

Remote Court Operations Incorporating A2J Principles



A Pandemic Resource from NCSC

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It is trite but true that extraordinary times call for extraordinary measures. Also true is that, in response to the current COVID-19 pandemic, courts across the country are figuring out ways to function in new days – especially for cases with emergency needs – often with remote staff and users. There are so many competing demands on courts now, and with this piece, we simply want to suggest that any remote operations offer an opportunity for courts streamline operations, improve the administration of justice and deliver greater access to justice.

Legal needs are not going away. Even in times of crisis – likely even more than under normal circumstances – couples will still get divorced, landlords and tenants will have disputes and people will find themselves in debt. The courts must remain a fair, neutral and available forum for the resolution of these problems. Operating procedures must be adapted to deal with the here and now, but that does not mean that the opportunity to think long-term should be sacrificed for expediency.

As we adjust to this new normal, we must challenge whether court operations, rules and practices can be modified to meet the needs of the time. But it is simultaneously vital to acknowledge that simply slapping a remote option on a current process likely misses critical opportunities to improve the way justice is administered and received.

With this short piece, we hope to offer some initial thoughts about how courts could approach this opportunity to expand access to justice.

Process Design and Simplification

Start with reexamining processes. How does someone get divorced? How many steps are involved? How many times must they come to court? When could those physical appearances happen remotely or not at all? If proof of jurisdiction is required, couldn't a person show their ID to the camera? If a notary was previously required, could a signature under penalty of perjury work instead? Is there an email address or upload portal (even as simple as a Google Drive) where users can send documents and evidence? Could mediation take place via phone?

Technical Considerations

What are the technical barriers to remote access to the courts? Does the court offer no-cost, freely available options to appear remotely? Are there ways to leverage technology to connect users to available civil legal aid and pro bono providers as needed? Vendor provided solutions may offer staff the opportunity to work remotely, but do they scale and afford the same ability to conduct business to court patrons? Can they operate off of a cell network or Wi-Fi on a smartphone? Is an email address necessary to access the court system? What about the unbanked – how do people pay court fees or fines if they do not have a credit card or checking account?

Opportunities to Supply Legal Information

Legal information is critical to empower litigants (especially those self-represented) to take action in their cases. In circumstances where physical courts are closed, court staff are not as available to the public as they would be during traditional court processes. But court staff may be able to answer questions via an online chat, send people links to legal information resources posted on court websites or to assist in navigating new court processes. Staff will need clear guidance on the difference between legal information and legal advice. There is a lot that staff can offer without fear of the unauthorized practice of law. Staff may also have the ability to use new mediums to convey information. For example, a clerk in the court will not usually send someone standing in front of them a link to a video that explains the small claims process. If engagement with the court is happening from a distance, courts now have the opportunity to generate suites of plain language forms (both automated and fillable PDF files), draft process maps to explain a case type and explainer videos that make plain how to use the court. Moreover, most courts will not have to reinvent the wheel, and there may be great self-help resources developed on civil legal aid or state Access to Justice Commission websites to adapt or use.

Plain Language Cuts Down on Confusion

Court patrons appearing remotely present an opportunity to provide clear guidance. Patrons, judges and court staff alike want people to understand how to navigate the court system. Text message reminders, email reminders and plain language instructions will help ensure met deadlines and avoid confusion. In the same way that this crisis offers an opportunity to revisit court procedures and processes, it also presents an opportunity to consider the ways in which those procedures are communicated and described. Whenever possible, forms and instructions should be written at a 5th grade reading level, and where possible, legal jargon and Latin should be stripped, or at the very least, explained. Courts should embrace the dynamism offered by online platforms. They can annotate statutes, embed videos and link to resources.

Be Mindful of People with Disabilities and Limited English Proficiency

In the same way that this virus has helped us focus on the most vulnerable among us, so too should efforts to implement remote court services consider, as a starting point, those who would be most impacted by the shift to remote services. People with disabilities, with limited English proficiency, or with limited access to technology are still entitled to the use of the court system, even in a time of crisis. Planning should center them, because decisions made that allow their continued use of the court will also necessarily result in conditions that improve the experience for all court patrons. Courts should be mindful of ADA requirements and web content accessibility standards. They should also ensure that there are call-in options in addition to websites and apps, and that any online resources have been translated.

The Solution is Not One Size Fits All

Some court cases are true emergencies and may not be appropriate to delay or handle remotely, or they may require special safeguards if handled out of the physical court. For example, some domestic violence cases may require partnering with a local domestic violence shelter or other safe space that allows a victim to participate in a proceeding without fear.

For more information about access to justice and remote operations in your jurisdiction, please feel free to contact Danielle Hirsch at dhirsch@ncsc.org/303-308-4318 or Zach Zarnow at zzarnow@ncsc.org.