

# Deputy Commissioner Section Update

Tammy R. Nance, Acting Chief Deputy Commissioner

Kevin V. Howell, Deputy Commissioner

North Carolina Industrial Commission

25<sup>th</sup> Annual N.C. Workers' Compensation Virtual Education Conference

# Deputy Commissioner Section Mission Statement

The Deputy Commissioners, Special Deputy Commissioners, and Legal Assistants of the North Carolina Industrial Commission endeavor to fairly, impartially, and efficiently adjudicate contested claims by careful application of the law; by adherence to rules and procedures; by encouraging settlement wherever possible; and by providing timely and excellent customer service to all parties.

# Regional Offices - Raleigh:

- ▶ Tammy Nance, Acting Chief Deputy Commissioner
- ▶ Robert J. Harris, Senior Deputy Commissioner
- ▶ Theodore S. Danchi, Deputy Commissioner
- ▶ J. Brad Donovan, Deputy Commissioner
- ▶ Sumit Gupta, Deputy Commissioner
- ▶ Kevin V. Howell, Deputy Commissioner
- ▶ Ashley Moore, Deputy Commissioner
- ▶ Adrian Phillips, Deputy Commissioner
- ▶ William W. Peaslee, Deputy Commissioner
- ▶ Thomas H. Perlungher, Deputy Commissioner

# Regional Offices - Charlotte:

- ▶ Jesse Tillman, Deputy Commissioner and Charlotte Office Liaison
- ▶ Mary Claire Brown, Deputy Commissioner
- ▶ David Hullender, Deputy Commissioner
- ▶ Mandy Witzke Bruce, Deputy Commissioner
- ▶ Erin F. Taylor, Deputy Commissioner

# Regional Offices - Wilmington:

- ▶ Lori A. Gaines, Deputy Commissioner and Wilmington Office Liaison

# Regional Offices - Winston-Salem:

- ▶ Michael Silver, Deputy Commissioner and Winston-Salem Regional Office Liaison
- ▶ Layla Santa Rosa, Deputy Commissioner
- ▶ Tyler Younts, Deputy Commissioner

# Special Deputy Commissioners

Special Deputy Commissioners handle penalty and contempt matters and inmate tort motions hearings. The Special Deputy Commissioners are:

- ▶ Jessica Price
- ▶ Travis White
- ▶ Marshall Wright
- ▶ Melissa Botiglione

# Deputy Commissioner Section

## Legal Assistants

The Legal Assistants support the work of the Deputy Commissioners in many ways, including but not limited to preparing hearing calendars, filing Orders, and communicating with parties and their counsel regarding matters pending before the Deputy Commissioners. They are:

- ▶ Sandra Cortes ..... Raleigh
- ▶ Kristen Calcaterra ..... Raleigh
- ▶ Jonathan Benimana ..... Raleigh
- ▶ Jes Miller ..... Raleigh
- ▶ Crystal Snow ..... Charlotte
- ▶ Amanda Yzquierdo ..... Charlotte
- ▶ Kyle Jones ..... Wilmington
- ▶ Crystal Workman ..... Winston-Salem



# Deputy Commissioner Section FY 2019-2020 Statistics:

▶ Number of Claims Docketed for Hearing.....	5,606
▶ Cases Heard.....	1,114
▶ Compromise Settlement Agreements Approved.....	1,927
▶ Final Determination.....	864
▶ Cases Dismissed with Prejudice.....	662
▶ Cases Dismissed without Prejudice.....	171
▶ Cases Continued or Removed from Hearing Docket.....	3,381

# Deputy Commissioner Section FY 2019-2020 Statistics, continued:

▶ Penalties Assessed.....	1,228
▶ Penalty Matters Docketed for Hearing.....	988
▶ Contempt Matters Docketed for Hearing.....	416
▶ Expedited Medical Motions*.....	252
▶ Emergency Medical Motions*.....	46

[\*All medical motions were ruled upon within the statutorily-mandated time frame.]

# Remote Hearings During the COVID-19 Pandemic

Kevin V. Howell, Deputy Commissioner

# Timeline for Implementing Webex Hearings

- ▶ Beginning on March 13, 2020, Chief Justice Cherie Beasley issued the first of many emergency directives aimed at reducing the spread of COVID-19.
- ▶ On May 21, 2020, Chief Justice Beasley directed judicial officials “to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.”
  - ▶ This emergency directive has been extended several times and remains in effect.
- ▶ Consistent with Chief Justice Beasley’s orders, Chair Baddour announced that Deputy Commissioner hearings would resume in June 2020 via Cisco Webex.
- ▶ As of July 2020 and continuing until further notice, all Deputy Commissioner hearings are being docketed as Webex hearings.

# What is needed to join a Webex hearing?

- ▶ A computer or mobile device equipped with a camera, microphone, and an internet connection.
  - ▶ However, if you do not have a microphone or experience poor audio quality, you can connect by telephone. (More on this later.)
  - ▶ NOTE: All hearing participants must be able to be seen and heard by all other hearing participants. Therefore, participation by audio only is not permitted.
- ▶ Mobile devices must download the free Webex application.
- ▶ Ensure that your computer or laptop is compatible by conducting a test at <https://www.webex.com/test-meeting.html>

# Can a party request an in-person hearing?

- ▶ Yes, a party may file a motion for an in-person hearing with the presiding Deputy Commissioner.
- ▶ The moving party must present good cause as to why an in-person hearing should be allowed in light of the emergency directive to “make use of remote hearing technology to the greatest extent possible to limit in-person appearances.”
  - ▶ This determination is made on a case-by-case basis and is in the discretion of the presiding Deputy Commissioner.
  - ▶ Generally speaking, the presiding Deputy Commissioner will weigh the need to limit face-to-face interactions to prevent the spread of COVID-19 and timely adjudicate the claim, along with the case-specific factors presented in the motion.
  - ▶ Considerations must include the health and safety of attorneys, witnesses, court reporters, interpreters, and courthouse personnel.

# What if a party or witness does not have the necessary technology?

- ▶ An inability to connect to Webex will be considered as a factor in determining whether good cause exists to hold an in-person hearing.
  - ▶ Are other options available and reasonable? E.g., can the participant testify from another location where the technology is available? Would bifurcating the hearing or conducting a post-hearing deposition be more appropriate?
- ▶ If a party believes that the case is neither appropriate for a Webex hearing nor appropriate to be heard in-person at the present time, the party may file a motion to temporarily remove the case from the hearing docket with the presiding Deputy Commissioner.
- ▶ At any time after a case has been temporarily removed, either party may request that it be placed on the next available hearing docket by filing a motion with the presiding Deputy Commissioner or upon notification to the Clerk's Office by the party who requested the temporary removal.
  - ▶ A new Form 33 is not required.

# Are hearings open to the public?

- ▶ Yes. Pursuant to N.C. Gen. Stat. § 97-79(d), hearings before the Commission must be open to the public.
- ▶ Remote hearings can be observed by going to <http://www.ic.nc.gov/> and selecting “Webex Remote Hearings” in the navigation bar on the right side of the page.
- ▶ The general public enters the hearing as an “attendee,” which only allows them the ability to view the hearing.
  - ▶ The camera and microphone cannot be enabled by the “attendee.”
  - ▶ If a person enters the hearing as an attendee instead of a panelist, the presiding Deputy Commissioner can promote that person to allow them to participate.



# How do you join a Webex hearing from a computer?

- ▶ Each panelist will receive a direct link to join the hearing via email.
- ▶ On the date and time of the scheduled hearing, click the link (“Join event”) in the invitation email.

**You're a panelist for this Webex event. When it's time, join the Webex event here.**

Host: Kevin Howell ([kevin.howell@ic.nc.gov](mailto:kevin.howell@ic.nc.gov))

Event number (access code): 161 442 7386

Event password: EJhPpWrD442

Panelist password: The Event has no Panelist Password

Thursday, May 28, 2020 6:30 pm, Eastern Daylight Time (New York, GMT-04:00)



# How do you join a Webex hearing from a computer?

- ▶ The link in the email will take you directly to the hearing landing page. Enter your name and email address and select “Submit.” (Note: the information must match the information provided to the host.)



For **NCE**

## Event Information: Mock Hearing

**Event status:** Not started  
**Date and time:** Thursday, May 28, 2020 6:30 pm  
Eastern Daylight Time (New York, GMT-04:00)  
[Change time zone](#)  
**Duration:** 1 hour  
**Description:**

By joining this event, you are accepting the Cisco Webex [Terms of Service](#) and [Privacy Statement](#).

Join Event Now as Panelist

To join this event as a panelist, provide the following information.

→ **First name:**   
→ **Last name:**   
→ **Email address:**

→ **Submit**

If you are the host, [start your event](#).

# How do you join a Webex hearing from a computer?

- ▶ Select “Join”



## Event Information: Mock Hearing

**Event status:** Not started

**Date and time:** Thursday, May 28, 2020 6:30 pm  
Eastern Daylight Time (New York, GMT-04:00)  
[Change time zone](#)

**Duration:** 1 hour

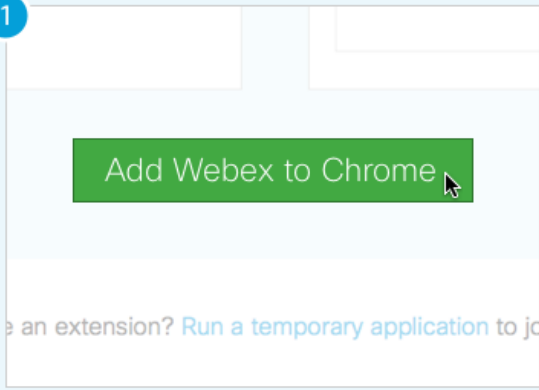
**Description:**

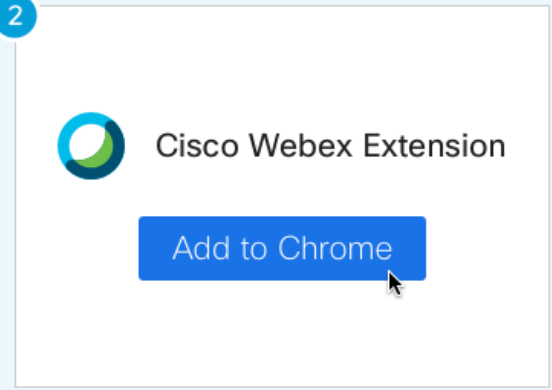
A screenshot of a Webex event page. At the top right, it says "For NC". Below that, there is a grey button that says "Join Event Now as Panelist". Below the grey button, there is a blue button that says "Join". A red arrow points to the blue "Join" button. Below the blue button, there is text that says "If you are the host, [start your event.](#)".

- ▶ When joining Webex for the first time from a desktop or laptop computer, you may reach a page like the one shown here.
- ▶ The page you see will differ based on the web browser you are using.
- ▶ If you do not want to download an add-on or extension to your web browser, select “Run a temporary application” and “open.”

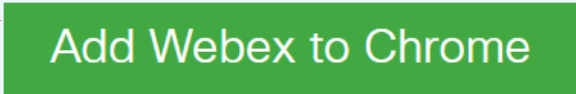
## Step 1 of 2: Add Webex to Chrome

Follow this one-time process to join all Webex meetings quickly.

- 

Select **Add Webex to Chrome**.
- 

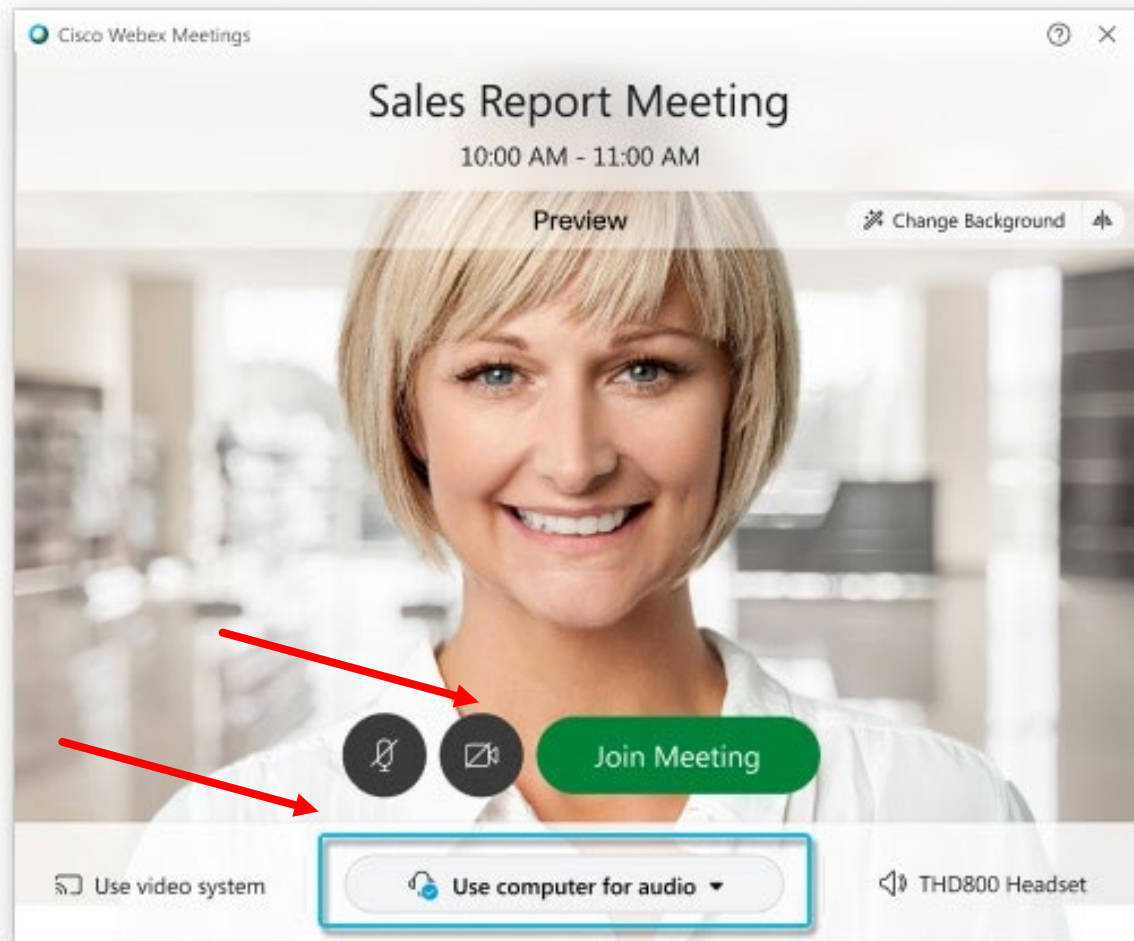
Select **Add to Chrome** in the Chrome store.



Don't want to use an extension? [Run a temporary application](#) to join this meeting.

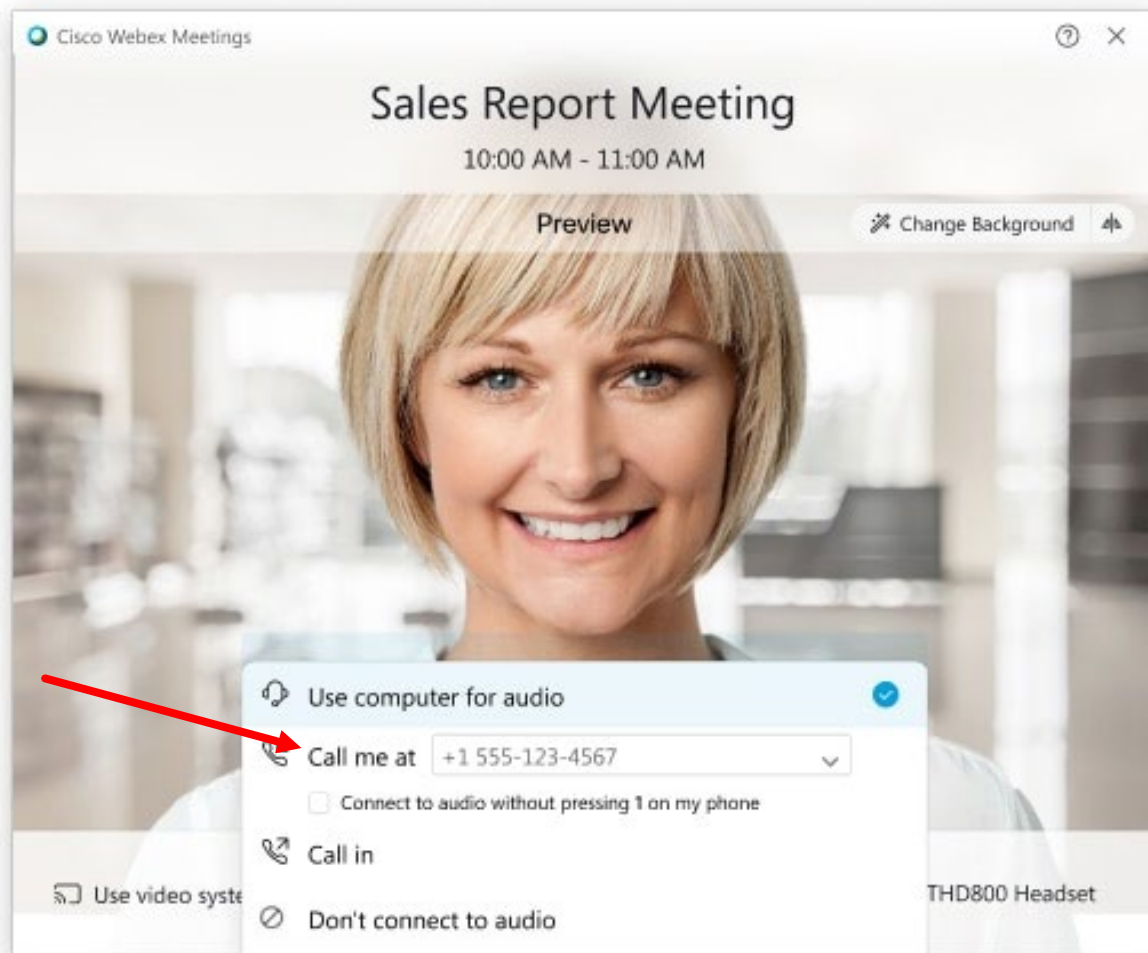
# How do you join a Webex hearing from a computer?

- ▶ Enable your camera and choose how you want to communicate.
- ▶ Using your computer for audio is the default.

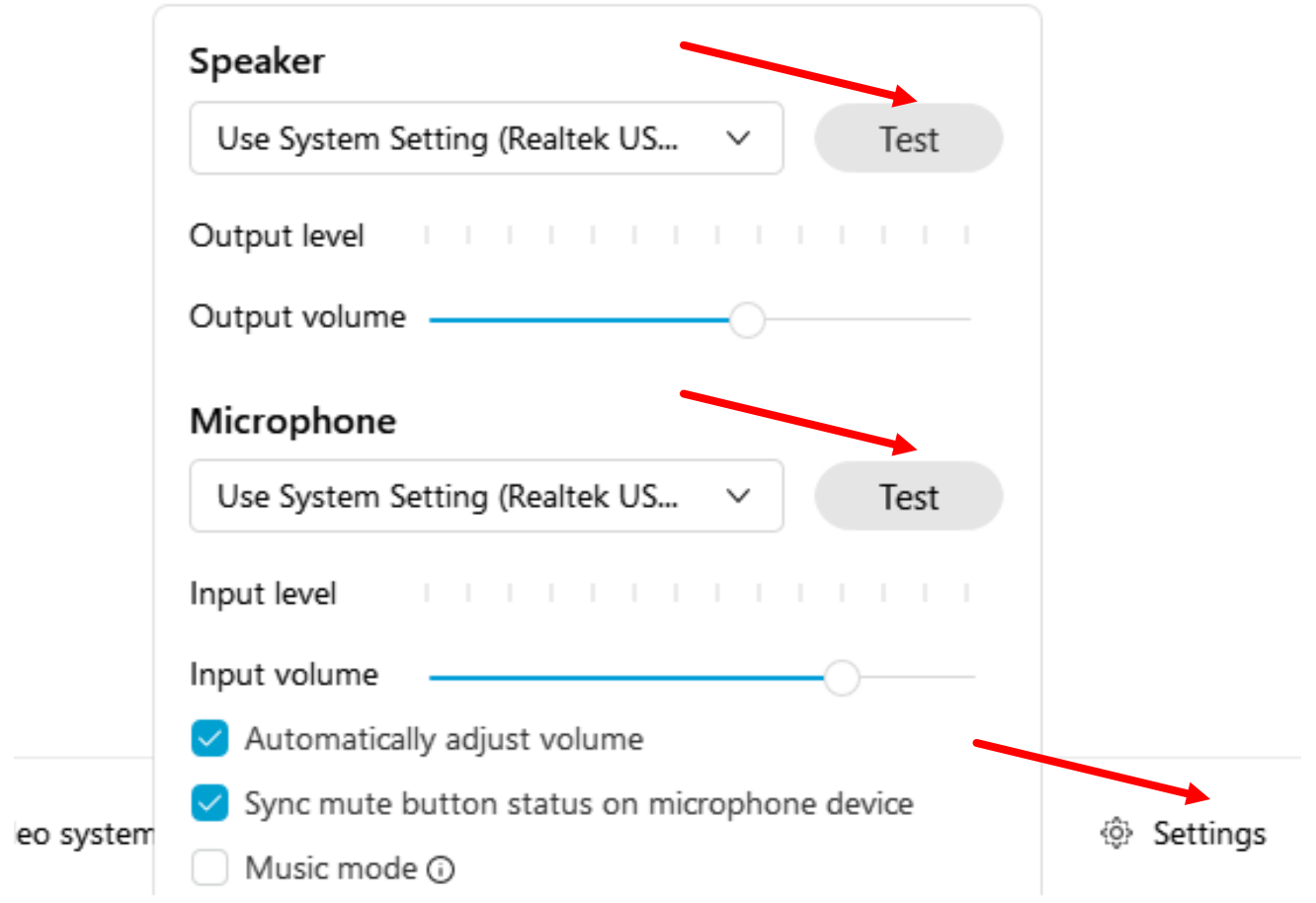


# How do you join a Webex hearing from a computer?

- ▶ If you experience poor audio quality or have internet connectivity issues, you can connect by telephone. Selecting the “call me” option is preferred.

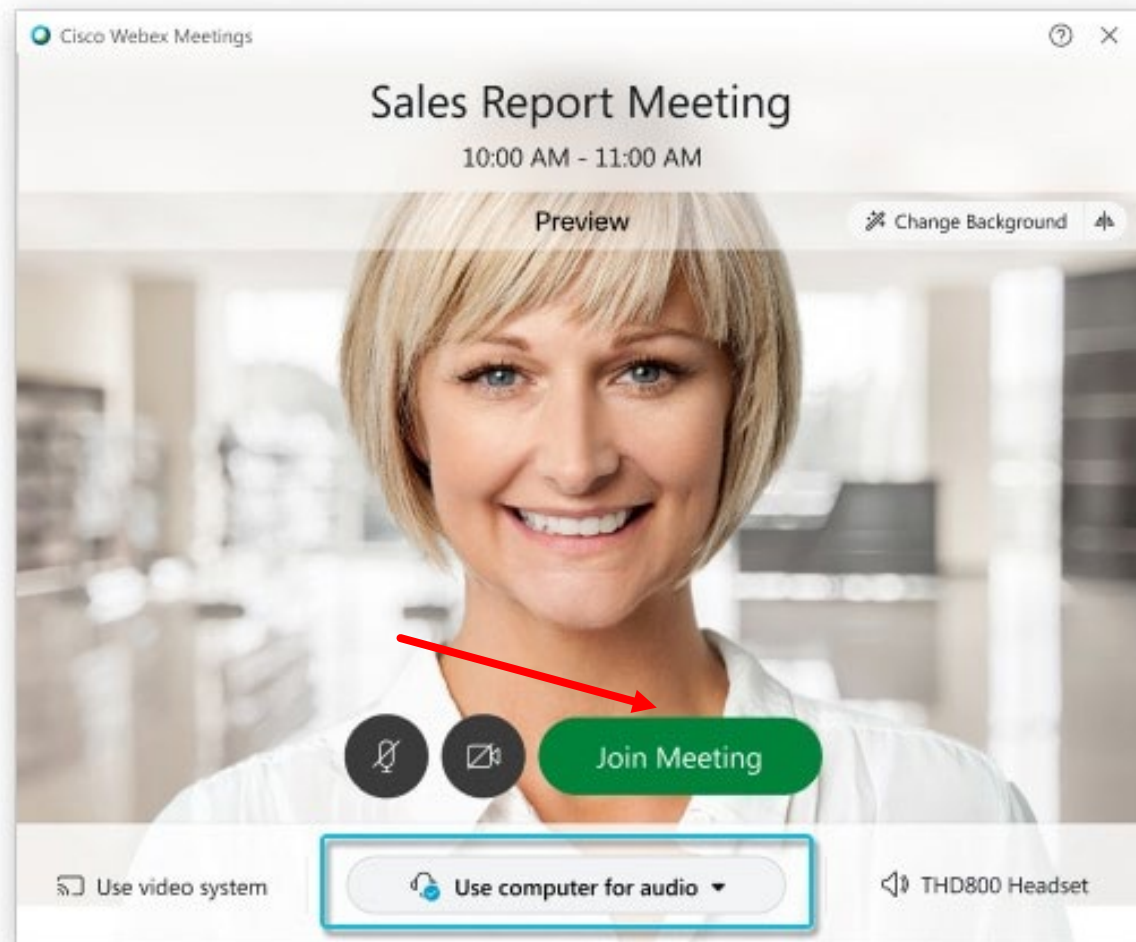


- ▶ Now that you have selected your audio connection, you can test your audio before joining the hearing.
- ▶ When you hover over the button on the bottom, right of the screen, the word “Settings” appears.
- ▶ Select “Settings” and then select “Test” to test your speaker and microphone.
  - ▶ Speaker - sound will play.
  - ▶ Microphone - record your voice, which will play back to you.



# How do you join a Webex hearing from a computer?

- ▶ Once you are ready, select “Join Meeting.”





# How do you join a Webex hearing on a mobile device?

- ▶ From the email invitation, click the link (“Join event”).
- ▶ If you have not already downloaded the Cisco Webex Meetings app, select “Download” and then select “Open” once the app is installed.
- ▶ If prompted, enter your name, email address, and the meeting number.
- ▶ Enable access to your camera and microphone.
- ▶ Select “Join” to join the hearing.

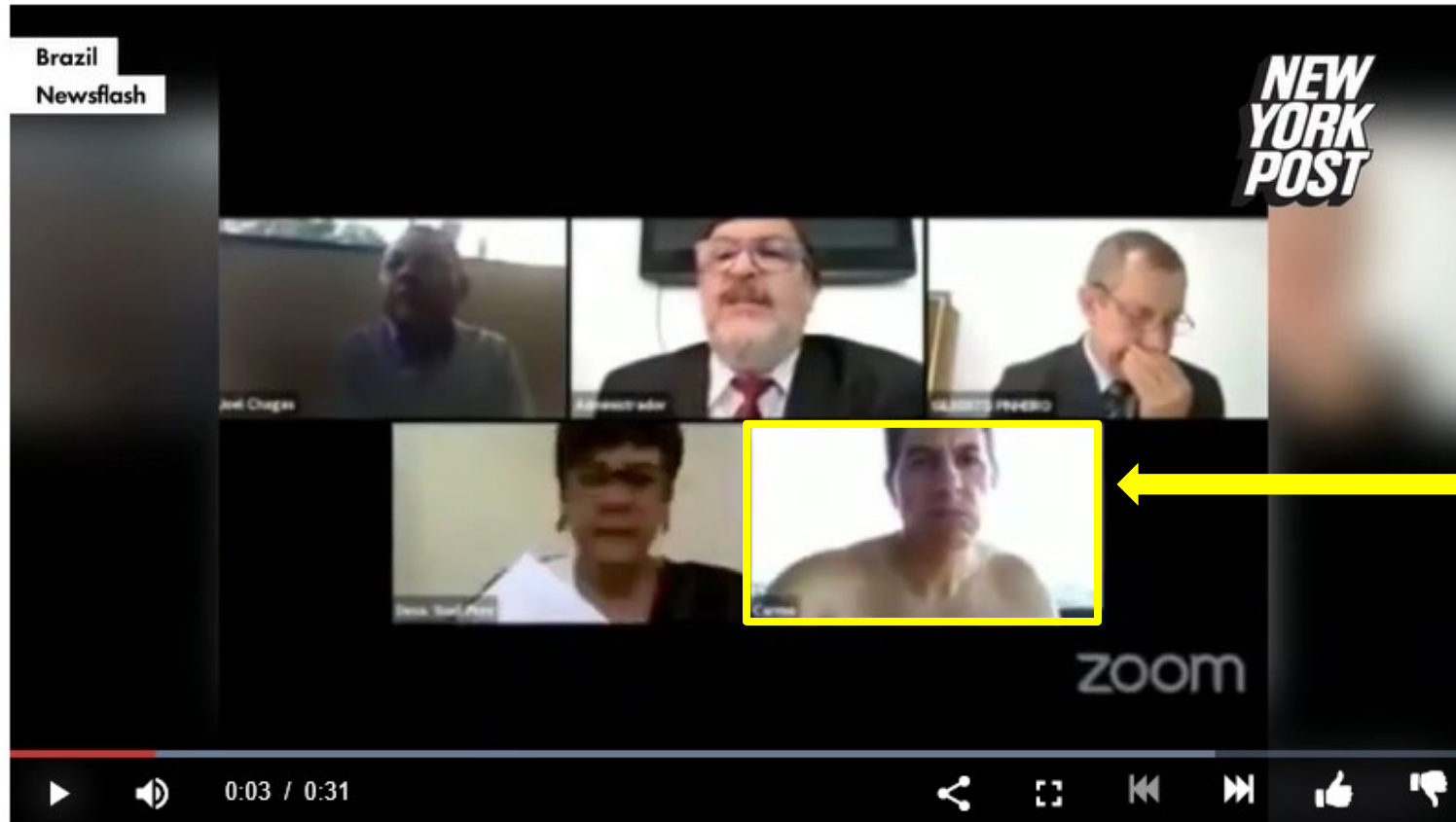
# Considerations before joining a Webex hearing

- ▶ Make sure:
  - ▶ you are in a quiet space that is free from distractions
  - ▶ the lighting is appropriate to ensure your face is visible
  - ▶ the camera and microphone are working properly
  - ▶ what will be in camera view is appropriate
  - ▶ you have a strong internet connection
    - ▶ Disable other devices that require an internet connection
    - ▶ Consider connecting to the internet with an ethernet cord directly with a modem rather than using Wi-Fi
- ▶ Business or business casual attire is appropriate for appearing at a remote hearing.

# Brazilian judge caught shirtless during court session on Zoom

By Lee Brown

April 16, 2020 | 8:55am | Updated



**NOT BUSINESS CASUAL!**

Source: New York Post, <https://nypost.com/2020/04/16/brazilian-judge-caught-shirtless-during-court-session-on-zoom/> (accessed on August 26, 2020).

# Additional considerations

- ▶ Participants are encouraged to join from a laptop or desktop. Viewing exhibits is more difficult on a smartphone.
- ▶ A webcam (with a built-in microphone) may need to be purchased. Webcams are relatively inexpensive and are available at various retailers.
- ▶ Participants who are not speaking should mute their microphones to avoid background noise interfering with the hearing.

# Additional considerations

- ▶ When testifying, a witness should be alone in a separate room without access to any documents or papers, other than copies of exhibits already provided to the Commission and opposing parties.
  - ▶ No witness may have private communications with an attorney or any other person while testifying.
- ▶ When not testifying, parties may communicate fully and confidentially with their counsel, including by text, email, or telephone if the party and counsel are in different locations.
- ▶ If an interpreter is needed for the hearing, make sure to comply with the notice requirement in Rule 619 so proper arrangements may be made prior to the hearing. (21 days!)

# Additional considerations

- ▶ All stipulated and proposed exhibits shall be uploaded via EDFP at least 48 hours prior to the scheduled hearing and exchanged with the other party or parties.
  - ▶ This requirement shall not apply to proposed exhibits contemplated exclusively for use in potential rebuttal, surrebuttal, or impeachment.
- ▶ Pre-trial agreements are still due no later than 10 days prior to the date of the hearing, unless otherwise ordered pursuant to Rule 610.
  - ▶ The party filing the hearing request shall deliver a proposed Pre-Trial Agreement to all other parties at least 20 days prior to the date of the hearing.

# Presentation of Exhibits

- ▶ Remember: All hearings are open to the public, and sharing records on a screen may disclose PII, confidential, or embarrassing information.
- ▶ Presentation of exhibits should be discussed with the presiding Deputy Commissioner prior to the hearing.
- ▶ Screen sharing may be allowed in some instances, but the preferred method is to make a hard-copy or electronic version of the relevant exhibits available to the witness during his or her testimony.
  - ▶ Some witnesses do not need access to all exhibits, such as a plaintiff's medical or employment records, so plan accordingly.

# IN-PERSON HEARING SAFETY PROCEDURES

The Deputy Commissioners' Uniform Pre-Trial Order sets out several health and safety guidelines for in-person hearings during the COVID-19 Pandemic:

- Any person with symptoms of COVID-19 shall not attend a hearing
- Any person who has tested positive for COVID-19 shall not attend a hearing unless the person has recovered from COVID-19 and the CDC-recommended amount of time has passed since illness onset and recovery. If the person who tested positive had no symptoms, he shall not attend a hearing unless at least 10 days have passed since the positive test
- Any person who has had a known contact with another person diagnosed with COVID-19 shall not attend a hearing unless at least 14 days have passed since the known contact
- Any person who has traveled internationally shall not attend a hearing unless at least 14 days have passed since returning home from the international travel.



# In-person hearing health and safety guidelines, continued:

In addition to the standard precautions regarding hand hygiene, the Uniform Pre-Trial Order also requires that all persons in the hearing room maintain a distance of at least six feet from all other individuals, as well as face coverings for everyone over the age of two who does not have a medical or behavioral condition which precludes the wearing of a mask.

With regard to hearing exhibits, all hearing participants are required to bring their own copies of the exhibits to the hearing. If it is necessary to use an exhibit to examine a witness, the questioning attorney must place the exhibit on a surface while maintaining a distance of six feet from all other individuals. The witness may then approach the surface to examine the exhibit while also maintaining a distance of six feet from all other individuals. If the witness must touch the exhibit, he should use clean gloves or hand sanitizer before and after touching the exhibit.



Thank you for your  
patience, flexibility,  
and cooperation!