

# Best Practices for Lawyers in a Virtual World

BY KATHARINE W. MADDOX

Commencing in March 2020, almost all law practices in the United States became, at the least, partially virtual. This was triggered by the COVID-19 pandemic, and lawyers have been forced to adjust to working remotely, even if part-time. It is safe to assume that to some extent the practice of law will be forever changed as a result of COVID, and many aspects of our practices will be, by necessity or by choice, conducted virtually. To that end, this article attempts to outline best practices for the practice of law in a virtual world.

## Pandemic Practices Inside the Office

Regardless of the size of your office, it is important to have clear and concise office policies in place. These should apply to both staff as well as other members of the public who may be entering your workspace. Below are some issues to consider with respect to your office space:

*Staff in Office.* Do you want to limit the number of staff who are able to be in your office at any one time? If so, provide a way to sign up in advance, giving priority based upon court hearings, depositions, mediations.

*Social Distancing.* Do you need to make any changes to your office space in order to facilitate social distancing? For example, if you normally have twelve chairs around the conference table, perhaps you want to reduce it to four or six to ensure appropriate social distancing.

*Masks/Sanitation.* Will you require staff to wear a mask while in the office? If people have individual offices with doors that can close, will they be permitted to remove their mask once their doors are closed? Will you require mask usage within common areas such as hallways, kitchen, reception area? If you do require mask usage, this author recommends that you provide everyone with masks and keep a supply of masks on site at all times. Consider providing hand sanitizer to every staff member and having hand sanitizer in the reception area as well as each room within the office space. Also keep a supply Clorox wipes, and have a thermal temperature thermometer on hand.

*Third Parties.* Will there be requirements for third parties to enter your office space? A sample form our office provided to clients prior to entry during the height of COVID appears on the following page.

## Remote Client Meetings

If you do not have a Zoom subscription that permits meetings of longer than forty minutes, sign up for one. The ability to have client meetings over Zoom during the COVID lockdowns has literally kept our office in business.

Until the majority of the population is vaccinated, and likely even thereafter, we will continue to have some meetings over Zoom. We have found that clients often prefer Zoom meetings over in-person meetings to avoid commuting.

Ensure the client knows the meeting will be held remotely and send them a release to sign in advance acknowledging this fact. A sample release is provided on the following page.

Remember a Zoom client meeting is still a client meeting. Ensure your background is professional looking; do not take a meeting from your bedroom where it is obvious that you are in your bedroom. If you do not have a professional-looking background, I recommend taking a picture of your office workspace and uploading it to your Zoom account so that it appears as if you are in your office when meeting with your client. To that end, ensure *you* also look professional. If you would normally dress up for an in-office client meeting, likewise, dress up for your remote meeting, including both your top and lower half. Professional appearance is important in all facets; we have all seen the video of the court appearance where one of the attorneys appeared as a cat and heard stories of someone standing up during a court hearing in their boxer shorts; you do not want to be that person!

If you do not know how to share your screen during a Zoom meeting, have someone teach you. It is important to be able to share information with your client during a remote meeting as you would be able to during an in-person meeting, such as running support guidelines or sharing relevant factors for an issue the court will be deciding.

## Preparing Clients for Remote Proceedings

The importance of professionalism, for you and your client and other witnesses, cannot be overemphasized. Prior to any remote proceedings, whether a deposition, mediation, or court hearing, schedule a practice session with your client on whatever platform will be used. For example, your client may be familiar with Zoom, but not Webex, Microsoft Teams, or other platforms that a court utilizes. Provide them with instructions on how to download the relevant platform and practice using it with them.

While I want my client to become familiar with the relevant remote platform, I also want them to be comfortable and familiar with reviewing and authenticating exhibits remotely. Accordingly, during a practice run not only do I work with them on the general nuances of a trial and testifying both on direct and in response to cross-examination, but I also teach them to review and authenticate exhibits remotely by sharing my screen and pulling up PDF exhibits. I also send my clients a full copy of the PDF

**SAMPLE**

**SAFETY AGREEMENT AND ACKNOWLEDGEMENT  
FOR ENTRY INTO OFFICE**

1. Visitor agrees to follow screening and prevention protocols to include, without limitation:
  - a. Wearing a mask prior to and during entry
  - b. If visitor does not have a mask, visitor will be given a mask to wear
  - c. Answering all screening questions
  - d. Washing or sanitizing hands before entry
2. Visitor shall adhere to maintaining six feet of separation between visitor and other.
3. Visitor shall not enter office suite if experiencing any of the following:
  - a. fever, chills, body aches, muscle pain, shortness of breath, prolonged cough, sore throat, loss of taste, loss of smell, vomiting, diarrhea.
4. Visitor shall not enter office suite if exposed to anyone diagnosed with COVID-19 within the last two weeks.
5. Visitor shall only enter rooms and areas as directed by a Firm employee or representative.
6. Visitor shall avoid touching doors and handles with bare hands.
7. Visitor understands that Firm shall not allow the sharing of phones, pens, computers, computer screens, and other such items.
8. Visitor understands that Firm will only offer beverages in cans or bottles. No food or snacks will be provided by Firm.

\_\_\_\_\_  
Signature of Visitor

\_\_\_\_\_  
Name of Visitor (printed)

\_\_\_\_\_  
Date

*Visitor shall not enter office suite if exposed to anyone diagnosed with COVID-19 within the last two weeks.*

**SAMPLE**

**VIDEO/CLOUD CONFERENCING ACKNOWLEDGEMENT**

The undersigned hereby consents to participate in a consultation/conference for legal services to occur via videoconferencing hosted by "Zoom" ([www.zoom.us](http://www.zoom.us)). Participation requires a computer, laptop, smartphone or tablet with video and audio capability. The undersigned hereby acknowledges that they have had the opportunity to review the security information available at <https://zoom.us/docs/doc/Zoom-Security-White-Paper.pdf> and acknowledges certain security threats are inherent to cloud conferencing or communicating via a web-based service. The undersigned hereby waives and discharges the provider of legal advice from any liability relating to any breach of confidentiality or Attorney Client privilege which may occur as a result of using the "Zoom" videoconferencing service.

Prior to your consultation/meeting, you will receive an invitation to join, at which time you will be allowed to enter the meeting. By signing below, you acknowledge that you have read and understand what you are agreeing to, and that you are competent to enter into this agreement. You further agree that no third parties, absent consent of the professional providing you advice, shall be present during the videoconference call.

Electronic Signatures. The parties acknowledge and agree that this document may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include signature by faxed versions of an original signature or electronically scanned or photographed and transmitted versions (e.g., via PDF or DocuSign) of an original signature.

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

exhibits, which are bookmarked by exhibit number, and also send them a hard copy of exhibits in case there are IT issues during the remote proceeding.

Work with your client and visual impressions. This includes having a professional background or virtual background, dressing professionally, and camera placement. During my first remote trial, I made an objection that the other attorney was badgering the witness while slamming her hand violently on her desk; the judge sustained my objection but also admonished my client to stop rolling her eyes at opposing counsel. My client's face took up the entire screen and so every small reaction was highlighted. Now I ensure my clients are seated away from the camera so that they are seen *at least* from waist up to a few inches above their head. When your client or witnesses are testifying, make sure they know to look at the camera so it appears to the judge that they are making eye contact. Also emphasize the importance of having an impassive face when others are testifying.

Attorneys should always have free and open access to and communication with their client during a trial, other than when their client is on the stand testifying. To that end, if I am not in the same room as my client, I find it to be good practice to let the judge know at the start of trial that I will be text messaging with my client during the trial other than when my client is on the stand. I also assure the court that my client will not be exchanging messages or information with anyone other than me during the trial (and I discuss this with my client in advance).

Finally, if at all possible, ensure your client and witnesses have access to a computer for their participation in the hearing as opposed to a cell phone. While you can often see the participants on a cell phone, often you cannot see documents/exhibits clearly on a cell phone.

## General IT Issues

General IT issues can be among the most frustrating issues to impact remote practice. Whether a client meeting or a court hearing, you must ensure that you have the tools you need so that it proceeds seamlessly. Given we are well over a year into COVID, there is no excuse for an IT issue to impact your legal practice.

*Wi-Fi.* Do not be a victim to Wi-Fi connectivity. Purchase an ethernet cable so that you can connect directly to your internet router. I purchased a 100-foot cable to go from my living room to my home office. Also ensure you have Wi-Fi extenders.

*Green Screen.* If you use a Zoom background and you do not appear as a whole person (we have all seen someone over Zoom where it looks as if their head has become disconnected from their body), purchase a green screen. I purchased an inexpensive green screen set that works very well.

*Microphone/Speaker.* Test your computer microphone. However, even if your computer microphone works well, have backup headphones in case there are any unexpected issues. I personally have a Bluetooth set of AirPods as well as a set of

corded ear buds that connects directly to my computer. It is important to ensure that your computer and your virtual platform are paired with your microphone of choice. Some platforms, such as Zoom, require you to choose your microphone source as part of the settings options. If you do not like headphones, ensure you have a high-quality microphone.

*Exhibits.* If you will be taking part in a proceeding that requires exhibits, and you plan to remotely log in to your computer network, it is good practice to have a backup copy of the exhibits saved to your computer hard drive. That way if for some reason your computer network goes down or there are internet connectivity issues at your office, you can still proceed from your remote location without issue. Ensure your exhibits are well organized and, ideally, bookmarked so you can easily and quickly pull up the relevant exhibit during your proceeding. We use Adobe Pro with success.

*Electronic Signatures.* DocuSign and Adobe Pro are probably the two most common platforms for obtaining electronic signatures. Our office uses Adobe Pro, and it is very easy to send documents for signature to multiple parties. Adobe Pro will timestamp each person's signature and also insert the email address used. If your document requires a notary, look into whether your state permits electronic notarization. In Virginia, we have e-notaries and have been using them successfully throughout COVID for documents that are signed remotely but still require notarization.

*Camera.* Many built-in computer cameras are subpar. Stand-alone cameras can be placed on a tripod or attached to the top of your monitor, and frequently will provide a much clearer image as well as a wider image to make it more likely that at least the entire upper half of your body is seen (as opposed to just your face) even if you are sitting right in front of your computer.

*Lighting.* To ensure you can clearly be seen, use a ring light. I use a tripod to ensure the light is the same level as my head.

*Mail/Faxes.* Implement a policy to ensure that mail and faxes are timely processed. For example, one staff member could come in each day to process mail and faxes. Or your IT professional could help you have faxes to the office simultaneously delivered to a designated email address.

There are countless considerations with respect to best practices for lawyers in a virtual world. Hopefully some of the within tips will be helpful to conducting your practice professionally and responsibly in our newly expanding virtual world. **FA**



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