

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR THE PENNSYLVANIA LIQUOR CONTROL BOARD

REMOTE HEARING ORDER

Preamble to Order

1. On July 10, 2020, Governor Wolf issued an executive order authorizing Commonwealth Agencies to conduct administrative hearings online by video or telephonic means, without the consent of the parties. The Governor's order temporarily suspends any regulatory statute, order, rule or regulation of any Commonwealth agency that would prevent the agency from holding administrative proceedings via video, telephonic or other online conferencing means.
2. Until further notice, all administrative hearings conducted by the Office of Administrative Law Judge (OALJ) shall be conducted by video conferencing.
3. The following procedures supplement the Board's regulations for proceedings before the OALJ, found at 40 Pa. Code §§ 15.1 to 15.62, which further supplement the rules for administrative practice and procedure found at 1 Pa. Code §§ 31.1 to 35.251. In the event of a conflict between this order and the regulations, the regulations shall control.
4. A link to this Remote Hearing Order can be found at the OALJ's website at <https://www.lcb.pa.gov/Legal/Office-of-ALJ/Pages/default.aspx>.

A. Software Platform

1. All administrative hearings shall be conducted using Microsoft Teams.
2. To appear via video hearing on Microsoft Teams, participants will need to have an electronic device with an internet connection. Participants may use a smart phone, iPad/tablet, or webcam/built in camera with sound and video. Participants will also need to install the Microsoft Teams app before the hearing begins from <https://teams.microsoft.com/downloads> (for a computer) or from the App Store of the participants' smart phone or device.
3. **DEVICE NEEDED.** A desktop computer, laptop computer, tablet, or smartphone may be used for the hearing. A camera and a microphone are **REQUIRED**. Please note, most devices have a built-in microphone and camera, and additional equipment will **NOT** be needed to participate in hearings. Participants who do not have any of this equipment must contact the OALJ Harrisburg office at (717) 540-5040 **immediately**.
4. A party or participant who does not have access to the necessary equipment described above may be permitted to participate in the hearing by telephone only. Upon request from the party, the Administrative Law Judge may in his or her discretion grant a request to participate by telephone where the party justifies the need to do so.

B. Protocol for Communicating with the OALJ

1. When the parties wish to communicate with the OALJ for hearing-related matters, they must use email. Parties shall direct emails to the hearing clerk or Administrative Law Judge's staff, as instructed.
2. OALJ staff shall use email addresses for the assigned Bureau counsel and the email address on record with PLCB for licensees, or the email supplied by counsel entering an appearance on behalf of the licensee.
3. In all communication the subject line shall include the case citation number and a brief description of the nature of the communication. All parties must be copied on emails.
4. All exhibits parties intend to use during a video hearing must be saved in a .pdf file format and be pre-marked as an exhibit. Each exhibit must be a separate .pdf file. The parties shall pre-mark exhibits to clearly identify them as that party's exhibit and shall also identify each exhibit by title. For example: C-1 Notice of Violation letter; or L-1 RAMP Certification.

C. Pre-Hearing Procedures

1. The hearing clerk shall schedule a hearing date and time and send notification of the hearing to the parties.
2. Notice of the hearing shall be sent to the parties by email, along with a copy of the OALJ's Remote Hearing Order.
3. No later than seven days prior to the scheduled hearing, the OALJ will send the parties an invitation to the hearing in the form of a Microsoft Teams meeting via email. The parties shall be responsible to forward the Microsoft Teams meeting invitation to all witnesses or hearing participants.
4. The parties will be provided with a telephone number for the hearing clerk or Administrative Law Judge's legal assistant, for use at the time of hearing if there is a problem accessing the Microsoft Teams meeting link.
5. Members of the public or other non-parties who are interested in "attending" the video hearing for a particular case shall contact the OALJ Harrisburg Office at (717) 540-5040 for a call-in number or video link. Such non-party participants are limited to observing only and shall not speak or otherwise participate in the hearing. All participants and observers are subject to being admitted or declined by the OALJ.

D. Exhibit Preparation

1. Parties must exchange all proposed exhibits no later than 14 days prior to the hearing. At the same time the parties must email their exhibits to the OALJ and the court reporter. When submitting documents, each participant shall identify the hearing by licensee name, hearing date and time. The only email address to be used for submitting documents to the court reporter is schedule@sargents.com.
2. Parties must prepare their exhibits in accordance with section B(4).

3. At the time of submission, the parties shall indicate whether there is a stipulation to the admission of each exhibit. The parties must state whether they have any objections to the admission of any exhibit, identify the exhibit, and the basis for their objection.
4. The requirements of D(3) will not prevent parties from raising new objections about the exchanged exhibits at the hearing if the new objection was not known to the objecting party before the hearing.
5. A party who intends to show video evidence during the hearing must provide a copy of the video on DVD or other standard media format when filing its exhibits in accordance with these procedures.

E. Witnesses

1. Parties must supply their witnesses with copies of both parties' pre-marked exhibits prior to the hearing.
2. It is strongly recommended that parties use separate connections and electronic devices or risk the quality of the hearing. At a minimum, if sharing connections or devices, parties are expected to practice social distancing as required by local rules, except that masks are not permitted when testifying. The parties assume the risk of any technical difficulties resulting from multiple participants using the same electronic device.
3. Parties are responsible for ensuring witnesses have separate computer feed, link to proceedings, and access to all exhibits, including the opposing party's.
4. Parties are responsible for instructing witnesses not to look or refer to any document except for pre-marked exhibits as outlined in D above, unless the witness is refreshing his/her recollection.
5. Sequestration of witnesses will be granted solely at the discretion of the Administrative Law Judge and only after demonstration of good cause by the party seeking sequestration. In the event of sequestration, witnesses will be instructed to disconnect and the party bringing the witness will be responsible for contacting the witness in time for their testimony. Or, the Administrative Law Judge/hearing clerk/legal assistant may return sequestered witnesses to virtual lobby and readmit them when it is time for their testimony.
6. Parties are responsible for providing these instructions to their witnesses and ensuring their compliance.

F. Hearing Procedures

1. All hearing participants shall click on the meeting link at least five minutes before the scheduled time of the remote hearing. All participants and observers must provide their full name when joining the meeting.
2. Participants shall wait in the virtual Microsoft Teams "lobby" until the Administrative Law Judge initiates the remote hearing. The Administrative Law Judge, hearing clerk or legal assistant shall admit participants to the meeting.

3. If a party or participant is unable to connect to the video hearing, they are to call the telephone number for the hearing clerk or Administrative Law Judge's legal assistant to inform the Administrative Law Judge of the situation.
4. At the Administrative Law Judge's discretion, a party/participant may be permitted to participate in the hearing by telephone instead of by video only where the party/participant demonstrates the need to do so.
5. The Administrative Law Judge will call the case, state for the record that this is a video hearing and instruct participants when to announce themselves for the record.
6. Hearings will proceed as scheduled whether or not all parties are logged in.
7. Any request for a continuance will be governed by 1 Pa. Code § 31.15.
8. Participants shall place microphones on mute unless they are speaking or wish to make an objection. Alternatively, the Administrative Law Judge/hearing clerk/legal assistant may control mute/unmute of participants.
9. All efforts shall be undertaken not to interrupt other speakers during the remote hearing unless it is necessary to assert an objection.
10. If an interpreter is necessary, all participants shall speak slowly, in short, complete sentences, and allow time for translation. No one shall respond to a question posed by another participant until the question has been translated.
11. The court reporter will create a stenographic record of the hearing. 1 Pa. Code § 35.131.
12. Participants may not use Microsoft Teams app or any other method to record the video or audio of the hearing conference. Doing so may violate 40 Pa. Code § 15.46(b).
13. All participants are required to identify anyone that may be observing the proceedings with them. This is essential for the rule of sequestration to be effective and ensure the credibility of testimony.
14. Parties who intend to show video evidence during the hearing are responsible for all technical aspects of displaying video on Microsoft Teams during the hearing.
15. All parties are reminded that this is a formal proceeding and appropriate attire and conduct is expected.

G. Case Management

1. Parties shall be required to file all case-related documents by email to the hearing clerk or Administrative Law Judge's legal assistant.
2. At the Administrative Law Judge's initiation or at a party's request, the Administrative Law Judge may require a pre-hearing telephone or video conference as permitted by PLCB Regulation 40 Pa. Code § 15.43 to simplify or limit the issues for hearing or number of exhibits or witnesses or to identify cases that can be resolved without the need for a hearing.
3. For cases where there is no dispute of facts, the parties are strongly encouraged to file waivers or written stipulations to resolve the case without the need for a hearing.

H. Questions

Please contact the OALJ Harrisburg office at (717) 540-5040 for assistance about the procedures or preparations.

I. Format for Notice of Hearing

Remote hearing notices shall be substantially in the form that follows.

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR THE
PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.:
LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	Incident No.:
v.	:	
	:	
LICENSEE	:	PLCB LID No.:
LICENSEE'S ADDRESS	:	
	:	PLCB License No.:
	:	
_____ COUNTY	:	
	:	
	:	
	:	

NOTICE OF HEARING

This matter is set for a hearing on ___ day of ___ 202_ at ___:___ am/pm.

CORPORATIONS, PARTNERSHIPS AND LLCs MUST BE REPRESENTED BY AN ATTORNEY.

OALJ will be holding hearings via video conference or by phone.

To appear via video conference on Microsoft Teams, you will need to have an electronic device with an internet connection. You may use a smart phone, iPad/tablet, or webcam/built in camera with sound and video. You will also need to install the Microsoft Teams app before the conference begins. The app can be found and downloaded from <https://www.microsoft.com/en-us/microsoft-365/microsoft-teams/download-app>.

Meeting ID: ___-___-___

To join the hearing via Microsoft Teams:

Please go to: <https://www.lcb.pa.gov/Legal/Office-of-ALJ/Pages/default.aspx>
Then type in the above referenced Meeting ID.

To join the hearing by audio/phone:

Dial _____, then type in the above referenced Meeting ID.

How to access Microsoft teams

On Windows devices: The program can be downloaded from the Microsoft website for free. Alternatively, the program can be accessed by clicking the link provided by the OALJ if the user is operating on Microsoft Edge or Google Chrome web browsers. However, it is preferred to download the program which will auto-launch when the link is clicked.

On Mac devices: The program can be downloaded from the Microsoft website for free. Alternatively, the program can be accessed by clicking the link provided by the OALJ if the user is operating on Microsoft Edge or Google Chrome web browsers. The program WILL NOT work with Safari web browser. However, it is preferred to download the program which will auto-launch when the link is clicked.

On Android devices: It is strongly recommended that the Teams application be downloaded (Free) from the Google Play Store and install it on your device. Allow camera and microphone access. Once the link is emailed to you, clicking the link will automatically launch the Teams program. Alternatively, the program can be used in your mobile web browser.

On Apple/iOS devices: It is strongly recommended that the Teams application be downloaded (Free) from the App Store and install it on your device. Allow camera and microphone access. Once the link is emailed to you, clicking the link will automatically launch the Teams program. Alternatively, the program can be used in your mobile web browser if you are using Chrome. This will reportedly NOT work with Safari.