

Amendment to Board of Pensions Regulation 1, adding paragraph 1.16,

VIRTUAL HEARING PANEL EMERGENCY PROCEDURES

1.16. Virtual Hearing Panels. The Board will provide with the explicit consent of the applicant-appellant and their attorney (if represented) a virtual Hearing Panel that will be conducted using advanced Telecommunication Technology as determined by the Board (e.g. Microsoft Teams, Zoom etc.). Prior to the hearing, the Board will require that the applicant-appellant, and their attorney, if represented, agree in writing that a virtual hearing through advanced telecommunication technology satisfies their request for a hearing pursuant to the Code and Board Regulation No. 1 and applicable state law.

a. Panel Members and all other participants will appear remotely at the virtual hearing using the designated Telecommunication Technology. The applicant-appellant and their attorney (if represented) acknowledge and agree that the panel members, court reporter and all other participants, including themselves, may appear remotely through telecommunication technology to conduct a hearing in accordance with the Local Agency Law, the Code and any constitutional requirements.

b. Unless modified or supplemented in this Paragraph 1.16, Paragraphs 1.0 to 1.15 apply.

c. The proceedings will be recorded and transcribed by a court reporter familiar with the Telecommunications Technology. No other audio or video recording, photographing, screenshots or other reproduction or saving of the proceeding through any device or technology by any person other than the Court reporter is permitted.

d. Applicants-appellants, their attorneys (if represented) and all other participants, including panel members, will be provided the appropriate log-in information at the time the Hearing Panel is scheduled, along with instructions about the technical aspects of the Telecommunication Technology to be employed.

e. The record shall be made available for inspection by the applicant-appellant and attorney (if represented) and any other participant by electronic transmission upon request no later than three business days prior to the hearing.

f. Documents to be submitted for consideration by the Board must be submitted electronically one week before the Hearing Panel.

g. During testimony by an applicant-appellant or any other witness, no one is permitted to communicate-by chat, text, email, verbally in-person or by any other means—with the testifying witness except by way of an on-the-screen oral question directed toward that witness.

h. If counsel has an objection or requests permission to address any panel member, counsel may activate the hand-raising function so that they can be recognized to raise their objection or speak with the panel.

i. If counsel during the course of proceedings requests permission to consult with the client in private for the purpose of asserting an attorney-client privilege or other privilege, counsel may activate the hand-raising function to request that the administrator of the hearing send them to a virtual breakout or other “waiting” room to have a private conversation.

j. All participants, including panel members, must appear on camera during the entire hearing, whether speaking or not, unless the proceeding is on recess. When not speaking, all participants shall keep their microphone on mute.

k. All participants, including panel members, are required to be alone in their remote physical location or room during the hearing, unless a person who is physically present in the same room or location is identified and permitted to remain in that location by the Board's lawyer.

l. The court reporter may interrupt attorneys, testifying witnesses, or panelists as and when necessary to obtain clarification or confirmation for the purpose of accurately and fully transcribing the official record.

m. In the event that a participant's telecommunication connection fails, the administrator will ask all other participants, other than the court reporter, to mute their microphone and turn off the camera to avoid any ex-parte or off-the-record communications. If a participant is disconnected and unable to restore connection for a substantial period of time as determined by the Board's lawyer, or some other technical failure occurs to prevent the start, resumption or continuation of the virtual proceeding, the Board's lawyer may suspend and reschedule the hearing to ensure the fairness and integrity of the proceeding and its compliance with applicable laws and regulations.

EFFECTIVE DATE: In keeping with the Mayor's March 11, 2020 Declaration of Emergency Circumstance allowing regulations related to addressing the pandemic to become effective immediately upon transmission to the Department of Records, this emergency regulation shall be effective on September 9, 2020.