

Litigating Virtually:

Lessons for succeeding in a new environment

Although many cities and courts are beginning to reopen, virtual litigation remains the primary means of appearing before the court and attending depositions and hearings — and may be here to stay for the foreseeable future. The following are three of the most important lessons Kramer Levin's attorneys have learned over the past few months of virtual litigation.



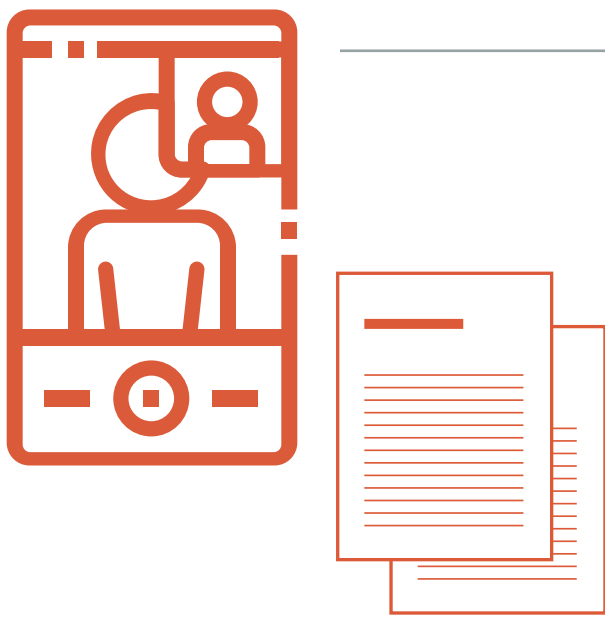
Choosing the right virtual medium

Videoconferencing has become vastly more popular over the past few months, but sometimes, simpler is better.

Traditional conference calls use less bandwidth and are usually more stable than videoconferences.

Consider saving **video** for instances when participants' physical appearance matters or when the ability to observe a participant's facial expressions is important.

Depositions and evidentiary hearings, as well as other presentations, will require the use of a videoconference interface, especially if there are exhibits — in which case, **document-sharing capabilities** or screen-sharing are especially helpful.



Setting up properly for videoconferences

Setting up your physical space will involve some trial and error. Set up a test run with a colleague. You will be more effective if the judge, opposing counsel, and witnesses can see and hear you clearly.

Put your **camera at or above eye level** and angled toward your eyes. If you are using a laptop, raise it up using a stack of books or laptop stand. Sit about an arm's length from the camera.

Set up your device as close to your **wireless router** as possible. Use a speed test at various places in your home to find the best spot.

If you have some flexibility, **choose a backdrop** that minimizes distractions and looks professional.



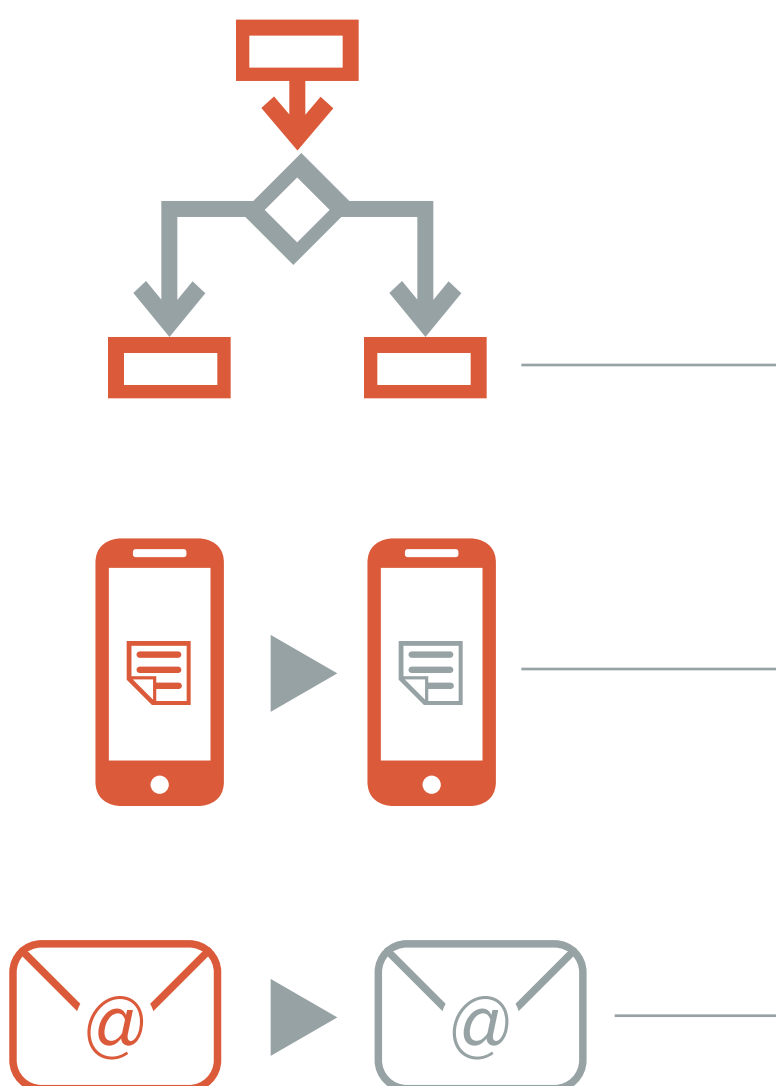
Conduct and communication during the event

In a traditional setting, there is already some distance between you and your adversary and between you and the judge or mediator. But virtual litigation also separates you from your team and your client.

Before the event, **make a plan for how you will communicate** with them. Set clear guidelines and strategy — for example, by charting out a decision tree based on witness responses.

To **"pass notes"** with colleagues during a litigation event, look for the closest digital equivalent to the usual practice of passing notes on Post-its or notepads, often tossed at the end of the deposition or hearing.

Email is likely the best option for communicating with a client during a deposition or hearing, especially if your company's policy requires maintaining a record of any legal advice or attorney-client communications.



For more information, contact

Samantha V. Ettari settari@kramerlevin.com
 Jennifer M. Klein jklein@kramerlevin.com
 Aaron L. Webman awebman@kramerlevin.com
 Danielle Moody dmoody@kramerlevin.com