



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.

INTRODUCTION

Courts in the state of Colorado and in virtually every other state in the nation responded to the historic Covid-19 pandemic with dramatic and groundbreaking changes in their operations. To respond to the worst public health crisis in 100 years, courts moved almost overnight to remote proceedings and other innovations that allowed them to continue to administer justice, while protecting the public from the risk of in-person interactions. The history of that effort would be heroic enough, if it only protected the public's health, but multiple national studies and data from Colorado courts confirm that the changes undertaken also dramatically improved access to justice and judicial efficiency.

This report details the findings of those national studies and data from Colorado courts and urges the Colorado Supreme Court, the State Court Administrator's Office (SCAO), and trial courts to make permanent policy changes based on the technological developments that have increased access to justice and enhanced the efficient operation of the courts.

RESPONSE TO THE PANDEMIC

As COVID-19 spread across the country in March 2020, schools, businesses, and the courts were ordered closed. Only the most critical services, including first responders, were still operating. Soon after those very first closure orders were issued, a collaborative process of invention across the country began, and thousands of judges, court staff, and information technology experts formulated new ways to keep court staff safe, to protect the public health, and to continue providing for the reliable administration of justice.¹

The goals, objectives, and authorities of this new formulation were firmly rooted in centuries of jurisprudence, with a keen sensitivity to the constitutional protections of due process, procedural fairness, transparency, and equal access.² Courts are ultimately responsible for ensuring access to civil justice, and delivery of just and timely resolutions to legal cases. In Colorado, this

¹ PEW CHARITABLE TRS., HOW COURTS EMBRACED TECHNOLOGY & MET THE PANDEMIC CHALLENGE 5 (2021), <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations>.

² Zach Zarnow & Danielle Elyce Hirsch, *Inflection Point: Can Courts Use Technology to Spur Transformational Change or Will They Return to the Traditional Way of Doing Business?*, 5 GEORGETOWN LAW TECHNOLOGY REVIEW 135 (2021), <https://georgetownlawtechreview.org/inflection-point-can-courts-use-technology-to-spur-transformational-change-or-will-they-return-to-the-traditional-way-of-doing-business/GLTR-06-2021/>.

responsibility is enshrined in the state’s Bill of Rights, which provides in part that “*courts of justice shall be open to every person . . .*”³

Although courts historically have been among the most conservative institutions regarding operational change,⁴ courts in Colorado and across the country recognized that maintaining crucial court services and keeping staff and the public safe required them to embrace technology at unprecedented speed and scale.⁵ As the Acting Chief Judge of New York State’s highest court, the Hon. Anthony Cannataro, stated, “*We saw more changes in the first two months of the pandemic than we saw in 200 years of law practice and judicial decision-making.*”⁶ Chief Justice of the Michigan Supreme Court, Bridget McCormack, reflected the same sentiment: “*What we’ve seen happen in courts has been tremendous. We’ve seen more change in 15 months than 15 decades, but it was all born of an emergency.*”⁷

Staff from the National Center for State Courts similarly observed: “*Courts are at an inflection point. They have made more changes more rapidly in nearly every aspect of their operations than at any other moment in modern times. Changes that once took committees, court staff, and judges years to debate, test, and implement were rolled out in a matter of weeks and months.*”⁸

There is no historical example of any similar collaborative invention, devised and implemented simultaneously by tens of thousands of experts to serve the public good, and which leapt into existence almost overnight.

³ COLO. CONST. art. II, §6 (“*Equality of Justice. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.*”).

⁴ See, e.g., K.L. Shuart & L.K.E. Olson, *Audio and Video Technologies in the Court: Will their Time Ever Come?*, 8 JUSTICE SYSTEM JOURNAL 287 (1983); Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 STANFORD L. REV. 589 (1985); Frederic I. Lederer, *The Road to the Virtual Courtroom*, S.C. L. REV. (1999); DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE; REFORMING THE LEGAL PROFESSION* (2003); RICHARD SUSSKIND, *THE END OF LAWYERS* (2008).

⁵ Brittany K.T. Kaufman, *Civil Justice in the Pandemic, Innovations, Recommendations and Redefining Normal*, COLO. LAW., July 2021 at 8, 9, <https://law-journals-books.vlex.com/vid/civil-justice-in-the-870882713>.

⁶ Marc Sorensen, *Working Group on New York State Courts’ Pandemic Related Practices to Hold Public Hearings*, AM NEW YORK, (Sept. 6, 2022), <https://www.amny.com/news/working-group-on-new-york-state-courts-pandemic-related-practices-to-hold-public-hearings/>.

⁷ D. Todd Smith, *Texas Appellate Law Podcast: Disrupting and Increasing Access to Justice*, Interview with Chief Justice Bridget McCormack, BUTLER SNOW TEXAS APPELLATE LAW PODCAST (Jul. 15, 2021), <https://www.butlersnow.com/news-and-events/disruption-and-increasing-access-to-justice-chief-justice-bridget-mccormack>.

⁸ Zarnow & Hirsch, *supra* note 2, at 139.

THE COLORADO RESPONSE

Colorado responded quickly to the crisis. On March 10, 2020, Colorado’s Governor declared a State of Emergency in response to the rapidly spreading pandemic. As Colorado braced for the arrival of COVID, the courts moved to protect the public health and ensure the safety of court staff. On March 16, 2020, Chief Justice Coats ordered “*the suspension of certain court operations,*” including jury trials. He ordered “*the continued provision of other essential court services,*” including specifically enumerated “*classes of matters and operations*” that involved the safety of individuals or the protection of their constitutional rights.

With regard to matters that were neither identified as essential nor prohibited, Chief Justice Coats gave chief judges the discretion to determine whether to proceed “*to prevent a substantial risk of imminent financial hardship or imminent risk to the health, safety or welfare of any individual or the community at large.*” Notably, his order emphasized “*the expectation that the Chief Judges of the various districts will make every effort to facilitate work from remote locations and to minimize or eliminate in-person proceedings and contact.*”⁹

On May 5, 2020, Chief Justice Coats amended his previous orders, while confirming that “*the state courts are to continue to operate on an emergency basis . . . [and] to make all reasonable efforts to facilitate work by department employees from remote locations and to minimize personal contact.*” With regard to remote proceedings, the order affirmed that “*with the understanding that some judicial proceedings may require personal appearances, whenever reasonably feasible, judicial proceedings, regardless of their nature, should continue to be conducted remotely.*”¹⁰

In response to the lockdown, Colorado courts shifted rapidly to videoconferencing technology and adapted it to the specialized needs of the court and the public it serves. SCAO, judges, and court staff across Colorado grappled with the complexities of adapting videoconferencing technology to a purpose for which it had not been designed. In roughly sixty days, SCAO selected vendors; created, tested, and distributed effective security protocols; promulgated policies and procedures; trained staff; and purchased necessary hardware.

⁹ CHIEF JUSTICE OPERATIONS ORDER (Mar. 16, 2020), https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Filing_Information/COVID-19_Order_16Mar2020.pdf, confirmed in CHIEF JUSTICE OPERATIONS ORDER (Mar. 20, 2020; Apr. 16, 2020).

¹⁰ CHIEF JUSTICE OPERATIONS ORDER (May 5, 2020), https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Filing%20Information/COVID-19%20Order%2016Mar2020.pdf, updated by CHIEF JUSTICE OPERATIONS ORDER (May 6, 2021), https://www.courts.state.co.us/Media/Opinion_Docs/Chief%20Justice%20Operations%20Order%20May%206%202021.pdf.

The Colorado Judicial Branch did not collect data identifying the number of remote proceedings during 2020. It is possible to extrapolate from data provided by the Branch, however, to gauge the number of proceedings that were held in the state remotely during 2020 and 2021, as shown in the accompanying chart. Since the pandemic has eased, all judicial districts have slightly exceeded their pre-pandemic caseload numbers with a hybrid system of mostly remote proceedings and some in-person proceedings.¹¹

| TOTAL SCHEDULED EVENTS* IN COLORADO COURTS | | |
|--|--|--|
| 2019 - | 1,403,212 SCHEDULED EVENTS | <i>almost no virtual</i> |
| 2020 - | 1,327,220 SCHEDULED EVENTS | <i>after 16 Mar 20, almost all virtual</i> |
| 2021 - | 1,466,781 SCHEDULED EVENTS | <i>almost all virtual</i> |
| 2022 - | 774,598 SCHEDULED EVENTS (THROUGH 15 JUL 22) | <i>moving towards hybrid</i> |

* Total Scheduled Events includes all hearings, trials and conferences for all case types.

The Colorado Judicial Branch’s budget request for FY 2022-2023, submitted to the state legislature on November 1, 2021, highlighted the widespread use of remote proceedings. It reported nearly 1,000 hours of videoconferencing per day with 17,500 videoconferencing meetings per month. Those meetings involved 130,000 “stakeholders” who either scheduled or participated in virtual court proceedings each month.¹² The increased demand required the state Judicial Branch to double the number of WebEx licenses from 250 to 500 during the pandemic.¹³ The Branch’s budget request also noted that the courts encountered an additional cost of over \$9,000 per month for telephone call-in access for court appearances. This is consistent with reports from judges and lawyers that rural Colorado courts relied much more heavily on the telephone for virtual proceedings because of the limited availability of broadband internet.

To support its needs for virtual activities in the future, the Branch anticipates an expenditure of \$482,160 per year on WebEx licenses.¹⁴ Its projected expenditures in support of remote

¹¹ Detailed graphics can be found at: https://www.coloradoaccesstojustice.org/files/ugd/c659b2_d4f4485e37754f678c0e02a35743462e.pdf

¹² COLORADO JUDICIAL DEPARTMENT FY23 DECISION ITEM REQUEST, IT INFORMATION TECHNOLOGY INFRASTRUCTURE UPGRADES, Tab. 3, at 3 (Nov. 1, 2021) [hereinafter *Colo. Jud. Dept. FY23 Budget*], https://www.courts.state.co.us/userfiles/file/Administration/Financial_Services/Budget/FY23JudicialBranchCourtsProbationBudgetRequest.pdf.

¹³ *Id.* at 5.

¹⁴ *Id.* at 4.

proceedings and other remote work are part of a four-year, \$33 million dollar IT infrastructure upgrade plan funded by the American Recovery Act.¹⁵ The request was based in part on the Branch's projection that *"The usage of video conferencing to support virtual proceedings will continue after the COVID-19 pandemic. Many Judicial Officers have found that more parties to cases are appearing remotely for their hearings due to the ease of use of the video conferencing technology."*¹⁶

Support for remote proceedings in the Colorado Judiciary is also reflected in a November 2021 SCAO survey of Colorado judges that found that 86% (306) of the 329 respondents planned to use or continue using WebEx for short proceedings.¹⁷ The Court of Appeals has provided for remote oral arguments since long before the pandemic and increased the opportunity for such arguments in light of the pandemic.¹⁸

Colorado also joined other states in pursuing various other means to facilitate litigants' participation in court matters without in-person involvement. Stemming from Colorado's 2017 Justice for All Strategic Action Plan¹⁹ and internal initiatives within the Judicial Department, several undertakings were already in varying stages of development. With the advent of the pandemic, those initiatives were rapidly put into operation. Most prominent among those new capabilities were public e-filing, public e-pay, remote notarization, remote mediation, and text message reminders.

Public e-filing provides an example of such accelerated implementation. In July 2000, Colorado courts piloted its first integrated e-filing system. By April 2011, the improved and updated electronic filing system was implemented in a two-phase development, with plans for future capability for pro se filers.²⁰ The first public e-filing program which covered domestic cases in seven counties was piloted in 2019 and rolled out in February 2020, just before the pandemic

¹⁵ *Id.* at 1-7.

¹⁶ *Id.* at 3.

¹⁷ *CO Webex Usage - Judge Survey Results* (Nov. 2021). The survey had 329 responses from 165 district court judges, 87 county court judges, and 77 magistrates. Two thirds of the judges were from urban areas, and one third from rural areas. Judges were distributed among dockets, including criminal (258), Civil (198), domestic (176), juvenile (93), mental health (43), probate (50), traffic (51), and water (10).

¹⁸ COLORADO COURT OF APPEALS, INTERIM REMOTE ORAL ARGUMENT POLICY, [https://www.courts.state.co.us/userfiles/file/Court_Probation/Court_Of_Appeals/Court_of_Appeals_Oral_Argument_Policy_06-30-2021_FINAL_\(002\)_002.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Court_Of_Appeals/Court_of_Appeals_Oral_Argument_Policy_06-30-2021_FINAL_(002)_002.pdf).

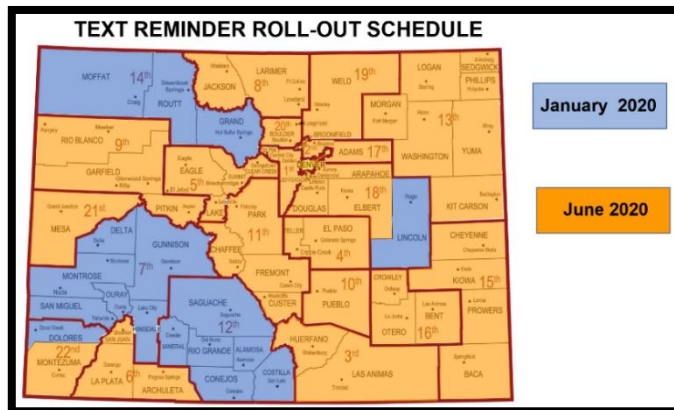
¹⁹ JUSTICE FOR ALL PROJECT, COLORADO STRATEGIC ACTION PLAN (2017), https://www.ncsc.org/_data/assets/pdf_file/0021/25518/co-jfa-plan.pdf.

²⁰ COLORADO OFFICE OF THE STATE AUDITOR, JUDICIAL DEPARTMENT'S INTEGRATED COLORADO COURTS E-FILING AND JUDICIAL PAPER ON DEMAND SYSTEM, at 6 (July 2012), <https://leg.colorado.gov/audits/judicial-departments-integrated-colorado-courts-e-filing-and-judicial-paper-demand-systems>.

struck.²¹ At that time, SCAO had not scheduled expanding the e-filing program to the other 57 counties. That changed dramatically a month later and as the pandemic took hold, SCAO implemented a statewide roll-out plan in five incremental phases. By December 2021, e-filing was a reality for domestic cases in all 64 Colorado counties.²²

Similarly, public e-pay had been utilized long before the pandemic, but largely for payment of restitution in criminal cases. With the advent of the pandemic, public awareness and use of the e-pay program grew dramatically for payments in all case types.

In another example, SCAO acted to implement a 2019 statute requiring a text message reminder system in criminal cases.²³ The statute required that in at least four participating judicial districts



two text reminders be sent to defendants who opted in for such messages. Sen. Pete Lee of El Paso County, who sponsored the legislation, explained its purpose: *“Too many people are sent to jail solely because they fail to appear in court for a scheduled hearing. Reminding people of their court appointments is a commonsense solution that can help us solve this problem [and]. . . would have the added benefit of reducing overcrowding in local jails.”*²⁴

Within just 85 days after the pandemic lockdown, the program expanded to all Colorado judicial districts. By June 2021, over 290,000 text reminders had been sent to ‘opt-in’ criminal defendants across Colorado. The Colorado legislature has changed the text reminder program to an opt-out model, which is expected to be used in 50%-75% of all criminal cases statewide.²⁵

²¹ Tony Flesor, *A Toolbox for Colorado’s Courts: Interview with SCAO’s Steven Vasconcellos*, L. WEEK COLO. (Mar. 6, 2020), <https://www.lawweekcolorado.com/article/a-toolbox-for-colorados-courts>. (The seven counties were Arapahoe, Douglas, Larimer, Routt, Moffatt, El Paso and Teller).

²² COLORADO JUDICIAL DEPARTMENT, *Program allowing e-filing by self-represented litigants expands to two more judicial districts* (Nov. 12, 2021), <https://www.courts.state.co.us/Media/release.cfm?id=1994>.

²³ Section 13-3-101, C.R.S.

²⁴ Sen. Pete Lee, El Paso County, quoted on KRDO News (Feb. 11, 2019), <https://krdo.com/news/2019/02/11/colorado-lawmakers-weigh-text-alert-reminders-for-court-dates>.

²⁵ SB22-018 EXPAND COURT REMINDER PROGRAM (enacted), <https://leg.colorado.gov/bills/sb22-018>; see also, Maddie Hosack, *Text-Message Reminders from Courts Could Become the Norm in Colorado*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (Feb. 8, 2022) <https://iaals.du.edu/blog/text-message-reminders-courts-could-become-norm-colorado>.

Lack of uniformity in remote proceedings

Despite the adoption of remote proceedings in Colorado, judicial districts have not embraced the change uniformly and each district has taken a different approach to supporting litigants and lawyers participating in remote proceedings. Ric Morgan, one of the authors of this report and creator of the Virtual Pro Se Clinics, which provide assistance to thousands of unrepresented litigants in every part of Colorado, also represents clients throughout the state. He observes “*There are substantial inconsistencies among all of the judicial districts. I say this not from my research, but from my practice. There are as many differences as the imagination can come up with.*”

SCAO issued well-crafted instructions to help the public use the court’s new videoconferencing technology.²⁶ Judicial districts, however, developed their own webpages on the state judicial website to guide the public in how to participate in remote proceedings in their jurisdiction. More than half developed their own detailed instructions on how to connect to and participate in remote proceedings. The webpages of five other judicial districts, in contrast, provide no information at all either for litigants or lawyers on how to join and participate in a remote proceeding.

The lack of uniformity across the state is an unfortunate impediment to lawyers’ agreeing to represent clients in various parts of the state other than where they are located. Michigan Chief Justice Bridget Mary McCormack stated it this way: “*consistency from court to court, where practical, is good government. Court users should not have to navigate different rules for appearances from courtroom to courtroom and pay the costs for mis-navigating hodgepodge processes. A judge-by-judge approach to remote proceedings might serve individual judges, but it does not serve the public.*”²⁷

Uniformity in remote proceedings has the potential for significantly expanding access to lawyers for litigants in rural Colorado. Uniformity would allow lawyers from more populous areas to expand their practice to serve rural areas that have few and sometimes no private attorneys. Uniform remote proceedings would also increase the viability of a lawyer setting up a practice in a rural county and expanding that practice to represent clients across a number of other counties. Unless such lawyers know with certainty, however, that they will be able to appear remotely for

²⁶ COLORADO JUDICIAL DEPARTMENT, PREPARING FOR A SUCCESSFUL HEARING, https://www.courts.state.co.us/Self_Help/VirtualSessions/story.html; see also, DENVER COUNTY COURT, VIRTUAL COURTROOM INSTRUCTIONS, <https://www.denvercountycourt.org/virtual-court>.

²⁷ MICH. SUP. CT. ORDER NO. 2020-08, 16-22 at 20 (Aug. 10, 2022) (McCormack, C.J., concurring) [hereinafter *Mich. Sup. Ct. Order No. 2022-08 (Aug. 10, 2022), McCormack, C.J., concurring*], https://www.courts.michigan.gov/4a42b2/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2022-08-10_formor_pandemicamdts.pdf.

a client with a proceeding that may be hours distant, they will simply not be able responsibly to agree to the representation.

The failure of some courts to offer the opportunity for remote appearances in criminal matters has also created unnecessary hardship for some defendants. Jonathan Rosen, Legal Resources and Technology Coordinator for Office of the Colorado Alternate Defense Counsel stated it this way:

Many court appearances are short and require little interaction with a judge. But, because many people are scheduled for live appearances simultaneously, our clients can be forced to sit in court for hours awaiting a five-minute appearance. This is incredibly detrimental for those struggling to make ends meet with an hourly wage job or those who rely on others for childcare. This situation is worse in rural communities where people may need to drive 30 minutes or more, each way, to simply reach the courthouse. . . . This comes with the caveat that not all appearances are created equal. There are times when the judge and the client should be together in the same room – sentencing for example.²⁸

THE NATIONAL RESPONSE

The changes that occurred in Colorado were reflected across the nation, sometimes very dramatically. Some states moved almost overnight from in-person to remote proceedings. In Texas, for example, starting within days of the lockdown in March 2020, its state’s courts began conducting remote proceedings, despite having had almost no previous history using them in a civil case.²⁹ Six months later, it had conducted nearly 400,000 remote proceedings with 1.3 million participants that spanned almost a million hours. The proceedings encompassed every type of case, including bench and jury trials.³⁰ Between April 2020 and January 2022, Texas courts had conducted 2,113,368 remote proceedings encompassing 6,065,932 hours, involving over seven million participants.³¹

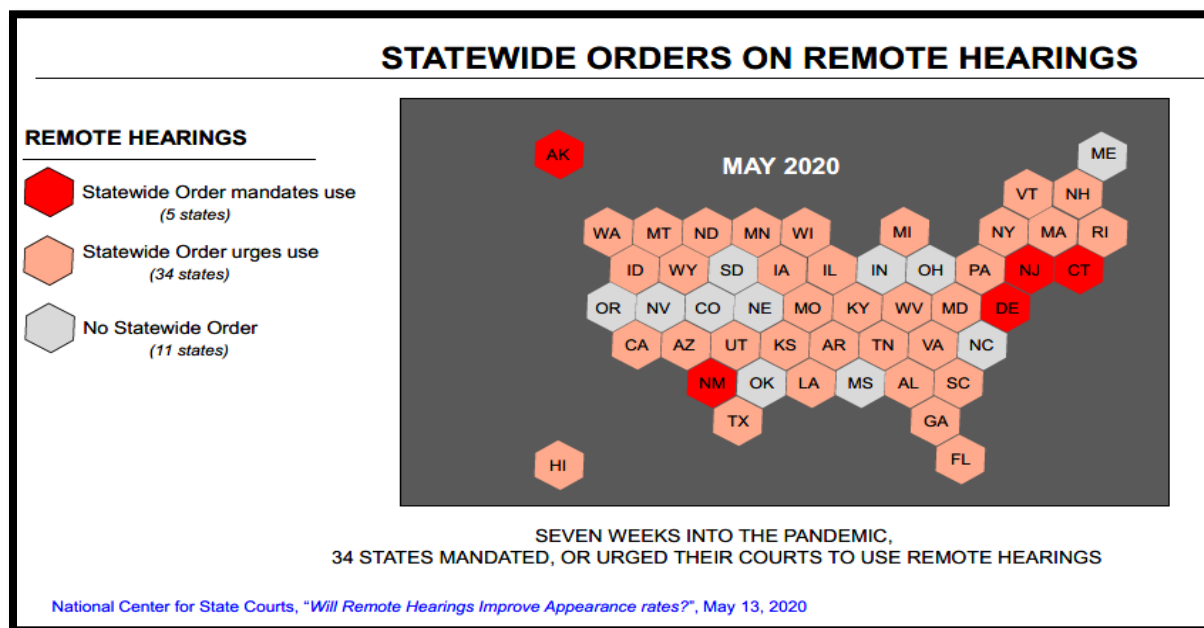
²⁸ E-mail from Jonathan D. Rosen, Legal Resources and Technology Coordinator, Colorado Office of Alternate Defense Counsel, to Elisa Overall, Executive Director, Colorado Access to Justice Commission (Oct. 31, 2022) (on file with author).

²⁹ PEW CHARITABLE TRS., *supra* note 1, at 2.

³⁰ DAVID SLAYTON, TEXAS OFFICE OF COURT ADMINISTRATOR, JURY TRIALS DURING THE COVID-19 PANDEMIC: OBSERVATIONS AND RECOMMENDATIONS 5 (2020), <https://www.txcourts.gov/media/1449660/jury-report-to-scotx-final.pdf>.

³¹ E-mail from Betty Balli, Executive Director, Texas Office of Court Administration to Texas Access to Justice Foundation (Feb. 28, 2022) (on file with author).

Similarly, Michigan courts held more than 50,000 video proceedings totaling nearly 350,000 hours of online proceedings in the first sixty days after the lockdown.³² Like Texas, it had never conducted a video proceeding for a civil court case before the pandemic.³³ Although not every state recorded data during the first year of the pandemic regarding the number of remote proceedings, a study conducted by the Thomson Reuters Institute in June 2021 confirmed that remote proceedings were commonplace across the nation. The Institute's national survey of judges and court professionals at state, county, and municipal levels found that 93% of the respondents participated in remote proceedings in 2020 and 89% were still doing so in 2021.³⁴ As shown in the accompanying chart, by May 2020, the supreme courts in five states had issued orders mandating remote proceedings and 34 states had promulgated orders urging their use. Eleven states had issued no statewide order.³⁵



³² Katelyn Kivel, *How the Coronavirus Revolutionized Michigan's Courts*, GANDER NEWS (Jul. 14, 2020), <https://gandernewsroom.com/2020/07/14/coronavirus-revolutionized-courts/>.

³³ PEW CHARITABLE TRS., *supra* note 1, at 2, 8.

³⁴ GINA JURVA, *THE IMPACTS OF THE COVID-19 PANDEMIC ON STATE & LOCAL COURTS*, THOMSON REUTERS INSTITUTE 3 (2021), <https://www.thomsonreuters.com/en-us/posts/legal/pandemic-impact-courts-report-2021>.

³⁵ NATIONAL CENTER FOR STATE COURTS, *WILL REMOTE HEARINGS IMPROVE APPEARANCE RATES?* (May 13, 2020), <https://www.ncsc.org/newsroom/at-the-center/2020/may-13>.

In addition to the dramatic shift to remote proceedings, courts across the country, like Colorado, quickly adopted other innovations to facilitate the public’s safe participation in court proceedings:

- Court systems expanded the availability of e-filing.³⁶
- States that had not already done so prior to the pandemic relaxed their policies on electronic notarization or waived notarization requirements altogether.³⁷

Some new procedures demonstrated the creativity that state judicial systems employed to meet the challenge.³⁸

- Arizona and New Jersey contracted with private vendors so court users could pay court fees by cash at a convenience or grocery store using a bar code scanned by a cashier.
- Texas and Michigan integrated interpreting and subtitling features into their use of Zoom.
- Alaska, which did not have an e-filing system, set up a dedicated email address through which court forms and pleadings could be filed by email. In other states, courts placed drop boxes outside of courthouses where pleadings could be safely deposited.
- Rhode Island opened a virtual court clerk’s office where users could engage in a video chat to conduct the same business they normally would in person at the clerk’s window.
- Michigan and Texas published online dockets to enable the public to watch live-streamed court proceedings.

IMPACT ON ACCESS TO JUSTICE

Increased appearances in civil and criminal proceedings

As we have noted, public health concerns drove the dramatic shift to virtual proceedings and other strategies to facilitate remote participation in court proceedings. The widespread adoption of remote proceedings led to a result that was perhaps unexpected. Every court that embraced remote proceedings found a significant decrease in the number of failures-to-appear in both criminal and civil cases. This result was stated directly in Colorado in the Judicial Branch’s FY2022-2023 Budget Request: *"many Judicial Officers have found that more people are showing up for their hearings as a result of the ease of use and that proceedings can avoid being postponed because a participant is unable to physically make it into the courthouse."*³⁹

Judge Roy B. Ferguson, a trial judge in West Texas and member of the Texas Access to Justice Commission, characterized the impact of this change with these words: “[r]emote proceedings

³⁶ PEW CHARITABLE TRS., *supra* note 1, at 9-10.

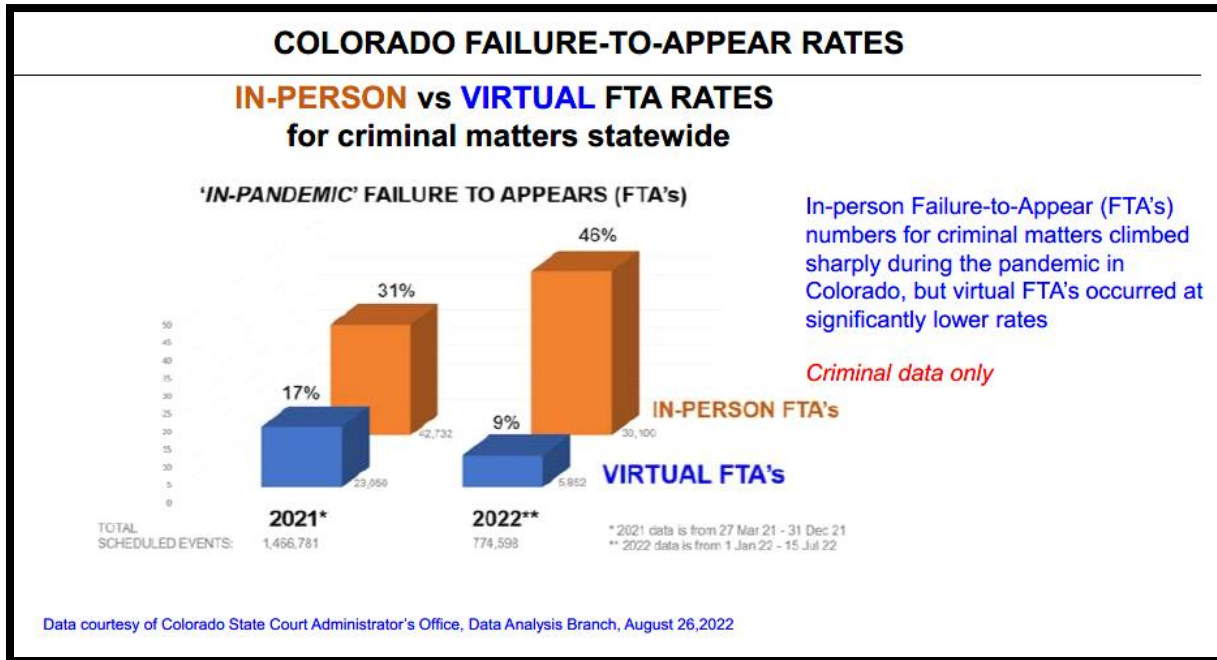
³⁷ *Id.* at 2.

³⁸ Zarnow & Hirsch, *supra* note 2, at 143-145.

³⁹ COLO. JUD. DEPT. FY23 Budget, *supra* note 12, at 1.

have revolutionized the legal system, and constitute the greatest improvement in access to justice since Gideon⁴⁰ gave every criminal defendant the right to free legal representation.”⁴¹

Colorado courts experienced a positive impact on appearance rates in criminal cases. Under Chief Justice Coats’ March 16, 2020, and subsequent orders, a limited number of criminal matters were held in-person, while most were held remotely. As the following chart shows, the 2022 Colorado no-show rate for in-person criminal matters was five times higher than the no-show rate for remote proceedings.



Colorado’s experience with the impact on failures to appear was echoed across the nation. Michigan Supreme Court Chief Justice Bridget McCormack, for example, noted that failures to appear in eviction cases were historically “*incredibly high.*” She noted: “*[i]t’s the opposite in these online courtrooms. It literally flipped. The number of people who now show up is as high as the number of people who didn’t show up in physical courtrooms. It’s the most important breakthrough in access to justice that we’ve had in my career as a lawyer.*”⁴²

The Chief Justice later reported that the Michigan Supreme Court's Statistical Research Team found that the percentage of Michigan civil cases ending in default judgment fell by 16.9% from

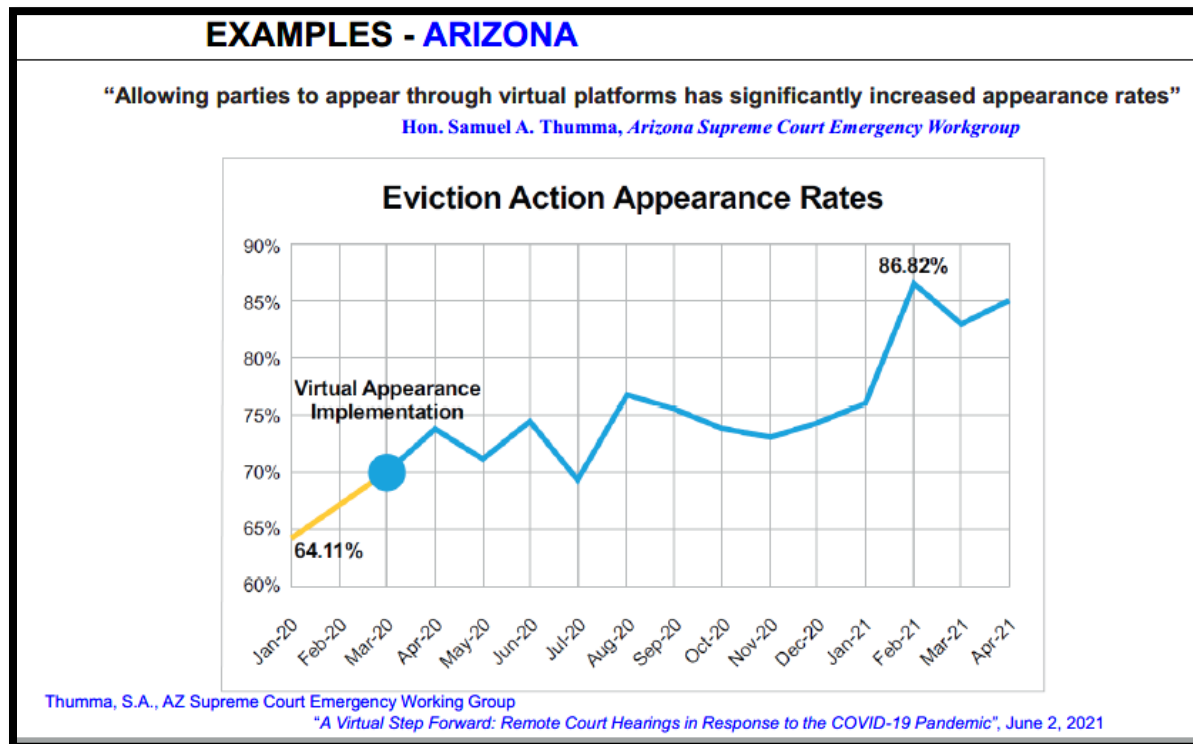
⁴⁰ Gideon v. Wainwright, 372 U.S. 335 (1963).

⁴¹ Hon. Roy B. Ferguson, in a Memorandum to Texas Supreme Court Advisory Committee, In re: Remote Court Proceedings, at 1 (Aug. 14, 2022).

⁴² Smith, *supra* note 7.

2019 to 2021, with a 38% decrease in the percentage of defaults in landlord-tenant cases during the same period. Tellingly, empirical data showing that the farther tenants lived from the courthouse, the more likely they were to be defaulted and to lose their home.⁴³ Similar increases in appearance rates occurred in other states as shown in the following charts:⁴⁴

In June 2020, Arizona civil courts saw an 8% decline in the rate of default judgments resulting from litigants' failure to appear, compared to the same period pre-pandemic.⁴⁵ In Maricopa County, the state's largest, the failure-to-appear rate for eviction cases dropped by 27% compared to the same period pre-pandemic.⁴⁶



⁴³ MICH. SUP. CT. ORDER NO. 2022-08 (Aug. 10, 2022), McCormack, C.J., *concurring, supra* note 27, at 18-19.

⁴⁴ Tara Kunkel & Kristina Bryant, *Do Remote Hearings Help or Hurt Access to Justice?*, 106 JUDICATURE, Spring 2022 at 1-4, <https://judicature.duke.edu/articles/do-remote-hearings-help-or-hurt-access-to-justice/>; *see also*, NATIONAL CENTER FOR STATE COURTS, *supra* note **Error! Bookmark not defined.**

⁴⁵ PEW CHARITABLE TRS., *supra* note 1, at 8.

⁴⁶ ARIZONA SUPREME COURT, PLAN B WORKING GRP., COVID-19 CONTINUITY OF COURT OPERATIONS; POST-PANDEMIC RECOMMENDATIONS 9 (2022) [hereinafter *Arizona Working Group Recommendations*], https://www.ncsc.org/data/assets/pdf_file/0025/68920/AZ-Court-Post-Pandemic-Recommendations.pdf.

EXAMPLES - NORTH DAKOTA, NEW JERSEY, MICHIGAN

NORTH DAKOTA - In some parts of North Dakota, appearance rates for criminal warrant hearings are nearly 100%, compared to 80% before the pandemic

NEW JERSEY- 20,000 hearings hearing were scheduled in criminal matters in New Jersey Superior Courts in the first 60 days of the Pandemic. In that time, the failure-to-appear rate (FTA) dropped from a pre-pandemic FTA rate of 20 percent to just **0.3 percent**.

MICHIGAN - Michigan saw FTA rates for all case types plummet from a pre-pandemic level of 10.7 percent to **0.5 percent FTA** in April 2020 after implementing virtual hearings.

National Center for State Courts, "Will Remote Hearings Improve Appearance rates?", May 13, 2020

Increased participation by litigants

Multiple national studies and the anecdotal observation of many lawyers and judges demonstrate a principal reason for the dramatic reduction in no-shows in civil and criminal cases. A year-long study of remote hearings in Texas by the National Center for State Courts (NCSC) found that remote hearings eliminated the need for litigants to find childcare, arrange and pay for transportation, and take a day off work to appear in court, sometimes with the risk of losing a job.⁴⁷ The same reason was one of those stated by Colorado's Judicial Branch in its FY2022-2023 budget proposal: "*members of the public don't need to take off work or find childcare to participate in all cases.*"⁴⁸

The same conclusion is reflected in the observation of numerous lawyers and judges. A legal aid director in Michigan, testifying in a hearing before the state's Supreme Court regarding remote proceedings observed:

What are inconveniences for many of us — finding childcare or traveling to court or taking off a day of work — are absolute barriers to access to justice. Default rates have plummeted in eviction court because . . . clients don't have to find a

⁴⁷ BRIAN OSTROM ET AL., NATIONAL CENTER FOR STATE COURTS, USE OF REMOTE HEARINGS IN TEXAS STATE COURT & IMPACT ON JUDICIAL WORKLOAD 9 (2021), <https://www.ncsc.org/media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf>.

⁴⁸ COLO. JUD. DEPT. FY23 Budget, *supra* note 12, at 1.

*family member to watch their kids or beg a friend to drive them to court or risk losing their job for a 15-minute hearing.*⁴⁹

Chief Justice Bridget Mary McCormack of the Michigan Supreme Court observed:

*The benefits of these changes are vast and undeniable. . . . The improvements in transparency and access to justice are . . . staggering; remote access has greatly increased court visibility, allowed for people to get legal representation, and reduce the number of cases defaulted because litigants couldn't make it to court. People who would have missed the court date because they don't have bus fare or couldn't afford to miss work have been spared the consequence of failing to appear (time in jail and accumulated debt).*⁵⁰

As a Texas legal aid lawyer explained about the virtues of remote proceedings, “[p]eople tend to be more active in their lawsuits when they realize they don't have to drive to a courthouse and miss an entire day of work by simply logging in or calling in. They love zoom court.”⁵¹

A Utah survey of participants in remote proceedings found that “75% of all Utah participants prefer remote hearings regardless of how they accessed court, their age, or location.”⁵² The survey noted that the preference for remote proceedings spanned all ages.

*The robust preference for remote access is found in every age range. As one might expect, younger users would rather appear in court remotely. . . . More surprisingly, 93% of older adults 65 years or over also expressed a clear preference for attending virtually. . . . Ultimately, no matter what age the participant was, they prefer to access court remotely by either computer, laptop, or phone.*⁵³

A comment to the Utah survey suggested that some litigants in virtual proceedings feel more comfortable when they participate remotely: “I felt the judge was more relaxed with the virtual

⁴⁹ Jonathan Oosting, *Zoom Hearings Could Become Permanent for Michigan Courts, Burps and All*, BRIDGE MICHIGAN (Apr. 26, 2022), <https://www.bridgemi.com/michigan-government/zoom-hearings-could-become-permanent-michigan-courts-burps-and-all>.

⁵⁰ MICH. SUP. CT. ORDER NO. 2020-08, 16-22 at 9 (Jul. 26, 2021) (McCormack, C.J., *concurring*) [hereinafter *Mich. Sup. Ct. Order No. 2022-08 (July 26, 2021), McCormack, C.J., concurring*], https://www.courts.michigan.gov/4a5475/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2021-07-26_formattedorder_rescpandemicaos.pdf.

⁵¹ Survey conducted by the Texas Access to Justice Foundation of legal aid staff in Texas (Feb. 2021) [hereinafter *Texas Access to Justice Foundation Survey*] (on file with surveyors).

⁵² UTAH STATE BAR ACCESS TO JUSTICE COMMISSION & UTAH JUDICIAL COUNCIL, *THE IMPACT OF REMOTE HEARINGS ON ACCESS TO JUSTICE, UTAH SURVEY OF COURT USERS 7* (June 2022).

⁵³ *Id.* at 8.

court. *I was much more comfortable at my work rather than standing in front of him. . . . It was much calmer.*⁵⁴ NCSC’s year-long Texas study quoted a participating judge who noted: *“It is emotionally easier for parties to get through a divorce if they’re not in the same room. Divorces are still a drain, and participants even break down remotely, but it is easier to get through.”*⁵⁵ The Report also noted that remote proceedings are beneficial for litigants, such as victims of domestic violence, who fear for their safety in the court.⁵⁶

Increased participation by others

The increased ability to participate in proceedings is not limited to litigants. The NCSC Texas Study found that remote proceedings also expanded access to the courts for experts, witnesses, and persons who fear coming to court. The latter can include persons who have been victims of violence as well as those with problematic immigration status. In summarizing its findings, the report noted: *“Judges reported that...remote hearings...are beneficial to litigants in many ways and allow for broader inclusion of interested parties than in-person hearings.”*⁵⁷ It specifically found *“...the opportunity for wider participation in many types of family-related cases, especially Divorce, Child Welfare, and Child Protective Services Cases.”*⁵⁸

The benefit of having potentially costly expert witnesses testify remotely without attendant travel costs and the time associated with that travel is self-evident. The same factors affect the willingness of potentially important witnesses to appear in child custody and domestic violence matters. The previously cited budget submission of Colorado’s Judicial Branch reflected this: *“Witnesses and victims are more comfortable in the safety of their own home, members of the public don’t need to take off work or find childcare to participate in all cases, and juveniles feel more comfortable when appearing by video. Probation Officers can see more probationers more quickly and more often without the need for travel or difficulties with scheduling.”*⁵⁹

A study by NCSC of virtual hearings in child welfare cases found that parents, foster parents, and kinship caregivers appeared more often in virtual hearings than in live ones and it attributed that increase in part to not having to travel, find parking, or miss work.⁶⁰ The same result was reported by Judge Roy Ferguson, who serves in a very large, remote judicial district in West

⁵⁴ *Id.* at 6.

⁵⁵ OSTROM ET AL., *supra* note 49, at 9.

⁵⁶ *Id.*

⁵⁷ *Id.* at ii.

⁵⁸ *Id.* at 9.

⁵⁹ COLO. JUD. DEPT. FY23 Budget, *supra* note 12, at 1.

⁶⁰ NATIONAL CENTER FOR STATE COURTS STUDY OF VIRTUAL CHILD WELFARE HEARINGS: IMPRESSIONS FROM JUDICIAL INTERVIEWS 2 (2021), https://www.ncsc.org/data/assets/pdf_file/0018/65520/Study-of-Virtual-Child-Welfare-Hearings-Judicial-Interviews-Brief.pdf.

Texas. In a memo to the Texas Supreme Court Advisory Committee regarding remote hearings, he noted:

*In child welfare cases, parents and foster families now appear for almost every hearing. Historically, having both parents at a hearing was rare...And as rare as it was to have both parents attend in person, having foster families in the courtroom was even more so...Now, I require that foster families have Zoom access in order to receive a placement in my jurisdiction. They appear at over 90% of our hearings, vastly improving the court's ability to monitor the child and quickly address problems.*⁶¹

IMPACT ON JUDICIAL EFFICIENCY AND PERFORMANCE

Judges have also reported that remote proceedings have a positive impact on judicial efficiency. Chief Justice McCormack of the Michigan Supreme Court observed: “*Virtual proceedings have enormous efficiency benefits for courts...Because of a decrease in missed court dates, judges reschedule fewer hearings, issue fewer bench warrants and contempt orders, and assess fewer fines and fees for failure to appear.*”⁶²

Trial Judge Roy B. Ferguson found that to be true in his court room:

*I have seen a fundamental shift in appearance rates in all areas of litigation. Default judgments, failures to appear, criminal bond forfeitures, and DWOPs [Dismissal for Want of Prosecution] are all down. This results in higher quality of justice, and in turn frees up the Court's time to focus on resolving cases rather than chasing down missing parties.*⁶³

The judge also noted the profound impact of remote proceedings on the efficient use of his time in a judicial district covering 20,000 square miles.

Remote proceedings revolutionized multicounty court efficiency, where one judge presides in multiple courthouses. Previously, I would travel every day, up to four hours per day, from county to county...Now, through remote proceedings,...regular dockets are stacked with multiple counties on the same day, without lost travel time,

⁶¹ Ferguson, *supra* note 43, at 1-2.

⁶² MICH. SUP. CT. ORDER NO. 2022-08 (Aug. 10, 2022), McCormack, C.J., *concurring*, *supra* note 27, at 19.

⁶³ Ferguson, *supra* note 43, at 1.

*and are often all completed within a week to ten days, leaving two or even three weeks for jury trials and other contested matters.*⁶⁴

A judge who participated in the 2021 NCSC study in Texas cited the increased efficiency in divorce matters. The judge reported that prior to the pandemic, litigants in only 25% of self-represented divorce cases had all the documents necessary to proceed. The report noted that when the judge provided forms for litigants to complete before a remote court hearing, more than 90% the parties had a completed agreement before the proceedings began and were prepared and ready to resolve their cases.⁶⁵

State-funded defense counsel have also found that remote proceedings also increase their efficient use of resources. Colorado's Office of Alternate Defense Counsel noted: "*In addition, as a state agency that pays our attorneys to drive to court, and for their time in court, remote appearances can drastically reduce the financial costs of providing counsel.*"⁶⁶

A recent Arizona study found "*there was substantial support for conducting more hearings remotely in the post-pandemic world.*"⁶⁷ The report provided detailed data regarding judges' view on the impact of remote proceedings on their own preparation, the efficiency of remote proceedings, and the effectiveness of lawyers appearing before them. Of the judges participating, 32% responded that remote motions hearings and other proceedings were "*more efficient,*" and 34% responded there was no change in their efficiency.⁶⁸ There were similar findings regarding the impact of remote proceedings on the preparation and effectiveness of lawyers presenting before them.⁶⁹

Michigan Chief Justice McCormack noted the benefit of remote proceedings in reducing backlogs:

Continued remote proceedings can also be a part of the solution to trial court backlogs, because they increase capacity: visiting judges can conduct remote proceedings for matters that are suited for them, freeing up physical courtrooms for jury trials and other proceedings that are better handled in person. The efficiency with which remote proceedings are conducted will only improve over

⁶⁴ *Id.* at 3.

⁶⁵ Kunkel & Bryant, *supra* note 47, at 9.

⁶⁶ Rosen, *supra* note 28.

⁶⁷ ARIZONA WORKING GROUP RECOMMENDATIONS, *supra* note 46, at 6.

⁶⁸ *Id.* at 18.

⁶⁹ *Id.* at 15-18.

*time as courts, attorneys, litigants, and other stakeholders become more familiar with new processes and new technologies.*⁷⁰

The Chief Justice of California’s Supreme Court, Tani Cantil-Sakauye, similarly observed that in California courts virtual cases concerning children and their families are moving faster and helping clear backlogs.⁷¹

An area where accountability for judicial performance may be enhanced is in the relationship between remote proceedings and judicial performance evaluations. The Utah courts, for example, rely on trained community volunteers to conduct eight courtroom observations of judges during the course of their six-year term. According to the Judicial Performance Evaluation Commission, 95% of the courtroom observations have been conducted virtually since the pandemic began. According to the report, “*Positive comments discuss generally quieter, orderly proceedings and an appreciation for the ability to see and hear everything as a litigant does. Negative comments bemoan things such as disruptive users, connection issues and poorly placed cameras.*”⁷²

Judicial performance evaluations may evolve in the future to consider the impact of remote proceedings on performance criteria, such as fairness. In Colorado, for example, the criterion of fairness includes “*giving participants an opportunity to be heard*” and “*giving each side enough time to present their case.*”⁷³ A litigant who lacks transportation to a distant court or is unable to arrange childcare or time off from work may as a result be unable to appear in a proceeding, if in-person participation is required by the judge. The result is in effect a denial of the opportunity for them to be heard or to present their case.

IMPACT ON AVAILABILITY OF LEGAL REPRESENTATION

Although there have not yet been empirical studies on the impact of widespread use of remote proceedings on the availability of legal representation, ample anecdotal evidence shows profound

⁷⁰ MICH. SUP. CT. ORDER NO. 2022-08 (Aug. 10, 2022), McCormack, C.J., *concurring, supra* note 27, at 20.

⁷¹ Maia Spoto & Madison Alder, *Rural Digital Divide Complicates Virtual Court Participation*, BLOOMBERG LAW 1 (Aug. 29, 2022), <https://news.bloomberglaw.com/daily-labor-report/rural-digital-divide-complicates-virtual-court-participation>.

⁷² UTAH JUDICIAL PERFORMANCE EVALUATION COMMISSION, REPORT TO THE COMMUNITY 3 (2022), <https://judges.utah.gov/2022/01/05/jpec-2022-report-to-the-community>.

⁷³ COLORADO OFFICE OF JUDICIAL PERFORMANCE EVALUATION, NON-ATTORNEY QUESTIONNAIRE (2018), https://judicialperformance.colorado.gov/sites/judicialperformance/files/documents/CO_OJPE_Non-Attorney_2018_Retention_Cycle_Clean.pdf

benefits in this area as well. Chief Justice McCormack made the following observation regarding the impact:

*Virtual proceedings have had enormous efficiency benefits too. By reducing travel time and time spent in the courthouse waiting for hearings to begin, attorneys can appear in courts in multiple counties on the same day. And lawyers benefit too when courts around the state have the same processes for appearing. Having to negotiate vastly different rules from court to court around the state is a cost lawyers and their clients would bear.*⁷⁴

Texas Judge Ferguson similarly observed:

*With remote proceedings, we eliminated cattle-call dockets. Lawyers know what time their case will be called, and can appear, participate, and leave with a minimum of wasted time. In remote rural areas, this can save as much as 90% of legal fees for each hearing. For most Texans, this alone is the difference between having representation, and not.*⁷⁵

Judge Ferguson stressed the particularly significant impact in rural areas:

*Two of my counties [in far West Texas] have no attorneys in private practice at all. In order for residents to obtain legal representation, they must retain lawyers from outside the District. Prior to the lockdown, only the wealthiest litigants could afford to hire these lawyers, and if the case dragged on, the litigant with the deepest pockets often won simply through attrition.*⁷⁶

Comments of legal aid lawyers in Texas responding to a survey conducted by the Texas Access to Justice Foundation also reflected the benefit of remote proceedings in increasing their ability to provide representation:

- *“There have been some days where our attorneys have appeared in one county in the morning and another county in the afternoon. It has greatly increased access to services for our clients.”*
- *“[It is] much easier to attend several trials a day when each trial is set remotely. [I am] able to represent up to 3 clients a day.”*
- *“We provide services to rural Texans. We could not get to all the places our clients live if we had to do everything, or really much of anything, in-person.”*

⁷⁴ MICH. SUP. CT. ORDER NO. 2022-08 (July 26, 2021), *McCormack, C.J., concurring, supra* note 52, at 10.

⁷⁵ Ferguson, *supra* note 43, at 4.

⁷⁶ *Id.* at 3.

- “Remote service has made conducting default and prove- up hearings much more efficient by not having to spend a day travelling just to conduct a ten-minute default hearing.”⁷⁷

Once again, the experience of Texas Judge. Ferguson is instructive:

I preside over the 394th Judicial District, which includes five counties in far west Texas, covering roughly 20,000 square miles. It is a rural court of true general jurisdiction. We transitioned to remote proceedings within a week of the March 13, 2020 lockdown, and as a result never ceased operations. Although I fully reopened for in-person proceedings in 2021, over 95% of my current docket remains remote, by request of the litigants and attorneys. Attorneys in my court overwhelmingly want remote proceedings to continue...⁷⁸.

The attorneys and parties strongly favor remote proceedings for evidentiary hearings as well. For the last six months, I have offered lawyers and litigants the option of remote or in-person format for all requested evidentiary hearings. To date, they have requested in-person proceedings less than 5% of the time, and when notified by the court that a hearing would be in-person anyway, at least one party has objected every time.⁷⁹

The counterpoint to remote proceedings’ enhancement of the availability of legal representation, particularly in remote rural areas, is the barrier created when such proceedings are not uniformly available. In taking on representation of a client in a distant county, lawyers need to know if a court in which they may need to appear will allow them to do so remotely. If it is unclear whether such an appearance is possible, the lawyer will generally need to deny such an engagement.

CHALLENGES OF REMOTE PROCEEDINGS

Increased hearing length

Notwithstanding the manifest benefits of remote proceedings discussed here, they present certain challenges. The year-long Texas study by the NCSC found that on average remote proceedings took 34% longer than in-person ones. The longer proceedings were occasioned by two negative factors: (1) technical issues using Zoom, (2) lack of preparation by the parties; and two positive

⁷⁷ Texas Access to Justice Foundation Survey, *supra* note 53.

⁷⁸ Ferguson, *supra* note 43, at 1.

⁷⁹ *Id.* at 4.

factors: (1) fewer default judgments due to the accessibility of remote proceedings, and (2) the increased numbers of parties participating in hearings.⁸⁰

The study did not measure specifically how much each factor contributed to longer hearings, but discussions with judges involved in the survey found that they “...were quick to say the increased time is largely the result of technical issues from hearing participants, such as difficulty logging on to the Zoom platform, connectivity problems related to limited bandwidth, or difficulty sharing screens or uploading documents and exhibits.” They noted that in all instances, remedying the difficulties fell to judges or court staff who were not trained to address them. The report notes that its findings aligned with those in studies in Nevada and Texas Child Protective Services cases.⁸¹

| Pre-trial Hearing | ESTIMATED HEARING TIMES | | | NUMBER OF HEARINGS | |
|----------------------------|-------------------------|-----------|-----------------------|--------------------|--------------|
| | In-Person | Remote | Percentage Difference | In-Person | Remote |
| Felony A (Person) | 40 | 53 | 1.34 | 42 | 124 |
| Felony B (Property) | 31 | 40 | 1.27 | 51 | 138 |
| Injury Damage w/ Vehicle | 26 | 45 | 1.73 | 16 | 104 |
| Injury Damage - No Vehicle | 68 | 73 | 1.07 | 12 | 52 |
| Contract | 13 | 58 | 4.43 | 5 | 117 |
| Other Civil | 48 | 80 | 1.69 | 36 | 226 |
| Divorce | 30 | 65 | 2.16 | 28 | 195 |
| Other Family Law | 59 | 72 | 1.22 | 26 | 224 |
| Modifications/Enforcements | 64 | 47 | 0.73 | 17 | 107 |
| Delinquency | 94 | 104 | 1.11 | 4 | 71 |
| Child Protective Services | 102 | 132 | 1.29 | 9 | 82 |
| Overall Average | 52 | 70 | 1.34 | 246 | 1,440 |

It is useful to note, as this chart from the Texas study shows, that the actual time difference between in-person and remote proceedings varies significantly based on the type of matter.⁸²

To address the technical issues encountered by the courts, the NCSC recommended that “Courts should not assume that all parties have access to the proper equipment (e.g., computers, tablets, smart phones) necessary to participate in remote court proceedings. If individuals do not have access to the appropriate technology, courts should make such equipment available to court

⁸⁰ OSTROM ET AL., *supra* note 49, at 5-9.

⁸¹ *Id.* at 8.

⁸² *Id.* at 7.

users in a safe and easily accessible location.”⁸³ They also recommended that courts consider hiring “technical bailiffs” who would be responsible for sending hearing links, scheduling, and addressing technical issues that arise during the proceeding.⁸⁴

Lack of respect for the court

A common refrain among judges conducting remote proceedings is when one of the parties fails to show proper respect for the court or for the proceeding. Judges have reported litigants who have appeared half-clothed, in bed, smoking a cigarette, or driving. While such incidents are infrequent, they need to be addressed. The NCSC Texas Study recommended that “*Court systems should develop clear instructions for remote proceedings on courtroom decorum and expectations of litigants, including timeliness, dress code, and appropriate places from which to log into [a] hearing.*”⁸⁵ Training judges in the use of remote proceedings can also include guidance in how to respond to such situations.

Digital Divide

The challenges associated with individuals who do not have the necessary computer equipment or knowledge of how to use it are greater than just the slowed pace of the proceedings. Many litigants, especially those in rural areas, lack the requisite broadband access, an internet-capable device, or knowledge about using remote platforms. A national study by the Pew Research Center in 2021 highlights the problem. PEW found that twenty four percent of adults with an income below \$30,000 do not own a smartphone, 43 percent do not have home broadband services, and 41 percent do not own a desktop or laptop computer.⁸⁶ While the numbers have improved in the last five years, in 2021, nearly one in three Americans in rural communities did not have access to broadband internet at home.⁸⁷ Indigent populations are trending towards greater reliance on smartphones for access to the internet. About one in four Americans (27%)

⁸³ *Id.* at iv, 18.

⁸⁴ *Id.* at 19. It is perhaps instructive to note that Judge Roy B. Ferguson who has been frequently quoted in this report was the judge in whose remote courtroom the widely publicized incident occurred of a lawyer who inadvertently appeared with a cat filter.
<https://www.youtube.com/watch?v=9f9eDBpnkaU>.

⁸⁵ *Id.* at 18.

⁸⁶ Emily A. Vogels, *Digital Divide Persists Even as Lower Income Americans Make Gains in Tech Adaptation*, PEW RESEARCH CENTER (June 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption>; see Spoto & Alder, *supra* note 73.

⁸⁷ Emily A. Vogels, *Digital Gap Between Rural and Nonrural America Persists*, PEW RESEARCH CENTER (Aug. 19, 2021). <https://www.pewresearch.org/fact-tank/2021/08/19/some-digital-divides-persist-between-rural-urban-and-suburban-america>.

making less than \$30,000 relied exclusively on smartphones for Internet access in 2021, which was an increase from 13% in 2013.⁸⁸

Responses to the previously cited Texas survey of legal aid advocates illustrate the problem:

- *“Many clients do not have technical skills. Some did not know how to download the Zoom program. Others could not work it. Then the actual technicalities of a hearing proved stressful. And some clients, (older) did not even have the equipment to do a Zoom hearing.”*
- *“[Clients] almost always required training in the use of remote technology, and some were very limited and could not participate remotely. Very seldom did I ever have a client who didn't need some degree of instruction and/or practice to effectively participate in hearings.”*
- *“Many potential and actual clients continue to have difficulty with access to the internet and knowledge of how to maneuver [a] virtual program (i.e., Zoom, Teams, etc.)”⁸⁹*

Bridging the digital divide

Some of the creative energy that was marshaled in the initial response to the pandemic has been brought to bear on the problem of the digital divide.

- Minnesota has placed 270 kiosks across the state in public libraries, community centers, and the like to facilitate access to a remote proceeding.⁹⁰
- The Texas Virtual Court Access Project expects by January 2023 to field 25 legal kiosks at statewide community centers through which users will be able to join a remote proceeding. A second phase over the next 24 months will install another 350 kiosks for users to participate in remote proceedings.⁹¹
- Colorado’s SCAO has begun exploring placing kiosks in court-sponsored Self-Help Centers throughout the state.
- The Western New England School of Law has established a Legal Kiosk Project in Western Massachusetts. They offer individuals without computers or Wi-Fi access to a free computer station to “connect with the justice system.”⁹²

⁸⁸ Vogels, *supra* note 88.

⁸⁹ Texas Access to Justice Foundation Survey, *supra* note 53.

⁹⁰ MINNESOTA LEGAL SERVICES COALITION, REACH JUSTICE MINNESOTA, MN LEGAL KIOSK PROJECT (2022), <https://www.legalkiosk.org>.

⁹¹ TEXAS LEGAL SERVICES CENTER, TEXAS VIRTUAL COURT ACCESS PROJECT (2022), <https://www.tlsc.org/post/kiosk-grant>.

⁹² LEGAL KIOSK PROJECT, WESTERN NEW ENGLAND SCHOOL OF LAW (2022), <https://www.legalkiosks.com/western-new-england>.

- Several states (California, Kentucky, Minnesota, Ohio, New York, and Tennessee) have instituted the use of “Justice Buses,” which are mobile clinic vans, stocked with computers, Wi-Fi access, and free lawyers.⁹³

Various states have also implemented initiatives to increase access to broadband and to equipment needed for a remote proceeding.⁹⁴

- West Virginia’s Attorney General partnered with Tractor Supply Store to offer Wi-Fi hot spots in their parking lots and as public internet access points.
- The City of San Jose, California worked with AT&T to offer 11,000 free Wi-Fi hotspot devices. An additional 3,000 hotspot devices were available through San Jose libraries.
- The Hawaii State Law Library System worked with an access to justice coordinator to create a searchable online statewide map of free Wi-Fi spots for court users who needed to get online.
- Columbia Law School and The Legal Aid Society of New York offered pre-loaded “*justice tablets*” for users in Queens, New York, which are mailed to the user’s home to allow them to participate in virtual proceedings.
- New Jersey, Arizona, and Texas will provide technology to jurors so they can participate in remote trials.
- The Salt Lake City Justice Court, the Eleventh Judicial Circuit of Florida and the Friends of the Court unit within the Family Division of the Circuit Court in Oakland County, and Michigan courts, among others, have adopted online scheduling tools to allow litigants to select hearings at times that work for them.
- In Idaho, the courts had remote access points installed in a local convention center, so that court users without internet access at home can file documents or participate in hearings.
- Hawaii, Kansas, Tennessee, Florida, and Michigan launched online dispute resolution platforms to help court users file a case, negotiate with the other party, and resolve disputes without having to come to court.

⁹³ See, OHIO ACCESS TO JUSTICE FOUNDATION, OHIO JUSTICE BUS, <https://www.ohiojusticefoundation.org/grantees/ohio-justice-bus/>; ONE JUSTICE (CALIFORNIA), JUSTICE BUS PROJECT, <https://onejustice.org/probonojustice/justice-bus-project/>; Legal Aid of the Bluegrass, Kentucky Justice Bus, ; Justice Buses: Putting Wheels on Justice, Reach Justice Minnesota, [Justice Buses - Reach Justice Minnesota](#); The Justice Bus Is Coming to Western New York, Neighborhood Legal Services, [Justice Bus - Neighborhood Legal Services \(nls.org\)](#); The Tennessee Justice Bus, Justice for All, [Justice Bus - Justice For All TN](#).

⁹⁴ Zarnow & Hirsch, *supra* note 2, at 141-144.

OPTIONS FOR MOVING FORWARD IN COLORADO

As with many other states across the nation, Colorado courts have looked to the future, and recognized the importance of examining the lessons learned from operating for two-plus years during the pandemic. The Supreme Court has appointed a task force of chief judges, chaired by Chief Judge William Bain from the 4th Judicial District, to consider the issue. The recently created Standing Committee, *Pathways to Access* – co-chaired by Justice Melissa Hart and Chief Judge Susan Blanco of the 8th Judicial District – has identified remote proceedings as one of its four areas of focus. The Judicial Branch’s Technology Committee and an IT subcommittee are examining the technology needs for continued use of remote proceedings. The Branch has conducted surveys of judicial officers and other court personnel, as well as participants in remote proceedings regarding their experience and to identify issues to be addressed.

As detailed earlier in this report, the response of the Colorado judiciary in embracing remote proceedings during the pandemic stands as a tribute to its underlying commitment to assuring access to the courts. We believe it is time for a robust effort to enshrine those changes as a permanent part of Colorado’s judicial landscape. To this end, we urge the Supreme Court and SCAO to formally affirm their strong support for the widespread and uniform use of remote proceedings in appropriate circumstances.

In the following pages, we analyze policies and practices adopted in other states since the pandemic has eased, to provide a framework for considering options available in Colorado. The supreme court in some states has mandated – by administrative order or amendments to the rules of procedure – that some specified proceedings will presumptively be held remotely and some in-person. In other states, the high court has issued guidelines regarding use of remote proceedings but has left the decision to each trial judge or judicial district. Others have expressed their strong support for remote proceedings, but have not given guidance regarding their use.

Central to the approaches taken by various courts across the country is the degree to which the supreme court in the state has or is accepted as having authority to direct the operation of the states’ trial courts. The following analysis, therefore, considers options based on a spectrum of authoritative structures, ranging from direct supervisory to mere hortatory authority.⁹⁵ In each case, the supreme court’s explicit endorsement of remote proceedings is key.

⁹⁵ Colorado courts have generally operated in recent years on the principle that trial courts in the state should have autonomy in their operations. The state constitution gives the Supreme Court “*superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.*” COLO. CONST. art. II, §2. COLO. CONST. art. II, §21 also states in part: “*The supreme court shall make and promulgate rules governing the administration of all courts and shall make and promulgate rules governing practice and procedure in civil and criminal cases...*”; see also, COLO. CONST. art. II, §5(4) regarding the authority of chief judges.

Administrative orders requiring remote proceedings in delineated proceedings

Minnesota and Arizona have taken the lead in mandating the permanent inclusion of remote proceedings in the state’s judicial operations.⁹⁶ On April 19, 2022, the Minnesota Supreme Court issued an Administrative Order that identified “*the presumptive format for cases and hearings in the district courts—either in person or remote—going forward.*” The order allows for a departure from the presumed format only “*if exceptional circumstances for that departure exist.*”⁹⁷

Arizona followed suit the following week when its supreme court ordered adoption of “*presumptive standards...regarding which hearing types should be held remotely and which should be held in-person in Arizona courts.*” The court ordered that the presumptive standards would supersede any inconsistent procedural requirements in the Arizona Rules of Court. The Arizona order allowed the presiding judge in each judicial district to alter how the presumptive standards are applied in response to “*limitations in local court resources, bandwidth, technology, hardware, software, and staffing or, for good cause, to meet unique needs in their respective counties.*”⁹⁸

Both Arizona and Minnesota promulgated detailed tables setting forth the specific proceedings in both criminal and civil matters that are presumptively to be held remotely or in-person.⁹⁹ In both states, a principal factor determining when a proceeding should be held in-person is when it is an evidentiary hearing or is a bench or jury trial. The Colorado Access to Justice Commission’s Courts Committee is examining the Minnesota and Arizona charts for their possible use in Colorado.

⁹⁶ The Minnesota Constitution does not specifically grant the Supreme Court authority to direct the operations and practices of the state’s trial courts. The Arizona Constitution gives the Supreme Court, through the Chief Justice “*administrative supervision over all courts of the state.*” ARIZ. CONST. art. III, §3.

⁹⁷ MINNESOTA SUPREME COURT, ORDER GOVERNING THE CONTINUING OPERATIONS OF THE MINNESOTA JUDICIAL BRANCH ADM20-8001, at 1-2 (Apr. 19, 2022), <https://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/COVID-19/041922.pdf>.

⁹⁸ ARIZONA SUPREME COURT, ADMINISTRATIVE ORDER NO. 2022-46, ADOPTION AND IMPLEMENTATION OF PLAN B WORKGROUP RECOMMENDATIONS AS PRESUMPTIVE STANDARDS FOR REMOTE AND IN-PERSON HEARINGS 1-2 (April 27, 2022), <https://www.justicecourts.maricopa.gov/media/e2yfvz1s/ao2022-046-supreme.pdf>.

⁹⁹ *Id.* at Appendix 1, 13-19 (the Arizona standards are more detailed, consisting of six pages); MINNESOTA JUDICIAL BRANCH, POLICY NO. 525, COURT OPERATIONS, ONECOURTMN HEARINGS INITIATIVE POLICY 3-4, https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/500/525.pdf (the Minnesota table is two pages).

Revising the Rules of Civil and Criminal Procedure

Michigan has also moved to make remote proceedings a long-term part of the judicial landscape in the state.¹⁰⁰ On July 26, 2021, the court issued an administrative order that rescinded previous temporary orders adopted in the face of the pandemic and temporarily changed a variety of procedural rules to require remote hearings “*to the greatest extent possible.*”¹⁰¹ The order also initiated a months-long process to gather input on whether the changes should be permanent.¹⁰² The process culminated in a public hearing held on March 16, 2022 in which the Court received oral testimony from 46 people and 41 written comments. In addition, every trial court met with local stakeholders and received input from more than 2000 people who represented 36 district courts, 17 circuit courts, 9 probate courts, 2 tribal courts, and 1 friend of the court. According to Chief Justice McCormack: “*the vast majority...supported the continued use of remote proceedings in some form.*”¹⁰³

As a result, on August 10, 2022, the court adopted an Administrative Order that, as described by the Chief Justice, made “*...remote judicial proceedings the presumptive norm in many proceedings, providing much needed consistency across courts for court users. Any participant in a lawsuit can still request to appear in person for any proceeding, however, and that request must be honored.*”¹⁰⁴

The order delineates the types of proceedings in both civil and criminal matters that presumptively will be held remotely and those that will be held in-person. It states that videoconferencing technology is generally not to be used in bench or jury trials, or in proceedings in which the testimony of witnesses or presentation of evidence may occur. Ten types of civil proceedings and the two types of criminal proceedings are identified in the order as presumptively to be conducted remotely.¹⁰⁵

¹⁰⁰ The Michigan Constitution gives the Supreme Court “*general superintending control over all courts.*” MICH. CONST. art. VI, §4.

¹⁰¹ MICH. SUP. CT. ORDER NO. 2020-08 (July 26, 2021), McCormack, C.J., *concurring, supra* note 52, at 10.

¹⁰² MICH. SUP. CT. ORDER NO. 2020-08, 16-22 at 5-6 (Jul. 26, 2021), https://www.courts.michigan.gov/4a5475/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2021-07-26_formattedorder_rescpandemicaos.pdf.

¹⁰³ MICH. SUP. CT. ORDER NO. 2022-08 (Aug. 10, 2022), McCormack, C.J., *concurring, supra* note 27, at 17.

¹⁰⁴ *Id.* at 16.

¹⁰⁵ MICH. SUP. CT. ORDER NO. 2020-08 6-8, 10-12 (Aug. 10, 2022), https://www.courts.michigan.gov/4a42b2/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2022-08-10_formor_pandemicamdts.pdf.

The Order gives trial courts discretion to determine “*that a case is not suited for videoconferencing, and...[to] require any hearing... to be conducted in person.*”¹⁰⁶ It also allows any participant to request to appear in person for any proceeding.¹⁰⁷ Participants “*found to be unable to adequately use the technology, to hear or understand or be heard or understood*” can be ordered by the Chief Judge to appear in person. In all such circumstances, other participants must be allowed to participate remotely.¹⁰⁸

Three justices dissented from the issuance of the order. One felt that the changes had been precipitously adopted without adequate consideration of their potential impact on criminal defendants and on persons without access to the necessary technology.¹⁰⁹ Two others opposed the order partly on the principle that “*the physical courtroom, with all of its trappings, is essential to the decorum, gravity, and civility of the proceedings.*”¹¹⁰ “*The courtroom—with the judge perched on a bench, the call of the court crier to open court and call cases, and the ceremony and ritual of live court proceedings—affords trial courts with authority that is conspicuously absent from video proceedings.*”¹¹¹

Chief Justice McCormack countered the concerns in an opinion that supported the changes, grounded in their impact on equal justice, judicial efficiency and need to bolster public confidence in the judiciary. She wrote, in part:

Equal access to justice is the most critical problem for the fair administration of our courts. Before the pandemic, [c]ourts were falling short in meeting their mission to provide access to justice for all, and particularly so when it [came] to addressing the needs of lower-income and minority communities....Indeed, surveys showed that "nearly nine in ten low-income individuals with a civil legal problem receive[d] little or no legal help" in trying to navigate the justice system.

*Public trust is the judiciary's only currency, and it is eroding...Improved access to justice, consistency, and transparency are critical components for creating and maintaining public trust and confidence.*¹¹²

¹⁰⁶ *Id.* at 3.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 38.

¹¹⁰ *Id.* at 27.

¹¹¹ *Id.* at 23.

¹¹² *Id.* at 19.

Rules that strongly encourage remote proceedings, but leave the decision to each court

In anticipation of the end of the pandemic, Ohio created a task force¹¹³ to survey developments across the country and recommend changes to the Ohio Rules of Practice and Procedure to permit courts to hold remote proceedings on a permanent basis.¹¹⁴ Based on the task force’s recommendations, the Supreme Court developed guidelines to encourage the use of remote proceedings. Although not mandating that a court must use remote proceedings, the revised rule mandates that each court adopt a technology plan that includes “*a comprehensive strategy for implementing and maintaining technology solutions for conducting remote hearings, electronic service, the acceptance of electronic signatures, and any other technology-related solution utilized by the court or division.*”¹¹⁵

Ohio’s Chief Justice Maureen O’Connor endorsed the permanent use of remote proceedings, which she noted had “*...decreased failure-to-appear rates, the number of continuances, and default judgments. Technology facilitates the expeditious disposition of cases and increases access to courts, so people can resolve life-altering legal problems.*”¹¹⁶

Adopting no formal rule regarding remote proceedings, but encouraging courts to continue them¹¹⁷

During the pandemic, Utah courts operated under a series of detailed Administrative Orders governing the operation of every court in the state, grounded in the protection of public health

¹¹³ The Improving Court Operations Using Remote Technology (iCOURT) Task Force was composed of judges, attorneys, court officials and justice partners. See THE SUPREME COURT OF OHIO & THE OHIO JUDICIAL SYSTEM, *TASK FORCE ON IMPROVING COURT OPERATIONS USING REMOTE TECHNOLOGY*, <https://www.supremecourt.ohio.gov/courts/advisory/task-forces/remote-technology>.

¹¹⁴ The Ohio Constitution gives the state Supreme Court broad powers over the practice and procedure in local trial courts. It states that “*...the supreme court shall have general superintendence over all courts in the state, [to be] exercised by the chief justice in accordance with rules promulgated by the Supreme Court.*” OHIO CONST. art. IV, §5(A)(1). Proposed rules may be disapproved by formal action of the state legislature, without which the rule becomes effective. Notwithstanding the rule, in Ohio each court by tradition sets its own rules.

¹¹⁵ See OHIO SUP. CT., *AMENDMENTS TO THE RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO* (effective Jul. 1, 2022), [https://www.supremecourt.ohio.gov/ruleamendments/documents/iCOURT Amendments \(As Adopted\).pdf#5](https://www.supremecourt.ohio.gov/ruleamendments/documents/iCOURT%20Amendments%20(As%20Adopted).pdf#5).

¹¹⁶ Kathleen Maloney, *New Tools to Modernize Courts and Resolve Legal Problems*, COURT NEWS OHIO (Aug. 18, 2022), https://www.courtnewsOhio.gov/happening/2022/iCourtGuide_081822.asp#.YzI3WDTMKUm.

¹¹⁷ Rules for the administration of courts in Utah are adopted by a Judicial Council of which the Chief Justice is the presiding officer. UTAH CONST. art. VIII, §12.

and tailored to whether the COVID-19 threat level was deemed to be red or yellow.¹¹⁸ On August 26, 2022, the Utah Supreme Court and Utah Judicial Council issued an Administrative Order that terminated all previous COVID-19-related orders and instructed “[i]ndividual districts and courthouses, as well as judges, commissioners, and court employees [to] work cooperatively with community partners to ensure a smooth transition from mandatory video appearances.” The order encouraged courts, judges, and commissioners “to continue to use video appearances and hybrid court as appropriate and as determined by individual benches, judges, and commissioners.”¹¹⁹

In his March 2022 address on the state of the Utah judiciary, Chief Justice Matthew B. Durrant noted that “virtual court has provided greater access to justice than ever before . . . [by] bringing court to the people.” He observed that “many Utahns have been able to attend proceedings without taking time from work, while legal professionals and witnesses alike have reduced travel costs and the associated time commitments and that those who live in rural areas can use technology to reach attorneys throughout the state, without being forced to travel.”¹²⁰

Recommendation to the Colorado Supreme Court and the SCAO

Based on the experience of Colorado and other states during the pandemic and on the thoughtful steps taken by other states as the pandemic eases, we urge the Colorado Supreme Court and SCAO to take steps to make remote proceedings a permanent and uniform part of the state’s judicial architecture in appropriate circumstances. We believe it is important that any action taken support the uniform use of remote proceedings across the state to enhance the opportunity for lawyers to represent clients in multiple jurisdictions, including in particularly rural jurisdictions.

Here are some options the Supreme Court and SCAO may wish to pursue:

- Mandate by administrative order which proceedings will presumptively be held remotely or in-person;
- Issue a Chief Justice Directive setting forth statewide policies and procedures to encourage the use of remote proceedings;

¹¹⁸ See e.g., UTAH SUP. CT & UTAH JUDICIAL COUNCIL, ADMINISTRATIVE ORDER FROM COURT OPERATIONS DURING PANDEMIC (Oct. 2, 2020), <https://www.wvc-ut.gov/DocumentCenter/View/15133/COVID19-Order-WVC-Courts>.

¹¹⁹ UTAH SUP. CT. & UTAH JUDICIAL COUNCIL, ADMINISTRATIVE ORDER TERMINATING COVID-19-RELATED ORDERS (Aug. 26, 2022), <https://legacy.utcourts.gov/alerts/docs/20220826 - Administrative Order Terminating COVID-19-Related Orders.pdf>.

¹²⁰ Calloquy, *Citing Benefits, Chief Justice Says Utah Will Continue Remote Hearings*, CALLOQUY (Mar. 28, 2022), <https://www.calloquy.com/blog/citing-benefits-chief-justice-says-utah-courts-will-continue-using-virtual-hearings>.

- Revise the rules of civil and criminal procedure, such as C.R.C.P. 121 and 43(i), to allow or require remote proceedings in specified circumstances;
- Issue a formal statement strongly supporting the use of remote proceedings in appropriate circumstances, but leave it to each local court to decide how to proceed;
- For every judicial officer, publish on the Judicial Branch’s website the types of hearings and proceedings they will hold remotely or in which they will permit remote participation;
- Continue to gather data and analyze the benefits and drawbacks of remote proceedings to encourage their use where appropriate and provide training and technical support to maximize their benefit and overcome their drawbacks.

CLOSING OBSERVATION

Colorado courts, like those in every state in the nation, are at a crossroads as the COVID-19 crisis has eased. What started as a response to the national health crisis has evolved to a set of policy choices regarding the furtherance of access to justice and the efficiency of judicial operations. We believe that it is important that the Colorado Supreme Court and the SCAO make permanent the extraordinary changes accomplished during the pandemic to further access to justice, enhance judicial efficiency and foster increased public trust and confidence in Colorado’s courts.