

FBA-LA – Challenges and Opportunities of Litigating During Covid And Where We Go From Here: A Judicial Perspective

By Jesse-Justin Cuevas, Esq.

On April 15, 2021, the Los Angeles Chapter of the Federal Bar Association presented The Challenges and Opportunities of Litigating During Covid, And Where We Go From Here: A Judicial Perspective, which was moderated by Susman Godfrey L.L.P. partner Davida Brook. Panelists from the Central District bench—Judge Andre Birotte, Judge Christina Snyder, Magistrate Judge Alka Sagar, Clerk of Court Kiry Gray, and Chief Deputy of Administration Cristina Squieri Bullock—gave a first-hand account of their experience overseeing and administering justice during the global pandemic. The webinar’s timing was perfect, as the U.S. District Court for the Central District of California issued a Notice from the Clerk regarding the Phased Reopening of the Court that same day.

Before the presentation began, attendees reported their experiences litigating during Covid: of the participants in attendance, 80% reported having participated in a remote hearing, 33% in a bench trial or evidentiary hearing, and 5% in a remote jury trial.

The Future of Remote Proceedings

The esteemed panelists mostly spoke positively about the transition to remote proceedings, recognizing the positive aspects for litigants and their attorneys, as well as court staff. Remote technology allows multiple attorneys from all over the country to attend and participate without incurring the costs of travel or down-time between hearings. Zoom and other web platforms have allowed court administration to operate more efficiently by removing the logistical difficulties of scheduling large meetings and check-ins across Central District offices and courthouses. Panelists reported an openness to continue remote proceedings even after the world reopens, with the caveats that each judge would have discretion whether to transition to in-person proceedings, continue with remote proceedings, or permit a hybrid model, and that certain proceedings are better suited for in-person hearing, such as those that involve a document-heavy record. Ms. Gray emphasized that Central District operations team is prepared and excited to take on the task of continued remote work.

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Upcoming Event:

October 7, 2021: Annual Program featuring Hon. Barry Russel Awards and Dean Chemerinsky’s Supreme Court Review

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Best and Worst Practices

All three judges provided their insights into the best—and worst—advocacy techniques they observed over the last year. Lawyers who stay organized and know where to begin and, most importantly, where to end during argument fare best, as do attorneys who can bring attributes of the courtroom into the remote space. The panel warned, however, that remote proceedings are still court proceedings, and advocates are expected to dress and act accordingly despite the virtual nature of litigation. Ad hominem attacks on the other side are no more helpful during remote hearings than they were during in-person proceedings, and a suit jacket is still expected (even if donning shorts from the waist-down).

Benefits and Disadvantages of Remote Work

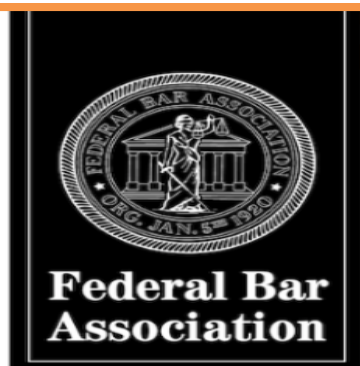
“It was the best of times, it was the worst of times.” Although the Central District was not excited about telework last March, most people’s views turned around relatively quickly. Panelists welcomed spending more time at home with their families and spoke warmly of the “ice breakers” introduced by the pandemic, from the shared experience of discovering where Wifi works best in the home to recognizing shared furniture in someone’s Zoom background. At the same time, however, everyone appears to be working longer hours, and the Court has observed an increase in workflow. Judicial panelists also lamented Covid’s impact on the clerkship experience. Across the board, clerks have voiced an eagerness to get back inside the courthouse.

Looking Ahead

Court operations has been working hard to prepare the Central District’s courthouses for reopening safely, from installing plexiglass and social-distancing demarcations to equipping courthouses with facial shields and masks. Jury trials began in the Southern Division on May 10, 2021, and on June 7, 2021 in the Eastern and Western Divisions. Given the significant case backlog, panelists strongly encouraged civil litigants to consent to trials before the District’s magistrate judges to keep justice moving forward timely, and for all litigants to be prepared to move forward on the scheduled trial date regardless of who is presiding. Because of social distancing requirements, juries will be empaneled in the ceremonial courtrooms rather than in each judge’s courtroom. Panelists urged attendees to be patient and flexible throughout the phased reopening and welcomed feedback as the process continues.



Jesse-Justin Cuevas is an attorney at Susman Godfrey LLP. She represents both plaintiffs and defendants in high stakes, complex commercial litigation across the country.



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