

SUPREME COURT OF TEXAS

In re the Texas Education Agency Mike Morath, Commissioner of Education in His Official Capacity and Doris Delaney, in Her Official Capacity

Supreme Court of Texas (October 2, 2020)

SUMMARY

This document is a guidance memorandum from the Supreme Court of Texas concerning participation in oral arguments conducted via Zoom. It provides technical, logistical, and courtroom-practice instructions for attorneys, including equipment testing, connectivity, backgrounds, meeting procedures, and preparation for technical difficulties.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	October 2, 2020
DISPOSITION	other
PRECEDENTIAL VALUE	unknown

TOPICS

appellate procedure

PRACTICE AREAS

appellate procedure

FACTUAL BACKGROUND

The supplied text does not contain a judicial opinion analyzing a dispute. It consists of guidance for attorneys concerning preparation for and participation in oral argument before the Supreme Court of Texas using Zoom, including equipment, lighting, testing, and procedures for technical difficulties.

DISPOSITION

other

OPINION

in Re the Texas Education Agency Mike Morath, Commissioner of Education in His Official Capacity And Doris Delaney, in Her Official Capacity

PER CURIAM.

Oral Arguments via Zoom for Lawyers By Blake A. Hawthorne Clerk of the Court Supreme Court of Texas

Becoming familiar with Zoom videoconferencing software is an important place to start. There are many resources available for training, including Zoom’s own quick start guide for new users. It explains how to sign up for a Zoom account and how to join a test meeting to check your audio and video. YouTube is also an excellent resource for video tutorials covering every aspect of Zoom. In addition to becoming familiar with the Zoom software, it is important to test the computer, audio, video, and internet connection technology that you will use during the oral argument. A hardwired internet connection using a cable is preferable to relying on a wireless connection for the oral argument. For the best audio and video quality use a desktop or laptop computer with a built-in or external USB webcam with microphone, rather than a tablet or mobile phone. Some users prefer the audio quality achieved using headphones, headsets, or earbuds with built-in microphones, but also consider how that will affect the visual presentation. Whatever computer, audio, or video equipment you use, test the equipment in the same location and under the same conditions that you will encounter during oral argument. Another important consideration is your location during the videoconference. Find a quiet, protected place where audio and visual interruptions are minimized or eliminated. Lighting is also critical to think about and test. Light sources should be positioned in front of you to illuminate your face. Light sources located behind you will place your face in the shadows. Check the background to see if there is anything distracting, out of place, or unprofessional. Bookcases and plain walls make good backgrounds. Windows and unusual pieces of art do not. Zoom has a virtual background feature (see guide to using virtual backgrounds) that enables you to use a photograph as your background. Although there are only a few (and mostly inappropriate) default backgrounds on Zoom, you can Google “Zoom backgrounds” and almost any subject matter and discover a broad array of possibilities that you can select and download. The virtual background feature may not work on older computers if you do not have a green screen behind you. If you want to use a virtual background feature, test it using the same lighting, background, and clothing that you will use on the day of oral argument. And to be safe, check with the court personnel to make sure that using a virtual background is acceptable. Think about whether you are more comfortable sitting or standing while presenting your arguments. Either is acceptable, though most people prefer to sit, and most courts consider sitting acceptable under these circumstances. But if you decide to stand, be sure that you stand during the test of your setup—keeping the advice above about lighting, audio, video, and backgrounds in mind. Regardless of whether you are sitting or standing, make sure that your head and shoulders are visible on camera. Position yourself near the center of the frame, leaving some room in the frame above your head. The video camera should be as level with your eyes as

possible, so that you are looking straight ahead at the camera. Zoom displays your name in the lower left-hand corner of the video frame. You can change your name by either editing your Zoom profile or by clicking on “Participants” in a Zoom meeting, choosing your name from the list, and then renaming yourself. Court personnel should contact you before the oral argument to set up a test meeting. During this test meeting, court personnel should go over the details of the Zoom oral argument. These details may include: who will host the Zoom oral argument session (i.e. who will send the link to and run the Zoom session); how oral arguments will be conducted over Zoom, including: o how time will be kept and displayed to the participants; o how audio and video should be treated during the argument, particularly for the advocate who is not speaking; o whether the arguments will be streamed live; when you will need to appear for arguments and how the waiting room will be handled; who will have responsibility for any concerns or problems that arise: o attorneys should provide an email address and mobile phone number to court personnel; who the contact person will be in the event of a technical problem, and the process for different technical issues. Discuss with court personnel what to do if there are technical difficulties before or during oral argument. Make sure you know who to call or email if you need help. During the test session with court personnel, practice leaving the meeting and reconnecting to simulate what to do if there is an interruption in internet service or other technical issues. The Zoom oral argument invitation should also contain instructions for joining the meeting using a cell phone so that the argument can continue as a voice conference if necessary. Conduct a Zoom moot court with your colleagues. Nothing will prepare you better for a Zoom oral argument than using Zoom during a moot court. If you encounter difficulties during your moot court, contact court personnel as soon as possible to discuss how you can resolve those issues prior to oral argument. During the argument, there is a slight audio delay, and if you do not stop talking immediately when you hear a justice speaking you will be talking over each other for a brief time. Using the gallery view instead of the speaker view in Zoom will help you see all the justices at once. This may help you identify who is speaking when multiple people speak at once. It will also more closely approximate standing in front of the bench as you would during an oral argument presented in the courtroom. Keep in mind that even though the square of someone who is speaking illuminates in a yellow border, that feature may activate because of a sigh or shuffling papers. So just because a square illuminates in yellow does not necessarily mean that a justice is asking a question and you need to stop. Wait until you hear the sound of a voice. Zoom Checklist

1. Create a Zoom account;
2. Download the Zoom client or app;
3. Conduct a test meeting on Zoom to test your microphone and speakers;
4. Start a Zoom meeting as the host and invite friends to join your meeting;
5. Discuss your lighting, background, audio, and video in your test meeting;
6. Familiarize yourself with Zoom in your test meeting;
7. Watch Zoom tutorials on Zoom’s website or YouTube if necessary;

8. Provide your contact information (email, cell phone number) to court personnel;
9. Participate in a test meeting with court personnel;
10. Create a group email and text group for your oral argument in case of technical difficulties;
11. Discuss with court personnel what to do if there are technical difficulties during the oral argument;
12. Practice disconnecting from and rejoining the Zoom meeting with court personnel;
13. Make sure you know who the host of the Zoom oral argument will be and when to expect the invitation for the Zoom session to be emailed to you;
14. Write down or print out the contact information for court personnel;
15. Participate in a moot court using Zoom;
16. Join the Zoom oral argument session at the appointed time.