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Best practices for remote advocacy during the pandemic

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The ongoing COVID-19 pandemic has significantly changed the legal world. Legal proceedings have traditionally been in-person activities, with counsel, parties, witnesses, and the judge, arbitrator or mediator all physically present. However, the pandemic has caused a rapid turn to technology as many proceedings and functions that would typically be deemed in-person activities have transitioned to being remote. As attorneys, especially litigation attorneys, make the transition to remote trials and hearings, it is vital to be aware of some best practices associated with the relatively new concept of remote advocacy.

First, and perhaps the most important rule, is to understand the technology and platforms used for the proceedings. Therefore, it is crucial to test all technology in advance. This includes, but is not limited to, testing all devices that will be used to join the meeting, ensuring that backgrounds are appropriate for a hearing, testing the capacity of the internet bandwidth, and confirming that the programs to be used

during the proceeding are up to date, to prevent any delays. Additionally, it is crucial to establish and test a backup protocol in case there are any unexpected technical difficulties on the day of the proceeding. Having a list of contact numbers for the court, opposing counsel and witnesses, for example, would be helpful if participants suddenly encounter an internet connection issue preventing them from joining the proceeding. Lawyers have long been familiar with the concept of “belt and suspenders.” Employing redundancy related to accessible backup technology in the event of a hardware or software issue will increase your team’s confidence level and can save valuable time and money. This may be as simple as having your laptop on standby if there is a problem with your desktop or having an iPad available if there is a problem with your laptop in the event of an emergency.

Next, counsel should understand how to handle documents during remote proceedings. Downloading and using applications such as PDF Expert enables parties to mark up and index documents to easily find what is needed during the hearing. Bookmarking crit-

ical documents and/or creating hyperlinked indexes may also allow counsel to locate necessary documents quickly. In addition, counsel should ensure that they know how to share and access multiple documents for the proceeding, especially in cases where exhibits are to be used. Furthermore, a predetermined backup protocol, such as an email chain with all participants, may also be helpful in avoiding any delays associated with the inability to share documents via the designated hearing platform. Redundancy is also a good idea here: The ability to access electronically stored documents on another device, or even having exhibit binders, may save the day if issues arise when using the digital documents on your preferred platform.

Managing time is another key factor in effective remote advocacy. Though meticulous preparation is undoubtedly necessary in a normal hearing, it is even more critical in remote hearings because of how much more taxing remote hearings can be on all participants. As such, it is important for counsel to have clear objectives and plan ahead to achieve those objectives, especially when handling witnesses

or conducting cross-examinations. Further, counsel should keep in mind that non-verbal communication, which can be impactful in in-person proceedings, is often lost in remote proceedings. Consequently, it is best to simplify and be concise when presenting arguments to the tribunal. Most notably, however, counsel must not shy away from requesting breaks when necessary. Because remote hearings can be more tolling than in-person hearings, more frequent breaks in the proceeding can help all participants as it allows counsel to regroup their thoughts and arguments, and gives all participants overall, a few moments to perhaps stretch, walk away from their screens and freshen up. If you have not been provided with an agenda for the day by your arbitrator, mediator, or judge, counsel should feel free to discuss and propose one, with built-in breaks.

Finally, counsel must maintain confidentiality. This is especially important because one of the most critical responsibilities of attorneys and law firms is to protect both their data and their clients’ data. Unfortunately, maintaining confidentiality when working remotely is much more challenging than

it is under normal circumstances. Remote advocacy not only requires the maintenance of confidentiality through a designated, organized at-home workspace, but it also needs counsel to be vigilant in protecting against the increased risk of cyber breaches. To manage the risks associated with a breach of confidentiality while working from home, counsel and firms alike should ensure that risk assessments are being conducted regularly.

Further, all work should be done on secure servers that require multi-factor authentication prior to granting access. Storing files and documents on secure platforms and ensuring communications are sent securely also adds an additional layer of security. More generally, though, the at-home work-

space should be organized, and counsel should take care to never walk away from their devices or documents without first locking the devices or ensuring that documents are out of reach. Similarly, whenever there is a need to share screens, whether for a meeting or during a proceeding, counsel should close out any unnecessary documents and turn off on-screen notifications for messages, emails, etc. prior to sharing their screen to avoid inadvertently sharing confidential data.

Before this pandemic, working remotely has not been a common practice in the legal world, and while the legal community has progressed dramatically over the past year in light of the challenges presented by COVID-19, there will certainly still be new challenges

that will arise. In the meantime, as we continue to learn and adapt, the suggestions and tips described in this article will help address some of the unique particularities and challenges currently

associated with remote advocacy.

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