

**AMERICAN ARBITRATION ASSOCIATION**  
**Employment Disputes Arbitrator**

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**In the Matter of the Arbitration between:**

Claimant,

Claimant,

v.

Case 01-19-0002-0854

Company X, Company Y, and President,  
individually,

Respondents.

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**ORDER<sup>1</sup>**

In preparation for the hearing in this matter scheduled for July 9, 2020, this Order sets forth the procedures to be followed in conducting the hearing virtually using the ZOOM videoconference platform (the "Platform"):

**I. Order for Videoconference Hearing:**

The parties have agreed, and the Arbitrator hereby orders, that the hearing in this case be conducted via the Platform in accordance with the procedures set forth below. This confirms that the hearing will be deemed to have taken place in New York City.

**II. Hearing Record and Recording:**

- A. The hearing [will/will not] be transcribed by a court reporter. [Rather, the parties and Arbitrator agree that the Platform's video and audio recording will serve as the official record of the hearing.] [Regardless of physical or remote attendance, the court reporter may interrupt attorneys, witnesses, or the Arbitrator as needed to clarify items for the record.]
- B. The parties and counsel agree that they will not record, via audio, video or screenshot, or permit any other person to record, via audio, video or screenshot, the hearing or any part of it, except as is provided for in this Order. The parties

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<sup>1</sup> This template was prepared by Alfred G. Feliu, Esq., Feliu Neutral Services, LLC, based on the "AAA-ICDR Model Order and Procedures for a Virtual Hearing Via Videoconference" available on the website of the American Arbitration Association website.

and counsel will ensure that each additional attendee at the hearing for which that party is responsible also acknowledges and agrees to this prohibition on recording. [Any party may record the hearing for his or its benefit, but such recording will not be deemed an official record of the hearing and no reference may be made to it during or after the hearing by the recording party. Should the hearing be recorded by a party, the resulting recording is subject to the Confidentiality Stipulation and Order entered on February 18, 2020 in this matter.]

III. **Technical Aspects:**

A. **Invitations to Access Hearing:** To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized attendees only. Hearing attendees should not forward or share the hearing link or password.

B. **Advance Testing of System:**

1. Each party will be responsible for testing the videoconferencing system with each of their witnesses, including any third-party witnesses that party has subpoenaed, who will be attending virtually. Each party also is responsible for ensuring that all logistical requirements of this Order are satisfied.
2. The videoconference technology used by parties, counsel, and witnesses shall be of sufficient quality so as to allow for clear video and audio transmission of all participants.
3. Each participant should test their equipment to determine their best audio connection – whether by phone, through their computer speakers/microphone, and with or without a headset.

C. **Back-Up Conference Call Line:**

The parties may reserve an optional dial-in conference call number or similar alternative in case one or more participants has poor quality computer audio (after trying the audio connection through the computer-- with and without a headset – and by phone).

D. **Hearing Participants:**

1. Each attendee of the virtual hearing shall disclose at the start of each hearing session all people in the room with the attendee. Should an individual join the attendee after the hearing session has begun, that individual should be identified to counsel and the Arbitrator at the earliest opportunity.
2. During the videoconference, the witness is expected to be in view of the camera.
3. At the Arbitrator's request, unknown participants may be asked to identify themselves by showing a piece of identification to the camera or by responding to the Arbitrator's questions regarding their identity.

E. **Ensuring Good Audio/Video:** Hearing participants shall make their best efforts to ensure that there will be clear video and audio transmission during the hearing. Participants should:

1. use the computer microphone, with or without a headset, for audio transmission or use a phone to dial into audio portion of the platform (or if necessary, use the back-up conference call number if the computer and platform audio are of poor quality);
2. eliminate any background noise;
3. consider camera positioning and lighting (e.g., avoid sitting near a window, positioning a light in front of (instead of behind) the participant);
4. access the Platform via desktop or laptop rather than by smartphone or tablet;
5. ensure computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary; and
6. not join the hearing from a public setting or using unsecured, public Wi-Fi to ensure the privacy and security of the hearing.

F. All counsel shall endeavor to speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question asked or to alert other participants of technical difficulties.

- G. All participants who are not actively being questioned as a witness, asking questions of a witness, defending a witness, or providing or responding to opening statements, closing arguments, or other arguments, shall maintain their audio on mute to limit potential interruptions. The video hearing host also will have the ability to mute and unmute any participant if needed.
- H. For each person participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the accurate transcription or recording of the participant's speech as appropriate.
- I. Each participant in the hearing shall have accessible a computer or other device with email.

**IV. Witnesses and Exhibits:**

- A. Apart from the parties' corporate representatives, who may attend the entirety of the hearing, all witnesses are to be sequestered until they testify.
- B. The direct examination of the witnesses will be in the form of a sworn affidavit to be provided to the opposing party and the Arbitrator on or before July \_\_, 2020. Counsel will meet and confer to discuss and attempt to agree upon a schedule for the order and timing of the hearing witnesses.
- C. Witnesses should follow the below practices:
  - 1. A witness shall give evidence sitting at an empty desk or table, and the witness' face shall be clearly visible in the video.
  - 2. To the extent possible, the webcam should be positioned at face level, relatively close to the witness (e.g., by positioning a laptop on a stack of books).
  - 3. Witnesses may not use a "virtual background." Instead, the remote venue from which they are testifying must be visible.
  - 4. Witnesses should speak directly to the camera while testifying.
  - 5. Witnesses should avoid making quick movements.
  - 6. All non-parties shall sign-off from the Platform at the conclusion of their testimony.

- D. At any time, the Arbitrator may ask a witness to orient his or her webcam to provide a 360-degree view of the remote venue in order to confirm that no unauthorized persons are present; any authorized persons (counsel, etc.) in the room with the witness must be identified at the start of the witness' testimony.
- E. In accordance with the provisions of this Order, the Arbitrator shall instruct each witness about: (i) what to do in the event of a disconnection or other technical failure; and (ii) the impermissibility of any unauthorized observers or recordings of the hearing.
- F. Hearing exhibits:
1. The hearing exhibits will be [in hard copy] and pre-marked [and will be deemed admitted in the absence of an objection by the opposing party or a ruling to the contrary by the Arbitrator.]
  2. [Before the hearing, counsel shall provide each witness with a clean, unannotated hard copy set of exhibits to be referred to during the witness' evidence, as well as a clean, unannotated copy of his or her witness statement or affidavit [if any] in a sealed envelope to be opened when directed during the witness's testimony.] At any time, the Arbitrator may ask a witness to display the set of exhibits and/or witness statement or deposition transcript and verify that they do not bear any annotations. Witnesses shall not be aided by any notes, unless permitted by the Arbitrator upon motion for good cause.
  3. The parties will upload their exhibits and forward them to the Arbitrator and the opposing party before the hearing so that, if necessary, the exhibits can be shared electronically during the hearing as may be necessary. [The parties may agree on utilizing a shared virtual document repository (i.e., document server) to be made available via computers at all participants' locations, provided that the parties use best efforts to ensure the security of the documents (i.e., from unlawful interception or retention by third parties). If available, a separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show and display the relevant documents to the witness during questioning.]

**V. Hearing Schedule & Logistics:**

- A. The hearing shall commence on July 28, 2020, and it will begin at 9:30 a.m., with morning, lunch, and afternoon recesses at such times as the Arbitrator determines in his discretion are appropriate. It is recommended that all participants access the virtual hearing room early each day of hearing. The Arbitrator may take additional recesses and adjust the hearing schedule, in his discretion, to facilitate a smooth and efficient hearing.
- B. The hearing schedule will take into account that extra time may be needed if there are technical problems that cause delays.
- C. Upon joining the Platform hearing, participants will be admitted to a virtual waiting room. The Arbitrator will admit all participants to the hearing at the same time.
- D. The parties will be provided access to virtual break-out rooms to facilitate private conversations between other case participants as may be appropriate (e.g., upon request, to allow members of a party's legal team to confer with each other directly, outside of the presence of the Arbitrator and witnesses). To avoid delay and difficulty reconnecting, hearing attendees should not disconnect from the meeting during any recess.

**VI. Technical Failure:**

- A. Should one party's or participant's videoconferencing connection fail, the Arbitrator will ask the counsel remaining on the videoconference to mute their audio and to turn off their video to avoid concerns regarding potential *ex parte* communications. Once the Arbitrator sees that the dropped participant has rejoined the videoconference, the remaining counsel should unmute their audio and turn on their video.
- B. If a participant is disconnected from the videoconference or experiences some other technical failure and connection cannot be re-established within a 5-minute interval:
  - 1. the Arbitrator may take steps to "pause" the hearing, which may include moving participants into a virtual waiting room or one or more separate break-out rooms, and the parties agree to pause proceedings as needed to accommodate any reconnections or technical issues;

2. such participant shall e-mail all hearing attendees, for example, by replying all to the hearing notice circulated by the AAA case manager and shall monitor e-mail for any further instructions from the Arbitrator.
- C. If the videoconferencing system fails to work such that the hearing cannot take place as scheduled, or if the Arbitrator determines that the videoconferencing system otherwise does not allow the parties to adequately present their case or that it would be unfair to any party to continue the hearing via videoconference, the Arbitrator may reschedule the hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings.

SO ORDERED.

Dated: July \_\_, 2020

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Alfred G. Feliu,  
Arbitrator

SAMPLE CASE SCHEDULING ORDER

**FEDERAL MEDIATION AND CONCILIATION SERVICE  
VOLUNTARY ARBITRATION SERVICES**

**IN THE MATTER OF THE ARBITRATION  
BETWEEN**

\_\_\_\_\_  
\_\_\_\_\_ ,

**UNION,**

**-AND-**

\_\_\_\_\_  
\_\_\_\_\_ ,

**COMPANY.**

RE:

\_\_\_\_\_

**FMCS CASE NO.:**

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**ARBITRATOR'S FILE NO.:**

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**HOMER C. LA RUE  
ARBITRATOR**

**PRE-HEARING ORDER NO. 1  
SCHEDULING**

**APPEARANCES**

**FOR the UNION**

\_\_\_\_\_, Esq.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**FOR the COMPANY**

\_\_\_\_\_, Esq.

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_



**Option #2:**

The video conference hearing will be conducted via Zoom's web-based software that will be provided by the Arbitrator. The parties will need to have a desktop or laptop computer with a webcam. All parties and witnesses may be in the same location or separate locations. The Arbitrator will be able to see all attendees at the hearing, and the parties will be able to see the Arbitrator. The protocol set forth in this Notice of Hearing is to ensure that the videoconference hearing is fair and efficient.

The link to the Zoom hearing room will be provided only to counsel. It will be the responsibility of counsel to provide the link to their respective clients and witnesses. The Arbitrator will not do so.

It is recommended that the parties, their respective clients, and first two witnesses access the Zoom site 30-60 minutes before the hearing start time to ensure that there are no impediments to access.

If there any problems, do not hesitate to contact my office. The Arbitrator's cell number is: ( )- -- .

The parties are to elect an option on or before the close of business on **Monday, June , 202** . The Arbitrator is to be notified of the choice on or by **Monday, June , 202** .

**ACCESS TO THE VIRTUAL HEARING SPACE**

In order to ensure the veracity of the online process, by participating parties, counsel, their clients, and their witnesses are asked to agree to the following protocol:

- Entry to the virtual hearing space will be granted only upon approval by the Arbitrator.
  - Each counsel must provide a complete Appearance List, including all persons and their email address, whom each counsel intends to have present at the hearing, whether that person is a witness or not.
  - The Appearance List must be provided to the Arbitrator at least 48 hours before the start of the hearing.
  - The hearing space will be locked at the beginning of the hearing, and access will be available only with permission of the Arbitrator.

SAMPLE CASE SCHEDULING ORDER

- b. Witnesses (and all others) are to be instructed by counsel to refrain from taking photos during the hearing unless instructed otherwise by the Arbitrator.
5. Requests to sequester witnesses in their own breakout (caucus) room, during any discussion between counsel and the Arbitrator related to an objection will be freely granted.
  - a. The microphone in the witness caucus room in Zoom will be muted during any caucus.
  - b. The "chat" function in the witness caucus room in Zoom will be muted.
6. Counsel are to have their cell phones on during the hearing, unless instructed otherwise by the Arbitrator, and may use their cell phone to communicate with the Arbitrator provided that the other counsel is conferenced in.
7. There shall be a final pre-hearing conference on **one week** prior to the first day of hearing at **10:00 a.m. (EDT)** for a final preparation for the videoconference hearing.

Date: June \_\_, 202\_

**SO ORDERED,**

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Homer C. La Rue  
Arbitrator

## **1. COURT REPORTER**

If the parties intend to use a court reporter, they are responsible for making those arrangements. If there is any dispute about the use of a court reporter, the parties are directed to attempt to resolve the matter between themselves. Should there be no resolution, the parties are directed to set up a conference call—early enough not to delay the arbitration hearing—with the Arbitrator to resolve the matter.

## **2. NOTE-TAKING AND RECORDING**

Whether there is a court reporter or not, the Arbitrator uses a laptop computer to record notes of the hearing. If there is no court reporter, the Arbitrator also may use a recording device as a back-up to his note taking. Neither the notes on the computer or on the recording are made available to the parties or to anyone else. Both are for the exclusive use of the Arbitrator for the Arbitrator's recollection of the hearing. Once the decision and award are issued, the notes are erased from the Arbitrator's computer, hard copies are discarded, and the recording is erased.

## **3. OFFICIAL RECORD/ARBITRATOR'S NOTES**

Unless some other procedure is agreed to by the parties (for example, the use of a transcript), the official record of the case will consist of the recollections of the Arbitrator, the exhibits introduced at the hearing and whatever recording the Arbitrator may have made of the hearing. While the Arbitrator may make use of notes to supplement his recollection, the Arbitrator's notes do not constitute the official record and will not be available to the parties under any circumstances.

Further, the Arbitrator will not voluntarily appear as a witness in any litigation associated with enforcement of, or a challenge to, any award, mediated settlement, or other resolution of a case.

If a court reporter is present at the hearing, the parties should advise the Arbitrator at the outset if they do not intend to have a transcript made available, so that the Arbitrator may factor that in as he listens to the evidence.

Unless otherwise mutually requested by the parties, the Arbitrator will destroy his file of the case **two** weeks after the issuance of the Award or the expiration of retained jurisdiction, as the case may be.

play-back equipment at the hearing. The play-back at the hearing must be of sufficient quality that the Arbitrator, the other party, and the witness (if necessary) can see and/or hear the play-back. The method of play-back must permit the **simultaneous viewing and/or hearing** of the evidence by the Arbitrator, the other party, and any witnesses, where necessary, without the necessity of anyone having to move unreasonably from her/his respective position in the hearing room.

## **6. REPRESENTATION AT THE HEARING**

Each party is entitled to have **one** person in the hearing room at all times who is the representative of the employer and of the union, respectively. That person, representing the employer and the union, will not be subject to any order of sequestration of witnesses. The grievant(s) will be entitled to be in the hearing room at all times.

Either party may have one or more observers in the hearing room if the person declared to be an observer is not a witness in the proceeding. A person designated as an observer, and who has been in the hearing room during **any** part of the proceeding after witnesses have been excused pursuant to an order of sequestration, shall not be permitted to testify at the hearing.

## **7. SUBPOENAS**

Subpoenas will be signed by the Arbitrator, upon request by a party and/or counsel for the party. Notice of the request for the Arbitrator to sign subpoenas is to be made to the other party at the time that the request is made to the Arbitrator.

A Subpoena requiring a witness to give testimony is to be made returnable on the day of the scheduled hearing unless the parties have otherwise agreed. A Subpoenas Duces Tecum is to be made returnable on the day of the hearing unless the parties have otherwise agreed.

Any motion to quash a Subpoena requiring witness testimony or a Subpoena Duces Tecum is to be heard before a court of competent jurisdiction. The Arbitrator will not entertain motions to quash a subpoena.

## **8. EXCHANGE OF LISTS OF WITNESSES**

At least three (3) **WORKING DAYS** before the hearing or at such other time as may be ordered by the Arbitrator, the parties shall exchange their respective

other-than-in-person testimony:

- a. The method selected for the other-than-in-person testimony shall be via videoconference.
- b. An audio-only conference (i.e., via telephone only without video) may be done only with permission of the Arbitrator and for good cause shown why a videoconference is not feasible.
- c. On the day of the testimony, the witness shall be in a place that is private, that is:
  - i. There shall be no one present in the space with the witness during the testimony given by the witness;
  - ii. There shall be no one capable of overhearing the testimony of the witness.

Documents necessary for direct and cross-examination shall be deposited in the Drop Box provided by the Arbitrator before the hearing. The witness shall review document(s) only as directed by counsel who is examining the witness.

## **10. OATHS AND AFFIRMATIONS**

Each witness will be asked to take an oath or to give an affirmation prior to testifying. Any witness preferring to give an affirmation should so-indicate at the time that he/she is called to testify. The Arbitrator will deliver the oath or affirmation.

## **11. DISABILITY ACCOMMODATIONS**

In accordance with the **American with Disabilities Act (“ADA”)** and other applicable federal laws, state and local laws, anyone who requires an auxiliary aid or service for effective communication or a modification of policies or procedures to participate in the arbitration hearing should contact the party responsible for coordinating the appearance of that person at the hearing. If there are any issues pertaining to reasonable accommodation, the party for whom that issue arises is directed to contact the other party to resolve the issue. If the issue cannot be resolved between the parties, either party—early enough not to delay the arbitration hearing—may convene a conference call with the opposing party and the Arbitrator to resolve the matter.

**14. FILING AND SERVING THE POST-HEARING BRIEF**

**Filing** of the post-hearing brief with the Arbitrator shall be completed by the parties filing electronically (i.e., via email) on or before the date agreed upon by the parties or set by the Arbitrator. **Service** of the post-hearing brief on the other party shall be completed by each party serving electronically (i.e., via email) on the other party on or before the date agreed upon by the parties or set by the Arbitrator.

The filing of the post-hearing brief with the Arbitrator shall not include cases or other authorities related to any arguments in support of or in opposition. Hard copies of any cases or other authorities shall be made available to the Arbitrator. Such cases or other authorities shall be filed and served as set forth below.

Cases or other authorities related to any arguments in support of or in opposition shall be transmitted to the Arbitrator as hard copy via overnight delivery (e.g., USPS, UPS, or FedEx) or hand delivery. At the time that the filing is made with the Arbitrator, such cases or other authorities also shall be served on the other party via overnight delivery or via hand delivery, unless the parties agree otherwise.

The Arbitrator's contact information is as follows:

**Homer C. La Rue**

Arbitrator

5305 Village Center Drive, Suite 339  
Columbia, MD 21044-2302

(301) 332-9227 (Voice and Cell)

Email: [homer@laruedisputeresolution.com](mailto:homer@laruedisputeresolution.com)