

# FAMILY

# LAWYER

Summer 2020

MAGAZINE

## **SPECIAL COVID-19 ISSUE**

**Practicing Family Law During a Pandemic**

**4 Tips for Working from Home During COVID**

**Pandemic Practice Management Videos**

**Taking Your Case to Virtual Court**

**Why You Should Care About CARES**

**Estate Planning in the Time of COVID**

**Coping with Coronavirus Fatigue**

**COVID: Surge in Divorce &  
Family Law Firm Marketing**

**Gaining Market Share  
During & After COVID**

**6 Best Video Conference Tools**

**Survey Results: COVID &  
Your Family Law Business**



[www.FamilyLawyerMagazine.com](http://www.FamilyLawyerMagazine.com)



# Taking Your Family Law Case to Virtual Court

As we shelter in place due to COVID-19, lawyers have had to adapt to remote practice and remote hearings. Here is how to “appear” when your appearance is virtual, and why your newfound online skills may be useful for the months – and perhaps years – to come.

By Timothy J. Conlon, Lawyer and Author

Like many jurisdictions, our small state’s domestic practice has traditionally funneled to county-wide calendars, assigned to specific judges, broken up to include both contested and uncontested divorces, paternity matters, child support collection, and miscellaneous petitions for other relief, such as modification or enforcement of existing orders.

These calendars were called daily, often resulting in a crush of folks coming to the Courthouse as clients, lawyers, witnesses, and the various supporting cast of characters assembled, who tried, with varying degrees of success, to be ready as their case was called. Not surprisingly, cases were often continued due either to scheduling conflicts or the parties’ desire to resolve an agreement through further discussion outside of court. In many other instances, agreements were made and orders were entered, or placed on the record, to be entered after the fact.

Occasionally, there were telephonic hearings, either because a party was out of state or in prison.

Then COVID-19 hit.

Since our courthouses were basically mass public meeting places, they had to be shut down. If there was one place

no lawyer wanted to be, it was in a packed courthouse, and it made no sense to expose the entire judiciary to the kind of risk posed by the pandemic.

Of course the Court never really closes: a Judge can issue an order over the phone or from their house, as long as the basics are in place. They have been doing so for years – issuing warrants and ordering detention on nights and weekends – but now we needed to be available and safe at the same time.

## The Courts Are Evolving

Within days of the shut down, I heard from lawyers (and judges) that informal processes were evolving to allow lawyers to confer and handle emergency matters over the phone or online. One clever judge, having seen his children attending school over Zoom, held a Zoom conference with a guardian and counsel for the parents in an emergency matter, much as he would have done in chambers pre-COVID. It saved everyone the time of getting to the courthouse, and it protected the guardian, who was immuno-compromised from prior chemotherapy.

Word started to spread, and in consultation with the Judges and the Bar, legal counsel for the Court formulated the

temporary Executive Order under which we now function. This Order formally creates a process for the Court to act remotely on emergency matters, and allows for non-emergency matters to be handled remotely by agreement. (Admin Order 2020-02, RI F. Ct.)

## How to “Appear” When Your Appearance Is Virtual

If you are in one of the many jurisdictions that has gone online, here are four tips about appearing virtually:

### 1. When appearing virtually, you still need to appear professional.

At least one Judge has cautioned lawyers that virtual court is still court, so video conferencing from their bedrooms (from bed in one instance), wearing casual clothing, bathing suits, or even appearing shirtless is unacceptable. If you don't know how to set up your background, lighting, and audio, there are plenty of online resources to help.

### 2. Be prepared.

Going online for a hearing doesn't mean you should “wing it” when it comes to the mechanics of getting before the Judge. It may have been years since you had to figure out how to get into a courtroom or where to sit, but now you have to learn some of that all over. If your court uses a particular platform (ours uses Webex, many are using Zoom), get familiar with it before your appearance. Being used to some other platform isn't a reason to ignore the need to learn the medium in which you will be appearing. Trial or free versions of most of these apps are available; consider “buddying up” with another lawyer at your firm to practice using the platform before you get to virtual court.

### 3. Prepare to be effective.

When appearing online in front of a Judge, you have to prepare as thoroughly as you would if going to court – and then some. Iron out the process for submitting and marking Exhibits before the hearing starts. Make sure you have a way to watch the proceedings and a way to look at your notes (or any other materials you need to present your case) at the same time. In our jurisdiction, the clerks can “share” a document they are looking at with the entire room. That is very helpful for examining a witness, but I also have marked copies of key documents in my file that I use to examine witnesses. Make sure your copies are paginated the same way the court document is.

### 4. Prepare your client.

You wouldn't bring a client to counsel table without discussing the rules of the road, so why would you let them loose with a video camera and open mic in front of the opposing party and the Judge? After you have prepared for your own digital appearance, prep your client. Remind them of how to dress, how to appear, and that they should speak only if spoken to. The usual problem of not having folks talk over each other is amplified when you are online, and no one likes somebody continually butting in. Consider practicing with them until you are sure they understand the dos and don'ts of their day in virtual court.

## Why Bother to Perfect Your Virtual Court Skills?

This may seem like a lot of time and energy to devote to a temporary situation. However, consider the following:

- **The new normal for courts may be normal for some time.**

Not unlike sports stadiums or movie theaters, courthouses are high-volume, tight quarters, with a large turnover every time they open. Just like the stadiums and theaters, courts are likely to be the last to go back to “business as usual” – if they do at all.

- **This may become more normal than you think.**

Leaving COVID-19 aside (please!), how would you like to be able to appear in any court in your jurisdiction without leaving your office? How would you like to be able to book appearances at specific times, and have a virtual chambers conference to move a case along without tying up an entire morning in court? What would your day be like if you didn't have to get from one courthouse to the next because all the cases were online? What if you did your mediations that way? In preparing to go digital, I spoke with administration in the Alaska court system, and they laughed at the idea that a lawyer would spend time driving from courthouse to courthouse, or that everyone would have to wait in a physical courtroom to have their case heard. Distance being what it is in Alaska, they have been doing telephonic hearings for years. Their summonses have a dial-in number and time, and the clerks stack clusters of cases on hold to move before the Judge for telephonic hearings at or around their scheduled time.

All of us want to put COVID-19 behind us ASAP, but it may take some time – and at least some of the practices that are a part of this new normal may prove useful to streamline the handling of family law cases going forward. Years ago the paperless office seemed like a dream, yet now we take it for granted. There are equally compelling reasons to get up to speed on your virtual courtroom skills as we may find perfectly good reasons to do virtual appearances long after COVID is just a memory. ■



*Timothy Conlon studied electrical engineering and pre-law at Brown; in 1983, he was the first to bring a computer into Family Court in Rhode Island. He was MIS Director for the RI Attorney General before entering private practice in 1987, and he co-authored Electronic Evidence for the Family Law Attorney (ABA, 2017).*

[www.tjcesq.com](http://www.tjcesq.com)

## Related Article

### Gathering, Organizing, and Presenting Evidence

“Well Begun is Half-Done” applies to trial preparation – especially in relation to gathering, organizing, and presenting evidence in family law cases.

[www.familylawyermagazine.com/articles/gathering-organizing-and-presenting-evidence](http://www.familylawyermagazine.com/articles/gathering-organizing-and-presenting-evidence)