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Tips & Techniques to Make Your Zoom Evidentiary Hearing a Success

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INTRODUCTION:

On Friday March 13, 2020 a group of Family Law practitioners gathered for happy hour; one of us announced that Miami Dade was “shutting down” and the Courts were closing. After the initial expression of disbelief the questions started surfacing. The conversation quickly turned to predictions and suppositions about how long the shutdown would last and what our practices were going to look like. Fear of the unknown dominated. However, soon we learned that in Dade County we did not put our Family Law legal system on hold, rather, we faced the challenge head on.

Relatively quickly the Family Division made provisions for remote/virtual proceedings, including bench trials. Our judges came together and developed *somewhat* standardized procedures by which we as practitioners could continue to practice our craft. The Family Law Bench created standardized forms and updated the Judicial websites so that litigants and practitioners could easily access the forms and rules for each Judicial Division as the Bench and Bar transitioned to this “new normal”. The Court purchased the necessary technology so that we could have our motions heard and even conduct virtual bench trials.

Upon first blush, the idea of conducting a trial via Zoom was not just intimidating, it seemed impossible. But it isn't. Undoubtedly, the proceedings only bear a slight resemblance to the bench trials we are accustomed to; missing from the virtual trial are the atmosphere, physical proximity, live confrontations and the “drama” of the courtroom. However, there really is nothing to be afraid of, and, most importantly, Zoom trials actually work quite well. You will be able to accomplish everything you have done during your in person trials during your remote proceedings.

Virtual bench trials 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. I predict that virtual/remote proceedings will continue in some form long into the future. In the future it is likely that witnesses will be allowed to testify via remote technology rather than being required to travel to present testimony. Virtual proceedings may outlast the pandemic.

I created this presentation primarily from personal experience.¹ What I have included here is what works for me. I urge each of you to consider these tips and techniques, but more importantly to modify them to fit your needs and to also find your own...and when you find something that works for you, please share your knowledge and raise the level of our collective practice.

¹ Since the Family Court reopened following the initial shutdown in mid-March 2020 I have had the following bench trials: a relocation case; an action to set aside a post nuptial agreement; a modification of timesharing case; an enforcement/contempt case involving timesharing and parenting issues during COVID; a modification of child support case; over 15 contested evidentiary motions ranging from temporary support issues to shared parenting issues; and I am currently trying an eight (8) day dissolution of marriage action...we just finished day seven (6).

Following are my top Tips and Techniques that I hope will help you present your evidence and case seamlessly during your remote hearing/trial.

1. **TECHNOLOGY:** Technical difficulties and glitches are to be expected but you can avoid a lot of stress by becoming familiar with Zoom. Remember to make sure that your client and the witnesses have a working knowledge of Zoom so when glitches arise you can handle them. You must test and practice using the platform to reduce your stress level during the hearing. Go to www.support.zoom.us for video tutorials and information on how to handle Zoom Room to integrating Zoom and Outlook or Google Calendars.

- a. I always use to monitors when conducting a Zoom hearing. Close your email and any program you are not using during the hearing to prevent unintentional sharing and eliminate the risk of accidentally sharing privileged information.
- b. Use a dedicated camera. The camera in your device is probably pretty good these days, but dedicated webcams often have better ability to adjust the shot and exposure. Logitech makes a good dedicated ; connect your HDMI camera to a USB port with a Magewell adapter.

Logitech C920s webcam



- c. Take advantage of the mute and video off function. It is a good idea to mute yourself to limit interruption from background noise. Consider

wearing ear buds or headphones because they make your hearing private and reduces noise. If you are using a court reporter consider announcing your name when you start speaking. It is often difficult for the Court and court reporter to hear what is being said especially when visual cues are lost.

- d. Zoom has an annotation feature that you can use during the hearing to circle or underline parts of a shared screen. The host has to turn on the annotation feature; you may need to obtain the Court's permission in advance. You can learn how to use the feature here: <https://support.zoom.us/hc/en-us/articles/115005706806-Using-annotation-tools-on-a-shared-screen-or-whiteboard> Zoom also has breakout rooms that allow you to confer outside the virtual courtroom. visit <https://support.zoom.us/hc/en-us/articles/206476313-Managing-Breakout-Rooms> Zoom also allows you to enable mirror effect, which means that when a witness raises her left hand the hand on the left side of the screen rises. <https://support.zoom.us/hc/en-us/articles/204065759-Zoom-Rooms-Camera-Controls>
 - e. Test your sound and video well in advance and make sure that your microphone and camera are working.
 - f. Mute your office and cellular phone during the hearing.
 - g. Upgrade your internet; nothing causes more delay or stress than a poor, unreliable or unpredictable internet connection. I recently upgraded to Ubiquiti independent WIFI antennas that provide industrial WIFI coverage. I used Jesus Perez from Flatrate Geek (786)360-9309.
 - h. Have a backup plan because technology often fails. Keep a jetpack or other hotspot nearby in case your internet fails you and a backup computer or laptop in case the one you are using crashes.
 - i. If you have someone else in the same physical space with you also participating in the hearing, on a separate device, you need to mute one of the two devices to avoid feedback.
2. **PREPARATION:** As lawyers we know that trial preparation is paramount; for Zoom hearings, preparation must be on steroids! Relying on technology to present evidence can be overwhelming unless you prepare in advance.
 - a. Witnesses require even more preparation for a virtual trial. Each witness should have his/her own electronic file with Exhibits and the Zoom sign in codes for the Zoom proceeding.
 - b. The rules of evidence continue to apply so make sure to brush up on your evidentiary objections.
 3. **APPEARANCE:** Although you are not driving to the courthouse, you are still in "court" conducting official business on behalf of your client. Dress and

act as if you are actually in the courtroom and instruct your clients to do the same. Try not to wear a white or black top, as those are hard for any camera to adjust to while keeping your face properly exposed. Avoid stark stripes or checked patterns, as they can show up as moiré, or "sizzle," that distracts the viewer.

- a. Put on your poker face. Be mindful of your appearance because not only do you have a better than ever vantage point to the judge's facial expressions and body language, the judge has the same view of you; the last thing you want is for the judge to catch you rolling your eyes or smirking on her laptop.
 - b. Location matters. The space behind you that is visible to the camera should be organized, clean and professional. If you are using a virtual background choose something simple that does not distract; remember the focus should be on you. You should select a quiet space where you will not be interrupted during the hearing.
 - c. Lightening is very important. Too often participants are hard to see because of poor lighting. Invest in a proper light; select one that has a dim option, the ability to control the temperature of the light, and adjustable positioning. It is best to have lighting behind the video device that projects directly on your face.
 - d. Sit up in your chair and avoid slouching or leaning on the desk in front of you. Choose a stationary chair as one that swivels or rocks can be a distraction.
 - e. When you are speaking look directly at the camera; make eye contact.
 - f. Set up a stand up workstation and stand up if possible when questioning witnesses or addressing the Court; standing up improves concentration and vocal range. Use voice moderation to control your presentation.
4. **EXHIBITS:** Pulling, Naming, Organizing, and Marking your Exhibits is very time-consuming. Do not leave it for the last minute; organize in advance. Have an exhibit plan in place and train your support staff in the process required by your judge. Request a CMC shortly after Notice of Trial to understand how your judicial officer handles exhibits, screen sharing, marking exhibits, use of CourtMap etc.
- a. Attached to the electronic version of these materials I have included a blank Exhibit List Form in Word format for your use.
 - b. Organize your exhibits on the Exhibit List in sets that relate to the witness you will use to introduce those exhibits. For example, all the exhibits you will introduce through your client should be grouped together and those that the teacher will testify to should be together on the list. Save your trial exhibits into separate electronic folders for each witness so that you may easily access the exhibit to share your screen.

- c. At least three weeks prior to trial send opposing counsel your Exhibit List and Exhibits and ask that counsel indicate if there is an objection to the Exhibit and if so to include the objection(s) is directly on your form.
- d. File your Exhibit List and Exhibits with the Court at least seven (7) days before trial. Remember to also upload the exhibits to Court Map if appearing before a judge; our Magistrates do not currently have access to CourtMap.
- e. Many judges do not allow “composite” exhibits. Check your Judge’s webpage for guidance. Even if your judge has no expressed preference, avoid composites because they are difficult to maneuver in an electronic format. You may, for example, include a thread of emails that are all on the same topic, but you should not bundle all the Our Family Wizard messages between the parties on a variety of topics as one exhibit.
- f. Bate stamp all exhibits that have more than 5 pages.
- g. Include the Docket/Index # on your exhibit list as well as the # you have given it for identification. Including the Docket # will allow the Clerk assigned to your trial to easily access and identify the exhibit during the trial.
- h. Don’t just give your exhibit a number, give it a unique name. For Example Exhibit 1, Father’s FA 11.11.20. this will allow you to easily find an Exhibit when you are search your electronic folder to share a document.
- i. At the conclusion of your trial ask the Judge to request that the Clerk file the Court’s completed Exhibit List. Once it is filed, check it to make sure that the name of the exhibit and the number correspond. You will need an accurate Exhibit List use it in preparing your proposed Final Judgement or to prepare for the next day of trial.
- j. Practice with your client and witnesses looking at exhibits on the computer *before* the trial. Counsel both clients and witnesses that it is easier to attend the hearing using a desktop, laptop or pad rather than a cell phone. Preparing your witness in advance to be able to review and identify documents empowers the witness and makes the witness more effective.
- k. If you have someone else working with you, have that person handle the “screen share” option so you can concentrate on just asking the questions. This also minimizes the embarrassing possibility that you may share something on your screen that you do not want others to see.

1. Put all the exhibits you intend to use with each witness in its own individual folder identified by the witness you will use to introduce the exhibit. This organization will save you time.
5. **ETHICAL CONSIDERATIONS:** While our surroundings and our process has changed, we still have an obligation to work within the rules governing our profession. As lawyers we have to worry about how to use this new technology consistent with our professional obligations. Compliance with the ethical rules within our office settings is routine, however, now we have to apply the ethical rules in our “work from home setting”. Be mindful of the confidentiality and privacy issues raised by working remotely. Be vigilant about whom is in the virtual room. Videoconferencing platforms have recording options however they should not be used without consultation and consent with all parties. You should also consider the reality that recordings can be shared and cause the dissemination of your client’s confidential information or a breach of the attorney/client privilege.
 - a. Our duty to provide competent representation is not lessened because we are using technology.
 - b. Our duty to maintain our client’s information confidential is not lifted when working from home.
 - c. Our duty to supervise our support staff, clerks and associates and ensure the firm’s adherence to the rules of professional responsibility are not lessened because we are working remotely.