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Sent: Wednesday, December 16, 2020 12:49 PM
To: Comments Mailbox
Subject: [External]Proposal for virtual jury trials

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Please accept this email as my response for mandatory virtual jury trials. I am the co-chair of my firm's litigation department and have been practicing litigation for over 30 years. I have rarely commented to the courts on any proposal but am so strongly opposed to mandatory virtual jury trials, that I am submitting opposition to same at this time.

Having the "pleasure" of conducting zoom depositions since at least May, I have experienced a myriad of problems, which will no doubt be much worse for a jury trial:

1. They take twice as long to conduct and prepare for. All planning for exhibits have to be arranged and circulated ahead of time. And, even then, there are documents/photos that were not anticipated and then you need to stop the deposition to locate/circulate/upload the document.
2. If the witness is testifying on his/her smartphone, it is very difficult to view the exhibit.
3. Even if I am prepared, a number of plaintiff's counsel have no ability or knowledge how to screen share an exhibit.
4. I too have experienced issues with presenting exhibits to witnesses.
5. There have been a number of connectivity problems with witnesses having limited ability to log onto zoom, have audio, or stayed logged on.

With jury trials, all of these same issues will be present and then additional ones, especially for defendants who have no ability to control the presentation of witnesses.

1. There will be no ability to subpoena witnesses and require them to appear by zoom and guarantee that they will have the ability to do so, even if voluntary.
2. Defense counsel will not know what documents/exhibits they will want to use as impeachment/rebuttal testimony and will certainly not want to share that info ahead of time to plaintiff's counsel. Would we have to stop the trial, obtain and scan in the exhibit and then figure out how to upload it? Cross-examination will be much less effective if we have to first stop and download an exhibit to use to question a witness.
3. Will the court be providing a technical person to screen share exhibits? I could probably enlist one of my IT people to do so but that would be a burden to tie up one of my IT people for the duration of the trial just to assist me. And, what about lawyers who do not have IT staff? Do they need to hire an IT expert to help them present exhibits? That will be expensive.
4. Realistically all doctors will be by video. There is just no reason to have the doctor testify "live" if by zoom. That loses the impact of a live versus a prerecorded testimony of your expert. And how exactly are doctors using demonstrative exhibits during the trial.
5. How do you deal with jurors not seeing exhibits until they are admitted into evidence. If evidence "books" are given to jurors, it is not realistic that they will not review exhibits that may never become evidence.
6. How do you resolve the connectivity issues?
7. There is no doubt that a virtual jury trial will eliminate "older" jurors and those of a lower socioeconomic class who do not have access to internet.