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# ILLINOIS BUSINESS LAW JOURNAL

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## I THINK YOU ARE MUTED, YOUR HONOR: THE RISE OF REMOTE LEGAL PROCEEDINGS AND WHAT IS IN STORE

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❖ Note ❖

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### I. INTRODUCTION

On October 28, 2021, Mark Zuckerberg announced Facebook’s new focus on the “metaverse.”<sup>1</sup> Facebook and its counterparts now belong to Meta Platforms, Inc. and will emphasize and move toward a virtual reality future.<sup>2</sup> This novel endeavor came about a year and a half after the COVID-19 pandemic forced the world to adapt to new, remote mediums.<sup>3</sup> Digital landscapes became an immediate necessity rather than a distant, futuristic concept.<sup>4</sup> Many industries were affected; the legal sector was no exception.<sup>5</sup>

In an unprecedented fashion, law firms and courtrooms alike moved entirely remote.<sup>6</sup> For the first time, depositions, hearings, and even entire trials were conducted by video conference from participants’ homes.<sup>7</sup> Attorneys and their clients no longer commuted to an office but instead conducted their business through programs such as Zoom or Microsoft Teams.<sup>8</sup>

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<sup>1</sup> Kim Lyons, *Facebook Just Revealed Its New Name: Meta*, VERGE (Oct. 28, 2021, 2:19 PM), <https://www.theverge.com/2021/10/28/22745234/facebook-new-name-meta-metaverse-zuckerberg-rebrand>.

<sup>2</sup> *Id.*

<sup>3</sup> See Richard Eisenberg, *Is Working from Home the Future of Work?*, FORBES (Apr. 10, 2020, 2:44 PM), <https://www.forbes.com/sites/nextavenue/2020/04/10/is-working-from-home-the-future-of-work/?sh=447c189346b1> (discussing the transition to remote work during the coronavirus pandemic).

<sup>4</sup> See *id.*

<sup>5</sup> See, e.g., Sam Skolnik, *New York Bar Advises That Firms Be Cautious About Reopening*, BLOOMBERG LAW (May 13, 2020, 5:41 PM), <https://news.bloomberglaw.com/us-law-week/new-york-state-bar-releases-law-firm-reopening-plan>.

<sup>6</sup> See, e.g., Robert Barnes, *Supreme Court Takes Modest but Historic Step with Teleconference Hearings*, WASH. POST (May 4, 2020), [https://www.washingtonpost.com/politics/courts\\_law/supreme-court-teleconference-hearings-bookingcom/2020/05/03/f5902bd6-8d76-11ea-a9c0-73b93422d691\\_story.html](https://www.washingtonpost.com/politics/courts_law/supreme-court-teleconference-hearings-bookingcom/2020/05/03/f5902bd6-8d76-11ea-a9c0-73b93422d691_story.html).

<sup>7</sup> See, e.g., Jake Bleiberg, *Texas Court Holds First US Jury Trial via Videoconferencing*, ABC NEWS (May 22, 2020, 12:31 AM), <https://abcnews.go.com/Health/wireStory/texas-court-holds-us-jury-trial-videoconferencing-70825080>.

<sup>8</sup> See *Which Video Conferencing Tool Is Best for Lawyers?*, LAW. MONTHLY (May 6, 2020), <https://www.lawyer-monthly.com/2020/05/which-video-conferencing-tool-is-best-for-lawyers/>.

With these sudden changes came questions about the legitimacy of the remote practices.<sup>9</sup> The legal field, which is rich in tradition and often slow to adapt, was now adopting modern technology with no time to verify its effectiveness or legality.<sup>10</sup> As the effects of the pandemic have waned, many firms and courts have maintained the new customs.<sup>11</sup>

What does this mean for the legal field moving forward? This note will argue that recent legal precedent has paved the way for the legal industry to enter the metaverse; businesses and firms should prepare for the changes, big and small, that will follow. Part II will examine the movement of legal proceedings and practices to remote settings in light of the COVID-19 pandemic and the history and current state of the metaverse. Part III will analyze the effects and legality of remote legal practice and how the metaverse may change the business and practice of law. Part IV will argue that legal precedent regarding remote legal proceedings will be applicable to practice in the metaverse, and the legal sector should prepare accordingly. Part V will conclude.

## II. BACKGROUND

### *A. Going Remote*

As the COVID-19 pandemic raged in the first half of 2020, entire industries were forced to comply with quarantine and stay-at-home orders.<sup>12</sup> These unexpected requirements meant conducting business from home for law firms and other office-based enterprises.<sup>13</sup> Meetings, depositions, and client relations moved entirely online, relying on phone and video conferencing.<sup>14</sup> Hopping on a plane to meet with a client face-to-face or collect a witness deposition was no longer an option.<sup>15</sup> Some firms already used remote methods for client and colleague communications, but many legal businesses were uninitiated to the practice.<sup>16</sup>

Client confidentiality concerns arose after operations moved entirely remote.<sup>17</sup> These worries came amid several privacy lawsuits filed against popular platforms like Zoom in the early stages of the pandemic.<sup>18</sup> However, firms also noticed benefits to practicing remotely, such as flexibility and massive travel cost savings.<sup>19</sup>

Courts faced similar challenges. State courts, and even the Supreme Court, had to find ways to conduct their activities from home instead of in the courtroom.<sup>20</sup> In March 2020, courts around

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<sup>9</sup> David Horrigan, *COVID Technology Law Update: The Law of Virtual Court Proceedings*, LEGALTECH NEWS (Feb. 8, 2022, 7:00 AM), <https://www.law.com/legaltechnews/2022/02/08/covid-technology-law-update-the-law-of-virtual-court-proceedings/?slreturn=20220216181903>.

<sup>10</sup> See Callie Evergreen, *Remote Legal Process Benefits 'Zees and 'Zors, Says Lawyer*, FRANCHISE TIMES (June 10, 2021), [https://www.franchisetimes.com/franchise\\_news/remote-legal-process-benefits-zees-and-zors-says-lawyer/article\\_3348ebe0-c965-11eb-b428-83edcf2985d0.html](https://www.franchisetimes.com/franchise_news/remote-legal-process-benefits-zees-and-zors-says-lawyer/article_3348ebe0-c965-11eb-b428-83edcf2985d0.html).

<sup>11</sup> See Horrigan, *supra* note 9.

<sup>12</sup> See Eisenberg, *supra* note 3.

<sup>13</sup> See LAW. MONTHLY, *supra* note 8.

<sup>14</sup> See Evergreen, *supra* note 10.

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> See LAW. MONTHLY, *supra* note 8.

<sup>18</sup> See, e.g., *Cullen v. Zoom Video Communs., Inc.*, No. 20-CV-02155-LHK, 2020 U.S. Dist. LEXIS 78745 (N.D. Cal. Apr. 24, 2020); *Hurvitz v. Zoom Video Communs.*, No. CV 20-3400 PA (JPRx), 2020 U.S. Dist. LEXIS 138590 (C.D. Cal. May 12, 2020).

<sup>19</sup> See Evergreen, *supra* note 10.

<sup>20</sup> See, e.g., *Barnes*, *supra* note 6.

the country started conducting online hearings at record rates to resolve cases.<sup>21</sup> Some courts initially delayed proceedings like trials and motions, but delays could no longer suffice as the pandemic continued longer than expected.<sup>22</sup> For the first time, courts conducted entire jury trials through remote video conference software.<sup>23</sup>

Two years after the start of the COVID-19 pandemic, much of the practices that the legal industry initially thought to be temporary appear here to stay.<sup>24</sup> Many firms now offer their partners and associates a “hybrid” work environment where they can work part of the week from home.<sup>25</sup> These programs respond to many attorneys’ preference for remote, at-home work and accordingly hope to improve retention.<sup>26</sup> Additionally, some courts are leaving pandemic practices in place.<sup>27</sup> Hearings, jury selections, and trials may stay remote in some jurisdictions.<sup>28</sup> For example, a new California law allows courts to conduct all civil proceedings, including trials, remotely until July 2023.<sup>29</sup> Courts and litigants alike have found that virtual proceedings are beneficial for increased access, participation, and simplicity.<sup>30</sup>

### B. *Into the Metaverse*

The “metaverse” can be defined as a “3D model of the internet.”<sup>31</sup> Digital representations of people, known as avatars, can interact in a virtual reality parallel to the physical world.<sup>32</sup> The metaverse “represents a digital space accessed with [augmented reality] and [virtual reality] devices where many of our daily activities can be carried out” remotely.<sup>33</sup> In many contexts, the metaverse can be thought of more simply as “cyberspace.”<sup>34</sup> The metaverse does not necessarily refer to any specific technology but is instead a broad shift in how society interacts in digital spaces.<sup>35</sup>

The metaverse concept has been around for many decades, but only recently has it been technologically possible to implement properly.<sup>36</sup> Although people can access virtual worlds through computers, game consoles, or phones, virtual and augmented reality devices allow for greatly

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<sup>21</sup> Erika Rickard, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations*, PEW CHARITABLE TRUSTS (Dec. 1, 2021), <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations>.

<sup>22</sup> See Jack Karp, *Trial Alternatives Getting Fresh Look with COVID-19 Backlog*, LAW360 (Feb. 4, 2021, 10:46 AM), <https://www.law360.com/articles/1351450/trial-alternatives-getting-fresh-look-with-covid-19-backlog>.

<sup>23</sup> See Bleiberg, *supra* note 7.

<sup>24</sup> See Horrigan, *supra* note 9.

<sup>25</sup> Ruiqi Chen, *Why Law Firms Take Differing Paths on Office Returns: Explained*, BLOOMBERG LAW (Nov. 10, 2021, 5:00 AM), <https://news.bloomberglaw.com/business-and-practice/why-law-firms-take-differing-paths-on-office-returns-explained>.

<sup>26</sup> *Id.*

<sup>27</sup> Rickard, *supra* note 21.

<sup>28</sup> Huo Jingnan, *To Try or Not to Try — Remotely. As Jury Trials Move Online, Courts See Pros and Cons*, NPR (Mar. 18, 2022, 5:45 AM), <https://www.npr.org/2022/03/18/1086711379/as-jury-trials-move-online-courts-see-pros-and-cons>.

<sup>29</sup> Cal. Civ. Proc. Code § 367.75 (Deering 2022).

<sup>30</sup> Rickard, *supra* note 21 (explaining that “[i]n recognition of technology’s potential to make it easier for people to participate in court processes, more court officials plan to embrace virtual services”).

<sup>31</sup> Shamani Joshi, *The Metaverse, Explained for People Who Still Don’t Get It*, VICE (Mar. 15, 2022, 4:52 AM), <https://www.vice.com/en/article/93bmyv/what-is-the-metaverse-internet-technology-vr>.

<sup>32</sup> *Id.*

<sup>33</sup> Oleg Fonarov, *Tech Leaders Are Jumping into the Metaverse — Should Your Company Follow?*, FORBES (Feb. 3, 2022, 7:45 AM), <https://www.forbes.com/sites/forbestechcouncil/2022/02/03/tech-leaders-are-jumping-into-the-metaverse--should-your-company-follow/?sh=3df7f35b6bae>.

<sup>34</sup> Eric Ravenscraft, *What Is the Metaverse, Exactly?*, WIRED (Apr. 25, 2022, 7:00 AM), <https://www.wired.com/story/what-is-the-metaverse/>.

<sup>35</sup> *Id.*

<sup>36</sup> Joshi, *supra* note 31.

enhanced immersion.<sup>37</sup> Virtual reality headsets have only existed for about ten years in their modern, popular form.<sup>38</sup> In 2014, Facebook acquired Oculus VR, one of the most prominent virtual reality headset companies.<sup>39</sup> In October 2021, Facebook rebranded itself as “Meta” to emphasize a new focus on metaverse projects.<sup>40</sup> Multiple tech giants have similar plans, including Microsoft, Disney, and Snap.<sup>41</sup>

Despite requiring advanced technology like a need for virtual reality headsets, many non-technology-centered businesses have considered metaverse implementation.<sup>42</sup> According to the Accenture Technology Vision 2022 report, “98% of executives believe continuous technological advances are becoming more reliable than economic, political, or social trends in informing their organization’s long-term strategy.”<sup>43</sup> A metaverse platform could allow companies to unite existing digital tools to communicate, track work, and store and share files.<sup>44</sup> Current business uses for the metaverse include remote cooperation, training, and client interactions.<sup>45</sup> Although virtual offices for remote work are a potentially valuable way for companies to implement the metaverse internally, there are also opportunities to market and advertise.<sup>46</sup> To implement the metaverse into their practice, companies can hire an in-house development team or outsource this work to programmers and 3D artists.<sup>47</sup>

### III. ANALYSIS

#### A. *The Legality of Virtual Legal Proceedings*

As soon as remote legal proceedings gained prevalence, there were questions about the practice’s legal viability.<sup>48</sup> A criminal defendant’s Sixth Amendment right to *confront* their accuser is one example of a worry raised in light of virtual proceedings.<sup>49</sup> Additionally, there were concerns about the practicality of transitioning from physical courtrooms to video conferencing software.<sup>50</sup> There were also questions of tradition, such as the Supreme Court’s rule against cameras while in session.<sup>51</sup>

#### 1. Case Law

*Vazquez Diaz v. Commonwealth* was one of the first cases concerning the constitutionality of remote court proceedings.<sup>52</sup> The question before the Massachusetts Supreme Court was whether the

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<sup>37</sup> See Ravenscraft, *supra* note 34.

<sup>38</sup> See, e.g., *Oculus Rift Virtual Reality Headset Gets Kickstarter Cash*, BBC (Aug. 1, 2012), <https://www.bbc.com/news/technology-19085967>.

<sup>39</sup> Chris Welch, *Facebook Buying Oculus VR for \$2 Billion*, VERGE (Mar. 25, 2014, 5:34 PM), <https://www.theverge.com/2014/3/25/5547456/facebook-buying-oculus-for-2-billion/in/3631187>.

<sup>40</sup> Lyons, *supra* note 1.

<sup>41</sup> Fonarov, *supra* note 33.

<sup>42</sup> *Id.*

<sup>43</sup> Vala Afshar, *Is Your Business Ready for the Metaverse?*, ZDNET (Mar. 16, 2022), <https://www.zdnet.com/article/accenture-technology-vision-2022/>.

<sup>44</sup> Fonarov, *supra* note 33.

<sup>45</sup> *Id.*

<sup>46</sup> See Joey Hodges, *How Brands Can Strategize for the Metaverse*, ENTREPRENEUR (Mar. 4, 2022), <https://www.entrepreneur.com/article/416547>.

<sup>47</sup> Fonarov, *supra* note 33.

<sup>48</sup> Horrigan, *supra* note 9.

<sup>49</sup> U.S. Const. amend. VI; see Horrigan, *supra* note 9.

<sup>50</sup> Horrigan, *supra* note 9.

<sup>51</sup> Barnes, *supra* note 6.

<sup>52</sup> See generally *Vazquez Diaz v. Commonwealth*, 167 N.E.3d 822 (Mass. 2021).

use of an internet-based video conferencing platform for an evidentiary hearing violated the defendant's constitutional rights to be present, to confrontation, and to a public trial under the Sixth Amendment.<sup>53</sup> The court concluded that "a virtual hearing is not a per se violation of the defendant's constitutional rights in the midst of the COVID-19 pandemic."<sup>54</sup> The court weighed the defendant's interests against the government's interests; it concluded that the state's "interest in protecting the public health during the COVID-19 pandemic is significant and, combined with its interest in the timely disposition of a case, would, in many instances, outweigh the defendant's interest in an in-person hearing."<sup>55</sup>

Although the court did not find virtual hearings during a pandemic a per se constitutional violation, they did hold that the trial court erred in denying the defendant's request for an in-person hearing.<sup>56</sup> The court stated that the trial "judge abused her discretion . . . in denying the defendant's motion to continue his hearing."<sup>57</sup> In making its decision, the court pointed to the defendant's waiver of his right to a speedy trial and that there were no civilian victims or witnesses.<sup>58</sup> Ultimately, *Vazquez Diaz* tells us that remote criminal proceedings are likely constitutional with the defendant's consent.<sup>59</sup>

In a concurring opinion to *Vazquez Diaz*, Justice Scott Kafker expressed some concerns with virtual proceedings, stating that "a virtual evidentiary hearing on Zoom . . . is not the same as an in-person evidentiary proceeding."<sup>60</sup> Justice Kafker was skeptical about the efficacy of virtual hearings because they "may alter [the] evaluation of demeanor evidence, diminish the solemnity of the legal process, and affect [the] ability to use emotional intelligence, thereby subtly influencing our assessment of other participants."<sup>61</sup>

Other states have reached similar outcomes.<sup>62</sup> For example, Illinois and Kansas appellate courts have likewise held that remote, video conferencing proceedings do not violate a defendant's due process rights.<sup>63</sup> In Illinois, the First District Court of Appeals noted that "[d]ue process is a flexible concept, and not all situations calling for procedural safeguards call for the same kind of procedure."<sup>64</sup> In Kansas, the Court of Appeals was asked to decide whether video conferencing hearings are a per se due process violation.<sup>65</sup> The court emphasized that there must be some particular deficiency, such as no access to documents or no ability to consult with counsel, for remote hearings to violate due process rights.<sup>66</sup> In response to claims of technical issues, the court stated that their "review of the . . . hearing transcript . . . reveals that the district court and counsel were not hesitant to ask other hearing participants . . . to speak up and repeat themselves if the audio quality rendered spoken comments unclear."<sup>67</sup>

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<sup>53</sup> *Id.* at 827-28; *see also* U.S. Const. amend. VI.

<sup>54</sup> *Vazquez Diaz*, 167 N.E.3d at 827-28.

<sup>55</sup> *Id.* at 832.

<sup>56</sup> *Id.* at 842.

<sup>57</sup> *Id.* at 833.

<sup>58</sup> *Id.* at 833-34.

<sup>59</sup> *See id.* at 833-34, 842.

<sup>60</sup> *Vazquez Diaz v. Commonwealth*, 167 N.E.3d 822, 843 (Mass. 2021) (Kafker, J., concurring).

<sup>61</sup> *Id.*

<sup>62</sup> *See, e.g.,* *Clarrington v. State*, 314 So.3d 495, 509 (Fla. Dist. Ct. App. 2020) (holding that trial court's order directing remote probation violation hearing did not violate defendant's right to confrontation and due process).

<sup>63</sup> *People v. W.L. (In re R.L.)*, 2021 IL App (1st) 210419, ¶15; *In the Interest of C.T.*, 501 P.3d 899, 907 (Kan. Ct. App. 2021).

<sup>64</sup> *People v. W.L. (In re R.L.)*, 2021 IL App (1st) 210419, ¶11.

<sup>65</sup> *In the Interest of C.T.*, 501 P.3d 899, 907 (Kan. Ct. App. 2021).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

Remote and virtual court proceedings present novel issues that many jurisdictions have yet to address. However, initial decisions such as *Vasquez Diaz* indicate that virtual proceedings are not outright unconstitutional; they are viable alternatives to traditional courtroom proceedings as long as courts follow proper procedures.<sup>68</sup>

## 2. Legislative and Regulatory Landscape

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act.<sup>69</sup> Under the CARES Act, courts may allow video conferencing for court proceedings in response to the COVID-19 pandemic.<sup>70</sup> Initially, Congress set the CARES Act provisions to expire thirty days after the end of the national emergency, but the President has extended the Act multiple times.<sup>71</sup> Some experts suggest the federal government will continue to extend the CARES Act into the near future.<sup>72</sup>

States are also beginning to take regulatory action in the form of statutes and procedural rules that authorize virtual proceedings and outline how courts should conduct them.<sup>73</sup> When the COVID-19 pandemic began, many states adopted emergency rules and authorizations for remote court proceedings.<sup>74</sup> California is the first state to codify more permanent legislation, with a new law allowing courts to conduct any civil proceeding remotely until July 2023.<sup>75</sup> The law gives courts the ability to deny remote proceedings only if the court does not have the necessary technology or if it determines that the in-person presence of a party or witness would “materially assist in the determination” of the proceeding.<sup>76</sup>

Additionally, the Ohio Supreme Court has proposed a new rule that would permanently allow civil trials to be held remotely.<sup>77</sup> The rule would allow parties to request a trial to be held remotely, but all parties must agree in the case of a jury trial.<sup>78</sup> This proposed rule has received some backlash from Ohio lawmakers, mainly due to individual parties having the ability to request remote court in the case of bench trials or other proceedings with no jury.<sup>79</sup>

Current case law and legislation, although arising from the COVID-19 pandemic, appear relatively straightforward; remote legal proceedings are not an outright constitutional violation when

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<sup>68</sup> See *Vasquez Diaz v. Commonwealth*, 167 N.E.3d 822, 827-28 (Mass. 2021).

<sup>69</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

<sup>70</sup> Coronavirus Aid, Relief, and Economic Security Act § 15002.

<sup>71</sup> Horrigan, *supra* note 9.

<sup>72</sup> *Id.*; see also Adam S. Minsky, *Biden Officially Extends Student Loan Payment Pause, Promises ‘Additional Flexibilities’ for Borrowers*, FORBES (Apr. 6, 2022, 10:13 AM), <https://www.forbes.com/sites/adamminsky/2022/04/06/biden-officially-extends-student-loan-payment-promises-additional-flexibilities-for-borrowers/?sh=55f662cf5b83> (discussing President Biden extending student loan payment forbearance, a part of the CARES Act, to August 2022).

<sup>73</sup> See, e.g., Cal. Civ. Proc. Code § 367.75 (Deering 2022).

<sup>74</sup> See, e.g., ILLINOIS SUPREME COURT, ILLINOIS SUPREME COURT POLICY ON REMOTE COURT APPEARANCES IN CIVIL PROCEEDINGS (2020); Stephen J. Henning, *California Leads Nation in Preserving Remote Appearances; Proposed Legislation Allows Virtual Appearances, Testimony and Trials*, WSHB LAW (Nov. 5, 2021), [https://www.wshblaw.com/california-leads-nation-in-preserving-remote-appearances-proposed-legislation-allows-virtual-appearances-testimony-and-trials/?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=LinkedIn-integration..](https://www.wshblaw.com/california-leads-nation-in-preserving-remote-appearances-proposed-legislation-allows-virtual-appearances-testimony-and-trials/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration..)

<sup>75</sup> § 367.75; see Henning, *supra* note 74.

<sup>76</sup> § 367.75; Henning, *supra* note 74.

<sup>77</sup> Csaba Sukosd, *Remote Technology Central in Proposed Court Rule Changes*, CT. NEWS OHIO (May 13, 2022), [https://www.courtnewsOhio.gov/happening/2022/Courtrulechanges\\_051322.asp#.YoVA9ujMIuU](https://www.courtnewsOhio.gov/happening/2022/Courtrulechanges_051322.asp#.YoVA9ujMIuU).

<sup>78</sup> *Id.*

<sup>79</sup> Nick Evans, *Ohio House Lawmaker Files Resolution to Block Remote Civil Trials in the State*, CITY BEAT (May 18, 2022, 9:45 AM), <https://www.citybeat.com/news/ohio-house-lawmaker-files-resolution-to-block-remote-civil-trials-in-the-state-13174365>.

appropriately implemented.<sup>80</sup> There remain unanswered questions, but many will likely be answered as courts decide additional cases and more states consider the issue in the near future.

### B. *Law in the Metaverse*

Current and proposed metaverse implementation in the private sector may suggest that legal work and proceedings could soon be found in a 3D virtual space.<sup>81</sup> Virtual and augmented reality metaverse experiences offer compelling reasons for law firms and courts to transition,<sup>82</sup> especially if they already use basic video conferencing platforms like Zoom. Business operations that are often done remotely, like client interactions and employee training, can now be enhanced and more realistic, allowing for a more connected remote work experience.<sup>83</sup>

The few years since the start of the COVID-19 pandemic have served as a proving ground for the legal sector's ability to adapt to remote, virtual landscapes.<sup>84</sup> Furthermore, some courts have found these new customs beneficial and even preferable.<sup>85</sup> As more sectors transition from basic remote video conferencing to virtual and augmented reality metaverse platforms, the legal system may be next. As more states follow in the footsteps of California and Ohio in implementing remote court outside the pandemic context,<sup>86</sup> they may look for ways to create a more immersive and realistic virtual experience.

The metaverse could quell many of the concerns expressed by Justice Kafker in *Vazquez Diaz*.<sup>87</sup> Current video conferencing software is limited to two-dimensional depictions, whereas the metaverse allows for interactions in a virtual third dimension.<sup>88</sup> Digital avatars in a virtual reality courtroom may convey demeanor and emotional intelligence more clearly.<sup>89</sup> This enhanced virtual depiction could also benefit law firms and other legal organizations by allowing for more personal interactions with clients and colleagues while maintaining the remote conveniences.<sup>90</sup>

Constitutionally, courts may not view metaverse legal proceedings differently than current video conferencing implementations. Fundamentally, the metaverse is still a remote, virtual interface similar to Zoom or other video conferencing software.<sup>91</sup> Virtual reality technology could allow for more robust remote legal experiences that relieve many concerns with current options such as Zoom.<sup>92</sup> Ultimately, the metaverse may provide an alternative to standard video conferencing

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<sup>80</sup> See, e.g., *Vazquez Diaz v. Commonwealth*, 167 N.E.3d 822, 827-28 (Mass. 2021); § 367.75.

<sup>81</sup> Cf. Mary K. Pratt, *10 Examples of the Metaverse for Business and IT Leaders*, TECHTARGET (Apr. 5, 2022), <https://www.techtarget.com/searchcio/feature/Examples-of-the-metaverse-for-business-and-IT-leaders> (discussing various ways that companies can use and benefit from metaverse implementation including business operations, improved training, and work meetings).

<sup>82</sup> See *id.*

<sup>83</sup> See *id.*

<sup>84</sup> Horrigan, *supra* note 9.

<sup>85</sup> See, e.g., Patrick Mcardle, *Some Changes to Vermont Courts Likely to Remain*, RUTLAND HERALD (Apr. 15, 2022), [https://www.rutlandherald.com/news/some-changes-to-vermont-courts-likely-to-remain/article\\_88e1af89-670b-5e82-b07f-3e4f4e8f6119.html](https://www.rutlandherald.com/news/some-changes-to-vermont-courts-likely-to-remain/article_88e1af89-670b-5e82-b07f-3e4f4e8f6119.html).

<sup>86</sup> See Cal. Civ. Proc. Code § 367.75 (Deering 2022); Sukosd, *supra* note 77.

<sup>87</sup> See *Vazquez Diaz v. Commonwealth*, 167 N.E.3d 822, 843 (Mass. 2021) (Kafker, J., concurring).

<sup>88</sup> Joshi, *supra* note 31.

<sup>89</sup> Shane L. Rogers et. al., *Realistic Motion Avatars Are the Future for Social Interaction in Virtual Reality*, 2 FRONTIERS IN VIRTUAL REALITY, Jan. 3, 2022, at 1, 7-9.

<sup>90</sup> See *id.*

<sup>91</sup> See Joshi, *supra* note 31.

<sup>92</sup> See Debra Cassens Weiss, *Another Lawsuit Is Filed Against Zoom Over Alleged Privacy Problems*, ABA J. (Apr. 14, 2020, 10:04 AM), <https://www.abajournal.com/news/article/another-lawsuit-is-filed-against-zoom-over-alleged-privacy-problems>.

software that retains the benefits of remote legal work and proceedings but is also more viable for permanent use.<sup>93</sup>

#### IV. RECOMMENDATION

Legislatures, agencies, and courts should begin to compose a permanent regulatory landscape around virtual legal proceedings, particularly in the metaverse context. Although the concept and technology are in their infancy, the COVID-19 pandemic revealed that the legal industry must be prepared for rapid, unexpected change. Congress' CARES Act was a step in the right direction but only concerned virtual proceedings in the context of a national emergency.<sup>94</sup> Even as the pandemic wanes, the proliferation of remote proceedings shows that more permanent legislation is needed.

States should consider promulgating rules like California's that plainly articulate remote court procedural authorization and expectations.<sup>95</sup> Legislators and courts should write these laws and rules to last indefinitely, even beyond public health needs, like what the Ohio Supreme Court is currently considering.<sup>96</sup> Cases like *Vazquez Diaz* suggest that although courts may not be able to compel parties to engage in virtual proceedings, it can be a viable and constitutional option when courts weigh interests.<sup>97</sup> The government's interest in public health was relied heavily upon during the COVID-19 pandemic.<sup>98</sup> However, many of the other benefits to virtual proceedings, like accessibility, could be compelling government interests that allow remote proceedings to continue beyond the pandemic context.<sup>99</sup>

Law practices of any size and type should begin preparing for future implementations of virtual, remote, metaverse technologies. To stay competitive, brands should begin developing strategies for how they will enter the metaverse.<sup>100</sup> This may mean adopting metaverse practices for internal activities such as meetings and training, or it may simply mean keeping up to date with current metaverse systems and platforms. Firms should also consider leveraging the metaverse for advertising, branding, and marketing opportunities to reach new and developing markets.<sup>101</sup> Firms that had already implemented remote video conferencing tools into their practice were at a distinct advantage when the COVID-19 pandemic began. There is no way to anticipate a similar situation.<sup>102</sup>

Law practices, public and private, should also be prepared to counsel their clients on possible implications of the metaverse. As the technology develops and more businesses and entities begin to adopt metaverse applications, attorneys will need to understand the new landscape and how to advise their clients appropriately. There may also be changes in the way attorneys interact with their clients,<sup>103</sup> and firms should ensure that attorneys and clients are comfortable with these new, virtual formats.

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<sup>93</sup> See Evergreen, *supra* note 10.

<sup>94</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281, § 15002 (Mar. 27, 2020).

<sup>95</sup> See Cal. Civ. Proc. Code § 367.75 (Deering 2022).

<sup>96</sup> See Sukosd, *supra* note 77.

<sup>97</sup> See *Vazquez Diaz v. Commonwealth*, 167 N.E.3d 822, 832-34 (Mass. 2021).

<sup>98</sup> See *id.* at 832.

<sup>99</sup> Rickard, *supra* note 21.

<sup>100</sup> Hodges, *supra* note 46.

<sup>101</sup> See Pratt, *supra* note 81.

<sup>102</sup> See Evergreen, *supra* note 10.

<sup>103</sup> See Pratt, *supra* note 81.



## V. CONCLUSION

When the COVID-19 pandemic forced the legal industry to quickly adapt to new, remote landscapes, most probably expected the changes to be temporary. However, despite some concerns and complications, many have noticed considerable benefits to remote, virtual legal and business work. Courts, law firms, corporations, and the like now continue to embrace virtual alternatives to the traditional courtroom or workplace. With the rise of innovative virtual technologies such as the metaverse, every aspect of the legal sector will be affected. One lesson to take away from recent history: departure from tradition may not always be a simple normative suggestion; prepare for change.