



Best Practices for Courts in Zoom Hearings Involving Self Represented Litigants

Here are some quick tips on best practices for handling cases involving self-represented litigants (SRLs) on a remote basis.

1. Important Information:

- a. **Lack of Internet or Reliable Internet:** Many people do not have access to the internet, or reliable internet, in the home. Public access to the internet via libraries, coffee shops, and other local options is problematic due to privacy issues and may not currently be an option due to stay in place orders.
- b. **Limited Phone Data/Call Minutes:** Some people may only have phones with a limited number of call minutes or data plan minutes, so they may not be able to use their phones to participate in a video hearing or even to participate by phone. You may need to work with the litigant to determine how they can have meaningful participation in the hearing. We do not have a solution for this problem, and welcome your ideas
- c. **Email:** Some SRLs may not have email. Those who have an email address may not be able to check their email due to a lack of internet access. Those who have access to their email may not understand the importance of checking their email regularly for information about their case. Please explain the need to check email daily or arrange an alternative way to contact SRLs for notice of upcoming hearings.
- d. **Consequences of Failing to Act:** Many people do not understand the consequences of failing to respond to a case or act timely in a case. Please explain these consequences to litigants.
- e. **Plain Language.** When communicating orally or in writing with a SRL, please use language at a 3rd grade reading level when possible. Short, clear sentences are best. Avoid legalese (for example, most people do not know what “default” means), terms of art, and acronyms. The National Association for Court Management developed a [Plain Language Guide](#) in 2019 on how to incorporate plain language into court forms, websites and other materials that may be useful to you.
- f. **Caretaker Responsibilities and Privacy Concerns:** Many schools, preschools, day care centers, in-home nursing care and the like have closed. Due to social distancing and stay at home orders, people may not have access to a friend or family member who can take over these responsibilities during a hearing. Be sensitive to a litigant’s ability to participate in a hearing without interruption. Privacy concerns are especially important in cases involving domestic violence or children in the household. Make reasonable accommodations to address privacy concerns and a litigant’s need to give medication to a family member, feed a baby, etc.

2. Notice of Hearing and Materials to Provide with Notice to SRLs

- a. **Send written notice in plain language by mail to the address on file when possible.**
 - i. Comment: Email notice is challenging for the above-mentioned reasons.
- b. **Contents of Notice of Hearing.**
 - i. Make sure your form notices state that the hearing will occur by video conferencing software, Zoom, and that the party should not to appear in person at the courthouse.
 - ii. Make sure to include basic information on what technology and equipment will be needed to participate in the hearing – such as reliable access to the internet, a phone,

laptop, tablet, desktop, etc. – and what to do if they do not have access to those things.

- iii. Include a short notice in Spanish, and any other languages that are common in your court, instructing SRLs with limited English proficiency to contact the court to get language assistance such as translation of the notice and the materials provided with the notice.
- c. **Instructions on How to Use Zoom + Contact Person:** Provide step-by-step instructions in plain language on how to access and use Zoom, including contact information for a person who can assist them if needed. Email alone is not helpful for those without internet.
- d. **Information on Court Procedure + Contact Person:** Provide step-by-step information in plain language on court procedure for hearings, including how to submit exhibits for the hearing and contact information for a person who can assist them if needed.
 - i. *Note:* TAJC has included basic information on court processes and procedure in its Tips for Self-Represented Litigants in Zoom Hearings that can be modified to accommodate your local rules and processes and distributed to litigants.
- e. **Provide a way for SRLs to inform the court of the following:**
 - i. Their phone number and email address, if any;
 - ii. Lack of internet or reliable internet;
 - iii. Lack of ability or limited ability to access the hearing by phone;
 - iv. Lack of ability to submit evidence electronically;
 - v. Lack of childcare or coverage for other caregiver responsibilities;
 - vi. Whether they are ready to have the hearing or need a continuance;
 - vii. How long they think the hearing or trial will take to present their side of the story, including witnesses and evidence;
 - viii. Whether they need any ADA accommodations (*Coming Soon* – an addendum on accommodations);
 - ix. Whether they, or a witness, needs an interpreter, and if so, what language(s); and
 - x. How many witnesses they want to testify on their behalf.
- f. **Develop a Plan B**
 - i. Develop a way to handle hearings involving SRLs or parties without reliable access to the internet, phone, tablet, laptop or desktop computer.
 - ii. Develop a plan for handling virtual hearings when technological difficulties make it impractical to continue the hearing.
- g. **Provide a list of legal resources serving your area:**
 - i. *2019-2020 State Bar Referral Directory.* The Legal Access Division of the State Bar of Texas publishes a list of local and statewide legal aid and pro bono providers as well as lawyer referral services in their [Referral Directory](#).
 - ii. *Texas Law Help.* The Texas Legal Services Center, a legal aid organization, hosts [Texas Law Help](#), a website that provides free information and resources, including a LiveChat feature for low-income people.

3. Hearings:

- a. **At the beginning of the hearing:**
 - i. *Address potential technical difficulties.*
 - 1. Ask litigants about the reliability of their computer, internet, or phone.
 - 2. Tell litigants what to do if they experience problems with their internet, computer, or phone, such as instructing the litigant to click on the Zoom link again if their connection drops, or to call back in to the Zoom number provided.

3. Provide litigant with a call back number not associated with the Zoom hearing in case they cannot reconnect.
 4. Obtain the litigant's phone number or other emergency contact in case it is needed.
- ii. *Assess need for ADA accommodations or an interpreter.*
 1. Ask litigant if they need ADA accommodations or an interpreter.
 2. Address as needed.
 - iii. *Caretaker responsibilities and privacy issues.*
 1. Ask litigant if there any caregiver responsibilities or privacy issues.
 2. Invite them to let you know if these issues arise during the hearing.
 - iv. *Overview of hearing.*
 1. Review what will happen during the hearing in plain language.
 2. Provide information about the proceeding and any procedural requirements involved, including how to upload evidence. If the litigant is participating by phone only, tell the litigant how to provide their evidence to the court.
- b. During the hearing:**
- i. *Oath.* If a party is unable to participate by video, have them recite the oath while on the phone rather than require a notary. It is impossible to have a notary present when stay in place orders exist. Additionally, if the litigant does not have access to the internet at home or a computer, they likely do not have the funds to pay a notary.
 - ii. *Reasonable Accommodations.* A judge may make reasonable accommodations to ensure all litigants the right to be heard without violating the duty to remain impartial. A judge may consider the totality of the circumstances, including the type of case, the nature and stage of the proceeding, and the training, skill, knowledge, and experience of the persons involved when making reasonable accommodations. For example, a judge may:
 1. Construe pleadings and briefs liberally,
 2. Ask neutral questions to elicit or clarify information,
 3. Modify the mode and order of evidence as permitted by the rules of procedure and evidence, including allowing narrative testimony,
 4. Explain the basis for a ruling, and/or
 5. Inform litigants what will be happening next in the case and what is expected of them.
- c. At the end of the hearing**
- i. *Litigant's email address.*
 1. If litigant has access to reliable internet at home (not through a library or public place), ask litigant if they have an email address.
 2. If so, tell them that notices of future court hearings will be emailed to the email address they gave you.
 3. Admonish them to check it daily and warn them of the consequences of missing a hearing.
 4. Tell them how to contact the court if their access to internet or phone number changes while their case is pending. Many people will lose access to their phones and internet if they lose income due to COVID-19. If that happens, they will need to receive notices by mail.
 - ii. *Review next steps.* Tell the litigants what will happen next, what is expected of them, and inform them of the next hearing date, if known.

Appendix
Accommodations for Persons with Disabilities
By Brian East, Senior Attorney, Disability Rights Texas

1. Introduction

The ADA and other laws apply to state and local courts,¹ as well as to attorneys.² These laws prohibit disability discrimination, and generally require that courts and lawyers provide equal access and an equal experience. Specific obligations include:

- Providing auxiliary aids and services (e.g., interpreters, captioning) to ensure effective communication
- Providing accessible electronic and web content
- Providing reasonable modifications to policies and practices
- Avoiding criteria or methods of administration that have a discriminatory impact (whether done directly or via contracts, etc.)

2. Give instructions for requesting modifications or auxiliary aids and services

- Invite people to ask for any modifications or auxiliary aids and services
- Describe in detail how parties should make the request
- Do not require a specific form or rigid adherence to the court's preferred process for requesting accommodations
- Avoid inflexible deadlines if possible
- Make sure the information is available in accessible formats

3. When attorney, party, or witness is blind or has low vision

- Ensure that web pages are accessible to and usable by screen-reader technology³
- Use a video platform that is usable by screen-reader technology (Zoom is considered generally accessible to blind individuals who use screen readers)
- Make sure that any documents being used, including exhibits, are in accessible formats
 - Word and PowerPoint documents have built in accessibility checkers
 - PDF documents are only accessible if the Select Text function works (i.e., OCR)
- Ensure, to the extent possible, that any documents are circulated in advance
 - Understand that Share Screen functions may not work for individuals who are blind
 - Understand that functions done during the hearing such as zooming in and highlighting may not translate
- Design any kiosks with accessible features (e.g., “talking,” etc.)⁴

¹ 42 U.S.C. § 12131(1).

² 42 U.S.C. § 12181(7)(F).

³ An accessible website generally means it complies with WCAG 2.0 Level AA. See 1 T.A.C. § 206.70(a). *See also* Accessibility Policy of the Texas Judicial System is online at <https://www.txcourts.gov/site-policies/accessibility-policy/>.

⁴ For an example of an accessible kiosk, see the 2010 ADA Standards for Accessible Design, Sec. 707 (“Automatic Teller Machines and Fare Machines”), available online at <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#pgfld-1006537>.

4. When attorney, party, or witness is deaf or hard of hearing

- Determine the primary or preferred method of communicating (e.g., American Sign Language; Signed Exact English, real-time captioning [CART], etc.)
- Have ongoing contracts with interpreting and captioning services
- When the primary method of communication is sign language:⁵
 - Remember state law requirements for interpreters⁶
 - Arrange for interpreter team to join video hearing as official interpreters
 - Ensure that interpreters are court-certified and fluent in the relevant sign language
 - Do not use the telephone “relay” service for interpreting
 - Do not use back and forth writing with deaf individuals unless they request it
 - Do not rely on lip-reading
 - Avoid using TTD or TTY machines
- If the deaf individual has an attorney or advocate:
 - Ask attorney/advocate if she will be using a “table” interpreter (i.e., a separate interpreter for private discussions)
 - Be prepared to place advocate, client, and table interpreters into a private “room” for confidential discussions
- For real-time captioning:⁷
 - Use a professional CART provider rather than assuming a court reporter can do it
 - Avoid automated captioning services or programs
- Lip-reading:
 - Do not rely on lip-reading for deaf individuals who primarily communicate by sign
 - Occasionally, individuals who are hard of hearing (and particularly those who do not sign) do use lip-reading as part of their communication process, and if that is the case, make sure that speakers are close enough to the camera and well lit.

5. Other Common Modifications/Accommodations

- Recognize that some individuals will use a telephone to connect, and may have no webcam.
- Ensure that materials and information use plain language.
- Even after courts re-open, consider remote attendance if needed as a reasonable accommodation because some people have the needed equipment at home and prefer to use it due to familiarity, etc.
- If remote attendance is impossible, consider continuing the hearing to a time that minimizes risk of exposure to COVID-19.
- If remote attendance is impossible, consider relocating to a place that allows more distancing.

⁵ The ABA’s Commission on Disability Rights has published step-by-step instructions for using interpreters on the Zoom platform, available online at https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/covid/zoomaccessibility.pdf.

⁶ See <https://www.txcourts.gov/lap/>.

⁷ The ABA’s Commission on Disability Rights has published step-by-step instructions for providing Closed Captioning on the Zoom platform, available online at https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/covid/zoomaccessibility.pdf.