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Conducting Litigation in the Era of COVID-19

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The COVID-19 virus has altered the daily lives of everyone across the globe. As a result, we have been faced with a new set of challenges in the banking industry. These issues have been exacerbated for those working on the litigation side and who routinely argue cases in court and settle numerous differences through mediation and arbitration. Now, in what appears to likely be the new norm, we must adjust our daily routines to manage these new challenges. As with all new challenges that arise in this industry, it is important to modify our approach to overcome them. As the world changes to accept this new reality, we must alter the way we do business to provide quality and effective service to our clients.

In some districts, the court is reviewing only matters which can be resolved without argument. In others, courts are permitting arguments via teleconferencing. While in some, courts may decide that only urgent matters are being reviewed. As such, it is important that each case be handled carefully as things can change literally any day.

Another obstacle for litigators arises in case management and case strategy. Typically, clients prefer cases be resolved quickly and efficiently with the best result. With the priority which courts are giving matters, it is seemingly even more difficult to advise clients what to anticipate with each case and even more difficult to estimate a timeline for completion.

The first and most important step to take in any case is to review the most recent administrative order

in the district in which your case resides. Throughout the crisis, the courts have released administrative orders specifying how it is handling certain matters. In some cases, it is important to review the prior administrative orders as there may be matters covered by a prior order which are still controlling certain court procedures. In cases where the court is reviewing matters based on the pleadings and without argument, it is important to include as much relevant information, caselaw and demonstrative exhibits as possible.

In the event the court decides to permit remote argument, it is important to be as prepared as possible, given the potential obstacles that arise with any form of technology. It is important to find a location with proper lighting and a strong internet connection. If the court is unable to see or hear you, it could negatively affect your outcome. Always test your equipment well in advance to resolve any issues that may arise. Practice, if possible, to ensure your argument can be effectively communicated and, most importantly, always wear proper attire.

The challenges which we are facing will likely resonate for years to come. There is no way to know with certainty how the legal industry will be operating in the coming months as the guidelines and orders seem to change daily and are out of our control. As such, the best we can do, given the circumstances, is to focus on the aspects of our lives within our control and to continue to develop ourselves and our businesses so that we can better serve our clients to the best of our ability. ☞