

CCJ/COSCA FAMILY JUSTICE INITIATIVE VIRTUAL TRIAGE, PATHWAYS, AND COVID-19



A Pandemic Resource from NCSC

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The COVID-19 pandemic has led some courts to suspend hearings deemed “non-essential” which can include family cases. Other courts have created emergency processes to resolve these matters during the crisis. Court closings as well as disruptions to the economy and society could result in a dramatic increase in filings when courts re-open. Now, and into the new normal, strategies are needed to provide service to families before the courts.

One strategy in place in a number of jurisdictions is the use of Triage and Pathway case management to resolve backlogged, reopened and new case filings for families. The [CCJ/COSCA Family Justice Initiative](#) recommends hands-on management of a case by court personnel through service-based pathways in order to match parties and cases to resources and services. “Tailoring the involvement of judges and professional staff to those characteristics and needs will lead to efficiencies in time, scale, and structure.”

As set forth in an evaluation of Alaska’s triage and Early Resolution Program: “Courts can resolve 80% of their contested divorce and custody cases between self-represented parties in just one hearing with a special calendar that employs a problem-solving approach, triage, a simplified process, and early intervention” (Marz, 2019). Triage processes can be adapted as described below in order to reap significant case management efficiencies.

1. Conduct Triage Screening Mid-Pandemic

As one court stated, “This is the time for us to conduct Pathways. We have staff members under stay-at-home orders, with the experience and time to reach out to parties to help them determine the best Pathway for resolution.” Even under the current circumstances, trained staff can participate in both screening as well as conversations to move cases forward on a pathway.

An essential element of triage is screening a case, either new filing or post-decree, to determine case complexity, level of conflict, and what services or case management are needed to resolve it.

Alaska screens cases using these objective factors:

- length of marriage: ____ years
- length of separation: ____ years
- significant property and/or debt: yes/no
- age(s) of child(ren): ____
- existing arrangement re: decision making and parenting time: ____
- DV history or allegations? Yes/no
- location/relocation issues? Yes/no

The factors can be built into a tool (as in Connecticut) and/or internalized (as in Colorado) by experienced family court personnel to analyze case characteristics based on the petition/motion and response to determine what case management and services will be most useful in resolving the case. [A Model Process for Family Justice Initiative Pathways](#) describes three Pathways that increase on the continuum of conflict and complexity: *Streamlined*, *Tailored Services*, and *Judicial/Facilitated*. Even though courts are physically closed, cases can still be managed under the *Streamlined* pathway, below.

2. Screen Streamlined vs. Tailored and Judicial/Specialized Cases

The *Streamlined* Pathway is for cases where little exercise of discretion is appropriate and thus may even be resolved mid-pandemic. Examples of cases that may be appropriate are administrative proceedings focused on limited issues, post-decree modifications of support or parenting-time, default proceedings and simple cases where the parties seek an order approving a stipulated result. We recommend that experienced family court personnel screen cases to identify those more likely to be *Streamlined* to focus on their resolution. Resolving *Streamlined* cases now will allow courts to focus on the *Tailored* and *Judicial/Specialized* cases once the courts re-open.

3. Facilitate Resolution for Streamlined Cases Mid-Pandemic

The [Landscape of Domestic Relations Cases in State Courts](#) indicated that most cases filed could be resolved with minimal court involvement. Experienced family court staff can engage in virtual or other communications with parties to help move the case forward.

It is common for courts (as in Washington and Florida) to conduct status conferences with parties to determine procedural steps. Family court facilitators or case managers will also often help parties with parenting-time schedules or child support calculations to help

parties move forward toward resolution. These same communications can occur by email, telephone, videoconference or a combination thereof.

4. Communicate via e-mail

We recommend increased use of email during the current emergency. Utah has posted notices at closed courthouses asking parties to send in their email and text contact information along with their case numbers so that court personnel can contact parties electronically to proceed with the case. Many Texas courts are receiving documents and agreements by email. Not only is email communication faster, but it may help prevent disease transmission.

Having separated *Streamlined* cases from the rest, trained court staff can reach out to parties to request communications by email and to communicate resolution processes going forward, such as a video or telephonic status conference. NCSC has sample communications available.

5. Conduct Video or Telephonic Status Conferences

Notify parties that a court staff person will contact them to establish a teleconference or web meeting to review their case and discuss options for resolution. You may want to designate a day and time in the email for this status conference. You can work to provide information and move forward with the parties that appear. If both parties do not appear, the case can be re-calendared for another date or deferred. Conferences can be held with both petitioner and the respondent at the same time, or shuttle-style (individually). This [sample protocol](#) provides ideas for case management and related issues, such as domestic violence.

At the established time, use a script to walk parties through the process, review the pleadings and set forth options for the case to be resolved. Options used by other courts include virtual hearings to receive agreements or receipt of agreements via email under the current emergency circumstances.

In terms of putting agreements on the record, a number of courts are working to embrace virtual hearings as part of the ‘new normal.’ Alaska and Texas are examples of courts that have implemented virtual hearings or processes, by phone, web or other means for the resolution of family matters.

- **Alaska** has set up conference call lines for all parties and attorneys to appear by telephone for all court proceedings (includes domestic violence).

- **Massachusetts** has recently opened a centralized Call Center to respond to customer inquiries during the pandemic.
- The **New Jersey** courts have long held tele- and video proceedings in court matters. The Supreme Court has published these rules on page 9 for family matters: <https://www.njcourts.gov/notices/2020/n200327a.pdf?c=yjW>.
- In **Texas**, custody matters are being handled via Zoom and are live-streamed through YouTube during the pendency of the hearing to satisfy the state’s open courts doctrine.

The Civil Justice Initiative published these [Findings and Recommendations on Remote Conferencing](#) that we recommend be applied to family law matters.

6. Consider Use of Online Dispute Resolution

Use of Online Family Dispute Resolution is increasing rapidly. It can be used to resolve various issues in family law:



While courts may or may not have the capacity to engage in ODR right now, it benefits a court to think of future need and whether ODR can assist. If you would like more information about this, NCSC has a page with resources and information here:

<https://www.ncsc.org/odr>.

Tips from Other Courts

- Identify staff to conduct virtual triage. These should be persons with good customer service skills, who are trauma-informed and have some tech-savvy. Identifying a limited number of staff to conduct triage will assist with quality control.
- Be Trauma-Informed. Be aware that domestic abuse is more prevalent under these circumstances. People may be living in close quarters and may not be speaking to you confidentially. Err on the side of caution. Make information about community supports for victims of violence readily available, such as an e-flyer communication that is sent with all court correspondence as a matter of course.

- Start small. Establish the population of cases that would be most suitable for a virtual triage/Pathways approach, for example: post-decree motions for modification to the parenting-time or support order. Field test with a handful of cases to refine the process.
- Write up a description of the triage process to share with parties. NCSC can share templates with you.

Support Available

A web-meeting will be held **April 24 at 12pm Eastern** via GoToMeeting to allow interested family courts to discuss these concepts and strategies that have been implemented. The meeting will be recorded and the link made available for others that cannot attend.

Other Resources

- Individual juvenile and family court responses: <https://www.ncjfcj.org/wp-content/uploads/2020/03/NCJFCJ-Call-on-Court-Responses-to-COVID-19-3242020.pdf>
- Texas Supreme Court Seventh Emergency Order Regarding the COVID-19 State of Disaster: <https://www.txcourts.gov/media/1446251/209050.pdf>
- Marz, Stacey, “Faster and as Satisfying: An Evaluation of Alaska’s Early Resolution Triage Program” Family Court Review, Vo. 57, Issue 4 (October 2019).

The Family Justice Initiative is a CCJ/COSCA project with partnership from the Institute for the Advancement of the American Legal System (IAALS), and the National Council for Juvenile and Family Court Judges (NCJFCJ).

For more information about FJI implementation, please visit www.ncsc.org.