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## *Family Law Attorney Jason V. Owens discusses Covid-19 court closures and the impact on divorce and child custody cases.*

**UPDATE: 5/15/20: For the most up to date information on how Massachusetts Probate & Family Courts are responding to the coronavirus crisis, please check out our [most recent blog, which includes updates](#).**



The email came on Friday afternoon. The Plymouth Probate & Family Court was canceling hearings scheduled for Monday, March 16, 2020. Any hearings scheduled for Monday, the email explained, would be “rescheduled at a future time”. With the [coronavirus](#) causing closures across the country, Massachusetts courts are not immune to the increasing pressure to prohibit public gatherings to avoid the spread of Covid-19.

Friday also marked the announcement that [all jury trials in Massachusetts District and Superior Courts](#) would be delayed at least a month, until April 21<sup>st</sup>. Elsewhere in the country, court closures have been more extreme. Contra County, California has [closed its Superior Court completely](#) until at least April 1, 2020. On the South Shore of Massachusetts, residents are quickly learning that “short term” closures of schools and public places are quickly extended. In Hingham, parents were told on Thursday night that the Hingham schools would be closed on [Friday and Monday next week](#). The following day, word came down that the closure would be for at least two weeks.

Against this backdrop – where short-term closures seem to turn indefinite overnight – the canceling of Monday’s sessions at the Plymouth Probate & Family Court felt ominous. Would the Court re-open for business on Tuesday, or was this a sign of things to come?

## Running Probate & Family Courts on a “Skeleton Crew”

During major weather events such as hurricanes and snowstorms, Massachusetts probate courts will reduce staff to a “skeleton crew” of one judge and a handful of staff and court officers. Regularly scheduled motions are removed from the judge’s list and hearings may be restricted to emergency motions and [209A restraining orders](#). It seems quite possible that the coronavirus could push probate and family courts to reduce staffing to emergency levels while restricting hearings to emergency matters involving domestic violence, child safety and emergency guardianship issues.

If and when courts reduce staffing levels, we will update this blog with additional details as we learn them. As of today (Saturday, March 14, 2020), no such announcement has been made, nor have probate courts been closed statewide. Of course, this could change quickly.

## Shutting Down Probate & Family Courts Completely Because of Covid-19

The last time Massachusetts Probate & Family Courts shut down completely was the 9/11 disaster. A colleague recently described being midway through a [divorce](#) trial in the Plymouth Probate Court before Hon. Stephen Steinberg (ret.) when the Twin Towers were attacked. Judge Steinberg interrupted the attorney midway through his cross-examination and remarked, “I just received a fax. We are under attack. Everyone needs to leave the building now.”

The week following the 9/11 attack was chaotic, but Americans quickly realized that small government structures – like country courthouses – were unlikely targets for subsequent attacks, and the courts soon re-opened. There is simply no precedent for the kind of long-term closure of probate and family courts that might be necessitated by Covid-19.

Indeed, a complete and total shutdown of probate courts would arguably have an even more serious impact on residents than shutting down the District Court and Superior Courts. After all, in criminal cases, police have the option of holding defendants accused of serious crimes in jail, while less serious offenders can be released on personal recognizance. For the parties involved District and Superior Court cases, any significant delay is surely a very big deal. However, the reality is that delay is *always* a problem in the court system.

For some probate and family court cases, delay simply isn't an option.

## **Probate & Family Court Issues that Require Immediate Action, Regardless of Coronavirus**

Imagine for a moment a single mother of a 5-year old child who contracts a serious case of coronavirus, causing the parent's hospitalization. Now imagine what happens if the 5-year old is being cared for by an aunt or a neighbor, and the child becomes sick. Who makes medical decisions for the child?

In Massachusetts, probate court judges will appoint a [guardian for minor children](#) whose parents are unable to care for the child. This gives the guardian the legal rights to act as the child's parent. These legal rights may especially important in an emergency, when hospitals or police must seek out parents and guardians to make decisions for children while lives hang in the balance.

Imagine another scenario in which a husband and wife with a strained marriage are locked inside on self-quarantine. One spouse is an alcoholic, and violence breaks out, resulting in injuries to the other spouse. The police make an arrest, but with criminal courts closed and jails on coronavirus lockdown, only the most serious criminal offenders are being held. The abusive spouse is released.

The good news for the abused spouse in this scenario is that Massachusetts judges are already empowered to issue emergency 209A restraining order by phone with the assistance of police. (This happens regularly on nights and weekends.) Accordingly, there is a framework in place for domestic violence victims to seek protection even when the courts are closed.

Beyond these two scenarios, there are a huge variety of emergency issues that can arise involving the care and [custody of children](#) that require immediate attention in the Probate Court. (Check our blog on [canceling court-ordered visitation due to Coronavirus fears](#) for more on this.)

For example, what happens if a parent who is infected with coronavirus is insisting on taking his or her court-ordered parenting time on the theory that "Covid-19 doesn't make kids sick". Even if the virus is less likely to sicken children, parents must be concerned about children spreading the disease to vulnerable household members as a result of visitation. The potential infection of a child with Covid-19 likely qualifies as an emergency, but your options for addressing the situation through a court will vary depending on your location.

# The Real-World Impact of Extended Family Court Closures

Beyond the chaos and confusion for the parties involved in probate court cases, the knock-on effects of an extended closure of probate and family courts would be profound. For parents whose only source of financial support for children is weekly [child support](#), court closures mean that some parents may simply [stop paying child support](#) with no immediate consequences, such as an orders for [incarceration for non-paying parents](#) in subsequent [contempt hearings](#).

In the custody, visitation and parenting time context, the impact of extended court closures could be even more dramatic. What happens if parents use the coronavirus as grounds to stop all visitation or parenting time with the other parent? What if one parent becomes hospitalized and the sick parent's relatives refuse to return the child to the other parent? Parents need access to courts to file a [Complaint for Contempt for violations of parenting orders](#).

Over time, extended probate and family court closures could result in a cascading set of emergencies involving children, ranging from child support-reliant parents being unable to afford food, to children being kept in unsafe conditions. With police, law enforcement and [DCF](#) already strained by the impact of Covid-19, each of these emergencies can turn into a crisis.

## Court Hearings by Video Conference: Are They Possible at Scale?

As noted above, Massachusetts judges routinely issue restraining orders by phone on nights and weekends. Massachusetts Probate Court judges have also been known to accept sworn testimony from witnesses over speaker phone; however, this is generally done when a single witness calls into an existing hearing. It is easy to imagine the problems that would ensue if multiple individuals (including the judge) were talking over each other during a hearing conducted by phone. Without video, it would be difficult to understand who was speaking, much less whether witnesses are reading or being coached during testimony.

All that said, Probate & Family Courts may soon need to determine if court operations can be handled via videoconferencing. Some courts already allow criminal defendants to appear via video conference. It is likely this practice will increase with quarantine measures in effect. The question is: how far can this technology be stretched?

Clearly, most attorneys have the means to obtain any hardware or software a court requires to enable videoconferencing. However, coronavirus quarantine concerns may prevent clients from participating in video conferences from their attorneys' offices. Moreover, many parties in Massachusetts Probate & Family Courts (and similar family courts throughout the country) are not represented by attorneys. Accordingly, any video conferencing option will need to be as simple and accessible as possible. Courts cannot buy laptops and smartphones for individuals, but it may be possible to create a platform for those with an internet connection and a camera-ready device to call into video conference hearing.

## **Court Closures Followed by Video Hearing Rollout?**

If Courts are forced to close due to the coronavirus, administrators should use the time off to develop apps and/or internet portals that enable large scale video conferencing for court hearings. Similar technologies already exist for telephone conference calls, with services like <https://www.freeconferencecall.com/> enabling any individual with a phone to join a conference call.

With the world racing towards a recession amidst the coronavirus crisis, the need for governments to stimulate the economy and for private businesses to generate revenue, a video conferencing solution should not be difficult to supply on a technical level. In terms of interface, the system should be simple: think "The Brady Bunch", with the judge taking the place of Alice at the center of the screen:



The service would work best if participants are able to view a list of cases in the order they will be heard, so participants know when their case will be heard. It

may even make sense to provide participants who are waiting for their hearing to start with a live mic to cases being heard before and after their case is called. (This would likely raise privacy concerns, but would also mimic a live courtroom most closely.)

Large scale video conferencing for court hearings in a uniform format across the country represents a major business opportunity. The technology already exists, but simply needs to be adapted to fit the unique needs of courts.

## How Will Court Closures Due to Coronavirus Affect Family Law Cases that Are Currently Open?

It is all well and good to discuss video conferencing solutions that don't present exist, but many readers of this blog will be asking: What is the immediate impact on my case if my local courthouse is closed for weeks or months, starting right now?

It would be irresponsible for us to pretend that we have clear answers for spouses, parents and litigants whose cases are directly impacted by court closures. The reality is that logical solutions differ, depending on the circumstances. Here are a few examples:

- **Videoconferencing Mediation for Divorce and Family Law Cases** – For many (if not most) courts, video conferencing is not an option. The same is not true for [mediation](#). Our firm's mediation division, [South Shore Divorce Mediation](#), has the tools to conduct video mediation using apps such as Skype for business. Participants can call into video mediation sessions from their individual devices. Mediation is not a perfect solution in every case, but if courts are closed and both parties recognize the need for resolution, mediation is uniquely suited to provide solutions even if Covid-19 grinds business everywhere else to a fault.
- **Domestic Violence, Urgent Guardianship Issues, and Child-Related Emergencies** – Even if courts are closed, it likely that certain resources will remain available for those facing serious emergencies involving [domestic violence](#) or children, such as the urgent need for a [guardianship of a minor](#). Consider calling your local court and listening to the recorded message to obtain the best options available. If google searching and calling the court don't work, consider calling local attorneys, police and/or [DCF offices](#) for information. (Note that calling police or child protective services may result in a law enforcement response.)

- **Call an Attorney.** Just because courts are closed in your area does not mean you are out of legal options. You'd be amazed how much a good attorney can accomplish outside of the courtroom. Granted, hiring an attorney costs money, but a qualified attorney can offer an enormous amount of information in a 1-hour paid consultation over the phone. If nothing else, [calling an attorney](#) can help you figure out your situation and understand what to do next.

## **UPDATE (3/17/2020) California Bay Area Severely Restricts Access to Courts**

Even as states like Massachusetts announce plans to [maintain court operations during the outbreak](#), other states have severely restricted the public's access. In the California Bay Area, the region's highly restricted "shelter in place" policy is mirrored in [strict limitations in family court](#), with courts closed completely in Alameda and San Mateo counties. Santa Clara County is mostly closing by restricting family courts to "[d]omestic violence restraining orders; juvenile dependency detentions; emergency mental health reviews".

As the economic and social strain of the coronavirus increases, it seems possible that positive outcomes achieved by social distancing may be outweighed by inability of parents and spouses to seek even emergency relief through the court system.

## **Don't Assume Courts Will Stay Closed for Long**

Everyone is coming to terms with the fact that the coronavirus may close businesses and agencies for weeks or months. However, it is important for individuals to realize that courts are unique and essential. Much like government agencies, Courts stand just below police and hospitals in terms of maintaining an orderly society. Individuals should not assume that courts will remain closed indefinitely, even if schools and other public services do not re-open.

Parents who believe they can stop paying child support or violate parenting orders during a temporary court closure are likely in for a rude awakening down the road. As noted in our blog about [parents denying visitation due to coronavirus fears](#), it is easy to get caught up in the Covid-19 news of the moment when it comes to caring for your child. It is important to remember, however, that the situation surrounding the coronavirus is changing rapidly. Actions that might seem logical one day may look foolish a short time later.

For individuals feeling anxious about a court closure, know that the closure is unlikely to last as long as other closures, and that many courts will be working on remote access solutions such as videoconferencing while they are closed. For individuals who believe that court orders no longer need to be followed while the courts are closed, know that judges are unlikely to share this view later, when the courts re-open.

We will continue to update this and our other blogs as we learn more. Stay safe out there.

## More Coronavirus Coverage from Lynch & Owens

The attorneys of Lynch & Owens have been blogging about the impact of the coronavirus on divorce and family law issues, as well as Massachusetts Probate & Family Courts, since the earliest days of the pandemic. Our coverage has been featured in the [New York Times](#) and the [Boston Globe](#). Check out the links below for more Covid-19 coverage from Lynch & Owens.

### *Coronavirus Impacts on Family Law:*

- [Nine Ways to Plan for Divorce During Quarantine](#) (5/13/20)
- [Ask Our Attorneys: How has the Coronavirus Impacted Family Law in Massachusetts?](#) (5/6/20)
- [Coronavirus News: Enforcing Child Support and Alimony Orders During the Crisis](#) (4/7/20)
- [Massive Coronavirus Layoffs Trigger Child Support and Alimony Reductions Across MA and US](#) (3/19/20 with updates)
- [Coronavirus Court Closures: How Covid-19 is Shutting Courts in Divorce and Family Law Cases](#) (3/14/20 with updates)
- [Can Coronavirus Fears Allow Parents to Cancel Court-Ordered Visitation?](#) (3/2/20 with multiple updates)

### *Massachusetts Probate & Family Court Updates:*

- [Coronavirus News: Mass. Probate & Family Courts Release Tidal Wave of New Rules](#) (4/9/20 with multiple updates)
- [Coronavirus News: County-by-County Info for Massachusetts Probate & Family Courts](#) (3/26/20 with multiple updates)



- [Massachusetts Trial Court Announces Comprehensive Response to Coronavirus for MA Courts](#) (3/15/20 with updates)

*Mediation and Coronavirus:*

- [Mediation is the Best Divorce Option During the Coronavirus Crisis](#) (4/15/20)
- [Court Filings and Covid-19: How to File Agreements in MA Probate & Family Courts During Crisis](#) (4/9/20)
- [Surviving Coronavirus: Video Mediation for Divorce and Family Law Issues](#) (3/19/20)

*Other media featuring Lynch & Owens and coronavirus:*

- [NY Times: For Divorced Parents, Navigating Coronavirus Is a Balancing Act](#) (3/27/20)
- [Boston Globe: For divorced couples with children, coronavirus creates added challenges](#) (4/10/20)

## Coronavirus Related Legal Services at Lynch & Owens

Lynch & Owens has adjusted our service delivery model in response to the coronavirus crisis. In addition to providing traditional divorce and family representation, during the outbreak, we are focused on delivering rapid-response legal services (including same-day service) to clients facing emergency financial and child-related issues, as well as assisting self-represented clients with document preparation and filings while the courts are closed for most regular business.

Clients can schedule same-day, 1-hour paid consultations with our attorneys by phone and we are accepting retainers as low as \$750 for additional consultation services. We are also offering same-day video mediation for parents, spouses and former spouses who are seeking to mediate coronavirus-related issues such as visitation, parenting time, and child support and alimony orders impacted by layoffs and unemployment. Our staff and attorneys have full remote access to all our office's resources in the event of mandatory quarantine or shelter-in-place order.

Please see our dedicated **Coronavirus Legal Services page** and [Coronavirus Mediation Services page](#) for more about services provided by Lynch & Owens and South Shore Divorce Mediation during the coronavirus crisis.

**About the Author:** [Jason V. Owens](#) is a Massachusetts divorce lawyer and family law attorney for Lynch & Owens, located in [Hingham](#), Massachusetts and [East Sandwich](#), Massachusetts. He is also a mediator for [South Shore Divorce Mediation](#).

**Schedule a consultation with [Jason V. Owens](#) today at [\(781\) 253-2049](#) or send [him an email](#).**

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