

LOS ANGELES COUNTY BAR ASSOCIATION ATTORNEY-CLIENT  
MEDIATION & ARBITRATION SERVICES (“ACMAS”)

**OPINION ON CONDUCTING MANDATORY FEE ARBITRATION  
HEARINGS BY VIDEOCONFERENCING PLATFORMS**

DATED MAY 15, 2020

Rule 49 of the ACMAS Rules of Conduct for Mandatory Arbitration of Fee Disputes (the “ACMAS MFA Rules”) authorizes the Arbitration Executive Committee to issue written opinions interpreting the Rules and determining their application. The development of new video conferencing technologies such as Zoom and other comparable platforms, and the desire of some arbitrators and parties to employ such platforms in Mandatory Fee Arbitrations conducted pursuant to Business & Professions Code Section 6200, et seq. (“MFA Hearings”), raises questions whether the Rules permit the use of platforms such as Zoom and telephone conference capabilities in the conduct of such hearings. This Opinion of the ACMAS Executive Committee provides guidance regarding the interpretation and application of the Rules to MFA Hearings conducted by the foregoing platforms.

Rule 28 of the ACMAS MFA Rules provides that “The sole arbitrator, or the panel by majority vote, shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing.” It is the opinion of the Arbitration Executive Committee that these provisions of Rule 28 authorize sole arbitrators, or the panel by majority vote, to conduct all non-binding and binding MFA Hearings using an ACMAS approved remote conferencing platform, either alone or in combination with audio only conferencing where video facilities are unavailable, so long as the sole arbitrator, or the panel by majority vote, determines that the MFA Hearing can be conducted in a fair, speedy, economical, and impartial manner pursuant to Rule 1.

Where the sole arbitrator or panel, by majority vote, elects to conduct the MFA Hearing by the use of an ACMAS approved remote conferencing platform, the parties shall be advised of the decision not less than twenty-one (21) days before the MFA Hearing. This notification shall advise the parties that any party who is unable to visually connect through the selected remote conferencing platform must so notify the sole arbitrator or panel chair not later than ten (10) days following the notification. In such event, the sole arbitrator or panel, by majority vote, may permit such party to participate by telephone or other audio only method. In the event a witness is unable to visually connect through the selected remote conferencing platform, the

sole arbitrator or panel, by majority vote, may allow such witness to give testimony by telephone or other audio only method.

Where a party asserts, and demonstrates to the satisfaction of the sole arbitrator, or panel majority, that it does not have access to or is otherwise unable to utilize a computer, iPad, cellular smart telephone, or other device capable of connecting to and utilizing the selected remote conferencing platform, the sole arbitrator or panel, by majority vote, shall have authority to order the party to participate by telephone or other audio only method if doing so is necessary to secure a fair, speedy, economical, and impartial resolution of the dispute.

For any mandatory fee arbitration pending at the time of this Opinion in which the parties have elected to proceed with a binding MFA Hearing, the consent of the parties to binding arbitration shall be reconfirmed by the sole arbitrator or panel chair after notice to the parties that the sole arbitrator or panel has elected to proceed via an approved remote conferencing platform. Any party wishing to withdraw their consent to a binding MFA Hearing following notification that the MFA Hearing is to proceed via an approved remote conferencing platform may do so by so notifying the sole arbitrator or panel chair, and other parties to the proceeding within ten (10) days following receipt of the notice. If a party gives notice that it will withdraw its consent to a binding MFA Hearing if the matter proceeds via an approved remote conferencing platform, the matter shall proceed as noticed, but as a non-binding MFA Hearing.

Sole arbitrators and the chair of panels intending to conduct an MFA Hearing using an approved remote conferencing platform shall first either complete a training program approved by the Arbitration Executive Committee or otherwise demonstrate to the satisfaction of the Arbitration Executive Committee's designee that they are qualified to use and administer the chosen remote conferencing platform safely and securely. The sole arbitrator or panel chair shall fulfill the functions of the host or alternative host (if the Arbitration Executive Committee staff is the designated host) of the videoconference. Absent prior approval by the sole arbitrator or panel majority for participation by telephone or other audio only method, all participants must have the ability to see each other, and to see any witnesses. The sole arbitrator or panel chair acting as host shall utilize the most secure version of the chosen videoconferencing platform and shall utilize appropriate controls and options to prevent intrusions and breaches of confidentiality.

A copy of this Opinion shall be supplied to all parties to MFA arbitrations at the commencement of their participation in the proceeding.