

TIPS FOR SUCCESSFUL VIDEO HEARINGS—Eastern District of Wisconsin

The COVID-19 epidemic has required the courts in the Eastern District to find safe, non-contact ways to keep the wheels of justice turning. Video hearings allow the parties to see and hear each other without gathering in the same room. Even when the courts begin to have some kinds of hearings in-person, video hearings will remain a tool in the court's toolbox for some time. The following are tips for successful video hearings.

I. Attire and Decorum

Whether a person walks into a courtroom or appears by looking into a camera, he or she is *in federal court*.

- Wear appropriate attire. Dress as if you were coming into the courtroom for a hearing and advise clients and other parties who will appear by video to do the same.
- If you are at home, select an appropriate room in which to set up (not the bedroom with the unmade bed). If you would prefer people not see your private space, select an appropriate virtual background.
- Although there will be some casual, off-the-record conversations while the court's staff is setting up the video hearing, once the clerk calls the case, you, the court and the parties are on the record, and all parties should behave with the decorum one would expect in a federal courtroom.
- Mute your audio when you are not speaking to avoid distracting background noise.

- Just like in-person court, the judge and other parties can see you during the entire hearing. Reading or scrolling through your phone or doing other tasks is rude and shows that you are not focused on the task at hand.
- Dial in early. You would not appear ten or fifteen minutes late for an in-person hearing (and if you did, you could face a very displeased judge!). Better to sit in the waiting room for a few minutes than hold up the hearing while court staff emails or calls your office.
- Leave the “World’s Best Dad” coffee mug or the “I Heart Florida” water bottle in the kitchen. You can get a drink after the hearing.
- Either before the hearing or at the start of it, check with the court to find out how best to let the court know you would like to be heard. Whether it’s raising your hand on the screen or using a “reaction” function on the platform, knowing ahead of time what the court expects will help ensure that you are heard when you need to be heard.
- Be patient! We all are learning—court staff and judges included. If there is a glitch, take a deep breath and persist.

II. Technology

- Do a dry run. Or two. Or five. Feel free to call chambers and ask whether a member of the court’s staff would be willing to set up a time to do a dry run with you. The court’s IT staff, while busy, also can assist.
- Learn the basic functions of the platform—how to turn your video on and off, how to mute and unmute yourself, how to shift from “gallery view”

(where you can see all of the participants at the hearing) to “speaker view” (where you see only the speaker) to “spotlight view” (where one speaker is highlighted but you can see others).

- Make sure that both your microphone and speaker sound are turned up sufficiently so that you can hear and be heard.
- If you plan to show documents to the court and the other parties during the hearing, learn how the “screenshare” function of the platform works.
- Change the “name” of your device from “iPhone X” or “Galaxy S20” or “MacBook Pro” to your name. You will then be identified by your name on screen, and the court staff will be able to tell who has appeared.
- HAVE A BACKUP. If you plan to use your laptop, great. But have your tablet or your phone nearby, so that if you can’t join through your laptop, you have options. Consider ahead of time whether you would agree to appear by audio only if you can’t get the video to work.
- Provide court staff with a cell phone or landline number. That way, if you’re having trouble accessing the hearing, or you fall off, court staff can call or text you and get you back on.

III. Cinematography

- Set up in a room where family or pets won’t wander through or disrupt. If you are in your office, close the door and let others know that you are in a hearing.
- Select a place that is relatively quiet—close windows to reduce outside traffic noise or voices and stay away from loud appliances. Silence your

cell phone and any other phones in the room during the hearing, so they won't ring while you are speaking and disrupt your remarks (or distract you even when you are not speaking).

- Whatever device you are using—laptop, tablet or phone—put it on a stand or a stable surface, where it will not wobble or slide.
- If possible, use overhead lighting or a light source that is in front of you. Sitting with your back to (and your camera facing) a window can result in the backlight obscuring your face.
- If you are using a cell phone, make sure it is not locked in “portrait” (vertical) mode and then turn it horizontally. The vertical view distorts features and makes it hard to capture your entire face.
- Not to sound like your mother, but try to sit up straight. Slumping back in your chair, or leaning off to the side, can cause you to fall out of the camera's view.
- It can be difficult to juggle all this if you also must look at papers and write notes. Nonetheless, try to speak toward your device. When you turn your head away to look at something while you are talking, the rest of the parties may not be able to hear you.

IV. Audience

- Friends, family, victims, the public and the media are welcome to join video hearings.
- Counsel is responsible for notifying interested parties of the date, time and access information for a video hearing.

- Ask friends, family and victims who plan to attend to mute their audio and disable their video during the hearing. The court will do the same.
- If an audience member needs to speak during the hearing—for example, if a family member or a victim will be speaking at a sentencing—notify the court ahead of time, or during the hearing. The court can give that person leave to unmute and activate audio.
- *Only the court* is authorized to record a video hearing. Any party who creates an unauthorized recording of the hearing may be subject to sanctions, including contempt. Share this information with family, friends and victims.

V. What the Technology Can Do

Provide Privacy

Lawyers worry that they will not be able to speak privately with their clients during a video hearing. Zoom has a feature called “break out rooms,” which allows the host to put people into a private room where they can talk without being heard by the other people at the hearing. It also allows the host to move people in and out of the waiting room. So, for example, if the lawyers needed to speak privately with the judge, the host could move the audience into the waiting room while the court conferred with counsel, then move them back into the “courtroom.”

Facilitate Interpretation

Zoom allows an interpreter to simultaneously translate to a party what the court or other parties are saying. Unlike in the courtroom, when the non-

English speaking party speaks to the court, the interpretation is *not* simultaneous. So video hearings involving interpreters take a bit longer than they would if they were taking place in person. But if you have a client who does not speak English, that should not deter you from participating in video hearings.

Allow Greater Public Access

Even in the days before the COVID-19 pandemic, courtrooms could accommodate only so many people. If large numbers of people wanted to watch a hearing, the court sometimes needed to set up overflow rooms and closed-circuit viewing. In contrast, hundreds of people may dial in to a video hearing, if they mute and disable audio. Defendants can have family members from all over the country appear. Members of the public and the press may watch hearings from their homes. Victims who fear sitting in a courtroom with a defendant may appear, and speak, from a distance. People who are disabled or ill do not need to travel to the courthouse and navigate the building to watch a hearing.

Help Reduce Risk of Transmission

As long as the COVID-19 risk exists, video hearings allow the court to conduct its business and the parties to move their cases while minimizing the risk of virus spread.

Conclusion

We have had in-person hearings for as long as there have been hearings. Video hearings are new and strange and, for some of us, not comfortable. But

they will be necessary for some time. Become comfortable with them. You may find that they provide some benefits that in-person hearings don't. And reach out to the court for help.