



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

NPC ADVISORY No. 2020-02

SUBJECT: GUIDELINES ON THE USE OF VIDEOCONFERENCING TECHNOLOGY FOR THE REMOTE APPEARANCE AND TESTIMONY OF PARTIES BEFORE THE NATIONAL PRIVACY COMMISSION

WHEREAS, the Corona Virus Disease (COVID-19), has posed serious risks to the safety, lives and health of the citizens of the Philippines and has been declared as a pandemic by the World Health Organization (WHO) on 11 March 2020;¹

WHEREAS, by virtue Proclamation No. 922, series of 2020, the President declared a State of Public Health Emergency throughout the Philippines and placed the entire Luzon under Community Quarantine² due to the COVID-19 pandemic;

WHEREAS, the Department of Health, through Department Memorandum No. 2020-056 prescribed the strict observance of social distancing and other health measures to help fight the spread of the COVID-19 virus;

WHEREAS, under the Rules of Procedure of the National Privacy Commission parties are required to personally appear and/or testify before the office of the National Privacy Commission in Discovery Conferences, Summary Hearings, Mediation Proceedings, Investigations, and Clarificatory Hearings;

WHEREAS, travel to and personal appearance before the office of the National Privacy Commission for the conduct of conferences and hearings have been rendered difficult due to the strict enforcement of Community Quarantine, restricting unnecessary travel, and the suspension of public transportation;

WHEREAS, the use of videoconferencing technology has been widely accepted for the remote appearance or testimony of the parties in other court proceedings³;

WHEREAS, allowing the remote appearance and/or testimony of parties through videoconferencing would reduce the risks of possible infection posed by face-to-face interactions, and ensure the continuity of proceedings before the National Privacy Commission;

¹ WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020. (n.d.). Retrieved June 05, 2020, from <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

² Memorandum from the Executive Secretary dated 16 March 2020

³ A.M. 19-05-05-SC and A.C. 37-2020

WHEREAS, Section 7 of the Data Privacy Act of 2012 has vested authority to the National Privacy Commission to prescribe and promulgate its Rules of Procedure;

WHEREAS, in consideration of these premises, the National Privacy Commission resolves to approve and hereby issues the following Guidelines on the Use of Videoconferencing Technology for the Remote Appearance and Testimony of Parties Before the National Privacy Commission:

I. General Provisions

A. *Objective*

To provide the parties the option to attend the proceedings remotely, in the relative safety of their chosen premises, in accordance with the Rules of Procedure, before the National Privacy Commission;

If parties do not avail of this videoconferencing option, the hearings will be governed by the Rules of Procedure of the National Privacy Commission.

B. *General Principles*

1. The rights of the parties to appear shall be deemed satisfied when such appearance is made remotely through video conferencing under these Guidelines.

2. The remote appearance of the parties, through videoconferencing, shall constitute as the appearance contemplated under the Rules of Procedure of the National Privacy Commission (NPC).

3. The parties shall observe transparency, integrity, and proper decorum during the duration of the video conference proceedings. The remote facility shall be deemed as an extension of the NPC office during the duration of the conference.

C. *Coverage and Applicability*

These Guidelines shall be supplemental to NPC Circular No. 16-04, the "Rules of Procedure" of the NPC.

These shall apply to all complaints and investigations initiated before the NPC including but not limited to the following:

1. Discovery Conference;

2. Summary Hearing;
3. Mediation Conference;
4. Investigations;
5. Clarificatory Hearings; and
6. All other hearings conducted by the concerned division and/or Commission.

D. Definition of Terms

1. “Commission” - shall refer to the Privacy Commissioner and the two (2) Deputy Privacy Commissioners acting as a collegial body.
2. “E-hearing” - refers to discovery conferences, summary hearings, mediation conferences, investigations, clarificatory hearings, and all other hearings conducted by the concerned division and the Commission held electronically through videoconferencing technology.
3. “Remote facility” - refers to homes, offices or any other facilities that are suitable and convenient to the parties in the conduct of videoconferencing. Such facility shall be limited to the room and amenities captured in the screen, where the parties as well as their counsels, if any, may be viewed during the conduct of the proceedings.
4. “Videoconferencing” - refers to the use of video, audio, and data transmission devices in the holding of a conference among people in different or remote physical locations to simultaneously communicate by seeing and hearing each other and shall refer to a videoconferencing platform vetted by the NPC.
5. “Conference Room” - shall refer to the meeting space within the Office of the National Privacy Commission where hearings, through videoconferencing, before the NPC are held.
6. “Electronic Signature” - refers to any distinctive mark, characteristic and/ or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedures employed or adopted by a person and executed or adopted by such person with the intention of authenticating or approving an electronic data message or electronic document.⁴

⁴ R.A. No. 8792

II. Proceedings

A. *Pre-Hearing*

The following technical and operational standards shall be observed prior to the conduct of the e-hearing:

1. Consent by parties - The parties to the complaint or investigation who may wish to avail of e-hearing shall express their written consent by affixing their electronic signatures⁵ to the consent forms provided to them and sending the same through e-mail to the concerned division or the Commission, copy furnished all the other concerned parties to the case at least three (3) days prior to the scheduled hearing.

Provided, if a party consents to the use of videoconferencing option but subsequently fails to meet the technical requirements prescribed in this guidelines, the concerned division or the Commission shall notify the parties of the reversion of the same to regular proceedings as prescribed under the Rules of Procedure of the National Privacy Commission.

2. E-hearings shall be conducted by the National Privacy Commission in a secure and reliable videoconferencing platform to be communicated to the parties to the case.

⁵ Republic Act No. 8792, Section 8. *Legal Recognition of Electronic Signatures*. - An electronic signature on the electronic document shall be equivalent to the signature of a person on a written document if that signature is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document, existed under which -

- (a) A method is used to identify the party sought to be bound and to indicate said party's access to the electronic document necessary for his consent or approval through the electronic signature;
- (b) Said method is reliable and appropriate for the purpose for which the electronic document was generated or communicated, in the light of all circumstances, including any relevant agreement;
- (c) It is necessary for the party sought to be bound, in or order to proceed further with the transaction, to have executed or provided the electronic signature; and
- (d) The other party is authorized and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same.

Section 9. *Presumption Relating to Electronic Signatures* - In any proceedings involving an electronic signature, it shall be presumed that -

- (a) The electronic signature is the signature of the person to whom it correlates; and
- (b) The electronic signature was affixed by that person with the intention of signing or approving the electronic document unless the person relying on the electronically signed electronic document knows or has noticed of defects in or unreliability of the signature or reliance on the electronic signature is not reasonable under the circumstances.

3. The minimum technical requirements for videoconferencing technology are as follows:

- a) Desktop computer and/or laptops in the conference room and remote facility;
- b) Video cameras in the conference room;
- c) Video cameras in the remote facility;
- d) Microphones;
- e) Video monitors;
- f) Audio system and speakers in the conference room;
- g) Reliable internet connection with high bandwidth; and
- h) Compliance with the data security and privacy standards under the Data Privacy Act, its Implementing Rules and Regulations, and other issuances of the National Privacy Commission.

4. Technical Capacity Building - Investigating officers, mediation officers, and other concerned personnel shall undergo capacity-building activities on these guidelines, including the operation of videoconferencing equipment and other digital tools, to ensure familiarity with the guidelines and technology.

5. Preparatory arrangements for videoconferencing. - The concerned personnel of the concerned division of the Commission shall always conduct a videoconferencing test in advance of the proceedings, at least one (1) day before the scheduled e-hearing, to resolve any technical problem or glitches and ensure a proper and clear audio-video connection between the conference room, where e-hearings are conducted, and the remote facility.

6. The investigating officer/ mediation officer/ Commission shall issue an order informing the parties of the date and time of proceeding, the link or access code to the videoconference, and the fact that the proceedings shall be recorded. Orders shall be sent via e-mail to the address on record of the parties. Such orders shall be equivalent to physical copies of orders sent through mail or courier service. An email read receipt shall constitute proof of service of the order upon the party, when the email client has such feature. If not, any other proof of receipt, such as acknowledgement or response to the email invitation shall suffice. *Provided*, the orders issued by the concerned division or the Commission and sent through e-mail shall be

deemed received at the time of the electronic transmission of the order, or when available, at the time that the e-mail read receipt of the order is sent⁶.

7. Remote appearance – Parties to a complaint or investigation shall, upon order of the investigating officer/ mediation officer/ Commission, remotely appear via videoconferencing.

B. Hearing

1. The conduct of the videoconference shall be hosted at the designated conference room at the National Privacy Commission.

2. Indication in the case record. – All remote appearances done *via* videoconferencing shall be indicated in an attendance sheet, which shall form part of the case record.

3. At start of the conference/hearing, all parties shall be required to produce competent proof of their identity by presenting any government issued I.D, and establish the circumstances of their authority to appear as duly authorized representative, if applicable.

Furthermore, the personnel of the concerned division or Commission shall ask each party to state the following for the record:

- a. Full name;
- b. Location;
- c. Confirmation that he/she can clearly hear and/or see the other attendees in the videoconference; and
- d. Confirmation that he/she consents to the holding of the e-hearing and that she received the order of the investigating officer/mediation officer/ Commission, to remotely appear via videoconferencing.

Should the parties opt to be assisted by their respective counsels, the same must be signified prior to the conduct of the videoconferencing hearing. Unauthorized or unauthenticated individuals will be denied access to the videoconferencing session.

4. Party speaking always within view and range. – Videoconferencing/ hearing participants at remote facilities shall ensure that they are within camera view and microphone range especially when speaking. Likewise, the same shall be ensured for those speaking within

⁶ Supplemental application of Section 9, Rule 13 of A.M. No. 19-10-20-SC

the conference room, so that he or she can be seen, heard and understood by those appearing remotely from another location.

The parties may request to mute their microphones should there be a need to confide with their counsel at any time during the videoconferencing hearing.

5. Submission of documents - The supporting documents and subsequent filing shall be done in accordance with the NPC Rules of Procedure. *Provided*, that if the testimony will be based on a sworn document, said affidavit or certification shall be furnished to the opposing party and the Commission at least three (3) days prior to the scheduled hearing.

The complainant and/or respondent may be required to send additional information or documents, or to produce additional documentary or testimonial evidence. The parties shall have the right to examine the evidence submitted, which he or she may not have been furnished, and to copy them at his expense.

6. Discontinuation of videoconferencing procedure - The investigating officer/ mediation officer/ Commission, at their own discretion, may suspend the videoconferencing proceedings when there are technical issues, or other matters that would affect its fairness and based on other reasonable or justifiable grounds as may be determined by the investigating officer/ mediation officer/ Commission.

7. Recording of videoconferencing proceedings - The following proceedings shall be recorded by the respective division/ Commission, *viz*:

- a. Discovery and Summary Proceedings - Complaints and Investigation Division;
- b. Mediation Conference - Legal Division;
- c. SClarificatory Hearings - Commission; and
- d. All other hearings - concerned division/ Commission.

The recordings shall form part of the records of the case and shall only be used as reference for the preparation of the Fact-Finding Reports, Memoranda by the Divisions, and the Decisions, Resolutions or Orders of the Commission.

C. *Post-hearing*

1. Storage of videoconferencing proceeding - An encrypted master copy shall be retained by the authorized personnel of the Division/ Commission as part of the case records, while a backup copy shall be stored in a secured location. Parties may be allowed to view the master copy of the recording upon written application with and approval of the Commission. Only the NPC shall be permitted to record the proceedings. Any unauthorized recording of the proceedings shall be dealt with in accordance with the Data Privacy Act, its IRR, related issuances and laws of the Republic of the Philippines.
2. Subsequent orders from the investigating officer/ mediation officer/ Commission shall be sent via e-mail to the address on record of the parties. Such orders shall be equivalent to physical copies of orders sent through mail or courier service. Hard copies of such orders may be provided to the parties upon written request and approval of the concerned division/ Commission.
3. The processing, including that of retention and disposal shall be in accordance with the National Archives Law, Data Privacy Act, its IRR, and other related issuances.

III. Effectivity

These Guidelines shall take effect immediately upon approval and shall remain effective until the lifting of the State of Public Health Emergency.

03 August 2020.

Approved:

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