



Just a few months ago, the idea of a court hearing by video conference seemed like something from a tale of a dystopian future. But the future is now. Though the COVID-19 pandemic has taken us back to basics in many ways – board games, home-cooked family dinners, walks in the neighborhood – it has also caused an unintended acceleration of time and technology in the law. We have been forced to instantly adapt to working from home, video conferences and now hearings and even trials by Zoom. Most of us have been pleasantly surprised by how well this all works. Of course, we all still have many lessons to learn. I have seen quite a few articles about Zoom etiquette, but that is not the purpose of this article. I hope by now that everyone knows they need to wear a jacket and tie to video court. It's not that difficult. You can even stay in shorts, but you must test your camera first. For all of our sake, especially yours, just make sure your legs are not in view of the camera. And don't stand up! For this article, though, I wanted to cover more of the practical concerns with hearings and trials by Zoom.

Most of the themes are consistent with typical trial tactics. I place them into four categories that connect and overlap, in no particular order. First, plan ahead. Second, control the controllable. Third, build in redundancy. Fourth, be patient.

Trials always require intense planning – preparation of exhibits, witnesses, demonstratives, briefs... The list is long. I hope that technology was already on yours. Now, we just add another layer. You must plan ahead and try to control the controllable. Start by solidifying your connection to the court. By that, I mean your digital connection. Select a location with good Wi-Fi for starters. If there is a room in your house that has the best connectivity, go there. Check the lighting in that room. Is there a good workspace there? Is it quiet enough? If your home Wi-Fi is spotty, then go to your office.

No matter how good your connection, know that there will be an issue at some point. This is where patience comes into play. If you lose your connection during trial, keep your cool. You will re-connect, and the Court reporter will be able to tell you where you got cut off. If you were not speaking at that time, just hope that someone else notices, and try to re- connect quickly. This is one of the reasons I strongly recommend that you build in redundancy.

I like layered redundancy. First, if you are connecting via zoom, use your computer audio with a blue tooth connection to some type of headset. I prefer to use AirPods but I also keep a spare set of wired headphones handy just in case. (First layer of redundancy) I keep my airpod case plugged in, and I wear only one at a time. When I hear the low battery signal warning, I add the other one, wait until it is connected, and then put the old one back in the case to charge. I also suggest dialing into the Zoom call from a land line as well. You can put the phone on mute and set it down. (Second layer.) If you lose the computer connection, you can just pick up the phone and you will not miss more than a beat. The third layer of redundancy is human. Whenever possible, have another

person from your team on the Zoom chat as well. This can be a paralegal, attorney, co-counsel, or your audio/visual person. This is another reason to conduct Zoom trials from the office (socially distant and safely of course). That way, your colleague is nearby and at least within shouting distance. If you lose your connection, they will hear your screams and can let the court know right away.

One of the tougher challenges for remote trials is the testifying witnesses. Whenever possible, I recommend that your witnesses be physically present with you – at least your client and ideally your expert. If you are in your office, hopefully you can set up for trial in a conference room and have them sit far enough away to be safe but to allow you both to watch and hear. If the client cannot be with you physically, then do a practice session with them. (You should do that either way.) Employ as many of the same elements you will have at trial as possible – same digital platform, same time of day, same room where the client will be. Work with the client on the camera location so they make eye contact when testifying and ensure they have the proper lighting and clear sound. Show your client the documents they will see as exhibits to confirm they can read the text and follow along with you. The object is to figure out what can go wrong before it goes wrong and control the controllable.

Organization of evidence is always important, and a virtual trial is no different. You will have a sense of order but must be able to make changes on the fly. This is another reason to have two people on the team – one questioning the witness and the other sharing their screen to show exhibits. Ideally, both of you will have two screens so the lead counsel can see the witness and document on one and the next document or notes on the other. Your second person is the one sharing the exhibits; so, they have the exhibit in use on their first screen and the next exhibits queued up and searchable on the other. Just like witness preparation, a practice session with documents is highly recommended. Go through all of your intended exhibits. Make sure they are legible. If it is a spreadsheet, do you have the right tab? Can you see the right cells? Call out some random documents to make sure your second-in-command can locate them and bring them up without issue. Again, we are attempting to find the problems before they occur. If you can anticipate the contingencies, you will be better prepared to handle them when a judge is watching and waiting.

Finally, before the trial, you should open a line of communication with your team. Some people like to use the Zoom chat feature to send private messages. But I am concerned about sending message to the entire chat group by mistake. A separate chat on a separate platform eliminates that risk of error. I like to establish a chat group using WhatsApp, but you can use a group text or Slack or any other mode. Whatever you choose, set it up and test it in advance! Make sure everyone is on and knows how to use it. I continue to be surprised at how many dinosaurs do not use WhatsApp!

Finally, be aware of the time. I don't mean to just to be aware of any court-imposed time limits. Rather you should be sensitive to how long the judge and the witness have been staring at the screen. This is probably the most difficult aspect of virtual trial (or any virtual meeting for that matter). It is extremely difficult to gauge interest. If the judge has tuned out, you may be wasting your time and perhaps valuable testimony. Use your second person to help gauge this. If you are going too long or you have lost the judge or spent too much time on a single exhibit, they should send you a message to move on or take a break. (Note that if you are using the chat for this, make sure the testifying witness is not in that chat. Obviously, you cannot be communicating with them while they are under oath.)

Nobody knows when we will be "back to normal" or even what "normal" will look like after all this. If virtual hearings and trials do not persist for some reason, I expect we will long for the days of "going to court" in shorts and no shoes. But I think it is pretty safe to expect that virtual court is here to stay, at least in some form in some courts. If you are still resistant or anxious about your next virtual appearance, I hope this helped you with a better sense of how to handle the "virtual" part of the virtual trial. Now the only thing you have to worry about is everything else! Start your preparations early. The future is now! You are ready!