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## ***The divorce and family attorneys of Lynch & Owens share their perspectives on how the pandemic has impacted courts, clients and their own work as attorneys.***

The world has changed in the wake of the coronavirus. In Massachusetts Probate & Family Courts, the virus has posed unique challenges, as a combination of [court closings](#), [massive layoffs](#), and [the impact of social distancing on parenting](#) and child-rearing have created a perfect storm for Massachusetts residents. Massachusetts Probate Courts have [been closed to many non-emergency matters](#); however, the issues that drive individuals to the Probate Court – including job loss affecting [alimony](#) and [child support](#), child safety concerns, and [domestic violence](#) and substance abuse – have skyrocketed during the pandemic.

For practicing [family law attorneys](#), the virus has been a legal roller coaster. Professionally, family law attorneys usually measure changes in legal trends over the span of years or decades. With the virus, legal trends seem to peak and recede over the course of weeks.

## **Social Distancing Causes Spike in Emergency Motions for Child Custody**

In the early days of the virus, attorneys saw a huge spike in [emergency cases](#) focused on parenting time and social distancing, with many parents concerned about their children transmitting the virus between households and the impact of “stay at home” orders on visitation. Many of these issues subsided, to a degree, after parents became used to life under quarantine. Then came the massive layoffs, as parents and former spouses rushed to Probate Courts to modify child support and alimony orders. Many of these modification cases remain on hold, piling up in an ever-lengthening queue, creating a backlog of work that awaits the re-opening of the courts.

In more recent weeks, Massachusetts Probate Courts have scheduled an [increasing number](#) of pretrial conferences and other hearings by phone. For attorneys, this has meant re-awakening cases that were temporarily dormant in the early days of the crisis, when courts were simply postponing all hearings. As these cases have become active, attorneys find themselves working without familiar litigation tools, such as depositions or enforceable discovery rules.

## **Massachusetts Probate Courts Slowly Expand Non-Emergency Hearings**

Finally, as Massachusetts residents become more accustomed to the “new normal” of staying at home, attorneys are now seeing an uptick in new [divorce](#) filings and [modification](#) actions, as residents reassess their living situations and take action to change their circumstances. As individuals, we are not built to remain in a constant state of emergency. Instead, we adjust and adapt, adopting new habits and redefining what makes us happy. Against this backdrop, Massachusetts residents are increasingly seeking to forge ahead with their lives despite the pandemic.

For a closer look at how the virus has impacted Massachusetts family law attorneys, I interviewed four attorneys at Lynch & Owens: [Carmela Miraglia](#), [Kim Keyes](#), [Nicole Levy](#), [James Lynch](#) and [Jason Owens](#). Here is how they described the pandemic.

## 1. What concerns/fears are you hearing from clients during the virus?

**Carmela M. Miraglia:** Many of my clients have put their litigation on hold and hunkered down with their families during the crisis. As things open up, I expect they will return to their cases. Many clients have expressed fears about the economy, their jobs and the housing market. There is a sense that income and wealth are disappearing that might not come back easily.

**James M. Lynch:** Most of the concerns I hear are economic. People are worried about the crashing economy, job loss and disappearing wealth. Another big concern has been access to Probate & Family Courts. The Courts were already crowded and chaotic; now they are closed to most business. When the Courts re-open, the backlog of cases is going to be astonishing. In the meantime, people are looking to attorneys to [use our connections and resources to gain access to the courts](#). Individuals who are trying to navigate the system without attorneys are really struggling right now.

**Kimberley Keyes:** Whether it is safe to have a child travel between parents’ homes under their parenting plan, given the risk of transmission. Early in the crisis, there was great concern from parents who were afraid their child would infect them with the virus, causing them to miss work. After the governor shut down most businesses, this concern decreased to a degree, but I expect it to return as the economy opens back up. At first, clients were constantly worried about whether the other parent was taking proper precautions to protect the child from possible exposure. As the weeks have passed, many parents have worked out agreements on social distancing, but the disagreements are not going away.

**Nicole K. Levy:** There is a lot of concern about keeping elderly and immunocompromised family members safe. Parents who do not need to worry about vulnerable family members have generally settled into a rhythm when it comes to social distancing and staying at home. As the virus becomes more and more prevalent, I think a lot of healthy people have started to think about infection as a risk they cannot afford to take, but for those with vulnerable family members, the risk only increases.

**Jason V. Owens:** Early on, there was a lot of fear and confusion about how [parenting time would be impacted by social distancing](#) and lockdown orders. When the layoffs hit, economic insecurity became the new fear. As the quarantine relaxes, I expect a second wave of concern on child-related issues as parents struggle to agree on how quickly and to what extent social distancing rules should relax for kids. Quarantine fatigue is going to result in conflict between parents.

## 2. What advice are you giving to clients during the coronavirus?

**Carmela M. Miraglia:** In general, I have encouraged clients to try to work with the other parent or former spouse as everyone is facing the same challenges and a conversation may get you a lot further than a court order. I try to remind clients that the other party is often afraid of the same things that are worrying the client. Search for common ground to avoid conflict.

**James M. Lynch:** I tell clients to be very careful about what they put in writing (texts, emails, social media) to or about their co-parenting partners. News and information about the virus is changing rapidly. Making a bold statement about the virus today could look foolish in a couple of months – when a judge is deciding whether you should have denied the other parent his or her parenting time, or whether you should have taken the child out of state for the weekend.

**Kimberley Keyes:** I have reinforced that parents need to follow court orders during the pandemic unless there is a true emergency – i.e., where there is credible evidence of a threat to the child’s health, safety or welfare – and we can obtain a court order changing the current order.

**Nicole K. Levy:** That the remedy of going to court is limited right now and to try and resolve conflict through each other or attorneys.

**Jason V. Owens:** I have advised clients to follow the recommendations from the Massachusetts Department of Public Health when it comes to caring for children during the crisis. The information about the virus on the news media, among medical providers and even at the CDC seems to be changing all the time. When in doubt, I tell clients to follow their local authorities. That means town, city and state recommendations and advisories. Do not argue with the other parent about proper pandemic behavior; pick a set of local guidelines to follow and stick with it.

## 3. Have you heard from many clients who have been laid off? How is this impacting their cases?

**Carmela M. Miraglia:** No.

**James M. Lynch:** No.

**Kimberley Keyes:** I have had multiple clients laid off in the construction industry. Most laid off clients believe so far that they will be able to continue paying child support at the court-ordered amount or (in a [mediation](#) case) an agreed-upon amount at least for the short term, although this could change in the near future.

**Nicole K. Levy:** Yes, I have filed [several motions to modify child support](#) in pending divorces.

**Jason V. Owens:** I have filed multiple motions for clients who have been laid off. I have also seen a number of party opponents argue for lower child support or alimony due to layoffs or reduced income. These cases are often most complicated with self-employed parents who experience a slowdown in business but are not definitively laid off. It is a very challenging environment for forecasting self-employment income in a reliable enough form to set a child support or alimony order.

## 4. Have you heard from clients who are no longer receiving alimony or child support because their spouse or other parent was laid off? How is this impacting their cases?

**Carmela M. Miraglia:** Again, no, everyone seems to be able to make their obligations right now and are waiting to see what happens after the stay home order lifts.

**James M. Lynch:** No.

**Kimberley Keyes:** I have one new client whose ex decided he could no longer afford to pay child support (he didn't give a specific reason). He already has considerable arrears, so we have filed a [Complaint for Contempt to enforce child support](#).

**Nicole K. Levy:** I had one client whose spouse told said he could not afford child support but did ultimately choose pay— rather than face a [contempt](#) filing.

**Jason V. Owens:** I have several cases in which one party is paying support with unemployment benefits at a reduced level from their child support or alimony orders. With Probate Courts not presently hearing most [contempt cases to enforce most child support or alimony orders](#), the remedies for these clients are limited in the short-term. I expect the courts to begin hearing more enforcement cases by telephone or video conference if the courts remain closed.

## 5. What issues are you seeing with visitation/custody cases?

**Carmela M. Miraglia:** I have a case in which a party's parenting time took place at a supervised visitation center, which is now closed. We are trying to facilitate parenting time via Zoom, but

the child is very young, and her attention span is limited. No amount of redirection is going to get the parent any more than 15 minutes at a time with a young child on a screen.

**James M. Lynch:** I am hearing from parents whose opposite number works in the health care industry and is being exposed, directly and indirectly, to coronavirus patients. Some parents are worried about infection of their children during overnight visits, while others view that as a statistically negligible risk but are worried about their children becoming carriers of the virus back to them.

**Kimberley Keyes:** Parents unilaterally withholding or trying to withhold parenting time based on generalized fear of Covid-19 exposure, without credible evidence of an actual threat to the child's health, safety or welfare.

**Nicole K. Levy:** I have received many questions about how to navigate the advisories coming from the government, and what impact that has on parenting time. Some people are staying with their court ordered schedule, some have come to a new schedule to limit transitions, and some have needed attorney intervention to assist in what to do to remain safe.

**Jason V. Owens:** As Massachusetts and the country gradually re-opens, I am hearing concerns from clients who believe the other parent is moving too quickly or aggressively away from social distancing. There is enough contradictory information in the media and even between states for parents to take different views on what is safe and appropriate for children. If a parent has the children on a sunny spring weekend, there will be temptations to go to the beach or a family cookout or a playdate. As perspectives diverge about safety and social distancing in society at large, we will see the same conflicts play out in our cases. The best bet for parents is to try to pick a single set of state or local recommendations to both agree to follow; as the recommendations change, parents can change their behavior in a consistent way.

## **6. Have you dealt with any cases involving out-of-state parenting time, such as a parent wanting to bring children out of state?**

**Carmela M. Miraglia:** No.

**James M. Lynch:** No.

**Kimberley Keyes:** No.

**Nicole K. Levy:** I have a case where the other party lives outside Massachusetts and wants to continue coming to Massachusetts to see the child, which is not feasible at this time.

**Jason V. Owens:** I have had several cases in which children travel out of state for parenting time. For the most part, out of state parents have agreed to postpone their visits. As the weather warms, however, and other parts of the country relax social distancing at different rates, I believe

this issue will become more common. If Massachusetts is too restricted, some parents may feel, why not travel to a state with fewer restrictions? Again, as increasingly divergent and conflicting views about social distancing continue to emerge – between states, regions and political figures – those conflicts are going to play out in families. The challenge for attorneys is forecasting how judges will react to these views.

## 7. What advice are you giving to clients about social distancing and parenting time?

**Carmela M. Miraglia:** My clients have been managing their parenting time without issue; I have not received any calls regarding parents withholding the children.

**James M. Lynch:** I tell them to use their best judgment as responsible parents and work to enlist their co-parent in a cooperative strategy that takes the long view and puts the best interests of the child above their own.

**Kimberley Keyes:** That people’s parenting styles and tolerance for risk can vary significantly, but again, as long as the other parent is not knowingly placing the child in jeopardy, a court is unlikely to grant an “emergency” order preventing the other parent from seeing the child. The real trick is knowing what kind of behavior constitutes “placing the child in jeopardy.”

**Nicole K. Levy:** I strongly suggest that parents follow social distancing rules for the children, because this is what Massachusetts courts currently expect from parents. At the same time, I tell clients that in order to cancel parenting time, a court order is required.

**Jason V. Owens:** Early in the crisis, Massachusetts courts were granting emergency orders that denied parenting time for parents who failed to take steps to protect children from the risk of transmission. The volume of emergency motions has subsided to a degree in recent weeks, but it will be interesting to see if “quarantine fatigue” begins to impact how judges react to these issues. The roadmap is murky for what constitutes sufficient social distancing for children, particularly if there are there are vulnerable family members who could be impacted by transmission. If and when we receive hard data on immunity – i.e. the degree to which individuals with Coronavirus antibodies prevent infection – then some of these issues could be mitigated through serological testing. If a child is largely immune to infection, this obviously changes the equation for parents.

## 8. What type of new cases/clients are you seeing during the crisis?

**Carmela M. Miraglia:** I received a call from a married client who wanted to stop her spouse from bringing their adult son, as well as the son’s girlfriend and 2-year old child, to live in the parties’ home. The client was concerned that the new household members would undermine her status as an essential worker. The client ultimately moved out of the house to a temporary

location. I am finding that people are afraid to start an action if there is not an underlying case because it could make their situation worse. I spoke with an unmarried father who wanted to file a custody action because the mother was threatening to withhold parenting time to get more money, but he was reluctant to do anything because there is no emergency and he is afraid he won't see his daughter. The lack of direct access to the courts is forcing people to make difficult decisions.

**James M. Lynch:** We have seen an influx of cases involving parties who reached a divorce agreement on their own, but who need an attorney's help to ensure their separation agreement is approved by a court. Right or wrong, [attorneys have better access to the courts right now](#). We are seeing more cases involving layoffs and lost work due to the shutdown as well, although I anticipate a much bigger wave once courts start hearing these cases regularly.

**Kimberley Keyes:** People whose ex-spouse or partner thinks they can take advantage of the courts' closure by unilaterally ignoring or violating court orders, either by withholding parenting time or not paying child support.

**Nicole K. Levy:** Primarily people who have parenting time issues, but parties in economic distress due to the shutdown are increasing too.

**Jason V. Owens:** At first, there was a massive influx of parents with emergency [visitation](#) issues. Next came parents seeking to modify support obligations due to job loss. Moving forward, I anticipate a second wave of visitation cases, as well as an increasing number of divorce cases as individuals adjust to life under quarantine and reach their breaking point with spouses and domestic concerns.

## 9. What challenges have you faced as an attorney trying to work through the virus?

**Carmela M. Miraglia:** It has been frustrating to see cases sitting stagnant because there are no motions to move the matter forward. To some degree, this is just luck of the draw. At the moment the pandemic hit, many of my cases were either early stage, or at a point where they can remain status quo during the shutdown. Accordingly, clients have been reluctant to authorize work on their case because they do not know how long this will last and they do not want to incur costs. For attorneys with cases that are further along in the litigation process, the change is less noticeable.

**James M. Lynch:** Addressing the legal needs of cases that are already in suit without the availability of court motion sessions. Although most attorneys are responding to discovery, courts are not hearing discovery motions right now and depositions are largely on hold. Video depositions remain an option, but every attorney I know prefers live testimony to speaking remotely over a screen.

**Kimberley Keyes:** Getting used to working amid the chaos of working from home with my family; dealing with occasional technological glitches that occur with working remotely; not

having face-to-face contact with clients and colleagues; limitations on discovery and other routine litigation tools; having contempt hearings and pre-trial conferences continued, which prolongs litigation. In general, the uncertainty prevents many cases from moving forward and resolving in the timeframe that was initially expected before the shutdown.

**Nicole K. Levy:** Having to tell clients that they will likely not be heard in court, barring an emergency, as well as having to work with clients who had court dates that are being rescheduled.

**Jason V. Owens:** Responding to more emergency motions while courts are still adjusting the “rules of the road” for litigation. A significant amount of my practice focuses on complex financial litigation. Some of those cases continue forward, but the influx of emergency child custody issues requires a different approach, and different habits, than what I had become accustomed to in recent years. Coordinating with office personnel and staff who are working remotely has been a huge challenge, but I am very proud of our response as a firm. Our staff, from our attorneys on down, have really risen to the challenge.

## 10. How do you think the legal world will be different/changed after the crisis ends?

**Carmela M. Miraglia:** I think more people may turn to [mediation](#) and conciliation to resolve their differences as they are seeing results from working collaboratively with the other party rather than waiting months to get before a judge incurring both financial and emotional costs, the latter of which can have long lasting effects on them and their children.

**James M. Lynch:** Long-term, very little, other than perhaps an acceleration of electronic practice, which could be a good thing. The courts (and attorneys) are notorious slow to modernize, so one silver lining could be increased efficiency and capabilities in terms of electronic filing and using technology. In the immediate aftermath of the virus, there will be an explosion of existing and new cases that will be seeking access to the courts for issue resolution that only judges can provide. That explosion will clog the court system for months before things return to normal. Moreover, it may take a while more before people will be able to work in close proximity with one another in courthouses without surgical masks being used. With massive delays, there are obviously concerns about how courts will dig out of the hole created by the backlog of cases. Will courts adopt new and efficient ways to process cases, or will the system end up hopelessly clogged? We really do not know.

**Kimberley Keyes:** The crisis has forced a lot of us out of our “comfort zone” of the office and the courtroom, leaving us to rely on previously under-used [technological advances such as Zoom](#) to get our work done. The issues that arise in family-law practice have not changed, but attorneys will have new skill sets for dealing with these issues, including a greater appreciation for alternative dispute resolution, since the courts have not been available to us absent an emergency. I also hope the state legislature will realize that the Probate and Family Court needs more funding to bring it into the 21st century and enable it to function more efficiently, to expand its ability to accept e-filing for matters beyond contested divorces, and to allow attorneys



to schedule hearings online without having to call or fax or email the court to find out if a particular day is available.

**Nicole K. Levy:** Hopefully, people will begin to see the benefits of not always running into court and seeking other means of resolution, like [mediation](#) and [collaborative law](#).

**Jason V. Owens:** Unfortunately, I think that we will see a fair number of family law attorneys struggle to keep their businesses afloat. Attorneys and firms that have not modernized or adjusted to the technical challenges posed by the virus are unable to service clients or generate revenue for themselves. I think that Probate & Family Courts will be at a crossroads as they seek to recover from the crisis. How will they tackle months' worth of delayed cases, as well as the inevitable rush of new filings that will occur when they reopen? Judges who cannot manage their dockets efficiently may find it impossible to catch up. For clients, I suspect the economic impact of the virus will outlast the medical component. Following the 2009 economic crisis, it took a good seven years for the economy to rebound; if anything, the current crisis is more severe. I anticipate a huge increase in bankruptcies, home foreclosures and poverty will hit middle class Americans in ways we have not seen in our lifetimes. Even if a vaccine was announced today, and the world and US economies opened fully in two months, I think we would be looking at several years' worth of acute economic distress, and that will impact the law at every level of society. The longer it goes on, the more profound the impact will be.

## More Coronavirus Coverage from Lynch & Owens

The attorneys of Lynch & Owens have been blogging about the impact of the coronavirus on divorce and family law issues, as well as Massachusetts Probate & Family Courts, since the earliest days of the pandemic. Our coverage has been featured in the [New York Times](#) and the [Boston Globe](#). Check out the links below for more Covid-19 coverage from Lynch & Owens.

*Coronavirus Impacts on Family Law:*

- [Nine Ways to Plan for Divorce During Quarantine \(5/13/20\)](#)
- [Ask Our Attorneys: How has the Coronavirus Impacted Family Law in Massachusetts? \(5/6/20\)](#)
- [Coronavirus News: Enforcing Child Support and Alimony Orders During the Crisis \(4/7/20\)](#)
- [Massive Coronavirus Layoffs Trigger Child Support and Alimony Reductions Across MA and US \(3/19/20 with updates\)](#)
- [Coronavirus Court Closures: How Covid-19 is Shutting Courts in Divorce and Family Law Cases \(3/14/20 with updates\)](#)
- [Can Coronavirus Fears Allow Parents to Cancel Court-Ordered Visitation? \(3/2/20 with multiple updates\)](#)

- *Massachusetts Probate & Family Court Updates:*
- [Coronavirus News: Mass. Probate & Family Courts Release Tidal Wave of New Rules](#) (4/9/20 with multiple updates)
- [Coronavirus News: County-by-County Info for Massachusetts Probate & Family Courts](#) (3/26/20 with multiple updates)
- [Massachusetts Trial Court Announces Comprehensive Response to Coronavirus for MA Courts](#) (3/15/20 with updates)
- *Mediation and Coronavirus:*
- [Mediation is the Best Divorce Option During the Coronavirus Crisis](#) (4/15/20)
- [Court Filings and Covid-19: How to File Agreements in MA Probate & Family Courts During Crisis](#) (4/9/20)
- [Surviving Coronavirus: Video Mediation for Divorce and Family Law Issues](#) (3/19/20)
- *Other media featuring Lynch & Owens and coronavirus:*
- [NY Times: For Divorced Parents, Navigating Coronavirus Is a Balancing Act](#) (3/27/20)
- [Boston Globe: For divorced couples with children, coronavirus creates added challenges](#) (4/10/20)

## Coronavirus Related Legal Services at Lynch & Owens

Lynch & Owens has adjusted our service delivery model in response to the coronavirus crisis. In addition to providing traditional divorce and family representation, during the outbreak, we are focused on delivering rapid-response legal services (including same-day service) to clients facing emergency financial and child-related issues, as well as assisting self-represented clients with document preparation and filings while the courts are closed for most regular business.

Clients can schedule same-day, 1-hour paid consultations with our attorneys by phone and we are accepting retainers as low as \$750 for additional consultation services. We are also offering same-day video mediation for parents, spouses and former spouses who are seeking to mediate coronavirus-related issues such as visitation, parenting time, and child support and alimony orders impacted by layoffs and unemployment. Our staff and attorneys have full remote access to all our office's resources in the event of mandatory quarantine or shelter-in-place order.

Please see our dedicated [Coronavirus Legal Services page](#) and [Coronavirus Mediation Services page](#) for more about services provided by Lynch & Owens and South Shore Divorce Mediation during the coronavirus crisis.

**About the Attorneys:** The attorneys of Lynch & Owens represent divorce and family law clients throughout Massachusetts, with offices located in [Hingham](#), Massachusetts and [East Sandwich](#), Massachusetts.

**Schedule a consultation today at (781) 253-2049 or send us an email.**

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