

Litigation Amid the Coronavirus Outbreak: How to Move Your Case Forward

There are strategic initiatives that can be implemented to keep your case moving forward if you are in the midst of a lawsuit or wish to initiate one.

By Janie Byalik and Michael S. Stein

As coronavirus ravages the nation, it has brought about an inevitable wave of disruptions to the country's legal system. Many courts have modified their operations, which include adjourning jury trials, restricting access to the courthouse, limiting the matters that the court will entertain, deciding matters on the papers without argument, permitting certain arguments and motions to proceed via video-conferencing, and, in some instances, suspending legal proceedings and closing the courts altogether. The actions taken vary state-to-state and even court-to-court, both state and federal, within each state.

The unprecedented challenges plaguing our country at the moment, and the resulting substantial reduction in operations in the judicial system, understandably cannot mean "business as usual" when it comes to litigation. Fortunately, however, that also does not mean that justice is suspended; there are strategic initiatives that can be implemented to keep your case moving forward if you are in the midst of a lawsuit or wish to initiate one.

Consider the Venue

All courts are not equal when it comes to the measures taken to deal



with the Coronavirus outbreak. For example, New York state courts have taken drastic measures and frozen virtually all civil litigations. All nonessential functions of the courts are postponed indefinitely and as of March 22, 2020, the court will not accept any court filings, paper or electronic, with the exception of certain "Essential Proceedings" (as defined in the Order's Exhibit A), which are extremely limited. Practically speaking, the March 22 Administrative Order halted the ability to file most civil actions in New York, including, applications seeking emergent injunctive relief.

New Jersey courts, on the other hand, have less severe restrictions. The courts have postponed all in-person proceedings in the Superior Court and have directed that, where possible, case management conferences, motions and hearings would be handled telephonically or by video conferencing. New Jersey courts continue to accept electronic filings without interruption, and have altered in-person filings to filings

sent by mail or delivery to a drop-box. The courts have also implemented a procedure to support the prompt filing and handling of certain emergent applications that cannot be filed electronically by allowing email submissions.

The federal courts in New York and New Jersey also vary in the restrictions imposed and measures taken. If you are looking to commence a lawsuit, particularly on an emergent basis, such as an application for a temporary restraining order, counsel will give due consideration to where that lawsuit should be filed to maximize the chances that the application will be heard (telephonically or by video-conferencing) sooner rather than later. Many cases lend themselves to an option of filing claims in more than one state or in federal court, and venue is now a significant factor in initiating a lawsuit.

Strengthen Your Pre-Litigation Tactics

Often times, particularly in contentious circumstances, litigants are in a rush to have their day in court, bypassing initial steps that can potentially resolve a lengthy and expensive dispute. In an effort to avoid costly litigation, parties should consider engaging counsel to draft correspondence on their behalf, attempt to

negotiate a pre-litigation settlement, pursue alternative dispute resolutions (ADR) such as mediation or arbitration (discussed below), or hire an attorney to conduct an internal investigation

Consider ADR: Mediation and Arbitration

There are many reasons parties may wish to mediate or arbitrate their disputes. As an initial matter, the main difference between a mediation and an arbitration is that in a mediation, the parties simply attempt to negotiate a resolution before a neutral third party whereas, in an arbitration, the parties submit evidence before an arbitrator, who makes an ultimate decision on the matter. Arbitration is like a court process, with less formality, and can be binding or non-binding. Mediation is a negotiation tool.

Litigants can take advantage of these alternative dispute resolutions at any stage of the proceeding. In some instances, the parties' contracts require mediation before a lawsuit is commenced, or provide that disputes must be submitted to arbitration. In other cases, courts refer matters to mandatory mediation, or the parties may jointly hire a private mediator to assist them in resolving their dispute.

Attorneys are equipped to work remotely and can draft and submit mediation statements or arbitration documents. Mediators and arbitrators can receive evidence electronically and can engage with counsel and parties telephonically or use video-conferencing to hear testimony. Numerous online platforms are available to conduct such video-conferencing. Many of our own attorneys have undergone special training to become court certified mediators, and the state's highly regarded former judges that serve as special counsel



are regularly called upon to mediate and arbitrate disputes.

In the current legal landscape, it may prove especially beneficial to take advantage of these options, particularly amongst the uncertainty as to when courts will be fully operational and the likelihood of backlog once courts reopen, never mind the floodgates of litigation that the epidemic will likely bring with it.

Proceed With Litigation – Electronically

Short of a jury trial, many aspects of litigation can be handled electronically, and a slowdown in the court system does not necessarily mean halting progress in your case. Virtually all discovery can proceed with little to no interruption. Documents can be gathered and stored in an online database and reviewed by attorneys remotely. Depositions can be conducted by video-conferencing, with simultaneous ability for the witness and court reporter to view documents on his computer screen. Indeed, the New Jersey Supreme Court's latest order provides that, where practicable, from now through

April 26, depositions should be conducted via video technology, and court reporters may administer and accept oaths remotely. Motions can still be filed and decided by the judge on the papers, or decided after hearing oral argument by phone or video conference. Even a bench trial can be conducted in certain non-document intensive or witness-heavy cases. The case can proceed with little interruption, and substantial progress can be made while the crisis is ongoing so that when courts fully reopen, the matter can proceed at full steam.

We, like most law firms, are operating remotely at full capacity and are looking forward to discussing with our current and prospective clients steps they can take to move their cases forward.

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