



Procedures for Remote & Hybrid Hearings

January 1, 2025

Part 1: Scope

On July 1, 2024, the Vermont Governor issued an update to the Open Meeting Law to require hybrid meetings for decision-making bodies. See Act 133 (2024). Advisory groups are not a decision-making body and therefore hearings will remain fully remote. The Office of Professional Regulation (“Office” or “OPR”), as an agency required to hold hearings on contested cases, is authorized under Vermont law to adopt rules of procedure governing those hearings. 3 V.S.A. § 831(d). The current Administrative Rules of Practice (“Rules”) governing contested hearings within OPR permit a hearing authority to, upon request, allow all or part of a hearing to be conducted by telephone, video, or other electronic means. Administrative Rules of Practice, Rule 3.19.

Part 2: Pre-Hearing Administration

2-1 Hearing Format

2-1.1 **Hybrid Hearings:** All hearings for decision-making bodies (boards) shall be held in a hybrid format with the option to appear by video conference, telephone, or in-person. Respondents and witnesses may be asked to look at documents during the hearing.

2-1.2 **Remote Hearings:** All hearings for non-decision-making bodies (advisory) shall be held in a remote format with the option to appear by video conference or telephone. Respondents and witnesses may be asked to look at documents during the hearing.

2-2 Hearing Notice

2-2.1 In addition to the other information required to be included in a notice of a hearing pursuant to 3 V.S.A. § 809, the notice of a hybrid or remote hearing shall contain instructions and information, including phone numbers and website links and addresses, for participating in the hybrid hearing by web-based visual and audio communication or by telephone.

2-2.2 The notice of a hybrid or remote hearing shall contain contact information for the Docket Clerk or another OPR staff member who can be contacted during the hearing if a party encounters any difficulties with remote participation.

2-3 Filings

2-3.1 Definition. A “filing” (when the term is used as a noun) includes any petition, application, motion, opposition to a motion, exhibit, or any other document or thing of any description which is required or permitted to be filed with a hearing authority, as that term is defined in the Administrative Rules of Practice (“Rules”), in connection with a pending case.

2-3.2 Pre-Hearing Filings

2-3.2.1 Prior to the beginning of a hearing, documents shall be filed by sending the filing to the Docket Clerk as an attachment to an email, by regular mail, or by facsimile. Regardless of the method of delivery, documents are only deemed filed upon receipt by the Docket Clerk.

2-3.2.2 Unless a different discovery and hearing schedule is issued by a hearing officer, filings submitted prior to a hearing must be received by the Docket Clerk no later than noon on the last business day prior to the scheduled hearing. Filings not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be introduced at the hearing in accordance with Procedure 3-2.2.

2-3.2.3 Notwithstanding Rules 3.17(B) and Rule 3.8, objections to the admissibility of pre-filed exhibits and responses to motions may be made at the scheduled hearing unless a discovery and hearing schedule issued by a hearing officer requires objections and responses to be filed by an earlier date. Objections to the admissibility of the pre-filed exhibit and responses to motions may also be made in writing by submitting a written objection or response to the Docket Clerk by noon on the last business day prior to the scheduled hearing.

- 2-3.2.4 Filings submitted prior to a hearing shall be served on the other party on the same day the filing is submitted to the Docket Clerk and using the same method of delivery.
- 2-3.2.5 The requirements regarding electronic introduction of filings at a hearing set forth in Procedure 3-2.2 shall then be followed.
- 2-3.3 Service
 - 2-3.3.1 Except for filings that are required to be served by certified mail, filings may be served on the other party via email, rather than by regular mail or personal service. Service by regular mail and personal service remain acceptable means of service. The filing shall be served on the other party using the same method of delivery that is used to submit the filing to the Docket Clerk.
 - 2-3.3.2 Filings that are required by statute or the Rules to be served by certified mail must continue to be served by certified mail.
- 2-3.4 Form
 - 2-3.4.1 The subject line of the email containing a filing as an attachment shall indicate the name of the respondent.
 - 2-3.4.2 A signature block containing the submitting party's typed-in name preceded by "/s/," or an electronic facsimile of the submitting party's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), will serve as a party's signature on pleadings, motions, and other documents that must be filed with a signature. This exception does not apply to affidavits, verified pleadings, or other signatures that must be notarized by statute.
 - 2-3.4.3 Exhibits submitted for use during a hearing shall be marked for identification by the party submitting the exhibit. The respondent shall mark exhibits using letters and the State shall mark exhibits using numbers.
 - 2-3.4.4 If appearing in person (hybrid only), the respondent shall bring each exhibit they wish to introduce, plus an extra copy.

2-3.5 Timing

2-3.5.1 Filings sent by email will be considered filed on that date if the email is received before 4:30 p.m.

2-3.5.2 Nothing in these Procedures extends statutes of limitations or other filing deadlines.

Part 3: Hearing Administration

3-1 Hearing Procedures

3-1.1 Prior to Hearing

3-1.1.1 Prior to the scheduled hearing, the Docket Clerk shall send the parties an email with all the filings in the pending matter attached, including, but not limited to, the specification of charges, the hearing notice, any filings submitted in the case and an agenda for the meeting at which the hearing will be held.

3-1.1.2 By noon on the last business day prior to the scheduled hearing, the parties and the members of the hearing authority shall provide the Docket Clerk with a phone number and email address at which the party can be reached in the event of a malfunction during the remote hearing.

3-1.2 Commencement of Hearing

3-1.2.1 If appearing remotely, a party is responsible for connecting to the remote hearing via the web-based audio and visual system or telephone number provided in the hearing notice. Parties shall participate in the scheduled hearing using audio communication, either web-based or through the telephone, at a minimum. Unless otherwise ordered by the hearing officer, the use of video communication shall be required only in extraordinary circumstances.

3-1.2.2 At the beginning of a scheduled hearing, the hearing officer

shall confirm the presence of both parties and their representatives, when applicable.

- 3-1.2.3 Parties shall be present at the time provided in the hearing notice via the web-based audio and visual communication link or by telephone. If there is more than one hearing scheduled, the order of hearings will be decided by the hearing officer. The first hearing shall begin at the time stated on the hearing notice. Subsequent hearings will occur after the conclusion of the previous hearing.

3-1.3 Hearing Conduct

- 3-1.3.1 Scheduled hearings shall be conducted in accordance with 1 V.S.A. Chapter 5, as modified by Act 92 (2020).
- 3-1.3.2 At the beginning of the hearing, upon request from the hearing authority, each party shall state their full name for the record.
- 3-1.3.3 The parties shall keep the audio connection, through which the party is participating in the hearing, muted while not speaking.
- 3-1.3.4 If a party is not able to hear the hearing authority or the other party, the party shall un-mute their audio communication system and notify the hearing authority.
- 3-1.3.5 The hearing officer shall administer oaths and affirmations, as required by law, using the audio and, if available, visual communication systems.

3-1.4 Hearing Decorum

- 3-1.4.1 The parties shall refrain from having food or drinks out during the hearing.
- 3-1.4.2 If appearing remotely, the parties' cameras should be on when possible during the hearing. Cameras can be turned off briefly if needed.

- 3-1.4.3 Hearing appropriate attire is preferred for the parties.
- 3-1-4.4 If appearing remotely the parties shall be muted when not speaking.
- 3-1-4-5 The parties shall be actively engaged in the hearing at all times.

3-1.5 Hearing Authority Members

- 3-1.5.1 When participating in a hearing remotely, hearing authority members shall comply with all requirements of 3 V.S.A. § 129, 3 V.S.A. § 131, and, where applicable, the Rules and these Procedures.
- 3-1.5.2 By noon on the day prior to the scheduled hearing, each hearing authority member shall provide to the Docket Clerk an email address for a current email account that the member can access during the hearing.
- 3-1.5.3 During a scheduled hearing, the Docket Clerk shall send all filings and required written communications to the hearing authority members at the email address provided to the Docket Clerk.
- 3-1.5.4 During a scheduled hearing, hearing authority members shall monitor the email account submitted to the Docket Clerk, and immediately review emails received from the Docket Clerk and other Office staff.

3-2 Record

- 3-2.1 Recording and Transcript. The hearing shall be recorded and the recording for the meeting will be posted to the Office website. Transcripts will be available after the hearing. Parties may request a transcript from the Docket Clerk. The party requesting a copy of the transcript must pay to the Office the estimated cost of producing a copy of the transcript.

3-2.2 Introduction of Documents During Hearing

- 3-2.2.1 All filings to be considered by the hearing authority during a

hearing shall be filed with the Docket Clerk in advance of the scheduled hearing in accordance with Procedure 2-3.2.1, or during the hearing in accordance with the requirements set forth in this subsection 3-2.2. Filings that are not received by the Docket Clerk by noon on the last business day prior to the scheduled hearing must be submitted during the hearing.

3-2.3 Exhibits

- 3-2.3.1 Exhibits that the parties wish to submit during a hearing shall Be filed as an attachment with the Docket Clerk and the other party in accordance with the exhibit filing deadlines set forth in the discovery and hearing schedule issued by the hearing officer. The form of the exhibit shall comply with the form requirements set forth in Procedure 2-3.4.
- 3-2.3.2 Once the exhibit is received by the Docket Clerk, the Docket Clerk shall email the exhibit as an attachment to the hearing officer presiding at the hearing and the other, non-filing party.
- 3-2.3.3 After receipt of the email from the Docket Clerk with the exhibit attached, the hearing officer and the other, non-filing party shall have a reasonable amount of time, as determined by the hearing officer, to review the exhibit.
- 3-2.3.4 The non-filing party shall have the opportunity to oppose the admission of an offered exhibit in accordance with Rule 3.18 and Vermont Rules of Civil Procedure 46 (Exemptions Unnecessary).
- 3-2.3.5 The hearing officer shall rule on whether to admit the exhibit in accordance with Rule 3.16 and 3 V.S.A. § 810 at the time the exhibit is properly offered into evidence.
- 3-2.3.6 If the hearing officer rules that an exhibit is to be admitted into evidence, the Docket Clerk shall send an email with the exhibit attached to all members of the hearing authority.
- 3-2.3.7 If attending a hearing in person (hybrid only), respondents shall bring two copies of their exhibits to the hearing. If attending a hearing remotely, respondents shall be responsible for sharing their admitted exhibits on the screen.
- 3-2.3.8 Members of the hearing authority shall not retain any copies, including electronic or physical copies, of the exhibit after the conclusion of the hearing.

3-2.4 Motions

- 3-2.4.1 Motions made prior to a hearing shall be in writing, in accordance with Rule 3.8, and shall be filed as an attachment with the Docket Clerk and the non-filing party. Motions may also be made orally during a hearing, in accordance with Rule 3.8.
- 3-2.4.2 A written motion shall be signed in accordance with Procedure 2-3.4.2.
- 3-2.4.3 Upon receipt of a written motion before or during a hearing, the Docket Clerk shall send the motion to the hearing officer or presiding officer.
- 3-2.4.4 The non-filing party shall have the opportunity to respond to a motion in accordance with Rule 3.8.
- 3-2.4.5 The hearing officer shall decide whether to grant or deny a motion in accordance with Rule 3.16.

3-3 Witnesses

- 3-3.1 Witnesses called by a party shall testify by video conference, telephone, or in-person (hybrid only).
- 3-3.2 The party calling the witness shall be responsible for providing the witness with the necessary information for participating in the scheduled hearing, including address for in-person participation (hybrid only), all necessary phone numbers, email addresses and website addresses. It is the responsibility of the party calling the witness to ensure that the witness is available when called upon to testify during the scheduled hearing.
- 3-3.3 The party calling the witness shall provide the Docket Clerk with a phone number and email address for the witness. In the event of technical challenges on the part of the Office or a need to dismiss and then recall a witness, the Docket Clerk shall telephone the witness with further instructions or when the witness is recalled to testify.

3-4 Deliberative Session (hybrid hearings ONLY)

- 3-4.1 The hearing authority shall have the opportunity to engage in deliberations, as defined in 1 V.S.A. § 310(1), about the contested case presented at the scheduled hearing. Deliberations by the hearing authority may occur in a deliberative session in accordance with 1 V.S.A. § 312(e).

- 3-4.2 Prior to the scheduled hearing, the Docket Clerk shall email to the hearing authority members and the hearing officer a conference call telephone number and/or a link for the confidential session to be used for the deliberative session.

- 3-4.3 After the hearing authority votes to enter into a deliberative session, the hearing authority remote members shall exit the audio and visual communication system or end the telephone call through which the hearing authority member is participating in the hearing. The parties shall remain available on the audio and visual communication system or the telephone during the deliberative session. The hearing authority members shall then call the deliberative session conference call telephone number or sign into the confidential deliberative session link provided by the Docket Clerk prior to the scheduled hearing.

- 3-4.4 At the conclusion of the deliberative session, the hearing authority members shall reconnect to the audio and visual communication system or the telephone line on which the hearing is being held. The hearing officer shall notify the Docket Clerk and the parties that the hearing is resuming on the record and shall provide the parties and the Docket Clerk with a reasonable amount of time to resume. Once the parties and the hearing authority have reassembled, the hearing authority may move and vote on a decision in the pending case.

3-5 Decisions

The hearing authority shall issue a written decision in accordance with Rule 3.24. The Docket Clerk shall serve the Decision on the parties by sending the Decision as an attachment to an email.

3-6 Appeals

- 3-6.1 A party may appeal a decision of a hearing authority in accordance with 3 V.S.A. 130a and Part 4 of the Rules.
- 3-6.2 Parties may submit written notices and filings to an appellate officer, the Docket Clerk, and other parties by email, mail, or facsimile.
- 3-6.3 Appellate hearings, including pre-hearing conferences, shall be held in accordance with the procedures for other scheduled hearings set forth in these & Remote Hearing Procedures.