



COLORADO ACCESS TO JUSTICE COMMISSION

REMOTE COURT PROCEEDINGS: OPPORTUNITIES AND CHALLENGES IN COLORADO

December 2022

EXECUTIVE SUMMARY

The Covid-19 pandemic fundamentally changed how courts operate in Colorado and in the rest of the nation. The changes adopted to protect public health were immediate and profound. The most significant change was the swift adoption of video technology to enable judges, lawyers, litigants, and witnesses to participate in court proceedings remotely. An unexpected and serendipitous benefit of remote proceedings was that they promote access to justice and judicial efficiency. National studies confirmed that thousands of litigants were able to participate in court proceedings who otherwise would not have been able to for a variety of reasons. Studies found the most common barrier to be litigants and criminal defendants having to take time off from work, arrange childcare, and travel, sometimes long distances, to a courthouse. Judges also found a higher level of participation in contested matters by witnesses, victims, and others important to the resolution of matters before them.

Remote proceedings also proved to increase judicial efficiency as judges found they spent less time chasing down missing parties in both criminal and civil matters and were able to move cases to resolution more quickly. In rural areas, virtual proceedings allowed judges to handle dockets in multiple courts without the necessity of lengthy and frequent travel.

Finally, remote proceedings enabled lawyers to participate in trials and hearings without having to travel long distances to a courthouse with the result that many found they were able to appear in proceedings in multiple jurisdictions, sometimes on the same day. The potential impact on the challenge of counties in rural Colorado with few or no private attorneys is profound. Clients have also benefited by not having to pay their lawyer for time spent traveling and waiting in court, sometimes making a difference in whether a client could afford the representation.

Now that the pandemic has eased, because of the demonstrated benefits, states across the country have moved to make remote proceedings a permanent part of their courts' operations. Judges, lawyers, and litigants have been found consistently to favor the continued use of remote proceedings.

Despite the manifest benefits of remote proceedings, they have had their challenges. According to national studies, remote proceedings have taken an average of 34% longer than in-person ones. Although some of the increased time resulted from higher participation rates because of

the increase in appearances, much of the delay was caused by technical difficulties, resulting from litigants and even lawyers uncomfortable with the use of videoconferencing technology. More significant is the impact of the “digital divide;” that is, the significant percentage of individuals who do not have a digital device, lack broadband access to the internet and are intimidated by technology. Creative efforts are underway across the nation to help courts address the technical issues and to make the necessary technology available to people who lack it and to support their use of it.

In Colorado, the State Court Administrator’s Office (SCAO), many judicial districts have adopted policies to encourage the continued use of remote proceedings. The changes, however, are not uniform among judicial districts and even among courts within a judicial district. As a result, remote proceedings are sometimes not available in places where they would clearly benefit the courts, lawyers, and litigants. The lack of uniformity inhibits lawyers being able to take on clients in different jurisdictions when they cannot be assured of being able to represent their clients remotely, exacerbating the problem of the lack of lawyers available for representation in many parts of rural Colorado.

The Colorado Access to Justice Commission urges SCAO and the Colorado Supreme Court to adopt statewide policies and procedures to encourage the continued and uniform use of remote proceedings across the state. The issue is being studied by several committees within the Judicial Branch, including the Pathways to Access Committee, the Technology Committee, and a Supreme Court appointed task force of chief judges. These committees are working to examine the types of hearings and proceedings that are appropriate to be held remotely and those that should be handled in-person

This report sets forth various options, including an administrative order, amendments to existing rules, the promulgation of a chief justice directive, or other means to bring about the uniform use of remote proceedings in the state. The Commission recommends the adoption of one or more of these alternatives to enhance access to our courts for thousands of Coloradans and to improve judicial efficiency and the quality of justice.