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Report of the Pennsylvania Bar Association
Joint Task Force on Continuity of Delivery of Legal Services
January 19, 2021

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Thank you to the organizations that participated in the Task Force:
Pennsylvania Association for Justice
Pennsylvania Defense Institute
Pennsylvania District Attorneys Association
Pennsylvania Association of Criminal Defense Lawyers
Public Defender Association of Pennsylvania
Pennsylvania State Conference of Trial Judges
Superior Court of Pennsylvania
Commonwealth Court of Pennsylvania
Pennsylvania Legal Aid Network

*Ms. Racine passed away during the middle of the Task Force work. She was a valuable contributor to the work of the Task Force, for which we express appreciation.
In December 2019, the world was alerted to a virulent new virus circulating in a province of China. Within weeks, it became apparent that this virus had reached American shores and by March 2020 the threat to Pennsylvanians was no longer theoretical. As a result of the worsening global pandemic, many executive and judicial orders were entered that impacted the delivery of legal services and the administration of justice. The Pennsylvania Bar Association assembled this Joint Task Force to address the disruption in the delivery of legal services in the face of the continuing pandemic as well as to mitigate the impact on delivery of legal services caused by any future emergencies that occur on a small or large scale. This report will provide background and recommendations to enable the continued effective and efficient delivery of legal services within Pennsylvania.1

I. Executive Summary

The COVID-19 pandemic has caused widespread disruption in the legal services profession and the administration of justice. While the pandemic will continue for the foreseeable future, its impacts are likely to persist for a considerable length of time. Pennsylvania Bar Association President David Schwager assembled a Task Force of present and former jurists and leaders of the Bar from across the Commonwealth to ascertain the impacts of the pandemic on the delivery of legal services and the administration of justice in the state, identify practices to mitigate those impacts, and make recommendations to assure the continuity of legal services and access to justice for the duration of the pandemic and in future states of emergency.

The impacts were widespread. Legal services were not deemed “essential,” barring attorneys and their staff from accessing their offices and their work on all sorts of matters. Government offices were shuttered. Human services agencies were overwhelmed. Courts were open for business throughout the pandemic, although courthouses were physically restricted at times for non-essential functions due to CDC and Pennsylvania Department of Health recommendations. Defendants accused of serious crimes languished in jails while Speedy Trial clocks were suspended. Nursing home residents were isolated from family and unable to attend to needs of a legal nature. Schools were closed, leaving the attorney parents to juggle work from home with child rearing.

Gradually, as the COVID-19 curve was lowered, restrictions were eased. Courts found ways to conduct “socially distanced” jury trials. The appellate courts switched to advanced communication technologies to conduct oral arguments, resulting in little disruption in the appellate court processes. Lawyers and law firms pivoted to remote operations, with counsel and staff working from home. Prison populations were reduced to minimize the spread of COVID-19 among those in custody. But the continuing impact of the pandemic is substantial, and steps must be taken to address the continuing impact.

Valuable lessons have been learned from shared experiences over the last year. Those lessons form the bases for the Task Force’s recommendations. Below is a summary of just ten of the Task Force’s recommendations.

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1 In addition to the Task Force members and organizations listed on the cover page, we thank the AOPC for supplying information and input when requested.
• First, any declaration of emergency that suspends all but essential services must recognize that legal services are indeed “essential.” It is imperative that attorneys be able to provide legal representation, especially to the most vulnerable in our society—the poor, the elderly, the disabled and the homeless. In this regard, it is important to recognize that many legal matters need attending to without a court order in place.

• Second, there must be meaningful statewide leadership and accountability to enforce health and safety standards uniformly and consistently on a statewide basis. Compliance with guidance from the Centers for Disease Control and the Pennsylvania Department of Health should not be left to the discretion of individual courts or jurists.

• Third, a joint task force involving the legislature, the courts, the organized Bar, and the general public should be formed to find a way to establish a uniform electronic case filing system for Pennsylvania. Electronically available records ensure access to documents essential to the efficient adjudication of controversies when physical access to courthouses is barred. Texas and Michigan are examples of large states that have established statewide electronic case filing systems, and the Federal Courts have operated such a system for more than a decade. A key lesson of the pandemic is that such a system is essential in Pennsylvania.

• Fourth, funding and training must be provided so that courts and the Bar are able to leverage the tools of technology to maintain operations. The Pennsylvania appellate courts performed admirably during the pandemic because they were able to pivot to use advanced communication technologies to conduct oral argument and other court proceedings remotely.2 In this regard, the judiciary should study the question of whether adoption of uniform advanced communication technology is advisable.

• Fifth, courts and administrative agencies should consider using advanced communication technologies to conduct proceedings when appropriate and practical, consistent with constitutional and statutory requirements. Remote proceedings through advanced communication technologies have proven to be efficient and effective.

• Sixth, to attack the backlog in civil cases, enhanced use of arbitration, mediation, judges pro tem, special masters, and other judicial adjuncts should be encouraged.

• Seventh, courts and county bar associations should explore options for making space and technology resources available to pro se litigants. Courts should be encouraged to

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2 Where used in this report, the term “remote proceedings” is intended to mean proceedings conducted without all persons present together, that is, with one or more persons participating through an advanced communication technology. The term “advanced communication technology” as used in this Report is intended to have the same meaning as that term is used in the Pennsylvania Rules of Criminal Procedure. Rule 103 of the Pennsylvania Rules of Criminal Procedure provides: “Advanced Communication Technology is any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail.” Pa. R. Crim. P. 103.
provide dedicated and secure space for advanced communication technologies. Cooperative arrangements with libraries, colleges, schools, and other public spaces to provide secure rooms and access to technology should be explored.

- Eighth, administrative agencies and county row offices should adopt policies and procedures to enable remote proceedings and electronic processing of documents. In addition, staff should be cross-trained so that the illness of one staff member does not create a bottleneck in the processing of important work.

- Ninth, problems encountered in the family law system concerning custody and child support must be addressed so that these matters of personal significance do not languish. Once again, greater access to advanced communication technologies and remote proceedings should be promoted.

- Tenth, the PBA in conjunction with its CLE arm should offer programs on wellness and training on advanced communication technologies and other electronic resources to enable the members of the Bar to adjust to the practice of law remotely. In addition, resources should be made available to deal with the stress and financial impact the pandemic has on the practice of law.

There are many other recommendations in this detailed report concerning physical and mental health as it relates to the administration of justice. The recommendations concern the practice of law generally as well as discrete practice areas, such as family law, immigration law, environmental law, and others. The Task Force invites your careful attention to the contents of this Report and asks for your comments, suggestions, and feedback. It is the intention of the Task Force to survey the Bar in the next year to ascertain what recommendations have been pursued, what have been the results of those efforts, and what additional recommendations that there may be to assure the continuity of legal services in a state of emergency.

II. History of the Pandemic and Select Orders

A mysterious illness began affecting people at the end of 2019. COVID-19 is the name given to that disease caused by the new virus named SARS-CoV2. This new virus is capable of causing severe illness and death within a few weeks of exposure. Doctors struggled to find ways to treat the disease and alleviate symptoms before they overwhelmed the patient’s ability to breathe or shut down other organ systems. Doctors and scientists raced to learn how the virus was transmitted and how to contain the spread to prevent healthcare systems from being overrun. The World Health Organization declared COVID-19 a pandemic on March 11, 2020.

Scientists and medical personnel continued to learn more and more about the virus, the disease, transmission methods, treatments, and mitigation efforts. As knowledge developed, COVID-19 was found to be highly contagious, spread through the air, able to spread before a person shows symptoms and even by people who never show symptoms or know that they are/were infected, and cause the most severe symptoms or death more frequently in older people or people with certain pre-existing conditions. For those who became symptomatic, symptoms generally developed 2-14 days after exposure and can be mild or severe, short-term or long-term,
and can cause death. Although the majority of people who get COVID-19 have no or mild symptoms, approximately 20% of them can have more severe symptoms requiring hospitalization. Some patients require ventilators or other breathing-assistance, and over 100,000 Americans died from COVID-19 by May of 2020. Spikes in severe cases can and have overwhelmed hospital systems.

As a result of enhanced knowledge about the virus and the symptoms it causes, health authorities provided various guidance and government authorities issued various orders to address the pandemic. Guidance and orders ranged from sheltering at home for a period of time to teleworking if possible, to wearing masks, keeping a distance of at least six feet from people not in your household, limiting the size of gatherings, cleaning/disinfecting surfaces, regular handwashing, staying home if sick, and staying home if exposed to the virus or waiting for test results. In addition to the physical toll COVID-19 has taken on people’s lives, the pandemic has caused massive unemployment, business closures and other economic consequences. Mitigation efforts and compliance with mitigation efforts have waxed and waned.

As related to the severe impact on the delivery of legal services and the administration of justice in Pennsylvania, we provide the following timeline of orders/recommendations3 issued during the pandemic and related information:4

- March 6: First known COVID-19 cases in PA are reported
- March 6: Governor Wolf proclaims disaster emergency
- March 13: Governor Wolf orders all K-12 schools to close for two weeks
- March 15: Governor Wolf orders bars and restaurants in certain counties to close for two weeks except for takeout and delivery
- March 16: Governor Wolf recommends all nonessential businesses to close or telework to flatten the curve of rising COVID-19 cases
- March 16: PA Supreme Court issues Order declaring statewide judicial emergency until April 14, 2020 and authorizing the president judges of the Superior and Commonwealth Courts and the president judges of individual judicial districts to declare judicial emergencies for the same time period and (1) enter orders suspending time calculations and deadlines, subject to constitutional restrictions; (2) utilize advanced communication technology to conduct court proceedings, including oral argument; (3) cancel and continue cases as needed, and to order them to be submitted for merits determination; and (4) take other necessary administrative action related to maintaining health and safety of court participants, staff, and public
- March 17: PA Supreme Court Judicial Administration Order extending certain filing deadlines
- March 18: Administrative Order (Courts Closed to the Public) through April 3, 2020 subject to directives and exceptions

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3 Hyperlinks, active at the time of the Report, to some orders have been inserted for the convenience of the reader.

4 This timeline is limited to state and county orders and the report primarily addresses state access to justice issues, but many of the issues and/or recommendations would also pertain at the federal level.
• March 19: Governor Wolf orders all non-life-sustaining businesses to close in-person operations
• March 22: Court Administrator Moulton shared guidance with president judges and the PBA regarding access by attorneys to their offices in order to participate in essential court functions
• March 23: Governor Wolf issues stay-at-home order for residents of certain counties and extends the school closure order
• March 23: Superior Court creates failsafe procedure to ensure filings of praecipes for writs of summons prior to expiration of applicable statutes of limitations, and opens Superior Court COVID-19 Administrative Docket for such writs
• March 24: Pennsylvania Supreme Court approves Superior Court’s failsafe procedure to permit filing of writs in the event a trial court is unable to timely docket praecipes for writs of summons
• March 25: Pennsylvania Supreme Court issues Order Cancelling its April, 2020 Pittsburgh Session
• March 25: PA Dept. of State orders limited suspension of physical presence requirement for notaries for certain real estate transactions
• March 26: Superior Court creates a failsafe procedure to ensure filings of appeals in Children's Fast Track appeals and opens Superior Court COVID-19 Administrative Docket for such notices of appeals
• March 27: Pennsylvania Supreme Court approves Superior Court's failsafe procedure to permit filing of appeals from Children's Fast Track cases in the event a trial court is unable to timely docket the appeal
• March 30: Governor Wolf extends the school and nonessential business closures “until further notice” and expands the stay-at-home order to more counties, but legal services/attorneys’ offices are not identified as essential services/businesses
• March 30: AOPC issues guidance for COVID-19 in the workplace to judicial districts, specifies steps to take if (1) an employee tests positive for the coronavirus, (2) there are suspected but unconfirmed cases, (3) there are employees exposed to the coronavirus, and the length of the quarantine period
• March 31: The Commonwealth Court cancels its oral argument session for April 2020 by way of an Administrative Order
• April 1: Pennsylvania Supreme Court enters Second Supplemental Order Extending Judicial Emergency through April 30, and all Pennsylvania courts are to remain generally closed to the public, except for essential matters, through April 30, 2020.
• April 1: Governor Wolf extends the stay-at-home order to all counties; PA Supreme Court orders a moratorium on evictions
• April 2: PA Dept. of State allows remote notarization of certain documents during COVID-19 emergency
• April 3: Governor Wolf and Secretary of Health Levine recommend mask wearing
• April 7: Supreme Court of Pennsylvania directs the President Judges of trial courts to review residential placements of juveniles; reiterates that essential court
functions include juvenile delinquency detention, juvenile emergency shelter and detention hearing and emergency placements for children

- April 9: Governor Wolf extends the school closure to the remainder of the school year
- April 22: Governor Wolf announces three-phase reentry plan: red, yellow, and green
- April 24: Superior Court schedules its first two remote argument court sessions for April 30, 2020
- April 28: Supreme Court issues Order (Local court operation) extending judicial emergency through June 1 but providing guidance to local courts to maintain open courts, subject to any local judicial emergency
- May 1: Governor Wolf starts gradually lifting restrictions in certain counties using a color-coded system of reopening
- May 7: Governor Wolf issues order staying/suspending foreclosures and evictions through July 10, 2020
- May 15: Governor Wolf moves thirteen Pennsylvania counties into the yellow phase of re-opening, making 37 counties in the yellow phase.
- May 19-27: Supreme Court Session conducted virtually (as were sessions in the summer and fall of 2020)
- May 22: Governor Wolf continues moving counties to different phases of reopening
- May 23: U.S. reaches 100,000 COVID-19 related deaths.
- May 27: Supreme Court issues Order re Cessation of Statewide Judicial Emergency after June 1, 2020 while allowing the President Judges of the trial courts and the intermediate appellate courts to continue to limit access to court facilities, utilize advanced communication technologies, and suspend jury trials and certain state rules regarding time computations
- May 28: Superior Court enters order in response to the Supreme Court's directive to end the judicial emergency on June 1, 2020, reinstating the standard time requirements for filings
- June 5: All counties are now in either the yellow or green phase of reopening
- June 25: The Pennsylvania Conference of State Trial Judges and the AOPC issues its Jury Trial Working Group Report, providing suggested best practices for resuming jury trials in Pennsylvania’s judicial districts, a copy of which is in Appendix B
- July 1: Governor Wolf orders masks to be worn in all public places
- July 7: Court Administrator Moulton recommends judicial districts comply with Secretary Levine’s mask order while in courthouses and courtrooms
- July 9: Governor Wolf extends his order limiting foreclosures and evictions through August 31, 2020
- July 24: After a number of courthouse employees tested positive for COVID-19, as well as the death of an Assistant District Attorney, parts of the Allegheny County Courthouse were ordered closed until further notice by the President Judge of Allegheny County and in-person proceedings in the Criminal Division of Allegheny County were postponed until further order of court
- July 28, 2020: U.S. reaches 150,000 COVID-19 related deaths
- July - December: The number of COVID-19 cases and deaths continued to rise and the cases surged again in November and December, with restrictions on in-person gatherings re-imposed and courts postponing the planned resumption of jury trials
- December: The FDA granted emergency use authorization for two vaccines against COVID-19, and vaccinations began in Pennsylvania in phases, with the first phase being limited to healthcare workers and nursing home residents; deaths from COVID-19 had exceeded 300,000 by the end of 2020
- January 18, 2021: The pandemic continues to surge, with worldwide totals approaching one hundred million cases and surpassing two million deaths; U.S. having roughly 24 million cases and nearly 400,000 deaths; and Pennsylvania having over 773,000 cases and over 19,000 deaths, with the latest average daily number of new cases averaging 5000-10,000 in Pennsylvania

Throughout the pandemic, the Courts of Common Pleas in the various judicial districts entered orders as to how various cases will (or will not) proceed. Appendix A to this Report provides a sampling of such orders from different courts at different times during the pandemic. Depending on the date, county and practice area, the pandemic affected the ability of individuals to complete all sorts of business and legal transactions, access the courts, communicate with legal counsel, and/or obtain timely judicial decisions. Some examples:

- Not only were court proceedings disrupted, the administration of estates was impeded by the delay in opening probate estates resulting from Register of Wills offices either being entirely closed (which occurred for a period) or having their employees working from home and scheduling virtual probates. The spread of COVID-19 in some county row offices also interfered with the processing of work. It can take 4-6 weeks after the appropriate paperwork is submitted for a probate to occur, and of course in the meantime, until a personal representative is appointed, family members are unable to access a decedent’s assets to pay bills and support family members. Additionally, the assets cannot be sold or managed until a personal representative is appointed. Also, the Pennsylvania Department of Revenue stopped processing inheritance tax returns for an extended period, and slowness continues even now. Fiduciaries had (and still have) to keep estates open while they await approval of returns from the Department.
- COVID-19 also disrupted our nation's immigration system. Because immigration law is federal, the majority of issues are dealt with at the federal level rather than the state level. However, issues related to access to facilities existed at the state level as well. For example, immigration detention facilities were turning attorneys away from being able to access the prison to represent their clients. When an attorney was able to schedule a time to meet with a client in prison, they were allowed “glass” visits, which could be listened to and monitored by prison staff. If an attorney requested videoconferencing with a client in prison, they had to prepay $1/min for access to videoconferencing three to four days in advance of the meeting.
Additionally, immigrant detainees often need interpreters and that increased the logistical hurdles. There was also an increased concern for the medical safety of immigrant detainees in prison. There were outbreaks and deaths in prisons due to COVID-19. Detainees were also sent out of state to other prisons, potentially increasing the spread of COVID-19. Attorneys also experienced delays in receiving paperwork through the mail and accessing their offices to receive or handle the mail due to safety concerns.

- The family law system was also affected by restrictions on building access and court closures. Both litigants – many of them pro se – and practicing attorneys were unable to get child custody and support matters moved forward. Among other difficulties, normal referral, consultation and conciliation processes that are central to the disposition of family law matters largely came to a halt. Temporary Protection from Abuse (PFA) orders generally continued to be processed on an expedited and ex parte basis; however, modifying, terminating and entering permanent PFAs was difficult or impossible.

At various times, the three branches of government took actions to address some of the issues affecting access to justice, but problems persisted. Pennsylvania Bar Association President David Schwager created the Task Force to study these problems and make recommendations on how to ensure the continuity of legal services while addressing the health and safety of attorneys, staff, clients, litigants, court personnel and the public during any current or future state of emergency.

III. Recommendations

During any state of emergency, public safety can affect access to justice as well as other aspects of life. Most states of emergency have a limited geographic scope and last a relatively short period of time even if the consequences extend well beyond when immediate health, safety, and transportation issues have generally resolved. Unfortunately, the pandemic’s geographic scope was global, its duration will exceed one year, and its impacts will continue for a considerable period of time. Technology has permitted many legal services to continue, but not all attorneys nor all courts have the same level of access to technology or ability to pivot to remote operations, and litigants – either those needing to participate with their attorney, or who are proceeding pro se – may lack the necessary access or technology skills. Also, constitutional constraints preclude use of advanced communication technologies for certain legal proceedings. Furthermore, access to legal services has been more severely impacted for certain segments of society, including the elderly, the disabled, and those in need of living assistance.

A. Physical and Mental Health and Safety as It Relates to Access to Justice

Attorneys and courts owe various duties to clients, staff and/or those participating in the judicial process. Sometimes those duties can compete with each other, can interfere with duties owed to self and family, and can clash with general public health and safety. Access to justice is governed by our state and federal constitutions, statutes, rules, and regulations. Access to justice is essential for the protection of constitutional and statutory rights, and it is thus imperative that legal services be regarded as essential. No person should be deprived of essential rights by
orders that prohibit the rendition of legal assistance. Clearer guidance must be given by all branches of government with respect to when a law office can be open or must close and what being closed means. The first executive order by the Governor did not list legal services as essential and only permitted a law office to be open to “comply with a court order,” which was problematic because not all legal services involve orders, let alone “court” orders. Many immigration cases are handled by federal administrative agencies, thus there are no court orders regarding deadlines, although there are specific deadlines mandated by administrative rules and policies. It must be recognized that lawyers must comply with deadlines imposed by law and administrative agencies, and not just by courts. The rendition of legal services must be regarded as essential in any future declaration of a state of emergency, subject to adherence to health and safety protocols established by the pertinent governmental agencies.

At the same time, court personnel, attorneys, their staff, litigants, and witnesses engaged in the judicial system are people who have other demands on their time and are susceptible to physical, mental, and family limitations. Even before the pandemic, the legal profession frequently had a higher incidence of depression and/or substance abuse. Add the extra stressors associated with keeping oneself and one’s clients safe and concern that safety issues interfere with focus on the case, attorney anxiety levels are even higher. A survey done by the Task Force found three issues related to physical and mental health and safety that predominate:

- The need for consistent, science-based standards enforced consistently from county to county and from judge to judge to protect lawyers and clients from exposure to the virus in courthouses and county and state prisons. One salient example here is the lack of uniform enforcement of the requirement to wear masks inside buildings.

- The need for PBA and county bar associations to continue to advocate on behalf of lawyers who have preexisting conditions or other issues that limit their ability to appear safely in person for hearings or depositions, and, to the extent necessary, seek changes in statewide rules of procedure and court operating procedures.

- The need for additional webinars and education on attorney wellness. Throughout the pandemic, PBA groups have increased CLE offerings as well as other events. Additionally, Lawyers Concerned for Lawyers Pennsylvania has a COVID Resource Guide (“LCL-PA RESOURCES FOR THE LEGAL PROFESSION DURING COVID-19”) in addition to its normal confidential helpline, peer support, and lawyer education programs.

One or more issues experienced during the pandemic could repeat in any emergency, whether it be the continuing pandemic or a flood, blizzard, hurricane, snowstorm, or tornado. With the foregoing in mind, we offer the following observations and recommendations for the remainder of the pandemic and for use in any future emergency that would limit access to courts and legal services.  

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While advanced communication technology promotes safety and efficiency, the Task Force recommends an annual review of continuity of operation plans to minimize the disruption in the delivery of legal services during any future public health emergency or any other emergency affecting physical
1. **UNIFORMITY AND LEADERSHIP**

The more that can be done on a statewide basis the better. Each judge/court within each county should follow the same rules and procedures as it deals with the COVID-19 crisis or any future emergency. This is true for not only individual trial courts but Registers of Wills, other row offices, and court divisions as well. The Pennsylvania Supreme Court along with the state and local bar associations can demonstrate leadership by ensuring or advocating that attorney and litigant safety is not dependent on the opinions of an individual court or judge, particularly if those opinions conflict with the recommendations or mandates from public health authorities.

While absolute uniformity may not be attainable due to the difference in number of judges, size of facilities, access to appropriate alternative facilities, and manpower, basic guidelines and frameworks for different scenarios can be established to achieve a baseline of minimal safety standards that an attorney can expect with a safe path to ensure compliance.6

2. **EXPANSION OF DECISION-MAKING RESOURCES**

One issue that has been noted throughout the pandemic experience is the concern that with postponement of proceedings (trials, hearings, discovery, etc.), cases...
may languish, resulting in significant disruption in the administration of justice. Some counties have used judges pro tem to address delays in, for example, discovery disputes. Others have called on retired judges (in unofficial capacity) to assist in similar circumstances. As another wave of pandemic hits us, it remains clear that additional judicial resources are needed to assure the “movement” of cases, some of which are facing nearly a year of stagnation. While judge pro tem procedures can help, it is also clear that the greater authority invested in a neutral presider, the greater the likelihood of success in advancing a particular matter. Because the Supreme Court is constitutionally authorized to restore judicial authority to former or retired judges, or to create relevant rules for appointment of master-level officials, it is urged that such possibilities be explored and developed as soon as possible so that further delay in resolving an ever-increasing number of cases can be alleviated. Retired judges and lawyers should be encouraged to serve as discovery masters or special masters empowered to issue orders, subject to judicial approval.

3. **BASELINE PROCEDURES**

To the extent not already done, the president judges of the courts (and/or their respective designees) should compare procedures and the PA Supreme Court should consider implementing emergency state rules that consolidate them, addressing the following:

- In-person appearances may not be required without appropriate face coverings and physical distancing or in any location where the ventilation is considered inadequate for safely gathering the number of people required. There should be temperature screenings when entering the Courthouse for all persons, including court personnel, parties, and witnesses, and cases should not proceed in the event that the parties, necessary witnesses, or counsel of record have symptoms of COVID-19 or have come into contact with someone who has tested positive for the illness within the time prescribed by the CDC or appropriate health authorities or who are awaiting test results of themselves or a household member. All individuals entering a courtroom or a court building or facility should be required to legibly sign-in with their name, address and phone number to facilitate later contact tracing. Hand sanitizer must be available.
- A phone number should be established and posted for reporting, anonymously or otherwise, perceived violations of these and other basic COVID-19 safety precautions.
- Alternative locations and configurations need to be developed if a courtroom and/or hallway/waiting area is not large enough to provide six-feet of space between participants and personnel.
- If the community spread in the county of venue or any location where a participant will be traveling from is deemed too high by health department orders or recommendations, in-person appearances should either be
suspended, or a hybrid appearance allowed. The only exception to this should be in the event that an in-person appearance is mandated by the United States or Pennsylvania Constitutions or pertinent law and a continuance would result in a constitutional violation or other harm that cannot be remedied.

- If a mandatory in-person appearance cannot be delayed and no facilities in the county are sufficient, consideration should be given to use a facility in a nearby county.
- Where in-person appearance is not required, advanced communication technologies should be used. If a uniform advanced communication system cannot be used statewide, effort should be made to limit the number of alternative options and baseline procedures for using the remote tools should be set so that all attorneys, litigants, and court personnel can be familiar with the technology. See below section on electronic platforms.
- For those court events that are being conducted in person, all parties and participants including witnesses should have the option and ability to participate via advanced communication technology without prejudice, if feasible and permissible under the Pennsylvania and U.S. Constitutions.
- Face shields and/or plexiglass may be required in the event any witness, juror, attorney, or judge needs to be unmasked to be understood or to see facial expressions. A supply of clear facemasks must also be available.
- A pilot program to conduct virtual jury trials in civil cases, similar to programs implemented in other state and federal courts, should be undertaken.

Because one or more of the above and below recommendations may require alternative space, upgrades to buildings, purchase of new or additional supplies, new or additional vendor contracts, and/or staff overtime, the courts should be allocated the necessary funding and the PBA should lobby the state legislature for funding to assist counties and the courts with assuring the safety of all participants.

4. ELECTRONIC PLATFORMS

Attorneys and courts need to widely adopt advanced communication technology that includes video platforms for conducting hearings, conferences and potential trials. As noted above, the unified judicial system should consider the adoption of one or a limited number of video platforms. The platforms need to have the ability to allow attorneys to share screens or other mechanisms to present documents or exhibits during arguments or hearings. Additionally, courts should provide within the platforms breakout rooms so that there is space and opportunity for confidential communication between lawyer and client in a manner consistent with and protected by the attorney-client privilege and Pa.R.P.C. 1.6, as well as between opposing lawyers to try to resolve issues/discuss settlement, etc. This also requires access to secure computers and software for all judges. Appropriate computer access for attorneys and participants is also
required and appropriate uniform rules related to appearance via advanced communication technology should be adopted. Electronic platforms will also require upgrades to Wi-Fi and other computer systems. Appropriate cybersecurity protocols must be established and enforced. Rules and procedures to allow *pro se* litigants to utilize the advanced communication technology to participate remotely must be established. Magisterial District Judges tend to be the first encounter many such litigants have with the legal system, and their office space may need to be expanded to provide for litigant computer access, along with technical resources to troubleshoot issues.

Appendix B contains copies of, or links to, some orders and manuals used by courts within and outside of Pennsylvania for various types of hearings and trials as well as reports or other resources related to court operations and safety issues from courts and organizations.

5. **ELECTRONIC FILING AND SERVICE BY COURT**

The unified judicial system should adopt a comprehensive and uniform system to accept electronic filing of all court documents, similar to what has been accomplished by the Federal Courts and other large states, such as Texas and Michigan.\(^7\) Consideration should be given to the use of filing fees to fund a statewide electronic case filing system, as has been done in Texas. A joint Task Force of the General Assembly, AOPC, and PBA should be established with the goal of implementing a statewide electronic case filing system. In the interim, counties that mandate in-person filing of motions should suspend or permanently eliminate that requirement.

Absent statewide adoption of a uniform and mandatory electronic filing system, those counties that are not yet capable of e-filing should move toward e-filing as soon as possible. Also, processes to allow court personnel to access filings that are mailed in must be implemented so that they can be filed and entered on the docket in a timely manner. All notices by the courts should be sent electronically and entered on the docket as many lawyers have been cut off from their offices and delays in the mail still persist.

For matters within the purview of the courts, courts should accept all forms of e-notaries and electronic signatures on court filings. Unless otherwise required by state or federal statute that a court is not permitted to modify, the courts and litigants should accept all pleadings, subpoenas, authorization forms, records requests, affidavits, etc. with proper e-signatures, subject only to valid questions of authenticity of, and authority to make, the signature.

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\(^7\) There are e-filing initiatives being undertaken via Pennsylvania’s Unified Judicial System’s Common Pleas Criminal Case Management System and Guardianship Tracking System.
6. **ACCESSIBILITY**

In the event of additional stay-at-home orders or future emergencies that limit physical access to court-related offices, courts must remain accessible in some fashion. Phone calls need to be routed to court clerks or other personnel so that the court remains available to litigants. Prothonotary, Clerk of Courts, Register of Wills and other offices should adopt technologies and procedures to remain accessible, such as email or phone.

7. **ALTERNATIVE AND ADDITIONAL PROCEDURES BY CASE TYPE/PRACTICE AREA**

Courts, counties, and attorneys should look to make as many processes streamlined and/or electronic as possible, whether permanently or only in emergency situations depending on the procedure. Consideration should be given to procedures that may be needed to address any backlog. Trials, hearings, witness testimony and other procedures must always consider due process and maintain the integrity of the judicial system. The following recommendations may apply only to certain types of cases or may apply to more than one type of case. We have grouped them based on the case type /practice area primarily involved.

**Civil**

- The Supreme Court and courts of common pleas, in conjunction with counties and the state legislature as necessary, should study whether and how to eliminate or suspend the requirement of service by sheriff and the procedures for deputizing the sheriff of another county for service, and whether alternative service of process should be expanded and/or made more uniform. In making this recommendation, the Task Force recognizes that budgets may be impacted by any changes to the procedural rules and resultant loss in fees.
- Courts should consider the need for appointment of qualified volunteer or paid lawyers sitting as judges pro tem, masters, or mediators to resolve discovery disputes and/or to attempt to resolve cases through settlement. Where necessary to avoid conflicts of interest likely to be encountered in smaller counties, attorneys from other counties should be appointed to perform these tasks. Many courts already have formal programs that can be used as a model and/or modified to meet the needs of other courts.
- In an effort to facilitate jury trials and subject to constitutional constraints, courts and litigants should consider the reduction or elimination of peremptory challenges to jurors, the use of smaller jury panels, and seating fewer alternates, in order to safely maintain social distancing in courtrooms and within the constraints of any constitutional requirements. For both jury and bench trials, courts should blend having witnesses appear physically or via advanced communication technology as appropriate. Courts should be given the autonomy to place jurors in rooms within the courthouse with screens and conduct trials in the courthouse. See Appendix B for various options used by
Courts within and outside of Pennsylvania for trials, hearings and other proceedings.

**Criminal**

- The U.S. Constitution guarantees that defendants appear in person and have the right to face-to-face confrontation of witnesses in many criminal proceedings. *See* U.S. Const. Amend VI. In order to honor individuals’ constitutional rights and promote proceedings via advanced communication technology, we are guided by case law and the Rules of Criminal Procedure. *Maryland v. Craig* outlines the constitutional protections afforded by the Confrontation Clause and the Sixth Amendment, 497 U.S. 836, 846-49 (1990). While proceedings conducted by advanced communication technology may satisfy face-to-face confrontation, the party seeking such proceedings must articulate “public policy” reasons to overcome the presumption of face-to-face confrontation. *Id.* The “reliability” of testimony refers to the physical presence of a witness, testifying under oath, subject to cross-examination, with his or her demeanor scrutinized by the finder(s) of fact. *Id.* at 846. In addition, the Pennsylvania Supreme Court has issued Rule of Criminal Procedure 119 outlining where advanced communication technology proceedings may *not* be used absent a waiver by the defendant.8 The following discussion relates to specific phases of a criminal proceeding affected by constitutional and Rule 119 limitations:

  - **Preliminary Hearings:** Preliminary hearings are problematic because it is often the first time the Commonwealth meets with the affiants and witnesses, and Public Defenders meet with defendants. Some defendants are incarcerated after an arrest, and the preliminary hearing is an opportunity to evaluate the evidence and to determine whether pre-trial incarceration is appropriate. While in-person preliminary hearings have the potential to cause voluminous foot-traffic in the courthouse, since the hearings require the presentation of fact witnesses, many hearings are waived without the need to present testimony after the Commonwealth extends offers that may determine the ultimate disposition of the case. A

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8 **Rule 119 - Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings**

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

1. preliminary hearings;
2. proceedings pursuant to Rule 569(A)(2)(b);
3. proceedings pursuant to Rules 595 and 597;
4. trials;
5. sentencing hearings;
6. parole, probation, and intermediate punishment revocation hearings; and
7. any proceeding in which the defendant has a constitutional or statutory right to be physically present.

(B) The defendant may consent to any proceeding being conducted using two-way simultaneous audio-visual communication.

(C) When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the proceeding.
procedure should be established to permit waiver of the preliminary hearing without the necessity of appearing. Mailed, faxed or emailed waivers, or oral waivers when done using advanced communication technology, should be accepted.

The Task Force recommends that if the case is uncontested, the proceeding should be held via advanced communication technology with the defendant waiving the requirements of Rule of Criminal Procedure 119. To reduce the amount of foot-traffic at the preliminary hearing, the Task Force recommends that the Rules of Criminal Procedure be amended to require that, to the extent practical, counsel meet and confer in advance of the preliminary hearing to discuss the potential resolution of a case.

Ideally, the Commonwealth should propose plea offers before preliminary hearings and defense counsel should have the opportunity to discuss the offers with their clients. Because of time constraints imposed by Pa. Rule of Criminal Procedure 540, communication before a preliminary hearing may not be practical. Alternative suggestions include arranging pre-trial conferences in advance of a preliminary hearing or scheduling first preliminary hearings to be conducted via advanced communication technology. If the matter requires an in-person hearing, then it would have to be rescheduled in a timely fashion. The specific procedures will likely vary from county to county, but the desired result would be that there is communication to determine whether a hearing is contested and requires an in-person hearing to take place.

- **Rule 569(A)(2)(b) (Examination by Mental Health Expert):** Those who are not competent, vulnerable, or who are less likely to understand the nature of criminal proceedings will likely undergo mental health evaluations. That process will only become more threatening and less comprehensible for mentally-challenged defendants if they do not hear about the procedures from the Court in person. The defendant should have the chance to confer with counsel privately before, during and after these proceedings.

- **Rule 595 (Mandatory Status Conferences):** The Task Force believes that mandatory status conferences can proceed initially via advanced communication technology. We recommend the Court schedule these conferences for advanced communication technology appearances and only schedule them in person if the defendant will not voluntarily waive Rule 119.

- **597 (Transfer from Criminal Proceedings to Juvenile Proceedings):** The Task Force believes that transfers from criminal proceedings to juvenile proceedings require in-person hearings. The Court must determine whether a child is amenable to treatment, supervision, or rehabilitation, by considering the following factors: (I) age; (II) mental capacity; (III) maturity; (IV) the degree of criminal sophistication exhibited by the child; (V) previous records, if any; (VI) the nature and extent of any prior delinquent history, including the success or failure of any previous
attempts by juvenile court to rehabilitate the child; (VII) whether the child can be rehabilitated prior to the expiration of juvenile court jurisdiction; (VIII) probation or institutional reports, if any; (IX) any other relevant factors pursuant to 42 Pa.C.S.A. § 6355(a)(4)(G).

Accordingly, the Task Force believes that evidence relevant to these issues should be presented in person.

- **Criminal Trials:** It is inherent in our criminal justice system that trials must be conducted in person to guarantee a defendant’s constitutional rights. It is conceivable, however, that certain portions of a criminal trial could be performed via advanced communication technology, such as witness testimony offered simply to lay the foundation for the admission of documents or the potential for expert witnesses, as is common practice in civil cases. The Confrontation Clause of the Sixth Amendment provides defendants the right to confront a witness against them in a criminal action with a presumption against waiver. *See Brookhart v. Janis*, 384 U.S. 1, 4, (1966). However, Rule of Criminal Procedure 501 allows the preservation of testimony by videotape recordings. Given the disfavor of physically-absent witness testimony, these issues would have to be evaluated on a case-by-case basis. Ideally the parties would be able to stipulate to foundational requirements to admit documents and exchange exhibits in advance of trial so that all exhibits can be handled electronically during in-person trials.

- **Sentencing Hearings:** Pursuant to the Sixth Amendment of the United States Constitution, Article I, Section 9, the Pennsylvania Constitution, and Pennsylvania Rule of Criminal Procedure 602(a), the accused has a right to be present in court for the imposition of sentence. Similar to other hearings subject to in-person appearances pursuant to Rule 119, the Task Force believes that if a matter is uncontested, the parties may consider proceeding via advanced communication technology. Negotiated sentences or uncontested matters can proceed via advanced communication technology in the event the defendant waives Rule 119. Accordingly, a defendant can knowingly, voluntarily, and intelligently waive the right to an in-person sentencing after having the opportunity to confer with counsel privately before, during, and after the proceedings; otherwise, in-person sentencings will have to be held.

- **Parole, Probation, and Intermediate Revocation Hearings:** Probation or parole revocation hearings, or what is typically referred to as “Gagnon II hearings,” require fact-finding and dispositions that may result in the risk of jail time. Therefore, the Task Force believes that such hearings must occur in person. In the event the matter is uncontested or is a negotiated disposition, the matter can proceed via advanced communication technology with the appropriate waiver of Rule 119. Initial hearings, or what is referred to as “Gagnon I hearings,” can proceed via advanced communication technology without the defendant’s consent.

- Where remote proceedings can be used, access to advanced communication technology proceedings for incarcerated and non-incarcerated individuals
must be considered. The Task Force recommends that any electronic platform used not require a subscription for attorneys or defendants to pay to participate.

- The Court should create a dedicated videoconference room, preferably in the courthouse, so that defendants who cannot attend via advanced communication technology from a remote location can do so from a Court’s conference room. Any paperwork should be completed in advance and sent to the attorneys electronically for signature and be permitted to be returned to the Court electronically with the originals then sent by regular mail. If a defendant is incarcerated, the prison should have rooms available for advanced communication technology conferencing with the Court. The prison should have assistance available to direct a defendant to obtain paperwork for the defendant’s signature to be sent back electronically to defense counsel and the Court.

- As noted above, procedures should be in place to allow breakout rooms to allow private conferencing between attorneys and defendants should the need arise during the proceeding. Those breakout rooms should not be accessed by anyone other than the defendant and the defendant’s designated counsel while confidential consultations are taking place and no personnel should be in or listening in on the conference room with the defendant during this consultation.

- In order to promote access to counsel by incarcerated individuals, the Subcommittee recommends that prisons develop and implement a secure and confidential virtual platform for counsel and counsel’s client to share information in a manner consistent with, and protected by, the attorney-client privilege and Pa.R.P.C. 1.6.

- The Task Force understands that not all counties will have the ability to make these accommodations because of cost or other limitations. In the event advanced communication technology access is not available to all parties, in-person hearings will be required to take place unless a hybrid method is deemed permissible under the law and constitutional rights of the defendant.

**Appellate Court Proceedings**

- The impacts of the global pandemic with regard to the appellate courts were similar, but not as pronounced, as those confronting trial courts, other adjudicatory bodies, and row offices: Filing notices of appeal when trial courts are closed, restrictions on physically accessing buildings, continuation of oral arguments, conducting evidentiary hearings and prompt disposition of emergency and election-related matters, ensuring all know how to use the advanced communication technology, coordination of administrative orders governing extensions of filing deadlines, preparation of and filing of paper documents with the court when counsel was subject to health pandemic concerns, and confusion whether the practice of law was an essential service.

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9 Detailed reports of the operation of the Superior Court by President Judge Jack Panella and the Commonwealth Court by President Judge Mary Hannah Leavitt are part of Appendix B to this report.
under the Governor’s executive orders. However, these issues were more fleeting or more easily addressed because the appellate courts quickly pivoted to advanced communication technologies to conduct their proceedings, training was provided for those who needed it, and cases continued to be decided efficiently.

- There should be a role for advanced communication technology oral arguments and evidentiary hearings in the future for good cause shown. Based upon the Superior Court's evaluation of the appeal process during the pandemic, and the interviews done by the Superior Court's Committee on Advocacy, members of the Bar have suggested the continuation of these remote arguments in some fashion. In addition to the convenience afforded to counsel, other beneficial results of arguments via advanced communication technology include the availability of watching the oral arguments on YouTube, and making the arguments available to the litigants themselves, other attorneys and members of the news media.

- The courts must be provided with the resources to continue to invest in their IT staff and inventory because the future will undoubtedly continue to move towards greater reliance on electronic functions. Also, adequate resources must be provided to enable adoption of cybersecurity protocols in light of the increase in cyber threats and breaches.

- Educational programs should continue on how to utilize the court platform, Cisco WebEx, and how to argue remotely to an appellate court as well as the proper decorum for appellate arguments even if made through advanced communication technology.

- Permit emergency PacFiling of all notices of appeal and writs in the appellate courts when trial courts are closed and not equipped to receive electronic filings.

- Temporarily suspend the requirement of filing paper copies with the court depending on the type of emergency in order to avoid the need for counsel to utilize the post office or a commercial carrier or needing to file when counsel and their staff are working remotely. Judges were able to utilize electronic versions of briefs and the record, and for the most part did not use the paper briefs.

- Provide opportunity for emailing of filings by pro se litigants during judicial emergencies. This may also be a precursor to permitting prisoners to file electronically and to permit them to forego paper copies.

- Court record offices should provide computer accessibility for those counsel and litigants who do not possess the required technology to enable them to participate in hearings and/or oral argument via advanced communication technology. County bar associations should consider this as well, if feasible.

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10 As noted above, the Superior Court, on March 26, 2020, established a failsafe procedure to ensure the timely filing of appeals in Children's Fast Track cases by opening a Superior Court COVID-19 Docket for such notices of appeal. On March 27, 2020, the Supreme Court approved this special docket and acknowledged it was for appeals in the event a trial court was unable to timely docket an appeal in a CFT case. Also, the appellate courts conducted tests and provided training and written instructions to counsel on the use of advanced communication technologies.
**Alternative Dispute Resolution**

- Because the pandemic has impeded the progress of litigation so as to prevent individuals from resolving their cases, the provision of ADR services needs to be encouraged and increased, including potential expansion outside of the courts and in areas other than civil litigation and family law.

- The Task Force recommends that a statewide ADR Commission be established consistent with the June 2017 Report of the PA Joint State Government Commission ("JSGC") on ADR and the PBA ADR Committee resolution approved by the PBA House of Delegates in May 2018. See link to the ADR Commission’s June 2017 report [here](#), which link was active at the time of this Task Force Report.

- Establish mediation programs in all levels of the Pennsylvania courts, including Magisterial District Courts, the Courts of Common Pleas, Commonwealth Court, Superior Court, and the Supreme Court, as well as in state agencies, to the extent mediation programs are not already in place.

- Revise/expand compulsory arbitration so that more cases may be arbitrated by raising jurisdictional limits and/or revising arbitrator assignment procedures to include the ability of the parties to strike potential arbitrators.

- Make the use of dispute resolution via advanced communication technology user friendly and easily accessible to parties, especially unrepresented parties, who may not have access to computers, Wi-Fi, or a quiet location in which to participate in ADR processes and where the confidential nature of the process may be maintained.

- Offer training programs on the use of dispute resolution via advanced communication technology.

**Corporate/In-House Practice**

- Until remote notarization was authorized, some documents requiring notarization required a special in-person trip or meeting with a Notary Public to execute documentation. Remote notarization should be enhanced and encouraged.

- As with the courts, county and state agencies that accept corporate filings need to remain open and accessible for filing and accessing documents. Electronic filing should be promoted. Phone and/or email contact needs to exist in order to obtain information that cannot be obtained solely through internet access to databases.

- The U.S. State Department and the PA Secretary of State need procedures to assist with and/or minimize delays in consularizing documentation required by international parties or governments.

**Employment and Benefits Law, including EEOC/PHRC, Unemployment Benefits, Workers’ Comp**

- Due to the drastic increase in unemployment claims because of COVID-19, the unemployment office was inundated and unable to keep up with requests. There were reports of people calling the unemployment hotline
for hours each day and being unable to get through to anyone for a month. Delays in receiving compensation also occurred. Thus, the state unemployment office needs to update its systems to handle processing and communication, whether its employees are in the office or working remotely. The office should also implement backup systems that can handle rapid expansion in cases, either through cross-training or streamlined systems that can easily train new employees hired to assist with a high volume of cases.

- The majority of employment issues for many practitioners are dealt with on the federal level with the EEOC. While the EEOC was working remotely, it did not provide Right to Sue letters until July, which kept cases stalled. Procedures should be implemented to allow for the timely issuance of right to sue letters. The EEOC should conduct hearings via videoconference rather than teleconference.
- The PHRC should likewise employ advanced communication technologies to increase efficiency and capacity.

*Environmental Law Practice*
- Practice before the PA Department of Environmental Protection (DEP) has challenges similar to those encountered by the trial courts. Indeed, DEP offices remain closed, and paper file reviews, which are an important part of the practice, are impossible. Staffing issues continue (especially in the Southwest Region), leading to delayed reviews of, and responses to, routine filings. Accordingly, DEP should proceed with limited re-opening of offices so that paper file reviews can re-commence and DEP should expand the use of digital files.
- DEP should also address regional staffing issues to ensure timely turn-around by DEP on submittals.

*Estate Administration and Estate Planning*
- The Register of Wills offices and the Department of Revenue each have critical functions for the orderly administration of decedents’ estates, and each deal with sensitive information (asset information, social security numbers, etc.). Investments in technology that allow staff to work seamlessly and securely from a remote location, and perhaps with extended hours or additional staff to reduce backlog would be helpful. These offices should take advantage of their websites to make clear, easy to find instructions available to the public. (One example that others could use is the Philadelphia County Register of Wills’ posted instructions with respect to “virtual probate,” including detailed directions on the paperwork and information that must be submitted to the Register, and information on how the process would work thereafter.) Staff should be cross-trained so that important services are not interrupted as a result of one staff member becoming unavailable.
- Estate planning documents have different requirements for execution. Wills and trust documents can be signed without a witness, but a health care power of attorney/living will must be witnessed by two individuals, while a
power of attorney requires two witnesses other than an agent appointed under the document, and in addition, either a notary public or an attorney, all three of whom must be present at the same time to witness the principal’s signature. The virtual notary legislation that was passed has been helpful to some practitioners, but generally does not go far enough to solve all of the issues created by witness requirements and difficulty of having people meet in person for signings.

- The legislature should reconsider the formalities needed for the execution of powers of attorney to make them more closely-aligned with the formalities for health care powers of attorney/living wills. While there is a need for certain safeguards, eliminating the requirement of a notary or an attorney-witness would allow many more individuals to get these important documents in place.

**Family Law**
- As with all litigants, the inability of attorneys/pro se clients to be in contact with the courts has been problematic.
- The County Court Administrators need to post information updates on their websites as to filings and procedures if the Courts close, especially for emergency custody petitions or PFAs.
- The courts must establish a contact person for pro se and unrepresented parties for the purpose of providing information.
- The Court Administrator’s phone number or email should be made available for unrepresented persons.
- Access to advanced communication technology for pro se and unrepresented litigants needs to be provided, and budgeted for, including appropriate space in family courts.

**Landlord/Tenant**
- Much of the above discussion related to the courts and civil litigation apply here as well. But extra emphasis is required with respect to the magisterial district judges, where many landlord/tenant matters are handled. Significant variation among MDJs exists with respect to access to advanced communication technology, willingness, and ability of staff to use advanced communication technology, and enforcement of and ability to follow COVID-19 mitigation protocols. Additionally, many clients lack access to technology, making it difficult for some clients to attend even remote hearings. Furthermore, guidance from AOPC and county courts was not always compatible (or at least left room for ambiguity), leaving MDJs in a difficult position about which guidance to follow.
- The Task Force recommends standardization of advanced communication technology for all MDJs (i.e., Webex or Teams or Zoom). This would ensure that MDJs and others can be provided with appropriate training on the use of technology.
- Also, MDJs should determine whether they can provide a safe, socially-distanced space in their location that is equipped with technology for
participants who do not have access to a computer to participate in a hearing. This could physically be located at the MDJ office or could be through a partnership with a social service organization or county library.

Public Service Sector
- The COVID-19 pandemic has been similarly impactful on the public sector practice areas. Government, public defense, and legal aid attorneys face the dual challenges of navigating remote operations amidst increased demand for services and providing access to clients and constituencies traditionally disadvantaged by accessibility issues related to technology, staffing, transportation, and other limited resources. In addition, service delivery has been impacted by variances in local and regional disparities. The public service sector should provide coordination and collaboration of COVID-19 legal resources on a designated government website, with particular attention to issues of relevance for underserved and low-income communities. Contact information should be included for legal aid resources across Pennsylvania, organized by specific groups as necessary (e.g., elder care, veterans, people with disabilities). It is advisable to provide the information in multiple languages.
- Schedule several “free legal help” days throughout Pennsylvania with public service attorneys to provide assistance/information related to evictions, foreclosures, public benefits, etc. when safe to do so, perhaps supported by the PBA and county bar associations.
- Expand collaboration with law schools to provide internships/externships for law students to gain practical experience in public service and government-related settings.
- Review current public service loan forgiveness programs in Pennsylvania for consideration of expanded debt forgiveness opportunities for public service attorneys.
- Create FAQs and short webinars by public service agencies regarding pandemic resources.
- Research and implement use of free legal technology to automate legal processes for consumers, e.g., CDC Eviction Declaration App – which provides information about eviction protections and allows consumers to opt into the program, sign and send declaration to landlords/mortgagees via smartphone, and the “Legal Services Link,” or similar app.

Legal Services/Legal Aid
- Practice-related issues for legal aid are the same as above with additional challenges, which are addressed below in Part B. Additionally, funders have documentation requirements that have been challenging to meet during the pandemic. For example, there is a requirement that an application for services is signed - except in limited circumstances. While the requirement can be satisfied with an electronic signature, legal services clients’ lack of access to technology has limited the ability to take advantage of electronic signatures.
B. Other Considerations Related to Access to Legal Services

Legal services do not always involve court appearances or court filings. Many aspects of corporate, transactional, and other client-centered practices never reach the courts or a filing office but require access to lawyers and attorneys to maintain their ability to work at non-emergency levels, whether those attorneys are in private practice, corporate practice, government practice, or legal aid. This section will focus on these other aspects of legal services, although some overlap with part A exists.

1. SELF CARE AND CONTINGENCY PLANS

Before attorneys can address the needs of their clients, they need to ensure that they and their offices are physically and mentally prepared to do so. Attorneys do this as part of their day-to-day operations, but during an emergency, normal procedures may not be sufficient. By this point, most attorneys have likely developed or activated procedures to deal with working remotely, continuing client services in the event of death, disability, or any type of incapacity, and maintaining their emotional and mental well-being. The Task Force offers the following recommendations to attorneys to the extent that any attorney has not yet needed or considered them and/or as reminders to maintain their continuity of operations plans and review them at least annually to ensure they and their staff are prepared for any future emergency regardless of size, duration, or scope.

- Quality of Life: Work/life balance and stress relief are necessary for attorneys and staff to function at their best. People deal with stress differently and have different work/life balance requirements that can vary over time. Ensure that you have procedures for you and your staff to take breaks by limiting daily work hours, requiring vacation time to be taken, and encouraging breaks within a day to eat, hydrate and rejuvenate as needed. During particularly stressful times related to deadlines, extra workload, or personal/family illness or problems, be on the lookout for danger signals in yourself and your staff that might require intervention. Such intervention can be as simple as taking a break to exercise, meditate, pray, or attend a family function. It can involve reminding your staff that they can take full or partial days off without fear of retribution and that through communication you can help find ways for the work to get done and the staff to address personal and family obligations that come up at inopportune times. It might rise to the level of needing to get assistance. If you need assistance and don’t know where to turn, contact Lawyers Concerned for Lawyers Pennsylvania. This is a free, confidential resource for lawyers and their family members. Their website and phone number: [https://www.lclpa.org/](https://www.lclpa.org/), 1-888-999-1941. Consider taking part in the CLEs and other activities addressing this subject offered by the Pennsylvania Bar Association and its CLE arm, county bar associations, and other groups.
• Succession Planning: Succession planning involves not just who will carry on the firm or take over your practice after you retire, but also contingency plans for unexpected illness, accident, or death, and depending on one’s practice and work load can also involve plans for when you take vacation. You and/or your firm should have systems in place so that someone else can service client needs whenever you or another integral part of client services is unavailable. Remember, this can involve not only another attorney to cover for you, but backups for staff functions, technology issues, and business functions, as well as plans for dealing with a cyberattack. Many resources exist to help you with this type of planning, including through the Pennsylvania Bar Association, your professional liability carrier, and other lawyer organizations.

2. TRAINING AND STAYING CURRENT

Ensure that you and your staff stay current on rules, laws, court administrative orders, technology, security, and alternate communication methods. This is important for your daily practice as well as when an emergency or other event occurs where rapid changes are being made and access to usual methods are curtailed. This training goes hand-in-hand with development of contingency plans. Remain in good communication with your staff and ensure that policies are being followed. Client confidences must be maintained even when working remotely, therefore, do not assume that your staff knows how or is able to ensure confidentiality while working from home. See PBA Legal Ethics and Professional Responsibility Committee Formal Opinion 2020-300, Lawyers’ Ethical Obligations When Working Remotely.

3. LEGAL AID

Legal aid lawyers practice in all counties and in several different practice areas. The need for free or low-cost legal assistance does not end during an emergency and most frequently increases. The COVID-19 pandemic was no exception, with unemployment rising and adequate access to services diminished due to the shut-downs and other mitigation efforts. Legal aid clients and practitioners encounter the same issues as those addressed in Part A, but certain unique challenges require mentioning.

• Lack of adequate resources for low-income clients to participate in proceedings is a real concern. While many low-income clients have access to mobile phones - this is indeed the main way they access the internet - data plans and access to WIFI are limited because of cost. This is compounded in rural areas where not only is cost a problem, but access in general is constrained. Furthermore, remote technology that relies on downloading an app is often not feasible or compatible for the phones that low income clients are able to afford.

• Many legal aid attorneys practice in front of agencies rather than in courts. Some common agencies/hearings are: Unemployment compensation hearings (Labor and Industry), hearings regarding public benefits
(Department of Human Services), Public Utility Commission proceedings, proceedings before professional licensure boards (Department of State), Social Security Administration hearings, and Immigration Court proceedings. The same challenges with access to technology, consistent technology, access to electronic filing, and other issues that affect the court system are present in these agencies. However, the challenge is that there is not a unified voice for these agencies that can mandate or dictate consistency.

- Similarly with respect to the above recommendations regarding the courts, the Task Force recommends development of statewide, interagency best practices for conducting hearings, use of technology, electronic filing, etc. Importantly, whatever technology is chosen for proceedings should be able to work well through a web browser on a mobile phone - rather than through an app or only on a laptop or desktop computer – to ensure equitable access for low income households. Additionally, the best practices should include finding access to rooms in courthouses, MDJ offices, administrative agencies, libraries, and/or other community-based organizations where low-income clients can securely and confidentially speak with attorneys and participate in remote proceedings on equal footing with other participants.

4. LEGAL EDUCATION

The continuity of legal education is important to ensure the long-term continuity of the profession and legal services to the community. Law schools and their students faced pandemic-related issues. The pandemic affected the ability to meet ABA Accreditation Requirements, classes needed to move to advanced communication technology, employment opportunities decreased and furloughs occurred, admissions were affected, racial inequality resulting from systemic racism was exposed, and graduates experienced turmoil related to the bar exam and licensing.

- The PBA COVID-19 Task Force and Legal Academics Committee should continue their work advocating for Bar Exam and licensing modifications as needed with the PA Board of Law Examiners and PA Supreme Court.
- With respect to employment opportunities, firms and employers should support some level of student loan forgiveness, while also creating alternative approaches to cost cutting that will avoid the rescission of summer associate positions and new attorney offers of employment.
- With respect to ABA Accreditation Requirements, the PBA, firms, and employers should support law schools in seeking relief from ABA standards related to distance education as well as requirements for increased diversity, equity, and inclusion in law schools.
- With respect to remote teaching and learning, law schools, firms, and employers could come together on a health and wellness protocol that would shepherd students and graduates from law school to work.
As racial inequality persists and the pandemic continues to have a disparate impact on minoritized segments of our communities, the PBA should continue its efforts through the Diversity Team and other groups focused on these issues. Law schools, firms, and employers should adopt an Antiracist approach to reforming legal education and the profession, see https://www.aals.org/antiracist-clearinghouse/. Law schools, firms, and employers should become aware of the profile of the legal profession, see https://www.americanbar.org/news/reporter_resources/profile-of-profession.

IV. Conclusion

The work of the Task Force has confirmed that the members of the Bar and the Courts have shown great resiliency and ingenuity in the face of the unprecedented and chronic disruption wrought by the COVID-19 pandemic. Legal services continued to be delivered and the administration of justice marched on, albeit at a slower pace and more remotely.

Moving forward, the Bar and the Courts need to assure that legal services are regarded as “essential” so as to assure that important rights remain protected; advocate for consistent enforcement of health and safety standards; enhance the ability to provide representation of clients remotely through advanced communication technologies and universal electronic transmission and filing of documents; expand the use of mediation, arbitration, and judicial adjuncts; and provide educational and training programs and materials geared to the technological skill sets needed to practice law remotely; and to assure the wellness and health of all participants in the legal system.

Respectfully submitted,

Hon. Thomas I. Vanaskie (Ret.)
Chair

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