

THE SUPREME COURT *of* OHIO

Task Force

*on Improving Court Operations
Using Remote Technology*



Report & Recommendations
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THE SUPREME COURT *of* OHIO

REPORT & RECOMMENDATIONS OF THE
Task Force to on Improving Court Operations
Using Remote Technology

2021



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The Task Force members express their deep appreciation to the following Supreme Court staff members for their significant contributions to this project:

- *David Edelblute, Children & Families Section, Office of Court Services;*
- *Brian Farrington, Office of Court Services;*
- *Sheila Lovell, Office of Court Services;*
- *Katheryn Munger, Case Management Section, Office of Court Services;*
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- *Alicia Wolf, Specialized Dockets Section, Office of Court Services.*

LETTER FROM THE CHAIR

The impact of the COVID-19 pandemic will be written in the history of our nation and etched into the memories of everyone old enough to understand the tremendous changes that it caused to our daily lives. Courts faced the daunting challenge of safely maintaining essential operations without the benefit of prior experience or planning. However, Ohio courts were quick to rise to the challenge by improvising and implementing innovative ways to continue to provide essential functions. As noted in this report, expanded use of technology was a vital part of that response.

Courts have revered traditions and practices that some consider to be unalterable but others view as outdated or even arcane. The Conference of Chief Justices and Conference of State Court Administrators, affiliates of the National Center for State Courts stated in its publication, “Guiding Principles for Post-Pandemic Court Technology” issued July 16, 2020, “The Covid-19 pandemic is not the disruption courts wanted, but it is the disruption that courts needed: to reimagine and embrace new ways of operating; and to transform courts into a more accessible, transparent, efficient, and user friendly branch of government.” The report of the iCOURT Task Force similarly notes that for Ohio courts, the pandemic was not just a gigantic disruption to normal operations, but also was a catalyst to rethink how to best provide justice in the future by increasing the use of technology in court operations.

Our task force was charged with preparing a report and recommendations by June 30, 2021. Thanks to the countless hours of work by the members of the task force, additional members of various subcommittees and the dedicated, professional staff of the Supreme Court assigned to the project, the task force, which began its work on Oct. 9, 2020, was able to complete its assignment on May 14, 2021 when it approved the final report.

The work of the task force was wide-ranging, including reviewing research articles, compiling survey data, attending webinars, and consulting with other state court systems and the National Center for State Courts on matters relating to using technology to continue court operations and to address legal issues that would arise from that use. Our final report contains recommendations for changes and additions to various Rules of Superintendence, state court rules, provisions of the Ohio Revised Code and the Ohio Administrative Code that will allow Ohio courts and staff to continue using technology even after the pandemic becomes a bad memory. It also contains recommendations for best practices, minimum standards, and a model for a local court rule for use of technology.

During the meetings of the task force, the subcommittee meetings, and ongoing email exchanges, many proposals and ideas were considered. There were vigorous discussions and debates in which diverse views were expressed. The recommendations and narrative in the report represent the consensus of those views.

I believe that the task force report and recommendations are an unprecedented recognition that courts must fully join the digital world of the 21st century and acknowledge that increased use of technology in the traditional functions of courts is not only appropriate but necessary to provide access to justice, transparency in the courts and greater efficiency in the utilization of resources. The recommendations in this report will not be the final solution, but rather the foundation and, hopefully, the inspiration for individual courts to continue to develop and implement innovative ways to utilize technology to modernize operations and provide justice for all.

My thanks and gratitude go to Chief Justice Maureen O'Connor for the honor of appointing me to chair the task force and for appointing a diverse group of members who are dedicated, experienced, innovative and extremely competent professionals. Their willingness to serve on the task force and to devote countless hours of their time over the past seven months is greatly appreciated. Thanks also goes to Justice Patrick DeWine who attended meetings of the task force and offered valuable comments on many of the draft proposals circulated for review.

Recognition and thanks also are due to all of the staff of the Ohio Supreme Court who were assigned to work with the task force and the various subcommittees. I never cease to be amazed at the high quality, energy, and competence of the staff of the Supreme Court. The work of the task force would not have been possible without the assistance and guidance of these dedicated public servants.

Finally, without question, the most valuable person involved in this project was Kyana Pierson, Policy Counsel for the Children and Families Section of the Ohio Supreme Court who was the primary author of the final report and many of its recommendations. She communicated with Vice Chair Serpil Ergun and me almost daily and worked tirelessly for the past eight months to coordinate the activities of the various subcommittees and their assigned staff members, to monitor their timelines to complete their assigned tasks, and to incorporate all of the various subcommittees' recommendations into this report. She was an inexhaustible source of support and guidance. Thanks, Kyana.

Sincerely,

Judge Rocky A. Coss, *Chair*

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INTRODUCTION

The year 2020 will be one to remember. Looking back to the early days in March when medical experts were learning new information about the novel coronavirus (aka COVID-19) on a daily basis, Ohioans eagerly awaited new updates during Gov. Mike DeWine’s weekly 2 p.m. press conferences. Those weekly, and eventual bi-weekly, press conferences were where the public learned that life as they knew it was coming to a rapid standstill. Schools, restaurants, banks, and governmental offices were closing. Employees were sent home with instructions to work out of their dining rooms, bedrooms, and basements.

Gov. DeWine declared Ohio in a state of emergency with Executive Order 2020-01D. Shortly thereafter, local courts began issuing administrative orders continuing court proceedings. The General Assembly enacted Amended Substitute House Bill 197 tolling statutory time limitations and Chief Justice Maureen O’Connor issued Supreme Court Administrative Order 2020-Ohio-1166 tolling time requirements imposed by Supreme Court Rules of Court. These measures gave courts some breathing room to determine the best course of action.

All paths led to the use of technology. The public health emergency forced courts to embrace online and virtual platforms like never before. Chief Justice O’Connor allocated more than \$6 million of the Supreme Court’s budget to provide emergency technology grants to local courts. These grant funds were issued to more than 280 courts in 87 counties for such items as cameras, laptops, Polycom systems, video-conferencing licenses, and other hardware. Courts purchased the necessary software and equipment to allow them to continue operating, but primarily doing so in a remote manner. “The reliance of courts, including the Supreme Court, on remote technology has been critical to the administration of justice during this pandemic,” Chief Justice O’Connor said.

To some degree, courts already had been using technology to enhance the delivery of services with online processes such as electronic filing, online payment options, and online case dockets. However, never before had they relied so heavily on technology to perform essential court functions. Courts had to equip staff to work remotely from home; determine how to accept filings, exhibits, and other documents; and figure out how to conduct court proceedings virtually. Local courts rose to the challenge and developed innovative strategies to ensure the administration of justice continued.

The coronavirus pandemic has served as the gateway to modernization that courts needed for them to operate more efficiently, increase access, and provide greater flexibility for court users. Chief Justice O’Connor urged courts to take advantage of the lessons learned over the past several months. “Now we will take our knowledge a step further by finding out how technology can help local courts become even more responsive to the public for the remainder of the pandemic and afterward,” she said.

The *Improving Court Operations Using Remote Technology (iCOURT) Task Force* was formed with the goal of providing recommendations on the future use of technology. The procedures courts adopted in response to the pandemic should not end as state and local health orders are lifted and restrictions on accessing courthouses are no longer in place. Courts should evaluate the effectiveness of those processes and continue those that promote the purposes of courts.

Milton Friedman said “Only a crisis – actual or perceived – produces real change.” As such, the recommendations set forth by the iCOURT Task Force in this report are not geared solely to responding to this and future crises impacting the operations of courts. They also are designed to modernize the judiciary so that courts in Ohio promote justice in individual cases, ensure the public perceives justice, provide an impartial forum for the resolution of legal disputes, protect individuals from the arbitrary use of government power, provide a record of legal status, deter criminal behavior, rehabilitate persons convicted of a crime, and separate convicted persons from society.¹

¹ National Association for Court Management, citing Ernest Friesen, Institute for Court Management, *Eight Purposes of Courts*, <https://nacmcore.org/competency/purposes-and-responsibilities/> (accessed April 12, 2021).

OVERVIEW OF THE TASK FORCE

On Sept. 10, 2020, Chief Justice O'Connor established the *Improving Court Operations Using Remote Technology Task Force* to study how courts used technology during the coronavirus pandemic and to make recommendations to allow for the continuing use of technology in the future to improve access to justice and modernize court operations.

The iCOURT Task Force was comprised of 25 individuals from the judiciary and its court partners. The goal was for the membership to represent the perspectives of all justice-system partners so that the findings and recommendations would encompass persons on both sides of the bench. To that end, task force members included judges, magistrates, court administrators, information technology professionals, clerks of court, prosecutors, public defenders, and private practitioners.

The task force was charged with reviewing Ohio courts' use of technology to ensure the continued and effective operation of the judicial system during the COVID-19 pandemic and make recommendations regarding the use of such technology in the future.

Specifically, iCOURT was tasked with:

1. Examining precisely how courts used technology;
2. Identifying courts' various experiences with remote appearances and trials;
3. Surveying judges and attorneys regarding their experiences and opinions with remote appearances and trials;
4. Identifying best practices and technologies for local courts;
5. Identifying barriers and challenges to the effective use of technology, such as limited internet access, wireless difficulties, costs, and equipment;
6. Identifying next steps;
7. Identifying practices to safeguard procedural due process and access to justice when technology is used;
8. Identifying rules that may need to be updated and modernized;
9. Addressing how to conduct remote criminal jury trials; and
10. Identifying uses of technology that can be implemented to improve court efficiency and access to justice.

The task force created six subcommittees to tackle each of its duties.

- Judge Theresa Dellick, Mahoning County Juvenile Court, served as the chair of the Survey Committee that developed surveys to courts, justice system partners, and litigants about their experiences with using remote technology.
- The Appellate Subcommittee, chaired by Doug Eaton, Tenth District Court of Appeals, focused on how appellate courts were using technology to conduct oral arguments and identified ways to make submitting briefs and other documents more efficient.

- The Civil, Civil Jury Trial & Domestic Relations Subcommittee was chaired by Judge Ian English, Lucas County Common Pleas Court. This group proposed several changes to the Rules of Civil Procedure to modernize procedural changes in civil actions and jury trials.
- Judge Jonathan Hein, Darke County Common Pleas Court, served as the chair of the Court Operations Subcommittee that recommended technology standards, case management strategies, and ways to make court operations more efficient.
- The Criminal & Jury Trials Subcommittee was chaired by Judge Andrea Peeples, Franklin County Municipal Court. This group primarily focused on the constitutional rights of defendants and victims to propose a process to allow for remote jury trials to be conducted in whole or in part.
- Finally, Judge James Walther, Lorain County Probate Court, was the chair of the Juvenile & Probate Subcommittee that proposed definitional and rule changes to clarify when remote appearances could occur in juvenile and probate courts.

SUMMARY OF RECOMMENDATIONS

Overall Recommendation

1. Courts should continue the use of remote technology to conduct court proceedings.

General Definitions

2. The definitions of the following terms and phrases should include remote appearances for purposes of any references found in the Rules of Court:
 - a. “In chambers”
 - b. “In person”
 - c. “In the presence of”
 - d. “Open court”
 - e. “Personal appearance”
 - f. “Physical presence” or “physically present”
 - g. “Shall appear before the court”
 - h. Any other term or phrase that could potentially be construed to require an individual to be literally face-to-face with another person in a designated location.

This includes amending: a) Rule 2 of the Rules of Criminal Procedure; Rule 101 of the Rules of Evidence; b) Rule 2 of the Rules of Juvenile Procedure; c) Rule 2 of the Rules of Superintendence; and d) Rule 2 of the Traffic Rules and adding a new Rule 1.1 to the Rules of Civil Procedure.

3. The definitions of the following terms and phrases should include remote appearances for purposes of any references found in various Revised Code and Administrative Code sections:
 - a. “In chambers”
 - b. “In person”
 - c. “In the presence of”
 - d. “Open court”
 - e. “Personal appearance”
 - f. “Physical presence” or “physically present”
 - g. “Shall appear before the court”
 - h. Any other term or phrase that could potentially be construed to require an individual to be literally face-to-face with another person in a designated location.
4. Revised Code 2705.01: Summary Punishment for Contempt should be amended to ensure that “in the presence” of the court or judge in chambers includes a remote appearance.

Minimum Standards for Technology Use

5. The Supreme Court should establish “Minimum Standards for Technology Use” for technologically adept courts similar to those created for courthouse security and courthouse facilities.
6. A new Rule of Superintendence should be adopted requiring the use of “Minimum Standards for Technology Use.”
7. The Supreme Court should use its technology grant funds to incentivize local courts to meet the “Minimum Standards for Technology Use.”
8. The Supreme Court and other partners should establish a technology assessment committee to review local courts’ technological capabilities; assess compliance with the “Minimum Standards for Technology Use”; provide in-person, telephonic, or virtual consultation; and recommend resources/enhancements to current technology.
9. Courts should utilize integrated software that allows for the exchange of information from one system to another, but also is fluid and adaptable to accommodate future technology upgrades and innovations.
10. Courts should review and refine Continuity of Operations Plans (COOP) mindful of ensuring the ability to deliver judicial services through technology (i.e., cloud back-ups and retrieval; electronic transmission of pleadings and notices; replacement of technology equipment; access to electricity; continuity of telephone communications; procedures, training and capabilities for staff to work at remote and varied work sites; etc.).
11. There should be consistent use of technology solutions within a courthouse, as well as county-to-county, where possible, to improve attorneys’ abilities to seamlessly practice in multiple locations.
12. Rule 5 of the Rules of Superintendence should be amended to require courts to adopt a local rule requiring a court technology plan.
13. The Supreme Court should develop a bench card of best practices for the use of technology in the courtroom.
14. Local courts and the Supreme Court should publicize success stories to encourage the adoption of technology by courts by outlining the benefits to both courts and litigants (e.g., increased access to justice, increased efficiencies, financial savings). The Supreme Court should develop a media template packet for local courts to customize.

Technical Assistance for Court Staff

15. The Supreme Court should establish an “Ask an Expert” list/dictionary of topics for courts to use when seeking answers to technology questions. Ideally, this would include a contact name of a person with expertise willing to advise a judge or court staff.
16. The Supreme Court’s Commission on Technology & the Courts should establish and manage an IT Leadership Consortium comprised of local court IT specialists or expert peers to advise courts in the application and use of technology in the courthouse similar to groups established for executive branch agencies (e.g., State Multi-Agency CIO Advisory Council).
17. The Supreme Court and other partners should provide training for IT court staff.

18. The Supreme Court should facilitate collaborative purchasing agreements among courts (e.g., statewide or countywide) to assist with the purchase of technology-related products and services. The purpose of collaborative purchasing is to leverage best pricing through buying in bulk.

Technical Assistance for Court Users

19. There should be instructions or training materials available for local courts to post on their websites that inform litigants and attorneys on how to use remote technology.
20. The Supreme Court should develop a bench card on providing technical support to attorneys and litigants on how to use remote technology solutions.
21. The Supreme Court, in coordination with subject-matter experts, should develop templates or guidance for local courts on the contents of their websites to ensure that basic information is uniformly available (e.g., local court rules, standardized forms); Americans with Disabilities Act requirements are met; and helpful legal information is available to the public, litigants, and the bar.
22. All courthouses should be equipped with free internet access available for use by the public.
23. Courts should coordinate with local bar associations for education to the public and the bar on the court's function and enhance civic education.

Scheduling & Case Management

24. Courts should use bench-based case management tools to automate workflow, reduce delay, and remove redundancy in caseflow processes.
25. Courts should consider implementing electronic scheduling by parties online, by themselves (with supervision by the court as needed).
26. Courts should consider creating a simple electronic method for parties to request a continuance of upcoming hearings.
27. Courts should use SMS/text messaging/email to provide general reminders about court appearances; this technology also can be used to alert parties to enter the courthouse.
28. Courts should provide online docket access for allowable case types under Rules 44-47 of the Rules of Superintendence, including the ability to view case file documents, through a website or mobile application.
29. The Supreme Court's Advisory Committee on Case Management, in consultation with the Commission on Technology & the Courts, should develop a proposal for the adoption and implementation of a statewide case management system. Alternatively, the Supreme Court should consider modules to connect or integrate case management systems to other platforms to minimize data entry duplication.
30. The Supreme Court should allocate funds for the sustainability of a specialized docket case management system upon the receipt of requested grant funds (and if the funds are not granted, the initial funding too).
31. Rule 36.08 of the Rules of Superintendence should be amended to allow for members of the Supreme Court's Commission on Specialized Dockets to attend meetings remotely.
32. The Supreme Court should enhance the features of the Ohio Courts Network.

Electronic Filing

33. Courts should use and expand their use of electronic filing.
34. Courts should maximize the electronic ticket process hosted by the Ohio Department of Public Safety.

Acceptance of Electronic Signatures

35. Courts should adopt a local rule allowing for the acceptance of electronic signatures.
36. *The Authentication Standards for the Use of Electronic Signatures in Electronic Documents* drafted by the Workgroup on the Standards Subcommittee of the Supreme Court's Commission on Technology & the Courts in 2008 should serve as a model for developing updated best practices for the acceptance and use of electronic signatures.
37. Rule 11 of the Civil Rules of Procedure should be amended to allow for the express ability to electronically sign documents.

Acceptance of Electronic Documents

38. Courts should expand their use of electronic document exchange.
39. Courts should establish a process so that requests for sealing of documents can be made electronically and immediately go to the judicial officer.
40. As courts implement new case management systems, they should include the capability to accept documents under seal (e.g., functionality to restrict access based upon rules/permissions).

Online Payment

41. Courts should expand their use of online payment of court costs, fines, and fees.

Virtual Assistance with Court Services

42. Courts should consider developing a mobile application where parties can access information about their case, make a payment, electronically upload and sign documents.
43. Courts should provide virtual assistants or kiosks that help users perform court-related functions (e.g., access forms, file documents, make payments, access information, participate in a remote hearing).
44. Courts should offer guided interview systems to help litigants prepare and file documents.

Online Dispute Resolution

45. Courts should consider online dispute resolution as a way to dispose of cases.
46. The Supreme Court should develop standards for online dispute resolution and publish them.
47. Rule 16.06 of the Rules of Superintendence should be amended to allow for members of the Supreme Court's Commission on Dispute Resolution to attend meetings remotely.

Administrative Judge Online Portal

48. The Supreme Court should develop a centralized online portal for administrative judges to communicate and perform Supreme Court-related administrative functions (e.g., magistrate registration, submission of local rules, court personnel directory).

Minimum Standards

49. The Supreme Court should establish platform-agnostic minimum requirements that must be met in order to conduct a remote proceeding.
50. Before conducting remote hearings, courts should develop and communicate procedures on how the proceeding will be conducted, including, but not limited to, evidence and exhibits, witnesses, cross-examination, objections, attorney-client communications, side-bar conversations, recesses, and courtroom decorum.
51. Courts should develop a procedure where a party can request a remote proceeding.

Instructions to Parties & Other Remote Participants

52. Courts should develop clear procedures and instructions for notifying parties of their remote proceeding (e.g., videos, FAQs, user guides).

Accommodations

53. Courts should determine a process for accommodating participants with limited English proficiency and disabilities in remote proceedings.
54. Courts should consider using virtual remote interpreting.
55. The Supreme Court should evaluate expanding interpreting services to include video remote interpreting for the use of American Sign Language interpreters and supplement the telephone language service to also include virtual remote interpreting in a foreign language.

Public Access

56. Courts should adopt procedures to allow the public to access remote proceedings, including live streaming court hearings and participating in the Ohio Virtual Courtroom Directory.
57. Courts should review existing orders to ensure appropriate procedures are in place to prevent impermissible and unauthorized uses of audio/video recording.

Methods of Service

58. Rule 4 of the Rules of Civil Procedure should be amended to require the inclusion of an email address in the summons when one is available.
59. Rule 4.1 of the Rules of Civil Procedure should be amended to expand the allowable methods of service to include email or other electronic media platforms as designated by the attorney or the party.
60. Rule 5 of the Rules of Civil Procedure should be amended to expand the allowable methods of service to include other electronic media platforms as designated by the attorney or the party subsequent to the filing of the original complaint.
61. Rule 5 of the Rules of Civil Procedure should be amended to require courts to adopt local rules allowing for the use of electronic service for subsequent pleadings and documents.

Discovery

62. Rule 26 of the Rules of Civil Procedure should be amended to add the express ability to obtain discovery in person or remotely.

Depositions

63. Rule 30 of the Rules of Civil Procedure should be amended to include “other remote technology” as an allowable method of recording.
64. Rule 13 of the Rules of Superintendence should be amended to expand videotaped testimony and evidence to “pre-recorded in-person and remotely-presented testimony” in conjunction with the proposed changes to Civil Rule 30.
65. Rule 31 of the Rules of Civil Procedure should be amended to allow for the electronic transmission of a deposition.

Taking Testimony

66. Rule 43 of the Rules of Civil Procedure should be amended to expand the circumstances under which testimony can be taken using remote technology.
67. Rule 43 of the Rules of Civil Procedure should be amended to allow the oath or affirmation of a witness to be administered using remote technology.

Notarization

68. A new remote notarization procedure involving court-related processes, separate from online notarization as defined in Revised Code 147.60, should be established to allow for a notary to utilize remote technology to verify the identity of the signatory at the time of signature.
69. The Supreme Court, in conjunction with various judicial associations, should review standardized forms and determine what forms actually necessitate being notarized. Upon the conclusion of this review, appropriate revisions should be made to the affected forms.

Arraignments

70. Rule 10 of the Rules of Criminal Procedure should be amended to include the defendant’s ability to be present during an arraignment hearing using remote technology.

Criminal Depositions

71. Rule 15 of the Rules of Criminal Procedure should be amended to allow the defendant to remotely attend a deposition and to allow depositions to be conducted remotely as allowed in civil cases.

Remote Criminal Trials

72. Rule 23 of the Rules of Criminal Procedure should be amended to specifically allow a remote criminal trial to be conducted either in whole or in part.

Defendant’s Presence

73. Rule 43 of the Rules of Criminal Procedure should be amended to expand the circumstances under which a defendant can remotely appear in a criminal proceeding, including a trial by jury.

Taking Testimony

74. A new Rule 40 of the Rules of Criminal Procedure should be adopted outlining the circumstances under which remote testimony can be taken during criminal proceedings.

Jury Trials

75. Rule 5 of the Rules of Superintendence should be amended to require the inclusion of procedures to conduct remote jury trials into the jury management plan if a court elects to conduct a jury trial in whole or in part.
76. Courts should consider conducting jury selection remotely.
77. The Supreme Court should purchase mobile tablets to lend, through its Law Library, to local courts for use by jurors and serve as the central repository for the distribution of these devices to courts on an as-needed basis.
78. Courts should develop best-practice procedures for the implementation and management of remote jury trials (e.g., submission and sharing of exhibits, jury deliberation, dress code, decorum).
79. The Supreme Court should facilitate regionalized technical support for trial courts conducting remote jury trials. (*See also Recommendation #15.*)
80. Rule 39 of the Rules of Civil Procedure should be amended to allow remote jury trials and to give courts the discretion to determine the manner in which the trial by jury will be conducted, including being conducted remotely in whole or in part.
81. The Supreme Court should develop best-practice procedures for the implementation and management of remote jury trials (e.g., submission and sharing of exhibits, jury deliberation, dress code, decorum) ensuring compliance with Rule 43(A)(2) of the Rules of Criminal Procedure for remote appearances and the *Maryland v. Craig* test.

Courts of Appeals

82. Courts of appeals should continue using remote technology for oral arguments where appropriate with the consent of the parties and/or at the discretion of the court.
83. Courts of appeals should offer standardized, electronically fillable templates for court briefs on their website, as well as a checklist for briefs, which includes formatting requirements.
84. Courts of appeals should offer local training on how to use standardized brief templates and virtual court-related processes and explore more “on-demand” video training options.
85. The Supreme Court should offer training or guidance to trial courts on the electronic submission of evidence and exhibits, including pre-sentencing investigations and the case record, for appellate purposes.
86. A workgroup should be formed to explore whether transcripts could be submitted in audio, video, or other formats that would reduce the cost for litigants and be fiscally feasible for courts.
87. Courts of appeals should continue and expand their use of remote technology for mediation where appropriate.

Juvenile Courts

88. Juvenile courts should continue using remote technology for probation, counseling or telehealth, and attorney consultation when necessary and appropriate.
89. Hybrid juvenile court hearings should be encouraged in the future to allow better participation of parties and witnesses in hearings.

90. Rule 41 of the Rules of Juvenile Procedure should be amended to allow witnesses to testify remotely.

Probate Courts

91. Personal service as required in Revised Code 2111.04 in guardianship cases should be revised to allow service to be conducted remotely when good cause is found by the court.
92. Rule 57 of the Rules of Superintendence should be amended to add email addresses to the information collected in probate court filings.

Evaluation & Data

93. Courts should track the number and types of cases being conducted remotely, as well as the types of court proceedings, to determine how best to incorporate the use of remote proceedings into the normal course of business.
94. Courts should collect and analyze data to determine whether remote proceedings result in disparities or unintended consequences using measures such as the National Center for State Court's revised-for-remote-hearings CourTool 1 Measure, Access & Fairness Survey for Trial Courts, as well as the Quality of Services Survey for Appellate Courts using an online centralized tool provided by the Supreme Court.
95. Courts should collect and analyze data to determine whether remote proceedings adversely affect self-represented litigants' ability to effectively participate in the justice system.
96. The Ohio Criminal Sentencing Commission should revise the Uniform Sentencing Entry to include whether a case was heard, in whole or in part, remotely. This data will be captured in the Ohio Sentencing Data Platform and should be analyzed.
97. Courts should establish a continuous quality improvement program to ensure they are adhering as much as practicable to all minimum best-practice standards for the use of remote technology to conduct court proceedings.

FINDINGS & RECOMMENDATIONS

On Sept. 10, 2020, Chief Justice O'Connor established the iCOURT Task Force. The task force met initially in October. Over the next eight months, it surveyed judicial officers and justice-system partners, researched best practices in other states, and examined statutory provisions and court rules. This work resulted in more than 90 recommendations designed to expand the court's ability to use remote technology to perform essential court functions. These recommendations comprehensively address the operational responsibilities of the court, the administration of justice inside the courtroom, and the administrative functions performed by the clerks of courts.

A TALE OF TWO SURVEYS

The task force was specifically charged with surveying judges and attorneys about their experiences with using remote technology during court proceedings. These findings informed the group's recommendations about the continued and future use of technology to improve court operations moving forward.

The Survey Subcommittee broadened the survey's audience scope to include litigants and other justice-system partners to ensure all relevant perspectives were considered by the task force.

The following groups were surveyed:

- Attorneys
- Clerks of Court
- Court Administrators
- Court Appointed Special Advocates (CASA)
- Court Interpreters
- Court Reporters
- Guardians ad Litem (GAL)
- Judges and Retired Assigned Judges
- Magistrates
- Mediators
- Probation Officers
- Represented Litigants
- Self-Represented Litigants
- Victim Advocates

Each stakeholder group was asked specifically crafted questions unique to its audience type, along with questions common to all groups. Details of the survey distribution plan, a summary of the results, and the individual surveys can be found in *Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report*. Skip logic was used to separate those respondents who participated in at least one remote proceeding since March 2020. This survey will be hereinafter referred to as the "iCOURT Survey."

As Table 1 illustrates, more than 5,000 responses were received and an overwhelming majority of those individuals had participated in a remote proceeding. While attorneys represented the largest

respondent group with more than 3,500 responses, their response rate as compared to their total population was the lowest at 8.8%.²

TABLE 1. RESPONSE RATES			Participated in a Remote Proceeding	
Group	# of Responses	Response Rate*	Yes	No
Attorneys	3,575	8.8%	83.7%	16.3%
CASA and GALs	460	18.4%	90.9%	9.1%
Clerks & Court Administrators	271	40.6%	95.9%	4.1%
Court Reporters	97	34.3%	91.8%	8.2%
Interpreters	60	33.3%	76.7%	23.3%
Judges	373	52.2%	97.1%	2.9%
Magistrates	399	45.0%	90.5%	9.5%
Mediators	132	26.4%	66.7%	33.3%
Probation Officers	148	9.1%	92.6%	7.4%
Represented Parties	146	Unknown	67.1%	32.9%
Retired Assigned Judges	27	19.1%	85.2%	14.8%
Victim Advocates	114	Unknown	66.7%	33.3%

(*) This is the response rate of the audience group as a percentage of its known total population.

The iCOURT Survey confirmed that the majority of courts were conducting remote hearings by some form of technology (82% by video-conferencing and almost 80% by telephone).³ The types of proceedings varied widely from criminal pre-trial hearings, plea hearings, and arraignments to traffic proceedings, family proceedings, and juvenile dispositions.⁴ The use of technology was not limited to hearings; it also was used for probation reporting, specialized docket team meetings, day reporting programming, mental health assessments, and residential facility visits.⁵

Overall Quality of the Remote Proceeding

All of the respondents who had participated in a remote proceeding were asked: “How would you rate the overall quality of the remote proceedings with which you have been involved?”⁶ As Table

² Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 1. Response Rates

³ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 15. Current Services Offered Using Remote Technology.

⁴ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 18. Types of Proceedings Conducted Using Remote Technology.

⁵ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 19. Types of Probation-Related Proceedings Using Remote Technology.

⁶ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 36. Overall Quality of Remote Proceedings.

2 illustrates, the results for attorneys, judicial officers, court administrators, and clerks show that a majority of these individuals replied that the quality was either excellent or very good.

TABLE 2. OVERALL QUALITY OF REMOTE PROCEEDING				
Overall Quality	Attorneys	Judges	Magistrates	Clerks/Court Admin
Excellent	17.2%	13.6%	15.5%	13.4%
Very Good	38.0%	41.6%	34.7%	46.9%
Good	27.1%	33.7%	36.1%	26.4%
Fair	13.5%	9.9%	10.6%	5.9%
Poor	3.8%	0.8%	3.2%	0.0%
Unsure	0.5%	0.3%	0.0%	7.5%
Total	100%	100%	100%	100%

Protection of Rights & Promoting Trust

The iCOURT Survey asked a series of questions aimed at getting feedback on how respondents felt virtual court proceedings protected the parties’ rights and furthered the court’s goal of promoting public trust and confidence in the justice system. Attorneys and judicial officers responded similarly that they were satisfied that remote proceedings protected the due process rights of parties. Approximately 25% of each group responded they were very satisfied and roughly 47% responded they were satisfied.⁷ There were slightly more noticeable differences between attorneys and judicial officers when asked about their satisfaction levels of remote proceedings providing parties with access to justice. More than three-quarters of judicial officers expressed satisfaction that remote hearings provided parties with access to justice compared to two-thirds of attorneys, leaving a third of attorneys either unsure or dissatisfied.⁸ There was agreement among both groups that the use of remote technology to conduct court proceedings promotes the public trust and confidence in courts (more than 50% for each respondent group).⁹

Similarly, the iCOURT Survey asked: “How satisfied are you that the use of remote technology to conduct court proceedings promotes the traditional dignity and seriousness otherwise experienced during in-person court proceedings?” This question elicited fairly wide variability between audience types. Judicial officers expressed notably less satisfaction than other groups, while a majority of responders in all other groups either were very satisfied or satisfied that the use of remote technology to conduct court proceedings promotes the traditional dignity and seriousness otherwise experienced during in-person court proceedings.¹⁰

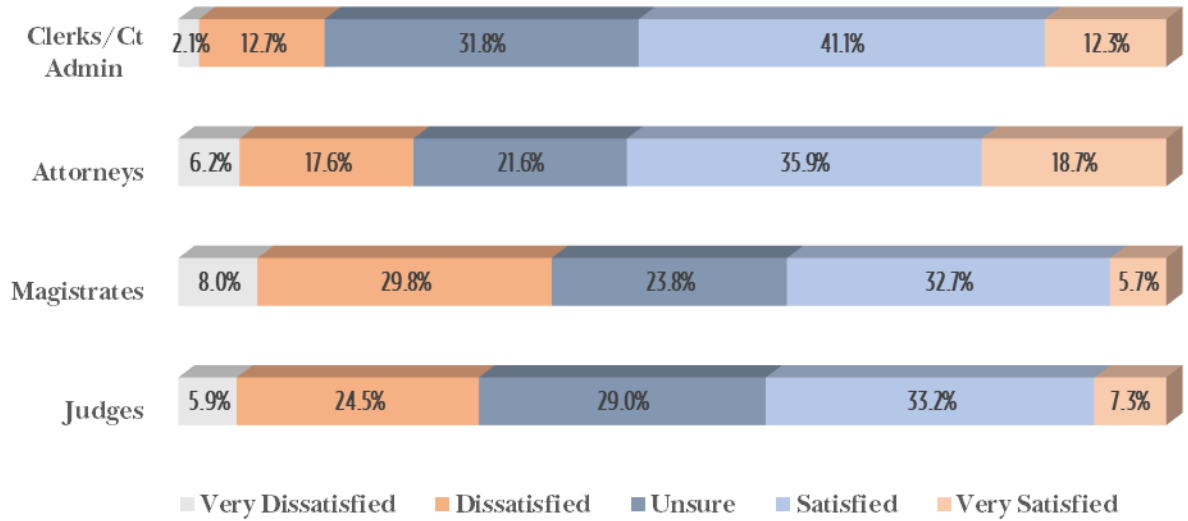
⁷ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 41. Protection of Procedural Due Process.

⁸ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 42. Provision of Access to Justice.

⁹ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 43. Promotion of Public Trust & Confidence.

¹⁰ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Table 44. Promotion of the Traditional Dignity & Seriousness of In-Person Proceedings.

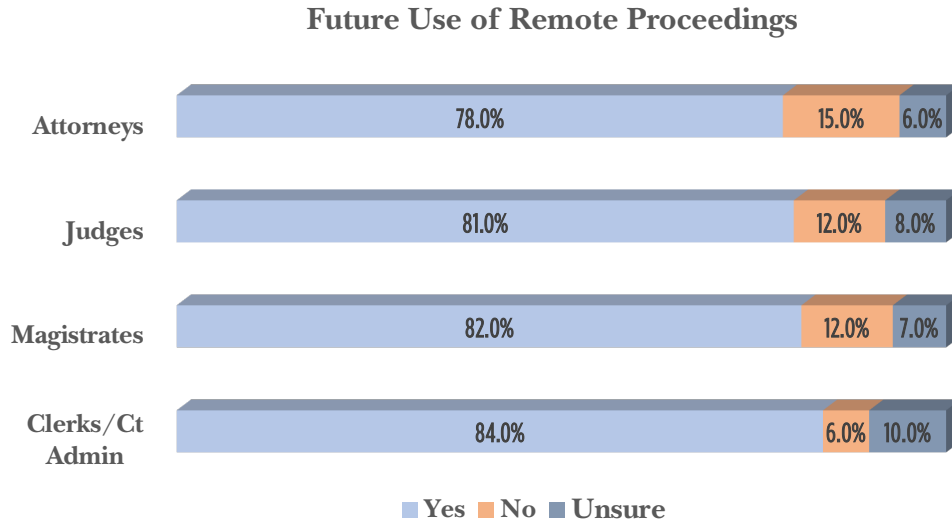
Promotion of Traditional Dignity & Seriousness



Continued Use of Remote Technology

All responder groups were asked a variation on the following question: “Once the COVID-19 pandemic is over and it is once again safe to do business in person, do you think courts should continue to conduct some proceedings by remote technology?” One of the main goals of the task force is to determine if, and how, courts should continue their use of remote technology in the future. Clear majorities of responders in all groups indicated that courts should continue conducting remote proceedings in the future.¹¹

¹¹ Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Figure 12. Post-Pandemic, Should Courts Continue to Conduct Some Proceedings Using Remote Technology?



A second survey, hereinafter referred to as the “Litigant Survey,” initially was developed to solicit input from self-represented litigants. However, due to the low response rate of represented parties in the iCOURT Survey, the Litigant Survey was expanded to allow for responses from individuals who were represented by counsel. This survey was sent directly to parties either from the court or by a legal aid organization. While there were more than 500 responses to the survey, approximately 130 individuals answered the majority of the questions. As such, the results should be read with caution due to the small sample size. On a positive note, the responses were reasonably distributed across all subject-matter jurisdictions, except for traffic cases.¹² The bulk of the respondents, more than 50% of both represented and unrepresented parties, were involved in a family law case.¹³

The Litigant Survey found that more than 60% of the respondents reported their experience with a remote hearing as either very good or excellent. Additionally, the participants found the instructions provided by the court to be helpful.¹⁴

¹² *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 3. Type of Cases with Remote Appearing Parties.*

¹³ *Id.*

¹⁴ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 8. Helpfulness of Instructions.*

TABLE 3. OVERALL EXPERIENCE OF LITIGANTS APPEARING REMOTELY

Rating	Self-Represented Litigants		Represented Litigants	
	# of Responses	% of Total	# of Responses	% of Total
Excellent	19	38.0%	82	46.9%
Very Good	13	26.0%	43	24.6%
Good	11	22.0%	34	19.4%
Fair	4	8.0%	10	5.7%
Poor	3	6.0%	5	2.9%
Unsure	0	0.0%	1	0.6%
Total	50	100%	175	100%

Method & Location of Participation

Laptop computers were the most commonly cited device used to participate in remote proceedings, with smartphones the second-most commonly used device.¹⁵ Interestingly, roughly one-quarter of the respondents reported using a regular telephone line to participate.¹⁶ Most litigants participated in the remote proceeding from their home or place of residence (78% of self-represented litigants and 69.1% of represented litigants.)¹⁷ Place of work, however, also was identified by substantial majorities among represented and self-represented parties.

Overall Experience

The responding litigants were asked: “Regardless of the result, how would you rate the overall experience of appearing by videoconference or telephone?” A significant majority of the litigants reported the experience as either very good or excellent (64% of self-represented litigants and 71.4% of represented litigants rated the experience as either excellent or very good).¹⁸ Many responders had appeared in person in a court proceeding prior to the pandemic and were able to compare the two methods of appearing. Slightly more than 40% of represented litigants said remote was much better than in person, compared to 15.2% of self-represented litigants.¹⁹

The survey asked the question, “Do you think appearing by videoconference or telephone is as fair as appearing in person in a courtroom?” A majority of litigants of both types responded in the

¹⁵ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 5. Device Used to Participate.*

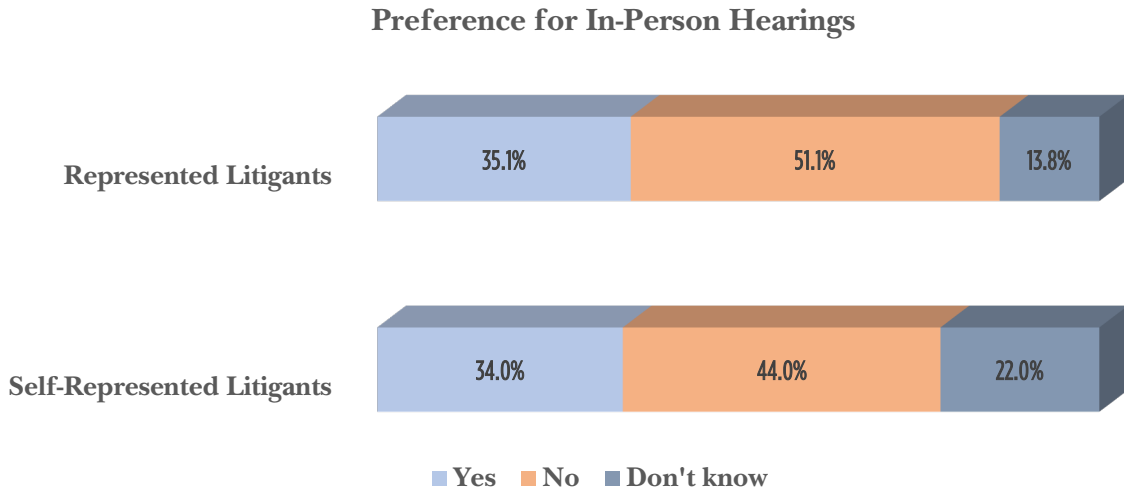
¹⁶ *Id.*

¹⁷ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 6. Location of Participation.*

¹⁸ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 9. Overall Experience of Appearing Remotely.*

¹⁹ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 10. Comparison of Remote to In-Person Participation.*

affirmative.²⁰ The Litigant Survey also asked parties if they would have preferred the hearing to be in person in a courtroom. A narrow majority of represented parties indicated in the negative – that they would not have preferred the hearing be in person.²¹ However, fewer self-represented litigants (44%) shared that view and would prefer to appear virtually.²²



BARRIERS TO ACCESS & PARTICIPATION

As courts shifted to conducting business remotely, they had to be mindful that not all individuals had access to the same resources, which affected their access to the justice system and ability to participate in virtual proceedings. While the results of both surveys did not indicate there were significant barriers for litigants participating in remote hearings, this data should be read with caution. Not only were the survey sample sizes small, but those responding to the survey had access to the internet and a device on which to respond. Therefore, it is likely that a significant portion of litigants not surveyed lack both. Moving forward, courts must be cognizant that barriers remain and work to find solutions that increase access and participation.

Public access is a fundamental principle of the justice system. Courts must strive to remove barriers as they use technology in the delivery of court services. There are three main areas of concern: 1) access to the internet, 2) access to equipment, and 3) access to knowledge (e.g., instructions or training resources) on how to use technology. These obstacles impede litigants’ ability to participate fully in the justice system.

²⁰ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 12. Remote Appearance & Perception of Fairness.*

²¹ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 21. Continued Use Post-Pandemic of Remote Proceedings.*

²² *Id.*

Access to Internet Services

Great inequities exist with regard to access to internet services in Ohio. There are many rural parts of the state still lacking reliable, affordable internet access. There has been a continued effort to expand broadband capability to all four corners of the state; however, over the years little progress has been made toward this goal. “Internet is not a luxury in 2021. It’s a necessity. More than a million Ohioans lack access to reliable internet,” said State Representative Brian Stewart, a sponsor of House Bill 2, legislation effective August 2021, that will provide grants to companies expanding broadband services to remote parts of the state.²³

Access to internet services is not solely about the availability of services; it also is about affordability. Many households in the state’s largest urban areas remain unconnected. The National Digital Inclusion Alliance reported that in 2018, 27% of households in Cleveland, 17% of households in Cincinnati, and 13% of households in Columbus do not have internet services.²⁴ Moreover, even if individuals do have access to internet services, this does not always translate to unlimited access. Litigants may have limited data plans on smartphone devices or only have access to Wi-Fi while at work.

As courts develop new ways of conducting business using technology solutions, they need to be aware of these barriers. Courts should equip courthouses with free Wi-Fi for the public and publicize other public locations where individuals can go for free access to the internet, such as public libraries or other local government buildings.

Access to Equipment

Having a device that is equipped with internet service is essential to access online or remote court services. Smartphone devices are the most common gateway to the internet. A 2020 report by the Ohio Commission on Hispanic Latino Affairs found that most families in the Hispanic/Latino Community primarily use the internet on their mobile devices and oftentimes do not have laptops or computers in their homes to use, especially in rural parts of the state.²⁵ The pandemic has exposed the racial and socioeconomic disparities in access, as the proportion of white middle- and higher-income families do not face the same challenges.

Courts should be mindful that many litigants use laptops or computers when accessing court services and especially court websites. Information and technology solutions (e.g., online payment, electronic filing, standard forms) should be designed to also be accessed on a smartphone.

Courts should also consider partnering with county social service agencies and install public computer workstations where parties can access and transact a wide array of public services (e.g., obtaining court forms, participating in a remote hearing, applying for government benefits, job searching, etc.).

²³ Jim Provance, Government Technology, *Ohio State Lawmakers Prioritize Bridging Digital Divide*, (Feb. 22, 2021), <https://www.govtech.com/network/Ohio-State-Lawmakers-Prioritize-Bridging-Digital-Divide.html> (accessed Apr. 12, 2021).

²⁴ National Digital Inclusion Alliance, *Worst Connected Cities 2018*, <https://www.digitalinclusion.org/worst-connected-2018/> (accessed April 12, 2021).

²⁵ Ohio Latino Affairs Commission, *The Digital Divide & Access to Information: A Focus on Ohio Hispanic/Latino Community*, (Aug. 7, 2020), <https://www.ochla.ohio.gov/Public-Policy/Latino-Community-Reports> (accessed April 12, 2021).

Access to Knowledge on How to Use Technology

Unfamiliarity with how to use an online platform or navigate a website can lead to difficulties navigating and accomplishing the user's goal. Most people were unfamiliar with how to use video-conferencing platforms back in March 2020. Verizon's catchphrase of "Can you hear me now?" has been replaced with "You are on mute." Comfort levels with technological solutions increase with repeated use. Judicial officers, court staff, mediators, guardians ad litem, probation officers, and attorneys, all have the benefit of a learning curve that eventually will result in the proficient use of the court's electronic filing system, online dispute resolution platform, or the solution used to conduct remote hearings. Litigants, on the other hand, typically are one-time or occasional users. They do not have the luxury of repeated opportunities to make mistakes.

As new technological solutions are implemented, the court has a responsibility to create clear, concise instructions on how to use them. Procedures need to be written in Plain Language, geared toward self-represented litigants, and available in many formats to meet the needs of individual users, particularly those in need of special accommodations. For example, courts should place links on their website to tutorial videos on how to use their chosen video-conference platforms. Courts should draft detailed instructions on how to submit electronic exhibits for attorneys and self-represented litigants. Information for online dispute resolution programs should be made readily available to all parties filing complaints to encourage settlement.

BENEFITS OF REMOTE TECHNOLOGY

The primary purpose behind most technological advancements centers around convenience. Keyless car starters allow drivers to quickly hop in the car, push a button, and start driving. No more wasted time fumbling around for keys. Mobile ordering applications save precious time sitting in the drive-through for that morning dose of caffeine. Likewise, courts use technology to provide more convenience to their employees and the public. Technology also is used to provide greater access and flexibility to users.

Financial Savings to Courts

Convenience generally translates into financial savings. Courts experience savings by implementing automated procedures or integrating platforms that reduce the time employees spend performing manual processes, such as scanning, data entry, and answering phone calls. There is an overall reduction of operating costs because employees are free to perform other tasks, thereby maximizing staffing levels and eliminating the need for additional staff.

Financial Windfall & Calendar Management for Attorneys

Attorneys experience a financial windfall through time savings. Remote technology allows attorneys to spend less time overall at the courthouse, that is – less time in the clerk's office filing pleadings and motions, less time in the lobby or hallway waiting for a court proceeding to start, and less time requesting continuances because of conflicts in schedules. The additional time allows attorneys to serve more clients because they can manage their schedules more effectively. This especially is evident for attorneys who practice in multiple counties or appellate districts. The reduction in travel time alone is significant when they are able to participate in remote hearings or utilize electronic filing services. One attorney commented that "remote hearings are so much more

efficient use of time. A brief hearing used to entail travel time, parking, waiting in the hallway, etc. for a 10-minute appearance.”²⁶

Reduction of Participation Costs & Increased Access for Litigants

Remote technology reduces the costs of participating in the justice system for litigants. Because they are not going to the courthouse, litigants have few expenses related to transportation and parking fees. They also are not forced to take as much time off of work, which for some individuals can mean losing a job or not getting paid due to absences. Remote hearings ease child-care concerns and school-related absences. For represented parties, the savings noted above for attorneys translate into reduced attorneys’ fees they have to pay. Ultimately, using remote proceedings and other technological solutions increases parties’ access to the courts by reducing the barriers imposed when having to physically go to a courthouse.

Increased Appearance Rates

Courts are reporting that parties are appearing at higher rates in remote hearings during the pandemic. Courts around the United States are seeing similar benefits. North Dakota has reported that some of its courts are seeing 100% appearance rates for criminal warrant hearings.²⁷ New Jersey saw a decrease from 20% to less than 1% after it began conducting remote hearings.

For many of the reasons outlined previously, virtual proceedings remove many of the barriers to participating in person and provide the necessary flexibility litigants need. Instead of missing an entire day of work, a party can utilize a break or lunch period to attend a 15-minute hearing. Litigants lacking reliable transportation do not have to rely on friends or family members to give them a ride or borrow a car. They do not have to secure and pay for a babysitter to watch children while they are in court. The convenience provided by remote hearings incentivizes parties to appear.

RECOMMENDATIONS

1. Courts should continue the use of remote technology to conduct court proceedings.

The task force recommends that courts continue using remote technology to conduct court proceedings. The results from both surveys indicate an overwhelming preference by litigants to use remote hearings when the pandemic is over. Table 4 illustrates the strong preference for their continuation.²⁸

²⁶ *Appendix A: Task Force on Improving Court Operations Using Remote Technology Survey Report. Appendix D.*

²⁷ 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> (accessed April 12, 2021).

²⁸ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 21. Continued Use Post-Pandemic of Remote Proceedings*

TABLE 4. CONTINUED USED OF REMOTE PROCEEDINGS POST PANDEMIC

Rating	Self-Represented Litigants		Represented Litigants	
	# of Responses	% of Total	# of Responses	% of Total
Yes	35	79.5%	141	84.4%
No	7	15.9%	17	10.2%
Unsure	2	4.5%	9	5.4%
Total	44	100%	167	100%

Judicial officers expressed concern that the traditional dignity and seriousness of court proceedings were forfeited with the use of remote proceedings. They worried the less formal setting would not translate the same level of respect for the consequences that the proceedings have on the parties' lives. The Litigant Survey did not validate those concerns with respect to litigants.²⁹ In fact, courts anecdotally reported that parties actually are more engaged. The virtual setting is less intimidating than the traditional courtroom and, consequently, litigants tend to ask more questions and be more forthcoming with information in certain circumstances.

As outlined before, remote proceedings result in significant savings for courts, attorneys, and parties. The task force recognizes that the use of remote technology may not be appropriate for all types of proceedings or even in all instances within one case type. However, there are many types of proceedings that warrant the use of remote technology. For example, pretrial and status conferences are conducive to the virtual courtroom. Typically, those proceedings are short and do not involve many participants. They can be conducted with ease using remote technology. Dissolutions and uncontested divorce cases are other examples of hearings that are highly appropriate for the remote platform. Those generally involve self-represented litigants without major issues who seek the court's blessing to end their marriage.

When possible, the task force recommends that remote proceedings be conducted using live two-way video and audio technology. However, the task force recognizes that stable, reliable internet service is a challenge for some participants, but effective telephone service is widely available. The use of audio-only participation still can be an effective means of participating in the judicial process. Mundane administrative tasks, case management hearings, and discovery dispute hearings are well-suited to being held over the telephone.

The ultimate goal of this recommendation and that of the accompanying recommendations in this report is to provide courts flexibility to conduct hearings in the most appropriate and convenient manner they see fit, whether that is in person, remote, or hybrid. Courts are encouraged to maximize their use of remote technology to meet the needs of the participants involved.

²⁹ *Appendix B: Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report. Table 16. Promotion of the Traditional Dignity & Seriousness of In-Person Hearings.*

DEFINITIONAL RECOMMENDATIONS

On March 27, 2020, Chief Justice O'Connor issued Supreme Court Administrative Order 2020-Ohio-1166 allowing appearances by remote technology to satisfy any requirement that a party appear in person.³⁰ Upon the expiration of the Administrative Order, the task force wants to ensure that courts have the authority to continue allowing remote appearances. Terms that could potentially be construed as requiring an individual to be physically located or literally face-to-face with another person in a designated location should be revised to allow an individual to appear by live, two-way video and/or audio technology.

2. The definitions of the following terms and phrases should include remote appearances for purposes of any references found in the Rules of Court:
 - a. “In chambers”
 - b. “In person”
 - c. “In the presence of”
 - d. “Open court”
 - e. “Personal appearance”
 - f. “Physical presence” or “physically present”
 - g. “Shall appear before the court”
 - h. Any other term or phrase that could potentially be construed to require an individual to be literally face-to-face with another person in a designated location.

Though the task force recognizes that courts use varying types of video and audio-conferencing platforms, it is important to establish a uniform definition of what constitutes a “remote” appearance. By adding the same set of definitions to all Rules of the Court, there is some assurance that there will be consistent procedures in all courts across the state, regardless of their jurisdiction.

With regard to the Rules of the Court, the following amendments should be made:

- Amend Rule 2 of the Rules of Criminal Procedure to add the following new definitions:
 - “Appear” or “appearance” “in person” means the physical or remote presence of an individual.
 - “In person” means the physical or remote presence of an individual, except as provided by Criminal Rule 17(D).
 - “Open court” includes a court proceeding open to the public in person or by remote access to the live proceeding.
 - “Personally” means the physical or remote presence of an individual, except as provided by Criminal Rules 4(D) (3) and (4).
 - “Presence” includes the physical or remote presence of an individual.
 - “Remote presence” means the presence of a person who is using live, two-way video and/or audio technology.

³⁰ This order was later extended indefinitely by Supreme Court Administrative Order 2020-Ohio-3861.

- *See Appendix C(ii): Rules of Criminal Procedure for specific language.*
- Amend Rule 101 of the Rules of Evidence to add the following new definitions:
 - “Present” means the physical or remote presence of an individual.
 - “Remote presence” means the presence of a person who is using live, two-way video and/or audio technology.
 - *See Appendix C(iii): Rules of Evidence for specific language.*
- Amend Rule 2 of the Rules of Juvenile Procedure
 - “Appear” or “appearance” “in person” means the physical or remote presence of an individual.
 - “Attendance” means the physical or remote presence of an individual.
 - “In person” means the physical or remote presence of an individual.
 - “Open court” includes a court proceeding open to the public in person or by remote access to the live proceeding.
 - “Personally” means the physical or remote presence of an individual.
 - “Remote presence” means the presence of a person who is using live, two-way video and/or audio technology.
 - *See Appendix C(iv): Rules of Juvenile Procedure for specific language.*
- Rule 2 of the Rules of Superintendence
 - “Appear” and “appearance” “in person” means the physical or remote presence of an individual.
 - “Attendance” means the physical or remote presence of an individual.
 - “Open court” includes a court proceeding open to the public in person or by remote access to the live proceeding.
 - “Remote,” “remotely,” and “remote presence” means the presence of a person who is using live two-way video and/or audio technology.
 - *See Appendix C(v): Rules of Superintendence for specific language.*
- Rule 2 of the Traffic Rules
 - “Appear” or “appearance” “in person” means the physical or remote presence of an individual.
 - “Attendance” means the physical or remote presence of an individual.
 - “Open court” includes a court proceeding open to the public in person or by remote access to the live proceeding.
 - “Personal” or “Personally” means the physical or remote presence of an individual, except as provided by Traf.R. 3(E)(1).
 - “Present” means the physical or remote presence of an individual.

- “Remote presence” means the presence of a person who is using live, two-way video and/or audio technology.
 - *See Appendix C(vi): Rules of Traffic for specific language.*
- Add a new Rule 1.1 to the Rules of Civil Procedure to create a “Definitions” section with the following definitions:
 - “Appear” or “appearance” “in person” means the physical or remote presence of an individual.
 - “Attendance” means the physical or remote presence of an individual.
 - “Open court” includes a court proceeding open to the public in person or by remote access to the live proceeding.
 - “Personally” means the physical or remote presence of an individual, except as provided by Civil Rule 4.1-4.5 and Civil Rule 45.
 - “Remote presence” means the presence of a person who is using live, two-way video and/or audio technology.
 - *See Appendix C(i): Rules of Civil Procedure for specific language.*
3. The definitions of the following terms and phrases should include remote appearances for purposes of any references found in various Revised Code and Administrative Code sections:
- a. “In chambers”
 - b. “In person”
 - c. “In the presence of”
 - d. “Open court”
 - e. “Personal appearance”
 - f. “Physical presence” or “physically present”
 - g. “Shall appear before the court”
 - h. Any other term or phrase that could potentially be construed to require an individual to be literally face-to-face with another person in a designated location.

The Revised Code and Administrative Code should be reviewed to identify provisions that can be construed to require an individual to be physically present or literally face-to-face with another person in a designated location. It is recommended that, with minor exceptions, statutory and administrative changes be general in nature and not made on an individual code section basis. For example, most Revised Code Chapters have a definitional section outlining terms that are used throughout that chapter. These sections would be the most appropriate sections to make the additions of such definitions.³¹ Nevertheless, a thorough review of both Codes is warranted to ensure that there are no unintended allowances of a remote appearance that would be inadvertently permitted as a result of adding general definitions.

³¹ See R.C. 2151.011. Juvenile court definitions; R.C. 2307.011. Civil action definitions; and R.C. 2901.01. General provisions definitions.

4. Revised Code 2705.01: Summary Punishment for Contempt should be amended to ensure that “in the presence” of the court or judge in chambers includes a remote appearance.

As discussed in the prior recommendation, there are a few Revised Code sections identified in this report that warrant a specific revision to be explicitly inclusive of a remote appearance. Revised Code 2705.01 allows the court or a judge to punish “misbehavior in the presence of or so near the court or judge.” The task force recommends that this section should be amended to specifically include misbehavior that occurred during a remote appearance (e.g., one that involved the use of live, two-way video and/or audio technology).

COURT OPERATIONS RECOMMENDATIONS

Minimum Standards for Technology Use

5. The Supreme Court should establish “Minimum Standards for Technology Use” for technologically adept courts, similar to those created for courthouse security and courthouse facilities.

There are basic levels of services that all courts must offer in order to administer justice. As technology has advanced over time, the reliance on technology to perform these basic services has increased. The last year arguably moved the judiciary from a system that was technology *driven* to a system that is technology *dependent* in order to effectively administer justice. It has also highlighted that not all courts are operating at the same levels – whether due to the lack of resources to purchase necessary equipment, the lack of knowledge on how to implement technological solutions, or the lack of desire to embrace change.

In order to keep the justice system effectively operating and relevant for the future, courts need to utilize technology. There always will be those frontrunner innovative courts that are on the cutting edge of new solutions. However, there also will be those courts that make changes only when it becomes required to do so. Because there is a large spectrum of use, the Supreme Court should establish minimum standards for the use of technology in courts. Similar standards already exist for courthouse security³² and facilities.³³ After the standards are adopted, each court would be required to meet these basic technology standards and would be periodically evaluated for compliance. As technology evolves quickly, these standards must be reviewed and updated on a regular basis.

6. A new Rule of Superintendence should be adopted requiring the use of “Minimum Standards for Technology Use.”

Upon the adoption of the “Minimum Standards for Technology Use,” the Supreme Court should adopt a new Rule of Superintendence requiring courts to adopt and adhere to these standards.

³² Rules of Superintendence Appendix C.

³³ Rules of Superintendence Appendix D.

7. The Supreme Court should use its technology grant funds to incentivize local courts to meet the “Minimum Standards for Technology Use.”

The Supreme Court’s technology grant funds have been a tremendously successful mechanism for local courts to implement technological solutions in their courts. Through the Ohio Technology Initiative, the Supreme Court has awarded more than \$17 million to local courts in the past six years. Grant dollars have been used to fund projects such as electronic filing platforms, new case management systems, video conferencing platforms, and audio-visual equipment.

Once the “Minimum Standards for Technology Use” have been adopted, a competitive grant process for those technology-deficient courts should be created to help fund projects that will foster compliance with the standards. This not only will provide financial assistance to courts lacking resources to implement needed improvements, but incentivize those courts needing change.

8. The Supreme Court and other partners should establish a technology assessment committee to review local courts’ technological capabilities; assess compliance with the “Minimum Standards for Technology Use”; provide in-person, telephonic, or virtual consultation; and recommend resources/enhancements to current technology.

Similar to the assessment and accompanying recommendations that the Supreme Court provides to courts on their compliance with courthouse security standards, the Supreme Court should establish an assessment committee to review courts’ technological capabilities and compliance with the “Minimum Standards for Technology Use.” The assessment committee would review the court’s current capabilities, either in person or remotely, and make recommendations for improvements toward the basic standards. Those recommendations serve as justification and support to courts when requesting financial assistance to purchase needed software and/or hardware from their local funding authority, the Supreme Court’s technology grant funds, or other potential funding sources.

9. Courts should utilize integrated software that allows for the exchange of information from one system to another, but also is fluid and adaptable to accommodate future technology upgrades and innovations.

There is no single, out-of-the-box technology system that can perform all of the necessary functions of a court. Courts are forced to either develop a customized system in-house or purchase multiple platforms that may (or may not) integrate well with one another. While customized systems are designed to meet the individual needs of the court, they require a significant investment of in-house resources, not only to develop, but to maintain and upgrade. It is common that over time, these home-grown systems are unable to keep up with the rapid pace of advancements, leaving users making do with the functionality that they have. These systems often are unable to integrate with any off-the-shelf systems, further limiting any expansion of their system’s capabilities (or at the very least any timely expansion).

When looking to purchase or upgrade their technological systems, courts should select products that can integrate with other platforms. This allows courts to efficiently expand functionality. For example, using a certain platform with encrypted data storage on the vendor’s site, freeing space on the court’s local server. This solution allows information to be

pulled from the case management system docket, ultimately a time saver for court staff as it reduces duplicative data entry. Another example is the integration of video conferencing and YouTube to livestream virtual court proceedings. These two platforms seamlessly work together without additional system configuration by the court. This saves the court time and resources and ultimately results in a faster implementation.

10. Courts should review and refine Continuity of Operations Plans (COOP) mindful of ensuring the ability to deliver judicial services through technology (i.e., cloud back-ups and retrieval; electronic transmission of pleadings and notices; replacement of technology equipment; access to electricity; continuity of telephone communications; procedures, training and capabilities for staff to work at remote and varied work sites; etc.).

Continuity of Operations Plans set forth the necessary procedures courts must follow in the event there is an interruption to a court's normal operations. Prior to 2020, most individuals could not envision a public health emergency forcing courts to shut their doors to the public and instead offer virtual or modified in-person delivery of services. They *could have* imagined, on the other hand, a natural disaster, a cyberterrorist attack, or a fire disrupting operations.

As courts have demonstrated their ability to pivot to conducting business remotely, they should review and update their COOP documenting the processes of delivering judicial services. Courts should consider adding areas that address what equipment was needed for staff to work remotely at home; how the message was communicated to the public that court operations were altered; and how documents were electronically transmitted into the case management system. It would be unfortunate to waste the lessons learned over the last several months by not preparing future court staff for the next unforeseen emergency.

11. There should be consistent use of technology solutions within a courthouse, as well as county-to-county, where possible, to improve attorneys' abilities to seamlessly practice in multiple locations.

As a non-unified state, each of Ohio's 88 counties and more than 700 judges recognize autonomy implementing judicial solutions that meet the needs of the communities they serve. This discretion resulted in courts within the same county employing different procedures and operating protocols during the COVID-19 pandemic (e.g., utilizing different technology platforms, having different health protocols and procedures). It has even been anecdotally reported by attorneys that in some multi-judge courts, individual judges had their own set of procedures that differed from others in the same court. The inconsistencies, especially among judges within the same court, place unnecessary hardships on attorneys.



“The common pleas courts and individual judges have employed varied and inconsistent guidelines, which have been and remain a nightmare.”

“Each court uses different platforms, [s]o downloading all the apps and keeping them straight has been a bit of challenge.”

See Appendix A: Improving Court Operations Using Remote Technology Survey Report. Appendix C – Open-Ended Comments to the Attorney Survey

Where possible, courts, at the direction of the presiding judge, should implement consistent policies for the use of technology, especially conducting remote proceedings. This uniformity improves an attorney’s ability to practice before different judges and in multiple jurisdictions, both inside and outside of the county.

12. Rule 5 of the Rules of Superintendence should be amended to require courts to adopt a local rule requiring a court technology plan.

The task force recommends that Superintendence Rule 5 be amended to include a requirement that by local rule, courts adopts a technology plan. This plan would ensure courts have a comprehensive strategy for implementing and maintaining technology-based solutions. This plan would include procedures for conducting remote hearings, the acceptance of electronic signatures, electronic service, and any other technology-related solution utilized by the court (e.g., electronic filing, online payment, online dispute resolution). The technology plan also would include procedures for notifying and providing instructions on how to use these solutions. *See Appendix C(v): Rules of Superintendence for specific language.*

13. The Supreme Court should develop a bench card of best practices for the use of technology in the courtroom.

Bench cards serve as valuable resources for judges in need of a quick reference while sitting on the bench. To assist judges with conducting remote hearings, the Supreme Court should develop a bench card identifying best practices for the use of technology in the courtroom.

The task force recommends the Supreme Court leverage an ongoing project by the Court Technology Committee of the Ohio Judicial Conference and collaborate with this group on the development and maintenance of this resource. Best practices are inherently dynamic in nature and warrant a mechanism for periodic review and revision. Such a partnership allows more judge-driven motivation to innovate, provides peer support and resources, and reduces the appearance of “top-down” decision-making.

14. Local courts and the Supreme Court should publicize success stories to encourage the adoption of technology by courts by outlining the benefits to both courts and litigants (e.g., increased access to justice, increased efficiencies, financial savings). The Supreme Court should develop a media template packet for local courts to customize.

Frequently, courts will implement new programs, policies, or procedures based upon the fact that another court has had success with it. Peer-to-peer support and/or recommendation is heavily valued among judicial officers and court staff. For example, recommendations from other courts frequently are solicited by members of the Ohio Association for Court Administration on its listserv. This also is often an underlying reason why pilot projects are conducted, so that other courts can hear the lessons learned and be encouraged by participating courts to implement something new.

The same holds true for the adoption of technological solutions. Court News Ohio published numerous articles spotlighting courts utilizing technology in innovative ways over the past several months.³⁴ Additionally, the Supreme Court’s Judicial College hosted multiple webinars featuring judicial officers and court personnel creatively using technology. These highlighted ways in which courts used remote technology so that others could benefit from hearing what their peers did, as well as the lessons learned by the early-adopters.

Courts, attorneys, and litigants need to be educated on the benefits of using technology, especially those who are averse to change. These success stories should continue to be published by the Supreme Court and local courts demonstrating how technology provides benefits for courts and litigants (e.g., greater efficiency by electronically filing court documents, convenience to make online payments, and the ability to participate in a hearing without having to leave work to appear in the courthouse). To assist courts in this effort, the Supreme Court should develop a media packet that can be customized by each jurisdiction and includes sample news release templates and other communication strategies to relay the court’s successes.

It is important to include data. For example, courts may publish statistics about decreasing failure-to-appear rates, lower attorneys’ fees, and courts’ ability to accommodate more walk-in foot traffic because the courthouse has fewer participants coming in for scheduled proceedings. Data identifies the savings and efficiencies that accompany the use of technology.



SUCCESS STORY – LAKE COUNTY PROBATE COURT

“The Lake County Probate Court has been able to have the judge and magistrates administer hearings remotely. This has provided not only the court, but the public a safe and efficient alternative to hearings.”

“Just a little uplifting story... adoption hearings typically are packed with family and friends. You can hear the clapping and cheering throughout the halls when the hearings are finished. When the Pandemic happened, the court almost had to put the attendance of these hearings to a complete stall. This is an exciting and special day for these families, that could not be taken away from them. With the remote technology that was implemented in the courtroom, the judge can provide all family and friends the ability to participate safely. One adoption hearing had almost 40 people participating remotely...it was absolutely remarkable!”

Christine Gibaldi, Lake County Probate Court

³⁴ Court News Ohio, <http://courtnewsohio.gov/default.asp> (accessed April 12, 2021).

Technical Assistance for Court Staff

15. The Supreme Court should establish an “Ask an Expert” list/dictionary of topics for courts to use when seeking answers to technology questions. Ideally, this would include a contact name of a person with expertise willing to advise a judge or court staff.

The success of a new technological solution is highly dependent on a user’s knowledge of how a solution works. While training and technical assistance for court staff are essential, the truest understanding and expertise of how a product works is gained through repeated use over time.

Courts would benefit greatly from having access to Information Technology (IT) experts they could turn to when needing assistance with technology-related questions. The task force recommends that the Supreme Court maintain a list of subject-matter experts identified from local court staff willing to assist fellow court employees. Courts would submit the names and contact information of those individuals who are knowledgeable (aka experts) about various technology specialties. The Supreme Court then would compile the list and make it available for use by the local courts.

16. The Supreme Court’s Commission on Technology & the Courts should establish and manage an IT Leadership Consortium comprised of local court IT specialists or expert peers to advise courts in the application and use of technology in the courthouse similar to groups established for executive branch agencies (e.g., State Multi-Agency CIO Advisory Council).

The Supreme Court’s Commission on Technology & the Courts should establish a group of local court IT specialists to help review and advise the Supreme Court and local courts on the use of technology. The IT Leadership Consortium should assist with the development and ongoing review of the “Minimum Standards for Technology Use.”³⁵ Similar groups exist among executive branch agencies that provide guidance and standards on the use of technology in state government.

17. The Supreme Court and other partners should provide training for IT court staff.

Training is essential for IT court staff. Training ensures courts get the maximum use out of their technology products; it keeps them abreast of new advances in technology; and it fosters retention of IT staff because the court is investing in the development of these individuals. The Supreme Court, through its Judicial College, currently provides training for other segments of court employees, such as court security officers, probation officers, and administrative staff. It would be a natural extension to provide training for court IT staff.

The task force also recognizes the value of the Ohio Judicial Conference’s annual Technology Conference. This conference focuses on the latest technology, providing both educational sessions and the opportunity to meet with technology vendors to learn about the latest products available to courts. The Supreme Court should encourage local courts to attend this training.

³⁵ See Recommendation #5.

18. The Supreme Court should facilitate collaborative purchasing agreements among courts (e.g., statewide or countywide) to assist with the purchase of technology-related products and services. The purpose of collaborative purchasing is to leverage best pricing through buying in bulk.

The task force recommends the Supreme Court leverage economies of scale to secure competitive pricing for local courts on their technology products. Vendors are likely to offer reduced pricing when there is the possibility of securing the business of multiple courts. This model is used by the Ohio Department of Administrative Services when it negotiates contracts with various vendors on behalf of state agencies under its Cooperating Purchasing Program.³⁶

Alternatively, if a group of courts is looking for the same product, there would be a cost-benefit to approaching vendors to reduce cost. For example, five courts all seeking to purchase laptops may receive better pricing from Dell or Acer if they pooled their orders, rather than each court approaching the vendors individually.

The Supreme Court should consider using a pilot-project approach and assist with improving purchasing power. The Supreme Court could provide support for collaboration by helping to identify other courts seeking the same product and even potentially subsidizing some project funding.

Technical Assistance for Court Users

19. There should be instructions or training materials available for local courts to post on their websites that inform litigants and attorneys on how to use remote technology.

The success of remote hearings hinges on the ability of attendees to effectively join and participate. Participants may be unfamiliar with conference call lines or video conferencing. Training and support help reduce anxiety and uncertainty by providing users with explanations of what to expect.

The instructions should include:

- Information explaining a party's rights or other documents that would be included or available for an in-person hearing.
- An explanation of what the participants should expect upon joining a remote proceeding.
- A reminder to not appear in person at the courthouse on the hearing date.
- Instructions for submitting exhibits or notifying the court of witnesses.
- Contact information to assist parties and attorneys when there are questions, as well as for updating the court when their contact information changes.
- A recommendation to counsel and parties to communicate prior to the hearing and stipulate as much as practicable.

³⁶ Ohio Department of Administrative Services, *Cooperative Purchasing*, <https://das.ohio.gov/Divisions/General-Services/Procurement-Services/Cooperative-Purchasing> (accessed April 12, 2021).

- Instructions on what to do if parties or attorneys have difficulty joining the remote hearing or if they get disconnected during the proceeding. Have a designated phone number for participants to call to inform the court.

The survey results demonstrated that the majority of attorneys and litigants found the overall quality of the courts' instructions and technical support information to be helpful.³⁷ For attorneys in particular, 19.9% reported that the quality of the instructions was excellent and 31.6% said they were very good.³⁸ Litigants were asked a slightly different question – “Were the instructions you received on how to appear by videoconference or telephone helpful?” An overwhelming majority (96.6% of self-represented litigants and 88.2% of self-represented litigants) answered in the affirmative.³⁹

Courts should consider developing separate instructions for attorneys and litigants (for instance, some courts require the use of electronic filing for attorneys, but not for self-represented litigants). Plain Language should be used when communicating with participants.⁴⁰



BEST PRACTICE

Include instructions and links to resources for attorneys and parties, along with the notice for the hearing. Make sure to reiterate that they should not appear in person at the courthouse.

Instructions and training materials should be placed on court websites. For example, Michigan has developed “Zoom Tips for Attorneys and Parties,” which outlines helpful instructions for preparing for the virtual proceeding, what to expect in the “courtroom,” and links to instructional videos on commonly used Zoom features.⁴¹ The Hawaii State Judiciary created a webpage with instructions and frequently asked questions about remote hearings using Zoom or Cisco Webex.⁴²

20. The Supreme Court should develop a bench card on providing technical support to attorneys and litigants on how to use remote technology solutions.

In connection with Recommendation #19, the Supreme Court should develop a bench card on how courts should provide technical support to attorneys and litigants on how to use remote

³⁷ Appendix A: *Improving Court Operations Using Remote Technology Survey Report*. Table 31. *Quality of Instructions Provided by Local Courts*.

³⁸ *Id.*

³⁹ Appendix B: *Improving Court Operations Using Remote Technology Litigant Survey Report*. Table 8. *Helpfulness of Instructions*

⁴⁰ National Center for Court Management, *Plain Language Guide* (2019).

⁴¹ Michigan Courts Virtual Courtrooms, *Zoom Tips for Attorneys and Parties*. <https://courts.michigan.gov/News-Events/covid19-resources/COVID19/ZoomTipsAttysParties.pdf> (accessed April 12, 2021).

⁴² Hawaii State Judiciary, *Remote Court Hearings via Zoom or Webex*. [Judiciary | Remote Court Hearings via Zoom or Webex \(state.hi.us\)](https://www.hawaii.gov/judiciary/remotecourt/) (accessed April 12, 2021).

technology solutions. The more information courts provide to the users, the greater the likelihood that the remote hearing, electronic filing, or whatever court service is being performed will end successfully.

21. The Supreme Court, in coordination with subject-matter experts, should develop templates or guidance for local courts on the contents of their websites to ensure that basic information is uniformly available (e.g., local court rules, standardized forms); Americans with Disabilities Act requirements are met, and helpful legal information is available to the public, litigants, and the bar.

The Supreme Court should collaborate with subject-matter experts to develop templates or guidance for websites to ensure that the public has access to uniform information across the state, such as local court rules, standardized forms, and links to legal aid organizations. This guidance should include how to develop web content that meets the requirements of the Americans with Disabilities Act. It also is extremely important that this information be accessible in mobile-friendly formats, as many self-represented litigants access court websites from their smartphones. Courts should use responsive/adaptive designs for their websites, whereby the content display changes depending on the type of device being used to access the website.

22. All courthouses should be equipped with free internet access available for use by the public.

The pandemic highlighted the inequities of the digital divide and further exposed that many Ohioans still lack basic access to internet services. Similarly, many litigants cannot afford unlimited data plans that allow them to participate in remote hearings or access online court services because they do not have access to free Wi-Fi. Courts should be mindful of these barriers and offer free internet access throughout courthouses to be used by the public.

23. Courts should coordinate with local bar associations for education to the public and the bar on the court's function and enhance civic education.

Local courts should coordinate with their local bar associations to provide education on how to use remote technology and how courts can enhance their services by offering technology-based solutions. Remote hearings reduce failure-to-appear rates and provide greater access to litigants. Attorneys benefit from the use of remote technology as they can more effectively manage their schedule, which allows them to serve more clients.

Scheduling & Case Management

24. Courts should use bench-based case management tools to automate workflow, reduce delay, and remove redundancy in caseflow processes.

Courts should maximize available technology by providing judicial officers with bench-based technology solutions connected to the court's case management system. Providing easy access to an electronic case file through the case management system allows the judicial officer (or bailiff) to schedule future hearings, generate entries, and calculate court costs while on the bench and while the parties are present. These tools eliminate the need for parties to wait for mail to arrive or stand in line in the courthouse after their proceeding concludes in order to

receive information about what happens next in their case. They are able to leave the courtroom (virtual or in person) with information about what is expected of them and the date of their next appearance.

When systems can access information from other departments, such as the clerk's office or the probation department, the judicial officer has further control over expediting hearings by removing the need to wait for updates or receive reports before making decisions related to a pending case.

25. Courts should consider implementing electronic scheduling by parties online, by themselves (with supervision by the court as needed).

Courts should consider implementing a solution allowing parties to schedule their hearings by themselves for certain types of court proceedings. The Eleventh Judicial Circuit in Florida launched a pilot program in early 2019 for its civil division. By March 2020, they had expanded to county, family, and probate courts. Similarly, Lee County Courts in Florida offers the "Judicial Automated Calendaring System," which allows attorneys and self-represented litigants the ability to schedule civil hearings.⁴³ Cases in small claims, county, and circuit courts, and hearings on residential mortgage foreclosures may be scheduled online.

Online scheduling allows parties to select times that are mutually beneficial. Attorneys are able to more effectively manage their calendars. Courts already allocate a set amount of time for certain types of proceedings (e.g., pretrial hearings, status conferences, traffic violations). These requirements are built into the scheduling algorithm. Calendar platforms either are integrated with the court's case management system or available as an additional module. They oftentimes are also paired with text-reminder functionality that sends automated reminders at set times prior to a proceeding. These reduce the court's time finding dates to accommodate everyone's schedules. The task force recognizes that this recommendation is not feasible in all case types, especially for those involving multiple parties/participants. However, it can be beneficial in non-complex civil matters, such as dissolutions, minor traffic violations, or eviction hearings.

26. Courts should consider creating a simple electronic method for parties to request a continuance of upcoming hearings.

The task force recommends that courts create an electronic method of requesting a continuance. Oftentimes, attorneys or self-represented litigants become aware they will be unable to attend a future hearing outside of the court's normal business hours. An online-request method allows these individuals the ability to submit a request at any time and also allows the court to proceed with that request in a more streamlined manner, because it can have a staff member dedicated to handling these requests as they are received.

⁴³ Lee County Clerk of Courts, *Judicial Automated Calendaring System*, <https://www.leeclerk.org/services/judicial-automated-calendaring-system-jacs> (accessed April 12, 2021).

27. Courts should use SMS/text messaging/email to provide general reminders about court appearances; this technology also can be used to alert parties (who are asked to wait in cars until prompted) to enter a courthouse.

While failure-to-appear statistics are not routinely collected, the Pretrial Justice Institute reports that 12 million Americans are detained annually for pretrial offenses that include failures to appear.⁴⁴ In a study conducted in New York City, text reminders were found to decrease the failure-to-appear rate by up to 26%, translating to 3,700 fewer arrest warrants per year.⁴⁵ Many case management systems offer this functionality. Automated reminders are sent to individuals flagged in the case management system according to the court’s pre-determined schedule. Several of the Family Dependency Treatment certified specialized dockets received funding from the Supreme Court’s Court Improvement Program Grant (CIP) to send text reminders in abuse, neglect, and dependency cases.

This recommendation is reinforced by data from the litigant survey. More than two-thirds of respondents answered that text reminders of hearing dates would be helpful.⁴⁶

TABLE 5. TEXT MESSAGE REMINDERS				
	Self-Represented Litigants		Represented Litigants	
Rating	# of Responses	% of Total	# of Responses	% of Total
Yes	34	70.8%	118	69.0%
No	11	22.9%	37	21.6%
Unsure	3	6.3%	16	9.4%
Total	48	100%	171	100%

28. Courts should provide online docket access for allowable case types under Rules 44-47 of the Rules of Superintendence, including viewing case file documents through a website or mobile application.

In an effort to increase public access, courts should develop online access to court records through its website or mobile application. Superintendence Rules 44-47 provide a presumption of the public’s access to open records with some specific exclusions (e.g., exclusions for abuse, neglect, and dependency cases and protection orders). When online docket access is available, it is widely used by attorneys. More than three-fourths of the attorneys responded that they

⁴⁴ Tashea, Jason, *Text Message Reminders Are a Cheap & Effective Way to Reduce Pretrial Detention*, <https://www.abajournal.com/lawscribbler/article/text-messages-can-keep-people-out-of-jail> (July 17, 2018).

⁴⁵ J-PAUL Poverty Action Lab, Massachusetts Institute of Technology, *Text Message Reminders Decreased Failure to Appear in Court in New York City*, <https://www.povertyactionlab.org/evaluation/text-message-reminders-decreased-failure-appear-court-new-york-city> (accessed April 12, 2021).

⁴⁶ *Appendix B: Improving Court Operations Using Remote Technology Litigant Survey Report. Table 18. Text Message Reminders.*

always use the online docket for case information.⁴⁷ Similar responses also were made by litigants when asked if they used the court's website to look up information about their case.⁴⁸

29. The Supreme Court's Advisory Committee on Case Management, in consultation with the Supreme Court's Commission on Technology & the Courts, should develop a proposal for the adoption and implementation of a statewide case management system. Alternatively, the Supreme Court should consider modules to connect or integrate case management systems to other platforms to minimize data entry duplication.

A centralized statewide case management system (CMS) allows for standardized data collection and reporting. The uniform collection of data facilitates data-driven decision-making and reporting across all 88 counties. Courts with limited resources benefit by joining fellow courts. Local courts are not burdened with ongoing maintenance, as upgrades are tested before rolled out at the local level. The task force recommends that the Advisory Committee on Case Management consult with the Supreme Court's Commission on Technology & the Courts to devise a proposal for the adoption and implementation of a centralized case management system.

Alternatively, if these groups determine that a centralized CMS is not feasible, then the Supreme Court should consider ways to integrate other data collection modules into existing CMS platforms, such as the sentencing data platform, the warrant and protection order database, and specialized docket case management system. Integration minimizes duplicative data entry on the part of court staff and uniform data collection simplifies reporting and data comparison.

30. The Supreme Court should allocate funds for the sustainability of a specialized docket case management system upon the receipt of requested grant funds (and if the funds are not granted, the initial funding too).

The Supreme Court's Specialized Docket's Section has applied for grant funding to create a case management system for the certified specialized docket courts. If those funds are received, the task force recommends that the Supreme Court allocate funds to sustain this project long-term. A designated specialized docket CMS would integrate into the court's existing case management system reducing the duplicative data entry these courts currently are doing in order to report specialized docket data to the Supreme Court. Should the grant dollars not be awarded, the Supreme Court should allocate its own funds for the development of a CMS.

31. Rule 36.08 of the Rules of Superintendence should be amended to allow for members of the Supreme Court's Commission on Specialized Dockets to attend meetings remotely.

Currently, members of the Commission on Specialized Docket may attend meetings by telephone or other remote means by making a request to the commission's chairperson. This

⁴⁷ *Appendix A. Improving Court Operations Using Remote Technology Survey Report. Table 83. Online Docket Use by Attorneys.*

⁴⁸ *Appendix B. Improving Court Operations Using Remote Technology Survey Litigant Report. Table 19. Use of the Court's Website.*

rule should be updated to allow members to remotely attend meetings without having to make a formal request. *See Appendix C(v): Rules of Superintendence for specific language.*

32. The Supreme Court should enhance the features of the Ohio Courts Network.

The original purpose of the Ohio Courts Network (OCN) was to allow local courts to query a centralized statewide database of court records in order to see where else in the state a person may have court involvement. It also provides users with a one-stop shop for person-level data stored in other state databases maintained by the Bureau of Motor Vehicles, the Bureau of Criminal Investigation, and the Ohio Department of Rehabilitation and Correction, among others.

Increasingly, the Supreme Court has relied on OCN as a potential source of data to inform policy, using data to drive decision-making. However, due to the lack of data standardization at the local court level, mining the OCN for actionable case data is extremely difficult. Additionally, the limited data collection impedes the Supreme Court's ability to respond to external data requests hindering its ability to be transparent and accountable through hard data and empirical evidence.

The Supreme Court should assess the current data elements collected by OCN and identify areas of expansion for data collection. The review should study and expand reporting capability to courts and external partners.

Electronic Filing

33. Courts should use and expand their use of electronic filing.

The number of courts offering electronic filing is continuing to increase. However, according to the iCOURT Survey, it is not widely available across the state; approximately one-third of court administrators and clerks responded that e-filing was offered to attorneys, whereas not quite 20% reported electronic filing was available for self-represented litigants.⁴⁹

When electronic filing is offered as an option, it is widely used by attorneys. Almost two-thirds of attorneys surveyed responded that they always use and another 22% reported using it often.⁵⁰ Litigants also expressed a desire to use electronic filing. Responders were asked: "If it was available, would you like to use internet to file documents with the court (rather than delivering papers in person or putting them in the mail)?"⁵¹ More than 80% of self-represented litigants and more than 90% of represented parties responded in the affirmative.⁵²

Electronic filing increases access to the courts by providing a more convenient way for parties and attorneys to file documents. It eliminates potential transportation barriers and parking

⁴⁹ *Appendix A. Improving Court Operations Using Remote Technology Survey Report. Table 15. Current Services Offered Using Remote Technology.*

⁵⁰ *Appendix A. Improving Court Operations Using Remote Technology Survey Report. Table 81. Use of Electronic Filing by Attorneys.*

⁵¹ *Appendix B. Improving Court Operations Using Remote Technology Litigant Survey Report. Table 20. Interest in the Use of Electronic Filing.*

⁵² *Id.*

fees; it saves parties and attorneys time by not having to go to a courthouse, and it reduces the amount of scanning clerks have to do to upload documents into the court's case management system. Overall, electronic filing is a more efficient way of conducting business.

34. Courts should maximize the electronic ticket process hosted by the Ohio Department of Public Safety.

The Department of Public Safety's Ohio Traffic Safety Office administers National Highway Traffic Safety Administration grants available for local courts who want to adopt an electronic citation and adjudication process. Efficiencies are experienced by both the court and parties as these electronic processes reduce the number of traffic hearings being held. Courts are encouraged to apply for these funds if they do not already offer such services.

Acceptance of Electronic Signatures

35. Courts should adopt a local rule allowing for the acceptance of electronic signatures.

While several courts have local rules allowing the acceptance of electronic signatures, many jurisdictions prohibit the use. This technology has many applications in courts. Electronic signatures can be used on the front end in conjunction with electronic filing to allow attorneys to file pleadings. They also can be used on the back end in remote proceedings where parties may be signing a settlement agreement. This is especially advantageous in family law jurisdictions that tend to be form-intensive. Multiple vendors offer products that provide this functionality, which ranges from standalone form-filling capability to being a component of an electronic document exchange product.



BEST PRACTICE

Make sure the solution offered to accept electronic signatures is mobile friendly, as many court users, especially self-represented litigants, primarily conduct business using their smartphone.

36. The Authentication Standards for the Use of Electronic Signatures in Electronic Documents drafted by the Workgroup on the Standards Subcommittee of the Supreme Court's Commission on Technology & the Courts in 2008 should serve as a model for developing updated best practices for the acceptance and use of electronic signatures.

As courts look to implement procedures around the acceptance of electronic signatures, they should consult the standards developed in 2008 by the Supreme Court Commission on Technology & the Courts' Workgroup on the Standards Subcommittee. These standards serve as a model for establishing current best practices for the acceptance and use of electronic signatures.

37. Rule 11 of the Civil Rules of Procedure should be amended to allow for the express ability to electronically sign documents.

Civil Rule 11 should be amended to expressly allow documents to be signed electronically. Currently, the rule is silent on how a pleading, motion, or other court document is to be signed. The task force recommends adding the phrase "including by electronic signature" to the first

sentence of the rule requiring the document to be signed. *See Appendix C(i): Rules of Civil Procedure for specific language.*

Acceptance of Electronic Documents

38. Courts should expand their use of electronic document exchange.

Courts should expand their use of electronic document exchange. This solution works hand-in-hand with remote hearings, as it allows courts to share, in real-time, documents such as plea agreements, divorce settlement agreements, or waiver forms with the parties for signature. The signed documents are electronically sent back to the court and can be filed immediately. Generally, the products have a feature where a copy of the signed documents can be emailed to the attorneys and parties (e.g., Docusign, E-Signatures by Adobe, SignNow). Currently, electronic document exchange only is utilized by a small number of courts (approximately 15%).⁵³ The task force recommends courts consider using this solution. This recommendation accompanies the acceptance of electronic signatures in Recommendation #35. It is important the solution be mobile-friendly to function easily on a smartphone.



When commenting about the drawbacks of using remote hearings, this attorney responded there was a “lack of ability to share documents outside of the actual hearing... There is no way to capture signatures as well on documents with clients appearing remotely.”

See Appendix A: Improving Court Operations Using Remote Technology Survey Report. Appendix J – Open-Ended Comments to the Attorney Survey

39. Courts should establish a process so that requests for sealing of documents can be made electronically and immediately go to the judicial officer.

There are times when parties file a request with the clerk to keep documents under seal. For example, in civil actions with corporations involving proprietary information, an attorney files a request for the document to be accepted under seal. Courts should develop a process that allows documents to be accepted and delivered directly to the judicial officer making the determination of whether a document is to be sealed.

40. As courts implement new case management systems, they should include the capability to accept documents under seal (e.g., functionality to restrict access based upon rules/permissions).

In conjunction with Recommendation #39, as courts implement new case management systems, they should build into the system requirements the ability to accept documents under seal and restrict access to certain staff members based upon a set of rules or permissions.

⁵³ *Appendix A: Improving Court Operations Using Remote Technology Survey Report. Table 15. Current Services Offered Using Remote Technology.*

Online Payment

41. Courts should expand their use of online payment of court costs, fines, and fees.

Courts should expand their use of online payment systems. Less than half of the courts reported in the survey that they offer online payment options.⁵⁴ Whether the court functions as its own clerk or works with a separate clerk's office, they should increase access by offering an online payment option of court costs, fines, and fees. This solution benefits both the court (and clerk) and litigants. The ability to make an online payment saves litigants time, transportation, and potential child care needs or missed work. Online payment options save court staff time, as the reconciliation process for electronic payment is faster and, oftentimes, a less expensive form of payment to process than cash or a check.

Virtual & Mobile Assistance with Court Services

42. Courts should consider developing a mobile application where parties can access information about their case, make a payment, electronically upload and sign documents.

Mobile applications provide court users with information and 24/7 access to court services, such as case information, filing documents, and online payment capability. It also expands the way in which a court can connect with users outside of the static delivery of information on a website. Applications allow for push notifications and reminders, and can include a messaging function where the user can contact the court.

Cuyahoga County Domestic Relations Court launched "CourtConnect" in 2019 that allows lawyers and litigants to conduct case searches, electronically file documents, and access child support information.⁵⁵ Similarly, the District of Columbia launched an application earlier this year providing users with access to the court calendar and searchable database. It also contains juror information, online forms, and court rules, and frequently asked questions.⁵⁶



"CourtConnect is bringing our courtrooms to the palm of your hands. Through technology and innovation, we're helping families navigate the legal system and conserve their resources, and also providing easy access to important information about Domestic Relations Court."

Hon. Francine B. Goldberg, Cuyahoga County Domestic Relations Court (Ret.)

If a mobile application is cost-prohibitive, courts can alternatively utilize an adaptive design website. Services and information are displayed as they would be on a mobile device, but are

⁵⁴ Appendix A. *Improving Court Operations Using Remote Technology Survey Report*. Table 15. *Current Services Offered Using Remote Technology*.

⁵⁵ Cuyahoga County Office of the Executive, *Cuyahoga County Domestic Relations Court Launches Mobile App: CourtConnect*, Press Release (Aug. 9, 2019).

⁵⁶ District of Columbia Courts Newsroom, *DC Courts Launch New Court App*, (Jan. 4, 2021), <https://newsroom.dccourts.gov/press-releases/dc-courts-launch-new-court-app> (accessed April 13, 2021).

hosted on the court's webhosting platform. This mimics the look and feel of a mobile application, but at less cost to the court.

43. Courts should provide virtual assistants or kiosks that help users perform court-related functions (e.g., access forms, file documents, make payments, access information, participate in a remote hearing).

Virtual assistants and guided interview systems increase access to justice by helping litigants navigate their way through various court processes. For example, courts are using virtual assistants or chatbots to provide basic information about their court system. These pre-programmed scripts are designed to address frequently asked questions, such as court hours, where to access forms, the amount of different court costs and filing fees. Virtual assistants are used to improve customer service by providing more accurate and consistent answers to questions.⁵⁷ The public has expanded access to court information beyond the normal operating hours.

The Garfield Heights Municipal Court has a virtual assistant that provides information on virtual court processes, small claims, civil claims, marriage, renting, crime, and traffic offenses.⁵⁸ Similarly, the First Judicial District Court of New Mexico has a virtual receptionist named Clara who greets courthouse visitors and helps them obtain requested forms, provides basic information to court users, and can assist with the request for a remote interpreter.⁵⁹ Courts also can consider adding these types of services to their website as a less expensive alternative to developing an application. Responsive/adaptive design websites offer users on a mobile device that same front-end interface experience on a mobile device as that of a mobile app.

44. Courts should offer guided interview systems to help litigants prepare and file documents.

A guided interview process asks the user a series of questions and based upon the answers provided will auto-populate standardized forms for the respondent. This process is commonly used by legal aid organizations (e.g., Ohio Legal Help), but also is used in courts around the country, such as in Oregon⁶⁰ and Minnesota.⁶¹ Guided-interview processes break down the questions asked on a standard form and provide them in easy-to-digest segments. They eliminate the need to complete forms manually and can be connected to the court's electronic filing system so users can prepare and file court documents all in one step.

⁵⁷ Joint Technology Committee, *JTC Quick Response Bulletin: Getting Started with a Chatbot*, (April 20, 2020).

⁵⁸ Garfield Heights Municipal Court, <https://www.ghmc.org/> (accessed April 13, 2021).

⁵⁹ National Center for State Courts, *Clara: New Mexico's Virtual Court Receptionist*, (Aug. 17, 2020). <https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/clara-new-mexicos-virtual-court-receptionist> (accessed April 13, 2021).

⁶⁰ Oregon Judicial Branch, *Online Services*, <https://www.courts.oregon.gov/services/online/pages/iforms.aspx> (accessed April 13, 2021).

⁶¹ Minnesota Judicial Branch, *Minnesota Guide & File*, <https://www.mncourts.gov/Help-Topics/Guide-and-File.aspx> (accessed April 13, 2021).

Online Dispute Resolution

45. Courts should consider online dispute resolution as a way to dispose of cases.

The American Bar Association defines Online Dispute Resolution (ODR) as the “use of technology to settle disputes between parties.”⁶² ODR integrates negotiation with information and communication technology. ODR utilizes web-based communication tools to facilitate dialogue between parties, manage group dynamics, and support parties’ understanding of the information and data exchanged.⁶³

Court-provided ODR is an avenue for parties to independently convene and resolve disputes without interacting with traditional in-court proceedings.⁶⁴ It is a tool that creates alternative access to justice, particularly for self-represented litigants, those in poor health, deployed for military service, and not located in close proximity to the courthouse. A court-supported ODR platform can provide a formal dispute resolution space without parties necessarily filing a formal complaint first.⁶⁵

In recent years, court systems around the country identified ways for ODR to triage issues, de-escalate tensions between parties, and provide a structured format to facilitate negotiation, mediation, and adjudication.⁶⁶ Courts have implemented ODR for a variety of different case types, such as landlord-tenant, small claims, and minor traffic violations.⁶⁷ It also can be used for uncontested divorces, some contested divorces, and matters relating to child support and parenting. The Supreme Court currently is piloting ODR with several courts for evictions, small claims, foreclosures, and family law cases.

Court-provided ODR often is time-constrained, where court systems designate a length of time parties have to resolve the issue using the online platform.⁶⁸ For example, the New Mexico state court system affords claimants 30 days to resolve their dispute using ODR.⁶⁹ Traditional litigation can take months, and sometimes years, to resolve through the court. ODR mitigates participant concerns of time away from work, cost of an attorney, cost of child care, and the

⁶² American Bar Association, *Online Dispute Resolution in the US*, https://www.americanbar.org/groups/centers_commissions/center-for-innovation/online-dispute-resolution-in-us/ (accessed April 13, 2021).

⁶³ Jeff Aresty, Daniel Rainey & Robin P. West, *Expand Your Practice with Online Dispute Resolution Technology*, 32 GPSolo 1, 22-24, 26 (January 2015).

⁶⁴ National Center for State Courts, *What is ODR?*, <https://www.ncsc.org/odr/guidance-and-tools>, (accessed April 13, 2021).

⁶⁵ *Id.*

⁶⁶ Joint Technology Committee, *JTC Resource Bulletin: ODR for the Courts*, https://www.srln.org/system/files/attachments/ODR%20for%20courts_0.pdf, (accessed April 13, 2021).

⁶⁷ *Id.*

⁶⁸ New Mexico Courts, *What is Online Dispute Resolutions (ODR)?*, <https://adr.nmcourts.gov/home/odr/>, (accessed April 13, 2021).

⁶⁹ *Id.*

effects of time away from family, reducing the costs to participants than with the traditional court process.⁷⁰

46. The Supreme Court should develop standards for online dispute resolution and publish them.

Online dispute resolution is an effective strategy for case resolution. However, in order to ensure these interventions are being conducted with fidelity, the Supreme Court, through its Commission on Dispute Resolution, should develop standards and publish them. This will create a governance structure upon which courts, mediators, and parties can rely.

47. Rule 16.06 of the Rules of Superintendence should be amended to allow members of the Supreme Court's Commission on Dispute Resolution to attend meetings remotely.

Currently, members of the Supreme Court's Commission on Dispute Resolution may attend meetings by telephone or other remote means by making a request to the commission's chairperson. This rule should be updated to allow members to remotely attend meetings without having to make a formal request. *See Appendix C(v): Rules of Superintendence for specific language.*

Administrative Judge Online Portal

48. The Supreme Court should develop a centralized online portal for administrative judges to communicate and perform Supreme Court-related administrative functions (e.g., magistrate registration, submission of local rules, court personnel directory).

The Supreme Court should develop a centralized online portal for use by administrative judges to streamline their communication and administrative functions to the Supreme Court. Courts currently are using online portals to upload monthly caseload statistics (eStats) and make requests for visiting judges (IGOR). The creation of a centralized portal would establish a one-stop shop for administrative judges to use when, for example, registering new magistrates and submitting local rules. It also would be used to collect a directory of local court staff. Currently, there are approximately 12,000 staff members; however, these names are not housed in a central database. Adding this information would allow the Supreme Court to better meet the educational needs and provide greater technical assistance to local court personnel. Once this portal is built, Superintendence Rule 4.01 should be amended to add this responsibility to the list of duties required of the administrative judge.

CONDUCTING REMOTE PROCEEDINGS – GENERAL RECOMMENDATIONS

Minimum Standards

49. The Supreme Court should establish platform-agnostic minimum requirements that must be met in order to conduct a remote proceeding.

⁷⁰ Rule, *Using Online Dispute Resolution to Expand Access to Justice*, 90 OBJ 26 (August 2019), available at <https://www.okbar.org/barjournal/aug2019/obj9006rule/> (accessed April 13, 2021).

There are several video-conferencing platforms available on the market. As their use skyrocketed over the last year, developers worked quickly to enhance their functionality to keep pace with competitors. The Supreme Court should establish a minimum set of standards that must be present in a video-conferencing platform in order for it to be used to conduct a remote court proceeding. If these are not present, then the court must establish an alternative procedure outside of the video-conferencing platform to satisfy compliance. For example, the platform must be secure, it must be able to accommodate Americans with Disabilities Act requirements, and it must include a mechanism for controlling disruptive viewers.

50. Before conducting remote hearings, courts should develop and communicate procedures on how the proceeding will be conducted, including, but not limited to evidence and exhibits, witnesses, cross-examination, objections, attorney-client communications, side-bar conversations, recesses, and courtroom decorum.

There is a lot of upfront work required to prepare for conducting a remote hearing before the first one is scheduled. Work on the front end will save time during the actual hearing and avoid continuances due to technical difficulties.

Breaks/Recesses

Courts should develop a process for requesting breaks or recesses (e.g., put the request in the chat box, raise your hand). Judicial officers should state this process at the beginning of the proceeding so all participants are aware of the procedure. Additionally, it is important to inform participants that they should refrain from leaving the room or the camera without first asking to do so.

Receipt and Sharing of Documents, Exhibits, & Evidence

Courts should consider using the pretrial order to address when and how evidence will be submitted and introduced during remote proceedings. This is especially important in jury trials. To the extent possible, the order should address procedures for handling evidence, including how and when evidence will be shared with the court, counsel, witness, and jurors (where applicable). Courts should consider specifications for file formats, naming conventions, numbering systems, file size limitations, deadlines, and special accommodations.⁷¹ A helpful resource to consult is the Joint Technology Committee's *JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings*.

Courts also should consider creating a court-specific portal or using other services, such as Dropbox or WeTransfer, for the acceptance of electronic evidence. Courts should require attorneys and self-represented litigants to pre-mark each exhibit so they are easily referenced during the hearing. Documents that are shared and reviewed ahead of time can save time during the hearing. It is important that alternatives are available for self-represented litigants who may not have the capability to use such services for uploading documents.

⁷¹ Joint Technology Committee's *JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings* (June 25, 2020) https://www.ncsc.org/_data/assets/pdf_file/0019/42814/2020-07-27-Managing-Evidence-for-Virtual-Hearings-002.pdf (accessed April 13, 2021).



BEST PRACTICE

Consider having attorneys or self-represented litigants (where applicable) be responsible for sharing exhibits during the remote hearing. This allows the judicial officer to focus on the substantive nature of the proceeding. In the alternative, designate a staff member to be the “producer” and handle this function.

Courts may want to consider the long-term use of electronically submitted exhibits even for in-person trials. In many instances, counsel already is electronically exchanging exhibits with opposing counsel and other necessary individuals. Utilizing this same process for submission to the court ultimately would save represented litigants attorneys’ fees for the reduction in the amount of trial preparation that is performed. The sharing of electronic evidence during in-person or hybrid hearings only would require a minimal investment on the court’s end. It could purchase (or potentially repurpose) a couple of mobile tablets or laptops to be used in the courtroom by the judge, attorneys, witness, and self-represented litigants, if necessary, to display electronic evidence.

With regard to physical evidence, those items can be photographed or videotaped while the court retains physical possession of the item. The court also can utilize the screen-sharing function to show items, such as weapons, clothing, etc. The court should encourage parties to stipulate to the authenticity of the evidence ahead of time.⁷²

With regard to the use of remote technology in evidentiary hearings, courts can enhance their processes. Multiple comments were received by attorneys responding to the survey stating that remote hearings were not suitable for the virtual platform. One attorney recommended to “use Zoom for all non-evidentiary proceedings, but any proceeding involving...exhibits should be in person.”⁷³ Another attorney stated that “it is difficult for some attorneys to properly share exhibits for hearings, even though they have been given instructions in the journal entry.”⁷⁴ This harkens back to the need for quality training and resources for attorneys and self-represented litigants on how to prepare and participate in a remote hearing. However, as courts conduct more virtual hearings, they should continue to refine their policies and instructions. This ultimately will result in greater proficiency among the attorneys after more time and practice.

Witness Testimony

There are many benefits to the use of remote testimony. Witnesses experience savings in time away from the witness’s normal daily activities, child care, transportation, and parking fees. This is especially true for expert witnesses who frequently come from out of town to testify. The ability to testify remotely, coupled with the savings on time and travel expenses, not only increases the likelihood that an expert will testify, but translates into savings to the party in terms of litigation fees.

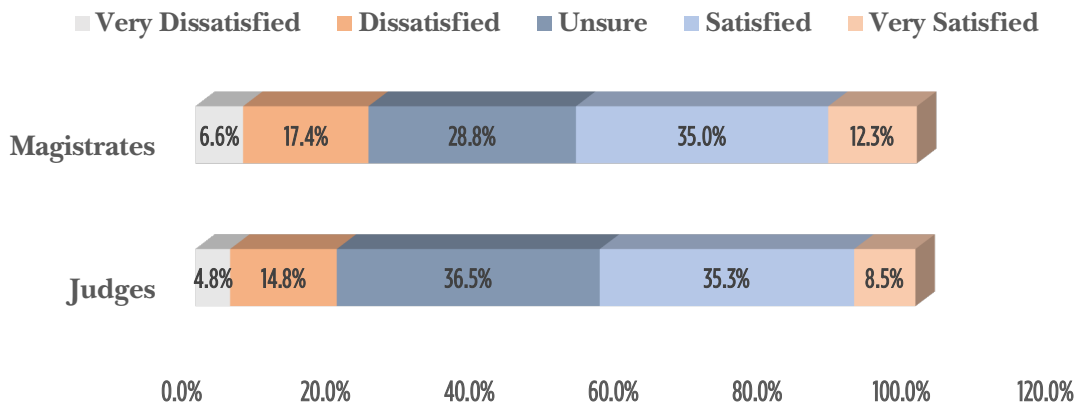
⁷² *Id.*

⁷³ *Appendix A: Improving Court Operations Using Remote Technology Survey Report. Appendix M – Attorneys.*

⁷⁴ *Appendix A: Improving Court Operations Using Remote Technology Survey Report. Appendix C – Attorneys.*

Remote testimony also can prove to be challenging. One attorney commented that it was “difficult to view the demeanor of witnesses and other participants, which is vital in trial work.”⁷⁵ This is a frequent concern that attorneys have expressed since courts moved to conducting remote hearings. Attorneys expressed apprehension that they (and also judicial officers and jurors) are unable to adequately gauge facial expressions and demeanor, which are necessary to determine a witness’s credibility. Judicial officers were split on whether they were able to effectively evaluate the credibility of a remote witness.⁷⁶

Judicial Officer: Evaluating Credibility of Witnesses



Courts should consider devising specific rules and instructions for witnesses (i.e., to be alone, avoid using notes, submission of evidence). Depending on whether a witness is testifying by telephone or by video, the court should develop a process for administering the oath.⁷⁷ Some courts require a witness to verify his/her identity, such as by holding a driver’s license or another government-issued identification card to the camera. Additionally, witnesses must be provided copies of all pre-marked exhibits prior to the hearing.

Courts should consider making counsel and/or self-represented parties responsible for providing instructions to witnesses. These instructions include requirements that witnesses (including litigants) must be alone, in a quiet place, and may not use a virtual background. Witnesses may be required to share their surroundings by moving the camera around the room if there are concerns the witness may not be alone. Witnesses are not permitted to record the proceeding and must turn off all electronic devices, except for the one being used for the hearing. Further, witnesses are to refrain from exchanging electronic messages during their testimony or from consulting any notes.

⁷⁵ *Id.*

⁷⁶ *Appendix A: Improving Court Operations Using Remote Technology Survey Report. Table 45. Evaluating the Credibility of Remote Witnesses & Interviewees.*

⁷⁷ Telephonic testimony may make it difficult to determine the witness’s credibility.

**BEST PRACTICE**

Include the following language in the court’s hearing order: *There shall be a separation of witnesses and no witness shall participate in or listen to the hearing except when he or she is testifying. All witnesses will be placed by the court in a “virtual waiting room” until they testify. If a witness is physically located at the same place as a party, counsel, or other witness, he or she shall physically stay in a separate room, except when testifying.*

The task force recognizes that the separation of witnesses is always a concern. This is complicated further when a witness is testifying remotely. Multiple attorneys commented in the survey that they had no way of knowing if the witness was being coached.⁷⁸ Courts should utilize virtual “waiting room” features for witnesses and only admit them when they are ready to testify. In addition to asking witnesses to scan the room with their device, the court can direct that witnesses must testify from different physical locations from other witnesses and be unable to hear the testimony, except as otherwise may be agreed upon by the parties on the record. If the court determines that further steps for sequestration are necessary, then the court could post a recording of the proceeding after the hearing, rather than livestreaming it.

Attorney-Client Communications

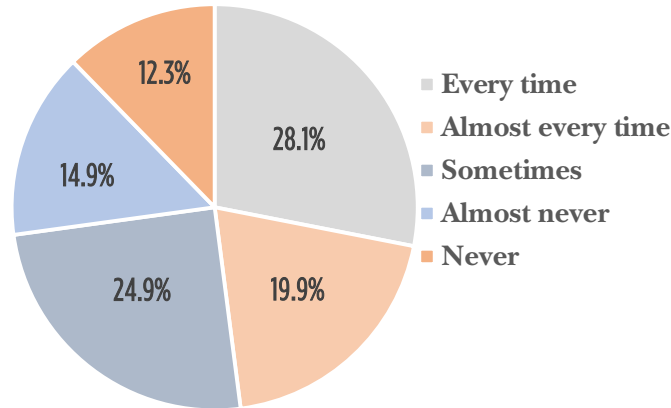
A primary concern of using remote hearings was the ability of parties to confer with their attorneys. Many video-conferencing platforms have “breakout rooms” or other separate virtual rooms where private communications can occur. Courts should reiterate the process for requesting a recess at the beginning of the proceeding. This reminds parties of their right to speak to counsel throughout the hearing.

The survey results highlighted this as a potential area of improvement for courts. Not even a third of the attorney respondents reported this was available during every remote hearing.⁷⁹

⁷⁸ See *Appendix A: Improving Court Operations Using Remote Technology Survey Report. Appendix C – Attorneys.*

⁷⁹ *Appendix A: Improving Court Operations Using Remote Technology Survey Report. Table 77. Use of Breakout Room/Private Chat Features to Conduct Private Conferencing – Attorneys.*

Attorneys' Use of Breakout Room/Private Chat Feature



Interestingly, these numbers are slightly higher with responses from judges and magistrates. More than 40% of judicial officers stated that they provided a breakout room or private chat feature to allow attorneys and clients to converse upon request, while at the same time, approximately 15% stated that they never or almost never provided that ability.⁸⁰ While on their face, these percentages are concerning; however, the survey did not ask a follow-up question as to whether alternative arrangements were made to facilitate private conversations. Many attorneys and clients simply use their cell phones to talk or text during the hearing. Nevertheless, this is not always an option. When the proceeding is conducted over a phone, the party has limited cell-phone minutes, or the party needs an interpreter, this arrangement is not feasible. Courts may need to set up a separate conference-call line or provide a space in the courthouse. Courts otherwise may also need to make similar arrangements for in-person hearings where, due to social distancing requirements, the attorney and client are seated too far apart to have a private conversation. Regardless, the court is required to ensure a mechanism is available for parties and their attorneys to privately confer.



BEST PRACTICE

Dedicate time before the hearing for the parties and their attorneys to meet in a separate virtual conference room.

Courtroom Decorum

While there were reports of extreme examples of how informal or casual remote hearings can be, many courts are operating on the other end of the spectrum imposing the same level of formality as is required for hearings inside the courthouse. In the iCOURT Survey, judicial officers expressed less satisfaction than other groups that remote proceedings promote the traditional dignity and seriousness otherwise experienced during in-person court proceedings.⁸¹ The judicial officer sets the tone and demeanor for the proceeding and must

⁸⁰ Appendix A: *Improving Court Operations Using Remote Technology*. Table 78. *Use of Breakout Room/Private Chat Features to Conduct Private Conferencing – Judicial Officers*.

⁸¹ Appendix A: *Task Force on Improving Court Operations Using Remote Technology Survey Report*. Table 44. *Promotion of the Traditional Dignity & Seriousness of In-Person Proceedings*.

hold attorneys, parties, and others accountable. This includes the setting and the attire of the judicial officer. Judicial officers should wear their robes and are encouraged to have a virtual background of their courtroom, the courthouse, or other professional setting. These serve as visual reminders to the participants that though the format is virtual, the hearing carries the same level of seriousness as it would if it were held in a courtroom.

The notice of the hearing should include the court's rules on dress code and expectations for conduct. People are to act as they would if they were physically appearing in court.

51. Courts should develop a procedure where a party can request a remote proceeding.

As changes to the Rules of Procedure are proposed to expand the ability to conduct a remote proceeding, parties, too, should have the ability to request participation in a remote proceeding. There are a variety of reasons why a remote appearance may be more conducive for a litigant – whether that is child-care needs, medical accommodation, or inability to miss work. However, a party's procedural justice needs are better met if they have flexibility in how they participate in a court proceeding. Maryland allows a party to request a remote hearing or a remote appearance for scheduling conferences, hearings, pre-trial conferences, trials, and other proceedings.⁸² Sample Requests for a Remote Hearing in civil and criminal actions are included in *Appendix D(iii)* and *(iv)* respectively.

Instructions to Parties & Other Remote Participants

52. Courts should develop clear procedures and instructions for notifying parties of their remote proceeding (e.g., videos, FAQs, user guides).

This recommendation accompanies Recommendation #19. It is important to have a standardized process for notifying parties of their remote proceeding. Obtaining accurate contact information (i.e., email address) as soon as possible will aid in the delivery of this information. Courts also should have a mechanism to confirm contact information at each interaction point, as this information frequently changes throughout the life of a case.

Quality instructions and resources significantly increase the likelihood that a proceeding will run smoothly. Technical difficulties not only are frustrating, but can cause unnecessary delays as well. Courts should develop resources, videos, or frequently asked questions to help those unfamiliar with the court's processes understand what to expect and what is expected of them. For example, King County Superior Court, Florida developed a series of videos to train attorneys on its virtual jury trial process.⁸³ Additionally, Michigan Supreme Court has resources on its website designed for self-represented litigants on navigating virtual court proceedings.⁸⁴

⁸² Maryland Judiciary, *Motion for Remote Proceeding or to Appear Remotely*, <https://www.mdcourts.gov/sites/default/files/court-forms/ccdc110.pdf> (accessed April 13, 2021).

⁸³ King County, *Virtual Civil Jury Trial Preparation*, <https://www.kingcounty.gov/courts/superior-court/get-help/civil-jtrials.aspx> (accessed April 13, 2021).

⁸⁴ Michigan Courts. *Resources for Self-Represented Litigants*, <https://courts.michigan.gov/News-Events/Pages/SRL.aspx> (accessed April 13, 2021).

**BEST PRACTICE**

Courts should make instructions available in multiple formats. Instructions should be included with the hearing notice, as well as on the court's website.

Courts also should provide resources to attorneys, parties, and other participants on how to use the remote-technology platform. For example, Michigan Supreme Court's website provides links to instructional videos on how to use Zoom.⁸⁵ The more comfortable users are with the technology, the less likely they will experience technical difficulties. In the event issues occur, the court should have a process in place to resolve those issues. It is important to provide a contact name and phone number for those individuals to contact in the event of a problem.

Accommodations

Courts have a responsibility to ensure meaningful access to court services to those in need of an accommodation, either due to limited-language proficiency or a disability. The use of an interpreter in a virtual hearing presents challenges courts are still working to overcome. The additional participant(s) increase the number of users on the screen, making it harder to see the parties and witnesses. Additionally, written documents that normally would have been orally read (sight-translated) by the interpreter in the courtroom must first be read aloud to the interpreter and then rendered into the target language by the interpreter. Depending on whether the court is using consecutive or simultaneous interpreting, the speaker may have to pause after each statement to allow for the interpretation to occur, adding time to the proceeding. Because the use/need is not widespread, courts may not be overly comfortable with the procedures they have in place.



"When [you] add two or three interpreters online it can become distracting and it is really hard to see facial expression [and] body language...Deaf people have to focus more on visual communication so technology makes it harder to focus than being in person."

Appendix A: Improving Court Operations Using Remote Technology Survey Report. Appendix C – Open-Ended Comments to the Attorney Survey

Most video-conferencing platforms offer closed captioning or a specific interpretation feature. For example, Zoom's virtual interpretation functionality provides separate audio channels between the interpreter and the person needing the interpretation. This feature makes simultaneous interpretation possible. Zoom also allows users to "pin" or "spotlight" a participant so the interpreter's screen would remain visible (and larger) while others are talking. This is especially helpful for users who are using American Sign Language Interpreters. Cisco WebEx has similar functionality. Platforms continually are working to increase their accessibility functionality.

The use of remote hearings has provided some benefits for courts in terms of accommodations. It has greatly expanded the pool of available interpreters for those in need of someone certified in less-popular languages and also provides greater access to those in rural areas. Remote hearings provide another alternative to telephonic interpretation, especially in instances where the court is using virtual remote interpreting (VRI) where a certified interpreter can be requested and appears remotely to provide simultaneous interpreting services.

⁸⁵ *Id.*

Though the use of interpreters presents challenges, 58% of interpreters who participated in the survey stated that courts should continue offering remote hearing after the pandemic is over.⁸⁶ Courts should continue working to improve their ability to provide accommodations.

The task force makes the following recommendations ensuring all participants have meaningful access to the court system:

53. Courts should determine a process for accommodating participants with limited-English proficiency and disabilities in remote proceedings.
54. Courts should consider using virtual remote interpreting.
55. The Supreme Court should evaluate expanding interpreting services to include video remote interpreting for the use of American Sign Language interpreters and supplement the telephone language service also to include virtual remote interpreting in a foreign language.

Public Access

56. Courts should adopt procedures allowing the public to access remote proceedings, including live streaming court hearings and participating in the Ohio Virtual Courtroom Directory.

The public's right to access court proceedings is a means of maintaining integrity and accountability in the judicial system. Accessing a remote proceeding, courts have employed a variety of strategies from providing the remote log-in information upon request, publicizing log-in information on its online calendar, having a designated space in the courthouse, and broadcasting the proceeding on YouTube or directly on its website. The method chosen by the court should have an accompanying process that encourages public access.

Livestreaming

Anecdotally, courts that are livestreaming their proceedings reported increased numbers of viewers than what is traditionally experienced inside of the courtroom. This should be favorably viewed as members of the public are taking an interest in court matters.

Oftentimes, video-conferencing platforms integrate easily with YouTube or other streaming services. If a court elects to livestream its proceedings, they are encouraged to participate in the Ohio Virtual Courtroom Directory hosted by the Supreme Court so that members of the public are aware that proceedings are available to be watched.

Courts that elect to broadcast their proceedings should consider taking the following measures:

- Turn off comments and likes/dislikes on the YouTube channel or other platform.
- Provide each judicial officer with his or her own channel.
- Prepare the judicial officer's background.

⁸⁶ *Appendix A: Improving Court Operations Using Remote Technology Survey Report. Figure 12. Post-Pandemic, Should Courts Continue to Conduct Some Proceedings Using Remote Technology.*

- Encourage judicial officers to display patience and discuss being conscious of facial expressions.
- Provide ground rules for participants.
- Determine who will handle technology issues.
- Identify a phone and/or email contact for participants who may need assistance.
- Have participants acknowledge consent on the record that the proceedings are being livestreamed.
- Include language in the notice to state that the hearing will be livestreamed.

57. Courts should review existing orders to ensure appropriate procedures are in place to prevent impermissible and unauthorized uses of audio/video recording.

Courts should ensure appropriate measures guard against the unauthorized recording of a virtual court proceeding. At a minimum, courts should include language in the notice to appear that recordings are not permitted. Other strategies include adding a “Do not record” watermark on the stream and requiring viewers to acknowledge by clicking a button that they will not record the proceeding.

CIVIL CASES – RULES OF PROCEDURE RECOMMENDATIONS

Methods of Service

58. Rule 4 of the Rules of Civil Procedure should be amended to require the inclusion of email addresses in the summons where one is available.

Currently, Civil Rule 4(B) does not require the inclusion of an email address in a summons. The task force recommends adding “email addresses if available” to Civil Rule 4(B) to help facilitate the use of electronic service and to reinforce the current practice of local courts already requesting this information. *See Appendix C(i): Rules of Civil Procedure for specific language.*

59. Rule 4.1 of the Rules of Civil Procedure should be amended to expand the allowable methods of service to include email or other electronic media platforms as designated by the attorney or the party.

The current methods of service of the initial pleadings do not allow the summons and complaint to be served electronically. The task force recommends adding “electronic service via email address or other electronic media platforms⁸⁷ as designated by the attorney or the party” to Civil Rule 4.1(A)(1) as an allowable method of service by the clerk, provided the following requirements are met:

- (1) The party being served consents to electronic service in writing;

⁸⁷ The expansion of notice by social media would require courts to have social media accounts. The task force encourages courts to establish policies ensuring those accounts are properly used with the understanding that any messages sent or received would constitute public records.

- (2) The certificate of service includes documentation that service was sent; and
- (3) There is acknowledgment that the party being served received the notice.

It also proposes a staff note be added outlining examples of acknowledgments that will be permitted in Revised Civil Rule 4.1(A)(1)(c)(iii), such as an acknowledgment response by the party being served (i.e., reply) or documentation by the sender that the notice was read (i.e., read receipt).

The threshold for initial electronic service will be higher than that for electronic service allowed for in subsequent filings under Civil Rule 5. This is due to the fact that the task force recognized that the consequences of failure of service for the complaint are far more detrimental for the defendant or respondent (e.g., future jurisdictional issues) than those that exist with subsequent filings. *See Appendix C(i): Rules of Civil Procedure for specific language.*

60. Rule 5 of the Rules of Civil Procedure should be amended to expand the allowable methods of service to include other electronic media platforms as designated by the attorney or the party subsequent to the filing of the original complaint.

Civil Rule 5(B)(2)(f) currently permits electronic service by “sending it by electronic means to a facsimile number or e-mail address provided in accordance with Civ.R. 11 by the attorney or party to be served.”⁸⁸ The task force recommends adding “other electronic media platforms as designated by the attorney or the party” to Civil Rule 5(B)(2)(f). This is consistent with the proposed changes suggested for initial service in Civil Rule 4.1. Moreover, by this time in the case, the parties and the attorneys have been identified, and courts already will have obtained valid email addresses from pertinent individuals. This is a common practice in many courts today, thus, demonstrating that electronic delivery is feasible. *See Appendix C(i): Rules of Civil Procedure for specific language.*

61. Rule 5 of the Rules of Civil Procedure should be amended to require courts to adopt local rules allowing for the use of electronic filing of documents.

Currently, courts have the option to adopt a local rule allowing the electronic filing of documents. The task force recommends amending Civil Rule 5(E) to require courts to implement the electronic transmission of documents. The survey results demonstrated an overwhelming use by attorneys when available (62.8% stated that they always used electronic filing⁸⁹), as well as a desire by parties to have that capability in courts where it was not available (91.8% of represented litigants and 83.7% of self-represented litigants⁹⁰). *See Appendix C(i): Rules of Civil Procedure for specific language.*

⁸⁸ This language mirrors Fed.R.Civ.P. 5(b).

⁸⁹ *Appendix A: Improving Court Operations Using Remote Technology Survey Report, Table 81, Electronic Filing by Attorneys.*

⁹⁰ *Appendix B: Improving Court Operations Using Remote Technology Litigant Survey Report, Table 20, Interest in the Use of Electronic Filing.*

Discovery

62. Rule 26 of the Rules of Civil Procedure should be amended to add the express ability to obtain discovery in person or remotely.

The task force proposes adding the express ability to obtain discovery “either in person or by remote presence” to Civil Rule 26(A). The addition of the term *remote presence* references the newly proposed Civil Rule 1.1’s definition requiring the use of live, two-way video and/or audio technology and ensures certain safeguards for the electronic exchange of information. *See Appendix C(i): Rules of Civil Procedure for specific language.*

Depositions

63. Rule 30 of the Rules of Civil Procedure should be amended to include “other remote technology” as an allowable method of recording.

Civil Rule 30 currently allows for a deposition to be taken using “other means.” The task force recommends division (B) of this rule specifically state “other remote technology” (emphasis added). The addition of the term *remote* references the definition of *remote presence* in newly proposed Civil Rule 1.1 requiring the use of live, two-way video and/or audio technology. This change coincides with the guidance set forth in Supreme Court Administrative Order 2020-Ohio-3155 allowing for depositions to be taken by “telephone or other remote means.”⁹¹ *See Appendix C(i): Rules of Civil Procedure for specific language.*

64. Rule 13 of the Rules of Superintendence should be amended to expand videotaped testimony and evidence to “pre-recorded in-person and remotely presented testimony” in conjunction with the proposed changes to Civil Rule 30.

Similarly, Superintendence Rule 13 sets forth the procedure for the recording of videotaped depositions. The use of videotape technology is no longer commonly used as most courts have upgraded their equipment and cannot record or play a videotape cassette. The proposed changes to this rule remove references to “videotaped” depositions and replace them with “pre-recorded in-person and remotely-presented testimony” or generically a “recording.”

While the use of videotape still is permissible, these changes give courts greater flexibility in how depositions are recorded, whether recorded in a room using a video camera or remotely using a platform such as Zoom. The proposed amendments also expand the mediums on which a recording can be stored to include “a disc or other storage device.” Again, this provides courts with greater flexibility and also leaves room for new types of storage devices to be used in the future. *See Appendix C(i): Rules of Civil Procedure for specific language.*

65. Rule 31 of the Rules of Civil Procedure should be amended to allow for the electronic transmission of a deposition.

The task force recommends revising Civil Rule 31 to allow the ability to send the deposition by electronic means. Email is a common mode of communication and already is frequently used to exchange information with attorneys, courts, and parties. *See Appendix C(i): Rules of Civil Procedure for specific language.*

⁹¹ Supreme Court Administrative Order 2020-Ohio-3155. This order was later extended indefinitely by Supreme Court Administrative Order 2020-Ohio-3861.

Taking Testimony

66. Rule 43 of the Rules of Civil Procedure should be amended to expand the circumstances under which testimony can be taken using remote technology.

Currently, Civil Rule 43 allows testimony to be taken remotely “for good cause in compelling circumstances and with appropriate safeguards.” The task force recommends removing the phrase “in compelling circumstances” because it requires a higher standard than is necessary for this type of routine court process. The court retains adequate protections and judicial discretion by still requiring “appropriate safeguards” to be in place in order for remote testimony to occur.

The proposed changes also would replace the language “by contemporaneous transmission from a different location” with “either in person or by remote presence.” This revision unifies the requirement of using live, two-way video and/or audio technology for remote witness testimony with other proposed changes being made throughout the various Rules of Court. Additionally, the rule would require a party seeking remote testimony to provide notice to the court as soon as practicable of its request. *See Appendix C(i): Rules of Civil Procedure for specific language.*

67. Rule 43 of the Rules of Civil Procedure should be amended to allow the oath or affirmation of a witness to be administered using remote technology.

The task force recommends amending Civil Rule 43 to allow a witness to be administered the oath or affirmation remotely upon verification of the witness’s identity. This proposal coincides with how courts have been administering oaths during the pandemic as permitted under Supreme Court Administrative Order 2020-Ohio-3155. This order allows courts to administer oaths or affirmations using “audio- or video-communication technology, provided the technology shall allow the person...to positively identify the person taking the oath or making the affirmation.”⁹² *See Appendix C(i): Rules of Civil Procedure for specific language.*

Notarization

68. A new remote notarization procedure involving court-related processes, separate from online notarization as defined in Revised Code 147.60, should be established to allow for a notary to utilize remote technology to verify the identity of the signatory at the time of signature.

Online notarization became permissible in Ohio in the fall of 2019; however, it was minimally used outside of real estate transactions until the pandemic closed the majority of locations the general public sought for notary publics. *Online notarization* is defined as “a notarial act performed by means of live two-way video and audio conference technology that conforms to the standards adopted by the secretary of state under section 147.62 of the Revised Code.”⁹³ The Secretary of State established administrative standards that require an individual seeking an online notarization to undergo and pass a complicated multi-factor verification process that

⁹² Supreme Court Administrative Order 2020-Ohio-3155(C). This order was later extended indefinitely by Supreme Court Administrative Order 2020-Ohio-3861.

⁹³ R.C.147.60(I).

was proven to be not only extremely time-consuming, but also can end with the individual being unable to complete the process during that session.⁹⁴

This became an evident access-to-justice issue for individuals seeking to file court-related documents, such as petitions for protection orders, child custody forms, and affidavits of indigency during the pandemic. The Supreme Court responded by issuing Administrative Order 2020-Ohio-3226 temporarily amending certain uniform forms in domestic relations, juvenile, general, and probate courts to remove the notarial certificate and replace it with a declaratory statement. While this alleviated some of the obstacles to filing court-related documents, certain forms still are statutorily required to be notarized, leaving online notarization as the only viable option when the public had no access to banks, courts, or other providers of notary services.

The task force seeks to create a new remote notary procedure for the notarization of documents that are needed for court-related processes. This carve-out procedure would be separate from online notarization as defined in Revised Code 147.60. The task force recommends enacting a new Revised Code section that would state the following:

“Notwithstanding Revised Code 147.62-64, for the purposes of any active or imminent court proceeding or any affidavit that is prepared for purposes to be included in the filing in a court, notarizations may occur using live two-way video and audio conference technology that allows the notary public to verify the identity of the remotely located individual at the time the signature is taken. Notaries that are administering these oaths are not subject to the provisions of Revised Code 147.64.”

As an alternative to the court-related exception, courts could develop an alternative procedure whereby they verify, under oath, documents submitted to the court that are not properly notarized. This currently is practiced in some courts.

69. The Supreme Court, in conjunction with various judicial associations, should review standardized forms and determine what forms actually necessitate being notarized. Upon the conclusion of this review, appropriate revisions should be made to the affected forms.

This recommendation builds off of the previous recommendation, as the notary provision can serve as a barrier to access for litigants. The Supreme Court should work with the judicial associations to conduct a review of the standardized forms containing a notarial certification to determine if it is a necessary component of the form.

CRIMINAL CASES – RULES OF PROCEDURE RECOMMENDATIONS

Criminal proceedings are governed by constitutional and procedural safeguards to ensure a defendant’s due process rights are protected. In early 2020, as courts were abiding by health orders restricting access to in-person proceedings, many were forced to suspend criminal trials until they were able to determine how best to move forward given the public-health limitations on attorneys

⁹⁴ Ohio Adm.Code 111:6-1-05.

and parties having access to courthouses. The task force recognizes that courts were cautious to implement changes to the way in which criminal hearings were conducted during the pandemic out of concern that these rights will be infringed upon.

Article I, Section 10 of the Ohio Constitution provides:

“In any trial, in any court, the party accused shall be allowed to *appear and defend in person* and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; *to meet the witnesses face to face*, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court.” (emphasis added)

The task force recommends the following amendments to the Rules of Criminal Procedure allowing courts the ability to conduct remote criminal proceedings, in whole or in part. These proposed changes retain both judicial discretion while maintaining the integrity of the protections afforded to defendants.

The Right to be Present

Article I, Section 10, along with the Fifth Amendment to the United States Constitution, as enforceable to the states through the Fourteenth Amendment, provides a defendant with the due process right of being present during criminal proceedings. “As the constitutional principle of ‘due process’ has evolved on both the state and federal levels, the courts have broadened its guarantees to mandate the presence of the defendant, absent waiver of his rights or other extraordinary circumstances, at every stage of his trial.... In Ohio, the expanded scope of the Due Process Clause, at least in criminal proceedings, has been embodied in Criminal Rule 43(A).”⁹⁵ Criminal Rule 43(A) fulfills the knowing and intelligent waiver of those constitutional rights listed before.

Criminal Rule 43(A)(1) requires the defendant to be “physically present at every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict, and the imposition of the sentence,” except as provided in Criminal Rule 10. Criminal Rule 43(A)(2) permits the defendant in a misdemeanor case or in a felony case when a waiver is obtained in writing or on the record to appear by “remote contemporaneous video” provided that:

- (a) All parties receive notice of the defendant’s remote appearance;
- (b) The defendant has access to adequate video and audio technology so that the defendant is able to see and hear the proceeding, has the ability to speak, and is able to be seen and heard by the court and all parties;
- (c) The court provides the ability for private communication between the defendant and counsel; and
- (d) If the defendant wishes to testify, the court inquires with counsel if he or she consents, and ensures counsel is present and participates.⁹⁶

⁹⁵ *State v. Williams*, 6 Ohio St.3d 281 (1983).

⁹⁶ Crim.R. 43(A)(2)

It is important to note the right to be present is not absolute. The Supreme Court, citing *Snyder v. Massachusetts*, 291 U.S. 97 (1934), held that the defendant’s right to be present only is required “to the extent that a fair and just hearing would be thwarted by his absence.”⁹⁷

70. Rule 10 of the Rules of Criminal Procedure should be amended to include the defendant’s ability to be present during an arraignment hearing using remote technology.

Criminal Rule 10 currently permits a defendant to appear for arraignment hearings by video under certain circumstances in misdemeanor cases. Video-arraignment appearances commonly are used in local courts across the state. The proposed revisions to this rule would give courts greater discretion in allowing remote appearances, eliminating the requirement that the defendant and the prosecuting attorney agree to the remote appearance. Also, the use of “remote contemporaneous video” should be removed and instead replaced with “remote presence,” which will be defined as “the presence of a person who is using live two-way video and/or audio technology” in Criminal Rule 2. This promotes not only consistency in the process, but also ensures the protections of Criminal Rule 43 remain intact. A Sample Waiver of the Right to be Present at Arraignment can be found in Appendix D(vi). See *Appendix C(ii): Rules of Criminal Procedure for specific language*.

71. Rule 15 of the Criminal Rules of Procedure should be amended to allow a defendant to remotely attend a deposition and to allow depositions to be conducted remotely as allowed in civil cases.

Criminal Rule 15 should be amended to allow a defendant to appear remotely to a deposition provided that a waiver is obtained and the process set forth in Criminal Rule 43(A) is met. Language explicitly allowing for the deposition to be conducted using live, two-way video and audio technology also was added. See *Appendix C(ii): Rules of Criminal Procedure for specific language*.

72. Rule 23 of the Rules of Criminal Procedure should be amended to specifically allow a remote criminal trial to be conducted either in whole or in part.

The task force recommends that a new provision be added to Criminal Rule 23 specifically allowing a criminal trial to be conducted remotely using live, two-way video and audio-conferencing technology. A court would have the discretion to determine the manner (e.g., in whole or in part) in which the remote trial would be conducted giving courts flexibility to meet the individual needs of a case, address limitations within the courtroom, and offer additional flexibility to one of the participants. This language also aligns with similar language proposed for Civil Rule 39 and Superintendence Rule 5.⁹⁸

The proposed amendments also would permit the remote participation and presence of a defendant in accordance with the requirements set forth in Criminal Rule 43, such as providing notice to all parties, having a mechanism for private communication between the defendant and counsel, and ensuring cross-examination can occur if there is sworn testimony. These

⁹⁷ *State v. Phillips*, 74 Ohio St.3d 72 (1995) citing *Snyder v. Massachusetts*, 291 U.S. 97 (1934).

⁹⁸ See *Recommendations #80 and #75 respectively*.

protocols guarantee a defendant's rights are in no way abridged by a remote hearing. *See Appendix C(ii): Rules of Criminal Procedure for specific language.*

73. Rule 43 of the Rules of Criminal Procedure should be amended to expand the circumstances under which a defendant can remotely appear in a criminal proceeding, including a trial by jury.

As stated above, Criminal Rule 43 sets forth conditions under which a defendant can appear for a criminal proceeding by video. The task force recommends these circumstances be expanded to allow remote presence and participation at all stages of a criminal proceeding and trial, including a jury trial. It is important to note that the procedural protections outlined in division (A)(2) are retained in the rule.

The proposed amendments to division (A)(2) mirror those being made in other procedural rules. The term “by remote contemporaneous video” would be removed and replaced with the addition of “remote” in reference to the defendant’s appearance. The term “remote presence” will be defined in Criminal Rule 2.

Additionally, the defendant would have to waive the right to be physically present for trials (bench or jury), a sentencing proceeding, or other substantive proceedings. The waiver must be obtained either in writing or made orally on the record. The court then could ensure the procedural safeguards in division (A)(2)(a)-(e) of this rule were met during a remote proceeding. *See Appendix D(vii): Sample Waiver of the Right to be Present at Trial. See Appendix C(ii): Rules of Criminal Procedure for specific language.*

The Right to Confront Witnesses

Both the Ohio and United States Constitutions set forth a right for the defendant to confront witnesses.⁹⁹ “The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.”¹⁰⁰ While there is a preference that this confrontation take place literally face-to-face, the Supreme Court of the United States held in *Maryland v. Craig*, 497 U.S. 836 (1990), that this preference occasionally must give way to considerations of public policy and the necessities of a case. The Court held that when there is a case-specific justification, there does not have to be face-to-face confrontation, as long as the witness is administered an oath, there is the opportunity for cross-examination, and the ability of the fact finder to observe demeanor evidence. These measures reduce the risk that a witness will wrongfully implicate an innocent defendant.

Ohio has interpreted the *Craig* test through its courts of appeals. In the Eighth District Court of Appeals, *State v. Marcinick* (2008-Ohio-3553), video testimony of a witness was upheld as the court outlined procedures to allow virtual testimony upon a showing that the use of virtual appearance was justified, on a case-specific finding, based on important state interests, public policies, or necessities of the case, and the other three elements of confrontation — oath, cross-examination, and observation of the witness's demeanor — were satisfied. Other court of appeals cases also allowed video testimony provided they follow the *Craig* test.

⁹⁹ Ohio Constitution, Article I, Section 10; Sixth Amendment to the United States Constitution.

¹⁰⁰ *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157 (1990).

74. A new Rule 40 of the Rules of Criminal Procedure should be adopted outlining the circumstances under which remote testimony can be taken during criminal proceedings.

The Rules of Criminal Procedure address the participation of a defendant, but are silent with regard to that of witnesses. Currently, the standard for witness testimony is found in case law. The task force recommends the addition of a new Criminal Rule setting forth the elements of the *Maryland v. Craig* test when allowing a witness to testify remotely.

This rule would allow a court to permit the remote presence and participation of a witness, including that of a defendant, for any proceeding, if all of the following apply:

- (1) The court gives appropriate notice to all the parties;
- (2) The court finds the remote appearance of the witness is based upon important state interests, public policies, or necessities of the case.
- (3) The witness is administered the oath or affirmation using live, two-way video and audio conference technology allowing the person authorized to administer the oath to verify the identity of the witness at the time the oath is administered.
- (4) The witness is subject to full cross-examination.
- (5) The video arrangements allow the witness to speak, and to be seen and heard by the court, all parties, and the jury if applicable.

See Appendix C(ii): Rules of Criminal Procedure for specific language.

JURY TRIAL RECOMMENDATIONS

The iCOURT Task Force was charged with examining how courts have used technology and specifically issue recommendations on how to conduct remote criminal jury trials. While the task force recognizes that certain issues are unique to criminal jury trials, there are many overlapping features with civil jury trials. For that reason, the task force sought to deliver cohesive recommendations for *all* jury trials. Specific considerations for criminal jury trials are addressed separately below.

Background Information¹⁰¹

Texas trial courts have been a national leader in conducting remote jury trials. As of December 2020, there have been over 800,000 remote hearings conducted and approximately 20 jury trials. Though Texas is a non-unified state, its Supreme Court issued an administrative order prohibiting in-person hearings and purchased Zoom licenses for all of the courts. Additionally, the Texas Supreme Court purchased 120 iPads for use by jurors who lack the ability to participate remotely. These iPads are distributed to the local courts and then either sent directly to the juror's home or picked up at a courthouse.

The state's first civil jury trial was held in May 2020. In August 2020, the Texas Supreme Court issued an administrative order allowing judges to conduct remote proceedings without the consent

¹⁰¹ This information was obtained during a Zoom meeting held with David Slayton, Administrative Director, Texas Office of Court Administration. Dec. 14, 2020.

of parties for non-jailable criminal cases under the rationale that under normal circumstances, courts do not seek the parties' input on how jury trials are conducted, scheduled, etc.¹⁰²

While the attorneys were hesitant when Texas first began conducting remote jury trials, those hesitations have been allayed. Trial courts are experiencing an 80% juror-response rate and report that the jury pool is far more diverse and representative of the community than before the pandemic.

Members of the task force met with representatives of the Texas Office of Court Administration to learn about how remote jury trials are held in their state. This information was instrumental in shaping these recommendations. Note: These recommendations are *in addition* to the minimum requirements that must be met in order to conduct a remote hearing.¹⁰³

Though the distribution of the COVID-19 vaccine is underway, sufficient herd immunity is still months into the future. As a result, it is expected that courts will be unable to conduct jury trials in the same manner as they were pre-pandemic, but will be forced to adopt new procedures in order to manage the backlog of jury cases that have amassed over the last year. These procedures will be in place when the court determines it beneficial or necessary to conduct a trial remotely.

Ohio trial courts have the capability to conduct jury trials remotely. As a non-unified state, local courts have the discretion on whether to conduct a full jury trial remotely. This is beneficial to both the courts and the litigants because it allows for flexibility to adapt to the resources available to the court, the circumstances of the case, and the unique needs of the parties. Some courts may elect to conduct jury selection virtually, but hold the trial in person. Other courts may conduct the entire proceeding remotely. And there will be courts that will elect to continue cases until arrangements can be made to hold a jury trial in person.

Jury Management Plan

75. Rule 5 of the Rules of Superintendence should be amended to require the inclusion of procedures to conduct remote jury trials into the jury management plan if a court elects to conduct a jury trial in whole or in part.

Courts conducting jury trials are required by Superintendence Rule 5(D)(2) to adopt a jury management plan ensuring the efficient and effective management of jury trials. The task force recommends amending the rule to include “and also procedures for conducting a trial by jury, whether in whole or in part, remotely using live, two-way video and audio technology where applicable” to the end of that subdivision.

It is important to note, the language “in whole or in part” gives the court the flexibility to conduct a remote jury trial in a way to best meet the needs of both the court and the individuals involved in the case. There may be instances when there is a hybrid jury trial, with some participants physically located in the courtroom and others in remote locations. This may arise because physical space limitations prevent all participants from being present in the same courtroom, resulting in jurors being located in a different part of the courthouse. Another

¹⁰² Objections are heard at least seven days prior to trial or as soon as practicable. Also note: Consent IS required for jailable criminal cases.

¹⁰³ See Recommendation #49.

example may be that parts of the jury trial process are conducted remotely (e.g., voir dire), but the trial itself is held in the courtroom. The court should structure its jury management plan to allow for partial and full remote jury trials so that a judge has the necessary discretion to determine what format(s) satisfies the needs of all those involved.

Jury Selection & Service

76. Courts should consider conducting jury selection remotely.

A typical jury selection process involves large groups of individuals gathering for multiple hours at the courthouse, oftentimes for days at a time. Many courthouses do not have the physical space to accommodate social-distancing requirements that may continue to exist. Remote jury selection alleviates both of these obstacles, while also saving the potential juror time, transportation costs, and time off work that often accompany jury service.

Remote jury selection requires a potential juror have access to:

- A desktop, laptop, or tablet equipped with a camera or a webcam AND a microphone;
- High-speed or broadband internet;
- A data plan on the device that provides unlimited data; and
- The ability to access a private space within the individual’s home or office where there are no interruptions.



BEST PRACTICE

Conduct jury selection in smaller groups. This allows the attorneys to have a better view of the potential jurors so they can gauge facial expressions, assess body language, etc.

Trial courts can utilize a questionnaire to determine whether potential jurors have the ability to participate remotely in the selection process and trial.¹⁰⁴ Courts then would be able to determine what, if any, alternative arrangements are needed for these individuals to serve. Examples of alternative arrangements include loaning mobile devices, providing dedicated space equipped with technology, or providing the opportunity to appear in person. The states of Texas and Washington have found that providing remote jury service has increased juror participation overall.¹⁰⁵

¹⁰⁴ The Civil Jury Project conducted a survey of potential jurors in Cook County, Illinois in December 2020. Of the more than 2,500 responses received, 80% of respondents were interested in participating remotely only, compared to 6% stating they would only be interested in in-person participation. Of those willing to serve remotely, more than 90% had access to the technology needed to participate remotely and 81% had used Zoom, Skype, or a similar videoconferencing platform before. Michael Pressman, *A Report on the Cook County, Illinois Jury Survey*, <https://myemail.constantcontact.com/January-Newsletter-of-the-Civil-Jury-Project.html?soid=1127815376566&aid=r7Lx-uOoOG8> (January 2021).

¹⁰⁵ Benjamin Perkel, *Summit Panel Recap: Practical Tips for Post-Pandemic Trials – Hybrid Jury Trials*, <https://myemail.constantcontact.com/January-Newsletter-of-the-Civil-Jury-Project.html?soid=1127815376566&aid=r7Lx-uOoOG8> (January 2021).



BEST PRACTICE

Develop an online juror questionnaire that asks jury service hardship, technological-proficiency questions, and case-specific questions in an effort to increase response time and also reduce the length of time spent conducting voir dire.

Courts must develop procedures well in advance of remote jury selection. For example, how will sidebar conversations with counsel and a potential juror be handled? Will they be moved into a separate break-out room while other jury pool members remain in the virtual courtroom? How will jurors be identified on the screen? Having these procedures set will save time and potential objections once the process starts.

Additionally, it is imperative that the court provide clear instructions to the jurors, as well as technical support for when issues arise.¹⁰⁶ Courts should consider having jurors check in the day before their scheduled appearance to determine if there are technical difficulties.



BEST PRACTICE

Periodically review the assembled jury pool for their representativeness and inclusiveness of the court’s jurisdiction. Courts can encourage juror participation by publicizing the safety measures they are taking to protect the health of potential jurors.

77. The Supreme Court should purchase mobile tablets to lend, through its law library, to local courts for use by jurors and serve as the central repository for the distribution of these devices to courts on an as-needed basis.

Though the majority of Ohio households possess an electronic device, such as a smartphone, tablet, or laptop,¹⁰⁷ access to reliable technology, data plans, and internet service remains a barrier for many individuals. In order to ensure equal opportunities for all individuals to remotely participate as a juror, the court should provide mobile devices for their use during their remote jury service.¹⁰⁸ Not only does this help reduce the inequalities of the digital divide, but it also helps ensure a defendant is being tried by a jury of his peers, that is “of his neighbors, fellows, associates, [and] persons having the same legal status in society that he holds.”¹⁰⁹

The court-issued mobile tablets would be loaded with the appropriate video conferencing application(s) and otherwise locked down. Cellular service only would be enabled during the

¹⁰⁶ Illinois Circuit Court, *Juror Admonishments & Rules of Conduct for Remote Jury Selection*, https://courts.illinois.gov/CircuitCourt/Jury/Remote/Appendix4_Juror_Admonishments_Rules_Conduct.pdf.

¹⁰⁷ The National Center for Education Statistics reported that in 2018, 90% of Ohio households possessed a computer (including smartphone, desktop, laptop, tablet, or other device). NCES, *Digest of Education Statistics, Table 702.60. Number and Percentage of Households with Computer and Internet Access, by State: 2018*, https://nces.ed.gov/programs/digest/d19/tables/dt19_702.60.asp?current=yes.

¹⁰⁸ Further discussion is needed to determine whether these mobile tablets would be provided for use during jury selection or distributed to the local courts once a jury pool is selected.

¹⁰⁹ *Strauder v. West Virginia*, 100 U.S. 303 (1879).

periods when the device would be officially in use.¹¹⁰ Local courts also could request that software allowing jurors to access exhibits (e.g., file-sharing applications) be installed so that jurors would be able to see the evidence during the trial, as well as for deliberations.

The task force recognizes it would not be cost-effective nor financially feasible for each court to purchase the needed equipment on its own. A more fiscally sound approach would be for the Supreme Court to purchase a large number of mobile tablets utilizing the state's collective purchasing agreement to be used by the local courts. Upon request by the trial court, the Supreme Court then would distribute the needed number of devices to the local court for use during its jury trial. The local court then would be responsible for distribution to the jurors. Upon completion of their service, the juror would return the device to the local court. After all of the requested devices have been returned, the local court then would send the devices back to the Supreme Court. *See Appendix D(v): Sample Juror Mobile Device Receipt Form.*

Not only is this approach cost-effective for the local courts, but having all jurors on the same device equalizes juror participation. Participating in jury service from a smartphone device is drastically different from doing so from a mobile tablet. Not only is the screen larger, but the navigation buttons are more user-friendly. Furthermore, having everyone use the device reduces technological difficulties and makes those that do occur easier to resolve. It provides a consistent experience for all and it has been reported anecdotally that jurors find they have a better view of the witnesses' faces than they would have sitting in the courtroom.

Conducting a Remote Jury Trial

78. Courts should develop best practice procedures for the implementation and management of remote jury trials (e.g., submission and sharing of exhibits, jury deliberation, dress code, decorum).

While the general recommendations for conducting a remote trial address discovery and evidence (both documentary and physical evidence), witnesses, establishing the record, and public access issues, local courts should develop best-practice procedures specifically for the implementation and management of remote jury trials. These best practices should be developed in consultation with groups such as the Supreme Court's Commission on Technology & the Courts, Ohio Judicial Conference Technology Committee, and regional technical support teams mentioned before. While recognizing remote jury implementation and management strategies will be unique to each court, they should incorporate the *Minimum Standards for Conducting a Remote Hearing* set forth in Recommendation #49.

For example, the Superior Court of California, Riverside County, established "Protocols for Remote Jury Trials" outlining how remote jury trials would be implemented in their court.¹¹¹ Similarly, Florida created a pilot program with a handful of courts to conduct remote jury trials

¹¹⁰ The Texas Supreme Court purchased 120 iPads to be used by trial courts for jury trials. The iPads are shipped to the local courts and then either sent directly to the juror's home or picked up at the courthouse.

¹¹¹ Superior Court of California, *Riverside County, Protocols for Remote Jury Trials*, <https://www.riverside.courts.ca.gov/GeneralInfo/AttyLitigants/Remote-Civil-Jury-Trials-Protocol.pdf?rev=03-04-2021-04:17:09pm> (accessed Feb. 1, 2021).

and elicit feedback from jurors, attorneys, and judges. Those findings were used to establish requirements for remote civil and criminal jury trials.¹¹²

Courts may utilize pretrial orders to inform parties of their remote jury-trial procedures (e.g., marking of exhibits, presentation of evidence, and witness testimony). It also is important to address how a court will handle technological difficulties that occur while the trial is in progress.



BEST PRACTICE

Courts should request that both parties consent to the remote jury-trial procedures on the record at the beginning of the trial. This will alleviate objections during the course of the trial, as well as during the appeals process should one occur.

Jury Instructions & Service

It is important to provide detailed, comprehensive instructions to empaneled jurors. In addition to the normal instructions for in-person jury service, it also is important to address:

- How to use the mobile devices (if being provided by the court);
- Technology troubleshooting procedures (provide a contact phone number);
- Breaks/recesses; and
- Expectations of juror conduct (e.g., engagement, attire, eating/drinking, use of other electronic devices).

It is recommended that courts either have a practice session with empaneled jurors or ask them to log on early the first day of the trial in order to address any technological issues. The court may require jurors to scan the room with their mobile devices to confirm that they are alone and not using other electronic devices. The court should state the rules on remote jury participation on the record and reiterate to the jurors the expectation of seriousness and their behavior should be the same as if they were present in a courtroom.

Jury Deliberation & Access to Evidence

It is essential that courts provide clear instructions to jurors on how to deliberate and cast their verdict remotely. Courts should provide jurors with a separate “space” to deliberate. It is important that a court staff member be available should a question arise or technical assistance is needed.



BEST PRACTICE

Utilize a virtual *break-out* room for jury deliberations that is monitored by staff if questions arise and to alert the judicial officer upon a verdict.

¹¹² Florida COVID-19 Workgroup on the Continuity of Operations & Proceedings During and After COVID-19, *Requirements & Evaluation Criteria – Remote Civil & Jury Trials*, <https://www.floridasupremecourt.org/content/download/719445/file/02-17-2021%20Requirements%20and%20Evaluation%20Criteria%20for%20Remote%20Civil%20and%20Criminal%20Jury%20Trials.pdf> (Feb. 17, 2021).

Additionally, it is important to provide each juror with access to the evidence. There are multiple ways in which this can be handled; however, a cloud-based document-sharing platform may be a cost-effective, secure method of sharing large amounts of documents, etc. The jury foreperson or another member can utilize the share-screen function on the video-conferencing platform to review evidence as a group.

Jury Verdicts

Courts have multiple options with respect to the verdicts. For example, the court can use an electronic document exchange platform to have the verdict form signed. Some video-conferencing platforms have whiteboard features or other functionality that allow the exchange of documents. Another option is to allow a roll call to be conducted or polling the verdict, instead of a verdict form.

79. The Supreme Court should facilitate regionalized technical support for trial courts conducting remote jury trials. (See also Recommendation #15.)

As courts have discovered, conducting a remote hearing requires more logistical setup on the front end than a traditional in-person trial. A remote jury trial has even more “moving parts” requiring both advanced planning and support during the proceeding. It is likely that a local court will need to consult information technology professionals for assistance, especially when conducting the first few remote jury trials.

The success of a remote proceeding largely depends on users’ ability to operate the technology, including the equipment and the video-conferencing platform. The ability to troubleshoot and provide technical assistance is critical; therefore, courts should rely on knowledgeable individuals who can assist them with jury trials.

The task force recommends the Supreme Court assemble a group of individuals from the local courts based upon their appellate district region who can work together to develop a procedure for conducting remote jury trials.¹¹³ These technical support teams also can walk courts through mock jury trials and provide assistance during the remote trial itself.

This strategy maximizes the expertise that local courts have within their region, without forcing individual courts to hire additional staff. Court staff will be able to learn from their peers and allow individuals to easily assist fellow courts if needed. Over time, there likely will be less reliance on the regional technical support teams as courts become more comfortable with their remote jury-trial procedures and jury trials transition back into the physical courtroom.



BEST PRACTICE

Designate a staff member as the technical specialist to oversee the “running” of the virtual jury trial so the judicial officer can focus on the substantive aspects of the hearing.

¹¹³ See Texas’ “Run of Show” and checklist for jury trials.

Civil Jury Trials

Article I, Section 5 of the Ohio Constitution states:

“The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.”

Civil Rule 38 expands upon this constitutional provision by preserving the right of a jury trial “to the parties inviolate” and allowing parties to demand a jury trial. Civil Rule 39 further gives the court the authority to order a trial by jury even in cases where the party does not make a demand. While these provisions generally apply to civil actions, there are specific statutes within the Revised Code that grant the right to a jury trial in specific types of cases.¹¹⁴ Additionally, a federal constitutional right to civil cases exists in the Seventh Amendment as applied to the states through the Fourteenth Amendment.

80. Rule 39 of the Rules of Civil Procedure should be amended to allow for remote jury trials and to give courts the discretion to determine the manner in which the trial by jury will be conducted, including being conducted remotely in whole or in part.

Civil Rule 39 provides the court with the discretion to order a trial by jury even when a party does not make a demand for one. In situations when the court initiates the jury trial, it too should have the ability to permit a trial to be conducted remotely.

The task force recommends adding new language to division (C) allowing a party to request or consent to a remote jury trial. The court would have the discretion to determine how the trial by jury will be conducted, in whole or in part, remotely. Again, this gives courts flexibility in determining how best to conduct the case. *See Appendix C(i): Rules of Civil Procedure for specific language. See also Appendix D(iii): Sample Request for a Remote Hearing – Civil.*

Other states are successfully conducting civil jury trials virtually.¹¹⁵ For example, New Jersey began holding jury trials in February 2021 in limited jurisdictions, but then mandated their use statewide in April.¹¹⁶ Consent of the parties is not required. Courts consider the complexity of the case, the anticipated length of the trial, as well as other operational factors when determining whether a case is suitable for a remote jury trial.¹¹⁷ Jury selection also is being conducted remotely, with the court providing Samsung Galaxy tablets to both summoned and empaneled jurors.¹¹⁸ Courts conduct a pretrial conference where they review all of the procedures for remote trials, including presenting evidence, witness testimony, and juror conduct.

¹¹⁴ R.C. 3.08 (removal of a public officer); R.C. 2107.72(B)(1) (will contest); R.C. 2711.03 (enforcement of an arbitration agreement).

¹¹⁵ Example states include California, Florida, Illinois, New Jersey, and Texas.

¹¹⁶ New Jersey Supreme Court’s Jan. 7, 2021 order.

¹¹⁷ JDSUPRA, *New Jersey Supreme Court Authorizes Virtual Court Jury Trials*, <https://www.jdsupra.com/legalnews/new-jersey-supreme-court-authorizes-9661723/> (Jan. 27, 2021).

¹¹⁸ Jurors may use their own device if they desire.

Criminal Jury Trials

81. The Supreme Court should develop best-practice procedures for the implementation and management of remote jury trials (e.g., submission and sharing of exhibits, jury deliberation, dress code, decorum) ensuring compliance with Rule 43(A)(2) of the Rules of Criminal Procedure for remote appearances and the *Maryland v. Craig* test.

Criminal Rule 43 and the *Maryland v. Craig* test work together to ensure a defendant’s due process rights of confronting witnesses and right to be present are protected. As with civil jury trials, the task force recommends that the Supreme Court develop best practices for the implementation and management of remote criminal trials. While most of these procedures are the same as those for civil jury trials, there are additional procedural rights that should be addressed.

Right to a Speedy Trial

A defendant is guaranteed the right to a speedy trial by the Sixth Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment.¹¹⁹ The majority of courts immediately suspended criminal jury trials after the Ohio Attorney General Opinion 2020-002 stated that though a delay of jury trial activity was “an extraordinary step, it is lawful – and responsible – to do so during a pandemic emergency.”¹²⁰

It is important to recognize that upon the end of the state of emergency order, courts potentially will be faced with a backlog of jury trial cases that have amassed over the past several months. It is logical to posit that if courts do not employ a strategy for handling these cases, defendants will begin to raise speedy-trial issues, especially those defendants who are incarcerated.

The flexibility in the revised Rules of Criminal Procedure is aimed at encouraging courts to develop a process for resuming criminal jury trials. For courts lacking physical space in a courtroom, the jury can participate remotely, either in their own individual locations or together in a separate courtroom or conference room. Courts may elect to conduct certain pretrial and motion hearings remotely, but hold the trial and sentencing in person. There are numerous scenarios for which a court can move forward with criminal jury trials.

Victims’ Rights

An Ohio Constitutional amendment,¹²¹ widely known as “Marsy’s Law,” and the Revised Code¹²² provides broad protections for victims of crimes to give and receive information in criminal proceedings. Specifically, victims¹²³ have the right to:

¹¹⁹ *Klopper v. North Carolina*, 386 U.S. 213, 222-23 (1967).

¹²⁰ Ohio Atty.Gen.Ops. 2020-002; March 18, 2020.

¹²¹ Ohio Constitution, Article 1, Section 10a.

¹²² R.C. Chapter 2930.

¹²³ “Victim” is defined in Ohio Constitution, Article I, Section 10a(D) as “a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act.”

- Receive timely notice of hearings;¹²⁴
- Be present at any stage of the case;¹²⁵
- Be accompanied by an advocate;¹²⁶ and
- Make a statement.¹²⁷

Courts must ensure victims have access to proceedings, whether remotely or in person; therefore, a court conducting a remote hearing either must allow the victim also to participate remotely or make an accommodation to attend and have the opportunity to speak in the courtroom. Similar arrangements may need to occur for the victim’s advocate. For example, the court can place a laptop or mobile device in a conference room where the victim and/or victim advocate can participate in the remote proceeding.



BEST PRACTICE

Once the manner in which the trial or proceeding is determined, provide a list of appearance options to the victim and advocate, if applicable, as soon as practicable so appropriate arrangements can be made.

Victims also have a right to object to substantial delays in the prosecution of the case. Revised Code 2930.08 states that “[i]f the victim objects to the delay, the prosecutor shall inform the court of the victim’s objections, and the court shall consider the victim’s objections in ruling on the motion, request, or agreement.”¹²⁸ Courts should be mindful of victims’ rights as they wade through their backlog of jury trials.

Another consideration when conducting remote hearings with victims of crime is privacy. There are concerns that defendants gaining information about them and their location through remote hearings they would not have were the hearing in court (phone numbers, location information, etc.). In order to maintain victims’ security and privacy,¹²⁹ special attention should be given to how the court will best protect victim information in remote hearings.

The iCOURT survey results found a majority of the victim-advocate respondents felt as though remote hearings protected victims’ rights.¹³⁰ Those who expressed dissatisfaction with the use of remote technology reported victims sometimes were overlooked because the court’s attention was focused on conducting the proceeding; the victims lacked access to necessary technology to fully participate; and in instances where judges excused defendants as “medically

¹²⁴ Ohio Constitution, Article 1, Section 10a(A)(2), R.C. 2930.03; R.C. 2930.06.

¹²⁵ Ohio Constitution, Article 1, Section 10a(A)(2); R.C. 2930.09.

¹²⁶ *Id.*

¹²⁷ R.C. 2930.13 and R.C. 2930.14.

¹²⁸ R.C. 2930.08.

¹²⁹ Ohio Constitution, Article I, Section 10a(A)(1).

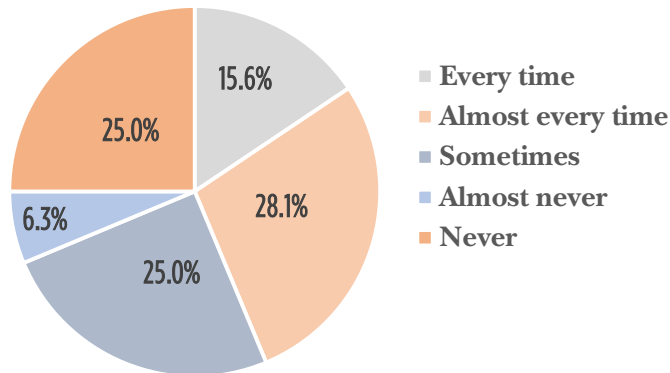
¹³⁰ See *Appendix A: Improving Court Operations Using Remote Technology Survey Report. Table 71. Protection of Victims’ Rights.*

unavailable,” the arraignments occurred without offering the victim the opportunity to request a temporary protection order.¹³¹

TABLE 6. USE OF REMOTE HEARINGS & THE PROTECTION OF VICTIMS’ RIGHTS		
	Victim Advocates	
Rating	# of Responses	% of Total
Very Satisfied	6	8.6%
Satisfied	32	45.7%
Unsure	19	27.1%
Dissatisfied	12	17.1%
Very Dissatisfied	1	1.4%
Total	70	100%

More than half of the victim advocates reported they did not generally have the ability to privately confer with the victim through the use of a breakout room or private chat if they participated in a virtual hearing from two separate locations.¹³² Multiple respondents indicated that they used their cell phones to privately communicate with one another.¹³³ Courts should take deliberate steps to ensure arrangements are made so that these communications always occur. If the video-conference platform does not have this type of functionality, then the court should provide alternative arrangements.

Victims' Use of Breakout Room/Private Chat Feature

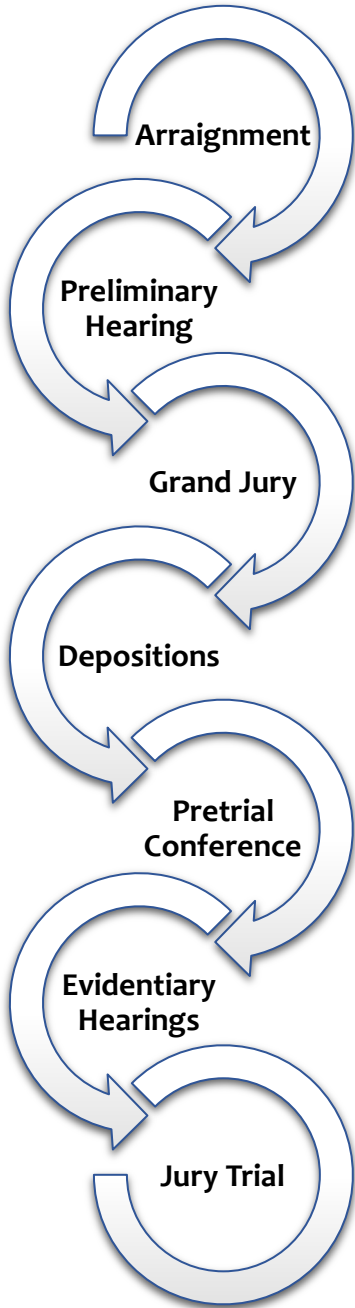


¹³¹ Appendix A: Improving Court Operations Using Remote Technology Survey Report. Table 72. Protection of Victims’ Rights – Explanation of Responses.

¹³² Appendix A: Improving Court Operations Using Remote Technology Survey Report. Table 79. Use of Breakout Room/Private Chat Features to Conduct Private Conferencing – Victim Advocates.

¹³³ Appendix A: Improving Court Operations Using Remote Technology Survey Report. Table 80. Use of Breakout Room/Private Chat Features to Conduct Private Conferencing – Victim Advocates – Explanations of Effectiveness.

A Walkthrough of a Remote Criminal Case



Arraignment (Initial Appearance)

Criminal Rule 10 allows the defendant to appear remotely if the conditions of Criminal Rule 43(A)(2) are met.

1. The court gives appropriate notice to all the parties;
2. The video arrangements allow the defendant to hear and see the proceeding;
3. The video arrangements allow the defendant to speak, be seen, and be heard by the court and all parties;
4. The court makes provisions to allow for private communication between the defendant and counsel. The court shall inform the defendant on the record how to, at any time, communicate privately with counsel. Counsel shall be afforded the opportunity to speak to defendant privately and in person. Counsel shall be permitted to appear with defendant at the remote location if requested.
5. The proceeding may involve sworn testimony that is subject to cross examination, if counsel is present, participates and consents.

Preliminary Hearing

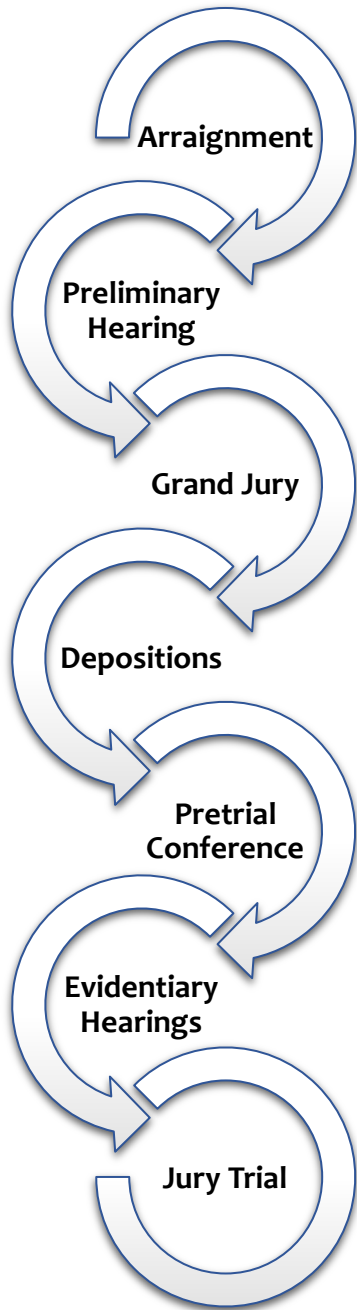
If the defendant wishes to appear remotely, the court must ensure the Criminal Rule 43(A)(2) procedures are followed.

Grand Jury

Courts should develop procedures to allow the foreperson to administer oaths remotely, as well as electronically sign all indictments as required under Criminal Rule 6. Additionally, if the defendant wishes to appear remotely, the court must ensure the Criminal Rule 43(A)(2) procedures are followed.

Depositions

Defendants have the right to “attend” a deposition under Criminal Rule 15(C). This appearance may be waived by written waiver and in open court, as long as the defendant is represented by counsel and is informed of the right being waived. Upon waiver, the Defendant may appear remotely at the deposition provided the Criminal Rule 43(A)(2) conditions are satisfied.



Pretrial Conference

The court should use telephonic and/or video platforms liberally in order to conduct pretrial conferences. Courts should encourage parties to meet immediately prior to the pretrial conference to discuss necessary pretrial matters.

Evidentiary Hearings

The court must obtain a written waiver to appear remotely from the defendant in open court. The court must ensure the process outlined in Criminal Rule 43(A)(2) is followed. If either party intends to call a witness who wishes to appear remotely, then the moving party should file a motion for a witness' remote appearance. The court should apply provisions set forth in Criminal Rule 40 and make a finding on the record.

Subpoenas

Subpoenas should include contact information for a witness to request to appear via remote means.

Jury Trial

The court must obtain a written waiver in open court from the defendant to appear remotely. The court must ensure the process outlined in Criminal Rule 43(A)(2) is satisfied. If a witness wishes to appear remotely, then the party calling the witness should file a motion for a witness' remote appearance prior to commencement of the trial. The court should apply Criminal Rule 40 and make a finding prior to the commencement of the trial. The court must decide prior to trial whether to conduct the trial completely in person, hybrid in person and virtual, or fully virtual, with a plan to ensure the public has access to the proceeding.

Verdict

Courts should consider adopting an electronic signature program so jurors may sign their verdict forms electronically.

Sentence

If the defendant seeks to be sentenced virtually, the court must obtain a waiver of defendant's presence in writing and in open court and must follow the conditions of Criminal Rule 43.

COURT OF APPEALS SPECIFIC RECOMMENDATIONS

82. Courts of appeals should continue using remote technology for remote oral arguments when appropriate with the consent of the parties and/or at the discretion of the court.

Throughout the pandemic, courts have been flexible and creative as to the method by which they conduct oral arguments. The use of remote technology has been workable and effective for oral arguments in most situations. All 12 appellate courts, as well as the Supreme Court, have conducted oral arguments virtually.

Remote court proceedings provide many of the same benefits in courts of appeals cases as they do for trial courts. In addition to allowing proceedings to continue when a party, attorney, or judge is unable to attend in person, remote oral arguments provide a valuable alternative during adverse weather conditions, serve as an accommodation for persons with disabilities or transportation issues, and are more cost-effective for attorneys and their clients.¹³⁴ They also provide courts of appeals in multi-county districts with greater flexibility in managing their docket. Cases from multiple counties can be scheduled on the same day. Single-county district courts also can benefit from ease of scheduling.

While the barriers to remote oral arguments have largely been resolved at the appellate level, in areas where parties may not be able to fully utilize remote hearings due to technological limitations, courts of appeals should be proactive in offering solutions. Similar to trial courts, they should offer space and/or court-issued devices (e.g., mobile tablet or laptop) at the courthouse for parties lacking access to the internet or necessary equipment. Another alternative is to direct parties to community resources, such as public libraries, where they can participate in remote oral arguments.



BEST PRACTICE

Courts of appeals should collect all necessary contact information for self-represented litigants to ensure they receive instructions on how to participate in remote oral arguments.

83. Courts of appeals should offer standardized, electronically fillable templates for court briefs on their website, as well as a checklist for briefs, which includes formatting requirements.

The appellate legal system can be intimidating for those unfamiliar with the process. Standardized templates and checklists enhance litigants' access to justice by helping to ensure procedural requirements are met. Templates assist appellants and appellees to submit briefs that conform to local rules and court standards. Checklists help ensure briefs are submitted in a timely manner and service is perfected.

Courts of appeals should offer standardized templates and checklists to assist attorneys and litigants with the appellate process. The Supreme Court, in conjunction with the appellate

¹³⁴ Remote oral arguments reduce an attorney's travel time and billable hours. This saves the client from paying higher fees, but also allows the attorney to attend multiple hearings or attend to more clients in one day. They also reduce the need to request continuances causing fewer delays because the attorneys have greater control over their schedules.

court administrators, should develop model forms/templates that can be modified by appellate courts to fit their individual needs.¹³⁵ Sample templates should be developed for motions, notices of appeals, briefs, praecipes, and docketing statements. These templates provide standardization and assurance that filings are received in an acceptable format.

The templates should be available on appellate courts' websites, as well as that of the Supreme Court, in an electronically fillable format. The templates should contain embedded definitions of legal terms that aid with comprehension.

84. Courts of appeals should offer local training on how to use standardized brief templates and virtual court-related processes and explore more “on-demand” video training options.

Some courts of appeals offer training to local appellate attorneys. These education efforts should be expanded to include new processes, such as remote oral arguments or online dispute resolution where applicable. The Supreme Court and other entities offering training have increased their use of webinars during the pandemic, showing virtual learning modules are convenient and cost-effective.

The appellate courts should expand upon these virtual training successes to offer on-demand training to new attorneys, as well as self-represented litigants. Courts, with the assistance of the Supreme Court, should create instructional videos for self-represented litigants using accessible platforms, such as YouTube, to host educational content. Instructional videos about forms and court processes should be user-friendly, using Plain Language and easy-to-understand legal terms. This education should be accessible at any time on the courts' websites.

85. The Supreme Court should offer training or guidance to trial courts on the electronic submission of evidence and exhibits, including pre-sentencing investigations and the record for appellate purposes.

Courts of appeals reported having difficulty obtaining pre-sentencing investigations (PSI) and physical evidence from the trial courts. For example, the PSI is not included in the court record, or physical evidence, such as photos, is not transferred. This causes unnecessary delays for the appellate courts, and in some instances, the court of appeals may not move forward because statutory requirements in the appeals process are not met.¹³⁶

The Supreme Court should issue guidance and subsequently, the Supreme Court's Judicial College offer education on the proper way for trial courts to store and manage exhibits. The training also should include identifying what is necessary to send when a case is appealed, helping to ensure practices across the state are consistent and safe.

86. A workgroup should be formed to explore whether transcripts could be submitted in an audio, video, or other format that would reduce the cost for litigants and be fiscally feasible for courts.

¹³⁵ This is similar to the standardized forms used in domestic relations, juvenile, and probate courts.

¹³⁶ R.C. 2953.08(F)(1) requires a pre-sentence investigation to be included in the appellate record in appeals of criminal sentences.

The transcript of proceedings prepared by the clerk of the trial court is part of the record on appeal in all cases. An appellant typically submits a transcript of the entire trial court proceeding to the appellate court because their briefs usually refer to “the record.” Transcripts are prepared by a trained court reporter and can cost a party thousands of dollars. This often prevents litigants from appealing their case and ultimately becomes an obstacle to accessing justice.

In addition to being cost-prohibitive, waiting for the transcript causes delay at the appellate-court level. As a result of this often extended waiting period, it becomes clear at the record phase that the appellate court will be unable to meet the time guidelines for case resolution. This delay often is traced back to court reporters requesting additional time, as preparing a transcript for a lengthy hearing is a time-consuming process.

Many trial courts updated their audio- and video-recording technology during the pandemic. Excellent recordings exist now that almost all trial courts record proceedings by audio (or video). A workgroup should be formed to determine if this technology can be utilized for the production of transcripts sufficient to be used as the record in an appellate proceeding.

The workgroup should consider whether in some cases, there is a possibility that appellants could submit the video recording to the appeals court in lieu of a typewritten transcript, thereby saving time and money. Use of an alternative recording could be by agreement of the parties or with permission of the court. The workgroup also should investigate the reliability and cost of computer-assisted voice-to-text technology.

As an example, Vermont Rule of Appellate Procedure 10 provides when the video-recorded proceedings total less than 12 hours “unless a party elects to pay for a transcript, the video recording itself will serve as the official record of proceedings. When a record of the proceedings is requested, the transcription service must send copies of all video recordings to the appellant and the Supreme Court, and must bill the appellant for all copies.” Additionally, “(i)n cases where the superior court proceedings were recorded by a digital audio recording device and the total elapsed time for all relevant proceedings does not exceed four hours: In forma pauperis appellants or cross-appellants who are not entitled to transcripts at state expense under Rule 24(d) may request that the audio recording be accepted as part of the official record of the case in place of a transcript.”¹³⁷ Similarly, Juvenile Rule 40 allows judges to permit litigants to submit an audio recording in lieu of a prepared transcript for objections to magistrate decisions.¹³⁸

The task force recognizes it generally is significantly less time-consuming to read a transcript than to listen and/or watch a recording of a trial or other proceeding. Furthermore, allowing appellate judges to review audio or video recordings is a significant change from the current practice that requires appellate courts to review a “dry record.” The review of audio or video proceedings also may make it more difficult for appellate judges to avoid reweighing evidence or making credibility determinations. The workgroup should consider whether in certain types

¹³⁷ Vermont Rule of Appellate Procedure 10(b)(8).

¹³⁸ Juv.R. 40(D)(3)(b)(iii) states “...An objection to a factual finding, whether or not specifically designated as a finding of fact under Juv. R. 40(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered.”

of cases (e.g., simple cases or those where credibility is not a determinative issue), the benefits to allowing audio recordings in lieu of transcripts outweigh the potential detriments.

87. Courts of appeals should continue and expand their use of remote technology for mediation when appropriate.

Courts of appeals have continued to offer mediation during the pandemic. Mediation can help resolve backlogs of cases and can empower the parties to settle their case without the time and cost of an appeal. In addition to teleconference mediation, some mediators are utilizing video conferencing. Court mediators should continue to explore and use technological solutions when appropriate to facilitate mediation, especially in multi-county districts where travel can be prohibitive.

JUVENILE COURT SPECIFIC RECOMMENDATIONS

88. Juvenile courts should continue using remote technology for probation, counseling, and attorney consultation when necessary and appropriate.

The use of remote technology has several applications in juvenile court. While telephonic communication often was used prior to the pandemic for proceedings such as pre-trial hearings or status conferences, video-conferencing technology was minimally used and typically limited to remote appearances by youth and sometimes parents in detention centers or correctional facilities. Over the past several months, juvenile courts have expanded their use of video conferencing to most types of court proceedings. Additionally, they have utilized this technology to conduct visits by probation officers, provide opportunities for attorneys to consult with clients, and allow for the provision of new or continued counseling or telehealth services to be delivered.

This expanded use of remote technology should continue when necessary or convenient within the court's discretion. Alternatives, such as video technology, remove barriers for participation and allow more frequent interaction with court-involved youth and their families. It further allows greater access to attorneys by their clients prior to hearings, as many courts offer dedicated time for attorneys and clients to meet prior to the start of the proceeding.

89. Hybrid juvenile court hearings should be encouraged in the future to allow better participation of parties and witnesses in hearings.

Anecdotally, juvenile courts report increased participation in virtual juvenile court proceedings by parties and witnesses.¹³⁹ Participation includes both appearing for the proceeding, as well as active engagement and asking questions. This was particularly true of juvenile participants as

¹³⁹ The National Center for State Courts is conducting a survey to determine how virtual proceedings are working in child welfare cases. The results of this survey are not yet available. Teri Deal, the NCSC consultant leading the study stated "We need to identify courtroom practices that help support families to access trauma-responsive, high-quality hearings because we know that when parents and children are engaged in hearings and receive high-quality representation, there are more positive outcomes for youth and families. We don't yet know how those practices translate best to the virtual environment, and this study is designed to begin to tease that out." NCSC Email Newsletter, @ the Center, Feb. 10, 2021.

anecdotally reported by juvenile court judicial officers. The convenience of remote hearings is particularly beneficial for parents and youth.

Juvenile courts should continue offering the option of appearing remotely, as it serves to increase the likelihood a party or a witness will appear for the proceeding, even in instances when other participants attend in person at the courthouse.¹⁴⁰ Most courts already adopted procedures and possess the necessary technology and equipment to conduct remote hearings. Therefore, conducting hybrid hearings does not create additional burdens on the court, with the possible exception of needing to add extra equipment for the individuals in the courtroom. Proving the option of appearing remotely prevents the need of parties and witnesses to find reliable transportation and to take an entire day off of work to attend a 15-minute hearing.

90. Rule 41 of the Rules of Juvenile Procedure should be amended to allow for witnesses to testify remotely.

Currently, Juvenile Rule 41 allows gives a court the discretion to permit testimony by “contemporaneous transmission from a different location” when the parties agree or for good cause shown. This rule gives the judicial officers the discretion to determine whether it is appropriate to allow a witness to testify, even if both parties agree or if there is good cause shown.

This rule should be amended to require the juvenile court to permit witness testimony either in person or “by remote presence with the agreement of the parties or for good cause shown.”¹⁴¹ See *Appendix C(iv): Rules of Juvenile Procedure*.

PROBATE COURT SPECIFIC RECOMMENDATIONS

91. Personal service, as required in Revised Code 2111.04 in guardianship cases, should be revised to allow for service to be conducted remotely when good cause is found by the court.

Revised Code 2111.04 requires a probate court to personally serve a person for whom a guardian of the person or the estate is sought with notice that a hearing is going to be held on the appointment of a guardian for that individual. This statute does not allow the probate court to proceed with the appointment without service, nor does it allow notice to be waived.

During the pandemic, personal service was nearly impossible, especially in situations where the ward resided in a nursing home or other residential facility that prohibited all visitors for several months. Probate courts were forced to make interim and emergency guardianship appointments and then extend those temporary appointments when able.

The restrictive language of the statute handcuffed the court’s ability to proceed in cases involving numerous vulnerable individuals. Thus, Revised Code 2111.04 should be amended to allow for service to be conducted remotely when good cause is found by the court.

¹⁴⁰ Hybrid court proceedings must meet the minimum standards for conducting a remote hearing. See *Recommendation #49*.

¹⁴¹ “Remote presence” is defined in the proposed changes to Juv.R. 2.

92. Rule 57 of the Rules of Superintendence should be amended to add email addresses to the information collected in probate court filings.

Superintendence Rule 57 sets forth requirements for all filings in probate court. Division (B) of this rule should be amended to include the addition of “email address” to the contact information that is contained on all filings. *See Appendix C(v): Rules of Superintendence.*

EVALUATION

In order for the continued and effective use of remote technology, courts should strive to make data-informed decisions. This requires courts to measure and analyze such things as the types of cases courts are conducting remotely, how remote technology impacts case outcomes, and what effects it has on litigants’ access to justice, especially self-represented litigants. As new solutions are employed, courts should regularly assess what works and what adjustments need to be made. The use of technology solutions in court operations is not new; courts have been finding creative technological solutions for operational efficiencies and improvements in users’ experiences. However, the speed at which new technology is implemented and its expansive scope necessitate courts ensure that no unintended consequences occur. Thus, the evaluation of its use is crucial so courts have a true understanding of the impact, both positive and negative, that remote technology is having on their court operations and ultimately the administration of justice.

The task force makes the following recommendations aimed at encouraging courts to collect and evaluate data (and to regularly assess whether changes are need) with regard to their use of remote technology.

93. Courts should track the number and types of cases being conducted remotely, as well as the types of court proceedings, to determine how best to incorporate the use of remote proceedings in the normal course of business.
94. Courts should collect and analyze data to determine whether remote proceedings result in disparities or unintended consequences using measures such as the National Center for State Court’s revised-for-remote-hearings CourTool 1 Measure, Access & Fairness Survey for Trial Courts, as well as the Quality of Services Survey for Appellate Courts using an online centralized tool provided by the Supreme Court.
95. Courts should collect and analyze data to determine whether remote proceedings adversely affect self-represented litigants’ ability to effectively participate in the justice system.
96. The Ohio Criminal Sentencing Commission should revise the Uniform Sentencing Entry to include whether a case was heard, in whole or in part, remotely. This data will be captured in the Ohio Sentencing Data Platform and should be analyzed.

97. Courts should establish a continuous quality improvement program to ensure they are adhering as much as practicable to all minimum best-practice standards for the use of remote technology to conduct court proceedings.

NEXT STEPS & CONCLUSION

The iCOURT Task Force was charged with issuing recommendations aimed at improving the overall efficiencies of court operations through the use of technology. These recommendations are designed to work collaboratively together to create modern, technologically adept courts responsive to the needs of the public they serve.

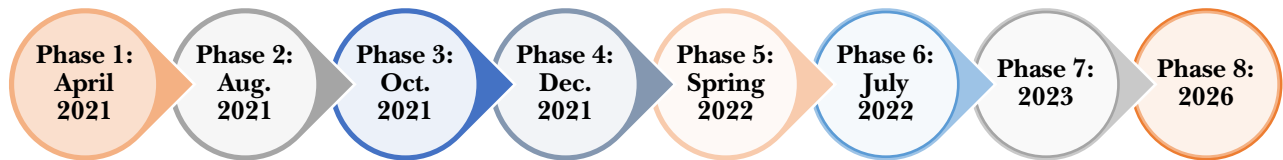
Overall the task force recommends the continued and expanded use of technology in court operations and for conducting remote proceedings. Both the iCOURT Survey and the Litigant Survey illustrate the frequent use of technology solutions, such as electronic filing, online payment, and electronic signatures, when available, and reinforce the demand for these services in courts where they are not present. These solutions increase fairness and the public's access to the judicial system.

Courts have shown that remote court proceedings are effective ways of resolving disputes. The task force's recommendations provide a framework that gives courts the discretion to determine the manner in which to conduct a hearing, whether in person, hybrid, or remote. This flexibility allows courts to meet individual needs of the participants. Both surveys reinforce the recommendation that remote hearings continue to be options in the future.

While COVID-19 was not an emergency for which the judiciary went seeking, it was a catalyst that courts needed to rethink the way they conduct business. The task force seeks to build upon the momentum and innovation courts have displayed during the pandemic as Ohio's judiciary continues to strive toward modernization to effectuate justice in a fair and equitable manner.

IMPLEMENTATION TIMELINE

The task force has proposed a five-year implementation plan for the recommendations outlined in this report. The timeline is ambitious with the intention of encouraging courts to take advantage of the efficiencies they have experienced over the last several months. The plan has eight phases divided into recommendations for local courts and recommendations for the Supreme Court. These recommendations work collaboratively together and build off of one another to create a structure in which the local courts have the discretion to move forward with implementing those recommendations that will enhance their ability to administer justice efficiently and effectively.



PHASE 1: APRIL 2021



Proposed Rules Changes [Supreme Court]

Rules of Procedure

Recommendations involving proposed amendments to the Rules of Civil Procedure, Criminal Procedure, Evidence, Juvenile Procedure, and Traffic Rules were submitted to the Supreme Court's Commission on the Rule of Practice & Procedure in April by the task force. These rule changes

were approved by the task force members at the March 19, 2021 meeting. The constitutional rule-making process prescribes a timeline that requires all proposals for rule changes to be submitted to the commission before this report's June 30th deadline. At the earliest, these rule amendments could go into effect on July 1, 2022.

Rules of Civil Procedure

- A new Rule 1.1 of the Rules of Civil Procedure should be created to add new definitions related to the use of remote technology.
- Rule 4 of the Rules of Civil Procedure should be amended to require the inclusion of email address in the summons where one is available.
- Rule 4.1 of the Rules of Civil Procedure should be amended to expand allowable methods of service to include email or other electronic media platforms as designated by the attorney or the party.
- Rule 5 of the Rules of Civil Procedure should be amended to expand allowable methods of service to include other electronic media platforms as designated by the attorney or the party subsequent to the filing of the original complaint.
- Rule 5 of the Rules of Civil Procedure should be amended to require courts to adopt local rules allowing the use of electronic service for subsequent pleadings and documents.
- Rule 11 of the Civil Rules of Procedure should be amended to allow the express ability to electronically sign documents.
- Rule 26 of the Rules of Civil Procedure should be amended to add the express ability to obtain discovery in person or remotely.
- Rule 30 of the Rules of Civil Procedure should be amended to include “other remote technology” as an allowable method of recording.
- Rule 31 of the Rules of Civil Procedure should be amended to allow the electronic transmission of a deposition.
- Rule 39 of the Rules of Civil Procedure should be amended to allow remote jury trials and to give courts the discretion to determine the manner in which a trial by jury will be conducted, including being conducted remotely in whole or in part.
- Rule 43 of the Rules of Civil Procedure should be amended to expand circumstances under which testimony can be taken using remote technology.
- Rule 43 of the Rules of Civil Procedure should be amended to allow the oath or affirmation of a witness to be administered using remote technology.

Rules of Criminal Procedure

- Rule 2 of the Rules of Criminal Procedure should be amended to add new definitions related to the use of remote technology.
- Rule 10 of the Rules of Criminal Procedure should be amended to include a defendant's ability to be present during an arraignment hearing using remote technology.
- Rule 15 of the Rules of Criminal Procedure should be amended to allow a defendant to remotely attend a deposition and allow depositions to be conducted remotely as allowed in civil cases.

- Rule 23 of the Rules of Criminal Procedure should be amended to specifically allow a remote criminal trial to be conducted either in whole or in part.
- Rule 43 of the Rules of Criminal Procedure should be amended to expand circumstances under which a defendant can appear remotely in a criminal proceeding, including a trial by jury.
- A new Rule 40 of the Rules of Criminal Procedure should be adopted outlining circumstances under which remote testimony can be taken during criminal proceedings.

Rules of Evidence

- Rule 101 of the Rules of Evidence should be amended to add new definitions related to the use of remote technology.

Rules of Juvenile Procedure

- Rule 2 of the Rules of Juvenile Procedure should be amended to add new definitions related to the use of remote technology.
- Rule 41 of the Rules of Juvenile Procedure should be amended to allow witnesses to testify remotely.

Traffic Rules

- Rule 2 of the Traffic Rules should be amended to add new definitions related to the use of remote technology.

Rules of Superintendence

Recommendations involving proposed amendments to the Rules of Superintendence were submitted to the Supreme Court's Commission on the Rules of Superintendence in April by the task force. These rule changes were approved by the task force members at the March 19, 2021 meeting. The rule-making process is lengthy; therefore, the task force wanted to submit these changes as soon as possible.

- Rule 5 of the Rules of Superintendence should be amended to require the inclusion of procedures to conduct remote jury trials into a jury management plan if a court elects to conduct a jury trial in whole or in part.
- Rule 5 of the Rules of Superintendence should be amended to require courts to adopt a local rule requiring a court technology plan.
- Rule 13 of the Rules of Superintendence should be amended to expand videotaped testimony and evidence to “pre-recorded in-person and remotely-presented testimony” in conjunction with the proposed changes to Civil Rule 30.
- Rule 16.06 of the Rules of Superintendence should be amended to allow members of the Supreme Court's Commission on Dispute Resolution to attend meetings remotely.
- Rule 36.08 of the Rules of Superintendence should be amended to allow members of the Supreme Court's Commission on Specialized Dockets to attend meetings remotely.
- Rule 57 of the Rules of Superintendence should be amended to add email addresses to the information collected in probate court filings.

PHASE 2: AUGUST 2021



Proposed Code Section Changes [Supreme Court]

The task force identified a handful of specific Revised Code sections that it recommends changing to specifically allow the use of remote technology. As a next step, the task force seeks the review of these changes by the Ohio Judicial Conference’s various Law & Procedure Committees.

- Revised Code 2705.01: Summary Punishment for Contempt should be amended to ensure that “in the presence” of the court or judge in chambers includes a remote appearance.
- Personal service as required in Revised Code 2111.04 in guardianship cases should be revised to allow for service to be conducted remotely when good cause is found by the court.

The task force also recommends a more global review of the Revised Code and Administrative Code to identify those sections that can be construed to require an individual to be physically present or literally face-to-face with another person in a designated location. This review should be conducted by the Supreme Court’s law library. This review also would identify the definitional section within each relevant Revised Code Chapter where a general definitional term of “remote”, etc. could be placed.

- The definitions of the following terms and phrases should include remote appearances for purposes of any references found in various Revised Code and Administrative Code sections:
 - a. “In chambers”
 - b. “In person”
 - c. “In the presence of”
 - d. “Open court”
 - e. “Personal appearance”
 - f. “Physical presence” or “physically present”
 - g. “Shall appear before the court”
 - h. Any other term or phrase that could potentially be construed to require an individual to be literally face-to-face with another person in a designated location.

The Supreme Court would seek the input and feedback of the Ohio Judicial Conference’s various Law & Procedure Committees on the library’s code-section review. These groups would determine what code sections needed to be amended with general definitions and determine if there is a desire to move forward with these changes.



Technology-Related Tasks [Supreme Court]

- The Supreme Court’s Commission on Technology & the Courts should establish and manage an IT Leadership Consortium comprised of local court IT specialists or expert peers to advise courts in the application and use of technology in the courthouse, similar to groups established for executive branch agencies (e.g., State Multi-Agency CIO Advisory Council).

- The Supreme Court should establish an “Ask an Expert” list/dictionary of topics established for courts to use when seeking answers to technology questions. Ideally, this would include a contact name of a person with expertise who is willing to advise a judge or court staff.
- The Supreme Court should develop a bench card of best practices for the use of technology in the courtroom.
- The Supreme Court should purchase mobile tablets to lend, through its law library, to local courts for use by jurors and serve as the central repository for the distribution of these devices to courts on an as-needed basis.



Evaluation [Supreme Court]

- The Criminal Sentencing Commission should revise the Uniform Sentencing Entry to include whether a case was heard, in whole or in part, remotely. This data will be captured in the Ohio Sentencing Data Platform and should be analyzed.



Technology-Related Tasks [Local Courts]

- Courts should continue the use of remote technology to conduct court proceedings.
- There should be consistent, use of technology solutions within a courthouse, as well as county-to-county, where possible, to improve attorneys’ abilities to seamlessly practice in multiple locations.
- Juvenile courts should continue using remote technology for probation, counseling or telehealth, and attorney consultation when necessary and appropriate.
- Hybrid juvenile court hearings should be encouraged in the future to allow better participation of parties and witnesses in hearings.
- Courts of appeals should continue using remote technology for oral arguments where appropriate with the consent of the parties and/or at the discretion of the court.
- Courts of appeals should continue and expand their use of remote technology for mediation.¹⁴²



Procedural/Operational-Related Tasks [Local Courts]

- Courts should review and refine Continuity of Operations Plans (COOP) mindful of ensuring the ability to deliver judicial services through technology (i.e., cloud back-ups and retrieval; electronic transmission of pleadings and notices; replacement of technology equipment; access to electricity; continuity of telephone communications; procedures, training and capabilities for staff to work at remote and varied work sites; etc.)
- Courts should consider creating a simple electronic method for parties to request a continuance of upcoming hearings.
- Before conducting remote hearings, courts should develop and communicate procedures on how a proceeding will be conducted, including, but not limited to, evidence and

¹⁴² The expansion of mediation programs may take up to two years to complete.

exhibits, witnesses, cross-examination, objections, attorney-client communications, side-bar conversations, recesses, and courtroom decorum.

- Courts should develop clear procedures and instructions for notifying parties of their remote proceeding (e.g., videos, FAQs, user guides).
- Courts should determine a process for accommodating participants with limited-English proficiency and disabilities in remote proceedings.
- Courts should adopt procedures to allow the public to access remote proceedings, including live streaming court hearings and participating in the Ohio Virtual Courtroom Directory.
- Courts should review existing orders to ensure appropriate procedures are in place to prevent impermissible and unauthorized uses of audio/video recording.
- Courts should develop a procedure where a party can request to have a remote proceeding.
- Courts should consider conducting jury selection remotely.

PHASE 3: OCTOBER 2021



Technology-Related Tasks [Supreme Court]

- The Supreme Court should establish platform-agnostic minimum requirements that must be met to conduct a remote proceeding.
- The Supreme Court should develop best-practice procedures for the implementation and management of remote jury trials (e.g., submission and sharing of exhibits, jury deliberation, dress code, decorum) ensuring compliance with Rule 43(A)(2) of the Rules of Criminal Procedure for remote appearances and the *Maryland v. Craig* test.
- The Supreme Court should explore funding options to assist local courts in implementing the use of technology.



Operational/Procedural-Related Tasks [Supreme Court]

- The Supreme Court, in conjunction with various judicial associations, should review standardized forms and determine what forms actually necessitate being notarized. Upon the conclusion of this review, appropriate revisions should be made to the affected forms.



Marketing Success [Supreme Court & Local Courts]

- Local courts and the Supreme Court should publicize success stories to encourage the adoption of technology by courts by outlining the benefits to both courts and litigants (e.g., increased access to justice, increased efficiencies, financial savings).
- The Supreme Court should develop a media template packet for local courts to customize.



Procedural/Operational-Related Tasks [Local Courts]

- Courts should establish a process so requests for sealing of documents can be made electronically and immediately go to a judicial officer.
- Courts should coordinate with local bar associations for education to the public and the bar on the court's function and enhance civic education.
- Courts should maximize the electronic ticket process hosted by the Ohio Department of Public Safety.

PHASE 4: DECEMBER 2021



Minimum Standards for Technology [Supreme Court]

Upon the adoption of this report, the Supreme Court will establish a workgroup of IT professionals, court operations staff, and judicial officers to draft “Minimum Standards for Technology Use.” The goal of these standards (and accompanying recommendations) is to create technologically adept courts. The workgroup will consult with the Supreme Court's IT Leadership Consortium.

- The Supreme Court should establish “Minimum Standards for Technology Use” for technologically adept courts, similar to those created for courthouse security and courthouse facilities.



Technology-Related Tasks [Supreme Court]

- The Supreme Court should facilitate regionalized technical support for trial courts conducting remote jury trials.
- *The Authentication Standards for the Use of Electronic Signatures in Electronic Documents* drafted by the Workgroup on the Standards Subcommittee of the Supreme Court's Commission on Technology & the Courts in 2008 should serve as a model for developing updated best practices for the acceptance and use of electronic signatures.



Procedural/Operational-Related Tasks [Local Courts]

- Courts should adopt a local rule allowing for the acceptance of electronic signatures.



Evaluation [Local Courts]

- Courts should track the number and types of cases conducted remotely, as well as the types of court proceedings, to determine how best to incorporate remote proceedings in the normal course of business.
- Courts should collect and analyze data to determine whether remote proceedings adversely affect self-represented litigants' ability to effectively participate in the justice system.

- Courts should establish a continuous quality improvement program in order to ensure they are adhering as much as practicable to all minimum best-practice standards for the use of remote technology to conduct court proceedings.

PHASE 5: SPRING 2022



Minimum Standards for Technology Use [Supreme Court]

After “Minimum Standards for Technology Use” are adopted, a new Rule of Superintendence will be proposed requiring the use of these standards at the local-court level. Accordingly, the Supreme Court should prioritize its 2022 technology grants for projects necessary for courts to meet the new standards.

- The Supreme Court should use its technology grant funds to incentivize local courts to meet the “Minimum Standards for Technology Use.”
- A new Rule of Superintendence should be adopted requiring the use of “Minimum Standards for Technology Use.”
- The Supreme Court and other partners should establish a technology assessment committee to review local courts’ technology capabilities; assess compliance with the “Minimum Standards for Technology Use;” provide in-person, telephonic, or virtual consultation; and recommend resources/enhancements to current technology.
- The Supreme Court should develop a bench card on providing technical support to attorneys and litigants on how to use remote technology solutions.

PHASE 6: JULY 2022



Standardized Appellate Court Briefs & Templates [Supreme Court]

The Supreme Court will facilitate workgroups to shepherd these recommendations.

- Courts of appeals should offer standardized, electronically fillable templates for court briefs on their websites, as well as a checklist for briefs that includes formatting requirements.
- A workgroup should be formed to explore whether transcripts could be submitted in audio, video, or other formats that would reduce the cost for litigants and be fiscally feasible for courts.



Procedural/Operational Tasks [Supreme Court]

- Proposed changes to the various Rules of Court become effective.
- The Supreme Court should facilitate collaborative purchasing agreements among courts (e.g., statewide or countywide) to assist with the purchase of technology-related products and services. The purpose of collaborative purchasing is to leverage best pricing through buying in bulk.

- The Supreme Court, in coordination with subject-matter experts, should develop templates or guidance for local courts on the contents of their websites to ensure basic information is uniformly available (e.g., local court rules, standardized forms), Americans with Disabilities Act requirements are met, and helpful legal information is available to the public, litigants, and the bar.
- The Supreme Court should develop a centralized online portal for administrative judges to communicate and perform Supreme Court-related administrative functions (e.g., magistrate registration, submission of local rules, court personnel directory).
- The Supreme Court should evaluate expanding interpreting services to include video remote interpreting for the use of American Sign Language interpreters and supplement the telephone language service to also include virtual remote interpreting in a foreign language.



Training [Supreme Court & Local Courts]

- The Supreme Court and other partners should provide training for IT court staff.
- The Supreme Court should offer training or guidance to trial courts on the electronic submission of evidence and exhibits, including pre-sentencing investigations and the record for appellate purposes.
- Courts of appeals should offer local training on how to use standardized brief templates and virtual court-related processes and explore more “on-demand” video training options.



Technology-Related Tasks [Local Courts]

- All courthouses should be equipped with free internet access available for use by the public.
- Courts should expand their use of online payment of court costs, fines, and fees.
- Courts should use SMS/text messaging/email to provide general reminders about court appearances; this technology also can be used to alert parties (who are asked to wait in cars until prompted) to enter the courthouse.
- Courts should develop best-practice procedures for the implementation and management of remote jury trials (e.g., submission and sharing of exhibits, jury deliberation, dress code, decorum).



Procedural/Operational Tasks [Local Courts]

- Courts should consider using virtual remote interpreting.



Evaluation [Local Courts]

- Courts should collect and analyze data to determine whether remote proceedings result in disparities or unintended consequences using measures such as the National Center for State Court’s revised-for-remote-hearings CourTool 1 Measure, Access & Fairness Survey for Trial Courts, and the Quality of Services Survey for Appellate Courts using an online centralized tool provided by the Supreme Court.

PHASE 7: 2023



Procedural/Operational-Related Tasks [Supreme Court]

- The Supreme Court should develop standards for online dispute resolution and publish them.
- A new remote notarization procedure involving court-related processes, separate from online notarization as defined in Revised Code 147.60, should be established to allow a notary to utilize remote technology to verify the identity of the signatory at the time of signature.



Procedural/Operational-Related Tasks [Local Courts]

- Courts should use bench-based case management tools to automate workflow, reduce delay, and remove redundancy in caseflow processes.
- Courts should consider implementing electronic scheduling by parties online, by themselves (with supervision by the court as needed).
- Courts should provide online docket access for allowable case types under Rules 44-47 of the Rules of Superintendence, including the ability to view case file documents, through a website or mobile application.

PHASE 8: UP TO 2026



Technology-Related Tasks [Supreme Court]

- The Supreme Court should enhance the features of the Ohio Courts Network.



Procedural/Operational-Related Tasks [Supreme Court]

- The Supreme Court's Advisory Committee on Case Management, in consultation with the Commission on Technology & the Courts, should develop a proposal for the adoption and implementation of a statewide case management system. Alternatively, the Supreme Court should consider modules and connecting or integrating case management systems to other platforms to minimize data entry duplication.
- The Supreme Court should allocate funds for the sustainability of a specialized docket case management system upon the receipt of requested grant funds (and if the funds are not granted, the initial funding too).



Procedural/Operational-Related Tasks [Local Courts]

- Courts should use and expand their use of electronic filing.
- Courts should expand their use of electronic document exchange.

- Courts should consider developing a mobile application where parties can access information about their case, make a payment, electronically upload and sign documents.
- Courts should provide virtual assistants or kiosks to help users perform court-related functions (e.g., access forms, file documents, make payments, access information, participate in a remote hearing).
- Courts should offer guided-interview systems to help litigants prepare and file documents.
- Courts should consider online dispute resolution as a way to dispose of cases.

Ongoing Recommendations



Procedural/Operational-Related Tasks [Local Courts]

- Courts should utilize integrated software allowing for the exchange of information from one system to another, but also is fluid and adaptable to accommodate future technology upgrades and innovations.
- As courts implement new case management systems, they should include the capability to accept documents under seal (e.g., functionality to restrict access based upon rules/permissions).

APPENDICES

The documents of the Appendix are included in Volume II of this report.

- A. Task Force on Improving Court Operations Using Remote Technology Survey Report
- B. Task Force on Improving Court Operations Using Remote Technology Litigant Survey Report
- C. Proposed Rules & Rule Amendments
 - (i) Rules of Civil Procedure
 - (ii) Rules of Criminal Procedure
 - (iii) Rules of Evidence
 - (iv) Rules of Juvenile Procedure
 - (v) Rules of Superintendence
 - (vi) Traffic Rules
- D. Sample Documents
 - (i) Sample Local Rule on Remote Appearances
 - (ii) Sample Local Rule of Livestreaming
 - (iii) Sample Request for a Remote Hearing – Civil
 - (iv) Sample Request for a Remote Hearing – Criminal
 - (v) Sample Juror Mobile Device Receipt Form
 - (vi) Sample Waiver of the Right to be Present for Arraignment
 - (vii) Sample Waiver of the Right to be Physically Present at Trial



THE SUPREME COURT *of* OHIO

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