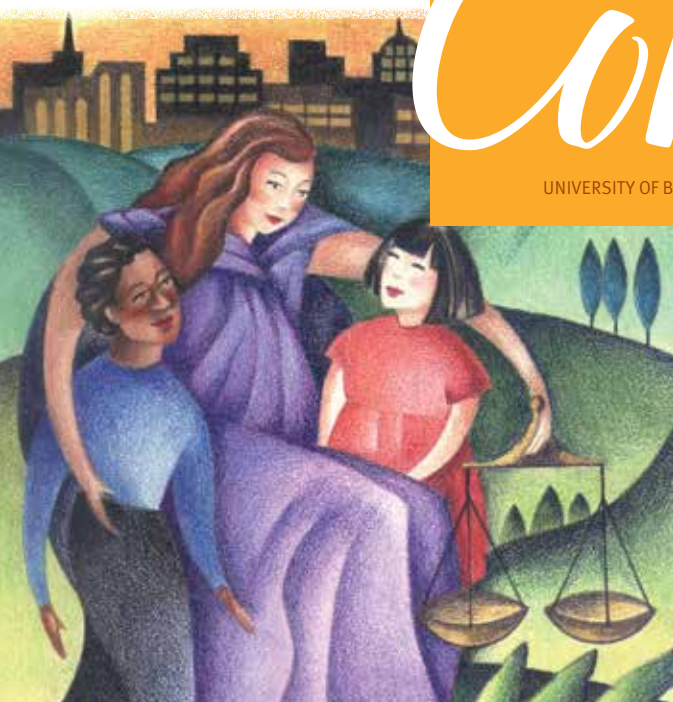




# Connection

UNIVERSITY OF BALTIMORE SCHOOL OF LAW ■ SAYRA AND NEIL MEYERHOFF CENTER FOR FAMILIES, CHILDREN AND THE COURTS



## Overview

The novel coronavirus (COVID-19) pandemic dramatically has changed the daily lives of Americans and has had a significant impact on the justice system on both the state and federal levels nationwide. With courts now phasing their openings based on the COVID-19 cases in their jurisdictions, judges, lawyers, court service providers, court personnel, and litigants face drastic changes in how they do business.

In this issue of the Unified Family Court Connection, we offer a variety of perspectives on how the pandemic has impacted courts nationwide.

- **The Honorable Romana A. Gonzalez**, a Wisconsin circuit judge and immediate past president of the National Council of Juvenile and Family Court Judges, discusses the access to justice during Covid-19 and the pandemic's impact on the family courts.
- **Leslie Starr Heimov**, the executive director of Children's Law Center of California (CLC), and **Susan Abrams**, CLC's director of policy and training, explore the shortcomings and opportunities presented by the COVID-19 pandemic.
- **Matthew J. Sullivan**, a forensic psychologist in private practice in California and the immediate past president of the Association of Family and Conciliation Courts, writes about how COVID-19 has changed the practices of family courts and all the judges, attorneys and practitioners who help families traverse the court system.
- **Annette Burns**, an attorney in private practice in Phoenix, Arizona, specializing in family law and a past president of the Association of Family and Conciliation Courts, writes about how the 2020 Covid-19 pandemic has redefined family law for lawyers.

## Access to Justice During COVID-19—The Role of Family Courts

BY RAMONA A. GONZALEZ

The courts in the United States were forced to close their doors this year for all but emergency cases as the novel coronavirus (COVID-19) spread across the nation with more than five million confirmed cases and over 163,000 deaths by mid-August 2020.<sup>1</sup>

The primary role of the family court judge under federal and state law is to ensure the safety, well-being and permanency for children and families. To do so, state leaders of the highest courts set the parameters for state-wide operations, while local jurisdictions adjusted to meet the needs of children and families in their communities using technology to hold emergency removal, temporary protection hearings and delinquency cases. Administrative and procedural orders frequently were amended to respond to the ever-changing dynamics of the pandemic.

People of color, people with low income, and people from other marginalized communities—including LGBTQ+, immigrants, and those with physical or intellectual challenges—were vastly affected by the pandemic and suffered mortality rates in greater numbers.

Communities, meanwhile, tried to cope with grief, isolation, loss of income and other social traumas. People of color, people with low income, and people from other marginalized communities—including LGBTQ+, immigrants, and those with physical or intellectual challenges—were vastly affected by the pandemic and suffered mortality rates in greater numbers. At the same time, children of color and others from marginalized communities were disproportionately represented in family court proceedings.

Judges who have struggled to meet the requirements under the law during the pandemic were challenged by the particular risks of each jurisdiction they serve. Social workers were unable to safely meet with children and families to recommend alternative placement options and services. The public's health in this pandemic caused the courts to close, but the need

for justice continued. Months after the court closures began, the question still remained: *Where do the victimized go, and what are the options for judicial officers making the decisions to ensure the safety, well-being and permanency of children and families?*

In addition, the pandemic hit close to home in some state court systems where judicial officers and court staff lost their lives from COVID-19. Others tested positive, which required quarantines, and other public health safety measures to lessen the spread of the disease.

Despite the challenges, family courts have attempted to be innovative and agile as the realities of the pandemic surfaced. A number of national judicial and legal organizations recognized these realities and the need for continued access to justice as the pandemic surged. The [American Bar Association](#) (ABA) provided guidance for judges and attorneys, [The National Center for State Courts](#) (NCSC) and [The Conference of Chief Justices](#) (CCJ), provided guidance for court administrators and chief justices, and the [National Council of Juvenile and Family Court Judges](#) (NCJFCJ) provided guidance and support to state court judges. Each explored alternatives to in-person hearings, the use of technology, and proper procedures to maximize public health and safety as states began instituting re-opening procedures.

Many states extended temporary domestic violence protection orders for months to ensure that parties did not come to court for a hearing to determine whether a permanent order should be issued. Adjustments were made in juvenile delinquency cases to address the increased risk of children being exposed to the virus in facilities, while probation adapted to properly monitor children's compliance with probation conditions, which the court may not have set initially. Meanwhile, the Children's Bureau of the U.S. Department of Health and Human Services issued guidance that did not allow waiver of timelines for dependency hearings required under the Social Security Act.

National judicial and other legal organizations urged all court systems to delay returning to full operations until science and local health officials deemed reopening safe, and that recommendations for masks, distancing, hygiene, and the numbers of persons within court halls, courtrooms and elevators be developed and monitored based on Centers for Disease Control and Prevention (CDC) guidelines.

"We cannot ensure access to justice if we—people who work in the courts and people who appear in front of us—are ill or afraid that coming to court will expose them to COVID-19," according to the May 2020 NCJFCJ statement on recovering from the pandemic. As part of its mission, the NCJFCJ, an 83-year-old judicial organization whose members preside over family court cases, has provided many opportunities for its members to talk with other judicial officers about their experiences adjusting to court closures, virtual and telephonic hearings, as well as their thoughts about access to justice as the pandemic continues.

Judges also were concerned about the use of technology and ways to ensure that litigants had the opportunity to be heard, and that attorneys were able to effectively represent their clients. Options were needed to provide services essential for children and families. Over the past three months, some family service providers including, but not limited to, therapists, social workers, substance abuse intervention specialists, domestic violence advocates, and educators began using technology to provide some services to allow compliance with court orders.

Over time, judges began asking whether family courts should return to business as usual once the reopening process began or whether they should adjust some aspects of the court system permanently. The question is designed to examine whether some of the procedures that courts have used to operate for decades affect true access to justice for the parties involved. In short, how can family courts and their community partners use the pandemic experience to refine and redefine access to better insure that children and families are at the forefront of the family court process, that they receive better outcomes and that courts not be confined to the operational premise that "we have always done it this way?"

Jurisdictions are beginning to address these questions through the use of existing collaborative networks. Service provision and compliance with orders issued in a virtual world have created talking points for process and rules changes across systems. As courts begin to open on a limited basis, some of the pandemic strategies may remain in place but may be augmented. Some procedures may become more sophisticated and include virtual therapy, participation of foster parents or relative caregivers in virtual hearings, regular check-ins for those under temporary protection orders to evaluate compliance with court orders, juvenile probation engagement, and arranging for a child's teacher or counselor or coach to participate in a dependency or juvenile hearing.

## CONCLUSIONS

Before the next disaster occurs, we ask courts and state agencies: *Did the 2020 experience enhance access to justice, respect, and dignity for all litigants in family court cases?* Many posit that the flexibility required during the pandemic, in some respects, has shown that access to alternative processes does not have to interfere with due process or the application of the rule of law. Others suggest that best practices in child maltreatment cases may be ripe for full implantation in all courts. The pandemic offers courts and communities the chance to infuse best practices when community disasters strike while continuing to examine what has been successful to create better outcomes for all children and families.

In 2016, The NCJFCJ published the *Enhanced Resource Guidelines: Improving Court Practice in Abuse and Neglect Cases* (ERGs). Among the ERG's principles and best practices is the necessity for engagement, empowerment, and hearing the voices of children and families in family court proceedings. The ERGs promote effective and consistent communication with the parties throughout the life of family court cases. Finally, the nation's courts today may be closer to reaching the long-held best practice of time-certain hearings, which encourages and engenders more frequent participation, engagement, and empowerment of children and families. A few examples:

- Parents can request hearing times without the need to miss work or travel to and from the courthouse when they have limited resources for transportation and cannot afford time off.
- Children will be able to participate without interruption to their education. Incarcerated parents can participate in hearings on a regular basis.
- Service providers including those in rural and tribal areas will have the ability to fully participate in court hearings to provide information to the court on compliance with court-ordered services.
- The door may be opened to more effectively provide monitoring and services where family violence is an element in family court cases to promote accountability but also responsibility for those responsible for family violence.
- The focus on developing a larger array of community-based, non-governmental partners to support parenting time arrangements, transportation, and community peer support may help to address access, engagement, and empowerment for children and families from communities of color and other marginalized communities who are hardest hit by the pandemic.

Although there may be concerns and challenges for courts in this new virtual world, the opportunities to better engage and empower families through increased flexibility supports the notion of nimble-

ness. Going forward, this idea will change processes that may have appeared insurmountable before the pandemic. The opportunity to test new approaches across different but related case types during the pandemic promotes exploration of new rules and policies across systems to increase engagement, involvement and empowerment for children and families that may lead to better outcomes for children and families.

<sup>1</sup> This number fluctuates daily and may have risen substantially since the newsletter's publication date.



**Judge Ramona A. Gonzalez** of La Crosse, Wisconsin has served as a State of Wisconsin Circuit Judge since April 1995 and is the immediate past president of the National Council of Juvenile and Family Court Judges. Judge Gonzalez is a leading expert on family law issues, specializing in particular on national and international matters relating to child abduction, unaccompanied minors and immigration, LGBTQ+ youth, and domestic violence.

## Child Welfare in the Time of COVID-19: Shortcomings and Opportunities

BY LESLIE STARR HEIMOV AND SUSAN ABRAMS

While the novel coronavirus (COVID-19) pandemic has brought much of the world to a halt, child welfare professionals and juvenile courts around the country have struggled to balance the critical need to function with the risks of the virus.

For the children and families whose lives are quite literally in the hands of social workers, lawyers and judges, being left without services or cut off from support systems can have a devastating and irreversible impact. The use of technology has allowed for creative solutions but, in many jurisdictions, child welfare agencies and the courts have dramatically reduced operations, reunification plans have been put on hold and family time canceled. Children and parents have been subjected to even more restrictive policies than the general public—exposing the flaws of a system that too often fails to meet the needs of the families it is meant to serve.

### LIMITATIONS ON IN-PERSON FAMILY TIME

Children's Law Center of California represents more than 33,000 children and youth under the jurisdiction of the dependency court system in Los Angeles, Sacramento and Placer Counties. Almost immediately following the issuance of a "Stay at Home" order in California, our clients were restricted from having in-person contact with their parents, siblings, relatives or other important individuals in their lives. This message written by a relative caregiver exemplifies the impact of dis-

connecting children in foster care from their parents at a time of extraordinary anxiety:

My daughter and my grandson are only allowed telephone and video chat which is not very helpful for a 3-year-old. This is a disastrous decision. My daughter typically comes here every day and is with my grandson until he falls asleep. He is so confused and hurt. We are in the final stages of reunification and now we don't what is happening. He is having huge melt-downs because all he wants is his mommy. This has done so much psychological damage to all the parties involved.

The child welfare system varies from state-to-state and even county-to-county in some states. Limitations on family time were not exclusive to California. A polling of counsel for minors from around the country revealed that 70 percent were seeing blanket cancellations or restrictions on family time in their jurisdictions. ([https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/webinars/covid-19\\_member\\_ship\\_webinar\\_.pdf](https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/webinars/covid-19_member_ship_webinar_.pdf)). Even as jurisdictions moved away from blanket restrictions to require case-by-case determinations, most families still have been limited to virtual contact.

### COURT CLOSURES

As an additional obstacle, many dependency courts closed for a period of time and then opened only for emergency hearings. Across the country, tens of thousands of hearings have been continued for anywhere from three months to as far out as 2021. Without access to the courts, there has been little remedy available for families to enforce court-ordered visitation or seek a change in placement.

Court closures also have threatened the due process rights of separated families and have delayed hearings that have an immense effect on the life of a child, such as whether families can be reunified, whether children in out-of-home care can be placed with relatives, whether the child welfare agency is providing appropriate services and support to the family, and when pending adoptions will be finalized. All of these delays also tax an already overburdened system—increasing the workload of social workers and attorneys alike.

With shelter at home orders becoming less stringent, visitation restrictions are easing, and courts are beginning to reopen. There is, however, a long way to go. In-person contact is still being restricted for too many families, the backlog of cases still jeopardizes the rights of system-involved families, and the long-term consequences of the past several months have yet to be determined.

Children have suffered trauma, and family bonding time has been compromised. In addition, without access to services and visitation, parents have been stalled in their effort to reunify. While the federal Children's Bureau has issued strong guidance that these obstacles should not threaten family integrity (<https://chronicleofsocialchange.org/child-welfare-2/family-is-a-compelling-reason/42119>), many states, including California, operate under strict reunification timelines and have not made the requisite statutory changes to toll the reunification time period.

### ADDITIONAL CHALLENGES

In addition to visitation restrictions and court closures, this crisis has exposed and exacerbated existing shortcomings of the child welfare system. Many children have struggled to meaningfully participate in



distance learning without access to technology. Children with disabilities, who are disproportionately represented in foster care, have not been provided with appropriate accommodations to meet their educational needs. Mental health services and case management support from social workers have been greatly limited.

The pandemic has been difficult especially for transition-age youth who are soon to exit foster care. Imagine being 18, 19 or 20 years old—living in campus housing, carrying a full course load, working part time at a job on campus and relying on the WiFi in the library to access the internet for homework and to maintain connections with your younger siblings still in foster care. Now imagine in the space of one week—the dorms close, students are sent home (but you have no home to go to), the campus is shuttered and now you also have no job and no access to the internet. This is the stark reality of the pandemic for many young people who were doing everything they could to reach their goals and are now on the precipice of losing it all. A national poll found that nearly 65 percent of transition age foster youth had lost their employment, almost one-fifth were facing food insecurity and over one-fifth were facing homelessness. <https://www.fosterclub.com/sites/default/files/docs/blogs/COVID%20Poll%20Results%20May%2010%202020.pdf>

## LESSONS LEARNED

Despite these challenges and hardships, this crisis has provided opportunity for innovative thinking and new supports for children and their families. Here are just a few examples from the jurisdictions where CLC provides legal representation:

- **Allowing family reunification by stipulated court order to avoid undue delay.** Because of visitation restrictions and court closures, attorneys for the agency, parents, and minors have been working together to identify cases where all parties agree that a child should be returned to a parent's custody. This has enabled families to reunify immediately, rather than wait for a court hearing.
- **Making services and court hearings available online.** Many families struggle to comply with their case plans because of program costs, lack of available services or transportation challenges. Caregivers, parents and children have reported that increased access to virtual services and court hearings has reduced these barriers and promoted engagement.
- **Offering virtual family time to augment in-person visitation.** Families generally are offered a standard visitation plan of a few hours of contact a few times per week. While virtual contact cannot supplant in-person contact, it does present the opportunity to supplement in-person family time, reduce isolation and strengthen connections between separated family members.
- **Providing robust support for caregivers to promote placement stability.** Because of concerns that COVID-19 would disrupt placements, California implemented a number of short-term changes for caregivers, such as allowing a higher monthly rate to care for a child with intensive needs. As the nation moves away from congregate care, these kinds of supports will be necessary to increase the availability of family placement settings.
- **Extending supports for transition age youth who are not ready to exit foster care.** California's Governor Gavin Newsom issued an executive order in April that allowed youth who had reached 21 years of age—generally the maximum age of extended

foster care—to continue to receive foster care benefits. This has been critical in keeping youth housed and able to meet their basic needs. As part of the 2020-21 budget process, California has taken the bold step of extending benefits for these youth through the next fiscal year.

## MOVING FORWARD

As John F. Kennedy said, *"In a crisis, be aware of the danger—but recognize the opportunity."* The pandemic has highlighted issues that have always existed in the child welfare system—long wait times, court calendars structured around the needs of judges and attorneys rather than the families, limited family bonding time, and lack of access to services and supports for children and families.

This crisis has also allowed the system to grow and change. We have the opportunity to rethink access to justice by permanently adopting the best of what we have learned since the pandemic began and abandoning entrenched practices that do not further the goals of child well-being and family integrity.



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**Leslie Starr Heimov** is the executive director of Children's Law Center of California ("CLC"). Since 1992, Ms. Heimov has been working to improve outcomes for children in foster care and to promote best practices in the representation of children and their families in the child welfare system.

# The Creative Disruption of the COVID-19 Pandemic Impacts Courts

BY MATTHEW J. SULLIVAN

The novel coronavirus (COVID-19) pandemic—which engulfed the entire world like a brushfire out of control—has changed the practices of family courts and all the judges, attorneys and practitioners who help families traverse the court system.

I work with parents in high-conflict, shared-parenting situations. My clients have typically become court involved due to conflicts in developing their parenting plan and/or ongoing conflicts that arise as they implement those plans. My practice, which includes court appointments to provide coparent counseling, mediation and parenting coordination services was profoundly disrupted in early March when shelter-in-place was ordered in California to combat the COVID-19 pandemic. There was an

immediate shutdown of the courts and my practice but, within a few weeks, business was booming. Interestingly, I have not been back to my office since the shutdown.

I would like to reflect on this abrupt disruption in the normal course of my practice which likely mirrors the disruptions to the larger family justice system. I suspect that some of the changes that I have made in my service delivery in response to COVID-19—such as providing remote, virtual or “Zoom” services to my clients—will persist after the crisis is over.

I had made slow shifts in the structure of my services delivery to high-conflict coparents over the last few years based on my experience that utilizing technology to move their necessary engagement as coparents (information sharing, dispute resolution, etc.) into cyberspace was an effective intervention. As part of that progressive shift, I was providing coparenting services increasingly from remote platforms (telepsychology). My younger, internet-savvy clients and the increasing transportation burdens present in the major metropolitan area where I work combined to have them welcome virtual services.

Finally, my ability to work from the convenience of home, or Hawaii for that matter, was personally attractive. In fact, the geographic proximity of the service provider to the client(s) is less and less relevant to our work and even jurisdictional/licensing restrictions to remote work are evaporating at a fast pace.

For example, in June 2020, the Psychology Interjurisdictional Compact now permits licensed psychologists that are part of a rapidly expanding 14-state network to practice in any of those states. Similarly, remote, tele-forensic services are increasing access to psychological and legal services for lower income clients who often struggle with barriers to obtaining services such as transportation, childcare issues when services are provided face-to-face. The COVID-19 pandemic disruption to the family justice system has accelerated these trends, some of which will likely become the new normal post-COVID-19.

This technologically-driven disruption to our work was created by the perfect storm of courts temporarily closing down while the stressful impact of COVID-19 on our clients, in some cases, drove the need for more services. Professional services have had to be delivered remotely, requiring an instantaneous pivot from the in-person, office context to phone, internet and video conference formats.

As courts and society continue to navigate the torturous, uncertain process of “reopening,” I believe the family justice system will not go back to pre-COVID-19 business as usual and instead institutionalize some of the creative and innovative responses to the challenges we continue to face during the pandemic. These changes provide the promise of greater access to more cost-effective legal and mental health services for court-involved coparents and potential benefits to service providers as well. The brick-and-mortar structures of our field - court houses and professional offices - may well become a thing of the past.

An example of a prescient and innovative pre-COVID-19 court administrative set of programs was described by John Greacen, who received the Association of Family and Conciliation Courts (AFCC) Meyer Elkin Essay award this year for the best article published this past year in the Family Court Review (Greacen, John (2019), “Eighteen Ways Courts Should use Technology to Better Serve Their Customers,” *Family Court Review*, Vol. 57 No.4 pp. 515-538). The article addressed the shift in emphasis of technology’s use in the family courts from streamlining internal processes, such as information management and storage, to external service provision. This program’s innovations

now have even more relevance given COVID-19’s disruption to the family justice system.

Similarly, the trend to triaging and channeling the higher conflict sub-population of coparents out of the more adversarial processes of the courts (e.g., litigation and child custody evaluation) have been occurring for many years.

The pre-existing lack of access to services that was punctuated by the COVID-19 court closures has had a couple of notable impacts on mental health professionals who work in the courts. First, the demand for alternative dispute resolution processes has increased as attorneys and self-represented litigants cannot yet turn to the courts to assist them with their disputes in many jurisdictions. Secondly, there are challenges to conducting the traditional investigative and evaluative processes, such as guardian *ad litem* (GAL) investigations and child custody evaluations, due to COVID-19 that are forcing jurisdictions to find creative solutions to both providing the courts and other dispute resolution processes with the essential information they need to do their job.

For example, professional standards of practice for conducting child custody evaluations (CCE) require in-person procedures such as parent-child observations and sometimes home visits and psychological testing. These procedures are currently precluded by COVID-19. This impact alone has resulted in some jurisdictions rethinking whether to continue to use of CCE altogether and to explore other service models, such as non-confidential, recommending mediation, brief-focused assessments and more active judicial case management (or delegation of that case management to parenting coordinators). These innovations and others generated by the COVID-19 disruption may ultimately add useful tools to the family justice system spectrum of services.

The shift in service delivery from in-person to remote is not without challenges and risks to both professionals and their clients. For example, professionals who do coparenting work on virtual platforms are scrambling to deal with poorly developed professional practice guidelines and standards addressing competence, informed consent, privacy and confidentiality, fee structures, etc.

Questions such as what the impacts on the professional client working relationship are and the efficacy of virtual service delivery are poorly understood. The pandemic has created a large-scale *ad hoc* experiment about remote services in our field. Working with a client or coparents you have never “met,” entering into each other’s homes with exposure to their personal “background,” including their children and other aspects of our personal spaces, are experiences we are all now discussing the pros and cons of.

There are, without question, professional practice skills necessary to provide competent coparenting services remotely that are different from those most of us have obtained as a result of training and practice pre-COVID-19. For example, recently, domestic violence experts have raised concerns about providing mediation services virtually. They caution mediators about the risks of the online environment in terms of confidentiality, safety and security, for victims of intimate partner violence who utilize these services (see Top ten tips for online dispute resolution and domestic violence, Gabrielle Davis and Tracy Shoberg, AFCC E-News, Vol. 15, No. 5, May 2020).

Professionals providing services remotely have unique personal challenges such as increased isolation, Zoom fatigue (interacting several hours a day with clients via a computer screen), and a further breakdown in the boundaries between work and personal life. Being a

parent homeschooling a child(ren) while doing Zoom sessions with clients in a home office can be overwhelming (see “*Conversations about Coparenting for Professionals during the COVID-19 Crisis*,” Drs. Robin Deutsch and Matthew Sullivan, <https://www.ourfamilywizard.com/covid-19-resources>).

On the brighter side, access to continuing education for professionals has increased dramatically. When the AFCC cancelled its annual conference in New Orleans this spring which would have attracted over 1,000 participants, it offered a webinar series provided by authors of the Family Court Review special issue on Parental Alienation that had over five times as many registrants as the conference. AFCC is gearing up to provide our next conference “virtually” with not only substantive programs but also social and networking opportunities as well. It’s a new, virtual world and everyone is working to adapt to it.



**Matthew J. Sullivan, PhD**, is a forensic psychologist in private practice in California. He is the immediate past president of the Association of Family and Conciliation Courts (AFCC) and co-founder of the non-profit organization, Overcoming Barriers, Inc. His website is [sullydoc.com](http://sullydoc.com).

## The 2020 Coronavirus Pandemic Redefines Family Law

By ANNETTE BURNS

Little did family law attorneys know earlier this year that their counsel tables would be reduced to a 14-inch screen on a dining room table and everything about the practice of law would be reexamined and altered to keep everyone healthy in the face of a raging novel coronavirus (COVID-19) pandemic.

In fact, on February 14, 2020, I was part of a panel of mediators and settlement judges who spoke on the then-somewhat obscure concept of Online Dispute Resolution (ODR). I discussed my half a dozen or so experiences of doing mediation by telephone or through email and the afternoon session was a demonstration of a live mediation done on something called “Zoom.”

I vaguely was aware of Zoom and other platforms called “GoToMeeting” and “WebEx.” While I thought of ODR as a fascinating concept of the future (and I’m a devoted follower of Colin Rule, the pioneer in the field of ODR, (<https://www.mediate.com/articles/ColinRuleNewCEO.cfm>), the notion of regularly doing mediations on online video platforms seemed remote to me. While a largely online practice loomed as a possibility, I felt I wouldn’t be doing it very soon.

I was wrong. That February 14 seminar now seems quite prescient.

Dozens of articles discuss the mechanics of taking a family law practice virtual in light of the pandemic. While it is relatively easy to say, “Our hearings will now be done virtually using GoToMeeting,” so

many questions remain. Do these hearings provide the same protections for and assurances to litigants who are worried about their family court case? Are remote hearings a short-term change, or will virtual hearings be the norm? Are remote hearings what clients always needed, to relieve them of the loss of extensive work time and the cost of expensive parking in an unfamiliar location? Do remote hearings allow self-represented parties more access to court and encourage a higher level of participation than in-person hearings? Will lawyers ever meet with clients in person again, to whisper in ears during hearings and hold hands during stressful events? How have the COVID-19 changes overhauled feelings about practicing law and connecting with clients and the court?

### FAMILY LAW ATTORNEYS.

Unbeknownst to family law attorneys at the beginning of 2020, we would, in a very short time, be forced to:

- Address client concerns never previously dreamed of, while learning (usually while actually engaged in a live hearing) how to conduct online hearings while operating Zoom, GoToMeeting, Teams, and other platforms in a reasonably professional way;
- Elicit testimony while masked, from a masked witness;
- Conduct a hearing while maintaining social distance from one’s own client;
- Cross-examine a remote or masked witness who is possibly lying;
- Introduce (and object to) exhibits in a remote hearing;
- Prepare a less-than-computer-literate client to testify online; and
- Deal with hardware, WiFi, and other technology problems during a live hearing.

Everything about the practice became novel. Procedures and routines for handling cases, acting as a mediator, communicating with clients, negotiating settlements, offering sympathy and feeling empathy, and relationships (with other attorneys and judges) have been rethought, reexamined and, in most instances, changed. Arguably, many of these changes are for the better.

### MEDIATION AND DISPUTE RESOLUTION.

Mediation has unquestionably thrived during the pandemic. Not only is dispute resolution a forum more suited to remote sessions, but the lessened availability of court remedies encourages wider use of mediation in family disputes. Zoom and other platforms anticipated the need for private breakout rooms to allow caucusing (which is also available for mediator-attorney private conferences). Remote viewing on a shared screen allows for a truly collaborative effort in preparing memorandums of agreement. Mediation organizations, many of which have promoted ODR for years, quickly rose to the occasion to provide support for mediators who were abruptly thrust into ODR without much training time. <https://www.mediate.com/family/>

### COURT SYSTEMS.

Court systems continue to struggle with COVID-19 responses, specifically the competing interests of public access vs. public safety. Even in severely affected locations where court closure was all but mandated, courts obviously had to be available to victims of intimate partner violence to obtain protective orders and to hear orders to resolve temporary custody and child-related disputes. Disputes between parents

## Courts are investing millions of dollars in new hardware, software, and online platforms, and it is unlikely those investments are planned only for short-term use

about COVID-19 implications increased the court's workload, as parents disagreed on whether exchanges are safe, whether a child should be traveling or even leaving a parent's home at all, and whether a parent should be quarantined based on unsafe activities.

How court systems have handled the drastic changes in services varies widely throughout the country, and procedures change weekly depending on a location's COVID-19 density. Wayne County Michigan (Detroit), as of the end of June, had met criteria necessary to proceed to later stages (Phase 3) toward full reopening. <https://courts.michigan.gov/News-Events/Pages/COVID-19.aspx>

In Maricopa County Arizona (Phoenix), however, the family court had attempted reopening phases, but the May through July outbreaks creating an Arizona COVID-19 hotspot have eliminated progress towards anything that might be considered reopening. Family court hearings are proceeding remotely, with in-person appearances at courthouses strongly discouraged. In-person access to court facilities is limited to those actively involved in a hearing, or for filing or deliveries. Online filings are widely used. As with most jurisdictions, COVID-19 positives among court personnel remain a serious concern.

In the 11<sup>th</sup> Judicial Circuit, Florida (Miami), limited use of court facilities for in-person hearings continues as of the end of July, but remote/virtual family court hearings are being conducted. <https://www.jud11.flcourts.org/coronavirus/ArtMID/2392/ArticleID/3479/Virtual-Court-Resources-by-Division-Case-Type> Even domestic violence and related emergency orders are being heard via Zoom at least through July, 2020. [https://www.jud11.flcourts.org/judges\\_forms/7482459032-DV%20Bond%20and%20Emergency%20Hearing%20Protocols%20.pdf](https://www.jud11.flcourts.org/judges_forms/7482459032-DV%20Bond%20and%20Emergency%20Hearing%20Protocols%20.pdf)

In Maryland, judiciary operations follow a phased plan issued by the Court of Appeals, and assuming Maryland's pandemic responses remain successful, Maryland courts employed Phase IV of that plan as of August 31. <https://www.courts.state.md.us/coronavirusphasedreopening>

Generally, major court jurisdictions have implemented all or most of the following protocols for hearings or use of the courthouse: Distancing of at least six feet; use of masks where appropriate and where distancing cannot be maintained; barriers between workspaces; and medical screening of all persons entering the courthouse including questionnaires and taking temperatures. Hearings are conducted virtually to the maximum extent possible.

A drawback for practitioners and the general public has been the difficulty in keeping up with each court's policy changes as the pandemic progresses or regresses. While court websites are helpful, the plethora of administrative orders and rule changes issued to deal with safety issues are hard to follow and change almost weekly.

Individual family law attorneys, law firms, and committees have jumped into the breach, disseminating information and issuing guidelines and recommendations to assist parents with court access and COVID-19 issues. In a particularly fast response, the Oregon Statewide Family Law Committee issued recommendations to assist parents on

subjects like exchanges, travel, illness, and even makeup parenting time in light of school cancellations and illness concerns. <https://www.courts.oregon.gov/programs/family/sflac/SFLAC%20Documents/SFLACGuidelineForParentsDuringCOVID19Pandemic.pdf>

Courts that were previously lagging in the implementation of online filings found themselves rushing to put those systems in place, while jurisdictions already using online filings were rewarded. As one example, Maricopa County, Arizona, in February 2020, started allowing online Orders of Protection for domestic violence cases, allowing petitioners to fill out all forms online prior to coming to the courthouse for a hearing. When COVID-19 shutdowns occurred, that court was able to quickly pivot to holding those hearings (on the already-prepared and filed Petitions) by telephone. [https://azpoint.azcourts.gov/Home/fbclid/IwAR3AeVGD4ytcWCEkECipXkkld\\_vNm7-tV5sDXr5WrulkWxlapzsspyVAJo](https://azpoint.azcourts.gov/Home/fbclid/IwAR3AeVGD4ytcWCEkECipXkkld_vNm7-tV5sDXr5WrulkWxlapzsspyVAJo)

What does all this mean for the future of family court? Courts are investing millions of dollars in new hardware, software, and online platforms, and it is unlikely those investments are planned only for short-term use. In 2013, a forward-thinking trial judge noted *"There will be a steady increase in video appearances by parties for motions hearings, including some evidentiary hearings, which will include remote witnesses, lawyers, and judges. Some judges or lawyers will come to this process kicking and screaming but will nevertheless relent due to necessity . . ."* [https://www.americanbar.org/groups/judicial/publications/judges\\_journal/2013/summer/technology\\_and\\_the\\_courts\\_a\\_futurist\\_view/](https://www.americanbar.org/groups/judicial/publications/judges_journal/2013/summer/technology_and_the_courts_a_futurist_view/) Most of the anticipated progress towards video appearances did not happen between 2013 and 2020, but mid-2020 finds family courts in the throes of "kicking and screaming" which is likely to lead to overall acceptance—permanently.

In his 2014 year-end report on the Federal Judiciary, U.S. Supreme Court Justice John G. Roberts discussed technology, saying: *"[T]he courts will often choose to be late to the harvest of American ingenuity. Courts are simply different in important respects when it comes to adopting technology, including information technology. While courts routinely consider evidence and issue decisions concerning the latest technological advances, they have proceeded cautiously when it comes to adopting new technologies in certain aspects of their own operations."* <https://www.supremecourt.gov/publicinfo/year-end/2014year-endreport.pdf>

This era of coming late to technology has ended for family courts. There is no longer a choice but to proceed remotely, or not proceed at all.



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“CFCC has been a key partner in promoting family court reform in our state. Its work helps courts and their community partners remain focused on how our work can benefit families.”

