

# APPELLATE PRACTICE DURING AND BEYOND COVID-19

JUSTICE SHARON LEE  
TENNESSEE SUPREME COURT

AUGUST 21, 2020

Covid-19 has changed our lives, including how we practice law.

## Remote Hearings

The Tennessee Supreme Court has been hearing cases remotely since April 2020. The Court has schedule remote dockets for September 2 and 30, 2020.

The Court of Appeals is hearing cases remotely.

The Court of Criminal Appeals is hearing cases in person.

Cases heard remotely are by Zoom and livestreamed on the TnCourt's Youtube channel.

## Positive Changes as a Result of COVID-19

Use of technology

More efficiencies

Less cost to clients

More public access and greater transparency through Youtube viewings

## Appellate Practice Tips

There are three oral arguments in every appeal:

the one you plan

the one you give

the one you wish you had given

### Remote Oral Arguments

- Watch the Youtube video prepared by our appellate court clerk, Jim Hivner—*Appellate Remote Oral Argument Tips*
- Review arguments in other cases on Youtube
- Make sure you have a good internet signal—wireless or connected by cable to modem to computer
- Check your equipment—use a laptop, desktop, or ipad—and be sure your equipment has a camera and adequate sound
- Adjust angle of the screen so you are directly facing the camera and are at eye level; adjust your camera before the argument begins
- Plug in your computer so there are no battery issues
- Mute the notifications on your computer; mute or turn off your phone
- Check the audio
- Adjust the lighting

- Check your background; use a virtual background but test it first
- Close your door to avoid interruptions
- Proper attire

The basic rules of appellate advocacy still apply to arguments:

- Oral argument is important: ask for it; changes the outcome in 10-20% of cases; allows for more collaborative review
- Preparation: anticipate questions judges will ask; plan your affirmative points so you can bring your argument back to these points; anticipate adversary counsel's arguments
- Pre-argument review: review the briefs; review cases cited; update your research; outline important dates; list relevant names
- Plan your oral argument: frame your argument in a different light than in your briefs; make your points quickly; use your time well; plan to concede certain points if necessary; write out argument in full or in outline form; have key language from relevant statute or document available; be clear about what you want the court to rule; anticipate questions
- Practice your argument: a moot court is best to sharpen and refine your argument

- Delivery of your oral argument: for nonremote hearings, know where the courthouse is and where to park; anticipate delays in arrival; know your bench and how to pronounce their names; have your material organized; speak to the court in a conversational style; welcome interruptions; don't be forced to concede a point or be bullied; don't be flustered by hostile questions; humor rarely works; watch your time and when the red light flashes, wrap up your argument; use rebuttal wisely