

Working Remotely as an Appellate Practitioner

BY RICHARD LEE STAVINS

From the standpoint of an appellate attorney, coronavirus sequestering has had a minimal adverse impact. Indeed, some might say it has made things easier for appellate counsel.

In another era, the appellate record – which forms the backbone of every appeal – consisted of one set of all the documents filed in the lower court and the transcribed report of proceedings, all neatly tied together by the clerk of the Circuit Court and filed with the clerk of the Appellate Court. Each brief-writer would then check out the record from the reviewing court, take it back to his office, and write the statement of facts to the brief.

Then the practitioner would go to the law library and begin the legal research for the brief's argument section. This library was either his law firm's library, the Cook County law library at the then-Chicago Civic Center, or the old CBA library at 29 South LaSalle Street. The brief was generally handwritten, and then typed by a secretary – in multiple iterations – on an IBM Selectric typewriter. Doing any of this from home was nearly impossible.

When it was ready, the brief would either be sent to one of the local brief-printers to be set in type, or duplicated on a photocopier (always called “the Xerox

machine”) – and ultimately with the prescribed color front and back covers. Then the requisite number of copies were brought to the office of the Appellate Court clerk at the Civic Center and filed. Three copies were sent by U.S. Mail to opposing counsel.

Today, there is no paper record on appeal. Everything filed in the Circuit Court is e-filed and then transmitted electronically to the Appellate Court. There is no cumbersome paper record on appeal to cart around because the Appellate Court clerk will e-send a copy of the entire record to anyone filing an appearance.

Legal research can now be done as readily from home as from a library. Some would say it's even easier from home, given that there's no attire code or “library hours.” Attorneys, of course, type the brief on a word-processing program on their computer.

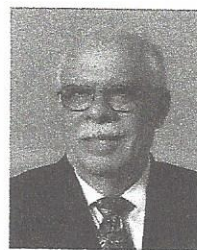
Litigants now must file and serve all appellate briefs electronically, and then deliver six paper copies of the e-filed document to the clerk. While the Appellate Court of Illinois, unlike the U.S. Court of Appeals for the Seventh Circuit, requires the e-filed document to have the requisite color cover, most software programs can do this easily. Other than the delivery of the

six paper copies, all of this is done remotely and just as easily from home as from office.

The lesson of this for the coronavirus world is clear: Just about everything in an appeal, other than oral argument, can be done from home. The bane of existence of appellate practitioners – constant interruptions from other attorneys in the firm – is gone for good.

What about meetings with the client or with opposing counsel? Not necessary. It's often said that appellate lawyers are great book people, but lousy ‘people’ people. In most appeals, the appellate lawyer never meets with the client and never sees the opposing attorney until they meet in the appellate courtroom for the oral argument. Clients seldom attend oral argument.

As we go to press, the Supreme Court has set oral argument at its May session to be conducted remotely via Zoom. Attorneys from Chicago (including the author) scheduled for argument at that session can simply sit at home at their computer screens, and not have to make the long trek to Springfield.



Richard Stavins is a shareholder in the Chicago law firm of Robbins, Salomon & Patt, Ltd. He concentrates his practice in trial and appellate litigation, and recently completed his 125th appeal. He serves on the CBA Record Editorial Board and is a 50-year CBA member.