

**Baker
McKenzie.**

COVID-19 and Courts: Are We Ready for the New Normal?

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Agenda

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4 COVID-19 and criminal proceedings

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7 Effective use of technology in virtual litigation

8 Implications of COVID-19 for cross-border disputes and discovery

9 COVID-19 and courts: what will the new normal be?

The background features a dark blue field with a complex, glowing pattern of interconnected blue dots and lines that form a series of overlapping, wavy shapes, resembling a digital signal or a network structure. The pattern is most prominent in the center and right side of the frame.

1

Introduction and recent trends

Introduction and recent trends



1. Current situation (supply chain disruptions, liquidity struggles, employment issues)



2. Initial measures in response to COVID-19



3. Old and new sources of disputes



4. Rise of online dispute resolution



5. Transition to virtual hearings and key concerns (cross-examination, juries, security and confidentiality, privilege concerns)

6. Potential benefits (cost savings, efficiencies)

7. Future outlook



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Constitutional issues in virtual proceedings and the CARES Act

Constitutional issues in civil and criminal cases

Due process and fairness concerns

Importance of physical presence in the courtroom has been recognized by the Supreme Court in a variety of contexts

- Coy v. Iowa (1986) Right to face to face confrontation of witnesses in criminal trials
- Richmond Newspapers (1980) Right of public to be physically present in the courtroom
- How to balance fundamental Constitutional rights with public health imperatives?



The CARES Act

Use of remote video and telephonic proceedings in criminal cases

March 27, 2020: Coronavirus Aid, Relief, and Economic Security (CARES) Act

- Section 15002: Federal courts can authorize the use of video- or teleconferencing for certain criminal proceedings
 - Remote appearance for detention, initial appearance, preliminary hearing, waivers of indictment, arraignments, probation/supervised release revocation and others as listed
 - Felony guilty pleas and sentencing remotely if conditions are met

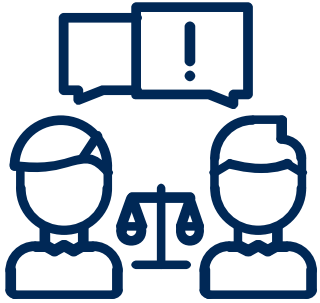


3

COVID-19 related civil litigation

COVID-19 court cases

Proliferation of new COVID-19 related cases



In addition to pending unresolved disputes, Covid-19 caused a slew of disputes due to supply chain disruptions, employment issues and liquidity struggles

- Force majeure claims (real estate leases, equipment leases, construction projects, supply agreements)
- Insurance claims (business interruption losses)
- Consumer/retail suits (price gouging, failure to refund, cancelled events, lack of access)
- Employment disputes (employees deemed "essential," discrimination, failure to pay overtime/provide breaks)
- Tort claims (negligence, failure to contain the virus, failure to warn)

The background features a dark blue field with a complex, glowing pattern of light blue lines and dots that resemble a digital signal or a network of data points. The pattern is centered and spreads outwards, creating a sense of depth and movement.

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COVID-19 and criminal proceedings

COVID-19 and criminal proceedings

Any crisis, and certainly the pandemic, creates pressure, which heightens the risk of fraud and other criminal behavior, such as:



- Accounting fraud – channel stuffing, reserve manipulation
- Securities fraud
- Bank fraud
- Bankruptcy fraud
- Antitrust –
- Procurement fraud / False Claims Act
- Government program fraud
- Foreign Corrupt Practices Act
- Sanctions / Export controls

COVID-19 and criminal proceedings

Any crisis, and certainly the pandemic, creates pressure, which heightens the risk of fraud and other criminal behavior



Warren Buffet – “you only find out who is swimming naked when the tide goes out.”

Budget cuts, and pressure on legal and compliance - maintain strong internal controls and procedures, targeted training emphasis on culture

Don't count on government COVID-19 leniency

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Court operations during COVID-19

Court operations during COVID-19

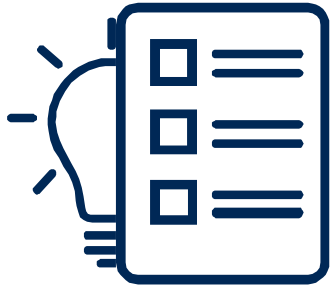
COVID-19 and courts



COVID-19 impact on courts vary by state, but general trends are:

- Hearings deferred or conducted by phone/video
 - Hearings proceed in emergency matters
- Trials suspended
- Statutes of limitations tolled/filing deadlines extended
- Case filings diminished
- Some courts are beginning to resume limited operations and others are embracing live stream technology

Virtual discovery, remote depositions, and written witness testimony



- Remote collection of evidence
- Remote depositions and strategies
 - Cost savings
 - Strategic, ethical and other considerations
- Declarations in lieu of appearing



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Trials, pleas and sentencings during the crisis

Trials, pleas and sentencings during the crisis

Courts pioneer remote criminal proceedings

CHICAGO SUN*TIMES

Federal judge agrees to videoconference sentencing in gun case

Malcolm Junious could be looking at time served at his April 14 sentencing hearing.

By Jon Seidel | Apr 1, 2020, 4:13pm CDT

Texas Court Pioneers Trial By Zoom In Atty Fee Dispute

By *Daniel Siegal*

Law360 (April 22, 2020, 10:05 PM EDT) -- A Texas state court judge charted a new path for trials during the coronavirus pandemic Wednesday when he held a one-day bench trial through videoconferencing service Zoom, overcoming technical difficulties to hear a dispute over roughly \$96,000 in attorney fees stemming from an insurance case.

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Considerations in remote proceedings

Factors to take into consideration



- Type of proceedings



- Benefits / necessity of confrontation



- Credibility determination

- Benefits of in-person hearings



- Effective representation

- Technology / Security



- Privilege

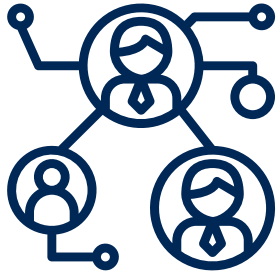


The background features a series of glowing blue lines that form a wave-like pattern, resembling a digital signal or data flow. The lines are composed of small dots and connect to form a mesh-like structure that undulates across the frame. The overall color palette is dark blue with bright cyan highlights.

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Effective use of technology in virtual litigation

Effective use of technology in virtual litigation



- Rate of change has dramatically accelerated. The world has been thrust into remote working and reliance on technology
- Courts are trying to become more adept at audio and video conferencing
- Considerations
 - video platform
 - exhibits
 - real-time

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Implications of COVID-19 for cross-border disputes and discovery

The implications of COVID-19 for cross-border disputes and discovery



- "Normal" practices will need to be reconsidered
- Issue: Travel to access records and image laptops may be restricted by law or company policy
 - Solution: Use of IT to access server data, use alternative sources of data
- Issue: In-person witness interviews
 - Solution: Skype, Zoom, BlueJeans, FaceTime videoconferencing capabilities (but may be harder to assess witness credibility/suitability and ensure confidentiality)

Implications of COVID-19 for cross-border disputes and discovery



- 28 U.S.C. § 1782 as a means of obtaining discovery in aid of foreign litigation
- Application:
 - Federal court where the person resides or where the person can be found
 - Motion with affidavit setting forth the facts
 - Memorandum of law
 - Can be done *ex parte*

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COVID-19 and Courts: What will the New Normal be?

COVID-19 and courts

What will the future be?



Most likely we will see a hybrid of what it was before COVID-19 and what it is now:

- Most courts will be open
- Remote proceedings will be available
- Civil vs criminal cases
- The world will continue to embrace technology

The image features a large white speech bubble on the left side, set against a dark blue background. The word "Questions" is written in a bold, dark blue font inside the bubble. On the right side, there is a glowing blue particle trail consisting of many small dots connected by thin lines, creating a sense of motion and digital connectivity.

Questions

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An abstract graphic consisting of multiple overlapping, wavy lines in shades of blue and cyan. The lines are composed of small dots and connect to form a complex, fluid pattern that resembles a digital signal or a stylized wave. The background is dark blue.

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