

# From the Judge's Side of the Bench: Zoom Court is Here to Stay

*by Judge Abbey Fishman Romanek*

On March 17, 2022, the Illinois Supreme Court issued a press release recognizing the numerous benefits remote court hearings have brought to self-represented litigants, attorneys, and other participants, including increased court attendance and participation. In short, remote court proceedings have resulted in an increased access to justice. Thus, such proceedings are here to stay. The Illinois Supreme Court Task Force continues its study to ensure each court has the needed technology required for such proceedings.

Despite the numerous benefits to remote proceedings, it is useful to understand some of the hindrances full time remote proceedings cause. Such an understanding illuminates the manner in which this court suggests moving forward until such time as the Illinois Supreme Court Task Force provides further recommendations.

## **The Pros**

Remote proceedings have allowed for increased access to justice in a number of ways. Self represented litigants can use a cell phone or computer to call in to court from work or home at an appointed time. This saves both time and money by remaining in the workplace or caring for their children without losing a day from work or by paying for childcare. In addition, remote proceedings save the time and cost of transportation and parking.

For attorneys and litigants represented by attorneys, the cost savings are also evident. Attorneys are able to remain in their offices and access numerous courtrooms at virtually the same time. Attorneys who practice in collar counties and suburban districts save drastically on transportation costs and time. This results in lower costs and fees to litigants. Attorneys have even been able to appear in different virtual courthouses at the same time, resulting in saving their clients fees and costs.

As a judge in the Daley Center in Chicago, it is clear that attorneys with suburban practices enjoy the benefit of not having to appear in person in court for short status hearings. If not for remote proceedings, they would have had to drive through traffic and pay for parking, only to obtain a new court date and turn around for the long drive back to their office, all at the expense of their client.

## **The Cons**

The morning status call at the Daley Center requiring all parties or attorneys to appear in person often resulted in more than just obtaining status dates from the court to return on a particular issue. Many attorneys traveled from courtroom to courtroom within a given morning. During those "travels" they would inevitably "run into" counsel with whom they have other pending cases. Upon seeing each other, lawyers can spend a few moments discussing issues and schedules in a congenial manner. They tend to remind each other of outstanding issues in cases, prompting scheduled telephone calls, impromptu agreements, or scheduling of meetings. During the pandemic, this court observed that opposing attorneys failed to contact each other in any meaningful way between status dates. It is usually only the mere imminence of the next court date that forced anyone to even think about getting anything done. For example, if written discovery was outstanding, nothing would happen between court dates. Perhaps an attorney would inform me that one attorney "emailed" the other regarding outstanding discovery. If that email went unanswered for any of a multitude of reasons, that would be the end of the contact. No one ever followed up on the email with either a second email, a telephone call, or a motion. This court constantly reintroduced attorneys to the use of the "old school" telephone, explaining how well telephonic communication works despite the invention of electronic communication. This significant lack of meaningful contact between attorneys has resulted in extending the time within which cases are now resolved.

Timely receipt and return of signed orders has been a challenge, as has timely receipt of written motions, responses, and replies. Court Coordinators are inundated with emails on a daily basis. Most (mine) have done an excellent job of keeping judges up to date with motions and briefs; nevertheless, things do get lost or missed.

In addition, attorneys don't always send orders in a timely manner and therefore the orders don't get entered as required. Finally, orders that are contested take extra time to review and get entered and are always entered late.

The *most* challenging aspect of remote hearings is the ability to conduct a meaningful settlement conference. It is this judge's experience that litigants participating in a remote pretrial do not feel the same exigency or gravitas felt when held in person. The result is that they hear the recommendations of the judge and though they may seem to agree, they do not immediately sign and enter an

order. Thus, the litigant leaves the meeting, has time to reconsider the recommendations, and changes their mind, resulting in the need for more trials.

Remote bench trials have worked surprisingly well during the pandemic. They do, however, take more time than in person trials. One possible reason is that working continuously in front of a screen for a number of hours is extremely taxing on all participants. Exchange and review of documents during a trial can be done through screen sharing, but that causes other challenges when attorneys are not in the same room reviewing the same actual document before putting it up on the screen. Refreshing recollection with a document not in evidence is a further challenge, requiring the court to walk away from the screen so the court is not improperly exposed to the documents. Also, there are often connectivity issues resulting in problems with audio, video, or excessive outside noise. So, while they work in the extreme circumstance of a pandemic, remote trials can never take the place of in person trials.

### **Moving Forward**

Starting May 2, 2022, barring further Covid 19 variants, this judge plans to return to court in the Daley Center on the 30th floor in person full time. However, keeping in mind the health of litigants and attorneys, the health concerns of crowded elevators and courtrooms, and the benefits of remote access to justice, this courtroom will continue to hold status hearings remotely. In the event that one or both parties prefer to appear in person, this court will accommodate them. I will discuss suggested rules and guidelines below to assist in the efficiency of these hearings.

All settlement conferences will be held in person only. All parties will be required to appear in court in person. In this manner, when the parties reach an agreement with the assistance of the court, they will sign and enter it immediately. These conferences will begin at 11:00 a.m. This will allow everyone involved time to get to the Daley Center after rush hour traffic has subsided, and give attorneys time to handle some remote status hearings before appearing. In addition, the elevators, hallways, and courtrooms should not be crowded.

Trials will be held in person at 2:00 p.m. Again, the elevators, hallways, and courtroom should be clear. The plexiglass in the courtroom will remain in place and appropriate spacing guidelines will be followed, including, if necessary, the placement of a lectern for the examination of witnesses. The purpose of the plexiglass, spacing, and lectern should alleviate the need to wear a mask if one is asking or answering questions. Experts or out of town witnesses may, by agreement, appear remotely. All counsel will still be required to appear in person and provide an appropriate remote connection and screen for the courtroom, at least until such time as the court is technologically updated.

### **Zoom (Remote) Hearing Etiquette**

For attorneys:

- Contact opposing counsel by *telephone* before your status. This is not the time to air grievances, argue, or otherwise discuss issues in your case. This is a status on discovery, pretrial, or trial readiness or a short report.
- Where possible, list the case name with your name.
- Be on time.
- Advise opposing counsel or the court if you will be late or are stuck in another courtroom.
- Do not speak until your case is called.
- *Unmute* when it is your turn to speak.
- Make sure it is quiet where you are. Outside noise is extremely distracting.
- *Do not* talk over another attorney or litigant. The court cannot hear you.
- Listening is a skill.
- Have your calendar readily available. You have appeared before the court to get a new date.
- *Do not* “pop in” to ask the court a question or check on a court order. Email the court with these questions or concerns with a copy to opposing counsel.

For your clients:\*

- Practice using Zoom with them before they appear.
- Dress appropriately.
- Be on time.
- Be prepared with pen and paper.
- Do not eat, smoke, or chew gum while on Zoom.
- Do not engage in other activities while on Zoom.
- Be seated in a quiet room by yourself. No children, dogs, television, or radio.
- Do not walk around.
- Stay indoors where possible.
- Do not drive. Pull over.

- Do not say anything or raise your hand to speak unless the court specifically asks you to do so.
- Save your questions for your attorney.
- Only unmute when the court asks you to do so.
- Press “leave meeting” when your case is over.

\*Thank you to attorney Peggy Raddatz for many of these suggestions.

The last two years have been a trying time for all of us. The swift time and manner with which everyone has managed to adapt is nothing less than remarkable. We should all be looking forward to being in person in court at least part time. We also look forward to the Illinois Supreme Court Task force recommendations.