



**JUMPSTART FAMILY LAW TRIALS  
TASK FORCE  
RECOMMENDATIONS  
JUNE 2020**

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## ***Preface***

On May 22, 2020, the Iowa Supreme Court ordered the establishment of the Jumpstart Family Law Trials Task Force following the Coronavirus/COVID-19 outbreak to develop temporary policies and procedures for resumption of family law trials following the COVID-19 postponements.

The Court directed the task force to develop policies and procedures to ensure parties' fundamental rights while protecting the health and safety of parties, court staff, attorneys, judges, and all Iowans who enter any of Iowa's courthouses. Family law cases comprise a significant portion of the civil docket, with the majority of those involving children waiting for final custody arrangements.

To ensure all state judicial districts and all stakeholder groups were represented, the Iowa Supreme Court appointed these persons to serve on the Jumpstart Family Law Trials Task Force:

Honorable Thomas W. Waterman, Justice of the Iowa Supreme Court, Chair  
Stacey N. Warren, private practice attorney, Des Moines, Co-Chair  
Honorable Julie Schumacher, Judge, Iowa Court of Appeals, Des Moines  
Honorable Kevin McKeever, District Judge, Iowa City  
Cherie Damante Cummings, Assistant Attorney General, CSRU, Cedar  
Rapids  
David Cox, private practice attorney, Iowa City  
Scott Hand, District Court Administrator, Mason City  
Julie Mayhall, private practice attorney, Carroll  
Jackie Myers, Des Moines County Clerk of Court, Burlington  
Jessica Noll, private practice attorney, Sioux City

Todd Nuccio, State Court Administrator, Des Moines

Carrie O'Connor, Iowa Legal Aid, Dubuque

Katherine Salazar, private practice attorney, Washington

Anjela Shutts, private practice attorney, Des Moines

Shannon Simpson, private practice attorney, Council Bluffs

Justin Teitle, private practice attorney, Bettendorf

Jenny Weiss, private practice attorney, Dubuque

Molly Kottmeyer, Counsel to the Chief Justice, contributed to task force discussions and provided valuable feedback throughout the process. Anna Stoeffler, Senior Law Clerk to the Chief Justice, coordinated meetings, distributed information to task force members, and served as a reporter. Mariah Slocum, Law Clerk to Justice Waterman, also reported and provided editing assistance. Their work allowed the task force to complete its objectives and meet its reporting deadline.

The task force met weekly by video conference for four weeks. The task force received health information provided to the judicial branch, and was educated on the processes needed to reopen courthouses. Workgroups focused on three areas: scheduling and case management, evidentiary and procedural issues, and alternative case processing options. These workgroups conferenced weekly before each full task force meeting. From the time each was asked to serve, members individually solicited information and feedback from the groups they represented and from the attorneys and judges in their respective judicial districts. The recommendations are submitted with the best interests of all Iowans involved in family law cases in mind.

The task force reviewed family law trial processes and procedures. It considered how to best ensure access to justice with expanded technologies and minimized personal contacts. The task force recognized the need to maintain integrity in the judicial process, while employing new procedures to resolve cases continued due to COVID-19 and absorb new cases filed. The task force placed the health and safety of the parties, attorneys, judges, court staff, and all others who may be a part of, or come in contact with, a family law case or trial, at the forefront of its deliberations. The task force respectfully submits these recommendations<sup>1</sup> to the court for its review.

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<sup>1</sup> After most recommendations, resources to review are listed. Most are hyperlinked. Those that are not are provided separately.

**I. The Supreme Court Should Clarify Case Priority Assigned to Family Law Cases Under the Case Priority Order of May 22, 2020.**

***Comment***

Under the Case Priority Order, family law cases involving child custody are given a relatively high priority with only emergency and criminal law cases taking precedence. While the task force agrees this makes sense, the Supreme Court should further clarify what the word “priority” means to ensure districts comply with the Case Priority Order. Task force members believe a percentage of docket time should be allocated for resolution of family law cases regardless of the district court’s criminal docket.

Our research indicates that districts across the state schedule more than one trial for any particular trial date. This practice usually works out well because trials often settle shortly before the date of trial and sometimes on the date of trial. However, district courts are occasionally faced with a situation where none of the scheduled trials settle, in which case one or more trials need to be continued due to a lack of courtroom space, judge and court reporter availability. When a trial needs to be moved, districts will try the case with priority and continue the other case.

Due to the rescheduling caused by the COVID-19 pandemic, family law cases have been delayed for at least three months and up to fifteen months. Many involve children. Our research indicates approximately seventy-five percent of our pending family law cases involve child custody. The task force’s concern is that districts may conclude that the Case Priority Order requires them

to clear the pending criminal cases before reaching the family law cases, including those involving children. If districts adopt this practice, a situation in which a four-month-old, non-speedy demand, out of custody, serious misdemeanor case would trump a two-year-old family law child custody case. Therefore, if both were scheduled for the same trial date and neither case settled, the family law case would have to be continued.

The court should provide clarification to ensure districts understand how much discretion they have in interpreting the word “priority,” thereby guaranteeing compliance with the Case Priority Order as they seek to clear the backlog of criminal cases, family law cases, and other cases.

Further, cases that have been on file the longest should be given priority when scheduling family law cases. District Court case scheduling should utilize the concept of First-In/First-Out to ensure uniformity in processing and fairness to litigants.

**II. The Supreme Court Should Reassign Priority Given to Non-Child Custody Family Law Cases Under the Case Priority Order of May 22, 2020.**

***Comment***

Non-child custody family law cases are listed in the Case Priority Order as “cases not given priority.” The same list contains small claims cases and several other case types. The task force respectfully requests that the Court consider assigning certain non-child custody cases as priority (e.g. prioritized after guardianship cases but ahead of small claims cases). These may include dissolution actions with domestic violence but without children, or cases with significant economic disparities between parties and/or dissipation issues.

In addition, cases ready for default processing can be easily identified and streamlined for swift resolution with minimal court resources. The issues may vary in default cases, but the court has the ability to resolve the cases in a streamlined manner by use of orders for final hearing with a short list of specific requirements needed for the court to enter the default and final order or decree, and close out the case.

**III. The Supreme Court Should Encourage the Implementation of Procedures to Allow Use of the 7<sup>th</sup> District Informal Family Law Trial Pilot Program. Once Established, District Courts Shall Consider Having the Program Be An “Opt-Out” Program for All Self-Represented Litigants.**

***Comment***

Self-represented litigant cases are time-consuming for courts and judicial staff because of the time required to shepherd the people through the process, not because the factual circumstances are overly complicated.

Funneling pending and new family cases involving dual self-represented litigants into a program like the 7<sup>th</sup> District Informal Family Law Trial Pilot Program will:

1. Expedite resolution of cases involving less complicated factual circumstances;
2. Free up judicial time dedicated to resolving the backlog of family law cases involving more complicated factual circumstances; and
3. Provide greater transparency, uniformity, and a clear path to resolution of the case for the parties.

District Court Case Coordinators should identify all pending cases and new cases where both parties are self-represented litigants, and these cases should be assigned to the Informal Family Law Trial track. These trials could be held by video conference.

Self-representation is expected to increase given the economic downturn and lack of financial resources. Freeing up judicial resources to resolve backlogged cases should be explored and encouraged. Directing all dual self-represented litigant cases into an Informal Family Law Trial program will allow

the mediation program to be used to resolve cases where there is at least one represented party. (See IV, below)

Each District should investigate the implementation of the program or feasibility and report back by August 17, 2020 to the Supreme Court.

### ***Resources***

[Informal Family Law Trial Pilot Program - Public Brochure](#)

[Supreme Court Order Establishing Informal Family Law Trial Pilot Program](#)

Informal Family Law Trial Pilot Project – Final Report (provided)

**IV. The Supreme Court Should Require District Courts to Establish Procedures for and Require Mandatory Mediation With Attorney Participation of All Pending or New Family Law Cases Through March 31, 2021.**

***Comment***

The task force believes that implementing mandatory mediation on a temporary basis will assist in resolving the backlog of cases. Mandatory mediation is likely to ensure focus is placed on the relevant issues. It will help the parties to hear a reasonable assessment from not only their individual attorneys, but also from the mediator, which can help to settle most, if not all, trial issues. Mediation provides a path to settle cases before trial with a favorable or at least a livable result for both parties.

Circumstances have changed since the COVID-19 slowdown, and cases are now facing delays of multiple months or a year or more before they will be heard by a court. Such delays justify the statewide use of a tool already proven effective in its various current applications in multiple judicial districts. The task force received feedback from mediators and attorneys who successfully used video conference platforms since March 2020.

Attorney participation in mediation will likely resolve some issues and will be helpful in drafting stipulations and doing so promptly. This will allow courts to clear cases entirely from dockets and reduce the time required for trial in cases where issues were narrowed in mediation.

The Supreme Court should select a deadline to establish the procedures by August 3, 2020. District Courts should establish, and implement, a procedure

requiring full case mediation for all family law cases currently pending.

Procedures shall provide for:

1. Mediation of all pending cases to be completed within 90 days of issuance of the mediation procedures (or a complete signed Stipulation resolving all issues must be filed within the 90 days);
2. Mediation of all cases filed after the procedures are issued to be completed within 120 days of filing (or a complete signed Stipulation resolving all issues must be filed within the 120 days);
3. Cases previously mediated to be subject to a second round of mediation, unless trial is held within 60 days;
4. Submission of Stipulations (partial or full) to the court within 30 days following conclusion of mediation;
5. Submission of Mediation Reports (see VI, below);
6. Mediations with assigned or retained mediators to be conducted via video conference platforms or in-person;
7. Addressing cases where claims of domestic violence may render mediation inappropriate or where modifications to the mediation process (including use of video conferencing) are necessary to ensure safety;
8. Addressing procedures for access to mediation, with consideration to fair distribution of cases where sliding scale or pro bono mediation must be undertaken by participating mediators.

All CSRU cases should be exempt from this requirement.

### ***Resources***

[Kimberly Stamatelos, Virtual Mediation Can Work Well With Proper Preparation, The Iowa Lawyer, May 2020 at 18](#)

**V. The Supreme Court Should Require Each District to Provide a List of Mediators to Post on the COVID-19 Family Law Web Page for State-Wide Use.**

***Comment***

A uniform list of approved mediators, compiled by each District Court in Word or Excel format, will be provided to the office of State Court Administration by July 31, 2020.

Mediator information should include contact information, rates, and whether mediators handle in-person mediation, remote mediation, or both.

The Supreme Court should place a master list of mediators on the Family Law Case COVID-19 web page for public and attorney use in required mediations.

The statewide list of mediators may conduct mediations in any county throughout the state. Open publication of the list should assist in parties successfully meeting timeline requirements under the statewide mandatory mediation order.

**VI. Following Mediation, the Supreme Court Should Require Attorneys to Submit a Mediation Report Identifying the Remaining Legal Issues Subject to Court Determination for Trial Scheduling Purposes.**

***Comment***

The information collected on the mediation report should identify the legal issues remaining following the conclusion of mediation. Further, the report should include a succinct summary of each party's position on each issue, including a brief statement of factual disputes. The form should be submitted within 7 days of mediation.

A form should be developed similar to that used in the 3<sup>rd</sup> Judicial District for pretrial stipulations, requiring report of information by attorneys and/or a self-represented litigant on:

1. Custody (see §3(c));
2. Visitation or Parenting Time (see §4);
3. Child Support (see §5);
4. Medical (health, dental, and vision) Insurance for Children;
5. Tax Dependency, Exemptions & Credits (see §6);
6. Alimony (see §8);
7. Life Insurance;
8. Division of Assets & Liabilities, including payment of Property Settlements;
9. Post-Secondary Educational Subsidies;
10. Attorney Fees (see §14);
11. Court Costs;
12. Expected witnesses, including experts, indicating whether witness appearance is in-person, by deposition, or by videoconference;
13. Time required for trial;
14. Readiness for trial (including status of discovery);
15. Attorney certification regarding video conference platform education (see XI, below); and
16. Any other issue.

The Mediation Report will allow each district to track rates in resolving cases that would otherwise remain on the docket until a time closer to trial. Each

district should be prepared to report results and impacts on trial scheduling timeframes by December 31, 2020. This collected data will provide a basis to consider a recommendation to continue mandatory mediation after March 31, 2021.

### ***Resources***

3rd District Pretrial Stipulation forms (provided)

**VII. The Supreme Court Should Authorize Trial Court Judges to Use Discretion to Overrule Objections to Video Conferencing Only in Non-Custodial Trials.**

***Comment***

There is an increasing concern that if one party is given the right to guarantee a continuance simply by objecting to a phone or videoconference hearing, parties might utilize this power as a delay tactic. Often, it is to the benefit of one party and to the detriment of the other to delay a trial. Sometimes, a telephonic or video hearing may be the only option due to COVID-19.

To reduce the backlog of cases, and to ensure parties' fundamental rights to timely resolution of their family law case within case processing guidelines established by the Court, the task force requests that district court judges be afforded discretion to overrule an objection to a video conference trial or hearing, or a telephonic hearing.

Non-custodial trials may be conducted by video conference, but not by telephone, and they may be held over the objection of a party, after an opportunity to be heard. Attorneys'/self-represented litigants' written objections will need to be specific if asserting good cause.

Custody trials may be held by video conference by consent of the parties. However, when the best interests of the child require court action regarding a time-sensitive issue (e.g. determination of a school district for a child's enrollment where there is no agreement between the parents) the court should have discretion to hold a hearing in the manner it deems appropriate.

Pre-trial hearings may be held by video conference or by telephone.

**VIII. The Supreme Court Should Provide That Parties Have Access to Justice by Providing Technology and Confidential Space for Individuals to Participate in Video Conferenced Hearings and Trials If They Do Not Have Separate Access to Technology.**

***Comment***

It will be critical for each court to establish access to justice by providing a computer loaded with the appropriate platform and a confidential space for individuals to participate in trial.

An “access to hearing” computer (potentially more than one computer per courthouse) and a confidential location (potentially more than one location per courthouse) will need to be provided for participation.

To ensure sufficient computers are available, the following language should be included in trial scheduling orders or orders setting video conference hearings: *If a party does not have access to a phone or computer to participate, the party should contact the Clerk of Court for (County) at (phone number) to arrange for access at the Courthouse no later than 7 business days before hearing/trial.*

Directions regarding resources and how to access the same should be issued by each District Court before the restart of trials.

***Resources***

[NCSC Remote Hearings & Access to Justice During Covid-19 & Beyond](#)

[Illinois Access to Justice Commission on Remote Hearings](#)

**IX. The Supreme Court Should Establish Uniform Procedures to Address Evidentiary Concerns for Video Conferencing of Trials and Hearings.**

***Comment***

Fundamental fairness in video conference trials and hearings is paramount. Trial courts should be able to view attorneys, parties, and witnesses separately to verify sequestration and absence of coaching. Pretrial orders should require the attorney and witness be in separate rooms and on separate devices.

Uniform procedures and guidelines should be included in all pre-trial orders, including uniform deadlines on filing of exhibits and foundational objections before hearings and trials requiring that:

1. Exhibits be filed 7 days before hearing and 14 days before trial.
2. Individual district requirements regarding filing affidavits before a temporary hearing should remain as previously ordered within each district.
3. Foundational objections should be filed 4 days before hearing and 7 days before trial to eliminate unnecessary witnesses and to streamline proceedings.

Unless the hearing or trial is closed by prior court order, the pretrial order should include platform information to ensure the proceeding is accessible to public, preferably directing the public to a physical over-flow room at the courthouse. This will provide protection against recording by those present on a video conference platform. Pretrial orders should include language that all expanded media requirements will still be enforced.

Pretrial orders should include information regarding accessibility and interpreters.

Pretrial orders should include references to the Judicial Branch Family Law Trial COVID-19 website for uniform information and expectations. (See XII, below) This will also direct attorneys and parties to information regarding best practices, trainings, and courtroom decorum.

***Resources***

[Video Conference Hearings For Attorneys - example](#)

[Video Conferencing Procedures for Persons Without Attorneys - example](#)

[General Tips for Video Court Hearings - example](#)

**X. The Supreme Court Should Establish Written Recommendations to Address COVID-19 Concerns for In-Person Hearings and Trials.**

***Comment***

Task force members relayed concerns about safety procedures when appearing for in-person hearings and trials. Significant concerns included the spacing required for social distancing and the ability of attorneys to rely on the candor of clients in reporting health information. The Supreme Court should clearly communicate expectations for attorneys and litigants toward the court, while also communicating expectations from the court to maintain a safe environment during the in person hearing or trial.

**Assuring Safety.** Many attorneys do not know how they will get their clients and witnesses to come into the courthouse due to their fears of contracting the virus. Similarly, because airborne contact is a big source of the spread, there needs to be a way to determine whether courthouses are safe in terms of ventilation. Access to factual information about facility safety is necessary. All people in the courtrooms should be required to wear face coverings. Guidelines for cleaning common surfaces during trials and hearings should be established and posted.

**Honesty Regarding the Duty to Notify and Inquire of Coronavirus Symptoms.** The Court's May 22, 2020, supervisory order requires attorneys to inquire of their clients and witnesses participating in in-person business whether they have an elevated risk of transmitting the virus and to notify opposing counsel and the respective clerk of court's office if they reasonably suspect a participant may have an elevated risk of transmitting the virus. Family law cases

often involve parties who want their cases completed as soon as possible, and attorneys can't ensure their clients will be honest with them about their risk of transmission. Ideally, there would be other measures—things like taking temperatures and wearing facemasks—to help with this beyond placing the obligation on attorneys.

**Spacing.** There is a lack of space in certain courthouses (and courtrooms) even in regular times, let alone when there is a need to maintain social distance. Practical issues like communicating with a client while maintaining space during trial, having a space to confer with a client in the courthouse, maintaining safe courtroom configurations during trial, and where to have witnesses wait when they're not testifying must be addressed. Clerks of court are concerned there is not enough space for everything (i.e. district court, associate district court, etc.) to go simultaneously in their courthouses. CSRU attorneys are especially affected by the lack of space, as neither party in these proceedings is their client and they frequently meet with the parties for the first time on the date of the hearing to gather information.

**Vulnerable Populations.** Clients, witnesses, and court staff may fall into the high-risk category due to their age or other health issues. Attorneys on the task force have seen an increase in cases involving older clients.

Courtroom protocols should be implemented to promote safety and appropriate interactions during in-person hearings and trials. Communication of expectations should be included in all orders requiring in-person proceedings.

Trial scheduling orders and orders setting hearing should:

1. Require each attorney or litigant to have separate exhibit binders (if paper exhibits are used) for themselves, their client, and their witnesses.
2. Require attorneys, litigants, and witnesses wear PPE, which may include face-shields versus face masks to allow for accurate reporting of proceedings.
3. Require screening of all litigants, attorneys, and witnesses before entering the courtroom.
4. Allow depositions of certain witnesses to be submitted in lieu of live-testimony, or allow a witness to testify via video platform, particularly if a trial would be delayed due to the witness being unavailable due to COVID-19 illness.

### ***Resources***

[Iowa Judicial Branch Resuming Court Operations in Courtrooms and Court-Controlled Spaces](#)

[Iowa State Association of Counties/Iowa Judicial Branch Recommended Checklist for Mitigating Exposure to COVID-19 While Providing Services to the Public](#)

[Clerks of Court - Phone & Addresses \(by County\)](#)

**XI. The Supreme Court Should Direct the Judicial Branch Education Division to Provide a Training Program for Attorneys Regarding Use of Selected Video Conference Platforms to Be Used in Trials.**

***Comment***

Iowa Rule of Professional Conduct 32.1.1: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for representation.

- Comment 8: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.
- Comment 5: Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and the use of methods and procedures meeting the standards of competent practitioners.

Minimum competence requires knowledge of the use of video conferencing platforms to appear before the court.

Attorneys should receive training, so they have the knowledge, techniques, and control necessary to participate in video conference trials and hearings in a professional and efficient manner. Attorneys should inform the court that they have received the required training. (See VI, above)

Judicial officers likewise should be provided training, so judges have the knowledge, techniques, and control necessary to ensure fairness in the video conference trial and hearing process.

## ***Resources***

[Sharon D. Nelson & John W. Simek, Zoom Training for Lawyers, The Iowa Lawyer, May 2020, at 7](#)

[Nelson & Simek - Zoom Training for Lawyers \(with slides\) - LSBA, May 7, 2020](#)

[Zoom Remote Hearing Training CLE - Texas - March 27, 2020](#)

[Online Meeting & Seminar Platforms - Indianapolis Bar Association](#)

**XII. The Supreme Court Should Establish a Family Law Case Web Page for Placement of All Policies and Procedures Adopted to Respond to the COVID-19 Outbreak and to Restart Family Law Trials as The Primary Resource for the Public, Attorneys, and Judges.**

***Comment***

To date, the Supreme Court has been successful in being consistent in providing information to the public, the bench, and the bar regarding the impact of COVID-19 upon the judicial branch operations. Transparency and consistency are just as important in the months to follow as the judicial branch processes cases and reopens to the public. It builds trust.

Communication is key to maintaining confidence in the judicial process and in the hope that the people involved in the process will have their cases heard. The long-term goal is to return to normal functioning and return to expected case processing timelines as previously established.

It is necessary to provide all stakeholders the information they need in a simple and concise manner. By creating a Family Law Trial COVID-19 resource page on the Judicial Branch website, the information about handling a case affected because of COVID-19 or handling a new case is easily accessible. It serves a purpose during this period and is resource specific.

Although the Judicial Branch does not include links to outside materials or sources on its regular web pages, consideration should be given to inclusion of a link to the Iowa State Association of Counties *Recommended Checklist for Mitigating Exposure to COVID-19 While Providing Services to the Public* (or updated PDF forms) while ensuring links to Clerks of Court are also included so

people can obtain the most current health and safety information on each courthouse.

The web page should include clear directions for the video conferencing platforms and information as to what court orders will be issued containing case-specific directions.

The web page will allow the Court to continue communicating clearly, simply, and frequently, as it has since mid-March. This is a crisis, one that will hopefully diminish. However, until it does, and until our systems are back to normal operations, the web page should be the go-to resource for getting things done in family law cases.

**XIII. The Supreme Court Should Implement Contingency Plans in the Event of a “Second Wave” of COVID-19.**

***Comment***

Much is uncertain, and it is prudent to have a contingency plan if a second wave of COVID-19 strikes Iowa. The policies and procedures established following this task force’s recommendations should be structured so that, if a resurgence of COVID-19 occurs, the family law trial system can be continued in this alternative manner across the state, avoiding a shutdown or a slowdown as initially experienced. Effective directions on the use of technology and structured procedures that will allow completion of hearings and trials should be included in any contingency plan.

Although we all hope for the best, preparation for the worst will ensure that the judicial system does not come to a halt if a resurgence occurs and/or second wave. Family law cases should continue to be processed while keeping the public safe.

A contingency plan should be adopted within 45 days to ensure that administration of justice in family law cases continues without further interruption in the event of a resurge or second wave of COVID-19.