

Written Advocacy in the Virtual Courtroom

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Inspiration for this article struck during a routine virtual hearing. As I was jotting notes on my legal pad, I glanced up and observed the judge's eyes rapidly scanning from left to right, as my adversary made his argument. Counsel was rattling off the names of filings, dates, and cases with limited relevance to the underlying issue—an open-book exam approach that has spawned from the presence of the computer screen while arguing from the home-office desk chair. Ostensibly, the judge was scouring the parties' motions for the answer to the all-important question (or a form of it): what is the issue, and how do these lawyers contend I resolve it? I thought to myself, maybe a key to effective advocacy in this "new normal" is not so new at all: clear and cogent legal writing.

As Florida courts continue to embrace virtual hearings, it is imperative that lawyers—and especially litigators—rethink advocacy in this new arena. Lawyers are confronting a variety of new skills to maximize the persuasion of the oral and visual components of their cases, including sifting through exhibits via screen share and, of course, muting. This technological adaptation is obligatory for practitioners who have had the ease and familiarity that accompanies years of experience in the courtroom abruptly stripped away due to a pandemic-induced shift to remote hearings. But because the majority of the focus has been on the virtual (and visual) aspect of court hearings, this article addresses another way to gain the competitive edge—revisiting the fundamentals on effective legal writing.

Using compelling prose to guide and persuade the judge

Virtual hearings feel more streamlined, and writing should conform to that format. These easy-to-implement suggestions, which are consistent with the teachings of writing authorities from lexicographer Bryan Garner to Strunk & White, will create a winning product for the court to read before the camera light blinks.

- **Cut unnecessary words, especially legalese.** Lawyers breathe a sigh of relief after putting the period on the first draft. But that is when the writing process truly starts. First, begin combing through the motion to delete words—particularly those fancy, lawyerly words: for example, *thereto*, *hereto*, and *henceforth*. Generally, those words are easily replaced with simpler, more readable phrases. Second, don't stop at cutting words. Assess the arguments, and after ordering them persuasively, delete the wordy sentences and paragraphs. A short submission increases the likelihood it is read in its entirety; and, the judge can scan it again during the hearing.

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- **Use headings to guide the argument.** A principal difficulty with virtual hearings is reading the judge. Presence in the physical courtroom made it easier to pick up on cues and body language and to tweak the argument accordingly. Incorporating headings and subheadings into a motion allows the lawyer to take some control of the proceedings. More specifically, lawyers can use the written headings to walk the judge through the oral argument and to highlight the strongest contentions. Referencing the writing, with the court following along, creates a conversational tone. This too will require adjustment on the fly; but, succinct written and oral argument will combat any deficiencies resulting from the remote format.
- **Ensure the issue and requested relief is specified at the outset.** Writing authorities have conflicting views on the best way to present this information to the court. And lawyers must always comply with the court's procedures. But anyone would be hard-pressed to dispute that the reader wants the most important aspects of the writing up front. The judge will lose interest if finding the main points involves a scavenger hunt. Therefore, if the writing is clear, the judge will know where the lawyer is going with the argument beforehand and can use the hearing to fill in any gray areas.

Communicating in the virtual landscape

The benefits of good writing will transcend wins in the virtual courtroom. Gradually, everyone has transitioned to videoconferencing to continue conducting business, including clients, colleagues, and the alternative-dispute resolution world. This has also led to an increased reliance on email and written communication. Good communication will create trust and confidence.

Based on the overwhelmingly positive feedback from the judiciary and legal community, it seems plausible that the future will present a hybrid of remote and in-person hearings. We will see what the future holds; but, for now, focusing on the written word may provide the familiarity and sway attorneys need to prevail in the virtual courtroom.

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