



# Cybersecurity and Remote Lawyering – Ethical Duty of Technology Competence

Presented to The University of Texas CLE Department

Elizabeth A. Rogers

November 5<sup>th</sup>, 2021

1



## Introduction

Professionals of all kinds have been forced to adapt to working remotely. For lawyers, this means using technology effectively but also in compliance with legal and ethical obligations towards clients and their information.

- Novel and accelerated uses of videoconference and document sharing/hosting technology
- Ethical duties of competence and confidentiality
- Security and privacy requirements
- Practical considerations
- Platforms: Zoom, Teams, Dropbox, Google Drive and others

2



## Use Cases

**Many applications already common in certain practice areas, often with tech-savvy corporate clients, are becoming more widespread**

- Videoconference with clients and opposing counsel or parties
- Transaction diligence data rooms
- Esignature and contract negotiation platforms
- Slack, Teams, and other internal collaboration



## Use Cases

**Others are more novel**

- Mediation and arbitration (AAA-ICDR Virtual Hearing Guide for Zoom)
- Hearings: According to the Office of Court Administration, Texas courts held more than 10,000 hearings via Zoom from March 30 - April 10
- Texas Supreme Court hearing oral argument via Zoom
- Current OCA guidance (effective June 1 and after) instructs courts to "use all reasonable efforts to conduct proceedings remotely"

<https://blog.texasbar.com/2020/04/articles/coronavirus/texas-courts-held-over-10000-remote-hearings-in-past-2-weeks-oca-estimates/>

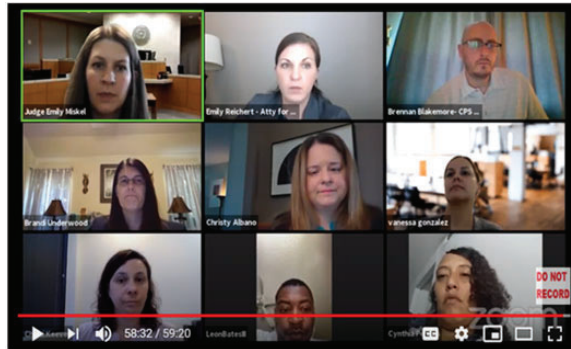
<https://go.adr.org/rs/294-SFS->

[516/images/AAA269\\_AAA%20Virtual%20Hearing%20Guide%20for%20Arbitrators%20and%20Parties%20Utilizing%20Zoom.pdf](https://go.adr.org/rs/294-SFS-516/images/AAA269_AAA%20Virtual%20Hearing%20Guide%20for%20Arbitrators%20and%20Parties%20Utilizing%20Zoom.pdf)

## Use Cases

### Even jury trials

- On May 18, the 470th District Court of Collin County heard jury selection via Zoom in what is believed to be the first remote jury trial in the U.S.



- <https://www.reuters.com/article/us-health-coronavirus-courts-texas/texas-prepares-for-a-pandemic-first-a-jury-trial-by-zoom-idUSKBN22U1FE>  
michaelbest.com

5

5

## Applicable Requirements

### Ethical Requirements - what does it mean for attorneys working remotely?

- Ethical Duty of Technology Competence (Rule 1.01)
- General Duty of Confidentiality to Clients (Rule 1.05)

### TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

(Including Amendments Effective May 1, 2018, June 1, 2018 and February 26, 2019)

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Cybersecurity and Remote Lawyering - Ethical Duty of Technology Competence

Also available as part of the eCourse

[First Friday Ethics \(December 2021\)](#)

First appeared as part of the conference materials for the  
2021 First Friday Ethics (December 2021) session

"Cybersecurity and Remote Lawyering - Ethical Duty of Technology Competence"