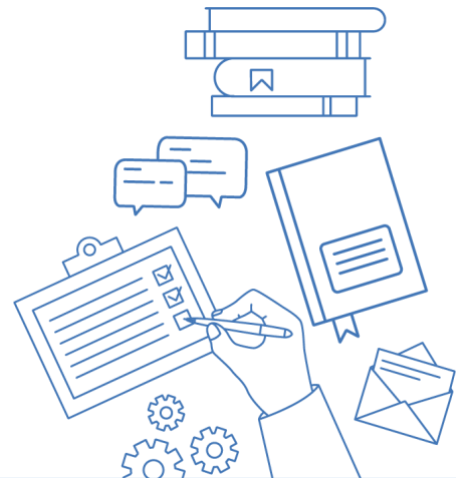


CCB HANDBOOK

Hearings

After the parties submit their written testimony, the CCB may decide to hold a virtual hearing to give the parties an opportunity to present their evidence and describe why their claims or defenses are valid.



Chapter at a Glance

- [What to Expect at a Hearing](#)
- [How to Request a Hearing](#)
- [How to Prepare for a Hearing](#)
- [Frequently Asked Questions](#)

Why You Need This Information

Toward the end of the proceeding, the CCB may decide to hold a virtual hearing with the parties to discuss the **merits** of the case. At the hearing, all parties will have an opportunity to present their positions to the CCB Officers, ask questions of the other parties and any witnesses attending the hearing, and refer to evidence. This chapter describes how hearings work in CCB proceedings. Some of these procedures are different in smaller claims proceedings, which are fully discussed in the [Smaller Claims](#) chapter.

HOW DID YOU GET HERE?

After exchanging evidence and information during discovery, the parties file party statements, as part of written testimony, describing their positions on the issues and providing key evidence and any witness statements to the CCB. The CCB may then schedule a hearing to discuss the issues further.

WHAT IS THE POINT OF A HEARING?

Party statements are the parties' chance to present their cases to the CCB in writing. The CCB may schedule a hearing via teleconference if the CCB concludes that it would be helpful in deciding the case. The CCB will use the hearing to discuss the case with the parties and hear the oral testimony of optional witnesses brought by the parties. The parties and any witnesses will answer questions from the CCB Officers and the other parties about the issues in the proceeding.

WHERE YOU ARE IN A CCB PROCEEDING:

1. Filing a Claim
2. Compliance Review
3. Service
4. Opt-Out Period
5. Proceeding Becomes Active
6. Response
7. Discovery
8. Settlement
9. Written Testimony
- 10. Hearing***
11. Determination
12. Post-Determination

*not in all proceedings

WHAT HAPPENS NEXT?

After the hearing, the CCB will issue a determination in the proceeding. This determination provides its decision on the claims and defenses. The Board may also award damages.

What to Expect at a Hearing

- Hearings are an opportunity for all parties to present their positions to the CCB Officers and includes presenting evidence and having witnesses testify. You may be allowed to ask questions of the other parties and any witnesses attending the hearing.
- CCB Officers will conduct the hearing, and participants must follow their directions. The Officers will have reviewed the claim, the response, and each party's written testimony, including any evidence. The Officers may ask you or your witnesses questions to make sure they understand the key issues in your claim.
- As a CCB participant, you're expected to uphold certain [standards of conduct](#) such as treating others with utmost respect and being ethical and truthful in CCB appearances and submissions. The CCB can impose financial penalties against a party who behaves in bad faith.

How to Request a Hearing

If you think the CCB should hold a hearing in your proceeding, you can

- include a request for a hearing in your party statement, or
- submit a request through a fillable form on eCCB no later than seven days after the deadline for reply party statements.

Your request must be a short statement providing your reasons for why you think the CCB should hold a hearing. However, the fact that a party has requested a hearing doesn't necessarily mean the CCB will decide to schedule one. And even if no party has requested a hearing, the CCB may decide to hold one. If the CCB decides to schedule a hearing, it will issue a revised scheduling order with the date of the hearing. The CCB may also schedule a pre-hearing conference to discuss with the parties how the hearing will work as well as any other relevant issues. The scheduling order may also include deadlines for submitting any additional evidence that the CCB has requested.

How to Prepare for a Hearing

It is important to prepare for a hearing in advance. You should be able to present your evidence in the best light possible and rebut the other parties' evidence and statements. The following are some ways to equip yourself with the necessary tools to present a persuasive case.

- **Check Hearing Time.** Hearings are held virtually. Check that the date and time work for you (all hearing times are U.S. eastern time). You may request that the CCB reschedule the hearing by email at asktheboard@ccb.gov. Please note that the CCB may not be able to accommodate your request. If you cannot attend, let the CCB know as soon as possible.
- **Be Ready with Technology.** Make sure you have the appropriate technology to participate in the Zoom meeting by web or by dialing in via the conference phone number. If you have any questions prior to the hearing or have trouble connecting during the scheduled time, immediately email asktheboard@ccb.gov and staff will help you get connected.

- **Gather.** Gather all of the written testimony submitted by you and the other parties, including party statements, witness statements, and evidence.
- **Review.** After gathering the testimony filed by all parties, review it to refresh your recollection about the important points in your case. Be able to respond to, and possibly counteract, the other parties' testimony at the hearing with your own testimony, witness testimony, or evidence.
- **Outline.** Create an outline of your best arguments and evidence so you can focus the Officers on the points that are most relevant to your case.

If you are a claimant:

- Go over each element needed to prove the kind of claim (infringement, noninfringement, or misrepresentation) you have brought. List the testimony or evidence that supports each of those elements in your outline. The elements for each claim can be found in the [Starting an Infringement Claim](#), [Starting a Noninfringement Claim](#), and [Starting a Misrepresentation Claim](#) chapters.
- Show how you are entitled to the damages that you are seeking—possibly through testimony or evidence showing your normal licensing fee for the kind of work that you allege was infringed or the amount of profits you lost or the other party gained due to the alleged infringement.

If you are a respondent:

- Figure out which elements the claimant has not proved so you can bring those to the attention of the Board. Go over your defenses to the kind of claim that is being brought against you. Think about what testimony or evidence supports those defenses. The defenses for each claim are found in the [Infringement Response](#), [Noninfringement Response](#), and [Misrepresentation Response](#) chapters.
- Present evidence showing the claimant was not harmed (or not to the extent the claimant asserts) or that lowers the profits you earned from the allegedly infringing work (for example, by establishing how much it costs to produce your work).
- **Invite Witnesses.** After creating your outline, think about whether it would be helpful to have any of the witnesses who submitted witness statements there to testify on your behalf. You are **not** required to bring witnesses to the hearing. However, if you think any witnesses would be helpful, you can invite them to attend. It is the witness's choice whether or not to attend.
- **Prepare Questions.** Make a list of questions you may want to ask the other parties and any witnesses testifying on their behalf. Make sure you focus the questions on the key issues of the case. Do not go off on tangents or waste time on extraneous issues. If you ask questions of the other parties or witnesses, be polite and avoid antagonizing them. Such conduct will not improve your chances of succeeding in the case and, in extreme circumstances, could result in an order of [bad-faith conduct](#) being made against you.

When preparing questions, think of asking about

- evidence the other parties may not have produced,
- weaknesses in the other parties' case,
- evidence you can present to a witness contradicting their testimony, and
- if the other party has called a witness you think is biased, information that would show that bias (for example, the witness may be related to or employed by the other party).

Frequently Asked Questions

WHAT KIND OF EVIDENCE CAN I USE DURING THE HEARING?

During the hearing, you can refer to any evidence submitted as part of the claim or response, or as part of any party's written testimony (including any witness statements, documents, or party statements), unless the CCB has excluded that evidence. Generally, all evidence relevant to the issues in the proceeding can be referenced during the hearing. However, the CCB can exclude evidence, give it less consideration, or ask a participant for more information if it has questions about whether specific evidence is authentic or reliable.

HOW DO I REFER TO EVIDENCE?

When you submit documents as evidence with your party statement, you will fill out an evidence list numbering each document. Those numbers should be used when referring to a document in the hearing, unless the CCB excludes it.

If the CCB allows evidence not on either party's evidence list to be presented at the hearing, the additional documents will be marked as an exhibit. This evidence will typically start with the next available number on that party's evidence list.

***Example:** Gianni filed an evidence list with seventeen documents as part of his party statement, and Luisa filed an evidence list with thirteen documents as part of her party statement. The third document on Gianni's evidence list is a copy of an email between Gianni and Luisa. As long as the CCB hasn't excluded that specific piece of evidence, it's automatically an exhibit in the hearing, and Gianni can refer to it during the hearing as "exhibit #3 on my evidence list" and Luisa can similarly refer to it as "exhibit #3 on Gianni's evidence list." If the CCB gives Luisa permission to refer to two additional pieces of evidence beyond the thirteen documents she filed as part of her party statement, Gianni and Luisa can refer to those additional pieces of evidence as Luisa's exhibits #14 and #15 at the hearing.*

HOW CAN I OBJECT TO EVIDENCE?

If you think that a specific piece of evidence another party refers to in the hearing isn't authentic or reliable in some way, then you can object to that evidence during the hearing. Objections in CCB hearings aren't formal like they are in court proceedings, and they don't have to be made in any specific manner.

***Example:** During the hearing, Susanna claims that Ernesto signed a contract, but Ernesto believes the signature on the contract Susanna uses as an exhibit is fake. When it is Ernesto's turn to speak, he objects to the document by saying, "The exhibit Susanna just referred to isn't authentic because the signature is fake."*

NOTE: You can also object to a piece of evidence if it wasn't provided to you before the hearing.

HOW DO I PRESENT MY LENGTHY EVIDENCE?

If certain evidence includes many pages and wouldn't be easy to present or refer to at the hearing, you may be able to present the evidence in the form of a chart, summary, or calculation instead. To do so,

- you must have provided all of the evidence on which the chart, summary, or calculation is based to the other parties during discovery, and
- unless you were given permission for a different method, you must have included that evidence on an evidence list filed as part of party statements.

If you plan on using a chart, summary, or calculation during the hearing, you must provide it to the other parties at least seven **calendar** days before the hearing (and if seven days before the hearing falls on a federal holiday, by the day before the federal holiday).

***Example:** Adina brings an infringement claim against Miller. During discovery, Miller provides to Adina several years of their financial statements that show Miller never made any money from the work that Adina claims is infringing. Miller includes all of these financial statements on the evidence list they file with their party statement. After Adina and Miller have filed their party statements, the CCB schedules a hearing for November 12. Miller decides that it would be much easier to use a chart summarizing their financial statements at the hearing. Miller prepares this chart and provides a copy of it to Adina by November 5—seven days before the hearing. If Adina thinks Miller’s chart misrepresents any of the underlying evidence or is based on any evidence not previously provided to her, she can object to the chart during the hearing.*

CAN I BRING NEW EVIDENCE?

You must have the CCB’s permission to use any evidence that wasn’t filed as part of a claim or response or any party’s written testimony during the hearing. You can ask the CCB’s permission either before or during the hearing. You can request permission before a hearing through eCCB using a fillable form. Your request must be limited to 4,000 characters.

TIP: Where possible, ask the other parties for consent to use new evidence before the hearing. Sometimes that won’t be possible, such as when something unexpected happens at a hearing and you want to introduce evidence to address it.

If another party files a request to use evidence not submitted as part of a claim, response, or any written testimony, and you would like to respond, you must submit your response through a fillable form on eCCB within seven days of the request. Your response must be limited to 4,000 characters.

The CCB will wait for the response deadline before *granting* a request, unless the requesting party has the consent of the other parties. Therefore, you should file your request at least ten days before the hearing and no later than seven days before the hearing. Note: The CCB can *deny* a request before the other parties respond.

If a request to use new evidence is made during a hearing, the other party may object. The CCB will decide whether the evidence should be included or excluded. If the other party states that they wish to submit their objection in writing after the hearing, the CCB may decide to preliminarily accept the evidence for use at the hearing. Then, the CCB will wait until the written response is filed (up to seven days) to make its final decision about whether to consider the evidence in its final determination.

After the hearing ends, parties cannot submit any additional arguments or evidence unless the CCB specifically requests or gives permission for a party to do so. Permission will only be given if there’s a good reason.

HOW WILL WITNESS TESTIMONY BE HANDLED AT THE HEARING?

Any witness, including a party, will need to take an oath or affirmation before they testify.

The CCB Officers will manage the hearing. They may limit the number of witnesses allowed to testify or the number of questions the parties can ask. The CCB can also exclude witnesses from the hearing when they are not being questioned.

CAN PARTIES BE REQUIRED TO BRING WITNESSES TO A HEARING?

Witness participation in hearings is purely voluntary. The CCB cannot require a witness to attend the hearing.

CAN NONPARTICIPANTS ATTEND A HEARING?

Only the parties, their representatives, and their witnesses are allowed to attend CCB hearings, unless the CCB gives permission for someone else to attend. If you aren't a party, representative, or witness in a CCB hearing and you would like to attend the hearing, you can request to attend the hearing using a fillable form on eCCB. Your request must be limited to 10,000 characters.

If a third party requests to attend a hearing in your CCB proceeding and you would like to respond, you may do so through a fillable form on eCCB. Your response must be limited to 10,000 characters and must be filed within fourteen days of the request.

The CCB will wait until the response deadline before *granting* a request, unless the requesting party has the consent of the other parties. The CCB will make its decision whether a third party can attend by issuing an order through eCCB. The CCB will not grant a request without giving all parties a chance to respond, unless all parties have consented to the request. Therefore, you should file your request to attend a hearing at least fourteen days before the hearing.

CAN I GET A TRANSCRIPT OF THE HEARING?

Yes, the CCB may make an unofficial transcript using available technology.

At the request of a party, the CCB may select an official reporter to prepare a transcript either by attending the hearing or by reviewing a recording. The party requesting the transcript is responsible for paying the reporter directly for the cost of creating the official transcript. You can request that the CCB select an official reporter to prepare an official transcript through a fillable form on eCCB. Your request must be limited to 4,000 characters.

If another party requests an official transcript and you would like to respond, you must submit your response through a fillable form on eCCB within seven days of the request. Your response must be limited to 4,000 characters.

The CCB will wait until the response deadline before *granting* a request, unless the requesting participant has the consent of the parties. The CCB will not grant a request without giving other parties a chance to respond, unless all parties have already consented to the request. Therefore, you should file your request at least seven days before the hearing.

WHAT HAPPENS WHEN A RESPONDENT AGREES TO VOLUNTARILY STOP OR CHANGE UNLAWFUL ACTIVITIES?

If you are a respondent or a counterclaim respondent, you can inform the CCB before (for example, in your party statement) or during the hearing whether you would voluntarily agree to a CCB order requiring you to stop or change the complained of activity *if* the CCB ultimately reaches a determination in favor of the other party. This is optional. If you make this statement to the CCB, the CCB can, in its discretion, use this statement to reduce any damages it might award against you. The CCB will consider your statement in deciding the amount of damages (if any) *only* if the CCB ultimately decides in favor of the other parties. It *will not* consider this statement in deciding whether to issue a determination in your favor or the other parties' favor. The hearing is your last opportunity to let the CCB know that you will stop or change the complained of activity. You do not need to make this statement again if you already included it in your party statement. If you do make the statement, the CCB may include in its final

determination a requirement that you stop that activity or change it in the way you have told the CCB you would.

Don't see your situation in this chapter? Get in touch! Email asktheboard@ccb.gov.

Glossary

- **Merits:** The substantive grounds or basis of a claim or defense to a claim.