technological issue can re-join the hearing. Please instruct counsel to communicate with you via e-mail and that they cc opposing counsel in the event they are disconnected from the video conference platform.
- Inform parties that during breaks they should NOT disconnect from the video platform, instead they should mute their microphones and turn off their video feeds.

## **BREAKOUT ROOMS/SESSIONS**

Breakout rooms may be used to sequester individual witnesses and provide counsel with confidential space to speak with their respective clients. The arbitrator should also create a separate room where the attorneys can confer with one another and/or discuss settlement. Please set up these breakout rooms in advance of the session. Do not pre-assign parties to the breakout

rooms, as this can create difficulties with the room assignments.

Please PRACTICE breakout room management in advance of the arbitration. The ADR Department staff will assist you with a practice session.

### **WITNESSES AND HEARING PARTICIPANTS:**

Counsel must jointly e-mail the arbitrator with a list of participants (including witnesses and certified court reporters) and their email addresses for the purpose of inviting and admitting them to the virtual arbitration hearing. Counsel is responsible for sending the original hearing invitation to the necessary participants

All witnesses must be sequestered in a breakout room until they testify. They must be alone in their location and informed that they may be asked to rotate the camera 360 degrees at any time. Upon joining the meeting at the appointed time, the arbitrator will assign witnesses into individual breakout rooms.

When testifying witnesses should:

- Sit at an empty desk or table;
- Ensure their face is clearly visible and centrally located in the camera;
- Speak directly to the camera;
- Not have a virtual background;
- Sign-off upon completion of their testimony (for non-party witnesses).

Prior to the arbitration, all parties and witnesses should test platform connectivity and functionality of their cameras and microphones..

### **EXHIBITS**

Prior to the hearing Counsel shall provide the Arbitrator and any witnesses with an unannotated set of exhibits. The Arbitrator will instruct counsel whether to send the exhibits as a hard copy or via a shared virtual document repository.

### **SCREENSHARING**

The arbitrator may determine whether to allow parties to use the Screenshare function available through the video conferencing platform. In the event you allow screensharing, please practice using the function prior to the arbitration session.

### **PRIVATE CHAT**

Be sure to disable the “chat” function within the video conferencing platform. The chat function is not a confidential forum and should not be used for the purposes of EDNY Arbitration.

### **ARBITRATION AWARD**

Please do not share your award via the remote video conferencing platform. The award should be completed promptly after the completion of the hearing. The completed award must be sent to Rita Credle at [rita\\_credle@nyed.uscourts.gov](mailto:rita_credle@nyed.uscourts.gov).

## SECURITY SETTINGS

Arbitrators may use their personal video conferencing account to conduct the arbitration hearing, but please set the privacy and security settings as follows:

- a) Enable Meeting Password
  - a. This is an additional layer of security to prevent anyone who does not have a meeting password from entering the session.
- b) Enable Waiting Room
  - a. This function enables you to admit individuals to the arbitration session. No one may enter a arbitration session unless you admit them.
- c) Disable Join Before Host
  - a. This will make sure no parties will “run into” each other in the joint session without the mediator present.
- d) Mute Upon Entry
  - a. All parties will be muted upon entry into the main session. This function serves to reduce background noise during the hearing and prevent *ex-parte* communications. Parties may unmute themselves when they’d like to speak, and as “meeting host” you can unmute them. Ask all parties to mute themselves when they are not speaking.
- e) Turn Off Recording Capabilities
  - a. This turns off the recording function offered by Zoom. NOTE: This does not prevent individuals from recording the session with other devices or functionalities on their computer.
- f) Turn off the Chat Function (Chat is NOT a confidential forum)
  - a. The chat function in Zoom is not confidential, and it is possible that communications via this function can be seen by others involved in the arbitration.
- g) Enable Breakout Sessions
  - a. You will need separate breakout rooms for witnesses, and for counsel to meet with their clients and/or one another.
- h) Require Encryption for 3<sup>rd</sup> Party Endpoints

Please contact Rita Credle [rita\\_credle@nyed.uscourts.gov](mailto:rita_credle@nyed.uscourts.gov) and/or Robyn Weinstein [robyn\\_weinstein@nyed.uscourts.gov](mailto:robyn_weinstein@nyed.uscourts.gov) for any assistance with remote arbitration proceedings.





