



Mastering “Zoom Advocacy”

This document was created by Steven C. Dupré and Sylvia H. Walbolt of Carlton Fields, P.A. The Task Force endorses its use, and commends the authors for their excellent work product and for sharing it with the College.

INTERIM GUIDELINES

This document was developed in response to the COVID-19 pandemic. It is meant to contribute to the ultimate development of “best practices” as courts and advocates adapt in an effort to ensure that Justice in the courtrooms of our two countries does not become a victim of the current economic and health crisis. Readers are (a) encouraged to provide feedback about their experiences with these and other ideas for addressing the issues identified in the Interim Guideline; and (b) continue to visit the College website to see the latest version of the document. Please email comments, orders, rules, etc. on this topic to advocacy@actl.com.

Task Force on Advocacy in the 21st Century

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American College of Trial Lawyers

The American College of Trial Lawyers is an invitation only fellowship of exceptional trial lawyers of diverse backgrounds from the United States and Canada. The College thoroughly investigates each nominee for admission and selects only those who have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism and collegiality. The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its mission. The College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings.

Task Force on Advocacy in the 21st Century

The purpose of the Task Force on Advocacy in the 21st Century is to develop and make available the College's expertise on the issues that will confront the administration of justice in a post-pandemic world, in particular those issues that impact the discovery component and trial of civil and criminal cases and oral arguments before appellate courts.

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Mastering “Zoom Advocacy”¹

Advocacy through a video conference differs –
sometimes materially – from in-person advocacy

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¹ The American College of Trial Lawyers does not endorse any remote video application. While this paper was written with specific reference to the "Zoom" application, other remote video applications have similar features.

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1. Hands-On Learning.

- (a) You must personally become skilled in the basics of videoconferencing, start to finish.
- (b) You must personally practice the techniques you learn before participating in a remote hearing via video conferencing technology – do not count on others to help.
- (c) Like any “App,” play with it and explore all of its features.
- (d) Rehearsal opportunities:
 - (i) Every phone call you have provides a chance to rehearse the remote video conferencing skills you will need in an adversarial hearing.
 - (ii) Consider using your remote video conference application to discuss a case with your colleagues and/or your client.
 - (iii) It’s better to experience and learn how to solve the inevitable glitches with a friendly audience before you appear remotely in front of a judge.
 - (iv) Assume the technology may fail and be ready with alternatives.

2. Home Technology.

- (a) Hardwire your computer to the internet if you can.
- (b) Know where in your house you can find the most reliable internet connectivity and speed.
- (c) Wireless - Position your computer or tablet as close as you can to your wireless router (which broadcasts your WIFI signal).

Tip: If your home computer or internet services are outdated, upgrade them, or conduct your hearings from your law office (if open, of course).

- (d) Use the best microphone you can – hard wired to the computer is probably best. Fully charged Bluetooth headsets work too.

- (e) To reduce the risk of a power outage knocking you offline suddenly, consider getting an uninterrupted power supply (UPS). It is basically a very large rechargeable battery that your devices can plug into, and automatically provides power in the event of an outage. If you are going to use one, any device that plugs into a wall outlet needs to be plugged into the UPS to keep you online (including the modem, router, and computer).

3. **Setup for a video conference.**

- (a) Coordinate the use of a court reporter for a remote video hearing:
 - (i) Check with the court's judicial assistant and find out the Court's preferences
 - (ii) Some Court's may have the court reporter appear in chambers or the courtroom, with appropriate attention to social distancing
 - (iii) Others may have the court reporter as another remote participant.
- (b) Camera-Video:
 - (i) Verify your computer has a working camera or buy a web cam you can mount on or just behind and above the screen of your computer.
 - (ii) Two basic views are available – “Gallery” and “Speaker.”
 - (1) The Gallery view will have the speaker highlighted with a box around the screen from which the audio is being transmitted.
 - (2) The Speaker view will have the Speaker essentially take over the screen (except when a screen – *e.g.*, a Power Point; PDF; etc. – is being shared).
 - (3) You can toggle between these views.
 - (iii) Consider putting the camera at or just below your eye level. That will give the appearance that you are talking directly to the judge. When arguing over video, look straight at your computer's camera so the judge sees you looking in her eyes.

Tip: If your application has a “Gallery” view where all participants are visible at once, re-size your window so the participants are stacked vertically (may not be possible if you have lots of participants) and center the window under your camera – if you look at them in the center of your screen under the camera, the judge and others will feel you are looking directly at them.

- (iv) Be deliberate in how you display yourself on camera. Sitting usually is better than standing. The further you are sitting from the camera, the more the judge will be drawn to your body movements.
 - (v) Consider framing your image from just below the shoulders to the top of the head (a “medium close up”). That said, if you speak with your “hands” so to speak, you will want a frame that displays enough of your torso that your hands are visible.
 - (vi) You don’t want the camera below you, looking at your chin or up your nose.
- (c) Virtual backgrounds:
- (i) Zoom and some other video conferencing programs permit the use of your own virtual backgrounds.
 - (ii) If you have the option to and need to use your own virtual background (e.g., to conceal distracting location-based backgrounds):
 - (1) Any photo can be turned into a virtual background.
 - (2) Don’t use one that itself creates a distraction; make sure it looks okay even when making hand movements.
 - (3) Test out how the background looks and use your common sense to gauge how the judge may react to it.
 - (iii) Sometimes virtual backgrounds fail and people can see behind you without you knowing it – so make sure that what is behind you is appropriate.

(iv) To improve virtual background stability, buy a “green screen” to put up behind you if your application supports a green screen feature.

(d) Lighting:

(i) Take it seriously. The best lighting does not get noticed – *i.e.*, it does not distract the viewer from focusing on you as the advocate. Have a source of light in front of your computer screen. Make sure your face is well “lit” - enough to be clearly visible against whatever background you may have.

(ii) Indirect natural lighting from the outside (*e.g.* through a window) coming from in front of you works well. Don’t position yourself with a bright window or light behind you (close the blinds or reposition your set up).

(iii) Keep the light source in front of your face. If the light is behind you, your face will be in shadow. If you are front lit by a spotlight, learn how to look at the camera without squinting.

Tips:

➤ A quick internet search will let you find lighting solutions designed specifically for computer video conferences. A ring light works well.

➤ A portable desk lamp that can be positioned in front of you will also work, although the lighting may appear a bit harsh.

(iv) Set your camera angle so you don’t pick up bright overhead lights on the screen.

(v) Practice different options before you ever get to a hearing.

(e) Audio:

(i) When you first begin to enter a remote hearing, you may be given the option of doing a sound check – take advantage of it and make sure the audio levels on both your speakers and your microphone are acceptable.

- (ii) If you do this test, however, remember you still need to click the button for joining the meeting (audio and/or video).
- (iii) At the start of a remote hearing –
 - (1) Say something to make sure you are being heard.
 - (2) Make sure you can hear the judge and others.
- (iv) Figure out how to quickly mute and unmute your audio.
- (v) Whenever you are unmuted, recognize that:
 - (1) Every noise you make can be heard, including coughs, heaving breathing, and other noises.
 - (2) Typing on a keyboard can be heard.
 - (3) Shuffling papers can be heard.
 - (4) Chewing things and drinking water can be heard.

Tip: Consider laying a towel down on your desk so that it muffles paper shuffling and other noises.
- (vi) Beware echoes and feedback and address those issues if possible before the hearing begins:
 - (1) Some people join video conferences using their telephones instead of their computer.
 - (2) But if sound also is coming from their computers, it may be picked up and fed back to the participants through their phone connection.
 - (3) Solutions will vary, but those connected by phone to the audio should mute their computer audio.
 - (4) Practice eliminating echo/feedback (or tactfully urge others on the call to take steps to eliminate).
- (vii) Anticipate “frozen” or garbled audio (and/or video) and have a plan for tactfully asking that something be repeated – if you are on mute, remember to unmute before you ask to do this.

- (viii) If you want to make your presentation standing up (like you would in court):
 - (1) Make sure your microphone stands up with you.
 - (2) You may want to buy a lavalier microphone set up so that you can use a lavalier mic; use a headset microphone/earphone (Airpods so long as fully charged) can also work, but test it out with a colleague to make sure the sound you are transmitting is not muffled.
 - (3) Otherwise, you may be moving too far to be heard clearly on the microphone that you are using.
 - (4) As you move around, your head may get cut off.
- (ix) Learn how to tactfully interrupt a speaker but only when absolutely necessary:
 - (1) Objections if the video conference involves testimony, or
 - (2) Inability to hear a speaker or other technical problems precluding you from effectively participating.
- (f) Screen Sharing and Hearing Books:
 - (i) When you first enter a remote hearing where you plan to present evidence or demonstratives via Share Screen or other like feature, click the “Share Screen” or other applicable button to see if the App will allow you to do so. If it does, then you are set and can wait until it is your turn to argue.
 - (ii) If you get a message that says something like “the host has blocked you from sharing the screen,” you will need to ask the Court for permission to do so.
 - (1) Most judges and their assistants likely will be able to provide that authorization with a few keystrokes.
 - (2) But if the judge is perplexed, you can instruct him how to do so by saying:

- a. With the Zoom App, click the up arrow next to the Share Screen button.
 - b. Click - allow multiple participants to share.
 - (3) Then test your ability to Share Screen again to make sure it worked.
 - (g) Have a lower tech back-up plan, if the Court allows this:
 - (i) Send a hard copy (old-fashioned) hearing notebook (and if so, where to send it – i.e., chambers, home or elsewhere), and/or
 - (ii) To upload or otherwise deliver (e.g. on a flash drive), PDF copies of demonstratives or your hearing notebook.
- Tip: all technology can fail when you need it most. Hard copy backups should be provided, if allowed, just in case.
- Tip: many judges are no longer accepting paper submissions – check each judge’s preferences and follow those.

4. “Share Screen” Feature.

- (a) Click “Share Screen” and then select from the screens that are displayed the one you want to share, and then click “Share” again.
- (b) Have the demonstrative you want to use open in a window and ready to be shared.

Tip: PowerPoint slides work well as shared screens, but you should consider starting the slide show in the background before you share it, so that you can share the already running slide show when prompted to click which screen you want to share.

Warning: practice moving in and out of a Power Point slide show; in particular, make sure you know exactly which screen the slide show will display on and share only that screen.
- (c) Remember to exit the Share Screen once you are finished with the demonstration.
- (d) Some considerations when weighing whether to use the Share Screen feature:

- (i) When you share the screen, the video images of all people will be reduced substantially and put off to the side.
- (ii) The focus of the video is now your screen.
- (iii) The judge will now likely only be watching the screen, not your face.
- (iv) Your demonstratives need to be persuasive enough to warrant this disruption on the video feed of your image and argument.

5. Advocacy In Remote Proceedings.

- (a) Recognize that you are going to be advocating over a computer screen, for which television is the closest functional equivalent. Practice is necessary.
- (b) Learn how to project the type of image that broadcasters and credible TV personalities project, much of which means minimizing *on screen distractions* – *i.e.*, anything on screen or in the audio that distracts the audience from staying focused on your advocacy.
- (c) Argue to the camera so the judge (or a witness) will feel you looking right into her eyes.
- (d) Consider presenting your virtual argument to a virtual panel of the same number of judges who will be hearing your argument. This will help you adjust to interrogations and crosstalk. It also will help you get in the habit of pausing and talking slowly.
- (e) Do not let your desire to ply your new-found skill at using technology while you are advocating your position get in the way of your advocacy.
 - (i) Don't let your ability to show documents on and "off-screen" screen keep you from listening to what the Court or your opposing counsel or witness is saying. It is easy to become distracted by the documents you are pulling up and missing important points that need to be addressed by you in turn.
 - (ii) Just as you would in open court or in an in-person deposition, listen and watch for opportunities to pivot from your pre-prepared presentation so that you can respond to what you

observe and hear, even if it means jettisoning demonstratives you had rehearsed sharing with the technology.

- (iii) If opposing counsel makes a point to which you want to respond, or if the judge has posed a question (either to you or your adversary) that provides an opportunity to make a point that does not particularly fit in anywhere in what you rehearsed or doesn't fit into your screen sharing plan:
 - (1) *Stop the screen share.*
 - (2) Pause.
 - (3) Look the court square in the “camera’s” eye, and make your point in the most impactful manner as is appropriate under the circumstances

6. Hearing Etiquette.

- (a) Controlled Privacy – treat the room you are in as if it were part of the live courtroom and control access to the room so that:
 - (i) Your significant other doesn't wander in and ask you questions mid-hearing.
 - (ii) Your children and pets are excluded from the room.
 - (iii) Colleagues who are not speaking in the hearing and are logging in separately could have just audio to minimize possible distractions.
 - (iv) Place a sign on the door that says “Video Hearing in progress. Do Not Disturb.”
- (b) If possible “arrive” early to the remote hearing, to check your lighting, sound, background and camera framing. Consider having both the audio and video toggled on so both automatically start as soon as the judge opens the hearing.
- (c) Silence your cell phone – unless of course that is how you are connected to the audio; silence your computer notifications; put your office phone on DND.

- (d) Stay on mute whenever possible – to eliminate unintended and sometimes noisy interruptions.
- (e) Speak directly into your microphone –
 - (i) Do not shout at a speaker phone
 - (ii) Consider using an external microphone connected to your computer
 - (iii) Do not be too far away from the microphone.
- (f) Watch the volume level rise and fall on the image of a microphone in the lower left hand corner to make sure you're not too loud or too soft – learn where the physical volume controls are on your computer and also where, inside the application, you can find audio volume controls.
- (g) Wait at least an extra beat in between your points to make sure you do not interrupt a judge trying to get in a question. You may want to specifically ask if the court has any questions for you before you move on to another point.
- (h) If the judge's question was "talking over" you, you may have missed the first part of it. Do not hesitate to repeat the question you believe the judge asked and wait a bit for the judge to give any clarification.
- (i) Be sure to be very specific in identifying any exhibits or demonstrative aids you are referencing.
- (j) Remember to speak slowly.
- (k) Remember you are "closer" to the judge than usual – connect with the judge – look her in the eyes by arguing directly at your camera and avoid distracting movements, including eye movements visible to the judge, if you "read" instead of "make" your argument. Consider using your application's Pin Video in Speaker mode (not Gallery mode) feature to make the judge the dominant image center screen, even though you are talking.

Tip for looking the judge(s) in the eyes: If you position the view of the judge immediately below the camera you are arguing to, you can probably get away with looking directly at the judge's image and have

it appear as though you are looking at the camera. Don't position the judge on a second screen away from the one with the camera.

- (l) Master muting and unmuting - Know when and how to put yourself on and off "mute" and stay on mute when others are talking, to avoid having unwanted sound come from your computer or workspace. Have your mouse positioned to click "unmute" when necessary.
- (m) Minimize your movement and facial expressions when not talking – remember you are right in front of the screen (not way back at counsel table) and the judge can see your every grimace or head shake.
- (n) Be sure you can reach your opposing counsel in case you have a connection problem.
- (o) If you wear glasses, be aware there may be reflections off of them. To avoid that:
 - 1. Adjust your head angle by dropping your chin or turning slightly.
 - 2. Slightly lift end of earpiece.
 - 3. Shift your lighting source. If possible, raising lighting source will help.
- (p) Make sure your name is correctly spelled on the screen.
- (q) Consider moving your chair back a little when you are not speaking and then moving it a bit forward when you are speaking. But remember you are always "on" and everything you do on screen can be seen, including taking notes, drinking a soda, etc. Do not make distracting movements or facial expressions while the other lawyer is arguing. Do not swivel your chair around or rock back and forth.
- (r) If someone is observing the argument or hearing off screen, don't let her inadvertently move on screen or talk to you during the hearing.
- (s) Dress as you would pre-remote work. Usually a dark-colored suit or outfit works best on camera, but black jackets can make you look tired, Pinstriped or checkered shirts/blouses get very busy on camera. Don't use a busy tie. Be aware of the effect it will have on the judge and his focus on you. Also be aware that you do not want the color of your clothes to match the color of the virtual background.

- (t) To appear to be speaking “extemporaneously” without looking down at your notes, consider having another screen above your computer screen with your “cheat sheet.”

7. Client and Witness Training.

- (b) Your clients and witnesses have not spent the last 8 weeks trying to figure out the nuances of remote proceedings.
- (c) Help them get comfortable with what will transpire.
- (d) They are subject to all the same rules that the other participants are, so train them in those rules.

* * * *

This document should be considered an evolutionary document - a starting point for adapting your advocacy skills to this new forum while simultaneously using Zoom or other remote proceeding video conferencing tools. With every new hearing and trial, lawyers are learning lessons on what to do and not to do. Judges are learning the technology at the same time as others and are likely to be forgiving of glitches encountered along the way - at least in the early stages. Please feel free to share any lessons you learn long the way that may not be addressed in this document.