



BOARD OF DISCIPLINARY APPEALS
Appointed by
THE SUPREME COURT OF TEXAS

Instructions and Admonishments for the Use of Zoom for BODA Hearings

For the health and safety of all involved, all *en banc* hearings before the Board of Disciplinary Appeals will occur remotely, via Zoom, until further notice. **Please carefully review the instructions and guidance below to prepare yourself, your client, and any potential witnesses for a successful and efficient hearing.**

These instructions can also be found on our website at <http://www.txboda.org>. Please contact the BODA staff at info@txboda.org with any questions or concerns.

Prior to the Hearing:

Zoom Setup:

Zoom is a free program that can be accessed through apps on mobile devices or can be downloaded on desktop or laptop computers. It allows participation via video or audio, even allowing for participation by telephone. Before your hearing, please ensure that you have Zoom up and running and that you know how to access the meeting.

To ensure a stable connection, please confirm that your system and internet connection meet Zoom's requirements, which can be found on Zoom's website. It may help to use a wired connection rather than using Wi-Fi. We highly recommend trial runs in advance.

Make sure the camera you intend to use is working. We recommend that it be placed near eye-level for a head-on view, and that you are in a place with adequate lighting to illuminate your face. Make sure that your microphone and sound are on and turned up

to at least medium volume. Please silence your email and text notifications before the hearing begins.

Zoom allows use of virtual backgrounds. If you elect to use one, please test it to be sure that it does not cause parts of your image to disappear in a way that will be distracting.

If more than one participant will be appearing from the same physical location, each individual should join the Zoom meeting from a separate electronic device and in different rooms to avoid feedback and echoes.

Please ensure that you have distributed the predesignated link and Zoom Meeting ID for the July 31, 2020, BODA Zoom hearing to any hearing participants. The link and Zoom Meeting ID, which was designated by BODA, is contained in the Notice of Remote Hearing, which was served with the original petition filed in each case. **It is your responsibility to ensure that your client and any witnesses you plan to call have access to the meeting information and the means to appear by video, or in the alternative, by phone.**

In addition, it is your responsibility to familiarize yourself, your clients and any potential witnesses with the setup and features of Zoom. In addition to the guidance below, the Office of Court Administration has provided a number of helpful resources, which can be found at: <https://www.txcourts.gov/court-coronavirus-information/electronic-hearings-zoom/>.

Exchange of Exhibits:

To help remote hearings go smoothly, the Board instructs each party to submit potential documentary exhibits in digital form, in advance of the hearing. The files should be in PDF format for documents. For any photographs, audio, or video exhibits, please confer with BODA staff to ensure your proposed exhibits are received and can be viewed by all parties. Questions about exhibits can be directed to filing@txboda.org. For ease of reference, the file names should indicate the BODA case number, offering party, the exhibit number, and the title of the document.

All proposed exhibits must be sent to all other parties and to filing@txboda.com by the deadline set by the Board. Please be advised that the filing of any proposed exhibits does NOT ensure their admission into the record. In order to be considered by the Board, all exhibits must still be offered and admitted during the hearing.

In the event that either party possesses potential exhibits as impeachment or rebuttal evidence that the party does not wish to disclose to the opposing party prior to the hearing, such exhibits should be emailed separately to filings@txboda.com, **by the deadline set by the Board**, and designated as confidential. BODA staff will have these items available for potential use during the hearings, but the members of the Board will not review them, and they will not be made part of the record unless they are introduced and admitted during the hearing.

The parties should make all reasonable efforts to comply with the instructions above. In the event that a party wishes to introduce an exhibit that was not previously submitted to BODA, the offering party should alert the Chair and request leave of the Board to offer the evidence. During the hearing, any such documents may be emailed to filings@txboda.com, and BODA staff will make reasonable efforts to timely distribute the materials to the Board; it remains the party's responsibility to immediately provide any such documents in electronic form to the opposing party. Failure to comply with these instructions, including the failure to have materials in electronic form prior to the hearing, may result in the exclusion of offered exhibits. Any and all questions or issues regarding the presentation of exhibits should be brought to the attention of the Board in advance of the hearing.

During the Hearing:

When you enter the information to access the Zoom meeting, you will be placed in a Zoom waiting room. Upon commencement of the hearing, all parties and witnesses will be admitted to the meeting. At that time, Chair will call the Board to order and issue instructions to the parties and witnesses.

There will be a brief docket call to confirm who is present for each case. Please be aware that the hearing notice is for 9:00 a.m. for all cases on the docket, but cases will be heard one at a time beginning after the docket call is completed.

Once the Chair calls each individual case, the parties and counsel for that case will be admitted to the hearing. All other individuals will be placed in the virtual waiting room until their specific case is called. Upon conclusion of the hearing of a specific case, if they have no other matters before the Board, the parties, counsel, and witnesses are excused and may leave the meeting.

In order to control the number of participants in the Zoom meeting, the Board requests that only parties, counsel, and witnesses log in to the Zoom hearing. All other

individuals who will not address the Board can observe the proceedings via livestream on YouTube.

Zoom Tips:

When entering the meeting from the waiting room, all participants will be muted. You will need to un-mute yourself (either using the mute button or holding the space bar while speaking) to be heard.

If at any time you forget to mute yourself and Zoom is picking up sounds that could be a distraction, the BODA staff may mute you. You will then need to un-mute yourself (either using the mute button or holding the space bar) to be heard.

Counsel for the parties (or the parties, if *pro se*) should not be muted during the hearing to allow for the making of objections.

Please note that there may be feedback and/or a minor delay in sound or video when using Zoom. As a result, these tips are very important.

- Speak slowly, clearly, and at a sufficient volume to be heard well.
- Speak one at a time. Zoom's audio cuts out if more than one person is speaking.
- If there are objections, please simply state "objection," and repeat it if necessary, so the speaker can stop and neither the Board nor the Court Reporter will miss any content. The Chair will ask for the substance of your objection and any response, if needed.
- Be aware that when you are not muted, minor sounds like typing, turning pages, a television going in the next room, or dogs barking can interfere with the audio. The BODA staff has the ability to mute participants and will do so if necessary to avoid distracting noise.
- Please promptly alert the Chair if you miss something, cannot hear, or have technical difficulties, and we will back up or pause to be sure everyone is able to participate.

We highly recommend practice sessions in advance of the hearing to get comfortable using Zoom.

Disconnections and Technical Difficulties:

If prior to or during the hearing, you encounter a technical difficulty, disconnection, or loss of internet service, please promptly alert BODA's staff. If you are disconnected and cannot immediately re-enter the Zoom meeting for some reason, please contact the BODA staff at **(737) 704-8039**. The proceedings will be paused until a connection can be reestablished.

Witnesses:

The Board will invoke the Rule in each evidentiary matter. As such, all witnesses will be placed in the waiting room until they are called to testify.

Witnesses may not view the live stream of the hearing on YouTube at any time during the hearing.

Before testifying, witnesses will be sworn in over Zoom by the Court Reporter.

Witnesses may not speak to, or otherwise communicate with, any other person during their testimony. Counsel may not communicate with a witness via chat, text, or any other means during their testimony.

Witnesses may not refer to any documents unless specifically directed to do so by counsel conducting the questioning, or by the Chair.

The Chair reserves the right to request that the witness adjust his/her camera to ensure no extraneous documents or unidentified individuals are present.

Use of Exhibits:

As explained above, the Board instructs that all exhibits be submitted electronically in advance of the hearing, and all exhibits must be offered into evidence and admitted by the Chair in order to be considered and made part of the record.

The parties may provide witnesses copies of potential exhibits prior to the hearing, so that witnesses may print out documents to reference during their testimony. If done in this way, the witness must be instructed that during his/her testimony, the witness may only review the specific page or material referenced by counsel.

In the alternative, counsel, or the parties if *pro se*, may request to use Zoom's screen sharing feature to display documents on the screen for all meeting participants to see. Only documents that have been admitted into evidence may be displayed using screen sharing, and the party sharing the document must ensure that it is identical to the exhibit that is part of the official record. If the Board or BODA staff has concerns about the document not being identical, the BODA staff will have to move the meeting participant to the waiting room while the issue is resolved. Requests for screen sharing shall be directed to the Chair during the hearing.

Chat:

Zoom has private chat feature, which will be available during the hearing. This feature can be used for private communication between counsel and client, or for parties to communicate with the BODA staff.

The chat feature may not be used to communicate directly with the Board or to communicate with a witness (including a client) who is currently testifying. The parties are warned to use caution with this feature and to ensure that their messages are directed to the intended recipient.

Please do not upload any files through the chat feature, unless invited to do so by the Board Chair or BODA staff.

Chat messages will not be reviewed or retained by the Board or BODA staff.

Breakout Rooms:

The use of breakout rooms will be available during the hearing. If you wish to confer in private with your client, please inform the Chair and state the identity of the client or clients with whom you want to confer. If allowed, you will be excused to a private breakout room for a brief conference.

The same will be true if you wish to confer sidebar with opposing counsel, in private.

The Board will not at any time enter a breakout room, and those rooms are not recorded or livestreamed in any way.

Participants will need to leave the breakout rooms on their own, but BODA staff may send a message asking participants to return to the meeting. Hit "return to main session" to exit the breakout room. Do not hit "leave meeting."

Livestream and Recordings:

Unless subject to confidentiality under the Texas Rules of Disciplinary Procedure, the proceedings will be broadcast via livestream on BODA's YouTube channel at: <https://www.youtube.com/user/TXBODA>.

Parties and counsel may be view the proceedings via YouTube when placed in the waiting room and waiting for their case to be called. Witnesses may not view the YouTube livestream, as this would violate the Rule.

Recording of the proceedings is prohibited.

A Court Reporter will be present during all hearings before the Board. The Court Reporter will prepare the official record of the hearing.

A recording of each hearing will be made available following the hearing on the BODA webpage at <http://www.txboda.org/video-gallery>.

By: _____
CHAIR PRESIDING