Rapid Response Team, Post-Pandemic Advisors: Civil

This advisory group has overseen the creation of issue briefs and webinars intended to provide guidance to courts on how to safely and strategically recover and resume full court operations and to document COVID-19 adaptations and reengineered court practices and procedures to be replicated during and following the pandemic recovery.

Involving Civil Cases Occasioned by the Pandemic

Business Litigation

In a five-part webinar series, state court judges, lawyers, and subject matter experts discuss legal and practical issues that are likely to arise in business litigation due to the COVID-19 pandemic.

- Recording: Complex Litigation Grab Bag (9-14-20). A panel of subject matter experts for a roundtable discussed effective commercial case management, the role of federalism in COVID-19 business litigation, and lesser known procedural quirks that state court judges may encounter in the coming months.
  - Webinar Materials

Advisory Group Members

Chief Justice Martha Walters
Supreme Court of Oregon | Co-Facilitator

Patrick L. Carroll
Chief Court Administrator
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Judge Jennifer Bailey
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Justice Thomas Balmer
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NCSC Staff Lead
Managing Civil Cases in the Time of COVID

Business Litigation

- Recording: Business Insolvency (8–10–20). National business news outlets estimate that as many as 100,000 small businesses have been forced out of business due to the pandemic. This session focuses on the role of state courts in insolvency and related proceedings, including an innovative pilot program launched in Rhode Island to provide otherwise viable businesses a lifeline to continue operations.

- Recording: Employment and Labor Liability (8–3–20). The risk of serious health effects from COVID–19 poses legal challenges for employers. This webinar focuses on equal protection, employment discrimination and ADA issues related to employer policies concerning the pandemic.

- Recording: Commercial Contract Litigation (7–20–20). The COVID–19 pandemic and related stay–at–home orders resulted in cascading breaches of commercial contracts concerning sales of goods and services. This session provided a primer on contractual and UCC issues that judges can expect to encounter in newly filed civil cases.
  - Webinar Materials

- Recording: Business Interruption Insurance Claims (7–12–20). This session provides a primer on legal issues related to business disruption insurance coverage; Life, Health and Disability (LHD) coverage by employers; and strategies to incentivize meaningful settlement negotiations.
  - Presentation

This reference guide describes the innovative “Business Recovery Plan” implemented by the Rhode Island Superior Court, Business Calendar, to provide assistance to small and medium businesses experiencing financial difficulty due to COVID–19.

This document includes citations and brief summaries of recent court decisions involving business interruption insurance; MDL and case aggregation for COVID–19 business cases; force majeure, including industry–specific rulings; and miscellaneous legal issues related to COVID–19.
Managing Civil Cases in the Time of COVID

High-Volume Civil Dockets

Consumer debt hit a high of $14.3 trillion just as the pandemic hit, leaving millions of newly unemployed workers without a regular paycheck to pay existing debts and putting them in the position of having to rely on credit cards to pay essential household expenses. These challenges to American finances are likely to extend many years beyond the pandemic crisis, leaving some to speculate that the "coronavirus pandemic is set to metastasize into a debt collection pandemic."

These Key Steps and Tools offer business practice changes that can be implemented by state courts now to ensure fair and efficient handling of consumer debt actions.

- Webinar Recording: Fair and Efficient Handling of Consumer Debt Actions: Key Steps and Tools to Implement NOW. This webinar highlighted key steps and tools that state courts can implement now — without statutory or rule changes — to ensure that consumer debt actions are managed fairly and efficiently.
  - Webinar materials

Most state courts experienced significant backlogs in civil caseloads due to the COVID-19 pandemic, and expect a substantial increase in cases, especially on high-volume calendars such as landlord/tenant, consumer debt collection, and small claims, due to the impact of stay-at-home orders on the economy.

This document and related webinar offer practice case management advice for addressing backlogs and preparing for the surge in civil filings. Many courts acclimated quickly to using videoconferencing platforms for court hearings.

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- NCSC Access to Justice experts Danielle Hirsch and Zach Zarnow are joined by Paula Hannaford-Agor (NCSC) and Emily LaGatta (LaGatta Consulting) in a Tiny Chat to discuss how courts can take steps to ensure procedural fairness, especially during the pandemic.
Managing Civil Cases in the Time of COVID

High-Volume Civil Dockets

This bench guide explains the foundational tenets of procedural fairness and offers practical tips to ensure procedural fairness in remote hearings.

A companion reference guide provides background research on procedural justice.

Federal and state eviction moratoria have temporarily halted eviction proceedings in many states, but state court policymakers anticipate a surge in eviction filings as these moratoria expire. To prepare, some states have implemented eviction diversion programs, many of which also tap CARES Act funds for rental assistance for tenants who have lost income due to COVID-19.

- This June 16, 2020 webinar highlights programs in Michigan and Pennsylvania.
- A follow-up webinar on September 15 returns to those programs for lessons learned about their implementation and early operations.