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PARENTS' COUNSEL
Protecting the Fundamental Right to Parent

Practice Pointers for the Virtual Courtroom

The world of courtroom advocacy is challenging during times of virtual court appearances. For clients, the mystery of the court process is exacerbated by the inability to meet their advocates in person or to face their accusers and judges. For attorneys, the challenge of persuasion is compounded by distance and technology. The skills we rely on in telling our clients stories compellingly must be reconfigured and shifted to meet the circumstances of appearing by phone or video. The difficulties lie not only in what you say, but in how you deliver the information. This guide endeavors to provide some support with logistical considerations and tips on strong advocacy during unusual conditions.

TELEPHONE vs. VIDEO

Many courts have switched to telephonic hearings. It seems to be the easiest change for them to make, and the technology with which many are most familiar. While it is the path of least resistance, phone hearings also create more impediments to communication and persuasion than video appearances. When possible, object to telephonic hearings, and work to create opportunities to appear by video, particularly when there are credibility issues that must be resolved by the court. Like phone interactions, video conferences also create limitations on non-verbal cues; however, it is easier to gauge interactions and interest when you can see the participants. From a due process perspective, video more fully allows the client to participate in the hearing. For clients who have not met you or seen any of the parties in person, video can help them understand the players and the procedure more fully.

When conducting hearings, particularly those with a witness, such as removal hearings, video gives you a better opportunity to see the witness you are examining. Also, most platforms give you the option to share your screen so that you can display the document you are referring to as you argue or examine a witness. This creates assurance that everyone is literally on the same page.

For courts who are concerned about recording the proceedings to create a record, remind them that every video conference platform also has a call-in option they can use from their recorded phone line. You may also encourage them to contact their IT department to create an option to have that audio system connected to their computer. There are many ways to accommodate the record with a video platform. Be creative to help solve the problem and encourage your court to do the same. It appears that many courts are already using, or are preparing to use, WebEx to conduct hearings by video. Take some time to become familiar with the platform. There are several tutorials available online for this and other services.



PREPARATION FOR HEARINGS

While preparation is always important, it is crucial in virtual hearings. Things to consider:

Preservation of issues is the priority:

While we are working under less than ideal circumstances, eventually every ruling may still become an issue on appeal. Because these are unprecedented times, there is also a dearth of law regarding the issues that will come before the courts. We need to be thoughtfully preserving every issue knowing that each question may be novel and will require review. Contemplate the due process implications of each of your arguments, and refer to the constitution, statutes, and rules. Make the clearest, most complete record you can, regardless of the circumstances. Be mindful of the long-term implications the ruling may have on the ultimate outcome of the case. Make a record of the potential pitfalls of the ruling as they relate to due process and fundamental fairness.

Client communication:

- Try to meet with the client as much as possible before the hearing. Ask the court to provide you contact information as soon as you are contacted for appointment. Some courts are getting that information to lawyers as much as a day before the removal proceeding. Take advantage of that if you are in the situation. If you are not, try to work with the county and the court to create that circumstance.
- When you are conducting a client meeting, make efforts to create a confidential environment for the meeting. Encourage or require the client to speak to you without others in the room. You should do the same.
- Help clients with the technology. Instruct them to mute when they are not speaking. Explain to them how to mute their device. Have them practice. Ask them to be sure not to breathe into the phone. Help them strategize to reduce distractions and be thoughtful about where they are and what they are doing during the hearing (i.e. this is not the time to eat a sandwich).
- It is not enough to just prepare the client for what to expect in court procedurally. You need to prepare them for what it will be like to appear by phone or video as well. The formality of the courtroom often works to tone down the emotions of clients during court appearances. Clients now may be appearing from their own homes. Remind them of the importance of maintaining decorum while on the phone or video. On the other hand, the formality of court often scares clients. The fear may be less



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overwhelming by phone. It may help to remind them, though, that this is still a very important proceeding that will require their full attention.

- Clients (and witnesses) may seem less credible in a virtual hearing than they would appearing in person. Prepare for that. You will be losing a lot of the strength of non-verbal communication. Take the extra time you need to create rapport with your client, to allow them to vent some of the emotions they are feeling in advance of the hearing, and to answer as many of their questions as possible. They will not be able to lean over and whisper their questions into your ear; anticipate what may arise and consider questions that have come up for other clients during similar hearings. Be sure to arrange time afterward to debrief and reiterate what happened during the hearing. Do another check in soon after to see how they are doing after having time to process the hearing. It is more difficult to determine a client's reaction when you can't see them during and after the hearing.

Document preparation:

It is essential that you provide every document you may need to rely on during a hearing to the court and the parties in advance. Be thoughtful in naming your documents. Labeling everything simply by exhibit number may be confusing during a hearing. Be professional and persuasive in the way you name your documents when you save them. When you send them by email, the document name is seen by the recipient. This is an opportunity to create readily identifiable file names to refer to in the hearings. Include the exhibit number in the file name when appropriate. Double check before the hearing begins that everyone has the documents you need them to have before them. Be sure to let others know what you have received from the other parties as well. If you plan to screen share to display a document, it is best to practice that in advance. Have the documents you want to show pulled up and available on your screen so that you can access it easily during the hearing and don't have to navigate to the window while others wait.

Stipulations:

Be thoughtful about what you are willing to stipulate to and what the other side might be willing to stipulate to under these circumstances. Be clear in advance what stipulations have been reached and be prepared to begin the hearing with those documents, making sure the court has them before you begin your arguments. It is good practice to confirm your stipulations with the other parties in writing before your hearing. You will not have the same opportunities to confer off the record during a hearing as you do during in-person matters, so it is essential to resolve all details in advance.



Prepare your arguments:

- Write them out.

A small, but distinct, benefit of not being seen in-person is that you can read your argument directly from the paper. Generally, we encourage eye contact and strong verbal delivery of your client's story, which includes not reading from the page. Here you have the advantage of being able to write strong, succinct, persuasive arguments and READ them to the court. Because attention span is more limited when people are appearing remotely, this is not the time to ramble or think on your feet.

- Think about your delivery.

A defender who does many telephonic hearings provided this reminder: the phone is a filter. It flattens the delivery by washing out the non-verbal cues. Don't be afraid to go seemingly over-the-top in the delivery. Err on the side of assuming poor connection and low volume. Others on the call can literally turn down the volume, but you don't want them to tune out your argument. Do not discard notions of pace and cadence. Speak slowly, clearly, and loudly. Create time for your arguments to sink in and allow others to ask you to repeat anything they may have missed. Try to avoid speaking over others and allow time for responses where appropriate.

- Create signposts.

It is far more difficult to remain engaged and not get distracted when you are on a phone or video call. In order to assist the others with focus, create signposts for your argument. For instance, tell the court, "I will be covering three points: the argument, that argument and this other point." Refer to those headlines as you proceed through the argument. Remember, it is difficult to read the court when you are on the phone. Err on the side of brevity and keep your arguments impactful. Do not, however, sacrifice your record. Preserve every argument to the best of your ability.

- Submit arguments in writing.

Considering the challenges to persuading verbally by phone and video, determine if your argument is better made, preserved, and considered by filing a motion for the relief you are seeking or the inquiry you are responding to. If you are not satisfied with the way the hearing has gone or you feel your point was missed, supplement the record in writing.



PHONE AND VIDEO LOGISTICS CHECKLIST:

- When scheduling, request enough time. Virtual hearings will take longer. Some estimate hearings may take up to twice as long as in-person hearings.
- Be sure your device is charged and connected.
- Double check your signal strength or bandwidth. You may need to reduce the number of devices connected to your Wi-Fi to optimize your internet strength.
- Do a sound check. Are the room acoustics satisfactory and/or do your headphones work well? You should test some options in advance.
- Be thoughtful about where you will be physically during the hearing (what is in your background, lighting, noise, other distractions).
- Be sure you are dressed appropriately, if applicable. This may impact the perception of you during the call and may subconsciously impact your delivery. It is easier to sound like a lawyer when you look like a lawyer, even when nobody else can see you.
- Mute yourself when you are not speaking. Ask others to do the same.
- Try to have your camera at eye level if you are on video.
- Look into the camera (not at yourself or the images on screen) while you are speaking.
- Determine how you can have confidential communication with your client during the hearing. Is there a confidential line you can use? Will the court take breaks to accommodate such interactions?
- Identify yourself when you are speaking so the record is clear.
- Create check in points, or ask the judge to, in order to ensure that everyone is still on the call and can hear one another.
- Determine if you want a recording of the video for any reason. Create the recording if appropriate.
- Ask people to repeat themselves if you cannot hear or are concerned others did not hear an important point. Also good for reiterating points that you want to be fully absorbed.
- Be aware there may be a delay in the audio. Allow for pauses. This will help keep you from speaking over others as well.



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- Double check that everyone has the documents they need to proceed fully.
- Determine how much time you have and keep an eye on the clock. If there is another hearing scheduled immediately after yours, you don't have the same latitude to run long as you do during a normal docket because the next hearing is also virtual.
- Double check that all your exhibits have been admitted before you end the call. It is more difficult when you don't have eyes on the court's exhibits.
- Be comfortable that the record is complete before ending the call. Make sure the court has made all the necessary findings and a detailed order has entered or you know when to anticipate a ruling.