

**Jul 15, 2020**

## Press Release: NITA Releases Statement Supporting In-Person Jury Trials, Court Proceedings

By [AMY SHAPIRO](#) Jul 15, 2020

FOR IMMEDIATE RELEASE

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**BOULDER, Colo., July 15, 2020** —The National Institute for Trial Advocacy (NITA) released a statement on Monday, July 6, 2020, in support of maintaining future in-person jury trials and other adversarial proceedings with approved medical safeguards. In the statement, NITA maintains that in-person bench and jury trials are designed to seek and reveal the truth in a public forum and that virtual or remote proceedings deprives the litigant, judge, and jury from using all of their senses to weigh the evidence, thereby diminishing the parties' ability to have a fair and impartial outcome that is supported by the Constitution.

*“As trial lawyers, we are becoming increasingly concerned about the possible loss of the traditional in-person jury trial to the ‘virtual trial,’”* says Ben Rubinowitz, Chair of NITA’s Board of Trustees and managing partner at Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf. *“For well over 100 years, the in-person jury trial has served to ensure justice in both criminal and civil trials. It is unfortunate that based on current health concerns stemming from COVID-19 and the temporary needs of the courts, some would permanently trade the long-established guarantees of constitutionally protected rights in exchange for the perceived speed, cost, and convenience of a virtual trial.”* Mr. Rubinowitz further states, *“I am proud of the NITA Board for recognizing the importance of in-person jury trials and ensuring that the time-honored tradition of in-person trials continues in our country.”*

In the statement, NITA recognizes the need to move to online and virtual proceedings during the pandemic and will continue to train attorneys accordingly. Pamela Bresnahan, Chair-elect of NITA’s Board of Trustees and partner at Vorys, Sater, Seymour and Pease LLP states, *“NITA has been and*

*will continue to be the premier place to learn trial advocacy. While in person trials are always preferable, we commit to providing virtual training for lawyers during the uncertain times created by the COVID-19 pandemic. And we also commit to return to in-person training as soon as it is safe to do so.”*

NITA’s Board and Faculty consists of a group of trial lawyers from across the country. These dedicated individuals are committed to training their colleagues in high-quality advocacy in support of NITA’s pursuit of litigants’ right to fairness and equal access to justice. *“We’re proud to support lawyers as they practice in these uncertain times to ensure clients are getting the best possible representation regardless of whether advocacy is happening in person or online,”*says Executive Director Wendy McCormack. NITA’s statement on in person trials and court proceedings is online at <https://www.nita.org/response-updates>.

The National Institute for Trial Advocacy is the world’s leader in advocacy skills training and publications. A 501(c)(3) not-for-profit organization based in Boulder, Colorado, NITA is a service organization made up of a volunteer network of lawyers, judges, and esteemed advocates across the globe whose mission is to train and mentor lawyers to be competent and ethical advocates in the pursuit of justice. To learn more, visit [nita.org](http://nita.org), or call us at **(303) 953-6828**.

## NITA'S STATEMENT ON THE IMPORTANCE OF IN-PERSON ADVOCACY IN COURTS

The National Institute for Trial Advocacy (NITA), is a group of trial lawyers from every corner of the country. We are committed to training our colleagues in high-quality advocacy in support of our pursuit of litigants' right to fairness and equal access to justice. For 50 years, NITA has served as the model for advocacy training, including trial techniques and other skills that are universal across venues and among factfinders in any court of law.

Recent articles in the public and legal press have started a discussion about the need for virtual trials. During the COVID-19 pandemic, our judicial system has struggled to balance the competing right of health and safety with the right to due process in criminal and civil actions. The Fourteenth Amendment provides that no one shall be "deprived of life, liberty or property without due process of law." These words are meant to assure that all levels of American government provide fair procedures that secure an impartial judge or jury, an opportunity for confrontation and cross examination of witnesses, and discovery. For these reasons, NITA urges and promotes in-person jury trials and other adversarial proceedings with approved medical safeguards.

While there understandably have been temporary interruptions to open courtrooms and court proceedings, it is critical that our democracy preserve traditional judicial processes. The fundamental role of the judge or jury in any case is twofold: (1) to decide the facts based on the credibility of the testimony and evidence presented, giving appropriate weight to evidence that may be conflicting; (2) to apply the law to the facts determined to be reliable. In order to judge the credibility of witnesses, a trial must have procedures in place that are *effective for determining the truth*.

The compelling need for in-person proceedings where credibility can be assessed is so profound that the law prefers in-person trial testimony over recorded or transcribed deposition testimony, because "live testimony" permits the judge or jury to use their senses to judge the credibility of witnesses and to observe their responsiveness, demeanor, and how they react to unscripted questions to which they must answer in real time. Live testimony allows a litigant to confront witnesses in the manner intended by the founders of our Constitution. The dynamic interchange that occurs in trial between witnesses, the attorneys, judge and jurors is critical to ensuring that the factfinders' search for truth is undertaken on the most informed basis possible. Denying a factfinder these crucial tools deprives a litigant of a fair process in either a criminal or a civil case. It is therefore critical that our judicial system not default to remote or virtual proceedings, where such essential tools are severely compromised or eliminated altogether.

The efficacy of jury selection would likewise be compromised if *jurors* were not present in "open court." All prospective jurors take an oath to answer truthfully the questions posed during the jury selection process. As with the examination of witnesses, answering questions in open court exerts a powerful force for truth-telling. And the ability to evaluate the prospective juror's demeanor face-to-face has immeasurable value.

Both bench and jury trials, as well as certain dispositive hearings, are designed to seek and reveal the truth in a public forum. In all types of contested matters – whether a criminal trial before a judge or jury, a civil trial before a judge or jury, a child custody dispute between caretakers in a family court, an asylum hearing before an administrative officer, a

bail/bond/detention/release hearing before a juvenile or criminal justice judge, a domestic violence proceeding for a victim seeking the court's order of protection – remote, virtual, or other substitutes for in-person advocacy are a poor substitute for in-person proceedings. Virtual or remote proceedings deprive the factfinder from using all of their senses to weigh the evidence, and thereby diminish the parties' ability to have a fair and impartial outcome.

NITA is proud to continue to train lawyers for all adversarial proceedings, but NITA urges our local, state, and federal governments to maintain full and fair in-person trials and hearings in open, public courtrooms. Also, restricting public attendance at our court proceedings impedes the open administration of justice. Our system of justice must not relinquish constitutional protections in favor of virtual convenience. Nor should it succumb to the enticement of economic expediency. NITA recognizes that during the pandemic certain proceedings might have to occur remotely; however, in the long run in-court advocacy must take place. The “cauldron of truth” that a courtroom represents demands a live setting.

# Will COVID-19 Bring You The Damocles Sword or Midas Touch?



FREDERICK SHELTON

📅 June 10, 2020    🏷️ Practice Management, Spotlight Article

In recessionary times, the questions are always the same:



Two historical factors and one new factor, provide the answers.

## Practice Area

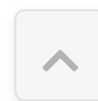
The first and most obvious factor to consider when evaluating the security of your position, is practice area. Certain practices will decline or even be eradicated for years. The key is to evaluate and accept the fact that you may need to make minor or even drastic changes in order to survive the COVID and Post-COVID era.

I spoke with Richard Newman, a patent attorney here in Las Vegas.

“As a small intellectual property boutique specializing in new gaming-related technology, COVID-19 stalled new work for the tech we typically addressed. In order to adapt, we pivoted slightly and are now doing more patent work in online gaming and non-gaming technology.”

While Richard was able to make a small change, one of my current clients is a partner in the Resorts & Hospitality department of an AmLaw firm. He spoke to me on the condition of anonymity.

“My work has literally been wiped off the face of the map. I have a couple projects where the funding is already in place but new business projects are nowhere to be seen.”



## AALM

*My advice to him was the same as I gave to real estate attorneys in 2009: Pivot with a pal.*

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Get together with a bankruptcy partner in the firm (especially a service partner who is motivated to share origination credit) and mix brands to become a hyper-niche in “Resorts & Hospitality Bankruptcy Specialist.”

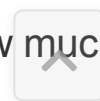
Clients tend to prefer attorneys who understand the idiosyncrasies of their specific industry. While this and other strategies may not always be successful (a great deal depends on the attorney’s ability to market effectively), having any strategy in place is better than inaction or denial.

Younger attorneys should also evaluate whether they should pivot. Associates in low or zero demand areas should pivot as quickly as possible – even if it means taking a severe pay cut.

We currently have a third year corporate associate, interviewing with clients for a position as first year attorney in bankruptcy at one firm, and health care at another.

## Cost Benefit Analysis

The next factor in determining job security is the Cost Benefit Analysis. How much you cost vs. what you bring to the table.





## AALM

The next safest group are the very best and hardest working, junior associates. Someone is going to have to do the grunt work and they're the cheapest labor in the firm.



*So who is living under the Damocles Sword?*

So who is living under the Damocles Sword? Other than a few service partners or senior associates in the right practice areas, the logical choice for layoffs has always been mid to senior level associates, Of Counsel and service partners. The math is easy on this one. They cost the most but don't generate revenue.

Recessions always illustrate the same cardinal sin: No one has the right to forego marketing efforts.

On the other hand, if you're in a high-value practice such as health care, bankruptcy or cybersecurity, you currently have the Midas Touch and the choices that come with it. You have a real choice as to whether you want to accept a pay cut or move elsewhere and get a raise.

I have received calls from partners who have been underpaid for a decade and now that their practice area is hot, are being asked to "be a team player."





## AALM

If you're in a high value practice area, now may actually be a good time to look around, because you are more valuable than you have been in nearly a decade.

However.

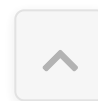
If your firm has always treated you equitably, then it's time to double your marketing efforts and help keep the ship afloat.

I spoke to Leslie Katz, a Regulatory, Blockchain & Fintech Partner at the national law firm, Clark Hill.

“While other people are in a holding pattern right now, we're busier than ever. Especially given that blockchain is now evolving to provide enhanced offerings for cybersecurity, which can include thousands of storage repositories for data, expansion of digital tokens and growing use for enterprise solutions”

She continued.

“While certain brands have nascent footholds in emerging practice areas such as mine, it's going to take more than brand to capture market share in the Post-COVID Era. Clients are going to look for firms that offer a more value-centric model like ours, beyond just delivering a legal product.”



## AALM

order to succeed in a high-end business practice, you need to deal with the politics, bureaucracy and lifestyle at an AmLaw, has been slowly disproven for years now. COVID is accelerating that.

AmLaw's and other firms that ignore Alternative Legal Service Providers (ASLPs) and the explosion of Virtual Law Firms are going to be in for a rude awakening.

John Lively is the Managing Partner of Practus, a virtual law firm that in two short years, has grown and gained a footprint that reaches from Los Angeles to Boston.

"We were built for this. We have no debt and none of the crushing overhead or long-term leases that were required in the 20th century law firm model.

"While the AmLaw's our attorneys once worked for are laying off hundreds of attorneys, we're poised for strategic growth and have begun implementing an aggressive plan to achieve that goal. The majority of attorneys we hire will see no decline in their pre-COVID incomes and many may see an increase."

“

*... we're poised for strategic growth and have begun implementing an aggressive plan to achieve that goal.*

The COVID Era has legitimized the virtual law firm concept overnight.



# AALM

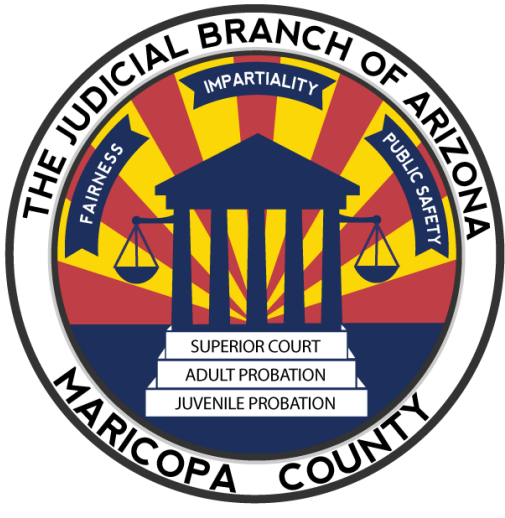
If your firm is operating under the “20th Century Business Model” it’s critical to pay close attention to the decisions being made by management. If they aren’t implementing specific strategies and changes right now, they’ve already fallen behind.

It’s not the biggest firms or most established attorneys who will survive. The attorneys and firms who are most capable of adapting, will become the next dominant species in the legal market.



## Frederick Shelton

Frederick Shelton is the CEO of Shelton & Steele ([www.sheltonsteele.com](http://www.sheltonsteele.com)), a national legal recruiting and consulting firm. Since 1993, Frederick has worked with associates, counsel, partners, groups and coordinated law firm mergers & acquisitions.



# Virtual Court Appearance Guide

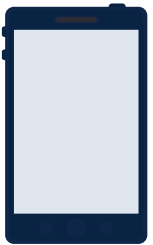
## Appearing before the court



Find a quiet place that is **not too bright** or **dark**.



**Dress neatly** and set the camera at your eye level.



If using your phone, **prop it up** so you can look at it without holding it.



**Know what time** you are supposed to log on or call the court. Try to be a few minutes early.



**Look at the camera**, not the screen, when you speak.

## Technology

Download the app being used by the court and check your **internet speed**. Do a **test run** to make sure everything works. If you don't have internet access **ask the court** what options are available.

**Charge your device**. If you are calling in by mobile phone, make sure you have enough minutes.

**Use earbuds** or headphones if you can and **mute your device** when you are not speaking. This will improve sound quality.



**Make sure the court has your current email address and check for new messages often.**



## Other tips and tricks



- Let the court know right away if you need an interpreter.
- Don't use virtual backgrounds or filters. Use your real name, not a screen name.
- If you can't hear or have technical problems, tell the court as soon as possible without interrupting.

QUESTIONS? CALL 602-506-3204



# CIVIL DEPARTMENT BEST PRACTICES FOR VIRTUAL COURT HEARINGS

## JUDICIAL BRANCH OF ARIZONA – MARICOPA COUNTY

The spread of COVID-19 has had a significant impact on the courts and the manner in which cases are heard and decided in Arizona. The Superior Court in Maricopa County has responded to that impact in many different ways, one of which is the implementation of a videoconference platform. The platform presently in use is GoToMeeting, which allows parties to appear remotely for hearings before the court.

When CIVIL DEPARTMENT judicial divisions set videoconference hearings, the parties will be provided with a link via email through division staff or the access information will be provided by the court in the minute entry or order setting the hearing. This link is separate from, and should not be confused with, the “bridge lines,” which are also referred to as the “audience lines” that allow for public access to court proceedings by providing a telephone number and an access code by which both parties and members of the public can virtually attend the proceeding. At a videoconference hearing, the bridge line is merged into the conference line; members of the public can hear, but cannot see, the videoconference participants. Counsel should feel free to share the videoconference link with their clients and others who need to appear by video (such as witnesses in a trial or evidentiary hearing). Those who do not need to see the proceeding or be present by video should use the bridge line

The GoToMeeting platform is user friendly and relatively easy to master after a little practice. That said, there are a number of ways by which practitioners can increase the effectiveness of the technology and in turn the effectiveness of their court appearances.



### Plan and prepare

- ▶ The court recommends that lawyers and their clients access the platform at least ten minutes prior to the scheduled start time for the hearing. During this time, participants should confirm that **THEIR DEVICES ARE PLUGGED IN OR FULLY CHARGED**, they have a good connection, and ensure that each can be seen and heard clearly. Practice sessions can be arranged with court staff in advance of the hearing to verify that the audio and video work properly for each participant, and to become familiar with the document sharing and marking features of the platform.
- ▶ Think about lighting. Generally speaking, natural light is best. As much as possible, the light source should hit your face straight on. If a light source such as a window appears on your video screen, you will likely experience darkness and shadows around your face. To reduce the shadows, turn your camera to eliminate the light source from appearing on your video screen.
- ▶ Minimize distractions. As best as possible, isolate yourself from distractions such as kids, pets, and outside noise (SUCH AS landscapers or other workers). **DO NOT CHECK TEXTS OR EMAIL, TALK WITH OTHER PEOPLE, OR TAKE OTHER PHONE CALLS UNLESS RELATED TO THE HEARING. WAIT YOUR TURN TO SPEAK. PAUSE BEFORE YOU SPEAK TO AVOID TALKING OVER OTHER PEOPLE. SPEAK AT A NORMAL VOLUME AND SAY YOUR NAME BEFORE YOU SPEAK.**



## Get ready.

- ▶ Video hearings should be treated the same as in-person appearances, and all participants should dress professionally AND REMOVE ANY MASK IF SAFE TO DO SO IN ORDER TO BE SEEN AND HEARD.



## Check your equipment

- ▶ Check your camera placement. The camera should be eye level or higher (no up angles). Closer is generally better. The Court and other hearing participants should be able to see your face clearly. If possible, practice your presentation with someone else who can give you feedback.
- ▶ Make sure you can be heard. Speakerphones often create an echo and poor audio quality. A Bluetooth headset or headphones with a microphone (airpods or hardwired headphones) are preferred. LOOK AT THE CAMERA WHEN SPEAKING, NOT THE DEVICE SCREEN. If you are not speaking, mute your microphone. This helps improve the sound quality for everyone.
- ▶ Technical difficulties happen. If you are having trouble with your wifi connection, disable your camera by clicking on the camera icon (the icon appears at the bottom of the GoToMeeting screen when you float your cursor over it). You will be able to see the participants appearing by video and everyone will hear you. If you are experiencing trouble hearing or seeing something you should be hearing or seeing, signal to the judge or use the Chat feature to communicate in writing.



## Before the trial

- ▶ Have your exhibits ready. Have a set of exhibits ready at the beginning of the hearing, and make sure each witness has a set. The exhibits should be marked to correspond to the exhibit index provided by the clerk of court prior to the hearing. If exhibits are submitted to the clerk of court electronically, the exhibits will be provided by the clerk of court to the judge in electronic format. Viewing participants on screen and electronic exhibits during a proceeding can be challenging; therefore, most judicial officers appreciate a courtesy paper copy of all exhibits you intend to use during the hearing. For ease of reference, each page of each exhibit should have an identifier such as a bates number. Exhibits that are displayed on the screen can sometimes be difficult to see clearly. If possible, while in presentation mode (screen share), be prepared to enlarge and highlight relevant portions of exhibits.





# PROTECTIVE PROCEEDINGS DURING COVID-19

Victims of domestic abuse, stalking, or harassment, including workplace harassment, may request a Protective Order from the Maricopa County Superior Court.

For any person in need of a protective order, **please remember that if you are in immediate danger, call 911.** For after business hours and on weekends, you may call your local law enforcement agency.

The following provides guidance for securing a protective order from the Superior Court. Protective orders may also be sought from municipal and justice courts and those courts have their own procedures.

The Maricopa County Superior Court continues to process petitions for protective orders as part of the Court's essential functions. This service is **Monday to Friday, from 8:00 a.m. until 5 p.m.** each day.

For an order of protection, an injunction against harassment or other protective order, you can begin the process by using your home computer, tablet, mobile phone or other access to the internet. If initiating the process at home is safe, you are strongly encouraged to use this system as it will result in significant time-savings at the courthouse, enhance social distancing and reduce exposure during the current pandemic. The system is user friendly and easy to navigate. Use of the AZPoint system does not, however, eliminate the need to appear in person at the Superior Court to secure a protective order.

To secure any form of protective order, the party must appear at the Maricopa County Superior Court Complex in downtown Phoenix, which is located at **201 West Jefferson**. (The other Superior Court locations in Mesa, North Phoenix and Surprise are not open at this time, but all Justice Court sites continue to operate.) After you have been cleared through security, you will be directed to the Law Library Resource Center where a representative will assist with the process. Throughout the process, social distancing protections are in place.

To complete required forms, go to: <https://azpoint.azcourts.gov/>

## AFTER ENTERING THE AZPOINT SYSTEM:

- Answer all of the step-by-step questions;
- After you answer all the questions, the system will provide a reference number, which you should save as you will be asked for your reference number when you appear at court;
- Call 602.506.5572, the Law Library Resource Center, and provide the reference number to the staff; and
- Staff will provide additional instructions, which will include instructions for your court appearance.

## FOR MORE INFORMATION ABOUT AZPOINT OR FILING A PROTECTIVE ORDER, THESE RESOURCES ARE AVAILABLE:

- [azpoint.azcourts.gov](https://azpoint.azcourts.gov)
- National Domestic Violence Hotline at 1.800.799.7233
- The Arizona Coalition to End Sexual & Domestic Violence at 1.800.782.6400

GET HELP  
TODAY

## \*REMEMBER

*Initiating the process from home should only be done so long as it is safe. If attempting to enter the responses at home is not safe, you may come to the courthouse at 201 West Jefferson, Phoenix, AZ.*



# Jail Tablet Hearings (JTHs) At a Glance

Jail Tablet Hearings (JTHs) allow in-custody defendants who are housed in Maricopa County jail facilities to attend hearings via interactive audiovisual system when they are on MCSO's Do Not Transport (DNT) list. The in-custody defendant will be in a quiet, private location in their assigned pod/unit with access to an iPad with a videoconferencing app, headphones, and a separate telephone to have a privileged conversation with their defense lawyer.

## Eligibility

- **Eligible Locations:** All jail facilities (Estrella, Saguaro, Lower Buckeye, 4<sup>TH</sup> Ave, Towers, and MHU) are able to hold JTHs.
- **Eligible Defendants:** JTHs are intended to be used for in-custody defendants who are on MCSO's Do Not Transport (DNT) list and in-custody self-represented litigants who need to attend Assignment Calendar to be placed for trial.
- **Eligible Hearing Types:** JTHs can be set for all hearing types with the exception of sentencing.
- "Plea on Demand" or ready *Change of Plea* matters can be scheduled by emailing [Settlement@jbazmc.maricopa.gov](mailto:Settlement@jbazmc.maricopa.gov). The scheduling requests must include a PDF of the signed plea agreement (signed by all parties) as an attachment.

## Logistics

- **JTH Requests:** Criminal Court Administration's JTH Group coordinates scheduling of JTHs. A judicial officer may set a JTH on motion of a party or on the Court's own motion. Other than Plea on Demand requests, all JTH requests must be made by a judicial officer's staff to the JTH Group, and it must be at least 48 hours in advance of the desired hearing date.
- **JTH Scheduling:** JTHs are placed based on available space and length of hearing:
  - **Estrella:** 8:30am – Noon, 1:30pm-4pm (30 minutes between hearings)
  - **LBJ:** 9am, 11am, 1:30pm, 3pm (30 minutes between hearings)
  - **Towers:** 8:30am – Noon, 1:30pm-2pm, 3pm-4:30pm (30 minutes between hearings)
  - **Saguaro:** 8:30am – Noon, 1:30pm-2pm, 3pm-4:30pm (30 minutes between hearings)
  - **4<sup>th</sup> Ave:** 8:30am, 11am, 1:30pm (30-minute hearing max), and 3pm (1 hour between hearings)
  - **MHU:** 8:30am, 11am, 1:30pm (30-minute hearing max), and 3pm (30-40 minutes between hearings)

## Documents

Prior to the scheduled JTH, attorneys are responsible for obtaining all necessary signatures and ensuring all parties, including the Court, have all necessary documents. A PDF of the signed documents can be emailed to the Court. Neither the Court nor the jail is responsible for obtaining signatures, making copies, or delivering documents to defendants. Failure to obtain signatures in advance and provide signed copies of all documents may result in a JTH being vacated.

# **Judicial Branch of Arizona Maricopa County Criminal Department**

**August 20, 2020**



# Topics

- **Administrative Orders 2020-115**
- **Operations at EDC**
- **Jail Tablet Hearings**
- **Settlement Conferences**
- **Resumption of Master Calendar / Assignment Calendar and Trial Assignments**
- **Socially-Distanced Trial Practices and Procedures**
- **Virtual Justice**



# Administrative Orders

- <https://www.azcourts.gov/covid19/Info>
- <http://www.superiorcourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/Index.aspx>
- <https://superiorcourt.maricopa.gov/communications-office/covid-19-judicial-branch-operations-and-updates/>
- <https://superiorcourt.maricopa.gov/media/6477/8-3-2020-modified-criminal-department-appearance-policies-during-covid-19-pandemic.pdf>



# Early Disposition Court (EDC)

- Update from Commissioner Wingard



# Jail Tablet Hearings



# Settlement Conferences

- **Joint Settlement Conference Statement**
- <https://superiorcourt.maricopa.gov/communications-office/covid-19-judicial-branch-operations-and-updates/>





# Master Calendar / Assignment Calendar

- **Courtroom Reorganization between SCT & CCB**
- **Assignment Calendar**
  - **Tuesdays & Thursdays @ 11 AM**



# COVID Trials

- **Socially Distanced Trials Practices & Procedures**
- <https://superiorcourt.maricopa.gov/media/6443/maricopa-superior-court-criminal-trial-practices-and-procedures-7-27-20.pdf>



# Virtual Justice

- Operates on Microsoft Teams platform

