

November 2022

The Impact of Remote Appearances on the Post-Pandemic Court

Kassadie Dunham

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Kassadie Dunham, *The Impact of Remote Appearances on the Post-Pandemic Court*, 57 IDAHO L. REV. (2022).

Available at: <https://digitalcommons.law.uidaho.edu/idaho-law-review/vol57/iss3/16>

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THE IMPACT OF REMOTE APPEARANCES ON THE POST-PANDEMIC COURT*

KASSADIE DUNHAM**

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I. EFFECTS OF THE PANDEMIC: A SUMMARY OF PRACTITIONER COMMENTS

In March of 2020, the United States was faced with challenging decisions as the scope of the Covid-19 pandemic was realized. Idaho’s first case of Covid-19 was confirmed on Friday, March 13th in Ada County—only hours after Governor Little declared a state of emergency.¹ Four additional cases were confirmed by Saturday night and decisions had to be made quickly throughout the state to determine what the best steps were to keep citizens safe and healthy.²

* Editor’s Note: This article was written, and comments were submitted in December 2020. The *Idaho Law Review* subsequently published this article in its online Spotlight Edition in May 2021 and is republishing now in November 2021. Unless otherwise noted, references such as “this year” or “in March” are presumed to have occurred in 2020.

** Kassadie Dunham is expected to graduate in May 2022 with her Juris Doctorate from the University of Idaho College of Law. During her 3L year, she is serving as the Executive Editor of the *Idaho Law Review*. She is also a co-author with Professor Richard Seamon on an article to be published in Volume 67, Issue III of the *South Dakota Law Review*, titled *Civil RICO Suits Against Harm-Causing Marijuana Operations: Momtazi Vineyards v. Wagner as a Case Study*.

1. Idaho Press Staff, *Covid-19 Updates: Gov. Little Releases Guidelines for Public Events, Gatherings*, IDAHO PRESS (May 27, 2020), https://www.idahopress.com/news/local/covid-19-updates-gov-little-releases-guidelines-for-public-events-gatherings/article_faa8a411-d531-5af1-bf2e-76dc4219391e.html.

2. *Id.*

Idaho's judicial response to Covid-19 started with this first governor order issued on March 13, intended to last for only four weeks.³ On April 22, all court proceedings were ordered to resume, but required to be held by means of audio or video conferencing.⁴ Some trial judges were even given discretion to hold cases in person as long as the Center for Disease Control and Prevention (CDC) protocol for social distancing and wearing masks was followed.⁵ Jury trials were originally to resume in June; however, the April 22 order further pushed back the date at which jury trials could resume to August for criminal jury trials and October for civil jury trials.⁶ Courts are faced with tough decisions now, often based on their own circumstances, as the state reopens.⁷

It is challenging to state what the future of Idaho's judicial system will look like. However, after researching and talking to practitioners throughout the state, I have learned that it is unlikely we will see remote court appearances disappear any time soon.

The most common positive of remote court appearances is the flexibility that it provides. Since the U.S. Supreme Court's oral arguments have shifted to live audio streaming, millions of Americans have been able to listen, according to Melissa Wasser, a policy analyst with the Reporters Committee for Freedom of the Press.⁸ Wasser also points out that transparency through remote access may broaden access to all levels of the federal judiciary.⁹ Several of the attorneys whose comments can be viewed below also mentioned how much easier the commute is and the time they are able to spend with their family rather than needing to appear in the court room. It may also open the doors to the ability for employees to work from other locations whether they are sick or have a family emergency in the future.

Despite the flexibility, it does not seem that working remote in the legal field is without issues. Some attorneys have been welcoming clients into their homes when they want to meet in person with offices closed. Some have been unable to meet with clients in person, which decreases credibility. Some feel unsure whether the witness or client is being coached by someone else at the other end. Defense attorneys still need to meet with clients while they are in the jail which increases their chances of exposure. Not every client has reliable cell service to connect by audio or reliable internet to connect to Zoom, in fact this is the most common tech issue that was mentioned by those who have provided comments below.

Remote hearings themselves are limited for what court hearings they work best for. The effectiveness of live hearings with witnesses or when presenting

3. Gregory W. Moeller, Essay, *Idaho's Judicial Response to Covid-19: A View From the "Fog"*, 56 IDAHO L. REV. 568, 569 (June 26, 2020).

4. *Id.*

5. *Id.* at 570.

6. *Id.*

7. *Covid-19 and the Courts: A Resource Guide for Judges*, BOLCH JUD. INST., <https://judicialstudies.duke.edu/covid-19-response-resources-for-judges/> (last updated Mar. 19, 2021).

8. Amanda Robert, *Judges in 3 States Testify In Favor of Continued Use of Remote Proceedings Post-COVID-19*, ABA J. (June 26, 2020), <https://www.abajournal.com/news/article/judges-testify-in-favor-of-continued-use-of-remote-proceedings-post-covid-19>.

9. *Id.*

exhibits decreases behind the computer screen, but uncontested proceedings may be successful through remote hearings.

The Sixth Amendment of the U.S. Constitution guarantees rights of defendants, including the right to a public trial without unnecessary delay.¹⁰ The opportunity of the public to attend hearings has been reduced—if the case is held in the courtroom, the judge must determine the number of people that can safely be there while adhering to Covid-19 guidelines, or the judge may have discretion to livestream hearings on YouTube or allow observers to have the Zoom link to attend. And these are just the issues faced for public access to the trial. Many other constitutional issues are also facing defense attorneys and defendants.

In addition to the potential constitutional issues of remote court appearances, these court appearances may be taken less seriously and have more interruptions that never were experienced before. A colleague of mine shared a story via email of someone who appeared for their court trial lounging on their couch in only their boxer briefs. An attorney who responded as a comment for this piece also talked about a janitor entering a defense attorney's office during the middle of a court trial to empty garbage cans. These distractions are unlikely in a courtroom.

Despite the downfalls of utilizing Zoom for remote court appearances, opinions seem to be that this method for conducting court will not go away completely, even after the Covid-19 pandemic. Outside of Idaho judges including a former California state and federal trial judge, Jeremy Fogel, Michigan Supreme Court Chief Justice Bridget Mary McCormack, and Senior U.S. District Judge David G. Campbell of the District of Arizona testified to the House Subcommittee on Courts, Intellectual Property and the Internet that remote proceedings had been successful enough to continue the practice without fully returning to “old norms.”¹¹ In fact, Fogel claims that Covid-19 opened the judiciary to new technology and that “he doesn't expect that ‘we're ever going back to where we were before.’”¹² Even in Idaho, some courts had already been examining utilization of technology for certain types of hearings. Nez Perce County had previously considered remote hearings for mental commitments and now, with Covid-19, this looks like a more viable option to continue. Although utilization of Zoom for remote court appearances is far from perfect, it is likely to continue to be an option through the future.

10. U.S. CONST. amend. VI.

11. Robert, *supra* note 8.

12. *Id.*

II. PRACTITIONER COMMENTS

Below several practitioners throughout the state of Idaho have provided their commentary on what advice they would provide to attorneys in their field, the pros and cons of utilizing zoom for remote work and for remote court, and whether they personally see the changes brought about by Covid-19 continuing into the future of the Idaho Judicial System.

A. Judge Sunil Ramalingam, Nez Perce County

All my civil hearings are on Zoom and if individuals wish to observe, they usually get the links from the party involved in the case. We will provide it if they contact us. I can't remember any non-parties attending recent civil hearings. We tend to see more non-parties when we have our criminal weeks. The three magistrates in Nez Perce County rotate through a "criminal week." We handle arraignments for the week, and the Lewiston Tribune sits in for those sessions. Friends and family members sometimes attend, and they either contact the court for the link or come to the courthouse, where they use one or more of the kiosks we've set up for people without other means to attend.

Yesterday, I had a preliminary hearing for a rape case that had a couple of observers. The defendant's mother (perhaps both parents were there) observed, as well as their attorney. They own the trailer park where the incident occurred. I haven't had many other people attend hearings. Wednesday is our usual prelim day, and this week a newer attorney wanted to sit in and observe a prelim while he waited for his next hearing. I would have let him in, but Judge Evans volunteered to take up his case, so he did not join us. The conversation took place via email as my hearing went forward, and my clerk handled the back-and-forth between the lawyer and the other judge.

It's fair to say that the public's opportunity to attend hearings has been reduced significantly. I have not used YouTube for hearings, though that is an option. We haven't had any requests, and it adds to my clerk's workload. Handling the Zoom schedule has already impacted our clerks a great deal, and I'm reluctant to add to their work unless we have requests. I've had one murder prelim, but the attorneys asked for an in-person hearing which I granted. We had a number of observers, family and prosecutors, but not many folks from the general public.

We regularly have tech issues. The most common is a bad internet connection. This often happens with pro se litigants, or witnesses who aren't in the attorneys' offices. We see lots of people in cars. It's optimal for people to use cables to connect, but even in lawyers' offices they use cables for their work computers and Wi-Fi for their Zoom devices, leading to issues.

I had a rape prelim in which the defense counsel was crossing the alleged victim about her consumption of alcohol that evening. He had painstakingly gone through her testimony on direct, getting admissions that her consumption had been in excess of what she'd testified to on direct, and just as he asked his 'gotcha' question about drug consumption, she lost her connection. No one thinks this was deliberate, but the timing could not have been worse. We lose witnesses all the time, and it's quite disruptive for all of us, especially the attorneys who are putting in the work.

People often are relegated to the Waiting Rooms and are busy doing other tasks when we bring them in. They need to connect to audio, but they don't see the prompt on their screens because they're otherwise engaged, and we have to email or call them or use the chat function to alert them to join us.

Almost all our hearings take longer. At the same time, the use of technology has been quite helpful. Each of the three magistrates have had to quarantine at home, and we've been able to work from home and handle hearings. The flip side is that it's taken a toll on our clerks. They have to manage exhibits, sometimes scanning them in and sending them to us (primarily for CPOR hearings with pro se litigants who don't comply with the ISC exhibit deadline orders).

The biggest pro is that most hearings have continued and we're able to plug away on our cases. It's always better to work slower and have hearings than to be shut down as we were in March and early April. In some ways Zoom has been great for litigants. I have two family law cases with clients and attorneys in the Boise area. Those clients haven't had to pay for their lawyers travel time to Lewiston or motel bills while they're up here for trial. They haven't had to pay for witnesses to come up, and all have been able to testify from offices or homes (or cars!). Witnesses and parties spend less time away from work which is a plus.

I'm sure that Zoom will be an option going forward, and I think that's good. One great change is that all mental commitments have been via Zoom. Before the shutdown we had wanted to switch to remote hearings, and it had been slow going. In District 2, patients for commitment hearings are treated at St. Joe's Hospital. Law enforcement transported them to court, and they were always shackled when transported. I always found this painful. These aren't people in custody for crimes (not for civil commitments), and they often didn't understand what was happening, and I hated seeing them shackled. I understand why law enforcement shackled them, but that didn't make it any better for the people involved. That doesn't happen now. Their lawyers go to the hospital and use a room there. I think we will continue to handle commitments this way.

Everything takes longer. We haven't had jury trials in months, and it's hard to know when we will start again. Examining witnesses via Zoom is not the same or as good as live testimony. Regularly in traffic court I have litigants call in. They can't see the state exhibits. We have lots of litigants who don't have access to their own connections or computers, and they are at a disadvantage.

But I also think this is the best we can do. It's far from perfect, but it has kept us going and for lots of court business it's an effective way to handle cases. And we are fortunate to be in jobs that have not been impacted by the pandemic in terms of our incomes. We are extremely fortunate compared to a lot of people.

B. Judge Steven Boyce, Madison County

The decision on how to provide public access to the courts is a discretionary one for the assigned judge. With restrictions on our courtrooms due to the Covid-19 pandemic, the Idaho Courts have provided alternative means for remote attendance at hearings to ensure that the public maintains its First Amendment right to access our judicial proceedings.

Most hearings at this time are held remotely via Zoom. The assigned judge may determine who is allowed to participate in the Zoom meeting, and a member of the public who wishes to attend a hearing may be allowed to view the hearing on Zoom. The Courts have also provided each judge with the ability to livestream hearings on YouTube. The Idaho Supreme Court's website has a streaming directory with links to each judge's YouTube feed, thus allowing the public to view hearings in real time remotely. The Courts have also created forms to assist the public in requesting that any particular hearing be livestreamed.

Some hearings are still required to be held in the courtroom, and in those cases the judge determines how many people can safely attend while still adhering to our mandated Covid-19 safety guidelines.

I have experienced technical difficulties during court hearings. Unstable internet connections are the most common problem. Most technical issues have created short delays while the matter is resolved, but on occasion hearings have had to be suspended and rescheduled, if either the court or a necessary party loses their remote connection. Fortunately, the Idaho Courts have provided the necessary technical support to make serious problems a rarity.

Remote hearings work very well for certain court hearings, such as scheduling conferences, pre-trial conferences and other uncontested but necessary proceedings. Appearing remotely has cut down on travel time and expense for attorneys and is an efficient way to bring the parties together to discuss certain aspects of pending cases.

Remote hearings are however much less effective than live hearings when witnesses are being examined and when large or complex exhibits are offered. Attorneys are unable to have the same interaction over a computer screen that they can have in person when litigating contested hearings, which is a challenge.

It is my belief that in the future the Idaho Courts will continue to use remote hearings for matters that do not involve witness testimony. The system has been implemented and works reasonably well for many types of hearings, so I don't believe it will go away anytime soon.

C. Elisa Massoth, Elisa Massoth, PLLC

The Covid-19 pandemic has brought mostly challenges to the world of criminal defense, both in state and federal court here in Idaho. While holding court over Zoom may be more time efficient for both attorneys and their clients, the drawbacks are immense: over Zoom, attorneys have extremely limited capabilities to present meaningful evidence to judges and an inability to accurately assess witness credibility, given that you cannot see what a witness is really looking at or if someone else is coaching them while they testify. The decorum that previously accompanied being in court is gone; while waiting for my own court hearings to begin, I have observed some defendants dressed in a t-shirt or hoodie, with a hat on, walking around aimlessly as they either try to get a better signal or talk to people around them. Toilets are heard flushing, dogs are barking. People are smoking cigarettes and eating food, and videos freeze—losing contact that was never truly established. Some counties have tried to correct this behavior with pop-up warnings prior to Zoom calls, but the gravity and enormity of an actual court appearance simply cannot be replicated over video.

And these are just issues with Zoom—actual in-person court proceedings are nearly impossible right now. The federal court calendar is so backlogged it is difficult to schedule even an evidentiary hearing, let alone a full jury trial. The state court situation is especially tragic, as there are clients who—though presumed innocent—are currently being held in jails with active Covid-19 outbreaks, and yet they have no chance of a jury trial until at least March 2021. The courts are reporting at least a year of backlogged criminal and civil jury trials. The difficulties in scheduling trials have also led to a current court order encouraging cases to be mediated. However, the rule requiring training for mediators has been suspended, allowing the encouraged mediation to occur with judges who have not been trained to mediate. On the other side of the table, prosecutors are working from home and are not feeling the pressure of a client or a client's family calling because they are stuck in a jail experiencing yet another Covid-19 outbreak; they do not seem to be negotiating in mediation with a sense of reasonableness or with any acknowledgement of what the pandemic has done to those who are accused.

The pandemic has also been difficult for defense attorneys to navigate: every time you visit a client in jail, you risk exposing yourself and therefore anyone you have regular contact with to Covid-19. Despite the precautions they have claimed to take, many jails are experiencing massive Covid-19 outbreaks. Many of the precautions claimed by jail administrators are not in fact occurring in practice. It is difficult to get paperwork to and from incarcerated clients, and the phone systems at the jails cannot handle the unprecedented workload. If attorneys finally do get to court, then they have to deal with mask orders: everyone is masked, making it difficult to read body language or understand muffled voices. Jurors over a certain age are automatically exempt from jury service, leading to legal claims regarding a "jury of peers."

The Covid-19 pandemic has impacted many constitutional rights of the accused: right to a speedy trial, right to confrontation, right to bail, effective assistance of counsel, capital mitigation preparation, and so forth. We must file motions and objections to document these issues. We must fight for those rights for our clients and hope beyond measure that trial-level judges convey the failings

of video court to higher courts. While convenience may render Zoom the preferred method for status conferences or other minor matters after the pandemic is over, video conferencing should never be allowed to replace in-person court proceedings.

D. Alayne Bean, Bonneville County Chief Deputy Prosecuting Attorney

Challenges: As a prosecutor, my concern is always that whatever we do with a defendant in a given case will be just what that defendant needs to never enter the criminal justice system again. (A lofty goal, I know.) With defendants not having to personally appear at the Courthouse throughout their case, the serious impact of court is lost. For example, I've seen Defendants appearing in their cars, in their pajamas, or walking around outside. (To be fair, there could be attorneys who "blackout" their screen that could be doing any or all of the same things.) But the impact of appearing in front of a judge is lessened, because now it's just like FaceTiming family or friends.

Additionally, some participants don't read the Court's posted instructions and don't understand all the functions – muting their microphone being one. The other day we had two defendants saying, "Hello?" "Hello?" "Who is this?" "This is DEFENDANT NAME, who is this?" "This is OTHER DEFENDANT NAME." And finally, the judge had to tell them to stop talking until their case was called. (It was kind of comical.)

I participated in a hearing within the last month, so six months into using Zoom technology, where an attorney who was waiting for his hearing did not blackout his screen, kept walking around, passed the phone to his wife where she proceeded to walk around, all while being very distracting to others. He also did not follow the Court's posted instructions and seemingly did not understand all the functions of Zoom.

I've seen where someone thought they were muted but were not and said something they never would have said for all the other participants to hear because they thought they were muted.

Let's add a new experience: The building janitor just came in a public defender's office during our Zoom hearing to empty the garbage.

Advantages: In Bonneville County, we used to have what many colloquially referred to as a "cattle call" for Preliminary Hearings. All attorneys, witnesses, victims, and spectators would pack into the courtroom and the judge would run down the list of cases to see which hearings are: continuing to a new date, being waived, or proceeding to a contested hearing. Now we do that via Zoom at 8:30 a.m., and it is so much easier. For those hearings that are not proceeding to a contested hearing, we are able to notify witnesses, etc. earlier in the day, so that they do not need to travel to the courthouse. This is a huge benefit to those people. I believe this procedure will continue, even after things are back to "normal."

It's much easier to work from home and cover court appearances.

Trials or Pre-Trial (Significant) Hearings: I had a hearing on essentially a Motion to Dismiss a Jury Verdict. The defense attorney and I had previously submitted exhibits in support of our motion, so those were already on file with the Court. But it was my first significant, substantive hearing on Zoom. It felt clunky and disorganized. I could not lay out my documents comfortably around the table like I would have in the Courtroom. It felt less formal.

I had a Preliminary Hearing on a case where the Defendant was accused of Forcible Penetration with a Foreign Object. Basically, a very serious crime. My witness was in IDOC custody, so Zoom allowed him to participate without being

transported back to the County Jail. However, with only a few participants on the screen, the defense attorney probably wondered how great the victim's identification of the defendant was. The hearing went smoothly enough, all things considered. But there are defense attorneys who refuse to have these types of hearings by Zoom, saying they cannot adequately cross-examine a witness by Zoom, judge credibility, pick up on body language, etc. like they would during an in-person hearing.

How have you been presenting Evidence: I have not yet had to present evidence, besides Exhibits previously on file with the court. I had a case where I was going to do that. However, it settled. In preparation for that hearing, I emailed pre-marked copies of the exhibits to the court clerk and opposing counsel about a week prior to the hearing.

Advice: Be prepared by knowing your case, just like always. Be professional so that the Court process maintains its integrity. And never say anything you would not say to someone's face, even when you think your microphone is muted.

E. Ryan McFarland, Co-General Counsel Scentsy

What has Gone Virtual.

Almost everything! I am co-General Counsel to Scentsy, Inc. and its family of companies. Most of the company has gone virtual, except, of course, for our “front-line” workers: our manufacturing, shipping, and warehouse staff, without whom Scentsy would likely not have survived. Perhaps the first change I noticed was how reliant we are on those almost-anonymous, hard workers, and how much we appreciate them. The company made significant changes in compensation to show that appreciation. As for the practice of law: the first month or so was a period of both uncertainty about the future, and high productivity – with no one walking into the office every few minutes, I was able to accomplish a lot! Over the weeks and months, however, as folks became more comfortable with virtual meeting technology, they have been virtually walking into my office more frequently until in some ways it feels like we are back to normal. Microsoft Teams, like the iPhone before it, and the Blackberry before that, has become a blessing and a curse. We have, at this point, almost eschewed the telephone entirely for video conferencing. I called someone in the company the other day who had a legal concern, and before telling me her situation, she asked if I would hang up and call her on video just so she could see my face. I think that speaks for how I and many others feel: we like each other, and we miss being together. Video conference technology has become very important.

Pros.

I love my commute! I walk downstairs to my office. I eat lunch my children who are taking their college, high school, and junior high school courses at home, while I am working at home. That’s an arrangement that does not work well for many, but I love it. I suppose one’s happiness level is directly related to the physical structure at home: is there enough physical space, and enough Wi-Fi bandwidth? We didn’t have to expand the walls of my home, but we did have to install some internet cabling and otherwise enhance our internet service. On a more professional level, video depositions are much better, particularly when defending. I like having my clients deposed via video. I like the ease of recording depositions and using electronic exhibits.

Cons.

Client meetings. Several of these take place in my home because our offices are closed to the public. That level of intimacy is sub-optimal in some cases and exposes my household to the spread of disease. Most matters can be taken care of via virtual communications, but some things – depositions, or court hearings where the client wants to be present (virtually) cannot.

F. Matthew Bennett, Partner at Foley Freeman

Some of the adjustments we've made have been by choice; some of them have obviously been forced upon us. The choice aspect is our office has really tried to limit contact with clients and our employees. For a period of time, we implemented a policy where staff members stayed home. Initially, everyone worked remotely, and the office was basically closed. Over time, that changed, and we did a hybrid model where we had half the attorneys and staff here half the week and half the attorneys and staff here the other half of the week. We did that for several months before we made the decision to have everyone come back to the office, implementing cleaning and safety protocols to limit the risk of spreading disease.

Quarantine definitely opened my eyes to the possibility of remote work. I'm able to do a lot of what I typically do in the office from home. I think in the future, if there's something like a court hearing that I need to attend in the morning, it's likely more efficient for me to stay home for a couple of hours and then go directly to that hearing than to drive into the office and then drive to the courthouse from the office.

I also think it will be possible to work when people are on vacation. Even though we don't want people to work while they're on vacation, if they wanted to go visit family, for example, that's going to be an option, whereas in the past it hasn't been. We want people to go on vacation and actually go on vacation, but I can see some of that happening.

It could also be an option when people are sick. If they're not too sick to work but they don't want to come into the office and expose people, working from home could be a solution.

Working from home works. We're able to facilitate communication and talk to everybody, but I don't think it's great for morale for the employees. It's hard being isolated, and so having people at the office can be somewhat of an outlet. Also, you're able to keep a closer eye on things. We are lucky to have great employees that we trust, and we don't think they're at home sleeping when they should be working, but with the staff here we can keep an eye on what they're doing all the time.

Overall, I don't think working remotely will become the norm, especially for staff. I do see it playing an increased role at times when it is more efficient or enables someone to work when he or she otherwise would not be able to do so.

We do not do in-person appointments anymore, for the most part. There are some clients that demand an in-person appointment, and we notify them that they need to wear a mask and take safety protocols, like not shaking hands. But for the most part, clients have been doing their consultations over the phone.

It's worked fairly well to work with clients remotely. That is something that will continue based on need, but once the pandemic ends, we anticipate opening the office. I would much rather meet with clients in person. I want to look my clients in the eyes; I want to gauge credibility. If I have a client that's lying to me, and I know he's lying to me — those aren't the type of people I like to represent.

Another reason I prefer to meet with clients in person is that these moments where they find themselves needing an attorney are probably some of the worst

moments of their lives. Nobody likes talking to an attorney. Helping clients feel comfortable and at home is an important part of the initial process, and it's harder to do on the phone. Meeting in person helps, and I anticipate going back to that.

There are some advantages and disadvantages to having remote court. One advantage is the cost savings for our clients. Our clients typically would have to pay for an attorney to go to the courthouse, and, at times, for the time the attorney spends waiting at the courthouse for a hearing to occur. In particular, the status conferences, pre-trial conferences, scheduling conferences, even some of the simple motions — having those held virtually, I think, is extremely beneficial to the clients, and saves on attorney time. While we're waiting for hearings to begin, we can do other things, and our clients do not get billed for that time. It's quite efficient in that regard.

Those hearings should continue to be virtual. It's a cost-saving measure for the client, and it's honestly more efficient for the court, as well. In a recent Family Law CLE, I asked a panel of judges from all over the state whether those changes would continue, and they indicated that yes, we are likely to continue some of these processes and procedures even after Covid has ended for those types of hearings.

One of the disadvantages of remote court is that it's complicated to litigate a case. There can be difficulties with testimony. If you do a trial over Zoom, then obviously you don't know what's going on at the other end. You don't know if somebody else is in the room, speaking or motioning to a witness. For all we know, someone could be holding note cards behind the camera and telling the witness exactly what to say. You hope those things are not happening, but you just don't know. Whereas when you're in the courtroom, you can affirmatively see what's going on, what people are looking at, that type of thing.

There's also a disadvantage with audio. Sometimes the audio or video freezes or doesn't work, and so you ask a question and you're not necessarily going to get a response right away, and that can disrupt your flow in questioning. It's just not ideal to do evidentiary hearings over Zoom. But there's also a downside to doing them in the courtroom during the pandemic, because people are wearing masks. At least over Zoom, you can see somebody's facial expression. Courts actually look at facial expressions to gauge credibility. That's an advantage of Zoom over in-person hearings during the pandemic.

G. Paul Rippel, Hopkins Roden Crockett Hansen & Hoopes, PLLC

Has Covid-10 changed the practice of law?

Of course, it has, but in the greater context I see it as another challenging need for adaptation in the practice of law. As technology changes, even old dogs must adapt to some degree, and that has happened greatly over the last few decades. For example, our firm's first cell phone looked like a big walkie-talkie and had a range of about 100 miles. Wow, what will be next? The telephone watch worn by Dick Tracy in the funnies? Floppy discs to computer towers to laptops to tablets and cell phones in everyone's pocket or ear or wrist have all come about and required adaptation.

Before the Covid-19 pandemic, we were adapting to communicating with clients through emails. You or they could send or reply any time day or night as might be convenient. Then we learned how to send attachments to keep them even more informed. By the time Covid-19 hit even older clients had emails and cell phones, and they like being kept up to date in nearly real time.

The younger generations who grew up with these devices were already in the mode of instant information and instant gratification. At times, the constant demand for immediate sharing of information can take away from a lawyer's professional duty. We have a duty to communicate and provide information, but we also have a professional duty to analyze the law and the facts to provide meaningful advice to clients. Otherwise, we might just as well be reporters repeating someone else's words.

But then there is Covid-19. We have had to adapt to a lack of personal presence and contact with clients and other professionals. And, to the technology of video hearings and meetings. The younger attorneys in my firm did not appear to skip a beat, but I need assistance and training like never before. I miss that first in-person meeting with a prospective client, the handshake to signify trust both then and at the end of a matter. It also makes it difficult to cultivate the professional collegiality with other attorneys, often instrumental in seeking a resolution to a dispute.

My worry for the profession is that the public will begin to see us as mere mouthpieces, a video screen image with a soundtrack rather than as professionals. There is one good thing about this pandemic. We are all experiencing the same type of needs for adaptation, and in the end, I believe we will get through it together.

H. Matthew Wolfe, Ludwig Shoufler Miller Johnson, LLP

I, personally, have found it easier to use Zoom to meet with clients. I was meeting with clients prior to the pandemic over Zoom, so the pandemic really helped force more of the clients to do it. I have not found any issues with my clients getting onto Zoom. The benefit to being in the courtroom is you are able to talk to your client and the other attorney either before or after the hearing. I find over Zoom that it is harder to have some of those one-on-one conversations that you would normally have. Without a doubt the biggest problem (for me) with digital only is getting signatures. With wills, you need two witness signatures, and you need to have that signing in person. Plus, while there are a few digital signature programs, they aren't as mainstream as one would like.

The biggest disadvantage has been the lack of ability to have some of those personal communications. Remote court has been a big time and money saver though. I no longer need to drive to the courthouse and wait around for my case. I can just put on a tie and jacket at work and start right up.

I. Zach Olson, Yturri Rose LLP

As a little background on me, I am from rural Alaska, and we have, for a long time, been comfortable with handling our business remotely. I argued summary judgment motions over the phone long before the pandemic, which many lawyers would find odd. I've also done a lot of work in federal courts, and in my experience most federal judges handle a lot of their docket over the phone. You are not usually flying in lawyers from around the country for a 15-min status conference to discuss discovery issues, for example.

These days, I practice throughout Oregon and Idaho, largely in the Four Rivers area. I do civil litigation exclusively. Our practice is pretty traditional, but we have adapted. For example, the lawyers I work with all felt like in-person depositions are essential before the pandemic, and that feeling has dropped off over time to where we are now all pretty comfortable with Zoom.

I have not participated in any trials since the pandemic began. Most courts I am in have completely put civil jury trials on hold. Some were starting to get back to trials towards the end of summer, and then the most recent wave has clamped things down again. This has created a pretty serious backlog and forced people to rely more on alternative means of resolving conflicts. Most courts are continuing criminal trials given the constitutional speedy trial requirement.

Virtually everything short of a trial has at least a remote option, and I have done most courtroom appearances by phone since March. In my experience, most courts use a mix of videoconference and phones. Many courts have a direct video line into prison that works well and judges are comfortable with video, but I have seen some glitches with lawyers trying to videoconference in from their offices. I personally almost always use the phone. It is much easier, and I do not find it overly important for a judge to see my face. I've never had technical issues with a phone. Sometimes an open phone line for court can be pretty wild, though. People do crazy things and forget they are on mute, etc. I heard one person shout obscenities at the judge thinking he was on mute, and then when the judge asked who was speaking nobody would admit it was them.

The pros are you save on travel time and waiting around in court time. This can be a massive cost savings. This really is the only pro, but it is huge.

The cons are that using juries to determine facts are a bedrock principle in our society. I know there has been some good research questioning whether juries are really that good at anything, but I think the concept is important and I have not heard of anything better. I do not think you can have juries hear evidence and deliberate over Zoom, and it is telling that courts have not tried to do that (that I have seen).

To me, the most important thing is to recognize it is a little different in that you can "cheat" a little bit and have access to your computer in a way you would not in court. I do not like fumbling through a trial notebook in front of a judge if I get stumped in court. If I get stumped, I will usually say I do not know and then ask to follow up in a filing with the court. If you are in your office in front of your computer, it might be easier to do a quick search to dig up the answer to a question. This is especially true when your opponent is making an argument you

did not expect. You might be able to put together a more cogent answer than you would if you only had access to your prepared notes.

I am not a big fan of videoconferencing into court, but I do recommend every lawyer prepare a legitimate Zoom setup. We are doing a ton of Zoom depositions and mediations, and one of the partners at my firm gave me a lecture early on about how I should act on video the same way I would in person. Your appearance is important in projecting your competency. Put on a suit, sit up straight, and look at the camera. Have a good background! I usually use a neat-looking old bookshelf, and I'm shocked how many people call in from among the disheveled stacks of paper in their office with their laptop camera looking right up their nose (I did it too a couple times). I recommend every lawyer scroll through @ratemyskyperoom on Twitter to see what I mean. I also recommend a headset, which looks a bit nerdy but makes for much better sound. I think we will all be using Zoom much more in the future, as it has proven to be a workable alternative for many things.