

VIDEO CONFERENCING RISKS

There are risk management issues to consider when using video conferencing.

TIPS

When video conferencing:

- never witness signatures via video conferencing
- always take reasonable steps to identify your client
- new clients should always be identified in person
- only give advice if the audio and visual reception is good
- check the client is alone (if appropriate)
- read any solicitor's certificates carefully.

Video conferencing is a prime example of changing technology affecting the way lawyers do business. Years ago it was only available for large companies and now everyone carries the capability in their pocket.

The risks for lawyers of using video conferencing relates to identity fraud and lawyers need to stop and think about how they use the technology to minimise that risk.

LPLC receives inquiries from practitioners about the use of video conferencing to:

- witness a signature
- identify their client
- give the client advice
- give a solicitor's certificate.

Witness a signature

LPLC considers you should not witness signatures via video conferencing. In many cases when witnessing documents, the witness attests to being in the presence of the person signing the documents. Watching someone sign a document on a screen who is not in the same room as you is unlikely to be considered "in the presence of".¹ It is also difficult for the witness to be sure the document that is subsequently sent to them to sign is the same document they saw signed on the screen.

Identify the client

Practitioners should always take reasonable steps to identify their client and giving advice via video conferencing is no different. You need to satisfy yourself you are advising to the right person. What those

reasonable steps are will depend on how well you know your client. If you have never met the client they should be identified face to face either by someone in your firm or a third-party agent if the client cannot come to your office. If an agent is used, they need to send copies of identification documents to you before the conference call. The client should produce the original identification documents during the conference and hold them up to the screen, so you can be satisfied the person on the screen is the one who was identified face to face.

Giving the client advice

Video conferencing gives you the opportunity to see the client and pick up facial expression cues when you are advising them that you would not get over the telephone. It is a better alternative to receiving instructions and giving advice by telephone but not as good as being face to face.

You should make sure you and your client can hear and see each other clearly and the reception is not patchy or disrupted. Depending on the advice being given, you may need to satisfy yourself there is no one else in the room who might influence the client.

The benefit of much video conferencing software is you can record the meeting for later reference. If you are giving the client important advice that means they can listen to the advice again later, which for many people will help them take in all that you have said.

Giving a solicitor's certificate

Besides the issue of identify fraud, the biggest risk when giving a solicitor's certificate is the accuracy of the certification. Practitioners need to understand what they are certifying and be satisfied that it is in fact true. You can only give a solicitor's certificate after giving advice to a client by video conference if the certificate:

- does not require you to be in the presence of the client, and ideally confirms the advice was given via video conferencing
- is confined to just giving the advice
- clearly defines what documents you advised on
- does not state you witnessed the client sign the documents.

You would not be able to certify that the advice was given before the client signed the documents but you could say the client informed you they had not yet signed the documents if the client confirms that is the case.

Any solicitor's certificate needs to be carefully read and understood before it is signed. Signing a false certificate has both professional indemnity and professional misconduct consequences. For more information on solicitor's certificates see www.lplc.com.au.

Think carefully about these issues now and develop safe practices before a client asks. ■

This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit www.lplc.com.au.

1. See <http://www.adls.org.nz/for-the-profession/news-and-opinion/2016/2/12/video-conferencing-technology-and-the-witnessing-of-documents/>

