

DAILY REPORT

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► COMMENTARY

COVID-19 Can't Slow All the Wheels of Justice

GAIL S. TUSAN

THANKS TO THE COVID-19 pandemic and shelter-in-place orders, even for us in the legal profession, it may feel that we have lost control of our customary methods for resolving disputes. Without a doubt, dark courtrooms, closed courthouses, working remotely and social distancing threaten to derail the “wheels of justice.”

Despite technological advances which have been available to attorneys and judges for some time, our justice system typically has defaulted to procedures and calendars requiring judges, court personnel, attorneys and parties to come to the courthouse and resolve matters in person. Have we not all witnessed a time or two when technology failed at a

critical point during an argument or witness examination? Those occasional backfires should not keep us from learning how to implement technology in daily practice of law and court case management. Together, judges, neutrals and attorneys can keep the wheels moving with the aid of videoconferencing and other forms of technology.

A year ago, I retired from full-time judicial service after almost 30 years on the bench and transitioned to an arbitration and mediation practice. During my tenure as chief judge of the Atlanta Judicial Circuit, most discussions among the justice system stakeholders and citizens were premised on the importance of access to justice under all circumstances. Critical creativity in using alternative



GAIL S. TUSAN is affiliated with JAMS Atlanta and serves as an adjunct professor at Emory University School of Law and Spelman College. The senior judge's career included judicial service on the Magistrate Court, City Court of Atlanta, State Court and Superior Court.

means of resolving conflicts was paramount in achieving the goal of all citizens, regardless of their means, realizing their “day in court” sooner than later.

During times such as these, those charged with administering justice must balance constitutional rights against the general safety and welfare of employees

and citizens alike in determining how to make justice accessible to those who need it. Georgia Chief Justice Harold Melton, Fulton County Judge Shawn Ellen LaGrua, who is president of the Council of Superior Court Judges; Fulton County Chief Judge Chris Brasher, DeKalb County Chief Judge Asha Jackson and so many others are to be commended for their guidance and leadership during these difficult times. The chief justice's March 14 Order Declaring Statewide Judicial Emergency (Amended) highlights videoconferencing as an effective tool for judges to preside over proceedings in pending cases.

Likewise, arbitrators and mediators are equipped to help resolve your disputes using videoconferencing platforms such as Zoom, Teams and Skype. We are highly sensitive to the concerns that you and your client or judicial staff may have regarding security and confidentiality. Be assured, such measures are in effect and steadily improved with daily upgrades and enhancements.

In my new role as a retired judge/neutral, I am truly

enjoying my freedom to speak more directly to parties and their counsel about their issues and the ultimate conflict. I am able and expected to speak more frankly and directly. Through premediation summaries, I learn so much about the parties and the impetus for their conflict. It's great for me to be able to relax my judicial poker face and be a bit more "real" with folks. Parties' personal revelations and the backstories provided by their counsel help me to engineer effective ways to break through impasse and achieve compromise.

During my church's live streamed Palm Sunday sermon, the Rev. Dr. David Anderson Hooker (who is also an attorney and a trained mediator) defined conflict this way: two ideas sharing the same space. I love that definition. My job as a mediator is to create a space where the owners of the two (or more) ideas can speak freely and enjoy mutual respect in expressing their candor. I also must listen carefully, using their cues and clues to help them reach a good, efficient and practical result. Likewise, as an arbitrator, my job is to create a

space where both sides can be heard and to issue a decision that resolves the conflict.

If we learn anything from COVID-19 imposed social restrictions and business model modifications, let's keep the wheels turning toward increased efficiency in resolving disputes, and turn to colleagues and available resources for help in controlling an uptick in backlogged dockets. You don't have to wait for the courthouse doors to reopen or judges to enter trial notices to agree with your opposing party to engage a mediator or arbitrator to help now with resolving your case. Access to justice is achieved when perceived. Virtual opportunities are available now. ☎