

May 13, 2020

MENTAL HEALTH & WELLNESS

Litigators Have the Tools to Adapt to a New Normal

It's important that we share our stories when we can as we all learn to live with coronavirus.

By Sonya Rao

Share this:



I'm in week nine of staying home to help stop the spread of COVID-19—home with my kids, while also trying to work, home school, keep the house clean and the fridge stocked—and it has been... hard. So. Very. Hard. I know that everyone is experiencing their own trauma in this pandemic. It's challenging for all of us in different ways. So I don't write this to say that life is more difficult for me than someone else. It's not—in fact, I feel lucky in so many ways. I have a job, my family is healthy, and, other than my favorite brand of paper towels, I've been able to find what I've needed at the store. I write this to say—as a parent, as a member of the community, as a fellow litigator—I empathize with you, you are not alone in this challenge, and we can make it through this one day at a time.

Over the last couple of months, I have come to the belief that we lawyers may, in some ways, be uniquely positioned to adapt to the challenges of this pandemic because of our profession. Litigation throws unexpected curveballs at us on a daily basis. We are accustomed to handling multiple matters in different stages, each with a seemingly endless to-do list. Because of the nature of what we do, we have likely had to balance the demands of home and family with looming deadlines—often staying up to see the sunrise while completing a brief. As a result, we have been trained to handle unexpected demands in our work and home lives.

That is not to minimize what we are all going through. We are not just balancing litigation and family. We are balancing litigation, family, and a global pandemic. I get it. But, over the last few weeks, I have come to learn how to change my practice and shift my perspective on things. And, for what it's worth, I wanted to pass that along. Because I think it's important that we share our stories when we can, as we all learn to live with a new normal. So here goes...

I Have Learned to Embrace the Technology

I am not the most technologically savvy person. But I've learned to embrace the technology that has allowed me to work remotely.

In fact, our whole firm has embraced distance working in a relatively smooth manner. We did it early—before any stay-home orders were officially issued in our respective states. This was for two reasons: First, we saw what was coming and wanted to protect our employees. We did not want anyone to feel like they needed “face time” in the office. Second, we are litigators, and we had deadlines coming up. There was not going to be time to stop at the last minute to ensure that everyone's wireless capabilities worked well. So, realizing that most of us did not need to be out in the community to continue our work, thereby risking infection to ourselves and others, we had everyone convert early to a home office setting.

Almost immediately after we went remote, we also embraced Zoom. We tried it first for our weekly firm meeting. During that first meeting, we could not help but notice that the computer screen looked a little like the opening of *the Brady Bunch*—small blocks of faces looking at each other. Eventually, we all figured out how to unmute ourselves and turn the video on and off, and we got down to firm business. And, honestly, it felt like any other firm meeting. Except we were dressed in comfy clothes at home.

That first week of the firm transitioning to telework, one of our clients had an interview scheduled with the government. I had planned to fly out with a colleague to prep the client prior to the interview. But instead we prepped over the phone and dialed into a WebEx meeting for the interview itself. There were moments during the interview when I talked over my client and one of the government attorneys because of a delay in the connection. There were times when someone forgot to mute themselves and inadvertently loomed large on the screen because of some small noise that they made. But the interview otherwise went relatively smoothly.

A week or so later, we decided to take expert depositions via Zoom. I felt comfortable prepping our expert by telephone prior to the deposition, but was apprehensive about whether a virtual deposition would be effective. To be sure, there were some glitches during that first of several depositions. The court reporter sometimes lost the audio, so, on a few occasions, the witness had to recall answers that they had just provided. The plan was to take a video deposition, but given the audio problems, all the parties ended up having to utilize a conference line...so much for an admissible video record. Then there was the issue of publishing exhibits. For example, the

deposing attorney was forced to slowly scroll through an entire expert report on a computer screen, so that the witness could answer the basic question, “Is this a true and correct copy of your report?” I can’t say that it was the smoothest deposition that I’ve sat through. But the world did not come crashing down, and the important questions and information came out.

Most important, we were prepared for the next time. Each individual attorney, as well as the court reporter, learned to connect with the best audio (whether it was through a separate dial-in number provided through the application or the computer microphone). We learned that you did not have to log off whenever you took a break or needed to have a privileged conversation with the client—all we had to do was simply mute and shut off the video. We learned how to publish exhibits in a manner that allowed the witness to scroll to where they needed to be. And, we shared anticipated exhibits (such as relevant expert reports) in advance, so that the witness could print out and refer to an identical, clean copy in lieu of reviewing the document on the computer screen. We instructed our clients to pause even longer than normal so that we could object, and jumped in to lodge an objection before the witness began to answer. The court reporter spoke up quickly if a connection was lost or words were not caught by a microphone, so questioning did not continue without transcription. And, both plaintiff’s and defense counsel learned to work with each other to accommodate hiccups presented by the technology or children playing in the background.

If I can become comfortable with the technology that allows us to work remotely, then, I promise, so can you. There will be glitches (and, to be sure, a fact witness deposition may be more difficult to take remotely than an expert one), but I have been surprised at how intuitive a lot of these applications are and how well counsel on all sides have worked together to adapt to them.

I have heard similar stories about court hearings. Instead of craning your ears on the telephone to hear what the other side is arguing, many courts have tried new platforms to make remote oral arguments proceed more smoothly. (I urge you to advocate for these remote options—there is no reason that any of us—the courtroom personnel, the court reporters, counsel, or witnesses—need to risk catching or spreading COVID-19 to each other. Just remember that it is difficult for an attorney to agree to being the only party that is not in the courtroom. All of us should make—and accommodate—these requests whenever possible.)

We are lucky that we work in a field that allows us to work remotely. So many people—from grocery store clerks, pharmacists, and postal workers to fire and police personnel, janitorial staff, and nurses and doctors, to name a few—have no choice but to leave the comfort and safety of

their home to do their jobs. But we, as litigators, largely have the luxury of working from our homes. And we should embrace this opportunity, even though the environment in which to get our work done is different.

I Physically Distance, but I Don't Socially Distance

No, I am not recommending that everyone stand shoulder-to-shoulder and start shaking hands with each other. We should all, of course, adhere to the Center for Disease Control's guidelines on avoiding large gatherings, standing at least six feet apart, and wearing masks while around people with whom we are not living. But that type physical distancing does not mean that we should stop connecting with each other.

As litigators, we often have to interact with people—the judiciary, opposing counsel, our clients, and our colleagues. We are accustomed to human connection being a frequent part of our jobs. While those interactions may go online, that does not mean that we cannot embrace some modicum of our normal exchanges. We are talkers—whether on paper or out loud—and we should continue talking to each other.

So call a colleague to work through a legal issue instead of thinking it through alone. When you check in with opposing counsel about your cases, ask how their families are fairing. Have regular virtual staff meetings, even if you can't gather in a conference room.

As I previously noted, our firm's staff meetings have gone to Zoom. And while nobody wakes up ecstatic to participate in a meeting, I do look forward to seeing my colleagues' faces. Our office also set up a Zoom happy hour, so that we can have drinks after a long work week and maintain social connections—it just happens in front of our computer screens instead of at a bar.

My office has also embraced an internal messaging system—so we can more easily talk to each other without clogging up inboxes. We can direct message each other, but also have different group channels (e.g., for office-wide discussions or for litigation teams). Just as importantly, in my opinion, we have a general chat channel—where we talk about the television shows, keep up on the latest coronavirus news, and share pictures and stories of our families. I highly recommend that any office working remotely take up an instant-messaging system. These systems help make communication feel more personal, like they used to be when we shared a physical work space.

And don't be afraid to rely on your legal community to get through this. We are in this together: We are all learning how to litigate in a new normal. We all have moments when a pet or a family member crashes a virtual meeting. We still have late nights and moments of overwhelming work.

Lastly, I have seen many silver linings in this pandemic. My neighborhood, for example, has become a community within a community: People place extra groceries in their cart for neighbors who cannot make it to the store. If someone picks up take-out, that person will pick up their neighbors' food and drop it off at their doorsteps. And, on sunny spring days, we stand at the end of our respective driveways to connect and catch up. There is no reason why the legal community cannot do this, too. Once in a while, call a colleague—not about work, but just to see how they are doing. If opposing counsel asks for an extension because their childcare situation unexpectedly sucked up an entire day, don't say no. If you are on a video call and another attorney's child interrupts with an ear-piercing tantrum, laugh and commiserate. It doesn't take much effort to connect and empathize.

We all know that things will continue to be strange and hard and overwhelming for the foreseeable future. But we can bestow some grace upon ourselves and others in the interim. I try to work more efficiently now that I have to add childcare, school Zooms, cleaning the house, and walking the dog into my routine. At the same time, I have also stopped beating myself up for not getting through my to-do list every day. Litigation may be different in some respects, but in others, it remains the same. I truly believe that our profession has given us the tools to get through this pandemic: To work under pressure. To juggle different things all at once. To communicate with compassion. To stay up late to get things done when it matters. Hang in there, my fellow lawyers, and keep fighting the good fight. You've got this.

[Sonya Rao](#) is a partner with Morgan Verkamp LLC in Cincinnati, Ohio.

Copyright © 2020, American Bar Association. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. The views expressed in this article are those of the author(s) and do not necessarily reflect the positions or policies of the American Bar Association, the Section of Litigation, this committee, or the employer(s) of the author(s).