

## Lessons Learned From One of Miami's First Zoom Bench Trials

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Trials are involved events that require outstanding legal acumen, and the ability to attract and maintain attention-keeping performances. In order to accommodate our “new normal,” remote testimony and electronic exhibit submissions have become front and center. From June 22-June 29, Peckar & Abramson (P&A) undertook one of the first week-long bench trials in Miami-Dade County and learned valuable lessons in providing effective and efficient representation.

Unlike a live trial, submission of exhibits requires a great deal of communication and involvement with the Clerk of Courts to ensure that all exhibits are submitted in a manner that is compatible with the clerk's new exhibit



**L-R: Freddy X. Muñoz, Anne-Solenne Rolland and Katherine Gonzalez of Peckar & Abramson.**  
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filing system. Note that every county is different, therefore communicating with the applicable county clerk well in advance of trial to prevent mishaps is highly recommended. In our case, following ongoing communication with the clerk, and some trial and error, the trial team determined that the “best practice” was submitting all exhibits on a USB drive, with each individual electronic exhibit saved as the exhibit number, as well as adding an exhibit label on the document itself so that it

would be easily identifiable when screen sharing. Ultimately, communication with the clerk prior to, during, and after submitting exhibits is key to this process.

Once the exhibits were submitted, the team created a trial exhibit spreadsheet that included a description of each document along with a hyperlink to the document itself. This allowed the trial team access to a uniformed view of all exhibits, minimizing search time and confusion. Similarly, it was crucial to have all

deposition transcripts and potential impeachment material easily accessible within electronic folders. Also, having the relevant impeachment testimony or information highlighted helped guide the witness and the court. All in all, going the extra mile by organizing exhibits and supporting documents in a manner that makes them easy to access electronically not only facilitates the presentation, but gives the trial team confidence throughout the experience.

The trial included witnesses residing locally and from around the world, some of whom required interpreters. One of the team's primary concerns was ensuring evidence was presented smoothly and professionally. One method used to address this concern included local witnesses being subpoenaed to appear in our Miami office, which minimized audio and video feed issues. For the witnesses unable or unwilling to travel, Zoom trial links were provided.

In order to maintain social distancing, the firm's largest conference room became the "trial room." This allowed attorneys and witnesses called to the "virtual stand" to participate while in the same room—the goal of which was to keep witnesses engaged and limit technical difficulties or distractions.

Attorneys sat opposite witnesses, with a laptop for video feed and independent computer screens to manage exhibits.

Witnesses were also equipped with a laptop and a professional video camera positioned at eye-level. This set-up allowed for the use of a single audio feed, preventing static and echoing that often occurs with the use of multiple audio devices in a single room. Moreover, to avoid internet interruptions, a conference room teleconference line was used, rather than computer audio.

Undoubtedly, the primary challenge encountered during P&A's virtual trial was the lack of "live" witness interaction. When engaging in a virtual trial, it is imperative to ensure that all remote witnesses have proper technical resources, and that they are arranged in advance of their testimony. Unfortunately, on many occasions, remote witnesses in this scenario had poor internet connections, which led to inconsistent video and audio feeds. Likewise, where witnesses required an interpreter, these issues were compounded.

Like much in life, and in the practice of law, the key to success in virtual trials is patience. Patience in finding a solution to the technical difficulties and patience in eliciting testimony from witnesses, which can be slow and difficult. It is important to always keep in mind the need for a clear record.

Similarly, communication among the trial team is crucial in both virtual and live trial settings. In doing so, be careful to communicate quietly or silently, depending on the

situation. It is easy to neglect traditional courtroom practices in this emerging format, however, attorneys must be mindful that microphones are always on. Be wary of communicating using chat rooms or other similar applications as these messages can be seen if one of the lawyers is screen-sharing. The same is true with any pop-ups (i.e., email previews), which can lead to the unintentional disclosure of these communications to the trial audience. Additionally, keep in mind that the court is the moderator of the platform, and can, within its discretion, unmute or mute a specific line at any time. Consequently, to ensure privacy, it is always preferable to leave a room with an "active" link when communicating amongst the trial team or with the client.

The old maxim "expect the unexpected" is even more appropriate for remote trials. Dogs will bark, children will wander into the background and remote witnesses will lose their internet connections. Planning, patience, organization, cooperation and communication with all parties involved are even more important for remote trials and for the successful presentation of evidence to the court.

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