

DALLAS BUSINESS JOURNAL

What happens to legal claims and other disputes when courthouses in Texas are closed?

STEVEN H. STODGHILL
SPECIAL TO THE BUSINESS JOURNAL

Sometimes, businesses have to go to court. Maybe there is a dispute with another company over a contract, or an employee who made claims about issues in the workplace.

But what happens to legal claims and other disputes when the courthouses in Texas are closed, as they are now in response to the coronavirus outbreak?

With the courthouses closed, is trial work shut down? With the courthouses closed, if your company had a trial scheduled, it is postponed. We're going to have to wait and see what the courts do as far as rescheduling their dockets once the various cities, counties and states lift orders they've issued to close.

But because so much of what goes on in a legal case happens outside the courtroom, there is plenty of legal work that is continuing, albeit in an electronic fashion.

What are some examples of the kinds of trial work that are continuing? Prior to trial, you have depositions, where the parties sit down, put a potential witness under oath to get their sworn testimony. Because you can't meet face-to-face right now, many depositions are taking place over video conferencing platforms such as Zoom.

Judges also often send cases to mediation prior to trial to see if the parties can resolve the dispute without the court's intervention. Those mediations also are continuing, again through video conference.

And leading up to trial, there are hearings addressing a wide range of issues. For a long time now, courts have been comfortable conducting some of those hearings on telephone conference calls. Not only are those kinds of telephone conference hearings continuing, but we are also seeing a dramatic increase in their use.

Do you think it would be possible to conduct a trial using a video conference platform? Probably not. For starters, if you think about it, when you and I get called for jury duty that's a summons that comes in the mail. And that's because the county has our home addresses. But for the most part, the county doesn't have our email addresses or mobile phone numbers, so it would be difficult, if not impossible, to gather the 75 to 100 people you need for a jury pool into a Zoom chat.



But assume for a minute that you could seat a jury and have all of them on their laptops at home while you and the opposing parties are six feet away from each other in court. How do you know that a juror doesn't get up for a drink of water at the most important point in some witness' testimony? Finally, think about the movie "12 Angry Men." Our trial process fundamentally relies on gathering people into one room so that they can go over the evidence and figure out where they can agree. It's almost impossible to create that dynamic in an electronic environment.

If my business has been harmed, can I file suit or does the courthouse closure mean I'm out of luck? If you have a problem or dispute you can't resolve on your own, you can still go to a lawyer and file a claim. Most of the work surrounding the filing of a lawsuit is already done electronically, coronavirus notwithstanding. Obviously, the trial schedule may run longer because of the current delay.

How do you see this affecting the process? In 2008, at the height of the Great Recession, we saw more parties willing to settle. They either didn't have the money to continue or wanted some sort of outcome now, so that they could move on. But then, coming out of the recession, we also saw a wave of new cases. It's difficult to say whether that will happen again, as our current situation is unlike anything that's come before.

Steven H. Stodghill is a litigation partner in the Dallas office of Winston & Strawn.