

Episode #1: How is COVID-19 impacting our Texas Family & Divorce Law Court system?

Jake: Well, this is the first podcast for Walters Gilbreath. And since this is our very first time doing this, I thought we would start off with introductions. So I'm Jake Gilbreath and I'm here with my partner, Brian Walters. And Brian, why don't you tell us a little bit about yourself? Yeah.

Brian Walters: Hi. I am a board-certified family lawyer based out of Houston, but I take cases all over the state of Texas, primarily Dallas, Austin, and Houston. And I'm here to help try to answer some questions during this trying time.

Jake: All right and I'm Jake Gilbreath. I'm board certified in family law as well. I practice primarily out of Austin, but just like Brian, I take cases throughout the state of Texas, primarily Dallas, Houston, and Austin.

So I thought what we would do is jump right in into the topic that of course everybody is talking about, which is the COVID-19 breakout and the effect that it has on our practice. Let's first talk about the court system and how the court system is dealing with the social distancing and the shelter in place and the current orders that are out in the state of Texas. So Brian why don't you tell us how things are being handled, in Harris County, which is Houston and the surrounding areas.

Brian Walters: Well, it's pretty much ground to a halt. As far as in-person hearings, there are some rare exceptions that are family violence type situations.

I was in court last week on one of those. Generally everything is submitted by you filing and if there are hearings, it's either done by submission, where the judge looks at what's filed and makes a ruling or sometimes by audio or video conference. Generally speaking, I'd say 90% of, uh, the forward momentum of the courthouse is halted at this time.

Jake: How are the audio or video recordings working down in Harris County?

Brian Walters: Well we're using Zoom recordings and that seems to work fairly well. The judge will send out a link everybody will join in and we'll have a hearing. A lot of the time it's over relatively straightforward things that don't require a lot of documents or testimony.

When it does require that, then we go ahead and kind of email and match exhibits. And we just put on testimony by video, like you otherwise would, which is something that we've ever done before in our court system which has a real strong emphasis on live testimony. But it's, it's worked in the limited times that we've been able to use it.

Jake: When you say you had a family violence hearing, why was the court open or why did the judge bring y'all in for that type of hearing?

Brian Walters: That's considered an emergency or important enough to get some actual, real, court time involved, even if that puts the litigants in the courtroom at some risk. That's

how important it is and how seriously we take that issue. So they will make exceptions with live testimony, but it is pretty rare.

Jake: That's pretty much the same in Travis County surrounding areas. But in my experience the judges in Travis County are using zoom links for kind of moderate, smaller hearings. Just like Brian was talking about, there are some in-person hearings, but they're reserved for what it's called essential matters.

That's mainly family violence cases where there's protective orders, family violence happening in the home and the judge needs to get action on it right away. As far as the zoom hearings they're using zoom and trying to push hearings forward. A lot of times it's little short review hearings, for like Brian said, not a lot of evidence or not a lot of documents.

Travis County though, is trying to push forward to do more and more hearings than just a little short reviews or band-aid hearings. The way they're doing that is they're telling folks to look at the case or the court in which their case is filed. So for example, if you're filed in the 419th court or the 200th district court, you contact that individual court and try to schedule a hearing.

Typically the way Travis County works is we have, what's called a rotating docket and they sort of randomly assigned cases just based on what judges are available. With the COVID-19 breakout and the stay at home orders. They're having folks contact the individual court that you're filed in and approaching that court to see if that judge will give you a hearing and that's the option that they're giving us. Sometimes the judges are saying "you know, this is something important enough. Let's have a hearing over zoom." But sometimes frankly they're saying that's not important enough for the court's time and y'all wait until the shelter in place is over.

Williamson County, Hays County, the same thing. Williamson County I think is using teams and probably conducting a few more evidentiary hearings than the surrounding counties. The point being is the courts are operational but limited. Everybody's having to adapt but the courthouse is still available, just to a lesser extent than it typically is.

So now let's talk about ways that cases can still get resolved or move forward when the case, uh, can't go to the courthouse, you know, before COVID-19 or used to, and when cases are, we can't resolve them or we can't move them forward.

We're used to just going down to the courthouse and having a judge help move the case forward. And even if you don't have a hearing that a lot of times, just the fact that you can go down to the courthouse helps move cases forward. That not being an option, there's lots of alternatives out there though that people are focusing on now to get a case moving forward.

So folks just aren't sitting there in a divorce or custody case and have no way to move forward. We actually wrote about this on our website. The three alternatives that we talk about are mediation, arbitration, and using what's called a special judge or more commonly known as a private judge.

So Brian, why don't you tell us about mediation and what you've seen happening with mediations, particularly since COVID-19 hit the United States.

Brian Walters: During the first week or so many of the mediations and other ways of resolving cases were canceled because I think it just confused a lot of lawyers who are not very tech savvy for the most part about how in the world are we going to do this by video or audio?

I think also initially there was some thought that maybe this would be real short term, and it's clear that it's not short term. It's also that I think people realize it's not that difficult to do a video mediation or through something like zoom and so we've seen those pickup.

What I think we've seen is two things. I think if both parties want to get to a resolution I think you've got even greater motivation to do so because everybody knows you're not going to get down to the courthouse to get it resolved otherwise. So, you've got that additional, I guess friction, if you don't settle where people are thinking "Hey, this is going to contract out. This is going to be more, more lengthy and stressful for me. So I want to try and get this over with." So I think actually if both people are in good faith then you've got a better chance of settling and actually if you've got one or both of the parties that don't want this to go forward or aren't there in good faith, then it's probably less likely to settle because normally what happens in the mediation is you've got to trial.

So even if you don't want this to be divorced, you know that's going to happen and you might as well do mediation try to get it resolved. But now if you're looking at significant delays and uncertainty about when it's going to be resolved, if you can just kind of cross your arms, if that's your attitude, you figure there's no real penalty for that, at least no immediate penalty for it.

So you can kind of go both ways is what we've seen.

Jake: Yeah, I think that's kind of the same in the Travis and surrounding areas. At first everyone sort of canceled mediation and just kind of sat there because we thought it'd be a week or so. Then I think people started realizing that you can do a mediation over zoom or Skype or something like that.

And the mediators in the Travis and Harris County areas have really adapted to doing virtual mediations. Essentially what I've seen is a lot of mediators do is create virtual rooms and the mediation conducts just like a regular mediation would, just being virtually. We talk about mediation on our website and how it works and essentially what works the same way.

But, like Brian was saying there's that backdrop of folks not being able to go down to the courthouse. Like he could, if a mediation doesn't resolve. I think more and more as the longer this takes, people start signing up for arbitrations and private judging. So the family code says that a case can actually be referred by agreement to what's called arbitration.

What arbitration is is essentially a private process to resolve the dispute, but it's a binding process. So you actually have a decision maker as opposed to mediation where you're just

trying to work it out. The mediator can't make you do anything. In arbitration, the arbitrator actually makes a decision at the end of the dispute.

It has to be agreed by the parties to go to arbitration, but a lot of people are doing that now to get their cases resolved and to pick an arbitrator, you pick someone like a board certified lawyer or a retired judge. You tell that individual here's our dispute. It could be something smaller, like temporary orders when a divorce is filed or it could be something much larger, like the entire case.

And you tell that arbitrator you want him or her to resolve the dispute. The arbitrator will conduct the arbitration probably over zoom or teams or something like that and then resolve the dispute. So that's one way folks can move forward even when the courthouse isn't available.

Another way is what's called special judging, which is in the Texas civil practice and remedies code. That would require an actual retired judge sit as a special judge. Just like arbitration, it's a private process. It's resolved outside the courthouse. You conduct essentially a hearing in front of a special judge who's retired and that judge makes the decision.

The differences are talked about on our website. The main difference is that if you do a trial by special judge, you have the right to appeal just like if you're in front of a district, judge. In arbitration your right to appeal is much more limited, but those are all different options to resolve the case even when the courthouse isn't available.

So now let's talk about ourselves. We've been operating completely remotely. We've been meeting with clients remotely. Our staff has is completely stay at home and working remotely. So Brian, why don't you talk about that experience? You know, that was a big decision that you and I had to make a few weeks ago about how we're going to handle this.

How are we gonna keep our staff safe, our clients safe while still providing services?

Brian Walters: Yeah it's been pretty seamless as you said, we were doing this long before this came about. We've been able to run our firm, everybody's been able to work off of the laptop that we issued them anyway, so that's been relatively easy. I had some concerns early on about one of our clients who wanted to meet and go over this and that, or new clients who wanted to meet and I think everybody can read the newspaper and see that that's really not a good idea right now and so we really haven't had issues with that.

There's been a remarkable lack of need to be in a physical space with other people. I think that it is a temporary situation. No one knows how long it's going to last. It's probably not something that can go on forever, but we've adapted to it pretty well. I think you know I've been pleasantly surprised about it.

Jake: Yeah, we'll see when that is. I guess every single day we opened up the news to see if this is going to be two weeks or two months or two years of this, but a lot of uncertainty. I really am proud that we've been able to adapt.

I think we'll probably continue to adapt. I'm ways talking to lawyers around me, seeing what they're doing, offering advice for other folks. And it's an interesting time that we're living in, but, uh, things certainly move forward, uh, in our world. So I think that's probably the overall theme of this is it's different.

So what an interesting time to do our first podcast. That sound good for a wrap-up for our first episode?

Brian Walters: Sounds good. We'll wrap it up and we'll be back with another episode

Jake: All right. Bye. Bye.