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How Will the Coronavirus Pandemic Impact Litigation and Dispute Resolution in the Future?

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The practice of law certainly has changed significantly since ancient Greek and Roman times, when unregulated groups of "advocates" presented cases on behalf of ordinary citizens. In the 21st century, technology has been at the forefront of these continuing changes in legal practice. The economic shutdown resulting from the coronavirus pandemic, however, has made the importance of technology even more prominent in the legal system. From the U.S. Supreme Court holding its first oral arguments by phone (with a toilet apparently flushing in the background) to trials, depositions and mediations being held via videoconference, judges, lawyers and other participants in the legal system must accept technology more than ever. So, with such acceptance, it seems inevitable that some aspects of the legal system currently being conducted remotely may become the norm, presenting both opportunities and challenges for clients and their lawyers.

The use of remote technology for court hearings, depositions and mediations obviously increased significantly with the onset of the coronavirus pandemic, and it appears that such use necessarily will continue into the future. As a result, lawyers now may represent clients in legal proceedings from nearly anywhere with an internet connection. And, while such convenience has resulted in some unique choices such as attending from one's bed or wearing less-than-appropriate attire, the experience thus far generally has been positive.

Questions remain about the effectiveness of arguments held via computer where lawyers and judges may find it difficult to communicate both because of technological issues and because of not being in the same location with the non-verbal cues that human-to-human contact allows. In addition, the ability to assess the credibility of a witness over a computer or phone seems less than ideal. But, with advanced preparation in terms of the technology as well as the questions and exhibits, lawyers certainly still may be able to conduct effective proceedings in many instances. And, with the use of technology, it presents opportunities for lawyers and litigants both in terms of convenience and in terms of limiting or controlling legal spend where appropriate. Thus, if nothing else, the current situation has made it clear that, in the future, lawyers and clients should be engaging in discussions about how technology may be used effectively in the discovery and trial phases of litigation.

The current environment also has presented opportunities and challenges in the resolution of litigation that should continue into the future. While courts across the country seem to be accepting the need for virtual hearings and trials, delays continue to occur, and, generally, such delays will increase litigation costs to the parties. Litigants further may want to maintain available cash. But, conversely, settlement opportunities may be presented that can result in saving business relationships or money. Hence, remote mediations and other dispute resolution proceedings appear to be more accepted now and, most likely, will become more common in the future.

Litigators and mediators, with appropriate planning, can achieve successful resolutions of disputes via remote technology. With current technologies, the functionality of online mediation results in a proceeding much like an in-person mediation. Mediations generally commence with a joint caucus session where the mediator concurrently joins all participants, and they will be able to see and hear each other. Thereafter, all participants

leave and join their private breakout rooms. Each party receives a separate and secure link to connect that, to ensure privacy, is not shared with anyone else. The party and the lawyer representing such party see and talk with one another as if sitting in the same conference room. And, the mediator may enter and exit the breakout rooms as if walking in and out of a conference room. Admittedly, some litigants and lawyers benefit from having to face one another together in a room to resolve certain disputes, as human-to-human contact, such as interactions with a judge, plays a part in the resolution of disputes. But, in the appropriate matters, experienced mediators and lawyers should be able to overcome this challenge. Consequently, the topic of remote dispute resolution via mediation or other proceedings should be discussed as a practice to be continued well after the coronavirus pandemic becomes a thing of the past.

No one knows when or how the current situation will end and what the "new normal" will be once it does end. Be that as it may, the current situation seems to have advanced the legal profession in terms of the use of technology both in good and bad ways. But, such use of technology brings certain benefits such as convenience, calendar availability, avoidance of travel and related costs, global choice of mediators and the overall potential reduction of legal spend for litigants. Hence, even after the coronavirus pandemic fades into history, it seems clear that, in certain circumstances, litigation and dispute resolution will be impacted significantly by what has been demonstrated over the last several months.

For more information visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.