

# THE LONG-TERM EFFECTS OF COVID-19 ON THE FAMILY

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# COURT PROCESS



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**C**HANGE HAS ALWAYS BEEN A CHALLENGING FEAT. This seems to ring true for the Connecticut family lawyer and the evolving court system. Just as the world shut down in March of 2020 and the courts were forced to suspend in-person proceedings, the Judicial Branch rushed to put into place a remote system, one sufficient to tend to the needs of the vast public seeking relief through the court system. Soon after remote proceedings were implemented, we learned that changes to the judicial system triggered by the urgency of COVID-19 restrictions in mid-2020 happened to coincide with the Judicial Branch’s on-going plan to implement their new “Pathways” system. Which of the court changes that have ultimately been implemented were a long-time in the making and which were because of improvising during COVID-19, may never be fully answered; what is known, however, is that the new procedures are here to stay.

According to the Branch, the goal of the new procedures within family law is “to give each case the level of court resources it needs, and to reduce the number of necessary court appearances by setting a scheduled at an early point in each case.”<sup>1</sup> Family lawyers have always been accustomed to accessing the court as needed. If an issue arose mid-divorce, such as the appointment of a Guardian *ad litem* to assist with a custody dispute or the need for an order of financial support due to a change in the parties’ circumstances, a *pendente lite* motion was filed and then quickly assigned to the short calendar docket in the matter of two to three weeks. Even if a hearing did not occur on the assigned “short calendar” date, it brought parties into court, providing the ability to seek court intervention quickly, and moved many matters closer to resolution. Such court access was expected, relied upon even. When COVID-19 hit, and as

courts shut down, what was most pressing was the loss of immediate access to the court for relief. In the beginning stages of COVID-19, access to the court and immediately relief, absent a life-threatening emergency, was unavailable, and, even in these instances, only relief from abuse petitions and ex parte custody petitions could mechanize the judicial machinery; financial hardship on its own had no redress. New procedures with different names continued to roll out, to the point it seemed continuity was a thing of the past, and each jurisdiction operated in a slightly different way. As courts continue through the COVID-19 backlog, the bar has been able to gain more clarity on what procedures will fade away in our “new normal” and what procedures will remain.

**1. RESOLUTION PLAN DATES,** or what has been more commonly referred to as triage dates, are here to stay. Resolu-

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tion plan dates are initial court dates, in most cases, the first time the parties will attend court. When a new custody/visitation or dissolution action is filed, after the return date, the parties will receive a notice with the assignment of their first court appearance, their Resolution Plan Date. For new custody/visitation actions, the Resolution Plan Date is anticipated to be scheduled for a date approximately 30 days after the return date. For new dissolution filings, the court is scheduling Resolution Plan Dates approximately 30-45 days after the return date. When a party files a post-judgment motion, once the paperwork is processed, instead of a hearing date being immediately assigned, a Resolution Plan Date will be assigned and is aimed to be 21-30 days from the filing of the motion. While parties need to submit financial affidavits on this date, do not anticipate a hearing on any issues. This triage is the “taking of the temperature” and testing the waters, allowing Family Relations to assess what is needed and how to help move the case forward. While this new procedure has the capability of bringing parties to court quickly, this is not a process for relief. Anecdotally, some judicial districts are making judges available on Resolution Plan Dates, but the main branch players on these dates is Family Relations, regardless of whether the case involves custodial issues.

**2. TRACK SYSTEM:** Prior to COVID-19, the short calendar system was able to provide temporary relief, as may be needed by the parties. Implemented along with the Resolution Plan Date is track assignment. Every new case that is filed will be assigned to one of three tracks: Track A, B, or C. The track the case is assigned to dictates the anticipated amount of court intervention needed. The family relations officer that the case is assigned to at the initial Resolution Plan Date will determine how much court intervention may be needed based on what representations are made at that time. Unfortunately, this can create a conundrum for families. In most cases, controlling conflicts do not always present themselves immediately. If you are in court 30 days after the return date, one



may not yet know what issues are outstanding. This could lead a case to be assigned a track that may not be appropriate. Track A will only be assigned to those cases that essentially enter Resolution Plan Dates with an agreement or anticipate having an agreement quickly thereafter. When the case is placed on Track A, no court time is immediately set aside for that matter and that will most likely be resolved without court intervention. Track B seems to be the track of choice for most. Track B cases have some issues in dispute, but the issues should resolve with one temporary hearing date and perhaps Family Relations or another type of intervention. The parties will thereafter receive an assigned case date, a date on which *pendente lite* motions can be heard. Track C is reserved for those cases that are high conflict and will need a lot of court attention throughout the pending litigation. Track C cases are assigned two case dates, two dates where the parties will appear before the court and will be given court time. In addition, Track C cases are intended to be “one judge” cases, where the same judge is involved with the case from the time it is first assigned to Track C. One of the major downsides of the tracking system is that it requires lawyers to anticipate the problems that will arise in the case early on, prior to any of the issue really being parsed out and prior to any financial discovery being exchanged. At present, it does not appear that there is

a mechanism for having a case re-tracked once it is assigned.

**3. REMOTE STATUS CONFERENCES:** Morning status conferences when multiple cases were scheduled for the 9:00 a.m. – 10:00 a.m. window are a thing of the past. The court has moved the majority of status conferences to the virtual setting. This transition saves enormous amounts of time and money for clients. Every attorney has struggled to arrive at a courthouse on time for a status conference that ends up lasting 15 minutes or, alternatively, waited in line with a dozen different lawyers for hours just to get their case 15 minutes of time with a judge. COVID-19 solutions brought with them remote status conferences, which are currently being used as check-ins with the judge, making sure scheduling issues are on track, checking to see if the parties need any type of intervention, or simply updating that court on the status of your case. All things that work well virtually. In certain cases where it may be important to have an in-person status conference, counsel can make that request by way of a Case Flow Request form. The judge will then decide if the conference will be assigned in-person or remain remote.

**4. “ON THE PAPERS” FINAL AGREEMENTS:** A couple of years prior to COVID-19, the Branch had rolled

out an “on the papers” mechanism for the Court to accept and approve *pendente lite* agreements. However, such procedures were limited to *pendente lite* matters and were inapplicable either to post judgment motions, whether fully or partially resolving the matter, or to final judgments of custody or divorce. When practitioners lost access to the courthouse in 2020, one of the first implementations was the accepting of agreements without the parties appearing in court. Instead of appearing, parties can complete a form, a different form depending on the type of agreement (*pendente lite*, final or post judgment), as well as an affidavit that acts as the in-person court canvas. The agreement, which can be a final Separation Agreement, a *pendente lite* stipulation or post judgment agreement, is submitted along with the necessary forms, all posted on the Judicial Branch’s website. The court will then take the matter on the papers, issuing an order accepting the agreement. The timing of the acceptance is not always known and depends upon the court’s availability. Be cognizant of the time sensitivity of your filing, as an agreement can take multiple days to be acted upon.

**5. SHORT CALENDARS AND THE TAKEOVER OF THE “MOTIONS DOCKET”:** The short calendar process ended abruptly during COVID-19, and, even as the doors started opening slowly, the idea of an en masse appearance of people during the age of COVID-19 seemed ill-advised. For many years, discussion had been underway concerning how ineffective a process

short calendar had been, with parties and counsel meeting with Family Relations and trying to get time with the court if a hearing was needed, all in the span of six court hours and often with as many as a hundred cases on the docket in one day. Although COVID-19 provided the final blow to the short calendar system, it quickly became apparent that the void needed to be filled with something. With case dates being assigned often six to nine months away, families required the ability to get the court’s attention for brief, pressing matters, like the appointment of a Guardian *ad litem* or the provision of child or spousal support. Coming to save the day is the “Motions Docket,” similar to short calendar in many ways, but limited in its application. If a party has a pending *pendente lite* motion that counsel deems is of a more urgent manner and cannot wait until the case date assigned, one can request by way of a Case Flow Request form that the motion be placed on the Motions Docket and be scheduled for a one-hour hearing. It is not an automatic placement and each request is reviewed prior to being ruled upon. This process is quite new and has only been in practice for a few months. However, it has the potential not only to resolve brief hearings before a judge but also to provide to parties that extra push to settle and *pendente lite* matter than sometimes will only occur when a court date loom close in the future.

**6. ADDRESSING DISCOVERY MATTERS “ON THE PAPERS”:** Prior to COVID-19, short calendar was

the vehicle used for settlement of disagreements over discovery matters. A party filing an objection to discovery would have the ability to argue their objection in front of the court at short calendar, with opposing counsel present and responding. While there are some discovery matters that can still be scheduled to be addressed in front of a judge by special request or assignment, the vast majority of discovery motions are now decided on the papers. This means any discovery objection should be thought through, meticulously detailed, and provide the proper discovery objections. Discovery objection motions are no longer a placeholder for a hearing, but must be detailed enough for a judge to understand the basis for the objection, the reasons for the objection, and what remedies are being sought.

While other procedures certainly have been implemented in the two and a half years since the courtroom doors closed in March 2020, those discussed above appear to have the greatest impact on the Connecticut family lawyer and appear to be the ones destined to remain. ■

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#### NOTES

1. Credit to Connecticut Judicial Branch Pathways Process article



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