

## Ten Tips to Make Your Zoom Trial a Success

Virtual bench trials could become part of the “new normal,” as they offer a practical tool for courts to convene parties, their attorneys and witnesses who are geographically dispersed or otherwise unable to travel.

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Unlike many states which largely put non-emergent proceedings on pause when the COVID-19 pandemic took hold in the U.S., New Jersey has forged ahead, quickly making provisions for remote depositions and court proceedings, even bench trials. And our courts appear well-equipped to handle this new challenge.

The idea of conducting a trial via Zoom is likely intimidating for the most seasoned trial attorney. But as attorneys that handled the defense in a recent Zoom trial in the Passaic County Chancery Division, we’re here to tell you that there’s nothing to fear. Although it was certainly a different feel than being in the courtroom, our trial—which took place over five days and required testimony from 12 witnesses (testifying from four different states) and the introduction of



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voluminous documentary evidence—went quite smoothly. While we await the ruling on the merits, the judgment is in that Zoom bench trials can work quite well. To share the benefit of our experience of participating in one of the first, if not *the* first, Zoom trials in New Jersey, we provide our top 10 tips below to make sure you put on the best case possible during a remote trial:

1. Preparation is key with any trial, but even more so for one taking place remotely. Exhibits need to be pre-marked, on the computer, and readily accessible to be shared via the “share screen” function with the court, counsel and witnesses. And when screen sharing, take a second to verify you’re sharing

the correct screen before hitting share—you don’t want your trial notes being broadcast for all to see. Practice sharing your screen multiple times within your office before trial so you are comfortable and proficient at trial.

2. In addition to any preparation on testimony, witnesses need to be prepared on the technology, or have someone with them to assist them with it. Even with preparation, some technical glitches are to be expected, and the court will understand. To minimize the disruption, someone on the trial team should be familiar enough with Zoom and any other technology issues that could arise to provide any quick remote

support needed—such as how to unmute, fix an inadvertent screen share, or check to ensure that the witness' volume is on. Staying in frequent communication with upcoming witnesses regarding trial progression is essential so they are near their computer and available to log into Zoom at the appropriate time for their testimony.

3. If witnesses will be shown exhibits, make sure they develop a comfort level with viewing documents on a screen (a larger screen, like a laptop or an iPad, is preferable to a cell phone if they have access to one). Unlike a courtroom setting where a witness has the ability to handle and flip through a document, someone else will have control over what portion of the document is in view. Witnesses must be empowered ahead of time to insist that the examining attorney follow the witnesses' requests to scroll the document as is necessary to familiarize with its contents before responding to a question, especially if the question is about what the document reflects or contains.

4. Zoom makes it especially important that only one person speak at a time, as the software generally only makes one person fully audible, leaving the potential for a messy



**Judges and attorneys from Houston participate in a video conference, organized by 127th District Judge R.K. Sandill, using Zoom.**

transcript. That limitation may also require needing to repeat objections so you are not steam-rolled over. Use of speaker view (which makes the screen of the speaker larger) rather than gallery view (which displays a grid of all participants in equal size, whether speaking or not) makes it easy to see whose voice is carrying and being recorded on the record.

5. Keeping an eye on the video of the judge and opposing counsel is also important—in case someone is trying to speak but is inadvertently muted. Or in case the judge or counsel disconnected.

6. Creating a trial exhibit list using Microsoft Excel with embedded links to exhibits is helpful for pulling exhibits quickly. That is especially true when an adversary displays only part of an exhibit, so you

can quickly scan through the whole document. But if you're only using a few exhibits for a witness, having them all already open in Adobe makes things go more smoothly. Using a touch screen for the screen share also helps with easily zooming into exhibits or highlighting on the fly.

7. With all the programs you will need to have open on the computer—Zoom, exhibits, notes and testimony outlines, and possibly a messaging app to pass notes to co-counsel if not in the same location—having a second (or third) monitor is invaluable. Any other programs not in use, and especially your email, should be closed to prevent distractions and alert sounds.

8. Take into account the positioning of the camera. Putting the trial outline directly under

the camera but above the Zoom video makes it look like you are talking at the witness while allowing you to keep an eye on the Judge and witness. Also, practice with your witnesses their appearance on Zoom. In a Zoom trial, a witness' face appears much closer and facial expressions and eye movement are highlighted. For example, a witness who regularly looks away from the camera could give the impression that he or she is referencing notes or otherwise searching somewhere for answers.

9. Taking advantage of the mute and video off function is a good idea when not actively participating to limit interruption from ambient sounds, and especially during breaks. Remember to instruct your witnesses and clients on that, so side commentary doesn't inadvertently make its way into the official record.

10. Professionalism still counts. Dress and act as if you are actually in the courtroom and instruct your clients to do the same. Make sure the room behind you is clean and organized, and do your best to eliminate interruptions by pets or children.

While following these tips won't guarantee a perfect trial or a ruling in your favor, they will help to prevent the remote nature of the trial from creating a barrier to success. We felt no difference between the case we were able to put on via Zoom as compared to what we would have been able to accomplish in the courtroom. You should view a remote trial as an effective way to move your case forward to conclusion amid the ongoing pandemic.

That said, we have our doubts that the same would be true for a jury trial. We were always able to view the judge, the witness, and opposing counsel, and the attorneys and judge were able to speak up if they had trouble hearing something or if other issues arose. A juror would be unlikely to interrupt if they missed testimony; there would be no way to keep an eye on 12 jurors while presenting testimony; and while we trust most jurors would take their civic duties seriously, it would be difficult to determine if jurors were not giving their full attention to the trial. From counsel's perspective, the persuasive impact of opening and closing statements may be lost on jurors observing through a screen, and not to mention the difficulty of

having side bar conversations outside the presence of the entire jury.

As New Jersey courts approach the gradual phases of reopening, we anticipate that some virtual-based proceedings may outlast the pandemic. Virtual bench trials could become part of the "new normal," as they offer a practical tool for courts to convene parties, their attorneys and witnesses who are geographically dispersed or otherwise unable to travel due to health, financial or scheduling concerns. At the least, we think courts will be less hesitant to grant requests to permit witnesses to testify via remote technology. Our unique experience has proven that we can continue to service even the most critical aspect of our clients' cases in a virtual setting.

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