

# Proposed Adoption of Administrative Order No. 2025-X, Proposed Rescission of Administrative Order No. 2012-7, and Proposed Amendment of MCR 2.407

The past 25 years of my legal experience has been almost exclusively in the realm of family law, primarily in Wayne and Oakland counties. I am a past chair of the Family Law Section for the State Bar of Michigan. I am a member of the American Academy of Matrimonial Lawyers. I have devoted myself to what I believe are best practices in family law and look to the greater good of families as high priorities in my practice.

The practice of family law post-pandemic continues to be severely impacted by the prevailing remote approach to the courtroom. As a practical matter, both Wayne and Oakland counties are virtually exclusively remote. A very few judges have crafted a hybrid approach, but the former bustle found on Wednesdays and Fridays live motion practice and other live hearings has vanished. Occasional trials and hearings may be live, but the vast majority are remote. This has harmed the dispensation of justice in immeasurable ways. It is harming families every day. Following are a few of the ways in which the practice and outcomes are harmed by the continuation of remote practice. Live family practice has resumed in Macomb, Washtenaw, and many other counties, but not in Wayne or Oakland. I am aware of a few courtroom exceptions in Oakland and Wayne County.

Pre-pandemic a vast amount of work was done in the halls; counsel and litigants waiting to be heard - or sent out by the judge to resolve issues. Relationships between counsel were formed or relied upon to craft solutions to pressing family problems. Meeting live reaps huge benefits in terms of settlement opportunities, far greater than today's approach. In the past, scores of orders were negotiated, drafted and agreed to in the halls every week. There are negligible opportunities to negotiate or even "get a read" on a situation in remote law today.

Additionally, live law provided the litigants an opportunity to view the actions of the court and understand the gravity of their situation. This led to better behavior and a higher likelihood of reasonable compromise. All of this is gone today and for no good reason post-pandemic.

Most trial/family attorneys would agree that perhaps the best education received occurred in the courtroom, observing other skilled attorneys present their cases. This is something not learned in law school, and nothing can replace live action and observation of others. Both counsel and litigants learn as the judges consider the arguments. Both

substantive and procedural law were absorbed by attorneys as they watched and waited. This is completely lost in Wayne and Oakland County today. The demeanor of lawyers is markedly different than pre-pandemic. Lawyers have lost five years of learning by example; younger lawyers have been especially negatively affected. Civility has taken a major hit because relationships have either fallen away or just failed to be established without personal interaction. Judges regularly express their frustration at the poor demeanor of attorneys appearing in their courts - they have had no good examples from which to learn.

Informal mentoring has largely stopped. Pre-pandemic, countless times I tapped a young lawyer on the shoulder or weighed in in some fashion with an idea or suggestion to help. Further, the opportunity to "know your judge" - a key to successful practice, has vanished. All we know now is what happens on our specific case. The open court has actually vanished. This is to the great detriment of the public. There are just a precious few exceptions to this in Oakland and Wayne County.

No opportunity exists to review a judge's decision-making process in live court. This harms our clients. Judges also need to have the opportunity to see a courtroom full of the folks who elected them. Courtroom protocols are more normalized when the public is viewing, judges are accountable when the public is viewing. While I have never been a judge, I can only imagine when other family judges are "down the hall" methods are shared and problems are solved. This has also vanished. Now newer judges are on their own without this informal guidance. Families can suffer terribly in this instance.

Remote law has contributed greatly to a lack of civility between lawyers and between their clients. For the most part, we no longer see one another in the hall or meet one another "live" in new cases. The lack of civility between lawyers has accelerated the already waning respect for the judicial system, especially by the litigants. It is hard to take a zoom seriously. The cat memes, which were (slightly) amusing at the start of the pandemic really are no joke. Ask any judge in the family court, they will tell you about litigants "zooming" in their pajamas, without shirts, in their beds and even driving a vehicle. This lack of respect is not healthy for a civil society. We must strengthen the possibility of respect for our judicial system. A continuation of remote law will further undermine the citizens' respect for the judicial system.

On a more practical level, many serious daily problems exist in the remote world. From the trier of facts inability to fairly assess the credibility of a witness over zoom, to the lawyers lack of ability to effectively assist their client(s) because of the limitations zoom imposes. There is often no ability to "control" or direct a client on a zoom hearing. Things can go sideways rapidly in a way that does not happen in an open courtroom.

Is remote law "easier" for counsel and the bench? Likely yes, but "ease" provides no legitimate basis to continue remote practice. Certainly there are limited instances where our new(ish) technology can be utilized in efficient ways without sacrificing the greater good ... a quick settlement conference ... out of town or out of state witnesses can zoom in expert testimony, and the like. Some Friend of the Court Referees claim they find a higher degree of

participation by litigants using remote law. It can provide parents flexibility, meaning less missed work and potential job loss. This may make good sense and could continue to some degree. However, countless Friend of the Court cases were settled in the rooms waiting for a hearing - this has been lost.

While the "old way" was not perfect, literally all of the foregoing illustrations would be impacted positively by a resumption of 100% live court. The urgency of these problems, especially given how readily a solution is available, cannot be overstated. The notion of judges, counsel and litigants just "staying home" at this point simply has no justification.

Thank you, Carol Breitmeyer

Carol F. Breitmeyer, Esq.



***Please note our new address!***

333 W. 7<sup>th</sup> Street, Suite 110  
Royal Oak, MI 48067

(313) 962-4600 · phone  
(313) 962-3600 · fax

(248) 723-3975 · phone  
(313) 962-3600 · fax



Email: [breitmeyer@bcfamlaw.com](mailto:breitmeyer@bcfamlaw.com)

Web: [www.bcfamlaw.com](http://www.bcfamlaw.com)

Blog: [www.TheMichiganDivorceReport.com](http://www.TheMichiganDivorceReport.com)

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