



# Legal Professionalism in the ELECTRONIC AGE



# Legal Professionalism in the Electronic Age

## *The Henry Latimer Center for Professionalism*

Due to the COVID-19 pandemic and the requirement of “social distancing,” society has been forced to rethink ways to carry out its essential functions. One of the most profound shifts is the movement to video conferencing. With this shift, it is crucial to uphold the expectation of professionalism and civility within the legal profession. This guide and its resources provide some best practices and recommendations for practicing with professionalism virtually.

### **Special Considerations for Attorneys**

- Continue to demonstrate The Florida Bar’s civility and professionalism expectations while fulfilling the fundamental duties to the client and the judicial system.
- Ensure the individual needs of your client are being met by confirming their access to the proper technology needed to conduct virtual hearings (i.e. computer with internet, smartphone, or landline).
- Plan to provide confidential communication with your client before and during the hearing to discuss and resolve any issues.
  - Coordinate frequent conference calls and emails before the hearing.
  - When discussing client matters at home, ensure all listening devices such as Amazon Alexa or Google Home are muted or turned off.
  - During the hearing, ensure the virtual platform allows for “private chats” or “breakout rooms” so that you may chat confidentially and directly with your client.
  - Be aware of your surroundings. You still have a duty of confidentiality to your client, which extends beyond just information the client wants to keep secret. Instead, that duty extends to all information learned in the course of representation. Just because the court hearing is public does not mean that you should be sharing the content of the hearing with others in your workspace. If you have a video or teleconference, find a location that is apart from others and that respects the privacy expectations of your client and the decorum expected by a court.
- During a virtual hearing it is best to:
  - Familiarize yourself and your client with the virtual platform prior to the hearing and join the conference before the start time.
  - While participating in a hearing remotely, it is important to be mindful of your surroundings. You should find a quiet place away from any distracting background noises and, if possible, use a neutral wall or virtual background.
  - As an attorney you are held to higher standards which includes wearing professional attire, even from the confines of your home.

- Be aware that while you are on camera on a video conference, other participants can see you the whole time and are looking directly at you. Your facial expressions are perhaps under more scrutiny than in an in-person setting. Pay special attention to monitoring your emotions and expressing them appropriately when others are speaking.
- Position the camera at eye-level. Your image is best captured if you are looking straight-on at the camera. If you are using a laptop, hard back books placed under the laptop are a great way to raise the laptop camera to eye-level. Try to allow a bit of your body to be shown. Your persuasiveness and influence may be increased by being able to take advantage of your non-verbals while on video.
- Continue to use all the non-verbals of active listening that you would use in a normal court hearing. Maintain eye contact by looking at the camera when listening and speaking, nod your head to indicate understanding, even lean in a little to show that you are engaged with the speaker.
- If a video conference is recorded, remember that the recording may begin before and end after you are aware of it. Anytime you are on a video conference, assume you are being recorded. Likewise, if there is a chat function that you are using, assume the chat messages are also being recorded.
- If you lose connection, stay calm and attempt to log back on. It is a good idea to have a phone number you can call or text to let others know you are working on resolving the problem and rejoining the call.

### **Special Considerations for Judges**

- Virtual platform instructions and rules for the hearing should be provided to all participants in advance. In order to avoid any *ex parte* communications, ensure all court correspondence is sent from the court coordinator.
- Begin the hearing by covering the ground rules such as how the platform will be used and how the participants will be selected to speak.
- In order to limit distractions, all participants' microphones should be muted and controlled by you.
- Remember to allow a little more time for other participants to respond to questions or in the conversation. It will take a moment for someone to unmute themselves, so a little silence can be expected.
- Technological competence is important. Allow a few minutes more than you normally would before the time to begin to ensure technology is working. In addition, if others lose connection, wait a few minutes before leaving the call; it is likely they will return if given time to do so.
- Create a YouTube channel to allow the remote hearings to be streamed live to the public.
- While conducting a hearing, it is helpful to have technology staff on standby, readily available to handle any technology issues that may arise.

## Resources

LegalFuel: <https://www.legalfuel.com/covid-19-information-and-resources/>

Effective Communication Strategies During Covid-19: <https://www.legalfuel.com/event/effective-communication-strategies-during-covid-19/>

### Legal Talk Network

- Remote Work—Apps, Tips, & Tricks: <https://legaltalknetwork.com/podcasts/legal-talk-to-day/2020/04/remote-work-apps-tips-tricks/>
- Going Remote During Covid-19: Tips and Tools for At-Home Legal Practice: <https://legaltalknetwork.com/podcasts/new-solo/2020/03/going-remote-during-covid-19-tips-and-tools-for-at-home-legal-practice/>
- How to Practice Law Remotely and Efficiently During the COVID-19 Crisis (ABA Journal): <https://legaltalknetwork.com/podcasts/aba-journal-asked-and-answered/2020/03/how-to-practice-law-remotely-and-efficiently-during-the-covid-19-crisis/>

The ABA Coronavirus (COVID-19) Task Force: <https://www.americanbar.org/advocacy/the-aba-task-force-on-legal-needs-arising-out-of-the-2020-pandem/>

- ABA Blue Print Video Series: <https://www.youtube.com/channel/UCvtFMPoLYr-L4FcpFql7gpA>

### Center for Courts, Iowa:

- Conducting Effective Remote Hearings in Child Welfare Cases, Capacity Building, Center for Courts, Iowa: [https://www.iowacourts.gov/static/media/cms/Conducting\\_Effective\\_Remote\\_Hearing\\_65C1888ED4C7B.pdf](https://www.iowacourts.gov/static/media/cms/Conducting_Effective_Remote_Hearing_65C1888ED4C7B.pdf)

### United States Court of Federal Claims:

- Guidance on Use of Videoconferencing in the Court—United States Court of Federal Claims: <https://www.uscfc.uscourts.gov/video-conferencing-guidance>

### Above the Law Blog:

- Zoom Videoconferencing Tips and Tricks--Time to Kick It Up a Notch!: <https://abovethelaw.com/2020/04/zoom-videoconferencing-tips-and-tricks/?rf=1>



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