

How Working from Home May Change Federal Court Litigation for the Better



While there are certainly times working as a lawyer requires presence in a physical office, there are many efficiencies associated with remote practice that are likely to outlive COVID-19.

By Ian Ballon | **August 4, 2020** | **The National Law Journal**

The sudden shift to working from home caused by the pandemic has forced industries and law firms to adapt to new ways of conducting business.

As an intellectual property and privacy/cybersecurity litigator, I—like other federal court litigators—represent clients in cases filed throughout the United States. Litigators who are used to traveling extensively have grown accustomed to working on briefs from hotel rooms, conducting conference calls in airport lounges, and preparing for depositions on airplanes or commuter trains. The widespread adoption of personal video technology has made it easier—and, in my view, better—to conduct certain aspects of our practice that previously required planes, trains and automobiles (or phone conversations, where visual cues are absent and maintaining attention may be challenging).

Litigating remotely, through one-to-one and one-to-many personal videoconferencing, can be more cost-effective and efficient, saving lawyers the time previously spent in transit, and clients the added costs and fees associated with travel. Personal video technology can even enhance focus, concentration and efficiency, because participants face each other directly, eye-to-eye, rather than across a courtroom or conference room table.

Potential witnesses, experts and colleagues may pay closer attention during one-on-one (or one-to-many) videoconferencing than during phone calls, commercial conference-room videoconferences and even some

live meetings. For example, traditional commercial videoconferencing—where people sit in different conference rooms looking at wide-angle views of other people, sitting in other conference rooms—can be more impersonal and may allow participants to hide behind laptop screens or send text messages outside of the camera’s view. While even the virus cannot kill distractions caused by multitasking, and participants may mute their video screens to take other calls, in general, when people interact face to face on Zoom or similar platforms, they are forced to pay closer attention and thus may be more engaged.

Working from home has also allowed some of us to better schedule our time. Zoom and similar technologies have allowed me to appear at court hearings, participate in mediations, and take or defend depositions in different parts of the country remotely—sometimes even on the same day! Some federal court judges have even shortened the amount of time it takes them to rule on motions.

Court hearings, in my experience, also start more promptly because they are scheduled individually, rather than in groups. A motion set for 10 a.m. typically starts at 10 a.m. because it is the only hearing on the docket at that time. A pre-COVID docket typically would include multiple matters heard over an extended period of time. Some courts also require lawyers to check their electronics at the door. On the other hand, at a recent hearing that I participated in via Zoom, my client, my associate and I communicated in real time during the proceedings.

Better and more efficient scheduling also translates to lower costs for clients. I recently won a motion for a client in a case pending in another state where the total time spent for the court appearance was less than one hour. My last in-person court appearance before we shifted to working from home, which happened to have been in the same case, took the better part of two days, including travel time.

Live hearings, of course, are valuable. Among other things, it is important to be able to read a judge’s face. Personal videoconferencing platforms, however, allow this by clearly displaying the judge’s facial expressions, as well as the reactions of opposing counsel—sometimes better than in a cavernous courtroom.

Zoom and similar technologies also allow you to see how your own facial expressions appear to the judge—and adjust them accordingly.

Seeing yourself, the witness and opposing counsel simultaneously on a Zoom screen can also provide unique benefits at depositions that are not available when sitting together in a conference room. For example, when opposing counsel made an improper speaking objection at a recent deposition, I saw my facial muscles tighten and observed myself starting to react in ways I could not have perceived at a live deposition, which allowed me to quickly recalibrate my reaction.

Without commuting time and business travel—and with the need to schedule most videoconferences in advance—some also may find it easier to schedule the workday efficiently. This, in turn, may allow for enhanced concentration and greater attention during each scheduled event.

Even legal conferences may work well from home. At a recent annual event where I spoke, people appeared to be more attentive, asked more questions, and engaged with the speakers more directly, both during and after the conference, than at the same event last year, which was held in person, when people were multitasking and periodically leaving the room to take unscheduled calls.

Of course, there are aspects of litigation where physical presence is better, such as trial (where courtroom drama is difficult to replicate on Zoom) or defending the deposition of a witness who is difficult to control.

Efficient remote litigation also requires a quiet place to work with high-speed internet access, which is not realistic for everyone. For state courts that are not open, for some practice areas, for training young lawyers, and for lawyers who are not adept at using mobile technology, working as a lawyer requires presence in a physical office.

On balance, however, there are many efficiencies associated with remote practice that are likely to outlive COVID-19. As the virus fades from memory, the lessons learned—about the potential value of one-on-one visual interaction, time management, and the realization that the goals previously sought by business travel may be accomplished even from home—will likely change the nature of federal litigation for years to come.

Reprinted with permission from the August 4, 2020 edition of The National Law Journal © 2020 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited, contact 1.877.257.3382 or reprints@alm.com.

About the Author:

Ian Ballon is co-chair of Greenberg Traurig’s global intellectual property practice and technology practice Group and author of “E-Commerce & Internet Law: Treatise with Forms 2d.” The views expressed are solely his own and not those of his firm or clients.



Ian Ballon
ballon@gtlaw.com