

Virtual Hearings

Jake: All right. So welcome back for this episode. Brian, we were just talking about quite a few hearings this last week. And given that it's July, 2020 all of our hearings were virtual hearings, and I'm up here at the office right now, preparing for virtual hearing tomorrow.

Brian, I know you've got a couple this week too, so I thought that'd be a good topic to talk about virtual hearings. The background is, most people know it's, most of the court houses, if not all of them, have been under a stay at home order since about mid-March. Whenever most of the courthouses shut down it took about a week or so before virtual hearings started getting set up.

As we sit here right now, it's July 12th of 2020, I would say probably most of the surrounding counties for the urban areas are virtual. There's a few that do in person and then all the urban areas are almost exclusively virtual, except for things that statutorily have to take place.

So I guess first question, Brian, before we get to the logistics of it, how have you, have you been handling the virtual hearings? How do you like it?

Brian: Yeah, they've gone remarkably well. I mean, we're both in big urban areas so it's nice to not have to drive way out to some of the outlying counties. That saves time and money for everybody.

I think we've kind of figured out that you can pretty much get the same type of evidence that you could otherwise. Also, often our witnesses are out of state or out of town and they used to have to fly in and then the hearing might not happen. Those kinds of things, we don't have any more of those problems which is really nice.

I've got a hearing on Friday that involves a bunch of people. Our client's witnesses are mostly in Virginia and they would have had to fly a bunch of people out here. Now we'll just log into zoom and save probably everybody time and money. It's nice.

Jake: Yeah, it's forced efficiency. It's been kinda my same experience too. You and I had that case with the jurisdictional issue between Mexico and Texas. and we ended up prevailing on that in the Texas court actually declined jurisdiction and sent the case to Mexico where our client was.

A lot of the testimony including the client was in Mexico and documents were from Mexico and our client, a lawyer in Mexico. In the past that would have been a huge logistical nightmare. You'd actually have to go and get permission from a judge to get telephonic testimony or testimony by Skype or zoom.

And a lot of times my experience was those would get denied, particularly for final trials. As a judge, you would say "Oh too bad, you got to fly your witnesses in." Which I was kind of

always amazed at, especially if it wasn't a party witness, but now it's like you were saying Brian, just, just log on and participate.

It definitely opens up the courts, to that end. I mean, I'm curious. How are y'all doing in your area, Brian, your experiences? I know in Travis County, a lot of the hearings that I've done they're live streaming them on YouTube in order to keep the open courts provisions in tax. The Texas constitution requires that we have open courts, and that it's a public forum and the way they're handling it in this area is they just live stream the hearing to YouTube.

What have you seen judges do?

Brian: It's similar here. And then typically I think they delete them right after the end, but they're live when they happen. It seems to not be an issue. They will typically kind of exclude a potential testifying witness from being one of those people observing it, but that's a little hard to enforce probably, but otherwise that's been fine. I haven't really had any problems with it either. So again, people seem to not be thinking that was possible and then we switched gears and did it, and it's going just fine.

Jake: Well, let's talk logistics. I know each County has different procedures and different local rules. Brian, both you and I have preached to our associates that you have to know the local rules and not just the local rules for one County, but for all the counties that you're practicing in.

If you ask our associates we could probably name 15 different ways that the various counties, sometimes even different courts within the County, do the virtual hearings. But generally speaking, and let me know if you disagree, I think generally speaking most of them have procedures that require that all your exhibits be exchanged beforehand and pre-marked, and then uploaded to a share folder.

A lot of times I think a lot of courts are using DropBox for example, and it requires us to organize our exhibit scan exhibit lists, and upload those exhibits before the hearing starts that way. Everybody's looking at the same documents and we can screen share if need be. But if not, if we're not screen sharing, the judge still has it uploaded on his or her box. The exhibits that are going to be offered and that's a step that takes place before.

And I know several counties are requiring that you file what's called a proposed disposition of issues before the hearing, even if it's just a temporary orders hearing or a motion to compel when it may be before, COVID more typical for those type of documents to only be required for a final trial, or maybe more common for a final trial for exhibits to be exchanged beforehand.

I see most of the courts are requiring proposed disposition of issues and exhibits being uploaded before the hearing. And I know it varies from County to County. I know Travis County for example, I think it's 12 hours before the hearing. So I think it's interesting. If you have an 8:30 AM hearing, that means that people are uploading exhibits till 8:30 PM the night before. Not sure what the use is, but that's the requirement while Fort bend I think is three business days.

Brian: Exactly that. Not only are there variations, but it changes over time. In large urban counties that don't do not have central dockets, for example Dallas County or Harris County, it's even more complicated because each individual judges have sort of an individual fiefdom and they've got their own rules, which also change.

And so we have procedures in place that not only do you need to check the local rules and the state rules, but then you need to check your particular court's rules and you need to check it a couple of days before the hearing, in case they've decided to update it. Some of them have on their fourth and fifth versions of those rules.

And, some places are still allowing in-person hearings either just, or setting them that way. And some of them are setting them as a default to be in person and then allowing one side or the other to opt out of it. But that's, that's a very specific provision. Then to further complicate it, it's a somewhat erratic enforcement of those rules.

I had a hearing on Thursday where we had followed all the rules. The other side basically didn't preach the exhibit that you gave for that County. It was three days before we filed ours. They didn't do it. There was a real specific provision in this court. Do not hand anybody any documents.

It's only electronic. And this guy walked in on the day of the hearing three days late and handed me a stack of exhibits. And so I brought this all to the judge's attention, hoping I just won on a technicality like that. And unfortunately the judge wanted to hear some actual facts, which we went on, but it's always nice to win on a technicality if you can.

So it's all over the place. And I think it's still a moving target because we just don't know when this is going to let up, or if it's going to be in a straight line or continue to be back and forth, it's really hard to tell.

Jake: Yeah. And on those rules I've sort of noticed it's the same as to how you conduct yourself for the hearing. But we'll get to that in a second. I haven't seen any judges take a completely hard and fast line on it. Just, sorry there's the rules. Too bad. You didn't do it. I think they're giving the people a lot of flex because it's so new and.

Watching lawyers fail to follow basic rules sometimes is an interesting thing to see, but I know you and are both obsessive about it and make sure it's exactly done for the local rules. Cause even if a judge gives somebody a pass, we never want to be that law firm or those lawyers that are having to ask for forgiveness for not following the rules correctly or not knowing the rules.

I think that, obviously it looks bad to your client. I mean, they're paying us all this money to represent them. We at least read the rules of how the hearing is conducted, but then on top of that, I do think it probably, even though they may not say it in a judge's mind, that's going to have some weight.

If you show up unprepared you don't want to start off a hearing with the judge frustrated with you. And I've sort of noticed then, and now it's talking about how these hearings are conducted, but I've kind of noticed that frankly, and even how the hearings are conducted.

Some counties Zoom. I know in Williamson County, they're using Microsoft teams for some of the hearings and other counties. I think Dell County is using Citrix. Harris County and surrounding counties are using Zoom. Sometimes like you said, it's a hybrid. Some people were in person and other people zooming in. The way I read the current Supreme court order is that the court has to give everybody the option of participating remotely if they want to, but being in those hearings and we've been doing this for three or four months and still sitting there and watching lawyers go "How do I unmute myself? How do I share my screen? How do I scroll through this?"

We talk all the time, we run a business this way through Zoom and video conferencing since we have offices all over the state. And so for us doing it, it was no big deal. But just watching other lawyers at the beginning and even still till this day, I still sit through here watching lawyers, trying to figure out how to screen share, or scroll through PDFs.

Then they have to call their paralegal to look over their shoulder and show them how to click on this and that. It's frustrating. I think it gives us an advantage that a hearing technically goes a lot smoother on our end of things. So talking logistics, I know it's generally different, but generally speaking once a hearing is set, there's a certain amount of time before the hearing happens.

We get an invite either via Zoom or Microsoft teams or however the court is doing it. The client gets that any witnesses that are involved, get the invite about five minutes before the hearing starts. And so my clients do it five minutes before. Cause, we log in and typically everybody's parked in a waiting room and there's a message that the judge will be with you shortly, and then once the judge is ready they let everybody in the meeting.

And then everybody kind of shows up at once. I see most judges start off with everybody on mute, and introduce himself or herself. People don't talk over each other like they do in the courtroom because it really frustrates people on Zoom. I'm sure all the judges wish they could mute people in real life sometimes, but here in a zoom hearing they could just hit mute and make things a lot easier.

Is that your experience, Brian, kind of how it's gone?

Brian: Yeah, exactly. And they'll, they'll typically do them in this kind of zoom tile view where you've got 10 to 30 little mini pictures on the screen and each one of an attorney. And then typically your clients logging in elsewhere so they've got their own.

I had a hearing like this about two weeks ago, where a lawyer tried to put, I guess there was sitting next to them in their office and try to put the camera on him. And it kinda cut each one of them in half because it wasn't big enough for the both of them, which I didn't think was a real effective way to present things.

But, yeah, and then they just kind of go through it and it's remarkable how,

to me, how few people seem to understand you're really in court. It just may not be in a physical courtroom and so they don't dress appropriately and seem to be totally fine doing strange things while the camera's running. Not necessarily bad things, but just not a terribly professional outlook.

And you've got the opposing side looking at you in it. I think there's gotta be a lot of clients in particular and I'm sure judges who are thinking, is this really a lawyer? Should someone be paying this lawyer? It's kind of amazing to me, but we're sort of like the people who can't figure out how to turn on their sound with the zoom.

It's amazing. But common. Yeah, I had a pretty complex case and the lawyer did the whole day without a jacket on. I just, I don't know, maybe that makes it more old school, but I mean, the judge didn't say anything particular about it but you do kind of see the strange look she was giving him, like he didn't know this is court.

I think the very first week of COVID everybody kind of thought, well, do I have to wear a suit or not wear a suit? And I think every judge I've dealt with says you need to dress like this is still court. I mean, you need to be respectful to the system, respectful to the judge, just like you would in person.

We tell our clients to do that. And yeah, I guess that message hasn't gone around completely. On the other hand, last week I had a hearing on Friday and I told my client, the mother, to dress professionally, which she did. The dad showed up with a polo shirt on and I guess you couldn't see what type of pants he was wearing, but he had a polo shirt on, which I thought was a little disrespectful of the judge that we were in front of was kind of a more traditional person.

And I don't think I appreciated it. He was in a tie in a suit with his robes. I was in a suit. My client was dressed professionally and that was a little odd to me. Yeah, and I do think it makes a difference. Well, let's, let's wrap up with Brian. Can you, what are some tips or kinds of does or don'ts that you're giving clients?

Brian: I've written up some rules that we use internally for our staff, in the Houston office at least. And, and we've got some for the clients too. And a lot of them are really basic things like we just talked about. Zoom from a well lit, appropriate place. Some of our clients prefer to come into the office and we have a big enough office where we can safely put them in their own conference room and social distance and everybody's fine. Even with that, most of them prefer to do it at home.

And again, just dress properly, don't forget the judges watching you, those types of things. Don't yell at your kids.

No cause at your kids in the middle of the hearing when they interrupt you or something like that in a custody hearing, probably not a good idea. So, just some basic things like that, because it is kind of easy to forget that it's a courtroom procedure, just like any others with exactly the same serious consequences.

So, hopefully, we've made a good impression. I think we have so far, and we'll continue to do that.

Jake: Yeah, that's pretty much the same thing I'm telling my clients. Don't, don't talk over each other. Just like court only talk if you're up on the quote-unquote witness stand, or if somebody asks you a question. It is probably more tempting over Zoom for a client to want to chime in or talk, even though he or she has a lawyer. You have a lawyer there, you're supposed to talk through your lawyer.

Then the other reminder is that sometimes at the beginning, I think people were forgetting to tell their clients, is that even if your client's testified, my client's testified, I remind them they can't text you or message you while you're testifying. Just like if we were live in the courtroom, I wouldn't be up on the witness stand next to you. I can't text with you while you're on the witness stand.

I tell them to make sure to be in a place which does not allow people to listen in on what they're saying. Make sure they don't have any notes in front of them. A lot of judges check to make sure you don't have anything in front of you.

But really the texting ones, the biggest one that I've emphasized with clients because when my client's not testifying, I do want them texting with me and I usually text them on my cell phone or we'll set up a Slack channel. With them. I typically don't use the private message feature on zoom.

I just have this paranoia that me or my clients are going to accidentally send a message to the whole group rather than a private message that you can do on zoom. So I usually tell clients if you're not sure about something I'm going to be texting with you. Messaging with you. If you have notes that you want to pass me, just like if we were in court I may give a client a yellow pad and say pass me notes.

I'll try to read them if I can, if I, if I don't, it's not that I'm ignoring you, I'm just concentrating on the witness. But, I tell them the texts with me or message me and, but just don't do it when you're up on the witness stand. Yeah, that's pretty much the tricks of the trade.

I think, like we said, at the beginning, it's gone pretty smoothly with that. I think it is a credit to the court system and the judges and the administrative side. I know I've worked really hard on this. It's changing, but like you said we don't know how long it's going to be. So, I assume when this is all over, when shelter in place or the state home orders are lifted, or there was a vaccine or whatever, there's already been talk, probably at least some counties or some district judges will do hearings like this for shorter hearings, like motions to compel or continuances or something like that, which makes a lot of sense.

So hopefully we'll be, will take all these skills and carry them onto the new world. We'll see. But, as this goes on, we're definitely prepared and ready to handle whatever they throw at us and do it better than anybody else does.

So I guess let's wrap up with that and we'll pick up another interesting topic next weekend.

Thanks for listening.