

- Virtual View From the Bench -
DURING THE COVID-19 PANDEMIC
A Letter from the Honorable Dennis Bailey

First of all, speaking on behalf of the ninety judges in this jurisdiction, we hope to find you in good health, safekeeping, and not in financial distress. Without revealing anyone else's medical information, the spouse of one of our own is fighting COVID-19 and we hope for good results. Clearly, the pandemic is no longer just knocking on the door.

Of all the divisions in the courthouse deeply affected by the shutdown, Family Court has been the least affected because it had two aspects unique to it: first, it's a very high priority because of families in crisis and children in harm's way and, second, it doesn't involve jury trials. So those of us in Family have been running dockets, conducting both evidentiary and non-evidentiary hearings, and even trials. And we continue to do so.

The Criminal courts arguably have suffered the most disruptive impact for two reasons: first, it's extremely rare that any trial proceeds non-jury and, second, the clients have a Constitutional right to be present for hearings. While Zoom can facilitate even final divorces, it is not logistically friendly to the demands of the Criminal Justice System. Now the positive testing of some inmates in the jail system complicates matters even further. Time will tell when those courts can return to functionality.

The Civil courts have finally gotten the green-light to begin using Zoom to run dockets and conduct hearings. They'll go to school on the lessons learned by the Family judges and hope for a very smooth track ahead.

One comment that needs sharing and that is the judges would appreciate it if the lawyers and their clients keep in mind these Zoom hearings are just that: hearings. They are not casual phone conversations. It is remarkable how many ATTORNEYS appear inappropriately on camera. We've seen many lawyers in casual shirts and blouses, with no concern for ill-grooming, in bedrooms with the master bed in the background, etc. One male lawyer appeared shirtless and one female attorney appeared still in bed, still under the covers. And putting on a beach cover-up won't cover up you're poolside in a bathing suit. So, please, if you don't mind, let's treat court hearings as court hearings, whether Zooming or not.

Finally, evidentiary hearings via Zoom take additional pre-hearing prep work. For instance, send whatever exhibits you intend to introduce into evidence to both the Court and to opposing counsel well in advance of the hearing (uploading to "Supporting Documents" in the e-portal is optimal; email is secondary), and that includes documents, photos and videos. You will also have to coordinate third-party witnesses; if they can't be on camera, they can't be sworn in by the judge and will need a notary at their location to verify identification and oath. Be aware, Zoom hearings take more time than in-person hearings due to lag time in audio capacity coming online and people talking over each other which challenges the responsibility to make contemporaneous objections. Often, lawyers are not looking at their screens but down at their files, their

outlines and notes, or simply out the window, and cannot see the judge is hollering "Stop! Stop!" because an objection has been made and the audio stays with the witness rather than obeying the judge. If you need additional guidance, call the J.A. and ask ahead of time. Just don't say I told you to!

If all this sounds like a challenge, it is. But there is no such thing as an objection to Zoom. That having been said, I for one will not conduct a two-week expert-laden hotly contested trial via Zoom; I will reschedule that one for late summer or early fall (if we're lucky). At the end of the day, we conduct these hearings as best we can, knowing we're running on one of those miniature spare tires we pulled from the trunk rather than a "real" tire. But it will get us to where we need to go if we decrease our speed and increase our caution and shorten our trip. Resolve as many issues as you can through negotiation and then buckle up. We'll get there, but it may get a little bumpy along the way.

Please, stay safe and healthy ... and lucrative.

Judge Dennis Bailey