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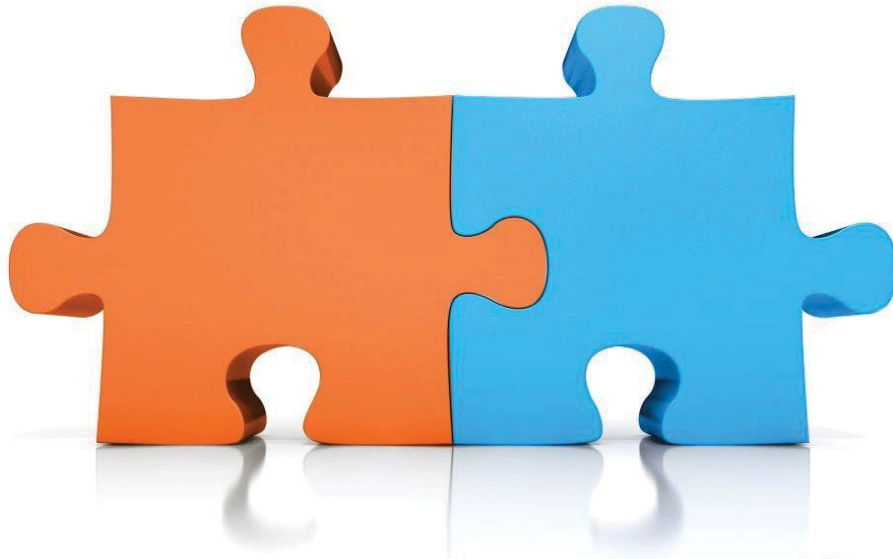


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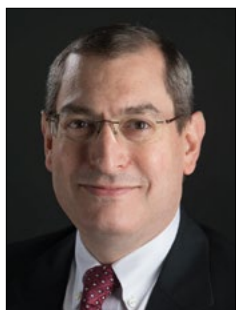
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Message from the President

By *Darren L. Kadish*
President, 2020-21



Moving Forward Through Challenging Times

Greetings and Salutations! To paraphrase Henry the VIII's statement to his 6th wife, don't worry, I won't keep you long. So let me first thank our Immediate Past President, The Honorable Dana M. Middleton for an amazing bar year. She has been a terrific leader of the Bar Association of Baltimore City, and set a very high bar for anyone who follows her. At every meeting I went to, her Access to Justice theme was not only prominent and well

executed, it was the focus point for all we did. Kudos Judge Middleton!

Certainly this is not how I expected to address the membership of the Bar Association of Baltimore City for the first time as President. Nor, do I expect that anyone does not understand my reference to the fact that these times are indeed challenging. The COVID-19 pandemic has altered not only how all of us practice law, but has altered the fundamental fabric of daily life. As of today, no one knows how long these changes may last, or whether they may be permanent.

It was Winston Churchill who said: "A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty." And so, I would submit that the Bar Association of Baltimore City has before it a great opportunity to serve its members. And while there are many unknowns moving forward, the BABC is here to help our members as we always have.

Pre-pandemic, one of my goals was to increase the reach and accessibility of our numerous CLE and program offerings by increasing the BABC's use of technology. I envisioned live-streamed CLE programs, with members able to watch from their desk at work or at home. Members being able to connect to a live program through their phone and listen in over their car's bluetooth connection as they drove perhaps from court, or to a child's doctor's appointment (no doubt boring their child to tears). I envisioned programs recorded for later viewing by our members who were unable to attend, accessible through a link on the BABC website. These were things that I knew could be done, but had not been implemented. And now live broadcasting of our programs is the norm. Ironically, the pandemic has moved us towards my goal before I could even take office. I hope to keep moving forward with technology to educate, inform and help our members even more.

Of course, by now we all know about Zoom, Google Hangouts and Skype and the myriad of ways we can connect remotely with others for meetings or educational programs. We know these programs can be recorded (at least I know Zoom can be recorded) for later viewing. Depositions are being held remotely. So are Court settlement conferences, bail reviews and many other Court related activities. Notaries are now allowed to remote witness documents. Insurance companies are accepting releases signed electronically, and without witnesses. Times are not just changing, they have changed.

But I believe we are just at the tip of the iceberg. The Court's backlog is going to be immense. It is unclear if there will really be jury trials anytime in 2020. The concept of gathering jury pools presents a challenge if we are to maintain social distancing. And many of our members will still need help learning to use the new technologies at hand, and even picking and choosing the right technology from the myriad of choices. Additionally, our members will face not only technology issues, but a host of collateral issues from a decrease in business to dealing with closed schools and daycare, along with personal issues caused by the pandemic. Some of our members will struggle, and we will be here to

help them in any way we can.

I am therefore announcing the appointment of a Special Committee of the BABC to assist our membership with COVID-19 related issues. This Committee will be charged with providing our membership with resources to assist them and their practice in dealing with the COVID-19 pandemic. From substantive programming to collecting and publishing resources available to help, the committee will provide centralized information and help our membership navigate the new reality of practicing during the pandemic. I am pleased to announce that Past Presidents of the BABC Greg Kirby and Kelly Hughes Iverson have done me the great honor of agreeing to chair this committee.

As I write this, the Courts have only begun to reopen, and while some restrictions on daily life have been lifted, others remain in place. Just when and how we return to normal is anyone's guess, but I do know a good many of our members have continued to work during this pandemic, and will continue to do so. And speaking of continuing to work, our amazing Bar Staff have continued the operations of the Bar Association of Baltimore without missing a beat.

Kathy Sanzone, our Executive Director, Patty DeGuilmi, the Executive Assistant, and Sabina Mohan, the Administrative Assistant have all remained hard at work during the entirety of the pandemic. Programs have been put on dealing with all aspects of the pandemic, emails have been answered, members have been served. I simply cannot say enough about the fantastic job they have done. Without them, we simply would not be able to exist as a bar association. Thank you Kathy, Patty and Sabina! Additionally our entire Senior Legal Services staff, Viola Woolums, Director, Jackie Jones, Calissa Randall, Madonna Lebling, Muriel Van den Berg, and Emanuel Hamwright, have worked tirelessly to serve those in need.

Lastly, I would like to introduce you to this year's Executive Council, truly those who are the heart of the BABC. Knowing the challenges ahead, they have all agreed to be a part of the BABC's governing body, and I could not be more excited about working with each and every one of them. And please, hold your applause until the end! They are: The Honorable Anthony F. Vittoria - President Elect; The Honorable Lynn Stewart Mays - Vice-President; Myshala E. Middleton - Treasurer; James W. Motsay - Secretary; The Honorable Dana M. Middleton - Immediate Past President; Lauren E. Lake - Young Lawyers' Division Chair; Samuel R. Pulver - Young Lawyers' Division Chair-Elect; Robert D. Anbinder - Member At Large; Tamara B. Goorevitz - Member At Large; Marshall B. Paul - Member At Large; The Honorable Michael W. Reed - ABA Delegate; Catherine A. Bledsoe - Chair, Pro Bono and Access to Legal Services Committee; Teresa Epps Cummings - Chair, Membership Committee; Amy Petkovsek - Chair, Communications and New Journal Committee; The Honorable Julie R. Rubin - Co-Chair, Bench Bar Committee; T. Christine Pham - Co-Chair, Bench-Bar Committee; Alicia J. Gipe - Chair, Lawyer Information and Referral Service; The Honorable Michael Studdard - Chair, Continuing Legal Education Committee; Valda G. Ricks, Chair - Judicial Selection Committee; Kerri L. Smith - Chair, Events Committee; Erin C. Thompsen - Chair, Legislation Committee, Fabian D. Walters, Jr. - Chair Professional Ethics Committee; Scarlett M. Corso - Co-Chair - Technology Committee; The Honorable W. Michel Pierson - Co-Chair, Technology Committee; Robert C. Baker III, Co-Chair, Technology Committee; Erik Atas - Elected Member; Natasha M. Dartigue - Elected Member; Thomas H. Barnard - Elected Member; Natalie Amato - Young Lawyers' Division Elected Member; James Robinson - Young Lawyers' Division Elected Member.

This will be a challenging year and I want to thank each and every member of the Executive Council for their incredible dedication to the BABC and for their support during my Presidency. I could not ask for a better group to work with to face the challenges ahead.

I wish you good health. Stay safe everyone!

Young Lawyers' Division Report

By Lauren E. Lake



Lawyering in the Time of COVID-19

When I interviewed for a leadership position with the Young Lawyers' Division of the Bar Association of Baltimore City in February 2019, I never could have imagined that my transition to Chair would occur amidst a pandemic. Although the approach

will need to be different, the plans and goals I spoke about then are still relevant and worth pursuing in our changed and continually evolving world, including (1) increasing and diversifying the YLD membership's engagement in events and activities and (2) offering more diverse programming for our members and the community.

In fact, in late-February of this year, I made a few notes for my remarks at the BABC Annual Meeting, which would have been held on May 21 (except that it, like so many other gatherings, was canceled and held virtually. Had life proceeded as planned, I would have reflected on the centennial anniversary event this year for the 19th Amendment, as well as the Women's History Month event that was scheduled for March to celebrate the ten women who have led the BABC, including our new Immediate Past President Judge Dana Middleton. But that event was one of the first canceled once COVID-19 began impacting all of us.

In particular, I had planned on recognizing one woman, Sheila Sachs, the first woman President of the BABC. I had the pleasure and opportunity to briefly work with her when I started working at Gordon Feinblatt not quite two years ago. Sheila's office was down the hall and around the corner from mine. She took me to lunch during

my first week and made me feel welcomed. I knew a bit about her as a pioneering and highly respected woman attorney, so I was most struck by her humble manner. She learned a little bit about my bar association involvement as a Co-Chair of the Public Service Committee and Member-at-Large. I envisioned Sheila becoming a mentor, sharing her wealth of knowledge and experience to help guide me professionally and personally as a young attorney. Unfortunately, like our Annual Meeting and nearly all of our association's spring events, unforeseen circumstances disrupted those hopes as Sheila's health declined rapidly, and she passed away in April 2019.

I wish I could have known Sheila longer and learned more about her tenure as the first woman President of the BABC. Her struggles and successes would undoubtedly serve as inspiration for the trying times we find ourselves in today. Each of us faces challenges in an increasingly socially distanced world, regardless of our practice area or years of experience. The need to pivot and be flexible in many aspects of our lives is evident, just as it is for the future success of the BABC and YLD.

Over the next year, the YLD will redouble its efforts to maintain our community's health and safety and offer support and resources for our members. We are excitedly planning a diverse array of informative, fun events to help people

stay connected, whether in-person or virtually, and share our collective experiences. The YLD strives for all of us to rise from this year as stronger, more knowledgeable professionals and members of our community. Thank you for your support, and we look forward to getting through this together!

Do you want to get involved or have ideas for the BABC YLD? If so, sign up to join one or more committees using the online form at <https://www.baltimorebar.org/for-attorneys/committees/join-a-committee> or email me at llake@gflaw.com.

**Young
Lawyers'
Division**

Bar Association of Baltimore City Statement on George Floyd's Death

(Issued June 8, 2020)

The Bar Association of Baltimore City mourns the tragic death of George Floyd, and sends its condolences to his family and loved ones. The impact of yet another life lost at the hands of those sworn to protect them has been greater than any of us could have imagined. People of all nations and backgrounds have come together to voice their outrage and weariness of a justice system that seems to work for fewer than intended.

This organization fully supports the peaceful demonstrations and

movements of those who are advocating for change. Indeed, we recognize that lawyers have always played an important role in turning anger and frustration into policies and laws that reflect the will of the people. It is important that we are consistent with our mission: to educate, advocate, and promote equality and diversity amongst its members. It is also our duty to serve the community where we work and live, and to remember the following quote attributed to Benjamin Franklin "Justice will not be served until those who are unaffected are as outraged as those who are."

Oral Argument in the Age of Corona

The Honorable Douglas R. M. Nazarian, Court of Special Appeals



Appellate courts aren't known for our bleeding-edge use of technology. Even with electronic filing, we work overwhelmingly on paper. There's rarely any opportunity in appellate settings for the audio-visual razzle-dazzle common in trial courts. And although the Court of Appeals broadcasts its arguments over the Internet, the appellate courtroom action in Maryland has always happened in person.

Until now. Some appellate courts around the country have experimented with and implemented various forms of remote oral argument technology over the years¹, but Maryland's courts hadn't until COVID-19 rendered our usual oral argument process unsafe. With not quite two weeks to prepare (and after a lot of quick and excellent work by our Chief Judge and Clerk's Office staff), our Court held its April, May, and June 2020 oral arguments using remote video technology (and livestreamed the June arguments too). Despite a few hiccups, the technology has allowed counsel and the Court to continue our work mostly unabated. So as the electrons settle, and with the usual caveats about the small sample size to date², here are some observations

on remote appellate oral arguments.

First, although video technology can't replace the in-person oral argument experience, it is a solid substitute, and better in my view than postponing or dispensing with oral argument altogether. The setting felt a little awkward at first—it was strange to sit in my robe in my office with only my law clerk³—but everyone got into a smooth rhythm within a few minutes. The technology worked pretty well overall, and we could see and hear and interact almost normally. The failures were relatively rare, and when someone did drop from the argument, they returned quickly and generally with minimal disruption.

Some courts, including the Supreme Court of the United States, are holding audio-only remote arguments. For me, the visual feedback was important to the experience, and I wouldn't want to lose that. It's harder to pay attention to a voice on a phone than to people in our presence, and the ability to see and be seen helped bridge the physical distance. Oral argument is a high-bandwidth activity for judges and counsel alike, and losing the visual element of the experience would diminish the experience considerably for everyone.

Second, the technology requires a few adaptations in both directions, but they seemed minor and manageable. Even with a good broadband connection, there is a short but discernible delay between the movement



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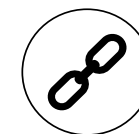
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of a speaker's lips and the arrival of the corresponding sound in the hearers' speakers. This delay requires everyone to wait a beat before asking or answering a question, and I found myself watching faces more closely to avoid speaking over someone. Video arguments actually offer one advantage over the courtroom: I could see my colleagues' faces more clearly and directly and could more easily avoid speaking over them (more on visual feedback below).

Another difference is the role of our Clerk. The process of checking counsel in for remote video argument seemed similar to the in-person process, and once checked in, the Clerk gathered counsel and brought them and the judges together. Once argument started, though, the Clerk was more involved than usual: the Clerk, not the presiding judge, called the case, kept time, and displayed cards with remaining time mileposts (which seemed easier for counsel to see than the white and red lights we use in the courtrooms). This coordination helped keep the cases and parties straight and in front of the right panel, which sometimes can involve more choreography than counsel realize.

Third, because everybody's face is on every screen, every non-verbal reaction—every nod, smile, eye roll, or arched eyebrow—appears in sharper relief than it does in court. As a result, normal and unintentional reactions have more visual force than they otherwise might. In one of my arguments, a colleague noted a discrepancy between a party's brief and the record, and counsel's look of surprise (maybe shock) jumped off the screen. But that feedback flows in both directions, and we judges need to watch and stay mindful of our own reactions to make sure we don't convey something, either in kind or degree, that we don't intend.

I know that I would prefer life and oral argument to return to its pre-pandemic state. For now, though, remote video arguments provide a safe and viable alternative to in-person argument that helps keep the work of our Court and the people we serve moving.

Endnotes

ⁱSee, e.g., R. Coleman, "The Vanishing Oral Argument: Why It Matters and What to Do About It," ABA Judicial Division (Feb. 18, 2020) ("Some attorneys in the crowd remarked that the value of the argument comes from the face-to-face interaction with the court, which would be lost if attorneys appeared by video or phone. Others, many of whom had argued remotely before, explained that although not as valuable as in-person arguments, remote arguments were better than having no argument at all."), available at https://www.americanbar.org/groups/judicial/publications/appellate_issues/2020/winter/the-vanishing-oral-argument/ (last visited April 14, 2020); M. Kerbis, "Oral Advocacy from the Perspective of the Bench with Judge Mary R. Russell of the Supreme Court of Missouri," TYL, ABA Young Lawyers' Section (Sept. 27, 2018) ("She says that her court experimented with remote oral arguments, but it did not catch on. 'I am not sure how that changes the dynamics of the proceeding. I would hate to see where someday judges stay at home for oral arguments and participate by video conferencing,' she says. 'I still think having the formality and dynamics of the courtroom is important."); "Fifth Circuit to Allow Parties to Appear Remotely at Oral Argument," Florida Appellate Procedure Blog (Apr. 24, 2018) (describing pilot remote oral argument program in the Fifth Circuit of the Florida Court of Appeals); Florida Bar Continuing Legal Education, Florida Appellate Practice, §§ 5.16-23 (2017) (describing differences among district courts of appeal and noting that the First District has held arguments by remote video conferencing since January 1995); M. Dunn and R. Norwick, Report of a Survey on Videoconferencing in the Courts of Appeals, Federal Judicial Center, 2006 (describing wide range of video argument practices and capabilities across circuits), available at <https://www.fjc.gov/sites/default/files/2012/VidConCA.pdf> (last viewed April 14, 2020).

ⁱⁱOne more caveat: Although these observations flow primarily from the court's experience using Zoom, and to a lesser extent Skype for Business, we used WebEx for remote arguments in May and June. There are some minor differences in functionality across these platforms, but the core experience is pretty similar.

ⁱⁱⁱShe sat a safe distance away, I promise.

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Refresher Tips for Remote Depositions in the Time of COVID

Kristen M. Mack, Plaintiff Civil Litigation Associate at Brown & Barron, LLC

Amidst these unprecedented times of COVID-19, most litigators find themselves trying to navigate the litigation world from home or, at the very least, from an office with only essential personnel present. For anyone that practices in civil litigation, that sentence probably sounds as unnatural as they come—oxymoronic in fact. Litigation typically requires a lot of in-person interaction, whether it be in the courtroom for a hearing or trial, a conference room for a deposition, or an office with your client. We, as lawyers, are currently tasked with figuring out how to continue to advocate for our clients and keep their cases moving forward in an efficient and, most importantly, safe way despite more limited access to the courts. One tool that we are able utilize in doing this is remote depositions.

The Maryland Rules allow for the use of multiple different forms of remote depositions. For purposes of this article, the focus is going to be on two of these forms: telephone depositions and video-conference depositions. I am not going to go into detail about the rules that permit the use of these but, in general, the main rules that come into play are Maryland Rules 2-401, 2-414, 2-415, 2-416, and 2-418.

The following are meant to be general tips on conducting these

different forms of depositions.

Telephone

In Maryland, telephone depositions are allowed as long as they are taken before a person authorized to administer the oath, and it is important to note that there is no requirement that the deposition officer be in the same location as the witness—the oath may be administered by telephone. This makes telephone depositions one of the more accessible forms of remote depositions—all that everyone participating in the deposition needs is a phone and a conference line for everyone to call. But if you are new to telephone depositions, it is important that you keep a few things in mind in order for your deposition to go smoothly.

For starters, be sure that your phone and computer are charged and have strong signal. This may seem like commonsense, but if you forget, it can seriously derail a remote deposition. You should also communicate with opposing counsel before the deposition takes place about any exhibits or documents that the witness will be relying on in the deposition so that they can be sent to all parties and the court reporter prior to the start of the deposition. This will save you a lot of time once the deposition begins. You should also consider



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leaving your phone on mute unless you are speaking. This will help make everyone's job easier, especially the court reporter's.

Witness preparation is key for any deposition, but especially for a telephone deposition. Unlike an in-person or video deposition, participants do not have the added benefit of body language to help them determine when someone is finished speaking over the telephone. There is not much worse than a telephone deposition where participants continuously cut each other off mid-sentence. Everyone gets frustrated with each other, the transcript usually ends up being hard to decipher, and timely objections are nearly impossible to get in. No one wins in that situation. Be sure that the witness understands the importance of pausing a moment before answering a question. Witnesses should also know the importance of speaking up if they were cut off before finishing their answer to a question. With that said, it is just as important for the attorney defending the deposition to speak up if the witness is continually being cut off by another attorney.

Video-conference

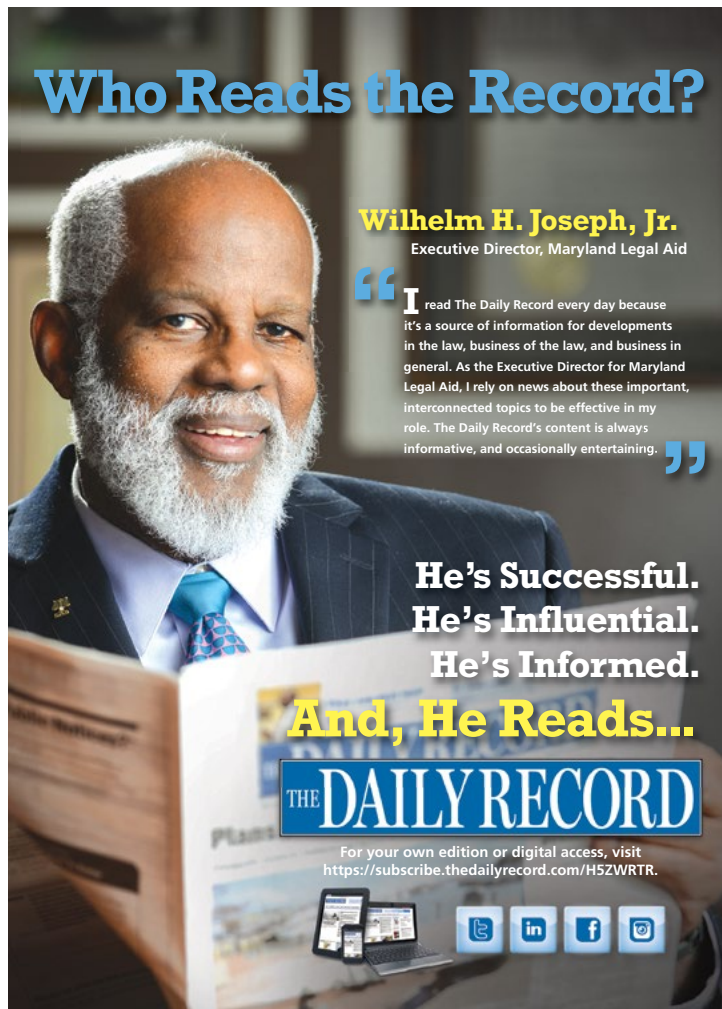
First and foremost, it is important to note that a remote video-conference deposition is not the same as a videography-based deposition. The request for a remote video deposition does not automatically equate to an agreement between the parties that the deposition be video recorded. Be sure it is clear what is being requested and agreed upon. A videography-based deposition would require a court reporter and a licensed videographer and is a little more complex

than a typical video-conference deposition. The standard remote video deposition, especially in the time of COVID-19, simply means that the parties intend to appear virtually, but the official transcript is the same as a basic in-person deposition. We are currently seeing these depositions take place with the use of platforms such as Zoom, Skype, and WebEx. This form of a remote deposition requires access to the internet and a device with a camera. Data security issues is something that needs to be taken into consideration with these types of depositions, but we will save that can of worms for another day.

As with phone depositions, you should be sure that the device you are using is charged and you should also communicate with opposing counsel before the deposition about any exhibits or documents that need to be shared with everyone. Also like with phone depositions, you should leave yourself on mute unless you are speaking. Depending on the platform you are using, there are usually shortcuts that you can use if you need to say something while on mute. As an example, in Zoom, all you need to do is hold down the space bar and you will be unmuted until you release it. It is always a good idea to connect to the meeting at least 15 minutes early to be sure there are no issues with connecting and to be sure your video and audio settings are set up properly. Be sure that the court reporter has a back-up plan in case the platform being used fails during the deposition. Usually, this would simply mean switching to a phone deposition.

Being able to see everyone via video makes it a little easier for parties to avoid speaking over each other, but it is still best practice for all parties to pause a little longer than you typically would to allow for things such as objections or to allow for clarifications if someone's connection was interrupted. Attorneys and witnesses alike should also remember to dress appropriately for the deposition. Being at home may make it feel a little less formal, but a video conference deposition is still just as important and just as serious as an in-person deposition. Everyone should be mindful of any preventable distractions to the deposition such as background noises or people or pet interruptions—as a dog mom of two, this usually means keeping their guest appearances to a minimum for me.

This is by no means a list of all of the different forms of remote depositions, but in the time of COVID-19, it does seem like these are the forms being utilized the most. Hopefully, this article will help get you into the right mindset as you prepare for a remote deposition, especially if it is not something you typically do.



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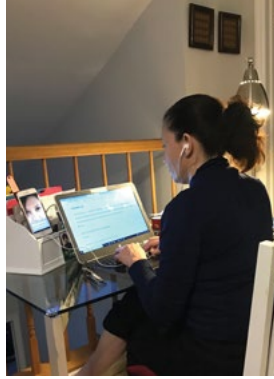
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Pro Bono Services in the Time of COVID-19

By Amy Petkovsek, Esq., Director of Advocacy for Training and Pro Bono, Maryland Legal Aid

When watching the major motion picture, “Silver Linings Playbook”, viewers hear the following quote: “You have to do everything you can, you have to work your hardest, and if you do, if you stay positive, you have a shot at a silver lining.” In the past few months of chaos and uncertainty, pro bono service may indeed be a silver lining during the COVID-19 pandemic. While many in the legal profession find themselves facing professional and personal challenges, members of the Bar Association of Baltimore City have worked hard to increase pro bono services to clients, alongside organizations such as Senior Legal Services, Maryland Volunteer Lawyers Service, The Pro Bono Resource Center of Maryland, and Maryland Legal Aid.

Senior Legal Services has continued to serve clients during this time, with a transition to remote services, in order to encourage clients, staff, and volunteers to stay safe and healthy. The pro bono attorneys and staff that work with older adult clients have worked to ensure that the ever-increasing number of clients with consumer debt-related issues receive excellent legal services over the phone. As Maryland moves in the next phase of recovery, Senior Legal Services staff are perfecting procedures to allow pro bono attorneys to safely serve clients moving forward, as all of the older adult clients are in high-risk categories, being individuals 60 years of age and over and living in densely-populated Baltimore City.



At Maryland Volunteer Lawyers Service, pro bono attorneys really stepped up to the plate. Since mid-March, MVLS has been able to place 145 pro bono cases. Some volunteers have gone above and beyond, for instance, volunteer attorney Shereen Middleton has taken 7 pro bono bankruptcy cases since the pandemic began. Additionally, MVLS has seen an influx in new volunteers joining their volunteer panel. Current service delivery for MVLS is dependent on how comfortable each client is with different technologies and their access to this technology. Many clients are most comfortable with the phone, and all clients are relieved that pro bono attorneys are still available to help them during this difficult time.

At The Pro Bono Resource Center of Maryland, the focus also shifted from providing in-person legal clinics to serving clients remotely. PBRC’s Maryland Immigrant Legal Assistance Project (MILAP) and Tax Sale Clinics, transitioned to Google G-Suite tools (including Google Voice) and WhatsApp to reach clients by phone or video. Through these platforms, clients are securely connected with volunteer attorneys and interpreters. “We are using every effort to ensure confidentiality, address any ethical concerns, and raise the comfort levels for both clients and volunteers,” said Sharon E. Goldsmith, Executive Director of PBRC. “The team has done a phenomenal job at pivoting quickly from community clinics to phone consultations with support, and so far, it has worked exceedingly well.” PBRC has seen that attorney volunteers are en-

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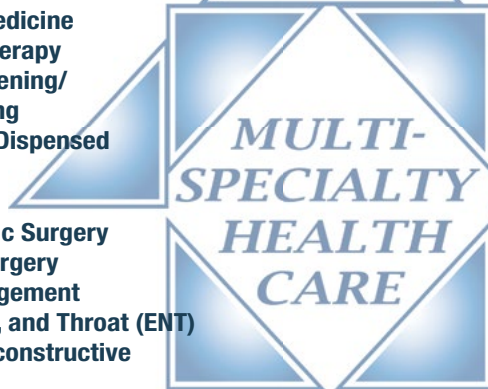
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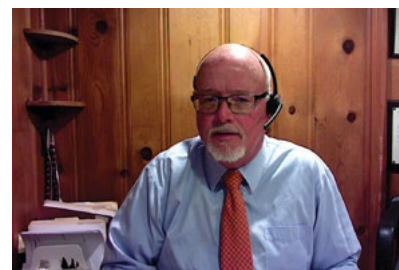
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enthusiastic about the seamless transition to remote consultations, and have appreciated the clear training and help before, during, and after their client consultations. As Snehal Massey, a PBRC volunteer, stated “with this week being so unpredictable, today’s service with your team reminded me WHY I became an attorney and reassured me how adaptable we all can really be - even during this uncertain climate.” PBRC also continues to facilitate free webcast trainings for attorneys who commit to pro bono work, and homebound attorneys are answering brief legal questions from the website Maryland.Free-LegalAnswers.org.



As with the other legal services organizations, Maryland Legal Aid is providing remote access to all services. The Lawyer in the Schools pro bono program developed a direct phone hotline and specialized email address for Baltimore City Public School families and clients. MLA’s pro bono program is utilizing livestream social media services to connect and interact with new client audiences. Further, the pro bono program at MLA has seen a large increase in private attorney volunteers, and MLA staff are providing increased virtual trainings to these new pro bono

attorneys. For instance, in mid-April, MLA held an on-line training for more than 70 federal government volunteer attorneys, who have agreed to assist low-income clients with preparation of simple will and power of attorney documents. Additional trainings have allowed volunteers to accept pro bono cases in the areas of bankruptcy, landlord tenant, family law, and employment and unemployment compensation. As MLA’s Pro Bono Program Director Julianne Tarver stated, “the increase in pro bono attorneys has allowed many more clients to receive immediate legal assistance during this time of heightened client need and uncertainty.”



Truly, it appears that increased pro bono assistance for low income Marylanders is a silver lining during the COVID-19 pandemic. As the economic impacts of this pandemic continue to emerge, clients in Baltimore City will surely have increased civil legal needs, especially in the areas of consumer debt, evictions, domestic violence protection, wills, family law, and foreclosure. If you are an attorney with time to give, please consider contacting a pro bono legal services organization to experience the joy of this silver lining.

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Remote Depositions During Coronavirus—Tips for Litigators

By *Thomas H. Barnard, Hal K. Litchford, Jamie Ballinger, Stuart Goldberg, and Peter Zuk*

Litigators are turning to remote depositions during the coronavirus pandemic to keep their cases moving. Baker Donelson attorneys offer tips for a smooth process, but also include thoughts on what to do if technology fails.

Litigators can strike a balance between actively moving their cases forward and coronavirus guidance and orders by remotely conducting depositions.

To conduct a successful remote deposition, litigators need to do some planning surrounding the platform, exhibits and deposition documents, and know what to do if the technology fails, including the following:

Vendor and Platform

Many court reporting services offer their own remote deposition platform. Once the parties agree to hold a remote deposition, the court reporting service needs the contact information for the participating parties and it will coordinate sending out invitations to the participants, for a test, prior to the deposition. As long as the parties have access to the internet, a device with a camera, and audio, they will be able to attend. It is best practice to work with the vendor at least one week prior to the deposition and arrive early.

Two of the largest remote deposition platforms are Planet Depos and Veritext Legal Solutions. These platforms offer pre-deposition trainings and have posted video recordings of the technology to demonstrate the ease of use.

Both also have advanced exhibit technology which allows easy admission and annotation of exhibits, as well as the ability to view the deposition transcript in real time. Planet Depos utilizes Zoom and advertises that its software is end-to-end encrypted, and are FedRAMP (Moderate) and SOC2 rated. Veritext Legal Solutions technology meets HIPAA (Health Insurance Portability and Accountability Act) security standards as a business associate, and meets PII (Personally Identifiable Information) federal and state requirements.

Managing Exhibits Remotely

Either forward the exhibits: (1) to the court reporting service for the court reporter's disclosure during the deposition; or (2) to the court reporting service and all counsel/pro se deponent. The best practice is to provide hard copy exhibits to the court reporter and opposing counsel in a sealed envelope. Then, stipulate

that any hard copies of exhibits will be opened, on camera, once the deposition begins. If the court reporter is not in the same room with the deponent, confirm: the court reporter received the exhibits, the exhibits are accessible, and that the exhibits are formatted properly.

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Best practice is to consult with/defer to the court reporter on all issues related to production and management of exhibits, subject to potential issues such as preferences could cause the deponent/your client.

Days Before the Deposition

When documents ordinarily would be produced at the deposition, best practice dictates that, instead, the parties negotiate an agreement that the documents will be produced a certain number of days prior to the deposition. Such production effectively acknowledges that the deponent complied with the subpoena or local/court rule requiring the deponent to “bring” requested documents to the deposition.

- Remote deposition requires integration with various audio/video equipment and, best practice demands multiple considerations, such as:
- where the deponent will be physically located during the proceeding;
- how the deponent plans to connect to the remote deposition;
- whether the deponent has necessary video equipment to conduct the proceeding;
- that the proper video conference link was properly distributed to all parties, including any of your clients;
- whether the court reporter will physically appear, to be with the deponent, during questioning; and
- working with your court reporting service to have it run a couple of practice questions between all connections and present a representative exhibit to ensure strong audio/video connections.

Finally, best practice, is to anticipate technological failures. That way, in the event the video system fails, you can, as seamlessly as possible, switch to a telephonic deposition (typically, this is done by working with your court reporter).

In the event this happens, and before actually resuming the deposition telephonically, remember to place on the record the time the system crashed, the time the telephonic deposition begins, and that the parties have all agreed to continue the telephonic deposition.

Day of the Deposition

The appearance of propriety and the integrity of the deposition must be maintained. The following are suggested best practices to achieve those ends:

- place a stipulation on the record that the deposition will be conducted remotely, by videoconference, and that the oath will be administered remotely;

- where applicable, orally cite to the rule in your jurisdiction that allows for oaths to be orally administered in that format;
- request, on the record, that all electronic devices, not necessary for the deposition, be put on silent;
- demand that the deponent, at all times, be visible, on screen;
- request that chat functions be solely controlled by the court reporter; and
- obtain an affirmation from the deponent that they will not communicate with anyone, in any form, during the deposition.

Many jurisdictions place time limits on counsel’s ability to conduct a deposition longer than eight hours—consider stipulating to extend such time to allow for what you can expect will be longer—due to procedural hurdles, increased frequency of breaks, potential technical difficulties, presentation of exhibits, etc.

During the Deposition

Allow the court reporter ample time to put all appearances on the record. If not speaking on the record, mute your microphone to avoid background noise and other distractions. Speak slowly, one at a time, read slowly from documents, and, request that the deponent spell out the names of each identifier (name, street, witness, etc.) to ensure an accurate record.

Finally, review the procedural differences that were agreed to so there is no confusion as to how exhibits will be disseminated, whether the record will remain open, etc.

This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.

Author Information

Thomas H. Barnard is a shareholder in the Baltimore office of Baker Donelson and is vice chair of the Government Enforcement and Investigations Group.

Hal K. Litchford, a shareholder in Baker Donelson’s Orlando office, focuses on the litigation, trial and appeal of antitrust, trade regulation and other significant business-related disputes, including class actions.

Jamie Ballinger, of counsel in Baker Donelson’s Knoxville office, concentrates her practice in employment,

professional liability and corporate issues in the health care, hospitality and manufacturing industries.

Stuart Goldberg is an attorney in Baker Donelson’s Baltimore office and a member of the Labor & Employment Group.

Peter Zuk is an attorney in Baker Donelson’s Washington, D.C., office and concentrates his practice in white collar criminal defense and civil litigation.



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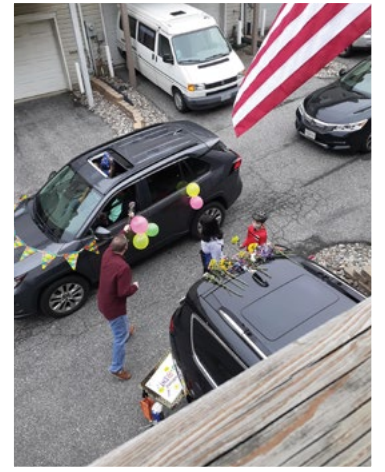
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Drive-By Celebration for Incoming BABC President Darren Kadish

May 24, 2020

Maybe we couldn't give incoming President Darren Kadish the Annual Meeting with all the pomp and circumstance he so deserves, but we could give him one heck of a Drive-By! Congrats Darren! We wish you all the best for a great year as leader of the BABC.



YLD's Evening of Networking and Learning

March 5, 2020

Thank you to all who came out to the YLD's Evening of Networking and Learning on Thursday, March 5, 2020. Thank you to our panelists: Natalie Amato, Angela Pallozzi, Divya Potdar, Hon. Michael Studdard, and Hon. Anthony Vittoria. Special thanks to our sponsor, The Daily Record, and to our YLD Secretary, Samuel Pulver, for organizing the event.



CLE – What's New Mediators? Woah, Woah, Woah!

March 5, 2020

On March 5, the Bar Association of Baltimore City, joint with the and Baltimore County Bar Association, presented a CLE, "What's New Mediators? Woah, Woah, Woah! Thank you to the BABC and BCBA Alternative Dispute Resolution Committees for organizing the program.



CLE – Professional Ethics: Avoiding AGC Complaints When You Can, Win Where You Must

March 5, 2020

A wonderful turnout for our CLE, “Professional Ethics-Avoiding AGC Complaints Where You Can, Win Where You Must,” on Thursday, March 5. Thank you to our sponsors, the Monumental City Bar Association and Miles & Stockbridge. Special thanks to our speakers, The Honorable Dolores Dorsainvil and Glenn Grossman, and to Fabian Walters and Aaron DeGraffenreidt for organizing the program.



YLD Public Service Event at the MD Food Bank

February 19, 2020

The YLD Public Service Committee held a community service event at the Maryland Food Bank on Wednesday, February 19. Over the course of two hours, our volunteers packed over 8,000 lbs of food! Thank you to our volunteers!



Welcome New BABC Members!

Joined February 2020 through May 2020

Delali Agblevor.....Law Student
 James Almon, Esq.Regular Member
 David Manuel Bana, Esq.Regular Member
 Stephanie V. CastroLaw Student
 Katie Chang, Esq.Regular Member
 Joshua Paul Coleman, Esq.....Regular Member
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