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THE LEGAL

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Professionalism and Technology in Practice

The Chief Justice's Commission on Professionalism thanks all who assisted with its December CLE discussing professionalism and the use of technology, recapped in this article.

BY KARLISE Y. GRIER

On Dec. 17, 2020, the Chief Justice's Commission on Professionalism held a CLE to discuss professionalism and the use of technology. Lawyers who may have traditionally worked on opposite sides of cases worked together on the Judicial Council/Administrative Office of the Courts COVID-19 Task Force to devise solutions that can help reduce the backlog of cases caused by the COVID-19 pandemic.¹ Hon. T. Russell McClelland, chief judge, State Court of Forsyth County and vice-chair of the COVID-19 Task Force, discussed the havoc wrought in his courtroom by the pandemic. Pre-pandemic, he could fit 180-200 people into his largest courtroom. Now, following the social distancing guidelines outlined by the Centers for Disease Control and Prevention, he is limited to a maximum capacity of 23 people. Supreme Court of Georgia Chief Justice Harold D. Melton encouraged judges to conduct court proceedings remotely as much as possible.²

Throughout the CLE, lawyers, judges and other legal professionals shared their thoughts on professionalism as the legal

systems works to use technology to address some of the challenges brought about by the pandemic. Adam Malone, task force member and executive vice president of the Georgia Trial Lawyers Association, articulated one of the professionalism themes heard throughout the CLE: Lawyers, as officers of the court, need to set their adversarial swords aside and address the backlog. If the courts are backlogged, clients suffer. Additional insights and topics of discussion shared by lawyers and judges during the CLE are highlighted below.

Who Should Be in Charge of the Videoconferencing Platform?

Panelists were asked their thoughts on a district attorney's office running the videoconferencing platform during a hearing as opposed to the judge's office. One judge acknowledged that during the initial two weeks of remote proceedings, the district attorneys did run Zoom until the judges got up to speed. The judge said it was not ideal, but it allowed the court to keep the cases moving.



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Hon. Shawn LaGrua, then a member of the Fulton County Superior Court bench,³ reminded participants that in some circumstances, lawyers and judges may have to make difficult choices on a case-by-case basis. Is it most important to have the case heard although an assistant district attorney may need to run the videoconference, or is it most important to wait until the judge can learn to do it or find an individual who can? LaGrua further reminded the audience that judges have access to varying amounts of resources throughout the state, and urged professionals to continue to work together to determine what solutions work best for each community. She said that if the parties do agree to allow one of the parties to run the videoconference, the lawyers should work together to set up parameters in advance. Hon. Robert “Rob” D. Leonard II, chief judge, Superior Court of Cobb County and chair of the Judicial COVID-19 Task Force Technology Committee, said judges have an obligation to learn to use the technology. If a judge is unable to use the technology, then

the judge should find someone on his staff or at the court to do it. He acknowledges that, ideally, you don’t want one party to have control over the Zoom session.

Discovery Disputes in Civil Cases

McClelland shared that the task force has developed some best practices for discovery disputes in civil cases and drafted a handout based on those practices that is currently under review. He reminded lawyers that the starting point for any discovery dispute is found in the Uniform Rules of Superior Court Rule 6.4. The rule requires lawyers to have a meaningful conversation about the dispute, not just an exchange of letters or emails. Hon. Alvin T. Wong, judge, State Court of DeKalb County, echoed the sentiment, “One of the most important tools [lawyers have] is lawyers talking to each other. Personal contact.” Don’t just write a letter or an email. At a minimum, lawyers should talk to come to an agreement about the essence of the discovery dispute. “Dur-

ing the pandemic era, it is more important than ever that you talk to each other,” said Wong.

David N. Nelson, task force member and the immediate past president of the Georgia Defense Lawyers Association, shared a story of how having a telephone conversation about a discovery dispute resolved not only the discovery dispute, but the entire case. McClelland then outlined the best practices for discovery dispute. Lawyers should submit a Notice of Discovery Dispute that is limited to one page. The one-page notice should set forth the nature of the discovery dispute, the efforts the parties have made to talk and resolve the discovery dispute and the specific relief requested. The other side would have the opportunity to submit a one-page response. The judge could then let the parties know how the court wished to proceed: with a conference call, a preliminary ruling or a hearing. McClelland said judges may decide to include the best practices in a standing pre-trial order, or lawyers may want to suggest the procedure to judges.



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Discovery Exchanges in Criminal Cases

One attendee raised questions about the exchange of discovery in criminal cases. During the ensuing discussion, the panelists used as a starting point the premise that the prosecutor does not have to provide discovery until 10 days prior to trial.⁴ Since very few trials might proceed in the near future, the question arose as to whether the lawyers in criminal cases needed to exchange discovery. Jimonique Rodgers, task force member and former deputy director and interim executive director of the Georgia Public Defender Council, addressed the question. “We recommend the digital sharing of discovery,” Rodgers said. “It is important for prosecutors and defense attorneys to work toward a resolution of cases. If lawyers wait until you have to do it under the statute, you are not operating in the spirit of ‘let’s try to resolve these cases.’” Exchanging discovery as soon as possible moves away from the old paradigm of the scorched-earth approach to a new para-

digim of how can we resolve cases that can and need to be resolved. “Defense counsel are willing to do that when it benefits the client.” LaGrua added that the more information people have, the more likely the case will move toward resolution. If the prosecutor is in a position to do so, turning over the information as soon as possible is more likely get a case resolved. In addition, if defendants have information to provide that can help the case reach a resolution, it is in the defendant’s best interest to do so. “This is not the time on either side to play hide the ball and adhere to 10 days when we know we are not going to have a trial for some time going forward. ... We all need to be working together,” LaGrua said.

Mediation

Tracy Johnson, executive director of the Georgia Commission on Dispute Resolution, shared that there was a bit of regrouping when the Supreme Court first declared the judicial emergency

in March 2020. Shortly thereafter, the commission on Dispute Resolution engaged national trainers to teach Georgia mediators how to conduct remote mediations. The Commission also clarified its rules to encourage remote mediations. Johnson reported that mediators have transitioned well to the platform, noting that remote mediation has allowed courts to make mediation more accessible. For example, some circuits didn’t have any mediators. Remote mediation has provided an opportunity for litigants in those areas to access mediation now. Remote mediation has also created more accessibility since mediators are no longer confined to working during the hours in which courts are operating. Depending on the availability of all parties involved, remote meditations can happen at any time. According to Johnson, the flexibility of mediation really embodies the spirit of *A Lawyers Creed and the Aspirational Statement on Professionalism*. Mediation encompasses civility, courteousness, fairness and cooperation.

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Stipulations and Admitting Evidence

The panelists also discussed practical professionalism pointers in conducting a remote hearing. LaGrua reminded attorneys that emailing documents to the judge's staff is not the same as having documents admitted into evidence; lawyers still need to ensure that the documents they wanted in evidence and as part of the record were properly admitted. Malone added that as he prepares for remote proceedings, he now assumes that the other side can authenticate documents and lay a proper foundation. As a result, he now works with opposing counsel to stipulate to authentication and foundation prior to the hearing. Additionally, he also stipulates to the admissibility of documents, when possible. Tina Shadix Roddenbery, attorney advisor to the task force, shared that during a recent bench trial, she stipulated to all of the facts and documents with the exception of two issues. She said she never would have considered doing so prior to the pandemic.

Access to Justice and Language Access

Cathy Vandenberg, a task force member and the deputy director of Atlanta Legal Aid Society, reminded the audience that not everyone has access to technology. She said that while many people in the metro-Atlanta area have smartphones, this was not necessarily the case in some parts of rural Georgia, which is served

by the Georgia Legal Services Program. As a result, some people will still need to come to court in person to have their cases resolved. She praised people for thinking creatively to solve access issues, especially for self-represented litigants. The Dougherty County Law Library and Middle Georgia Access to Justice Project are two of the organizations that are working to bridge the technology gap. Maria Mackay, certified legal interpreter and a member of the Chief Justice's Commission on Professionalism, discussed some of the challenges courts have faced regarding the language barrier as a result of the pandemic. Wong advised the audience that Zoom had a module for interpretation. He also stated that when he had cases in which the litigants spoke a language not commonly used in the court, he sometimes used the language line.⁵

Final Thoughts

McClelland and Wong encouraged judges to proactively review and conduct pre-trial conferences in their cases. Elizabeth Fite, president-elect of the State Bar of Georgia, encouraged lawyers to "give each other grace but explain to clients that we are still in court," even if it is a remote proceeding. Leonard shared, "Be patient and accommodate people." Roddenbery reminded everyone to read and take to heart *A Lawyers Creed* and the *Aspirational Statement on Professionalism*.

The Chief Justice's Commission on Professionalism appreciates the time and assis-

tance of everyone who participated in the CLE. A complete list of speakers and written materials are available on the Commission's website, www.cjcpga.org.⁶ ●



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Endnotes

1. For more information on the Judicial Council/Administrative Office of the Courts Judicial COVID-19 Task Force, see <<https://georgiacourts.gov/judicial-covid-19-task-force/>>.
2. See also <<https://www.gasupreme.us/wp-content/uploads/2021/01/10th-SJEO.pdf>>.
3. After this article was written, Judge LaGrua was sworn in as a justice of the Supreme Court of Georgia.
4. See generally O.C.G.A. § 17-16-22 and O.C.G.A. § 17-16-23 (misdemeanor cases) and O.C.G.A. § 17-16-4 (felony cases).
5. For more information on interpreters, visit the website for the Georgia Commission on Interpreters <<https://ocp.georgiacourts.gov/commission-on-interpreters/>>. The State Bar of Georgia's Law Practice Management Department can provide information about various videoconferencing platforms. See <<https://www.gabar.org/committeesprogramssections/programs/lpm/>>.
6. See <<http://cjcpga.org/121720-cjcp-cle/>>.