

Lessons from a Year of Living Virtually



Rob Buchanan

I am writing this column on the eve of the first in-person State Bar of Michigan Board of Commissioners meeting in 18 months. I've had good virtual relationships with these incredible people, but several of them I have never met except through my computer screen. Instead of bonding around the boardroom table in Lansing as we did in the past, we've Zoomed together for more than a year — laughing over embarrassing failures to mute or unmute, chuckling about absurd frozen faces during internet crashes, and getting a charge out of everyone transitioning from a warm smile to a stern mug as they fumble to find that button to leave a Zoom meeting. Through it all, our board hasn't missed a precision turn in flying this airliner through the pandemic turbulence. Though virtual meetings work, nothing beats in-person contact and camaraderie, so I am excited about getting together with my friends at the Bar.

I am grateful that like the State Bar of Michigan itself, our commissioners and the State Bar staff are all in good health. In addition, I am proud of the resilience, ingenuity, and historic feats of Michigan attorneys and courts under the extraordinary challenges we've faced.

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Now that a few rays of light are starting to penetrate the dark cloud deck, it's time as humans to reflect on the lessons we have learned during this episode. In our personal lives, we've learned to appreciate our family, our friends, and social interactions. But what lessons has the pandemic taught us about our professional lives? Perhaps the most important one is that we can master change.

Attorneys and judges have well-deserved reputations for revering precedent and old ways of doing business. I don't fault us for being careful. Tradition has proven to be a wise and durable guide, enabling us to move forward steadily without reinventing the wheel each time, offering stability and predictability, and providing a firm anchor that keeps us from drifting off toward the bright shiny fad of the day.

But in March 2020, the pandemic blasted our profession with a crisis that paralyzed most of our old and familiar ways of doing business. Amazingly, we swiftly and cleverly adapted. The Michigan bench and bar have been strong performers. For instance, we have completed more than 3 million hours of court hearings remotely by Zoom in less than a year.¹ That's impressive!

Shepherded by the Michigan Supreme Court, which has been a national leader in this regard, attorneys quickly learned new technologies to keep the machinery of jus-

tice in our state running even when the rest of the world shut down. We figured out how to use technology effectively to advocate for our clients, and we sagely turned away technology that is an inferior substitute, such as remote jury trials.

Becoming digitally proficient was our profession's first big challenge. The next phase of that challenge begins soon. We must answer some of the most consequential questions the legal profession has ever had to face. For starters, how do the emergency measures we have been forced to adopt measure up to what we had done for our entire careers? Defaults in virtual proceedings, for example, are way down; how much weight should we give that positive outcome? What is lost when we "appear" remotely with our clients in court, miles apart from one another? How do we weigh the disadvantages against convenience? What about court-user satisfaction versus in-person proceedings?

Virtual proceedings are open and accessible to the public much more than in-person proceedings; what are the privacy implications? Do the demands of due process and equal justice look different in a virtual setting? How much discretion should individual judges have in these matters? Answers to these questions, and more, will forever shape legal practice in Michigan ahead.

In a recent memo, Michigan State Court Administrator Tom Boyd shared with the

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state's judges the first chapter of the new playbook, "a series of proposed rule changes and administrative orders that will be published for comment this fall as the Court begins to formally remake the rules that guide practice and procedure in our courts."²

We aren't returning to the old, familiar practices from 2019.

"This is no time to retreat from the use of technologies and new practices that have brought us so far," Boyd continued in the memo. "In fact, many of the administrative orders the Court adopted in the last year remain in full effect and prescribe the path forward."³

Boyd highlights the measures that will form the foundation of the court's new playbook. "By working together as One Court of Justice... we made extraordinary progress so that courts are more accessible, more engaged, and more efficient."⁴

Through the State Bar of Michigan, attorneys will be intimately involved in the conversations that determine how Michigan courts will operate going forward. There is delightful irony in the fact that this year living apart from one another has also brought us closer together. That's true not only in our personal and professional relationships, but also in the collegial bond between our bench and bar. The need for urgent communications about how courts would operate under COVID-19 helped forge better and deeper relationships between the State Bar of Michigan, our sections, and the state's judiciary.

I look forward to doing this rewarding work alongside all of you. Just as important, I am looking forward to seeing you in person soon and sharing a moment together. ■

ENDNOTES

1. Michigan Courts News Release, issued May 7, 2021, available at <https://courts.michigan.gov/News-Events/press_releases/Documents/3%20Million%20Zoom%20Hours%20news%20release_FINAL.pdf> [<https://perma.cc/C4H3-8K54>], (website accessed June 14, 2021).
2. Memorandum from State Court Administrator Thomas Boyd to all Michigan Judges, Court Administrators, and Probate Register, issued May 27, 2021, available at <<https://courts.michigan.gov/News-Events/covid19-resources/COVID19/05-27-21ThePathForward.pdf>> [<https://perma.cc/4D8H-8R6L>], p. 2.
3. *Id.*
4. *Id.* at p. 1.

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