



THIRTY-SECOND ANNUAL  
CORPORATE COUNSEL SYMPOSIUM  
MINNEAPOLIS, MINNESOTA  
TUESDAY, NOVEMBER 9, 2021



## **After-Effects: The Lasting Impact of COVID on Trials and Investigations**

### **Guest and Dorsey Panelists**

**Hon. Toddrick Barnette**, Chief Judge, Hennepin County District Court, Minnesota,  
Fourth Judicial District

**Laura Hammargren**, Assistant General Counsel, Litigation, 3M Company

**Beth Forsythe** and **Andrea Wechter**, Dorsey & Whitney LLP

### **Program Materials**

PowerPoint Presentation

Materials are Available on [www.dorsey.com](http://www.dorsey.com) at

<https://www.dorsey.com/newsresources/events/event/2021/11/corporate-counsel-symposium-2021-materials>

## After-Effects: The Lasting Impact of COVID on Trials and Investigations

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November 9, 2021

**Scene illustrating the technological challenges posed by virtual court hearings, from Texas's 394<sup>th</sup> Judicial District Court (February 2021).**

## Agenda

- **Introductions**
- **Impacts of COVID on practice**
  - Substantive
  - Procedural and logistical
- **Near-term shifts**
- **Long-term/permanent impacts**
  - Redefining in-person versus virtual needs – finding balance
  - Technological advances
- **Adaptability is key**

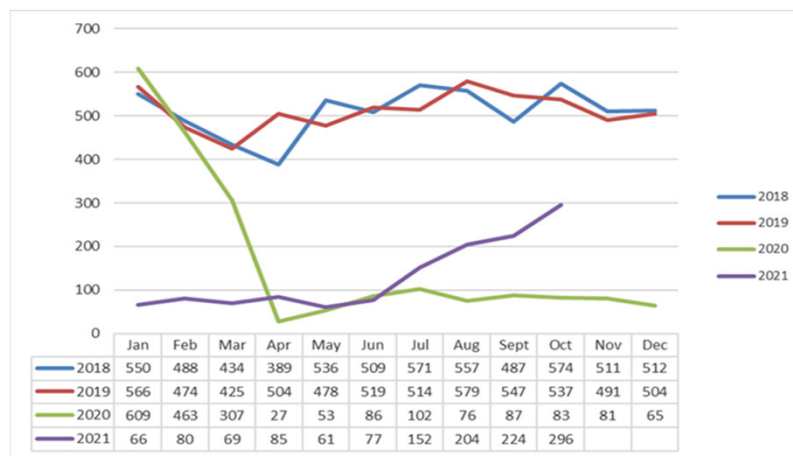
## Pre-COVID Practice

- **Chief Judge Barnette**
- **Laura Hammargren**
- **Andrea Wechter**
- **Beth Forsythe**

## Impacts of COVID on Practice – *Substantive*

- **Fewer employment cases filed in 2020 (Lex Machina: federal court employment cases down 12% in first three quarters of 2020)**
  - Harassment: -22%, ADA: -20%, Discrimination: -17%
  - Trend may continue with more flexible work from wherever policies
  - But see COVID-related employment cases (FMLA, FLSA, vaccine req'ts)
- **Impact of eviction moratoria (residential and commercial)**
- **COVID-specific cases**
  - Vaccine mandates
  - Fraudulent medical supplies
- **State claims**
  - Hennepin County divisions: Civil, Criminal, Family, Probate, Juvenile

## Impacts of COVID on Practice – *Eviction Moratoria*



Courtesy: Fourth Judicial District Court, Minnesota

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## Fighting Respirator Fraud Globally. Every day.

### 3M Fraud Hotlines

3M has dedicated teams to investigate fraud globally

Reports to date: **15,900+**

### Legal Actions

**39**  
lawsuits filed to date

**55,300,000+**

**21** temporary restraining orders granted

### Trademark Takedowns

counterfeit respirators seized

**16** preliminary injunctions granted

**24,800+**

false or deceptive social media posts removed

**26,500+**

fraudulent e-commerce offerings removed

**400+**

deceptive internet addresses or content removed

[https://www.3m.com/3M/en\\_US/worker-health-safety-us/covid19/covid-fraud](https://www.3m.com/3M/en_US/worker-health-safety-us/covid19/covid-fraud)

## Impacts of COVID on Practice – *Substantive*

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## Impacts of COVID on Practice – *Procedural and logistical*

- **Initial delays in all aspects of litigation (depositions, hearings, trials)**
- **Making it work**
  - Discovery during COVID (depositions)
  - Trials during COVID (bench vs. jury, effectiveness)
- **Managing litigation through COVID**
- **Impact on corporate investigations**

## Near-term shifts (through 2022)

- **Default seems to be litigation activities will be remote where possible**
- **What is possible vs. what is most helpful to the case**
- **Discovery and Mediations**
  - cost savings vs. credibility (particularly in depositions)
  - value of shared downtime to case, relationships
- **Pre-trial hearings: interact with the judge live, see the courtroom**
- **Trial: connection with judge, jury, witnesses**

## Long-term or permanent impacts – *Finding Balance between Live & Virtual Litigation Activities*

- **Standardizing default settings for litigation activities**
  - Minnesota Judicial Council effort
  - Legal departments
  - Law firms
- **What weight, if any, should younger lawyer training and engagement carry in these considerations?**
- **How might long-term changes be implemented – Rules of Civil Procedure, judges' preference documents, etc.?**

## **Long-term or permanent impacts – *Technological Impacts***

- **Will digitization widen or narrow the gap between those who can and can't access the justice system?**
  - E-filing
  - Remote proceedings (arraignments, motions, pre-trials)
    - Saves court costs for governments and clients with lawyers
    - Increases transparency where jurisdictions stream proceedings online
      - But will expectation be that all proceedings, even live, will be streamed then?
  - Access to technology as equity issue – cuts both ways
- **Discovery obligations: Expectations for collection of text messages and app-based communications?**

## **Adaptability is key**

- **Judges, rulemakers, legislators – need to adapt rules to welcome new professionals, new processes, and new technologies**
- **Skills for new lawyers: project/process management, design thinking, data science**
- **Communication within and across organizations about what is working and what is not, and willingness to shift in response**