

VIRTUAL LAWYERING

STAYING ETHICAL DURING WORK-FROM-HOME

C OVID-19 is transforming our idea of legal work. It has shown the creativity and willingness of many in our profession to be flexible in the way we represent and advocate for our clients. It has proven that we are capable of maintaining relationships and a work schedule remotely. It has even allowed for the exploration and use of new technology to take depositions, attend hearings and mediate disputes.

But, as we evolve into this so-called "new normal," our ethical duties cannot be forgotten. Consider the following:

Understanding Video Call Software Basics

Perhaps the biggest technology shift for many attorneys during work-from-home is the use of video calls. This may be an easy way to maintain social distancing with some form of human interaction. But, per our ethical duties, lawyers need

to understand the benefits and risk of this technology (lawyers are required to stay abreast of benefits and risks of relevant technology).

Think about what video call platform you are using. Does it maintain appropriate security settings? Does it store recordings of your calls? If so, how? Does the platform have a duty to inform you if it receives a subpoena that may impact or be related to your data? How will you ensure that the firm's internal data and client data are protected?

No Longer Protected by the Four Walls of the Office

Confidentiality – probably one of the first ethical considerations that comes to mind during work-from-home. With video calls, not only should you be competent in how the software works (above), but also be aware of who can hear and attend the call. Do you have new office mate(s)? Find a room alone and wear headphones.

Is the call limited to specific attendees? Use an access code and/or "waiting rooms," which require the host to let attendees into the call.

Remote mediations possess their own risks. Most platforms allow "break-out" room set-ups. You, your mediator and clients attending the mediation should test and be competent in the platform's capabilities and limitations to prevent any inadvertent disclosure of information to the wrong party.

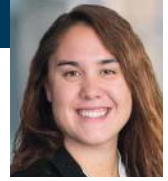
Video depositions are similar. Court reporters providing remote deposition services should control who attends the deposition and provide capabilities for the use of exhibits. You should gain proficiency with marking and displaying documents before depositing a witness remotely in order to provide diligent and competent representation.

(Over) Communicate with Clients

The difficulties and distractions of work-from-home do not alter a lawyer's responsibility to appropriately communicate with clients. Make sure you have established the means and logistics to be available to clients, as you would in normal circumstances.

Everyone is Working from Home

Last, do not forget about your responsibilities regarding nonlawyer assistants. Lawyers must make "reasonable efforts" to ensure that nonlawyers associated with or retained by the lawyer maintain the same professional and ethical standards. Be sure to communicate with nonlawyer assistants and remind them that appropriate technology usage is part of their professional responsibilities as they continue to work-from-home. ■



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WE'RE ALL IN THIS TOGETHER – UNLESS WE'RE ALONE IN A VIDEO CONFERENCE WAITING ROOM!

Remember when Zoom was a TV show kids watched? Well, no longer. Zoom, Microsoft Teams, Google Meet, etc. are here to stay. These virtual video conference programs have helped us weather the COVID-19 pandemic by keeping us all connected. Not to mention, who doesn't love being able to change your background to look like you're on a beach, in the mountains or in the cosmos?

Zoom and others are here to stay, so we must embrace them and learn to love them. As attorneys, we must learn to use them effectively while not exposing our clients' confidences and our strategies. Easy enough if it's just you and your client on a video conference. But what if you are a mediator? How do you make sure one side doesn't hear confidential information the other side tells you? How do you make sure that represented parties

in the mediation can securely and privately talk to their attorney? These are no small challenges, and mediators must practice using the necessary tools and tactics to facilitate a professional virtual experience.

For many, mediation is a viable or preferred alternative to litigation, for a number of reasons, but it comes with its own challenges – challenges that have been compounded by the current pandemic and the shift to remote technology.

Let's answer the two questions above. First, how can a mediator ensure one side doesn't hear confidential information the other side shares during a mediation via video conference? For now, that is handled by placing a party and their attorney in a virtual "breakout room."



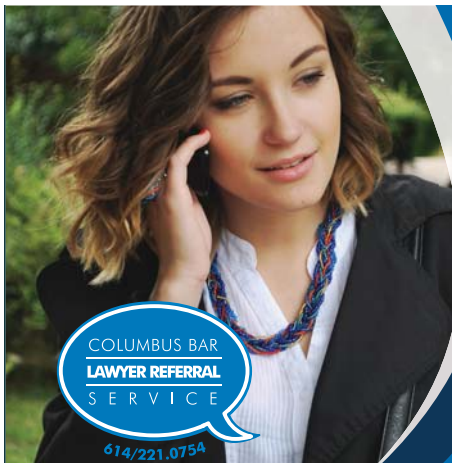
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Isaac Wiles

The people in the "breakout room" are not able to see or hear what is happening in the main mediation room. Participants could potentially be in a "breakout room" a long time while the mediator talks to the other side. It helps if the mediator periodically sends a message to the "breakout room" saying that they haven't forgotten about them and are still working hard in the main mediation room with the other party and counsel.

Of course, the "breakout room" can be lonely because participants can't hear or speak to the mediator, but at least they can converse with each other privately until the mediator returns. And, if they get antsy, they can usually message the mediator through the platform's

"chat" function. If a participant is not comfortable having a private conversation with his/her attorney in the virtual "breakout room", he/she and his/her attorney could use their mobile phones or other devices to call or video conference while in the virtual "breakout room". For instance, while the attorney is video conferencing via his/her laptop computer to attend the mediation (while in the "breakout room"), they can video call the client from a mobile phone which the attorney and the client can mute when they join the main mediation room again.

This all takes practice. Fortunately, the Ohio Supreme Court has published some guidance on such things. See the Court's "Security and Safety Tips – Online Hearings, Mediation, and Other Court Events," and "Online Mediation – Practical Guidance for Mediators and Courts" for starters. ■



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