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FROM THE COURTS

Business Is Booming for Mediators as COVID-19 Cools Courts

by Angela Morris

Civil mediators are working nights and weekends to handle increasing numbers of cases from litigants seeking to sidestep courthouse slowdowns from the COVID-19 pandemic.

Many courts across the country have postponed jury trials, and judges face learning curves with the technology for remote hearings, which slows down business and forces courts to prioritize criminal cases, child protection matters, domestic violence protective orders and other urgent cases.

"Business is dramatically increasing, as long as mediators are able to offer options for remote attendance," said Mark Lemke, incoming president of the Southern California Mediation Association. "There really is a tremendous need for mediation right now."

The push to mediate is coming from judges in some instances.

"Our court capacity is limited," said 470th District Judge Emily Miskel of McKinney, Texas. "I'm able to accommodate a third of the amount of stuff I'd be able to hear."

Miskel has encouraged family law litigants to do remote mediations to work out temporary orders and co-parenting issues. She and her judicial colleagues have also put together and distributed a list of Texas media-

tors who are able to do remote sessions.

Courts might decide to make mediation mandatory, if government shutdowns and social distancing last into the summer, said mediator Hannah Stroud, an associate with Hanshaw Kennedy Hafen in Frisco, Texas.

"I haven't seen a big pickup yet, but I do see that coming down the pipeline," said Stroud, who has turned to Zoom video conferences for her mediations. "My feeling is it's going to be in the next three weeks, when we see more shelters-in-place, because Texas doesn't have a mandatory one now."

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Florida litigator Harsh Arora, who is currently scheduling a remote mediation in one of his cases, said that before the coronavirus outbreak, he didn't get a high success rate from remote mediations, which usually happened when one litigant was in another state or country.

Now, COVID-19 is creating a different perspective because no one knows when the courts will reopen for trials, which makes it harder to walk away from the negotiating table. Also, some plaintiffs and defendants are facing a financial crunch.

"When you have this level of uncertainty, and people are looking at various loan options, grants and other ways to save



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their businesses from going under, they are very motivated," Arora said. "The playing field

for remote mediations versus in-person mediations has been leveled."

Lemke, the mediation association leader, said that more clients are asking for mediation sessions on short notice. His firm, Lemke Mediation in Los Angeles, has started offering mediations during evenings and weekends, because litigants worried about losing their jobs are refusing to ask off of work to attend mediations.

"The increase that I am seeing, it's probably about a third increase," he said, adding that more litigants are settling their disputes, too.

Weekend work is also on the horizon for Suzanne Wooten, a mediator and arbitrator at North Texas Litigation Solutions in McKinney who's scheduled five sessions this week and seven next week.

But she's afraid the number will decrease over time because of the economic harm from the virus crisis.

"I'm running into more people, as time goes by, who cannot afford to go to mediation because they are not earning any income," Wooten explained, adding that litigants who can't afford mediators also can't pay lawyers. "The question is, how will the work be compensated? We all have to pay all of our bills."

Angela Morris covers lawsuits in all levels of Texas state and federal courts. Contact her at amorris@alm.com. On Twitter: [AMorrisReports](https://twitter.com/AMorrisReports).