

**VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION**

**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 Virginia Supreme Court ensued, the most recent being the “Eighth Order Modifying and Extending Declaration of Judicial Emergency in Response to COVID – 19 Emergency” extending the current Judicial State of Emergency through August 30, 2020.

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. We have reviewed and considered the dictates of the Supreme Court Order and wish to adopt as much of it as is relevant to the proceedings before the Commission.

Since the entry of the prior Commission Orders and the return to in-person hearings, the COVID-19 pandemic has affected offices, hearing locations, hearing dockets, litigants, Commission personnel and attorneys in various ways, rendering some locations unavailable or unsuitable for in-person proceedings and some participants unable to attend in-person proceedings due to COVID-19 infection or exposure. Recognizing that hearings must go forward in a way that ensures the safety of all participants while ensuring due process and that a single approach will not adequately address changing conditions in different locations and circumstances, we hereby ORDER as follows:

- 1. FORM OF HEARING:** It shall be 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. HEALTH SCREENING REQUIRED:** Individuals will be prohibited from entering a Commission office or hearing location if they have a temperature in excess of 100.4 degrees F/ 38.0 degrees C, or if they have within the previous fourteen (14) days:
 - (1) Traveled internationally;
 - (2) Been directed to quarantine, isolate, or self-monitor;
 - (3) Been diagnosed with, or have had contact with anyone who has been diagnosed with, COVID-19;
 - (4) Experienced a fever, cough, or shortness of breath; or
 - (5) Resided with or been in close contact with any person in the above-mentioned categories.

Commission and security personnel will conduct a non-invasive temperature screening prior to entry to Commission facilities and will query visitors regarding the above. Individuals with an excessive temperature or with any affirmative response will not be permitted to enter a Commission office or hearing location. Commission and security personnel shall direct individuals with any affirmative response to contact the Customer Contact Center at 1-877-664-2566. The contact center specialist will direct the call to the appropriate judicial office to receive further instruction regarding alternate arrangements for access to the Commission offices or participation in hearings. The above criteria may change from time to time without further Order of the Commission consistent with CDC and Health Department guidelines.

- B. MASKS REQUIRED:** In order to further minimize the risk of the spread of COVID-19, in addition to recommended social and physical distancing, all persons aged ten (10) or over entering a Commission facility must wear a face

covering that covers the nose and mouth. This includes Commissioners, Deputy Commissioners, attorneys, security personnel, hearing clerks and other Commission employees, witnesses, members of the public, contractors, and all others who work in or visit the Commission's facilities. Individuals without a face mask will not be permitted to enter Commission facilities except for those who cannot safely wear a face mask because of a health-related condition. Within a courtroom, the presiding Commissioner or Deputy Commissioner may authorize removal of a face mask to facilitate a proceeding. The requirement to wear a face mask 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.

C. OCCUPANCY LIMITED: Occupancy in any one courtroom or waiting area will be limited to ten (10) persons. In order to ensure recommended social and physical distancing, it may be necessary to further limit the number of people present in the courtroom or Commission facility at any given time as this number will necessarily be limited by the size of the courtroom to ensure that those present can remain six feet apart.

D. 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.

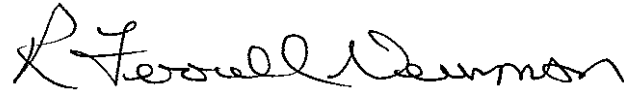
- (2) ***Objections:*** Objections to any item in the medical designation or to a proposed exhibit must be filed with the Commission by any opposing party no later than four (4) calendar days prior to the hearing.
 - (3) ***Late Filings:*** Any medical record or exhibit submitted less than seven (7) 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, an identical electronic or paper copy 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.

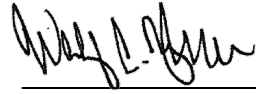
- D. MINIMUM TECHNICAL REQUIREMENTS:** Parties and witnesses attending the video hearing must participate remotely using a PC, laptop, tablet or smartphone equipped with a video camera and microphone. All parties and witnesses should use up to date browsers and operating systems with a reliable high-speed 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 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 replaces and supersedes the Orders entered on April 6, 2020, May 21, 2020 and June 23, 2020 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.

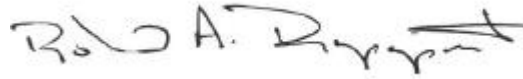
ENTERED this 7th day of August, 2020.



R. Ferrell Newman, Chairman



Wesley G. Marshall, Commissioner



Robert A. Rapaport, Commissioner