



AttPro Ally

THE STRUGGLE IS REAL:

How to overcome remote work challenges



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Lawyers' Communications in a 'New Normal'

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Communication is an interpersonal skill that involves cooperating and collaborating with others. In all types of professions, this skill is a key element that can create more value and lead to better performance. During the pandemic, many lawyers found themselves tackling communication challenges that were not a factor while working from a physical office. In fact, recent data supports that lawyers are struggling with collaboration and communication while working remotely.¹ Effectively communicating in the “new normal” requires a skilled approach that instills a level of trust and confidence with the intended audience.

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Effective communication in remote work

Virtual communication is a complex activity requiring consideration of both approach and technology. For many people, communicating virtually is a new and potentially intimidating experience. But, with the right approach and technology in place, lawyers can help colleagues and clients feel more comfortable and secure when communicating from remote locations. Security helps establish trust.

Trust is an important component in the client-lawyer relationship. **Establishing confidence in the ability of their lawyer can be more challenging for a client when they cannot meet face-to-face.** Crafting and executing a strategic approach can help establish trust and provide the client with confidence that their lawyer understands their goals, and the appropriate technology is in place to help to accomplish them.

To help secure the trust of the client while communicating remotely, the following should be established and agreed upon:

- Privacy and security provided by the communication approach and technology providers;
- How and why the communication approach and technology are being used;
- The practitioner's policy on recording communications;
- Document management and record retention;
- What constitutes a valid signature to an agreement, such as e-signatures; and
- The practitioner's disclaimer that there is no guarantee that information shared remotely cannot be compromised.

Effective communication fosters client trust in both their lawyer and the work product. As communication skills improve, working with clients may become easier and even more collaborative. Clients who appreciate their lawyer's communication approach may be more likely to look to the firm for future representations, making the practice more profitable. The basic rule of business: A happy customer is a repeat customer.

¹ <https://lp.buffer.com/state-of-remote-work-2020>

How can lawyers improve communication skills?

While there are many effective communication skills, **six key tips** are highlighted below.

1. Be your authentic self

It is critical to show yourself to people in a complete manner. Make no distinction between your online and offline selves; simply be yourself in your online presence. People value authenticity and openness, which are lost in today's world of digital communication.

2. Practice active listening

Being a good listener is one of the most important aspects of becoming a good communicator. Active listening fosters reciprocal trust by making the person you are listening to feel heard. Active listening also helps to avoid misunderstandings since you are more likely to understand what the other person is saying correctly.

3. Be persuasive

When you communicate with people, the words you use have a significant impact on how others see you and interpret your message. Do you find yourself saying things like "maybe" or "I think so" a lot? Start saying "yes," "no," or "I'll do that" instead of "maybe." This is referred to as "leadership language."

4. Know your audience

Legal jargon isn't easy to understand for everyone. When speaking with clients, you run the danger of losing your essential message if you employ overly formal or archaic terminology. Instead, use plain English and stay as far away from legalese as possible.

5. Be aware of your body language

Did you know that folding your arms in front of your body can indicate that you are feeling defensive? Or fiddling with a pen might indicate to others that you are bored or uncomfortable? Even when you are in an online meeting, you need to be aware of how your body language

communicates your message through your posture, facial expressions, or eye-contact.

6. Be clear and concise

Have you ever talked to someone that rambles on? Most of the time, we tune out. The best policy is to express your point in as few words as possible if you want to keep your audience's attention. So, before you say anything, consider this: What is the core of my message? What is the bottom line here? What is important? How can I say this in the simplest way possible?

Tools for better communication within your team and with clients

Communicating with staff and clients in a virtual setting can be challenging. So, taking time to explore new technology available, and whether or not it is a good fit for the firm, is time well-spent. For instance, there are a lot of great messaging applications (i.e. Signal, Pryvate, WhatsApp, Telegram) that could help simplify and improve communication with staff, as well as with clients. Just remember that a lawyer's duty of confidentiality and technological competency extends to online activities. So when using any electronic communication software, applications or videoconferencing options, keep these obligations in mind.

As both advocates and advisors, lawyers need to be able to communicate effectively and proficiently. They also need to understand the importance of continuously developing their communication skills. Due to the pandemic, communication needs and means have changed. With the shift to remote work, it is crucial for today's lawyer to examine and assess their communication style. Because, although operating technology during a virtual meeting is critical, so is appreciating the importance of constructive and fruitful remote discussion.

*This article is an extract from the free ebook [Lawyer's Work and Productivity in a New Normal](http://lawrina.com/resources/ebooks/lawyers-work-and-productivity).
(<http://lawrina.com/resources/ebooks/lawyers-work-and-productivity>)

THE STRUGGLE FOR SOBRIETY IN THE LEGAL PROFESSION



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Addiction haunts the legal profession, yet most attorneys remain silent in their struggle. Many factors including the competitive culture of law firms, deadlines, and client demands can create a pressurized environment for lawyers. Join this 60-minute webinar to learn facts about substance

abuse and how to help those who struggle with it. Erica Grigg, Attorney with the Texas Lawyers' Assistance Program and Eric Wood, MA, LCAC, Clinical Case Manager with the Indiana Judges and Lawyers Assistance Program will lead the discussion.



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16 TIPS

TO
Nail Your Next
REMOTE
Deposition or Hearing

By: Esquire Deposition Solutions

The American Bar Association's Litigation Section recently gathered two experienced virtual advocates and one judge to discuss their experiences handling remote depositions and virtual trials during the COVID-19 pandemic. The lessons they dispensed were the product of hard-earned experiences in early 2020 — the pioneering days of virtual proceedings. Some were earned through practice and preparation, some were pleasant surprises, and some were mistakes they will not make twice. Here are 16 actionable takeaways from their remarks.

1. Zoom fatigue is real

Virtual proceedings are challenging for everyone involved. It is easy for witnesses and fact-finders to lose focus after several hours of watching a computer screen.

"You are asking a lot when you ask your fact-finder to sit and pay attention while staring at a screen for eight hours a day," Tynan Buthod, partner at Baker Botts LLP Houston, warns. "As a trial lawyer, it is incumbent on you to make sure that you are delivering the case in the clearest, most straightforward way which includes the use of documents and efficient time with witnesses." That may require taking more breaks than needed for an in-person proceeding in order to keep the audience's attention.

2. Plan ahead for exhibits

"Think about how you're going to handle exhibits in advance. If you've had trials in the courtroom, you know how long it takes to prep for exhibits," Kathleen B. Campbell, a partner at Manko Gold Katcher Fox LLP advises. Her advice is to double or triple the length of time it will take to deal with exhibits in a virtual hearing.

3. Project a compelling image

According to Hon. Robert M. Spector, U.S. Magistrate Judge for the U.S. District Court for the District of Connecticut, "Litigators are not well-served by cameras set up to capture several people at the same time." He advises that although a lawyer may think that being in a conference room with three other partners or with the client is a good thing, when the camera is 20 feet away, it is difficult to see anyone. Therefore, it is better to be in separate rooms, with separate devices, so that each person can be seen and heard clearly.

4. Help the court reporter record the proceedings

It can be difficult for the court reporter to accurately track who is saying what in a virtual environment. When the court, the attorneys, and the witness are all in separate screen windows, it is not always clear whose voice is connected to the images on the screen. Securing a good record and preserving errors in a virtual environment is a critical task that should not be overlooked.

5. Establish ground rules and expectations

Buthod relays that he begins remote depositions with a series of questions to the witness that are designed to enforce the integrity of the proceeding. He asks the same questions after every break as well:

- Who is in the room with you?
- What documents are in front of you?
- Can we agree that you will tell me if someone joins you in the room?
- Is there anything that is distracting you?

6. Do not hide behind PowerPoint

A PowerPoint slide deck, if given a prominent role, can push the attorney into a small box off to the side of the screen — not the best vantage point from which to deliver an argument. This set-up may prevent the attorney from making good contact with the fact-finder.

7. What was forgivable in 2020 is not anymore

Tales of virtual lawyering during the early days of the COVID-19 pandemic included accounts of attorneys seen on-screen in their pajamas or other less-than-professional attire. Many were clearly, and unapologetically, challenged by videoconferencing technologies. That behavior is no longer appreciated.

"Fourteen months later, it's not funny anymore," Judge Spector opines. "So I think that you have to know the platform and be ready for it."

8. Be disciplined when asking questions

Long-winded or ambiguous questions are difficult to process under the best of circumstances. When in a virtual environment, the odds that a question is misunderstood by the witness, or that the witness's answer is misunderstood by the attorney, go up significantly.

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"Doing a trial by Zoom was a lot like taking a deposition when you have a translator," Buthod shares. "It forces you to shorten your questions. It forces you to make sure that your question is a clear yes or no. That is, 'What is it that I'm after?'"

9. Your conference room is the courtroom

Attorneys should behave in whatever room is being used to participate in a virtual proceeding in the same way that they would behave in a courtroom. In other words, there should be no multitasking, no checking messages, no eating, and no conversing informally with associates.

10. Pin the judge, minimize the witnesses

Campbell relays that it has been helpful to her to give the judge a prominent position on her computer screen, while minimizing the views of witnesses and others.

"I was looking at the judge as I was questioning my witness," she said. "And I could pick up on his overall demeanor, when he was taking notes, when he seemed bored, and when he seemed particularly interested. And it really helped me cater my line of questioning accordingly. Also, when cross-examining an opposing witness, give the witness prominent screen real estate. I recommend pinning the witness that you're cross-examining. Look into the camera directly. Typically the witness that you're questioning is going to be really up close. If you can establish that it's the two of you in the room that can be really effective."

11. Is your witness ready for a close-up?

The technology used in virtual depositions and trials allows the fact-finder to get a really close look at witnesses. Facial expressions that might have been missed in a courtroom are captured in detail by the camera.

"If we're in a courtroom, I can't see a witness the way I can see them on Zoom," Judge Spector said. "On Zoom, I can really see facial expressions. I can see somebody roll their eyes. I can hear them sigh. Everything you do can be seen close-up and personal and you can't get away with things you may have been able to get away with in a courtroom."

12. Place witnesses in distraction-free environments

If a witness is testifying from home or some other environment not under the attorney's control, then that witness should be told to testify from a location free from distractions. They should appear professional and undistracted on screen just as they would in front of a court or in front of a jury.

"I don't ever need to see the place where somebody else sleeps, that's just too private, too personal," Buthod remarked. "I find that a rotating fan on somebody's ceiling or other things in the background are distracting. Or you find yourself saying, 'Man, I wonder if those are his kids? How old is that picture?' All those things can only serve to keep the fact-finder distracted."

13. Virtual is here to stay

Virtual proceedings are not favored by many litigators. They prefer in-person proceedings where they can connect closely with witnesses and fact-finders. That connection can be difficult to achieve online without practice in front of a camera. "There is a lot that we used to do in-person that we just don't have to do in-person anymore," Buthod acknowledges. "It's harder to take a deposition. It's hard to have a lot of contested hearings. But there are so many occasions where we can do those things virtually and save our clients' time and money." In-person may be more comfortable, but virtual is here to stay.

14. Courts will modify the rules for a good reason

Do not assume that published court procedures are not subject to modification. Would you like your witness to testify without a mask? Would you like to address the court without a mask? If COVID-19 vaccination numbers are high, or if you have opposing counsel's agreement, the court may very well grant your request.

"I would not shy away from asking the court to modify things as we move forward," Judge Spector said. "We're trying to be responsive to the current situation, but that situation is ever-changing."

Judge Spector also advised attorneys to ask judges which format they preferred to receive documents and exhibits — paper or electronic. Some judges have gone entirely paperless. For those judges, paper filings are a burden.

15. Wear one hat: lawyer

Attorneys should focus on delivering high-quality advocacy for their clients. Leave technical matters to an assistant, if possible.

"Your job is to examine and cross-examine witnesses. Hire a video technician, hire the right person to handle your documents, and rely on them so that you're not stammering through your virtual trial, showing your ineptitude at something that you don't need to do. You need to have somebody else that's able to do that for you," advises Buthod.

16. Learn and prepare diligently

"In order to zealously represent your client today, you need to learn the technology," Campbell counsels. "Lawyers tend to not be the best at technology, but we do not have a choice. In the same way you prep for regular trial in a courtroom, you've got to prepare, prepare, prepare. If so, you'll do a great job."

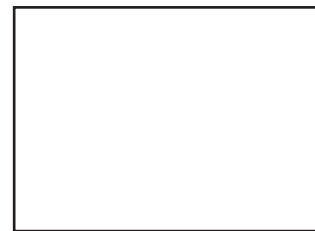
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