

Transitioning From In-Person to Remote Oral Arguments in Fla. Appellate Courts

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In Aldous Huxley's 1932 novel, "Brave New World," he imagined a genetically engineered future where life was pain-free. Fast-forward almost a century, and COVID-19 has disrupted the world we once knew. Although it seems like technology has made remote work "pain-free," lawyers and judges are adapting to the challenges to avoid a breakdown in the justice system. Florida's appellate lawyers and judges are at the forefront of utilizing technology to prevent the annihilation of oral arguments—a practice that both sides crave.

The Shift to Remote Oral Arguments

At the pandemic's onset, Florida appellate courts quickly postponed or canceled oral arguments. It was not clear whether the courts would transition to remote oral arguments. However, that soon changed.

On April 14, the Fourth District Court of Appeal became the first appellate court in the state to conduct oral arguments using teleconferencing software. Judges and lawyers interacted from remote locations, while staff masterminded the teleconference and kept the official clock inside the courthouse. Oral arguments were livestreamed on the internet.

The Fourth District's Marshal Daniel DiGiacomo and the IT staff held practice sessions with the judges and separate sessions with the attorneys. The Fourth District sent attorneys a guide titled, "Best Practices for Your Video Oral Argument."

Florida's other district courts of appeal will follow suit and hold remote oral arguments in May. According to Chief Judge Kevin Emas of the Third District Court of Appeal, the Third District has been running mock tests for the judges and will likely hold technology checks on the day of the oral argument for the attorneys.

In addition, the Florida Supreme Court will hold its oral arguments using the same remote technology May 6. This is a departure from its previous decision to postpone arguments until June.

Tips for Navigating Remote Oral Arguments

Now that remote arguments are here, will this format change how appellate practitioners prepare for oral argument? Probably not. The same rules should apply, but with slightly new variations and obstacles. Here are a few tips to help

navigate the brave new world of remote oral arguments:

- **Prepare Equipment**

First, select a quiet location. For those working remotely with small children, I feel your pain as it is difficult to truly keep them quiet. Find a way to keep them occupied and in another room. Do your best to avoid any distractions from family or even pets while presenting your argument.

Take advantage of the practice sessions the courts are offering. On the morning of your argument, turn on your computer early. Ensure you are properly connected to the internet and the teleconference application. Test your microphone and video connection. Pray your internet connection is strong. Try to have others in your household avoid using the Wi-Fi at the same time to prevent being kicked offline while in the middle of the argument. Close out all other applications on your computer.

Check the lighting. Ensure the light source is in front of you. Close the shades, if needed, or find an area without a glare. Set up in front of a neutral wall. Or, consider using a virtual background, such as a photograph of the courtroom. Position the camera so it is eye level, capturing you from waist up with your head and shoulders as the dominant feature. Once you are live, be sure to mute your microphone. Avoid answering a cell phone or any other chatter while the video and microphone are live. It was no surprise to advocates that the podium microphone and the video camera might have been live before the judges entered the courtroom. Think of your device as the live microphone on the podium and avoid embarrassing pre-argument comments or gestures.

- **Dress Professionally**

Any time you go into a courthouse you should dress professionally. Former Third District Court of Appeal Judge David M. Gersten used to tell his law students, “If you want to feel like a lawyer, you should dress like a lawyer.”

Now, there may be days when you do not get out of your pajamas. It may be hard to feel like a lawyer when you are juggling your cases with your child’s homeschooling duties or simply competing with the daily soap operas. Trust me. Your confidence will show during your argument when you are dressed professionally and sitting up straight—not slouching. You should also avoid leaning over the table or into the screen.

The last thing you want to do is have your appearance impact the credibility of your arguments.

- **Speak Clearly**

It is essential to check your microphone to ensure it is functioning properly. Speak loud and clear. Avoid mumbling. If you have a headset, that might help with the background noise. External speakers might also provide more clarity when presenting your case.

Unlike in-person oral arguments, where advocates look straight and up toward the bench, you will have a different vantage point. Everyone will be encouraged to utilize the gallery view on the screen to be able to view the panel, your opposing counsel, as well as the time clock.

However, you should avoid looking at your image on the screen. Doing so will appear as if you are looking down. Instead, look straight at the camera when you are speaking.

Like any in-person oral argument, advocates should not read from a script, and they should be able to segue back to their arguments after a judge's question.

Finally, remote software may enable users to share their screens. However, advocates should utilize such an application cautiously and only after obtaining approval from the court in advance.

- **Listen Carefully**

As with in-person oral arguments, advocates should listen carefully to the panel's questions and respond directly. It may be difficult given the platform, but advocates should not interrupt when a judge is speaking.

In the event of a microphone or video malfunction, the panel will likely pause the oral argument and wait until you are able to rejoin the meeting. Staff from the courts will be standing by to help troubleshoot.

Conclusion

While some are excited to transition to remote oral arguments, others are worried how today's remote arguments will influence the future of oral arguments. No one has a crystal ball. Let's embrace this brave new world. With key preparation, remote oral arguments will go smoothly and remain a meaningful part of appellate practice.



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