

New York Law Journal

A Virtual Report Card

Our new virtual reality has attained a report card that boasts mostly “A’s” across the law practice board.

By **Peter J. Galasso** | September 17, 2021

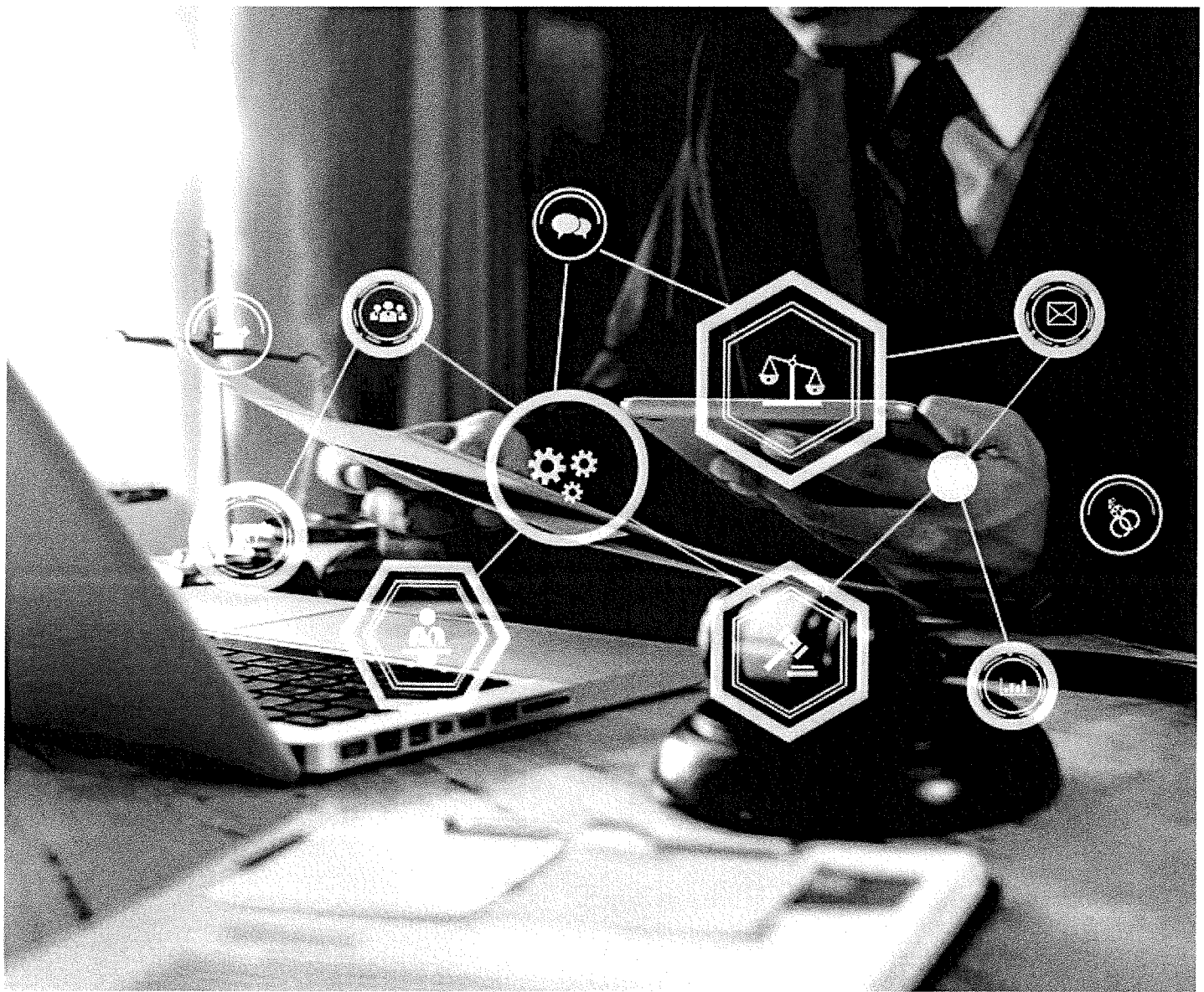


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Over the past several months, I have informally canvassed my colleagues' reactions and opinions regarding the pros and cons of practicing law remotely. While clearly an inexact survey, the anecdotal information garnered thereby has reflected that our new virtual reality has attained a report card that boasts mostly "A's" across the law practice board.

Turning first to my primary area of practice, it is clear that the pandemic has had an unexpected yet positive impact on how the court system treats divorcing couples. Virtual conferences amass huge savings for our clients. By eliminating in-person appearances to address the parties' episodic mini-dramas, a whole array of financial and emotional benefits flow.

For all areas of practice, the litigation costs to the parties are dramatically and indisputably lessened through the use of virtual conferences. This observation is especially true in Family Law matters, which, unlike other civil litigation, have historically required that the parties and their attorneys appear at each court conference. Through remote conferencing, counsel for feuding couples generate a fraction of the fees formerly incurred by clients whose attorneys were historically required to appear in court on their behalf. Comparable savings are likewise realized on the fees charged by those attorneys appointed to represent the parties' children. No travel time fees and only minimal "waiting around" fees necessarily lighten the clients' attorney fee burden, that is all too frequently inflated by the costly inefficiency of court appearances.

Likewise, the emotional stress experienced by divorcing parties the night before and the morning of a scheduled court appearance, traveling to the courthouse, parking their cars, entering the courthouse passing through the metal detectors, looking anxiously for their attorneys, feeling the dread of the inevitable face-to-face encounter with their soon-to-be ex-spouse, or sitting uncomfortably for what feels like an eternity waiting for their case to be called, are all avoided. The parties also do not need to take a day off from work to participate in a virtual conference. Less money, less stress. What's not to like?

Another unexpected benefit of remote conferencing is that while client billing is reduced, attorneys can now accept engagements in counties they never braved to venture in the past. Driving to an appearance in Kings or Richmond County for an attorney based on Long Island can be an absolute nightmare. Moreover, charging for the tedious travel time often quadruples the cost to the client. A client's choice of an attorney is substantially broadened by remote conferencing. In our new virtual reality, accepting an engagement in a distant county no longer poses the onerous impracticalities or hardships historically encountered. Aside from the savings on dry cleaning and gas spawned by remote Team conferences, the formerly impossible can now be achieved with wonderful alacrity. At 9:45 a.m., one can appear for a remote conference in Suffolk County and follow that with a remote conference in Manhattan a half-hour later, without skipping a beat. Between those court appearances, attorneys can remain occupied attending to other matters and thereby shorten their workday. Of course, although charging clients for traveling to a distant venue and waiting for their case to be called was a staple windfall for many members of the Bar, the gravy train of unnecessary billing opportunities had to end sometime.

On the other hand, I have heard from my friends who populate the insurance defense bar that billing for court appearances formerly represented half of their workday. Substituting those lost billable hours with hours attending to other tasks has lessened the reduction in revenue but not replaced it. Conversely, counsel representing plaintiffs prosecuting tort claims on a contingency fee basis have clearly benefitted from the reduction of uncompensated time spent traveling to and waiting around in court for their cases to be called.

For Big Law firms, the pandemic has certainly produced healthy benefits by allowing its overworked members to work from home and by the patently obvious realization that they may not need as much office space going forward. The revenue and profit statistics reported by the New York Law Journal's accounting of various Big Law firms seem to show that the pandemic represented barely a financial blip, if not a profit.

Because judges schedule their conferences at specific times and usually allocate about 15 minutes for each conference, counsel no longer need to waste time at court pretending to look busy. The pre-arranged brevity of the conference also reduces opportunities for an adversary's judicial pandering or self-laudatory anecdotes. Efficiency and equanimity seem to follow closely behind the rigidity of the virtual conference.

Another unexpected positive consequence of our virtual reality is the judiciary's greater willingness to accommodate attorneys in need of emergent judicial oversight. Scheduling a short virtual conference with counsel on a moment's notice allows judges to be more hands on in helping the Bar better navigate their way even when they are situated in their homes. Moreover, having the courts' immediate and collaborative input as a case moves forward can prove invaluable. From a trial or hearing perspective, to the extent they continue to be heard virtually, counsel are also now wisely encouraged to be more open to stipulating to the introduction of evidence and to limiting the issues to be tried at a virtual trial, given everyone's learning curve with the new technology.

Although judges can better control their schedules by designating the exact time for all counsel to connect to a Microsoft Teams conference, a handful of judges still believe that they can get more done on a case when situated in a room with counsel rather than when communicating with them on a computer screen. Perhaps. But Team conferences also permit the judge the ability to more rapidly interact with counsel, whether together or individually. As a sign of the times, the awkward shuffling of counsels' feet traversing in and out of chambers during a negotiation has now been replaced by a keyboard function.

Conversely, virtual trials are definitely hampered by the absence of a courtroom's ambiance and dynamism. Most trial attorneys use movement, tonality, drama, and body language, among many other tools, to make their arguments, which are largely lost at a virtual trial. Hands down, the courtroom is still the best place to try a case.

This report card would not be complete without reveling in how wonderfully peaceful appellate arguments are when made from the comfort of one's office. Forget about the anxiety over arriving on time, finding parking, or sitting in traffic on the trip home. Depending upon your technological skills, you can construct dual screens that allow you to glance over instead of down as you weave your way through your argument. First time participants must beware of the intimacy of the argument as the screen is suddenly filled by the enlarged face of the jurist asking a question. Feels a lot like you are talking with each inquiring Justice at a coffee house. Plus you can hit the mute button and generate billable hours as the court's calendar unfolds before reaching your case. But for an aberrant technical issue, arguing in the Appellate Division is now a far more efficient expenditure of attorney time.

If the concerns about COVID-19 completely vanished next week, that happy event should not alter the direction or expansion of our new world order. Other than to celebrate nostalgia, a persuasive case cannot be made to return to the broken and inefficient system of jurisprudence that historically ruled our lives. The public truly deserves a virtual reality in addressing their disputes. Despite its pandemic roots, this change was not only welcome, it was long overdue.

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