

Access to Justice Through the Eyes of an Advocate and Court Monitor

RENEE BEEKER | Executive Director, NFCWP

LISA FISCHEL-WOLOVICK, ESQ. | NFCWP Advisory Board

The COVID-19 pandemic altered court proceedings. Before the pandemic, family courts were filled with judges, lawyers, support staff, litigants, interested community members, law students, and court monitors who provide public oversight. Today, courts struggle to provide pre-pandemic levels of transparency and the public access. It is essential that what had been open to the public prior to the pandemic remain open, as families in crisis continue to seek the courts' help.

The National Family Court Watch Project (NFCWP) enlisted over 40 volunteers, many of whom were university students, pre-Covid, to observe over 640 family law cases involving 58 judges in six different states. (Beeker & Holdorf, 2019). Using a standardized instrument, court monitors entered courtrooms, observed cases, took notes, gathered important empirical data, and were never asked to leave the courtroom. The experience gained during this court access project gives us the unique ability to compare the public's experience in the family courts pre-COVID

to current times. Now, litigants, often with limited internet access, must engage with the technology of a virtual courtroom.

The ongoing pandemic keeps the courts closed to the public, with access typically dependent on local infection rates or social distancing requirements. The courts were forced to move quickly to virtual operations for many different types of cases. However, this virtual shift has restricted access to family court, making it extremely difficult for court monitors, advocates, and mental health and law students to participate in, or observe proceedings. When our monitors enter a virtual hearing, clerks often ask who they are, placing them in a waiting room where they are never allowed into the hearing, preventing our monitors from observing the court, costing the students and volunteers many wasted hours.

Our spot-check of public access to the family courts around the country shows these courts tried various solutions. In New York State,



like other state courts, the family courts were initially closed, then moved to virtual access. However, in some states family court proceedings remain closed to our student court watchers, although, in New York, some judges are allowing law students to observe. At the time of this article, the authors' request for our graduate forensic psychology students in New York to observe family court proceedings was denied, although such experiences would vastly improve their understanding of the courts where they will serve.

In Texas, hearings are held on YouTube. Initially, the judges' remarks were inaudible, as they were seated behind a partition and wearing masks. The audio issues were corrected, but observers noted the docket information was unavailable. Many states have very spotty access for monitors to observe virtual hearings. Florida courts offer some online access. Michigan has several counties that offer online access, but we found when checking the MI Virtual Courtroom link that many of the judges are not online. We find there are no reliable methods for our monitors to access hearings.

Access to Justice (Continued)

Access to court dockets is also limited. Cases can be viewed, but none of the court information essential for monitoring is available. In contrast, Michigan's Third Judicial Circuit provides a link to the hearing, including the docket and the Judge's name. We find this to be ideal and would like to see all court systems adopt this practice. Additionally, courts use various video platforms to conduct virtual hearings, creating problems for monitors and litigants. Sometimes links to court proceedings change, often without notice to litigants and private attorneys, and there is no central place to locate information. Some individuals requesting a court watcher have been denied permission by the judge.

Virtual appearances present significant challenges for litigants, including lack of access to technology. Web connections are often unreliable, so critical portions of the proceedings could be lost. Accommodations are required pursuant to the Americans with Disabilities Act (ADA) for those with hearing and/or visual needs or who require additional help accessing virtual proceedings. Court monitors have also commented that judges appeared exhausted.



A recent report by the New York City Bar Association ("The Report") recommended that the family courts adopt strategies to "ensure that litigants and attorneys are regularly updated on the status of their cases as well as ...court operations." It was also observed that judges were understanding the technical challenges of litigants and attorneys. We have noticed other encouraging aspects; lawyers and judges are on-time more for virtual hearings than physical ones. Attending a hearing without travel from home or office saves money and time.

The NFCWP believes the best form of court monitoring is in-person, and when the pandemic ends, family courts should be open. If the judicial system remains virtual, the courts must develop more reliable access for advocates and court monitors. The NFCWP recommends that all courts adopt uniform access for observers. The method used by the Third Judicial Circuit of Michigan, where the family court docket with the case name, number, and hearing time for each case is listed adjacent to the Judge's name with a virtual courtroom link, seems to be a best practice. This type of reliable access to

virtual hearings would allow advocates, court monitors, and the public's involvement in the judicial process.

We urge judges and court management to improve access to the court and to invite advocates, court monitors, and the public into virtual or in-person proceedings as an opportunity to enhance the experience of litigants in accessing what looks to be a more permanent method of operation. Making courts open and available to the public will improve the community's trust and understanding of court operations. The experience of moving from virtual online access to the court and in-person appearances challenges the courts and observers to find solutions to the need for public oversight to promote civic interest and transparent access to justice.