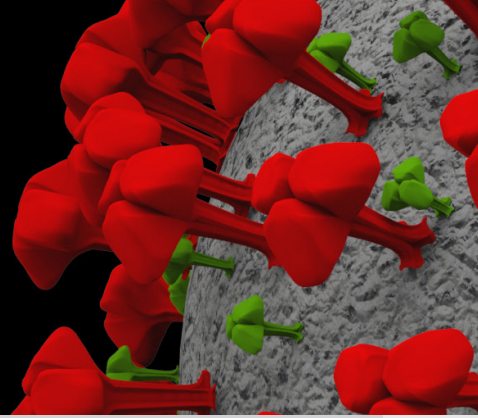


COVID-19

Remote Work and Court Proceedings Follow-Up Q&A



On April 22, 2020, CNA and the National District Attorneys Association brought you a webinar focusing on remote work and court proceedings. During this webinar, we received a number of questions that we did not have time to answer. We have compiled these questions in this document. For information on steps to take to prepare for remote work, see [Key Steps for Setting up Technology for your Personal to Work from Home](#).

FOLLOW-UP RESOURCES

- During the virtual discussion, Jennifer Webb-McRae, Cumberland County Prosecutor, mentioned a letter that Cumberland County, New Jersey, signed, disputing the court's decision to conduct virtual hearings. The Gloucester County Prosecutor Letter can be viewed [here](#).
- Damon Mosler, San Diego Deputy District Attorney, shared that the San Diego District Attorney's Office put together a number of trainings for their support staff to work on while working from home. View these trainings [here](#).
- Teresa Fuller shared the link to [iTether Technologies](#).
- Patrick Muscat, Deputy Chief of the Special Prosecutions Division in Wayne County, mentioned that his office has used [Adobe](#) and [DocuSign](#) to sign documents virtually.
- Patrick Muscat also mentioned that some Michigan courts are livestreaming daily proceedings, including the [Third Judicial Circuit of Michigan](#) and the [36th District Court](#).

QUESTION: WHAT TECHNOLOGY IS REQUIRED IN YOUR JURISDICTION FOR REMOTE TESTIMONY?

Damon Mosler:

Computers for everyone to connect via Microsoft teams and a cell phone in the jail for inmates to talk to their lawyer.

Jennifer Webb-McRea:

They are using Scopia and Microsoft Teams.

Patrick Muscat:

Right now, Zoom for courtroom appearances is all that's required to attend a court session. The court provides that technology. We still need a way to send files to our staff, to the police, send discovery, and to present in court.

The court also has to finalize a solution for the signing of documents, which could include Adobe or Kofax Power PDF/DocuSign.

Examples of products we use to work remotely and present in the courtroom:

1. Zoom for teleconferencing
2. BlueJeans for teleconferencing



3. Microsoft Teams for teleconferencing, internal communication
4. Evidence.com for digital file transfer, redaction, discovery needs
5. One Drive/SharePoint for internal file share
6. Jabber Voice over Internet Protocol phones (allows remote access to desk phones, messages)
7. VmWare Horizon for Remote Access to Office Network
8. Camtasia for screen capture and video redaction
9. Handbrake for video file conversion
10. Audacity for audio file redaction
11. Irfanview for photo redaction
12. Kofax Power PDF (with redaction tool) for PDF creation, redaction, DocuSign
13. PowerPoint for trial presentation
14. Trial Pad (on iPad) for trial presentation
15. Sanction Litigation software for trial presentation

QUESTION: ARE EMPLOYEES ALLOWED TO USE PERSONAL DEVICES FOR WORK PURPOSES? IF SO, HOW ARE YOU ENSURING THAT THESE COMPUTERS HAVE THE PROPER LEVEL OF SECURITY?

Damon Mosler:

Yes. We are ensuring security by allowing employees to access files via a secure portal.

Jennifer Web-McRae:

All attorneys have laptops issued by our office. All of the supervisors (who review search warrants and authorize charges have office-issued cell phones).

Patrick Muscat:

Yes, with a manager's permission on a case-by-case basis. Law Enforcement Information Network material may not be stored on an employee's personal device. We warn our employees that this could expose their machine to a FOIA request in the future.

Our trial attorneys are all issued work laptops, so this isn't a big issue anymore.

QUESTION: HAS ANYONE USED SKYPE FOR BUSINESS?

Damon Mosler:

We did, but it proved to be limiting for us when we tried to do meetings with over 80 attendees.

Patrick Muscat:

Yes, for my law school class. However, I switched to Zoom because I think Zoom and Bluejeans are much easier to use.

QUESTION: CAN YOU PROVIDE US WITH MORE INFORMATION ABOUT ITETHER? CAN THIS BE USED FOR PROVIDING VICTIM SERVICES?

Teresa Fuller:

Our office is using iTether as part of a diversion grant research project entitled "Digital Transformation of Community Supervision." This three-year study proposes to test the systematic preparation, implementation, fidelity, and cost of a comprehensive HIPPA-compliant digital model on the levels of crime, recidivism, and violence and its differential effects on completion, satisfaction, and recidivism based on risk status, gender, age, and sentence duration of approximately 220 defendants compared to a matched control group.

Defendants who have access to the platform will be able to conduct virtual appointments with their diversion officer and multidisciplinary team, complete assessments that will help drive educational and treatment interventions (Adverse Childhood

Experiences (ACES)), Ohio Risk Assessment Screening Tool (ORAS) and Social Determinants of Health (SODH)) and access treatment and educational services through a community resource library.

As for the utilization of a digital platform within victim services, we are currently exploring the functionality as it applies to victim services as well. Our stakeholder group has identified several features that would help enhance victim participation throughout the criminal justice process and streamline the ability of victims to post opt-in, update contact information, provide victim impact statements, and access evidence based treatment and educational content.

QUESTION: HOW MANY OF YOUR OFFICES ARE PAPERLESS?

Damon Mosler:

We receive paper reports that we scan and provide in e-discovery.

Jennifer Webb-McRae:

We are not totally paperless, but we do have an information management system call Infoshare that includes scanned files. We also maintain paper files to comply with our state's records requirements.

We also have a Complaint Management system and eDiscovery system through Infoshare as well.

Patrick Muscat:

We are not. We went to paperless overnight because of this pandemic.

We had several small units that were experimenting with paperless. We used Evidence.com and OneDrive to help us through this very rapid transition.

We also set up a Lit Tech Unit a few years ago that has eased this rapid transition.

QUESTION: ARE THERE DIGITAL FILE OPTIONS THAT ARE AVAILABLE WITHOUT PURCHASING A NEW CASE MANAGEMENT SYSTEMS AND UTILIZING MICROSOFT OFFICE PRODUCTS?

Patrick Muscat:

Yes, we did it this way. We do not have a true case management system. We use the products mentioned above. We add in status updates about the case into our statewide ACT system (which has to be completed in office by rotating clerical staff). We have exported our unit list tools, dockets, and unit databases to the OneDrive cloud.

QUESTION: IS ANYONE USING WEBEX FOR COURT PROCEEDINGS AND, IF SO, ARE YOU RECORDING THESE PROCEEDINGS?

None of the panelists are using WebEx for court proceedings. Damon Mosler noted that Microsoft Teams has the capability to record court proceedings San Diego is currently using court reporters, so recordings are not necessary.

QUESTION: HOW DO YOU INCLUDE COURT REPORTER AND CLERK OF COURT DURING VIRTUAL COURT PROCEEDINGS?

Damon Mosler:

Court reporters and clerks are in the courtroom with the judge. Attorneys are their offices.

Jennifer Webb-McRae:

I am told that the court is recording the proceedings and the court reporters are also present in the hearings.

Patrick Muscat:

Our courts are using court reporters. They are appearing in the courtroom where the HOST Zoom account is being run. The HOST Zoom account is usually run in a courtroom that has a large screen TV and good sound.

QUESTION: HOW ARE COURT PROCEEDINGS BEING RECORDED?

Damon Mosler:

For felonies, we are using court reporters who are in the courtroom along with the judge. In the past, we have used tape machines for misdemeanors. As of now, I do not know how misdemeanors will be recorded.

Jennifer Webb-McRae:

I am told they are recorded through the programs (Scopia and Microsoft Teams).

Patrick Muscat:

We are using court reporters, but some courts may be using the very simple recording tool in Zoom to temporarily record the sessions. One court is posting court proceedings to YouTube. However, I'm not sure how long they will stay posted.

QUESTION: DOES YOUR JURISDICTION HAVE STANDARDS FOR FILMING COURT PROCEEDINGS?

Patrick Muscat:

Michigan has **standards** for remote proceedings.

QUESTION: JURISDICTIONS HAVE INITIATIVES TO REDUCE JAIL INMATE POPULATIONS USING AN EXPEDITED PLEA PROCESS IN WHICH INMATES' PLEA FOR A TIME-SERVED AND/OR PROBATION DISPOSITION TO GET OUT. SHOULD WE BE CONCERNED ABOUT FUTURE MOTIONS TO WITHDRAW BASED ON DURESS?

Damon Mosler:

Yes, we are seeing this already in a different capacity. Defendants are claiming that they do not want remote hearings and that they are being forced upon them.

Patrick Muscat:

I'm sure there will be issues that grow from this pandemic and the remote hearings in the future. The best advice I can give is to spend extra time making whatever record necessary to accomplish the task necessary. There is case law in Michigan regarding "phone pleas" that may offer some guidance.

QUESTION: ARE THERE ANY FUN TEAM-BUILDING SUGGESTIONS THAT CAN BE USED TO GET ATTORNEYS FAMILIAR WITH THE APPS?

Patrick Muscat:

I have hosted several Zoom sessions for large and small groups to demonstrate the technology. I run a Visual Trial School in Michigan for the state prosecutor's association that many of the prosecutors in the state have attended over the last 10 years. Many of these tools are taught in my course. I make test cases to share with people to practice.

We have progressed well considering some in our office had never used products like Zoom, Evidence.com, or OneDrive before a couple weeks ago.

One idea would be to try a mock trial on Zoom with your team to see how it goes. This will give you the change to work out the kinks in a virtual trial before conducting a real virtual trial.

Remote Work and Court Proceedings Follow-Up Q&A

Our panelists answered the following questions during the remote work and court proceedings virtual discussion. To access a recording of the virtual discussion, please click [this link](#).

- Do you have employees teleworking from home? If so, what positions and how many?
- Greatest challenges thus far?
- Other than in-custody arraignment and bail hearings, what other types of hearing are actually being heard?
- How are courts and attorneys attending those hearings?
- What software are people using to attend hearing remotely?
- Are cases being tried and how?
- Can jurisdictions provide ideas for holding jury trials and jury selections during COVID-19?
- Have jurisdictions encountered problems relating to the confrontation clause and/or right to physical presence of the defendant for various hearing types?
- How are jurisdictions ensuring that any pleas or sentencing done remotely will stand the test of appeals?
- How are jurisdictions addressing the open courtrooms requirement with teleconferencing and different methods of compliance being used by courts to allow public access to the proceedings?
- What to do when for video testimony and when things go wrong with technology in middle of video testimony?
- How to get signatures passed on documents such as pleas and plea colloquy's?
- How have offices been handling evidence and discovery digitally?
- How have offices been circulating documents to parties?
- What means are jurisdictions using to all PD to conference with their clients if hearings are held remotely?
- What types of hearings have mandatory defendant appearances and can that be accomplished by video link?

FOR QUESTIONS, CONTACT US AT COVID19_COURTS@CNA.ORG.