



Tips for Working with Children and Youth Remotely in a Hearing or USCIS Asylum Office Interview

Introduction

There has been an increase in working with children and youth remotely during the COVID-19 pandemic. In some situations, this has included representing a child remotely during an immigration interview or hearing. This resource provides some tips¹ for working with unaccompanied children remotely; whether you are planning for a state court hearing, immigration court hearing, or an interview before the U.S. Citizenship and Immigration Services (USCIS) Asylum Office, this resource aims to provide some pointers to consider beforehand and during the interview or hearing. We provided some information regarding Texas state courts as an example, but we hope the information is still helpful to those practicing outside of Texas as well.

TIPS FOR WORKING WITH CHILDREN AND YOUTH REMOTELY

TIP #1: PREPARE YOURSELF IN ADVANCE: CONSIDER RELEVANT COMPETING INTERESTS & VALUES

There are several competing interests and values involved when working with a child remotely, particularly for a hearing or an interview. It is essential to be aware of and consider the competing interests involved in advance.

With the COVID-19 pandemic, more hearings have been held remotely due to public health concerns and needs. Additionally, remote hearings might help increase access to counsel in areas that are considered legal deserts,² with limited resources and counsel, since presumably now clients may be able to work with attorneys in different states and the attorneys can connect remotely for meetings and possibly the adjudication. However, remote proceedings also present many downfalls and challenges.

In March 2020 a pilot project began in Houston, Texas that combined a rocket docket and remote hearings for all detained unaccompanied children's cases. This pilot project occurred before the COVID-19 pandemic had really taken root in the United States and had an impact and was not started in response to the pandemic. The plan for the pilot project included that *all* unaccompanied

¹ The tips included in this resource represent a consolidated list of tips CILA attorneys have learned from their experience and research, as well as information we learned from practitioners at legal service providers working with children and youth in immigration matters. Attorneys and staff shared information and tips via a survey conducted by CILA in February 2022. Thank you to those who shared their experience and knowledge to help others. Also, keep in mind that information on this topic changes frequently, so independent research is necessary. This resource does not include legal advice. This is for informational purposes only and should not be a substitute for your own research and analysis. This is not comprehensive. We simply wanted to highlight some information and resources to help get you started.

² According to the American Bar Association's (ABA) report *Profile of the Legal Profession 2021*, "[o]verall, 40% of all counties and county-equivalents in the United States – 1,272 of 3,141 – have less than one lawyer per 1,000 residents." *Profile of the Legal Profession 2021*, ABA (July 2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>.

children’s hearings, both master calendar hearings and individual calendar hearings, would be held via video teleconference. The American Bar Association (ABA) among others advocated for the pilot project to end.³ Advocates voiced concern and opposition to the pilot project for several reasons, including that it created confusion for children and a lack of meaningful due process. The program came to an end, and soon after, the effects of COVID-19 on everyone including the courts became apparent.

Even prior to the 2020 pilot project, remote hearings have raised concerns. The ABA’s report, *Achieving America’s Immigration Promise*, states, “[a]s set forth in the ABA’s Standards, the ABA strongly opposes the use of video conferencing in immigration proceedings involving children. At best, these hearings are difficult to comprehend for children; at worst, they are terrifying for children.”⁴ The ABA’s *Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States* (ABA Standards) provides further information stating, “. . .when hearings are conducted in person, a Child may feel more at ease in the courtroom and testify more effectively, and the Adjudicator can directly observe and respond to the Child’s body language that may not be observable by camera in a videoconference.”⁵ Remote adjudications raise due process concerns and create more opportunities for confusion, technological challenges, and delay in addition to increased tension and fear for children, and potential for difficulties communicating effectively.

Although convenient, and at times, necessary, remote hearings come with potential significant detriments and consequences for children in immigration proceedings. It is important to be aware of the competing interests, to be aware of potential pitfalls and to fully know your options. It is important to discuss the potential options with your clients, and to give them choices, where possible.

TIP #2: PREPARE YOURSELF IN ADVANCE: KNOW WHAT TO EXPECT

First consider your forum, what type of hearing or adjudication are you preparing for—are you preparing for a state court hearing, an immigration court hearing, or a USCIS Asylum Office interview? Each agency or court has their own guidance and local rules that will influence what to expect and what options you may have.

Generally, keep in mind the following information:

- **Executive Office for Immigration Review (EOIR):** Immigration court hearings can be held in person, by video conference, or telephone conference; this has been the case even before the

³ See *Video Immigration Hearings Deny Children’s Right to Fair Proceedings*, the Young Center for Immigrant Children’s Rights (Feb. 21, 2020), <https://www.theyoungcenter.org/stories/2020/2/21/video-immigration-hearings-are-a-threat-to-childrens-right-to-fair-proceedings/>. See also Amanda Robert, *Video teleconference program for immigrant children ‘is contrary to the American pursuit of justice,’ ABA says*, ABA Journal (Mar. 5, 2020), <https://www.abajournal.com/news/article/aba-president-calls-for-end-to-new-video-teleconference-program-for-unaccompanied-children>; Jennifer Podkul, *Remote hearings for unaccompanied children proves a disaster*, The Hill (Mar. 16, 2020), <https://thehill.com/opinion/immigration/487440-remote-hearings-for-unaccompanied-children-proves-a-disaster>.

⁴ *Achieving America’s Immigration Promise*, Am. B. Ass’ Commission on Immigr. at 34 (2021), https://www.americanbar.org/content/dam/aba/administrative/immigration/achieving_americas_immigration_promise.pdf.

⁵ *Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*, Am. B. Ass’n Commission on Immigr. at cmt. X.A.3. (Aug. 2018), https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/standards_for_children_2018.pdf.



pandemic began; however, video and telephonic hearings have increased due to the pandemic.⁶ Additionally, keep in mind that evidentiary merits hearings can only be held via phone with a respondent's consent.⁷ According to the EOIR Policy Manual, "[h]earings held by video or telephone conference are conducted under the same rules as hearings held in person."⁸

Throughout the COVID-19 pandemic, many immigration courts stopped holding non-detained hearings for an extended period, and many courts began holding more telephonic hearings and video teleconference hearings. Unaccompanied children in Office of Refugee Resettlement (ORR) shelters are detained, and their hearings continued, even though their hearings are typically held at courts that hear non-detained cases. In detained children's cases, the setup for hearings varied depending on the immigration court, immigration judge, legal service provider, attorneys, and ORR shelter involved. For example, sometimes children would stay at the ORR shelter, and their court proceeding would be held via video teleconference. Sometimes the attorney would be with the children at the shelter, at the immigration court, or in a different location participating via phone, for example. In other situations, perhaps everyone would go in person. In some situations, the attorneys would appear on behalf of the children and the children's presence were waived. In July 2021, non-detained hearings in immigration courts nationwide resumed for the courts that were still closed; many immigration courts had already opened at earlier dates. Hearings have largely continued in some form except for individual court closures related to the pandemic or for other reasons.

Whether a hearing will be held in person, via video teleconference, or by phone continues to depend on many factors including the immigration court, immigration judge, OPLA attorney, attorney working with the child, and ORR shelter guidance if the child is detained. The parties involved do not necessarily have to appear together at the same location.⁹ According to the EOIR website, *currently*, "EOIR continues to support remote hearings. Attorneys and accredited representatives are strongly encouraged to use the Openvoice and Webex platforms. To facilitate appearances by Openvoice and Webex, attorneys and accredited representatives may appear via those mediums, as available, without prior approval and without filing a motion in advance."¹⁰

- **USCIS Asylum Office:** Generally, asylum interviews are held in person. However, during the pandemic, oftentimes the setup for interviews has been different. For example, sometimes the attorney and client were in one room at the USCIS office and the adjudicator was located in another room connected via tablets and conference call, or everyone was in separate rooms connected via tablets and conference call. Currently, USCIS's website states, "[d]epending on local conditions, you may be interviewed **in-person** or through a **video-facilitated interview**. In an **in-person** interview, you will be in the same room with the interviewing officer separated by a plexiglass barrier. In a **video-facilitated** interview, you will be in one room and

⁶ INA § 240(b)(2); 8 U.S.C. § 1229a(b)(2); 8 C.F.R. § 1003.25(c). *See also* EOIR Policy Manual, Part II – OCIJ Manual Ch. 4.6-4.7.

⁷ *Id.*

⁸ EOIR Policy Manual, Part II – OCIJ Manual Ch. 4.7(c).

⁹ *See* EOIR Policy Manual, Part II – OCIJ Manual Ch. 4.7.

¹⁰ EOIR Operational Status, EOIR, <https://www.justice.gov/eoir-operational-status> (last visited Mar. 1, 2022).



the interviewing officer in a different room.”¹¹ Some individuals have expressed that the Asylum Officer will try to separate everyone into different rooms, but that the attorney can request to stay with their client. At least one individual noted that you may need to raise the request to a supervisor, and that approach has had success for them. Some USCIS Asylum Offices in major cities are currently conducting a pilot project, where attorneys can seek to appear remotely for interviews by phone or video, while the client appears in person.¹² The attorney is required to fill out a form ahead of time for this accommodation.

- **Texas¹³ state courts:** The Supreme Court of Texas issued the “Forty-Seventh Emergency Order Regarding the COVID-19 State of Disaster” renewing provisions from a prior emergency order.¹⁴ The Supreme Court of Texas issued the first emergency order relating to the pandemic in March 2020.¹⁵ The Forty-Seventh Emergency Order expires in April 2022 and allows for the continuation of remote proceedings. The Emergency Order states, “[s]ubject to constitutional limitations and review for abuse of discretion, all courts in Texas may in any case, civil or criminal, without a participant’s consent: except as this Order provides otherwise, allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, court reporter, grand juror, or petit juror—to participate remotely, such as teleconferencing, videoconferencing, or other means . . .”¹⁶

Research agency and court guidance and any local rules to know what to expect. For example, you may want to consult the following resources:

- **EOIR:** According to the EOIR Director’s Memorandum (DM) 22-02,¹⁷ the EOIR website is the primary source for information relating to the pandemic’s impact on immigration courts including whether a court is open. The immigration court’s website includes information regarding each court’s operational status and a map where you can find court information and any local standing orders issued for that court. Local standing orders vary greatly from court to court and may impact whether and how to notify the court regarding holding a hearing by phone or video teleconference and the court’s guidance related to remote hearings. Generally, it is important to contact the immigration court and file any necessary motions to appear remotely.¹⁸ You can also monitor EOIR updates on EOIR’s Twitter account and by signing up for email updates.
 - o EOIR homepage: <https://www.justice.gov/eoir>
 - o EOIR Operational Status: <https://www.justice.gov/eoir-operational-status>

¹¹ USCIS Response to COVID-19, USCIS, <https://www.uscis.gov/about-us/uscis-response-to-covid-19> (last reviewed/updated Mar. 25, 2022).

¹² *Preparing for Your Asylum Interview*, USCIS, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/preparing-for-your-asylum-interview> (last reviewed/updated Mar. 15, 2022).

¹³ Each state court has different rules and procedures. CILA is based in Houston, Texas, so we provided some information about Texas as an example.

¹⁴ *Forty-Seventh Emergency Order Regarding the COVID-19 State of Disaster*, Supreme Court of Texas, Jan. 19, 2022 <https://www.txcourts.gov/media/1453483/229005.pdf>.

¹⁵ See Qudsiya Naqui, Erika Rickard, *Coronavirus Accelerates State Court Modernization Efforts*, PEW (June 18, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/06/18/coronavirus-accelerates-state-court-modernization-efforts>.

¹⁶ See information cited *supra* note 14.

¹⁷ See Director’s Memorandum (DM) 22-02, *Updated Guidance on EOIR’s Response to the COVID-19 Outbreak*, EOIR (Nov. 18, 2021), <https://www.justice.gov/eoir/book/file/1447111/download>.

¹⁸ See *EOIR Policy Manual*, Part II – OCIJ Manual Ch. 4.15.



- EOIR *Operational Status Map*: <https://www.justice.gov/eoir-operational-status/operational-status-map>
 - EOIR Twitter account: https://twitter.com/DOJ_EOIR
 - EOIR email updates: <https://public.govdelivery.com/accounts/USDOJ/subscriber/new>
- **USCIS Asylum Office:** USCIS provides information on its website regarding the agency's response to COVID-19 including precautions and information impacting appointments.
 - USCIS *Response to COVID-19*: <https://www.uscis.gov/about-us/uscis-response-to-covid-19>
 - USCIS *Service and Office Locator* with COVID-19 Alert: <https://egov.uscis.gov/office-locator/#/asy>
 - USCIS *Preparing for Your Asylum Interview*: <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/preparing-for-your-asylum-interview>
 - **Texas state courts:** Information is available online regarding the status of Texas state courts and several websites provide other relevant resources including the following.
 - Texas Judicial Branch *Court Coronavirus Information*: <https://www.txcourts.gov/court-coronavirus-information/>
 - Texas Judicial Branch *Court Coronavirus Information, Court Guidance*: <https://www.txcourts.gov/court-coronavirus-information/court-guidance/>
 - Texas Judicial Branch *Electronic Hearings (Zoom)*: <https://www.txcourts.gov/court-coronavirus-information/electronic-hearings-zoom/>
 - Harris County Robert W. Hainsworth Law Library *Zooming into the Harris County Courtroom*: <https://www.harriscountylawlibrary.org/zoomhelp>
 - Texas State Law Library *COVID-19 & Texas Law*: <https://guides.sll.texas.gov/covid-19/courts>

Keep in mind that rules and guidance on this issue have changed frequently over time due to the nature of the pandemic, so it is important to make sure that the information you are relying upon is up to date, including information included in this resource.

In addition to doing some research regarding the court's or agency's current status, instructions, and any requirements, it is also a good idea to speak with other advocates locally who have experienced a hearing or interview remotely, so you can gather some local advice. If you are going before a particular judge, it might also be a good time to gather specific advice regarding the judge as well.

TIP #3: PREPARE YOURSELF IN ADVANCE: CONSIDER YOUR OPTIONS

As you can likely tell from the above information, sometimes there is a choice regarding whether the hearing will be held remotely or not and who will attend remotely or in person. It is important to familiarize yourself with the local rules to know your options, and whether you and/or your client have a choice. Consider those potential options with your client and the other issues involved, as discussed in tip number 1. In some situations, options may be limited due to the court's or agency's guidelines and rules.

Also, keep in mind that some matters can be handled via paperwork, and this can eliminate the need for a court hearing or reduce the number of matters that need to be addressed. It is also important to consider if matters can be handled in an alternative way to a remote hearing, by



motion practice or briefing, as examples. In some cases, the best strategy option might be to submit a motion for a continuance or a motion for an in-person proceeding to move the case to a different date when it can be conducted in person. Additionally, if you intend to move forward with a remote hearing, it might be prudent to submit anything that you can in writing, including briefing, in advance to ensure that the record is protected and to put the judge on notice of all relevant issues.

TIP #4: PREPARE YOUR CLIENT IN ADVANCE: OFFER CHOICES

In conjunction with tip number 3, to consider your options, it is important to discuss any options with the client regarding a potential video teleconference or telephonic hearing or interview. According to the ABA Standards, “[w]hile the Child being present is generally preferable, the Child has the right to choose to appear through technological means such as a phone or video.”¹⁹ Offer your client choices, when you can, to empower them in the process and to prioritize their needs and wishes. If there are limited options, this will also be important to discuss and explain.

TIP #5: BE AWARE OF POTENTIAL ISSUES & PITFALLS

Day-of adjudications in USCIS Asylum Office interviews or hearings in immigration court or state court can bring up surprises. Remote proceedings are no different, but some additional issues may arise.

Potential issues and pitfalls to be particularly aware of in advance of a remote proceeding:

- Potential issues with clients having access to technology and familiarity with technology
- Potential problems with clients having access to a quiet and confidential space
- Requiring an area with a strong internet connection
- Consider privacy and confidentiality of the space where you and your client are located
- Interruptions if any individual is not in a professional setting
- Difficulty for the child to understand the process or what is going on
- Confusion regarding who the judge is and who is present in the room and confusion where to look, who to speak to
- Overall confusion for the child regarding the gravity of the situation
- Difficulty communicating with a member of the legal team if working with someone else and/or difficulty having a private conversation with your client before, during, and after the proceeding
- Long delays and unpredictability of knowing exactly when the hearing may start
- Some adjudicators may try to speed through remote hearings and interviews
- Technology issues and problems from any of the individuals involved
- Additional issues with connecting to interpreters, hearing and understanding interpreters due to audio quality and technology lags
- Difficulty with audio and ability to hear everyone participating generally
- Impeded ability to read your client fully, read the judge, and situation
- Impeded ability to have a quick aside with your client or a sidebar with the adjudicator
- It is possible that you might find a particular judge is more receptive to arguments and a positive working relationship when appearing in person

We hope that by knowing some of the potential pitfalls, some of these issues can be identified, addressed, and prepared for or avoided, to minimize impact on your client’s case. Hopefully, the

¹⁹ See ABA Standards *supra* note 4.



suggestions in the other tips provide guidance and ideas to overcome and/or prevent some of these issues.

TIP #6: PREPARE YOURSELF IN ADVANCE: GET COMFORTABLE WITH THE TECHNOLOGY

Once you determine that the hearing or interview will be held remotely, learn what technologies will be used during the hearing or interview. Familiarize yourself with the technology, so you are prepared. The process may be very simple, or you may need to download a program or conduct some online research to ensure that you are ready for the hearing or interview. You should be familiar enough to explain what will happen and how the technology will work with your client.

Fortunately, how-to's and other helpful information can usually be easily located online. If you cannot find the information you are looking for, call the court clerk or the agency's customer service line for assistance. For example, this information may help you prepare.

- **EOIR:** Immigration courts use Webex for video conferencing for hearings, and some immigration court locations use Openvoice for audio conferencing. EOIR's *Operational Status Map* includes information regarding the availability of Webex and Openvoice per immigration court and links to instructions regarding how to use both tools. For telephonic hearings, the EOIR Policy Manual states that the "representative or respondent appearing by telephone must be available during the entire master calendar hearing" and that "[u]nless expressly permitted by the Immigration Judge, cellular telephones should not be used for telephonic appearances."²⁰
 - o EOIR *Operational Status Map*: <https://www.justice.gov/eoir-operational-status/operational-status-map>
- **USCIS Asylum Office:** If the interview is held using multiple rooms, the use of video conferencing software and/or tablets provided by the Asylum Office will likely be used. If you have access to a tablet, it might help to ensure you and your client know how to use one in advance, as a precaution.
- **Texas state courts:** Most video hearings are conducted via Zoom. There are several online resources available to assist individuals. Example resources include those listed above and the following.
 - o TexasLawHelp.Org *Virtual Court*: <https://texaslawhelp.org/article/virtual-court>
 - o State Bar of Texas *Zoom and Videoconferencing Resources*: https://www.texasbar.com/Content/NavigationMenu/Coronavirus_COVID_19/Zoom_Videoconference.htm

Additional technology preparedness tips:

- Follow all technology instructions carefully. Keep in mind that many courts have local guidance, tips sheets, and instructions regarding the technology which is important to review.
- If possible, it is a good idea to test out the technology on the specific device you will be using in advance.
- As relevant, test the video and audio functions to check that they work how you want them to, and to check for sound quality and lighting. For example, for lighting it helps for you to

²⁰ EOIR Policy Manual, Part II – OCIJ Manual Ch. 4.15(n)(2)-(3).



face a window rather than the window to be behind you. It may also help to get a light for your computer if you have issues with your lighting.

- Find out in advance where the mute and unmute buttons are located. Ensure that your client knows where the mute and unmute functions are as well and practice using them beforehand.
- If you will need to share your screen at any time, test that out as well.
- It is frequently very helpful to use a headset with a microphone for better sound quality and to reduce background noise and echoes.
- If using your own device, charge the device's batteries and have it plugged in for the proceeding. It is also a good idea to have a backup device ready in case there is a technical challenge.
- Have a phone number or other contact number for technical support available, to easily call someone if there is something that goes wrong or if you get disconnected.
- If you are using your own device, ensure that your computer's security is up to date and all updates are done in advance so that it does not interfere with the hearing.

TIP #7: REMEMBER IT IS STILL A FORMAL PROCEEDING

Even if you are in a different space than the adjudicator, and even if you are at home, remember this is still a formal proceeding, and you should act and do things like how you would typically do it if you were going into a USCIS office or courtroom. This is a formal proceeding—it is still a court hearing or adjudication with potential significant consequences and life-changing impacts for your client.

Keep these tips in mind for you and consider sharing some of these tips with your client in a way that is child-friendly and developmentally appropriate:

- Be professional.
 - o Dress professionally. Do not wear a hat. It is best to wear solid colors when appearing by video because patterns can sometimes be dizzying.
 - o Do not smoke, eat, or chew gum.
 - o Appear early, just like you would appear early in person for a similar proceeding. One advocate recommended setting up an hour ahead of time. Another advocate recommended getting on the platform early to ensure everything is working well and to be prepared for technical difficulties.
 - o Plan your calendar accordingly. Know that you will likely need to be available for a large block of time, waiting for a call from the court or for your case to be called, for example, if other cases will be heard before your client's case is called. This is common, so it is best to be prepared for that and to ensure that your client is aware and also has a large block available on their calendar too.
 - o Plan ahead and consider all logistics involved. Think about where everyone will be located, each participant for that day. It might help for your client to go to your office, so you can be there to setup the device and assist with technology, if needed. Also, remember to ensure that each witness knows what to expect, is prepared for the technology, and any potential delays.
 - o If your client will appear in person, ensure that your client has a copy of their hearing notice or interview notice. Go over detailed instructions regarding how to get to the hearing or interview, including anything they need to know to get through security upon entry. It may help to be on the phone while they navigate entry to assist them or to at least be available and have a plan for them to contact you or your office if any issues arise.



- If you will be in a different location than your client or other members of your legal team, plan in advance for how you will communicate with them in a private conversation, if needed. Capacity Building Center for Courts created a resource that provides several ideas to consider including whether the technological platform has a “private chat” function that can only be viewed by a limited number of participants, texting your client, seeking a break to call your client, or asking to go into a breakout room with your client on the online platform.²¹ Consider attorney-client privilege and confidentiality issues when deciding which method to use. If using a private chat tool, you may want to include a note that the conversation is confidential and protected by attorney-client privilege. This idea is not full-proof, and it is only one idea to consider. Consult resources regarding the protection of electronic communications and inquire with the court or agency regarding who has access to the chat or whether breakout room conversations are recorded. You may also be able to find out some of this information by researching the technological tool or platform being used. It will be essential to have a way to communicate with your client, so it might be best to have a plan A, B, and C ready.
- Except for the point immediately above, generally, do not answer other calls, texts, and/or emails. If you need to text with your client, you may need to ask for a break to do so or ask for a moment to confer with your client, just as you would in person. If you seek a break and either speak with your client on the phone or in your office, ensure that you mute your device during the private conversation.
- Prep the case in advance.
 - Ensure your representation documents are filed in advance.
 - Remember to follow court and agency instructions regarding submissions.
 - Ensure that the record is complete in advance since it may be harder to provide the judge or Asylum officer with a copy of a document that is not in the record when not appearing in person. To ensure that there is a complete record, submit the paperwork further in advance than usual, if possible.
 - For court, if something comes up and you need to submit something the day of a hearing, ask about the best way to submit the document. For example, you may need to have an email address readily available or the court might provide a fax number. Just in case, you might want to download a fax app to your phone, so you are prepared. Additionally, you may want to have a folder on your computer with important filed documents in case you need to show a digital copy or proof of filing to a judge.
 - With remote hearings, there often is not an opportunity for informal conversations and negotiations with opposing counsel to consider stipulations. Therefore, it will be necessary to reach out in advance to see if the issues can be narrowed with opposing counsel. If successful, this will greatly help to simplify some matters for the day of the hearing.
- Consider your space.
 - Choose a quiet space to setup.
 - You might be sitting in the same area for a while, so make sure it is comfortable.
 - Prepare your space so that you have access to everything that you may need during the proceeding, including a glass of water, pens, notepad, etc. Additionally have easy access to your case binder or evidence that you may need to reference. It might be easiest to print the material. If you are going to access it electronically, then store the

²¹ *Conducting Effective Remote Hearings in Child Welfare Cases*, Capacity Building Center for Courts, <https://www.acf.hhs.gov/sites/default/files/documents/cb/covid19-conducting-effective-hearings.pdf>.



information on a different device to access notes, look at evidence, and see witness lists or other information. For example, you could appear via video on your computer and use a tablet for your notes and other materials. Either way, ensure it is a system that is easy for you to access and use.

- Your background should be clean, professional, and clear of any distractions.
- Take a tip from the judge who presided over the Zoom cat filter mishap, Judge Roy Ferguson. He posted this to his Twitter account following the incident: “IMPORTANT ZOOM TIP: If a child used your computer, before you join a virtual hearing check the Zoom Video Options to be sure filters are off. This kitten just made a formal announcement on a case in the 394th (sound on).”²²
- Hopefully, you are in a room by yourself or only with those who will be participating in the proceeding. If there are others around you where you are located, do not speak to others not involved in the proceeding. Remember the court is likely making an audio recording of the proceeding. Keep that in mind and confidentiality issues.
- Privacy and confidentiality are key when determining your location, your client’s location, and the background(s) behind you both. This is especially important to consider if the proceeding will be public or livestreamed (for some state court proceedings), and if the case involves sensitive matters. When discussing with your client where they will be located during the hearing, it might help to verify that the child has an appropriate place to have privacy to talk about their life and experiences. This can be done by asking questions like: “Will anyone be there with you?” and “Will the door closed?” along with explaining why you are asking those questions to help you both determine the best location for the day of the hearing.
- During the proceeding, remember general public speaking tips.
 - Identify yourself when you speak.
 - Speak loudly and clearly and into the microphone you are using (i.e., on computer, phone, headset.). There is also no need to yell or raise your voice too loudly unless an audio issue is raised.
 - If an interpreter will be used remember to pause intermittently and allow time for the interpreter to catch up.
 - You should keep in mind what is in view in your camera to perhaps minimize hand motions or to be more intentional regarding which gestures will be effective.
 - Check your video framing so that you can see your full head with a little space above your head and the bottom of the video should be around chest level.
 - Do not pace or rock.
 - Consider your eye contact. Make sure you are looking into the camera and that you are focused on who you would be focused on if you were in person, whether that be the judge, Asylum Officer, or your client.
- Follow instructions given by the judge, clerk, and/or Asylum Officer. For a telephonic or video hearing, you may need to call ahead to the court clerk to confirm any instructions regarding accessing the court hearing. You may also want to practice using the call-in information during off hours before the hearing and make sure your client understands those instructions as well.

²² You have probably seen the famous YouTube video of the attorney who appeared for a remote hearing in the 394th District Court of Texas using a cat filter. If not, it is worth viewing. *Kitten Zoom Filter Mishap*, YouTube (Feb. 21, 2021), <https://www.youtube.com/watch?v=KxIPGPupdd8>. See also Christina Zdanowicz, *Lawyer tells judge 'I'm not a cat' after a Zoom filter mishap in virtual court hearing*, CNN (Feb. 10, 2021), <https://www.cnn.com/2021/02/09/us/cat-filter-lawyer-zoom-court-trnd/index.html>.



- Ask the judge, clerk, or Asylum Officer before getting started, what you need to do if the call drops, screen freezes, or tablet dies (for interviews). If you are at an USCIS Asylum Office, ask the officer for their phone number to contact them if there is an issue and ask where you or your client can go in that situation.
- For hearings, check in advance about whether a recording is being made and how you can access the recording later for any potential appeals.
- Provide the typical advice and reminders you would for your client to prepare them for testimony. For example, remind your client that they can ask the interpreter to repeat something or to mention something about the sound quality if there are issues. Remind your client to address the judge with “Your Honor” or “Judge” just like you would if you were in person. It is okay for your client to say “I don’t know” and “I don’t remember” when testifying. Answer questions directly and succinctly, but also fully answering the question that is raised.
- Speak when it is your turn.
 - o It is likely best to keep yourself on mute until it is your turn, so no background noises interfere. Be mindful of this and careful not to make a mistake of speaking when you are not on mute or vice versa.
 - o Remind your clients that the remote technology and interpretation are not perfect. Because of this, it is very important to wait until the judge, OPLA attorney, or Asylum Officer finishes asking the question and the interpreter finishes with the interpretation before responding. Otherwise, if they try to interject or answer early, things may get lost in translation or get confused as a result of lagging technology. It is important to be patient as these things or other technological issues come up, and the advocate should be careful to take steps to smooth things over and clarify the issues and record, if possible. It is important for the advocate to speak up to note that there are technological challenges or reception issues going on. It is okay to say I did not hear what was asked due to reception and ask for that information to be repeated. The child can feel empowered to make those same remarks, but there will often be times when the advocate should step in to raise the issue. Ensure that your client is being heard and understood.
 - o It can be more difficult to read when others are talking or about to talk when participating by phone or video, due to technology lags and inability to see everything at once. Do your best not to interrupt. Be respectful and apologize if you accidentally interrupt someone. It is best to minimize all distractions and focus as much as possible to avoid this.
- Do not get up and leave where you are setup by your computer or phone once the proceeding for your case has begun. If you were in court, you would likely ask for a recess or a short break if you needed to step away. It is important to make the same request here.

TIP #8: PREPARE YOUR CLIENT IN ADVANCE: EXPLAIN WHAT TO EXPECT

There are many ways to help prepare your client for a remote interview or hearing, and the best method will depend on several factors including your client’s age, developmental abilities, maturity, comfort level, and degree of understanding to name a few. The method you use might also depend on your capacity, how much notice you have before the proceeding, and how many cases you will be handling remotely. Additionally, it will often be very helpful to use several of these methods to ensure preparedness for both you and your client. Furthermore, if you try one method to explain the proceeding and prepare your client, and your client still seems confused or uncomfortable, you may want to try another method to explain what to expect or consider an alternative. It will be



important to give yourself enough time to review this information with your client and an opportunity to schedule another meeting or time to discuss the issues, if necessary.

Example ways to help prepare your client:

- It is recommended to conduct a mock interview and/or hearing using similar technology methods and to practice with everyone in different rooms to get comfortable with the setup you will experience on the day of the hearing or interview. Try to get the setup to be as similar as you can to what will happen on the day of the hearing or interview, including using a separate interpreter and someone acting as the judge.
- Hold a meeting to verbally explain everything regarding what to expect and offer space for questions and additional explanation.
- Send your client a letter with an explanation of what to anticipate for the hearing or interview.
- Create a visual aid such as a drawing to show the hearing room setup or the interview setup based on the technology and where everyone will be located. You can also show a photo of a courtroom that has a video teleconference in it to help explain the process. You can send this with the letter you send to your client or review it with the child during a meeting. You can also draw this out on a marker board with the client during a meeting and explain it as you draw out the layout.
- Create a client tip sheet regarding what to expect for a remote hearing or interview and information they may need to know in advance including any technology that is involved. Some information from this resource could be used to create a tip sheet or it could be modeled after tips sheets provided by courts, for example.²³
- Share videos in your client's language regarding how to use the technology or create a video to show your clients what to expect.²⁴

There is a reason several of these tips are dedicated to being prepared. Taking the time to prepare yourself and your client in advance can make a significant difference on what happens during the hearing or interview itself. You and your client will be more confident and ready to handle anything that comes up on that day. Being prepared is one of the most important tips we can provide for any hearing or interview, but it becomes that much more important for a remote hearing or interview because there are additional opportunities for surprises and areas for confusion.

TIP #9: REMEMBER YOUR TRAUMA-INFORMED LAWYERING SKILLS

It is always important to practice trauma-informed lawyering skills. This also applies to situations when working with a client in a remote interview or hearing, and it is possibly even more important in these situations due to the challenges that can arise in remote proceedings.

²³ As an example, consider the D.C. Courts' *Tips for Attending Remote Hearings – Criminal Division*. The sheet answers key questions and provides tips relevant to hearings generally and specifically for video hearings. *Attending Remote Hearings – Criminal Division*, D.C. Courts, <https://www.dccourts.gov/sites/default/files/Criminal-Remote%20Hearing%20Tip%20Sheet.pdf> (last visited Mar. 3, 2022).

²⁴ There are example videos that you can find online to use as a model. For example, GeorgiaLegalAid.org created a short video regarding *How to Prepare for a Remote Hearing in Georgia* and The Pro Bono Project created an informational video on *Video Conferencing at the 24th Judicial District Court*. See *How to Prepare for a Remote Hearing in Georgia*, GeorgiaLegalAid.org, <https://youtu.be/6UoGZqWlpGY> (last visited Mar. 3, 2022); *Video Conferencing at the 24th Judicial District Court*, The Pro Bono Project, <https://www.youtube.com/watch?v=2IMogAfh0I8> (last visited Mar. 3, 2022).



Keep the following suggestions in mind when working with your client:

- Consider whether a very young child needs to be present in court or not. You may be able to seek a waiver of their presence.
- Even if some of your preparation has been done remotely, it is helpful to do some in-person meetings to establish rapport. This will help you develop trust and get a better sense for your client, as a person in addition to learning more about their tech savviness, personality, and non-verbal cues.
- Even if you are in different locations, be a good listener. Be very present. During the hearing or interview, consider what you know about the client from other encounters and in-person meetings to help you engage and read the situation.
- Remind the client of the choices they have in the situation and empower them.
- Ensure when you are explaining what to expect that you use examples and simple language, as best as you can.
- Step in to advocate when you need to during the hearing or interview. This could come up in multiple ways. For example, you might want to initiate requesting a break, seeking time to get a drink, a tissue, or time to do a calm-down exercise. It can be easier sometimes when appearing in person to see that your client is crying or tearing up, so it is important to be keenly aware of what is going on and pay attention to any of your client's non-verbal cues. Additionally, empower your clients to ask for a break when preparing and to voice other needs, like those mentioned above. It is a good idea to have your client practice asking for a break in advance, so they feel ready to do so during the hearing or interview, if needed. There have been reports of very long Asylum Office interviews, for example, and hearings can frequently take a long time as well. It is important to be patient, but also remember the importance of seeking breaks for your client, to have some rest, stretch, do a calm-down exercise, and to go to the bathroom.
- In court hearings when you are asking questions on direct examination, remember to pause. Sometimes pausing or slowing down your speed of talking can also help to slow down the overall pace of the hearing if it is moving too fast. You can help create space for your client to think, breathe, or calm down if you slow down your line of questioning or pause intentionally, when needed.
- Consider whether it would be best for you and your client to be in the same location, whether they would benefit from having someone by their side physically, to have that sense of support and presence.
- Consider whether an in-person proceeding is the best approach for the child you are working with, particularly for a child with special needs.
- If you are in different locations and you can tell your client is nervous, you can also interrupt to reassure them that you can see and hear them and that they are doing well, and to remind them that we can stop at any time for a break to take a breath.
- Part of providing trauma-informed lawyering is what you do before and after a hearing or an interview. Ensure that you have a plan to prepare your client in advance. Include in your plan touching base the day of the proceeding or the day prior to provide time for any last-minute questions, to have another opportunity to practice, if needed, or to review the logistics plan again. Also, schedule a meeting to recap and review what occurred during the hearing or interview. Use this time to check in to see how they are doing and to recommend connecting with other resources or services, if necessary.



TIP #10: ADVOCATE FOR A CHILD-FRIENDLY PROCEEDING

There are many aspects of remote hearings and interviews that make it more difficult for the proceeding to be child-friendly as noted by the challenges presented in this resource. It is still important to do your best to make it as child-friendly as possible. Remind the Asylum Officer or the judge, that you are working with a child, their age, and any need to make adjustments in the instructions, process, or pace of the hearing or interview as you go forward. Be sure to seek as many breaks as necessary as it is easy for children to get distracted or tune out, especially when appearing remotely.

Review guidance regarding children's cases provided by EOIR and USCIS in advance, so you have something to point to and rely upon if you need to advocate with the judge or Asylum Officer for the hearing or interview to be more child-friendly. EOIR's Operating Policies and Procedures Memorandum (OPPM) 17-01, *Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children*²⁵ and the more recent DM 22-01, *Encouraging and Facilitating Pro Bono Legal Services*²⁶ from 2021 provide helpful guidance and ideas for advocates.²⁷ For example, DM 22-01 states, "Judges are reminded to employ the child-friendly practices described in other agency guidance, such as scheduling detained juvenile dockets, employing child-sensitive questioning, and allowing the use of a Friend of the Court, among other practices."²⁸ OPPM 17-01 details several considerations including that "stress and fatigue can adversely impact the ability of a younger child to participate in his or her removal proceedings . . ." and that "for emotional and physical reasons, children may require more frequent breaks than adults."²⁹ View the USCIS's *Asylum Division's Affirmative Asylum Procedures Manual*³⁰ and search the USCIS's Electronic Reading Room³¹ to review Asylum Officer Basic Training Course Learning Modules including the *RAIO Combined Training Program Children's Claims Training Module*³² for additional information to prepare for asylum interviews with children.

TIP #11 PROTECT THE RECORD

Keep in mind that the immigration court generally records the audio of immigration court hearings, but Asylum Office interviews are not recorded. There will also often be a transcription of state court proceedings, but this will differ per court. Much of the following advice applies to all settings, but some tips may only apply to court proceedings.

²⁵ See Operating Policies and Procedures Memorandum (OPPM) 17-03, *Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children*, EOIR (Dec. 20, 2017), <https://www.justice.gov/eoir/eoir-policy-manual/OPPM01703/download>.

²⁶ See DM 22-01, *Encouraging and Facilitating Pro Bono Legal Services*, EOIR (Nov. 15, 2021), <https://www.justice.gov/eoir/book/file/1446651/download>.

²⁷ See also EOIR Policy Manual, Part II – OCIJ Manual Ch. 4.22.

²⁸ *Id.*

²⁹ See OPPM cited at *supra* note 23.

³⁰ See *Asylum Division Affirmative Asylum Procedures Manual*, USCIS (May 2016), <https://www.uscis.gov/sites/default/files/document/guides/AAPM-2016.pdf>.

³¹ See *Electronic Reading Room*, USCIS, <https://www.uscis.gov/records/electronic-reading-room> (last visited Mar. 2, 2022).

³² See *RAIO Directorate – Officer Training: RAIO Combined Training Program Children's Claims Training Module*, USCIS (Dec. 20, 2019), https://www.uscis.gov/sites/default/files/document/foia/Childrens_Claims_LP_RAIO.pdf.



Tips relevant to remote hearings before EOIR, state court, and Asylum Office interviews:

- Generally, in terms of the flow of a hearing or interview, it helps to try to defer to the judge's or Asylum Officer's timing and rhythm, since they are generally leading the proceeding, like you would in-person. However, if you appeared in person, there would also likely be times when you need to interject, when you need to as the advocate create space to say something. That space is not always just given. It is still important to do that in a remote proceeding. Respectfully, interject yourself, even if you have to interrupt slightly. Do not be pressured not to speak or to hurry up. Express what is important. You are creating a record for your client and their case. This is of course a balancing act, but a very important one to ensure zealous representation of your client, coverage of all important issues, and to protect the record for potential appeal in the future.
- One idea to help prepare for the hearing or interview is to write down your case's strengths and weaknesses when reviewing your case and going over case strategy. Think about the areas where you might get push-back and how you would like to respond. Then draft talking points in advance; this can help empower you as the advocate to respond boldly in the moment. Do what works best for you, but that is one approach.
- Additionally, as an earlier tip noted, provide as much of a written record as possible, so the record is clear.
- Other considerations are involved when thinking about creating a strong record in court. Always think about the record; be intentional about it. Think about what is being verbally said and what is not being said, what will be captured on the record if you need to appeal. There are times when you should point out issues verbally to ensure that you are creating a strong record. For example, sometimes your client might be tearing up or crying but it is inaudible. You may want to say on the record in a subtle way, my client is crying/upset, could we have a moment, let's get a tissue, or could we take a short recess. Additionally, in a different situation you could say, my client appears confused, let me take a moment to clarify something, or ask if you can explain something or rephrase the question, depending on when it comes up. If you are asking your client about prior harm that they suffered, and they start pointing to their body, note for the record where your client is pointing on their body so that the record is clear. These issues could also come up in an Asylum Office interview too, but again interviews are not recorded, so there will not be an official recording, but these comments could impact the flow of the interview, as well as the officer's observations, reactions, and notes.
- If there are technological challenges, issues with video, or audio problems, it is important to note that on the record, so that the issues are clearly noted and can be addressed.
- Additionally, if a portion of the hearing or interview was missed due to the technological problem, then provide the last portion of information that was heard and ask for the rest to be repeated.
- You can also factually describe any visual issues you notice based on problems with the video.
- If a child is confused or upset about the process, it may also be important to note for the record other factual details such as that the child is looking off in a different direction, holding their head, or if the child is clinging to the attorney or other children. These observations and factual details may all be relevant to seeking a break, adjournment, or a different process if the child cannot fully participate in a remote hearing.

Additional tips relevant to remote hearings before EOIR and/or state court:

- It is still important to make any objections and to offer witness testimony, if necessary.



- Other issues come up particularly when there is a large group or many children being called on a detained hearing docket in immigration court for example. Ensure that for every case the immigration judge noted the child's name and A# on the record, that their appearance is noted on the record, and that any conversation regarding the case is also on the record. If the judge did not say this information once on the record, you may need to restate it.
- Pay close attention to when the judge states that they are going on the record. If important issues were discussed before that point, observe whether the judge accurately describes them on the record. If anything is missing or mischaracterized, politely interject, or speak up to remind the judge of what was said.

It might help to practice these skills in a moot court with colleagues beforehand, so as an advocate you get in the habit of raising issues on the record.

Conclusion

Thank you again to those who completed CILA's survey to provide tips and to others who have shared tips over the last couple of years regarding remote proceedings to help contribute to this resource. We hope that this resource helps you prepare for a remote hearing or USCIS Asylum Interview when working with a child client. Feel free to reach out to CILA at cila@abacila.org if you have any additional tips that you would like to share.

ADDITIONAL RESOURCES

- o ABA COI: [*Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*](#)
- o ABA CILA: [*CILA Pro Bono Guide: Working with Children and Youth in Immigration Cases, IV. Practical Pointers*](#)
- o ABA CILA: [*How to Prepare for an Individual Hearing: Different Practitioners' Perspectives*](#)
- o ABA CILA: [*Trauma Informed Representation in Asylum Cases: Asylum Interview/Asylum Merits Hearing Checklists*](#)
- o ABA CILA: Texas Champions for Immigrant Youth Symposium presentation by ProBAR: [*Legal Services for Tender-Age Children and Best Practices when Providing Services Remotely*](#)
- o National Center for State Courts (NCSC) and State Justice Institute (SJI): [*The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload*](#)
- o Immigration Justice Campaign: [*Fearless Lawyering Video Roundtable: Remote Lawyering in Immigration Court*](#)
- o Fatma Marouf & Luz E. Herrera, *Technological Triage of Immigration Cases*, 72 Fla. L. Rev. 515 (2020). Available at: <https://scholarship.law.tamu.edu/facscholar/1428>
- o Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 Nw. U. L. Rev. 933 (2015). Available at: <https://scholarlycommons.law.northwestern.edu/nulr/vol109/iss4/2/>

