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Introduction to FCR Special Issue on Covid-19 Pandemic

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Recommended Citation

Applegate, Amy G.; Crampton, Alexandra; and Fines, Barbara Glesner, "Introduction to FCR Special Issue on Covid-19 Pandemic" (2022). *Social and Cultural Sciences Faculty Research and Publications*. 324.
https://epublications.marquette.edu/socs_fac/324

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Family Court Review, Vol. 60, No. 2 (2022): 163-164. [DOI](#). This article is © Wiley and permission has been granted for this version to appear in [e-Publications@Marquette](#). Wiley does not grant permission for this article to be further copied/distributed or hosted elsewhere without express permission from Wiley.

FCR Special Issue on COVID-19 Pandemic

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Introduction

Planning for this issue began in May 2020, during the initial crisis stage of lockdowns and vague calls for “pivots.” At that time, Barbara Glesner Fines anticipated need for a “Post-Covid” special issue of lessons learned, and we thought that a publication date of April 2022 was far enough in advance to provide this perspective. We now know that the editorial work of sending out a call for papers, selecting articles, and receiving final submissions had to take place alongside the pandemic as an ongoing source of disruptions and uncertainty. The authors have journeyed with us in this process. Some articles keep focus on the initial impacts from March through September 2020, which was when initial titles and abstracts were due. Others take a longer view, adding waves of new data (and an evolving context) into fall 2021. A third approach transcends the specifics of this crisis to examine online family law services that can operate within and outside of public health crises.

While we are unable to provide a special issue on lessons from a crisis fully resolved, the articles in this volume nonetheless remind us of the chaos and shock of the early months of the pandemic while inviting us to consider long-term lessons learned. We now know that there is no going back to a pre-

pandemic normal. For example, online services that were novel have become necessities. In this process, lack of information technology resources has become an access to justice issue. Pandemic impacts have also amplified and exacerbated pre-existing concerns in serving vulnerable populations and ensuring access to justice. Finally, pandemic necessity has accelerated technological innovations that benefit better resourced court systems and populations. As learned through reading across articles, a global pandemic encourages cross-national and U.S. based comparisons of resources and innovations in family law and service.

Articles that remind us of initial and longer-term pandemic disruptions address a wide range of contexts, such as court services, co-parenting, and support for victims of domestic violence. Asnakech Getnet documents access to justice problems in Ethiopia as courts closed during lockdown from March to September 2020, without the resources to offer online alternatives. Focusing on family court in the Amhara Region, she found that women and children were especially vulnerable given that the limited cases courts would hear as emergency cases did not include family violence, child custody, or divorce. Family separation needs had to be postponed, litigants and lawyers were often ill-informed about case hearings, and further confusion was caused by rotating judges on and off cases in a de-densified courthouse. Claire Houston and colleagues describe studies conducted in Ontario, Canada on early pandemic court decisions and professional experiences. Court case assessment was from March to October 2020, while the professional survey collected data during November and December 2020. Their findings reinforce concern over the disparate impact of pandemic stressors and potentially limited benefit of remote services for more vulnerable families. They argue that ensuring greater access to justice through access to technology may require in-person support for self-represented litigants. Rachel Moyer and colleagues continue attention to system “pivots” with special attention on serving victims of domestic violence. Their article focuses on how the Crystal Judson Family Justice Center in Tacoma, Washington quickly adapted in the early months of quarantine. They describe changes in client needs and service delivery that included protection orders, court hearings, community outreach, and victim advocacy. They note which innovations also hold promise outside of pandemic necessity.

Other articles consider broader lessons learned given the ways that the pandemic has amplified previously identified and recurring family law challenges. Audrey Brittingham argues for legal reform when imputing income for custodial parents. Current law inputs income for parents who voluntarily leave work and/or choose to care for children at home. She argues that this is discriminatory towards parents who make these changes in response to systemic crises (such as a pandemic) and in the best interests of their children rather than bad faith. Kristin Gerdy and Benjamin Forsgren characterize the pandemic as one example of how natural disasters create a “Catch-22” in family law. The catch is in how natural disasters cause problems that require parents to file in court while also undermining the ability of courts to hear cases. Using examples from both Covid-19 and Hurricane Katrina, they argue that U.S. courts adapt during natural disasters by offering special masters, “to act as mobile or virtual neutral third-party decision-makers.” They advise preparation for these emergencies through recruitment and training prior to the next disaster.

Finally, several articles address the transformation of reliance on physically located court services to online resources, and consider the long-term impact of these transformations. Ayyoub Ajmi describes a

system for automated protection orders created during the pandemic and argues that such a system may be especially important for serving vulnerable populations given the common intersections of family violence with lack of economic resources and attorney representation. Genevieve Heard and colleagues report on both “new risks and opportunities” brought by the pandemic for separated and separating families using family dispute resolution services in Victoria, Australia. Lockdown has become chronic in Australia, and family dispute resolution (“FDR”) service providers have relied on “rapid and wholesale shift(s) to remote delivery via telephone and video conferencing.” Data collected from clients and FDR practitioners between March 2020 and March 2021, help evaluate the advantages, disadvantages, and professional training needs to consider when relying on remote service delivery. Lisa Harker and Mary Ryan also studied the pros and cons of remote services using three “rapid consultations” examining remote court hearings provided through telephone and/or video in England and Wales. Their data collection time frames were during April 2020, September 2020, and June 2021. They share the kind of concern expressed in the Australia article (Heard and colleagues) about the differential impact on more vulnerable families. They also find that pandemic necessities have shifted debate over remote services to nuanced concerns, such as assessment for when remote hearings are appropriate and what access to justice problems may persist. Claire Tomlinson and colleagues finish the volume with another consideration of whether online services could become a “new normal” beyond pandemic contexts. They report from a study examining barriers to parent use of online parent education programs. As found in other articles in this volume, their findings temper enthusiasm for internet-based services by identifying problems of digital divides in resource access and when parents either need technology assistance or greater peer support than automated online services will provide.

While we may not have truly arrived in a “Post-COVID” world, the articles in this issue provide helpful data and evaluation of the ongoing responses to the global pandemic.