

VIRGINIA
IN THE WORKERS' COMPENSATION COMMISSION

REVISED ORDER REGARDING EVIDENTIARY HEARINGS
DURING THE COVID-19 PANDEMIC

On March 16, 2020, the Virginia Supreme Court entered an Order Declaring a Judicial Emergency in response to the COVID-19 pandemic. Additional Orders of the court ensued, the most recent being the “Thirty-Seventh Order Extending Declaration of Judicial Emergency in Response to COVID–19 Emergency” extending the current Judicial State of Emergency through April 20, 2022.

On April 6, 2020, the Commission entered an Order directing that all evidentiary hearings be conducted via video conference until in-person hearings could resume subject to the terms and conditions set forth in the Order. On May 21, 2020, the Commission entered an Order allowing in-person civil proceedings to resume in certain circumstances beginning June 1, 2020. On August 7, 2020, the Commission entered an “Order Regarding Evidentiary Hearings During the COVID-19 Pandemic” that set forth terms and conditions for evidentiary hearings to be conducted both in person and virtually via video conference. On June 1, 2021, with the rate of COVID-19 infections decreasing and COVID-19 vaccinations increasing, we modified the August 7, 2020, Order to lift many of the restrictions that were in place. Those restrictions were reinstated and heightened by Orders entered on August 23, 2021, and January 6, 2022, and eased by Order entered on March 13, 2022.

Based upon revised guidance from the Centers for Disease Control and Prevention (CDC) and the Virginia Department of Health (VDH), we find it appropriate to further ease the restrictions currently in place. Accordingly, we hereby Order as follows:

1. **FORM OF HEARING:** It shall remain in the sole discretion of the Deputy Commissioner to determine the form of hearing for any case pending adjudication on that Deputy Commissioner’s docket, whether it be video, in-person or a hybrid of the two. Consent of the parties is not required for any particular form of hearing. On-the-record proceedings remain available and are encouraged as an alternative to an in-person or video hearing in cases where the parties are able to stipulate to the facts necessary for the dispute to be adjudicated.
2. **OBJECTIONS TO FORM OF HEARING:** Any objection to the form of hearing scheduled by the Deputy Commissioner in any particular case must be filed with the Commission, and copied to parties who do not have access to WebFile, within seven (7) calendar days of the issuance of the hearing notice for that case. Specific reasons for the objection must be provided before a ruling will be made on the objection.

3. **RULES SPECIFIC TO IN-PERSON PROCEEDINGS:**

- A. Mask Requirements:** Mask requirements for Commission offices and courtrooms shall vary depending on the COVID-19 Community Level where the office is located, as determined from time to time by the CDC and VDH. Masks shall not be required of any person regardless of vaccination status in Commission offices and courtrooms located in areas where the COVID-19 Community Level is classified as low or medium. Masks shall be required for all persons regardless of vaccination status in Commission offices and courtrooms located in areas where the COVID-19 Community Level is classified as high. Regardless of the designated Community Level at any time or location, persons may wear a mask or face covering in Commission facilities if they choose. Within a courtroom located in an area where the COVID-19 Community Level has been classified as high, the presiding Commissioner or Deputy Commissioner may authorize persons to remove their face masks to facilitate a proceeding. The requirement to wear a face mask in an area where the COVID-19 Community Level is classified as high shall not apply to:
- (i) Commissioners or Deputy Commissioners to the extent they determine it inhibits their ability to effectively communicate,
 - (ii) Individuals who have difficulty breathing, who cannot remove a face mask without help, or have other medical issues that make wearing a face mask unsafe, or
 - (iii) Any person whom the presiding Commissioner or Deputy Commissioner determines should be excused from the requirement to wear a face mask.
- B. Additional Safety Measures:** Hearings conducted in facilities other than the Commission's offices shall be further subject to the requirements and restrictions of those facilities. Some facilities may not be available, necessitating a change in venue or hearing date. Deputy Commissioners are granted broad authority to adopt additional procedures to ensure the safety of persons appearing before the Commission as well as the safety of Commission staff.

4. RULES SPECIFIC TO VIDEO PROCEEDINGS:

A. Pre-filing of Exhibits and Medical Records Designations Mandatory:

- (1) **Filing deadline:** A copy of each party's medical designation, as well as all proposed exhibits, must be filed no later than seven (7) calendar days before the scheduled hearing. The Medical Records Designation must be filed in accordance with the Commission's July 1, 2013 Order Clarifying Commission Rules 2.2(B)(3) and 4.2. A copy of this Order may be found at:

<http://www.workcomp.virginia.gov/documents/order-regarding-medical-records-and-designations>

Any other proposed exhibits must be filed with a numerical table of contents which must include title, author and date. All proposed exhibits must be preceded by a separator page and numbered to identify the following document in accordance with the table of contents.

- (2) **Objections:** Objections to any item in the medical designation or to a proposed exhibit must be filed with the Commission by any opposing party no later than four (4) calendar days prior to the scheduled hearing.
- (3) **Late filings:** Any medical record or exhibit submitted less than seven (7) calendar days before the hearing, other than a response to a record timely submitted under this Order for which leave is granted to file a response, will be excluded from evidence or may serve as a basis for the continuance of the hearing, in the sole discretion of the Deputy Commissioner.
- (4) **Copies required for witnesses:** If a party anticipates questioning an adverse party or witness about a particular exhibit or medical record, identical electronic and paper copies of the exhibit must be sent by the questioning party to the adverse party or the witness so the party or witness may view the documents while testifying. No other written explanatory or instructive materials may accompany the documents. Failure to provide the witness with such copies will be grounds for excluding the anticipated testimony

from the record. It is not considered an improper *ex parte* contact for a party to provide to the adverse party or witness a particular exhibit or medical record with an accompanying cover letter as long as no additional instructive or explanatory materials are provided. A copy of the cover letter must be filed with the Commission. Alternatively, parties may agree which party will produce exhibits and medical records to an adverse party or witness. Under this provision, it is expected that parties will send exhibits and medical records to their own witnesses.

- B. Oaths required:** Witnesses will be sworn remotely and all witnesses must aver prior to their testimony that they shall not receive any undisclosed or other assistance from any source while testifying.
- C. Witnesses:** Parties must provide the Commission with the name, telephone number and, if possible, email address of all witnesses they expect to call to testify no less than seven (7) calendar days prior to the scheduled hearing. Further, parties who receive a WebEx Meeting invitation to the hearing from the Commission must forward that invitation to any witnesses they expect to call to testify to allow for ease of connecting to the video hearing. Failure to do so may result in exclusion of witness testimony, at the discretion of the Deputy Commissioner. Continuances will not be granted solely because a witness fails to appear because the calling party failed to provide this information, subject to the discretion of the Deputy Commissioner. Nothing in this Order shall preclude the parties from obtaining evidence by *de bene esse* deposition or as otherwise permitted by the Commission.
- D. Minimum Technical Requirements:** Parties and witnesses attending the video hearing must participate remotely using a PC, laptop, tablet or smartphone equipped with a video camera and microphone. All parties and witnesses should use up-to-date browsers and operating systems with a reliable high-speed internet connection and participation in the hearing will be subject to such other technical requirements as are published from time to time. Parties and witnesses are strongly encouraged to test their systems as instructed in advance of the hearing date. Parties must notify the Commission as soon as possible, and not less than fourteen (14) days prior to hearing without good cause being shown, if they or any of their witnesses cannot meet the minimum requirements for participation in the video hearing, so that alternate arrangements for the participation of such

attendees may be arranged. Deputy Commissioners have broad discretion to continue or cancel the hearing if attendees cannot meet the minimum technical requirement for participants.

- E. **Recording Prohibited:** Parties and witnesses attending the video hearing may not record the hearing by any means except upon advance leave granted by the Deputy Commissioner. The Commission's recording of the hearing will be the sole official record of the proceedings.

- F. **Proper Decorum Required:** Parties and witnesses attending a video hearing are attending a formal judicial proceeding and must dress appropriately just as if personally appearing in court. All attendees must participate from a quiet location free of distractions. Deputy Commissioners have broad discretion to continue or cancel hearings or exclude witnesses if noise or extraneous activity disrupts the proceedings and to impose contempt sanctions for inappropriate conduct where necessary.

This Order is effective immediately and replaces and supersedes the Orders entered on April 6, 2020, May 21, 2020, June 23, 2020, August 7, 2020, June 2, 2021, August 23, 2021, January 6, 2022, and March 13, 2022, in their entirety and will continue in force and effect until further Order of the Commission. This Order does not replace or alter the terms and requirements of any other Order entered by a Deputy Commissioner in any particular case, including Pre-Hearing Motions Orders and Pre-Hearing Statement Orders. Except as stated, this Order does not modify any other Rules of the Commission, which shall remain in effect until revoked or modified.

Entered this 14th day of April, 2022.



Robert A. Rapaport, Chairman



Wesley G. Marshall, Commissioner



R. Ferrell Newman, Commissioner