

# Technology and the Courts Post COVID

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VIRTUAL COURTS, HYBRID  
COURTS AND ONLINE  
TECHNOLOGIES

Hon Tierra Jones  
Hon. E. Alan Tiras

# The Pre-2020 Court

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👉 Vast Majority of Proceedings were In-Person

👉 Participant travel to/from the Courthouse

👉 Large facilities

👉 Sizable security and screening staffing costs

👉 Options

👉 Telephonic Hearings

👉 Some Video Hearings (Mainly In-Custody Arraignments)




# The Post-COVID Court

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- 👉 In March 2020, substantive changes were made to how society connects with each other, with business and with government, including the Courts.
- 👉 Most courts adapted the way we did business to provide for remote and virtual interactions.
- 👉 Without discounting the devastating impact COVID had on us all, we benefited from the huge acceleration of technological adoption that took place as a result.
- 👉 We are now able to move forward and provide more convenient access to the courts for all stakeholders.

# The Problems Courts Experienced Since March 2020

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-  Many Courts have significant case backlogs
-  Impacts on Employee Morale
-  Safety Precautions

# Additional Existing / Continuing Problems

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- 👉 Many parties were and are again compelled to take valuable time away from work at significant cost to travel to/from and appear at Court.
- 👉 Q: Must participants be physically present in the Courtroom for justice to be done?
- 👉 With the internet and communication technology so accessible, is it time for the Courts to seriously change the way we do business?
- 👉 Can we continue to use (or adopt new) technology or new procedures to improve our “customer service”?

# Is Court a Service or a Place?

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- 👉 In his book, “Online Courts and the Future of Justice” (2019), Richard Susskind poses this question.
- 👉 Is there more to “Court” than appearing in a Courtroom before a Judge to have a matter adjudicated?
- 👉 Can stakeholder interaction with the Courts take place virtually, or even asynchronously?

# What are the Purposes of the Courts

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The Nevada Judiciary interprets laws and provides an unbiased check on the Executive and Legislative branches. The Nevada Judiciary has the responsibility to provide impartial, *efficient*, and *accessible* dispute resolution in legal matters.<sup>1</sup> (*Emphasis added*)

<sup>1</sup> [nvcourts.gov/Supreme/Court\\_Information/About\\_the\\_Nevada\\_Judiciary/](https://nvcourts.gov/Supreme/Court_Information/About_the_Nevada_Judiciary/)

# What are the Purposes of the Courts

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Responsibility of the Courts<sup>1</sup>:

-  Ensuring access to the Court process for all who seek it.
-  Managing the business of the Court in a manner that promotes efficiency, transparency and the opportunity for fair and timely disposition of the cases filed.






<sup>1</sup> National Association for Court Management 2020



# What are the Purposes of the Courts

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Purposes of the Courts According to Judges:

-  Resolving Disputes
-  Clarifying the Law
-  Developing the Law
-  Access to Justice
-  Rule of Law

<sup>1</sup> Online Courts and the Future of Justice, Richard Susskind (2019),

# What are the Purposes of the Courts

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Purposes of the Courts According to "Customers":




- 👉 Not to have a Problem at all
- 👉 Problem solved with Authority and Finality
- 👉 Apologies
- 👉 Ability to "Move on"
- 👉 Principle – Seeking Binding Precedents

<sup>1</sup> Online Courts and the Future of Justice, Richard Susskind (2019),

# What are the Purposes of the Courts

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Purposes of the Courts - **Sociology**:

-  Bringing Certainty in the Affairs of Humans
-  Promoting Social Cohesion
-  Delivering Social Justice

<sup>1</sup> Online Courts and the Future of Justice, Richard Susskind (2019),

# What are the Purposes of the Courts

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## Purposes of the Courts – Political Science




-  Promote the Rule of Law
-  Serve as a Restraint on Excesses in the other Governmental Branches
-  Justice

<sup>1</sup> Online Courts and the Future of Justice, Richard Susskind (2019)

# What is the Impact of an Increased Backlog?

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An Increased Backlog of Cases causes a delay in adjudication

-  Failure to Provide Speedy Justice (Justice Delayed is Justice Denied)
-  Cost to Parties
-  Challenges to Prosecutors (absent witnesses, faded memories, stale evidence)


# Access to Justice

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Access to Justice:

 Nevada –

 AJC Mission is to

 “[I]mprove the ability of all Nevadans, particularly those of modest means to utilize Nevada’s legal system.

# Access to Justice

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Access to Justice:

- 🔨 U.S. Department of Justice – 3 Principles
  - 🔨 Promoting Accessibility – eliminating barriers that prevent people from understanding and exercising their rights
  - 🔨 Ensuring Fairness – delivering fair and just outcomes for all parties, including those facing financial and other disadvantages
  - 🔨 Increasing Efficiency – delivering fair and just outcomes effectively, without waste or duplication.

# Access to Justice

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What is the impact of a Difficult to Access Court?:


-  Cost of Compliance
-  Increased instances of FTA/FTC
-  Loss of Work - Lost Income
-  Frustration / Loss of Confidence



# What Can the Courts do?

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What kind of Changes are the Courts Willing or Able to Make?




 Incremental - Using technology to increase efficiencies in what we already do

 Radical - Doing things differently to achieve the needed outcome

# What Can the Courts do?

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## Online Dispute Resolution – What is it?




-  Uses Technology to Facilitate Resolution of Disputes.
-  May include Negotiation, Mediation or Arbitration
-  Typically “Asynchronous” Communication

# What Can the Courts do?

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## Online Dispute Resolution – What is it?

According to the National Center for State Courts, Court related Online Dispute Resolution (ODR) is a public facing digital space in which parties can convene to resolve their dispute or case.

-  Exclusively online. ODR users do not otherwise interact with the court for traditional in-court procedures or events.
-  Designed to assist litigants resolve their dispute or case. Not a technology platform to support judicial decision making.
-  Hosted or supported by the judicial branch.

# What Can the Courts do?

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## Online Dispute Resolution – History

- 👉 Conceptualized in the early 1990's by academia.
- 👉 Adopted by Ebay to resolve disputes arising out of online activities.
- 👉 By 2010, Ebay was handling over 60M disputes per year.
- 👉 Since 2015 has expanded significantly for Court use

# What Can the Courts do?

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## Online Dispute Resolution – Types of Change

-  Tool for Replicating in-person processes in a virtual environment (Incremental)
-  Reimage how to perform some Court processes better, without relying on in-person proceedings (Radical)

# What Can the Courts do?

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## Online Dispute Resolution – Potential Uses

 Traffic and Misdemeanor Criminal

 Allows Prosecutors and Defendants to Interact Electronically to Seek Resolution

 Small Claims

 Allows Parties to Communicate Asynchronously to Resolve Matter





 Evictions

 Allows Parties to attempt to resolve the matter without the Court's direct involvement

# What Can the Courts do?

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## Online Dispute Resolution – Potential Benefits

-  Provide Enhanced Access to Justice
-  Reduce Time to Adjudication
-  Reduce Backlogs
-  Reduce Use of Physical Facilities

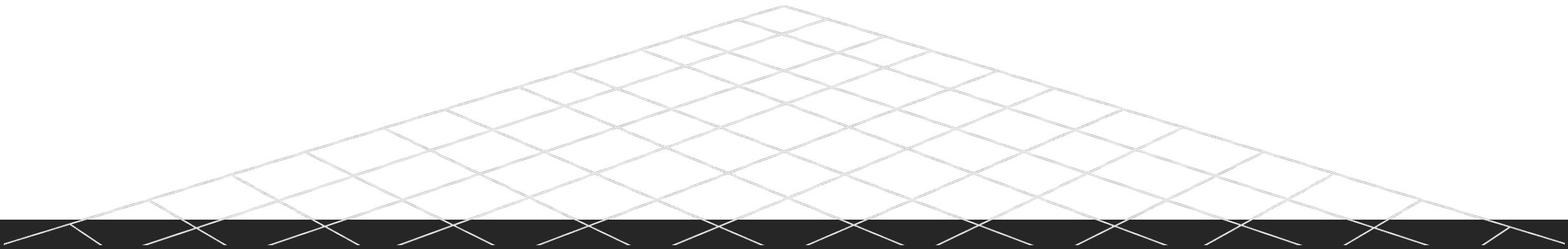
# Virtual/Hybrid Courts

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## Benefits to Defendants

1. Enhanced Access to the Courts (“Access to Justice”)
2. Reduced Travel Time and Transportation Costs
3. Reduced Time Off of Work





# Virtual / Hybrid Court

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## Benefits to Court

1. Reduced Expenses
  - a. Reduced Staffing Needs
    - 1) Security
2. Reduced Physical Courtroom Use
  - a. Anticipated Reduction in Substitute Judge Usage
    - 1) Presiding Judge can appear remotely as well
3. Increased Efficiency
  - a. Ease of Multi-agency cooperation

# Virtual /Hybrid Court

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🔨 Not Every Type of Hearing Lends itself to a Virtual Proceeding in Every Instance, BUT:

🔨 Civil

🔨 Can work absent issues of physical evidence

🔨 Criminal

🔨 Can work for Arraignments, Bail Hearings, Suppression Hearings, Simple Criminal Trials, Sentencing Hearings

🔨 Not appropriate for Jury Trials

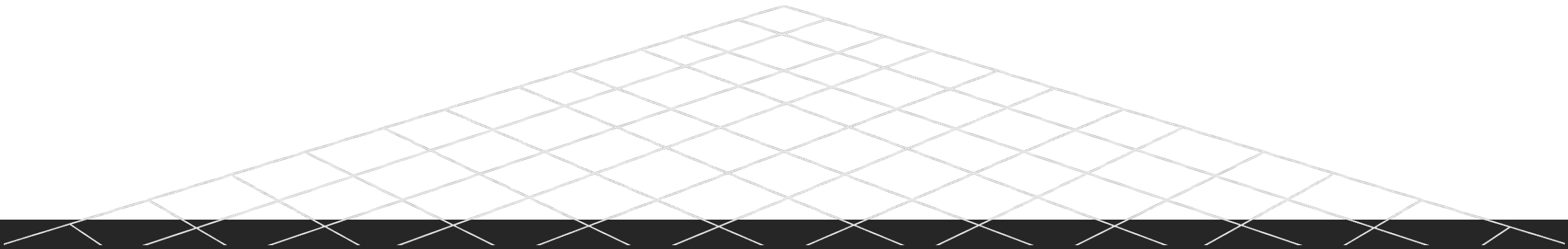
# Virtual /Hybrid Court – The Future

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What May the Future of Online Courts Look Like?

- 🔨 Completely Virtual Environment with limited persons physically present in a Court facility / Studio
- 🔨 Fully Immersive Courtroom Experience for Observers





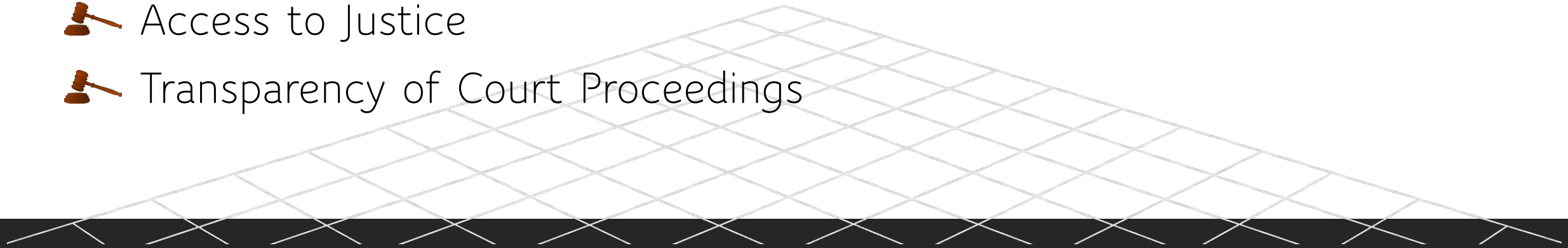
# Virtual /Hybrid Court - Summary

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## Pros

- 👉 Overall Convenience for Litigants, Counsel and the Court
- 👉 No Travel Required
- 👉 Limited Time Away from Work as Compared to In-Person Proceedings
- 👉 Ability of the Court to Handle Its Calendars Remotely as Well.
- 👉 Access to Justice
- 👉 Transparency of Court Proceedings



# Virtual /Hybrid Court - Summary

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## Cons

### 🔨 Technology Implementation for the Courts

🔨 Different Courts have Different Standards (NJLJ Suggested Standards)

### 🔨 Technology Accessibility for the Court

🔨 Courts don't all have the necessary technology budget or Bandwidth Availability.

### 🔨 Technology Accessibility for the Public

🔨 Not everyone has the technical expertise, appropriate devices or bandwidth available.

### 🔨 6<sup>th</sup> Amendment Right to Confrontation

### 🔨 Judging Witness Credibility

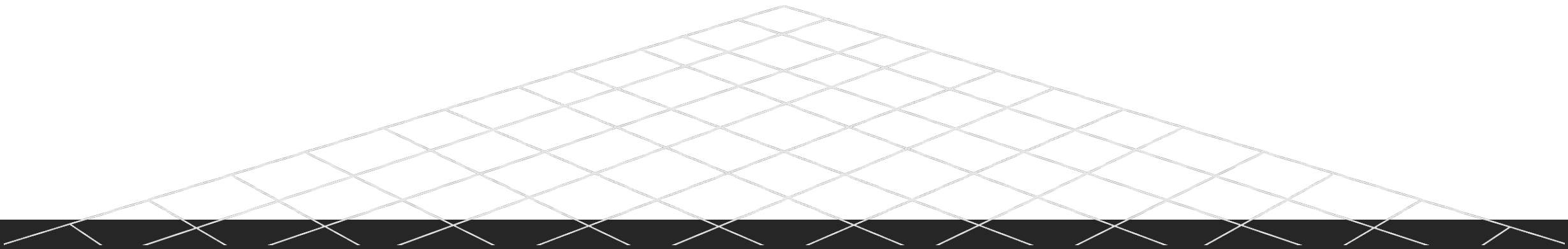
# Nevada Courts Technology Survey

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## Summary

N=53 participants

Judges = 100%



# Nevada Courts Technology Survey

Virtual Court Proceedings Provide:

60%

50%

40%

30%

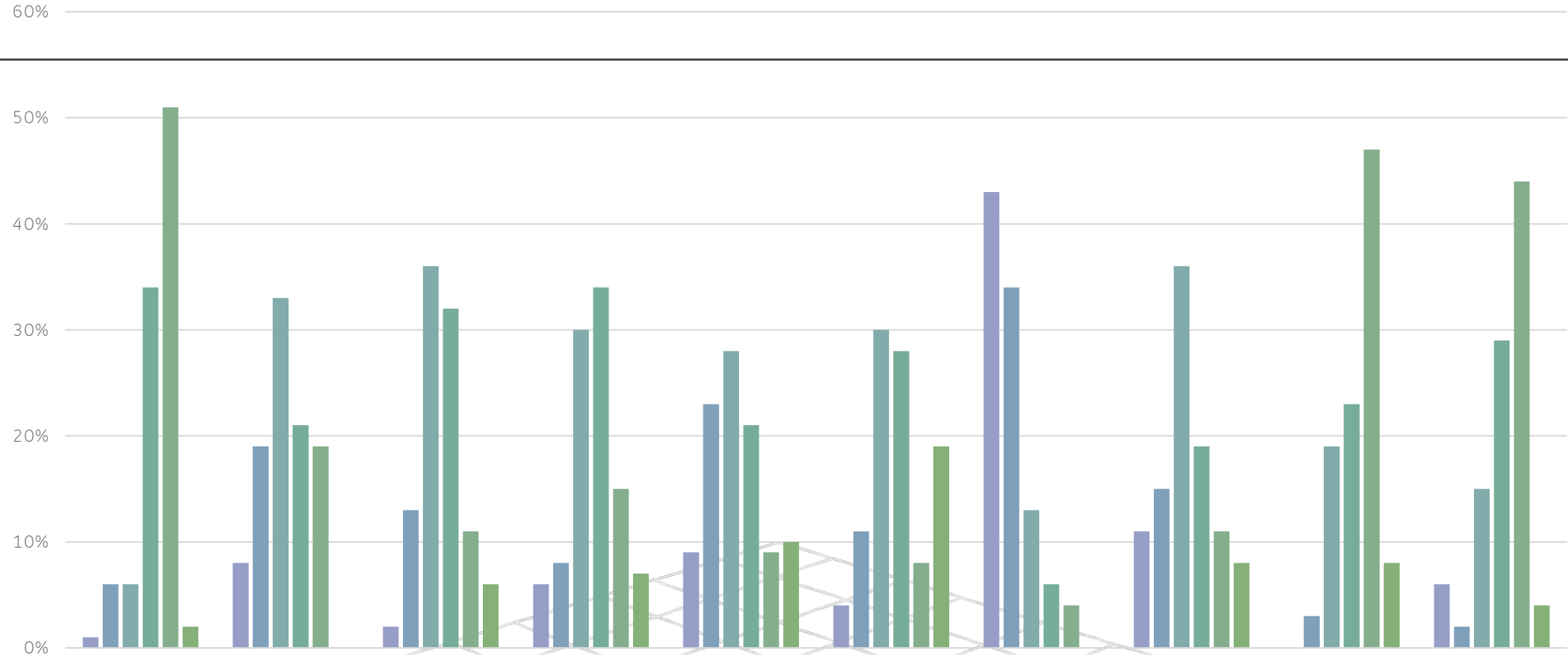
20%

10%

0%

Ease of Access to Court    Transparency of Court    Decrease Litigant Stress    Incr. Feeling of Safety    Freer Contr. by Participants    Increase Victim Participation    Easier Witness Credibility    Improve Reputation    Reduce COVID Risk    Good Option

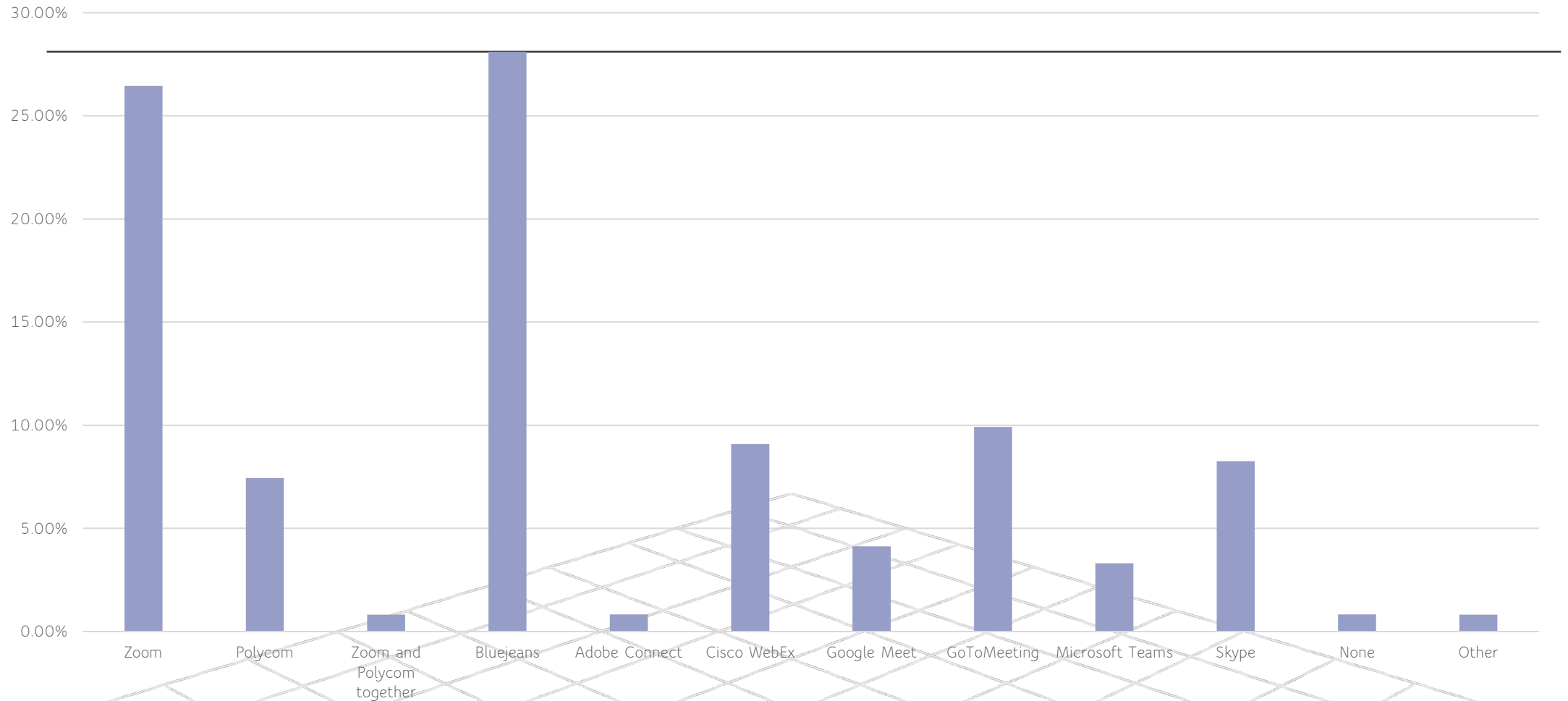
Strongly Disagree    Disagree    Neutral    Agree    Strongly Agree    N/A - Don't Know





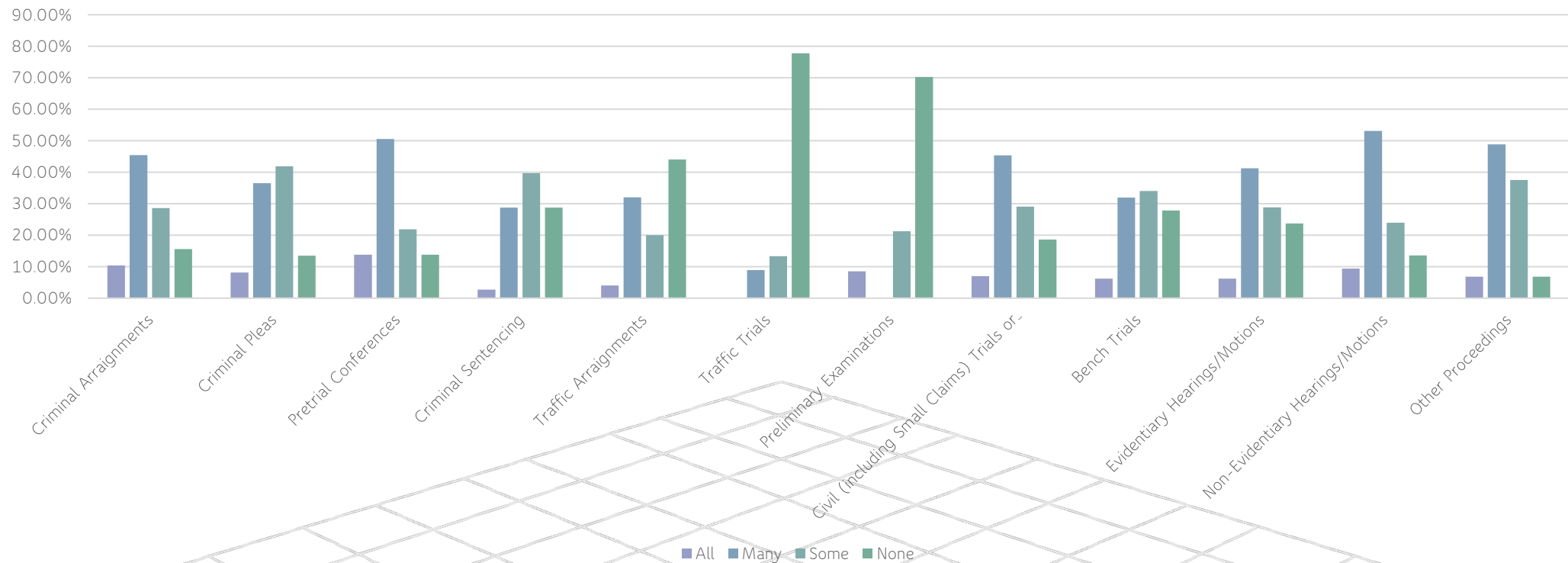
# Nevada Courts Technology Survey

Video Platforms Used



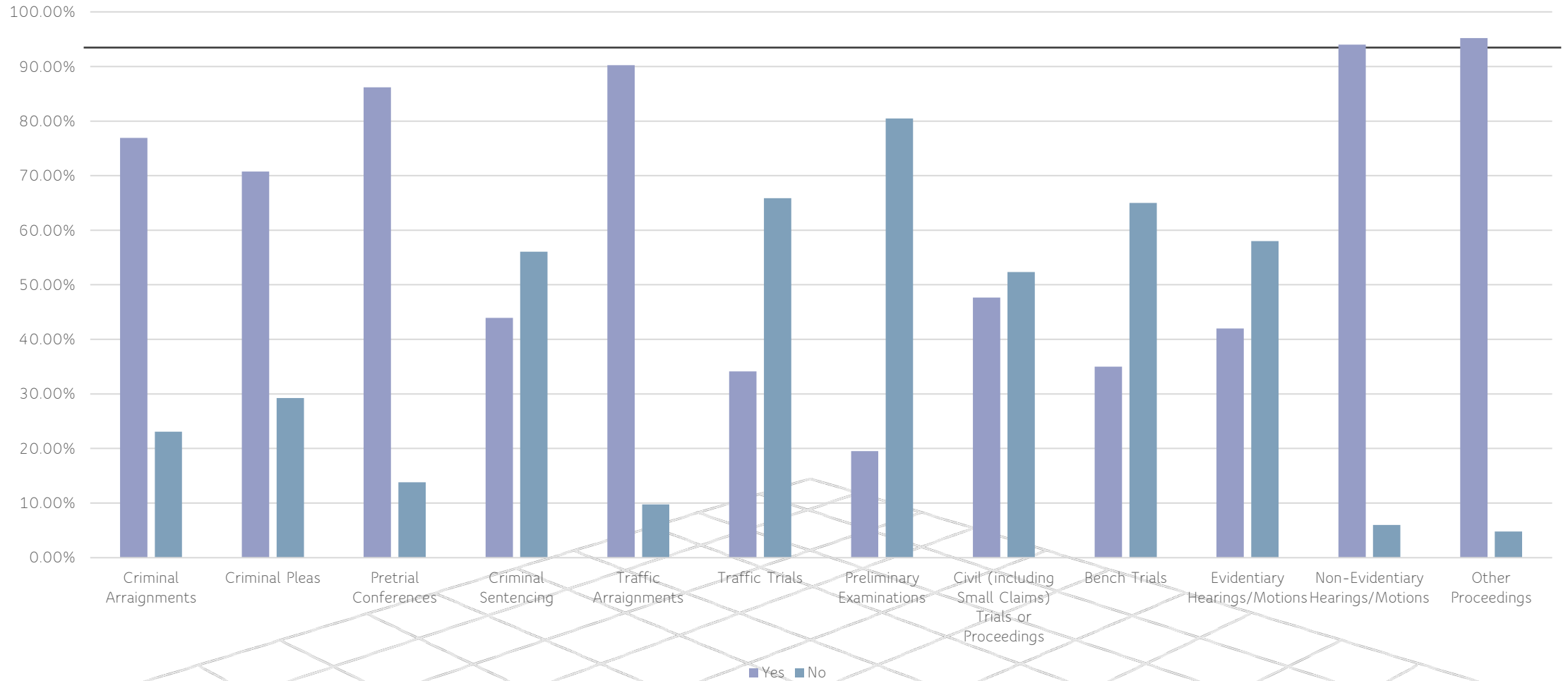
# Nevada Courts Technology Survey

Current Virtual Proceedings



# Nevada Courts Technology Survey

## Future Virtual Proceedings



Thank you

# Technology and the Courts Post COVID

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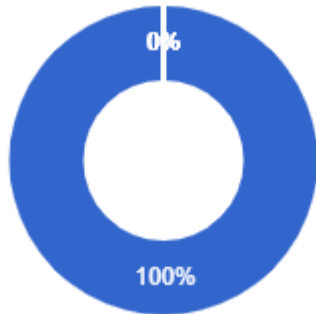
Hon Tierra Jones  
Hon. E. Alan Tiras

# Nevada Courts Technology Survey

► Which of the following best describes your role with the Court?

🗨️ Total Responses: 53

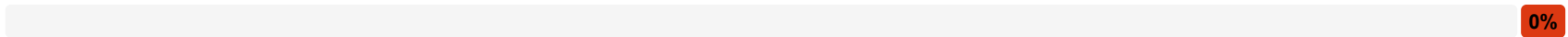
Which of the following best describes your role with the Court?



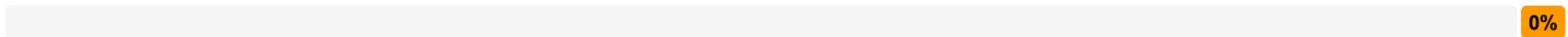
Judge (100% / 53 votes)



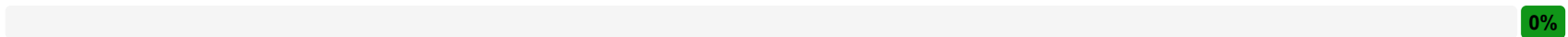
Master (0% / 0 votes)



Court Administrator (0% / 0 votes)



Court Clerk (0% / 0 votes)

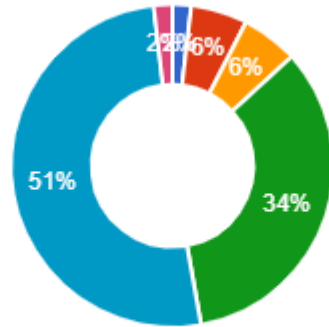


► To what extent do you agree that virtual court proceedings...

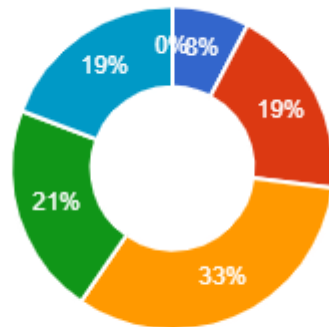
Total Responses: 528

Toggle Charts

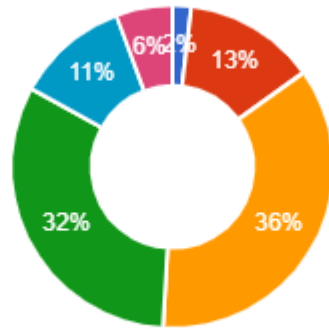
...make it easier for participants to access the courts.



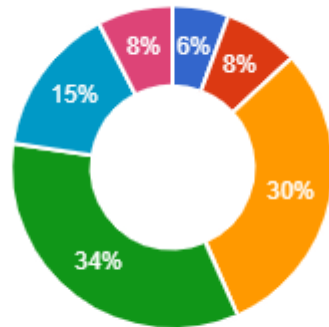
...make courts more transparent to the public.



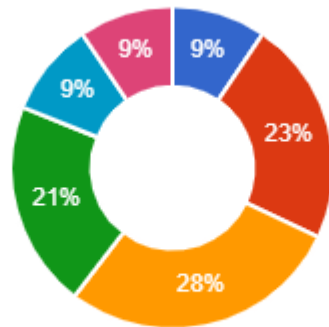
...decrease stress for litigants.



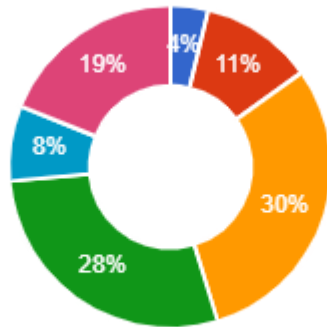
...make participants feel safer.



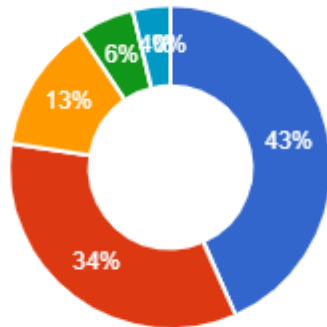
...make participants feel freer to contribute.



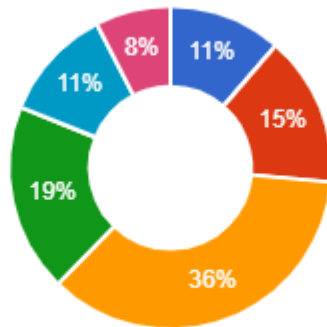
...increase participation levels from victims.



...make it easier to assess witness credibility.

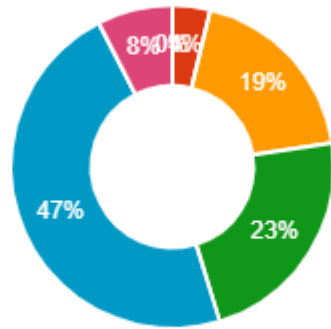


...improve the reputation of our courts.



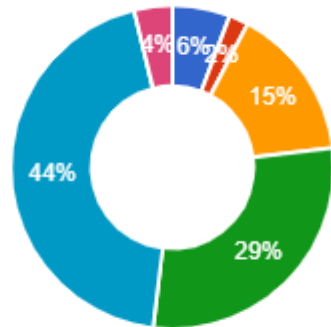


...reduce the risk of transmission of the COVID-19 virus.



Strongly Disagree Disagree Neutral Agree  
Strongly Agree N/A - Don't Know

...are a good option for our state's courts as they navigate the COVID Pandemic

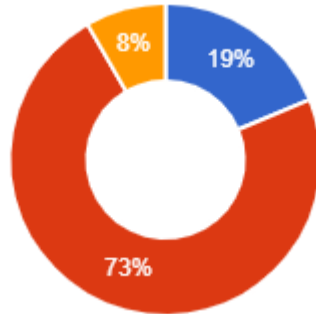


Strongly Disagree Disagree Neutral Agree  
Strongly Agree N/A - Don't Know

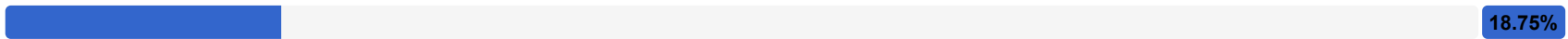
► How concerned are you about your Court using virtual technology (i.e., Zoom) to conduct court proceedings (during the pandemic and hereafter)?

🗨️ Total Responses: 53

How concerned are you about your Court using virtual technology (i.e., Zoom) to conduct court proceedings (during the pandemic and hereafter)?



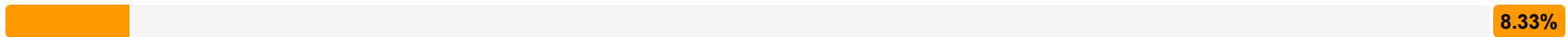
I am not at all concerned (18.75% / 9 votes)




I am concerned about certain types of cases or proceedings (72.92% / 35 votes)



I am concerned about all types of cases and proceedings (8.33% / 4 votes)



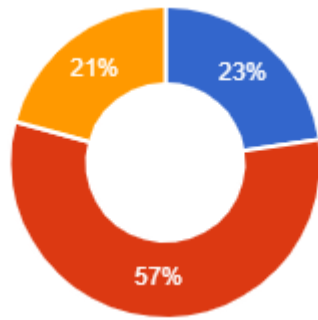
Username	Answer
Guest	Use of temote appearances have made us a better court, and we're eager to improve, however lack of technical support rural courts makes implementation difficult.
Guest	I love it for most hearings but for trials with victim testimony am concerned how to handle defense attorneys objections
Guest	Use of zoom depends on the type of case and the participants involved. It works wonderfully in many cases. It works terribly in others.

Username	Answer
Guest	I am concerned that Courts may try to replace in courthouse proceedings on matters that ought not be replaced. The reasons are several: (1) virtual proceedings greatly limit real time communication between crim def and atty; between judge and staff; and between judge and non-participant observers; (2) virtual proceedings vastly limit court's ability to make credibility determinations; (3) they diminish ability to observe def demeanor to assess possible substance use before court; (4) they inhibit a judge from being able to do her non-adjudicative functions such as walk the halls and encourage/inspire court employees at their job; mentor law clerks and interns; and travel to spur-of-the-minute outreach when time suddenly frees up; and (5) the connectivity issues repeatedly delay the proceedings and restrict the natural flow of matters, to name just 5 of the more important concerns on a rather long list of compelling reasons why virtual court should only be used in rare, simple and special circumstance matters,
Guest	I am concerned about the majority of the proceedings going forward this way. I find audio/video to slow down the pace markedly, the communication is ineffective, and it overall fails. It should be used for very limited appearances where no substantive issues will be discussed.
 <a href="#">View All Responses</a>	

► How concerned are you about your Court live-streaming court proceedings?

🗨️ Total Responses: 53

How concerned are you about your Court live-streaming court proceedings?



I am not at all concerned (22.64% / 12 votes)



I am concerned about certain types of cases or proceedings (56.6% / 30 votes)

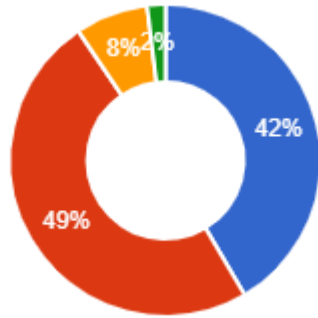


I am concerned about all types of cases and proceedings (20.75% / 11 votes)

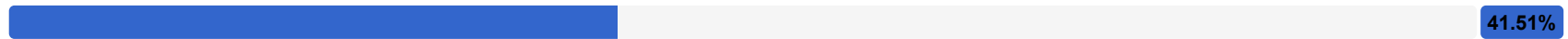


► How comfortable do you feel with using technology (i.e., Zoom) to hold virtual court proceedings? 🗨️ Total Responses: 53

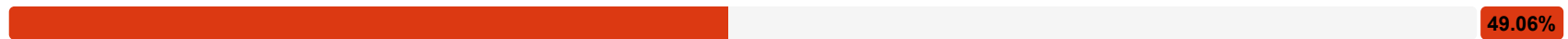
How comfortable do you feel with using technology (i.e., Zoom) to hold virtual court proceedings?



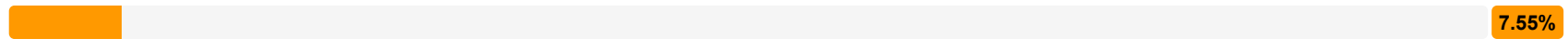
Extremely Comfortable (41.51% / 22 votes)



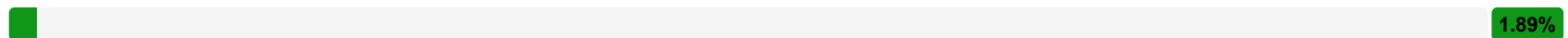
Moderately Comfortable (49.06% / 26 votes)



Slightly Comfortable (7.55% / 4 votes)



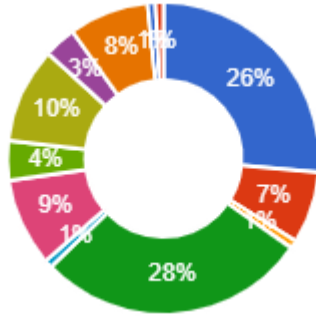
Not at all Comfortable (1.89% / 1 vote)



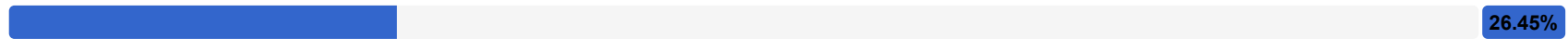
► Have you conducted or been involved in a virtual court proceeding using any of the following platforms? (Select all that apply)

🗨️ Total Responses: 121

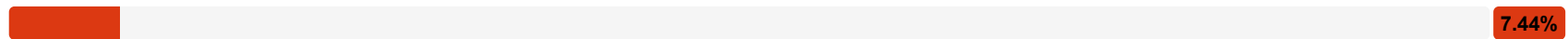
Have you conducted or been involved in a virtual court proceeding using any of the following platforms? (Select all that apply)



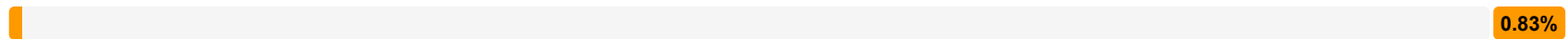
Zoom (26.45% / 32 votes)



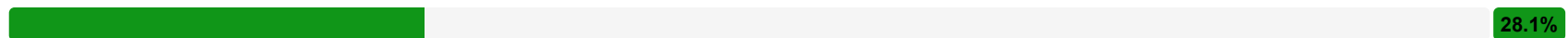
Polycom (7.44% / 9 votes)



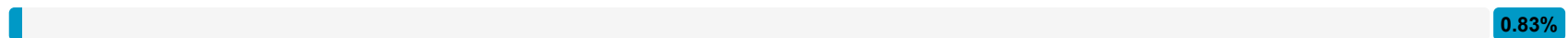
Zoom and Polycom at the same time (0.83% / 1 vote)



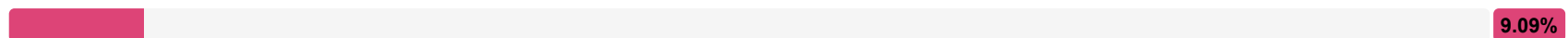
Bluejeans (28.1% / 34 votes)



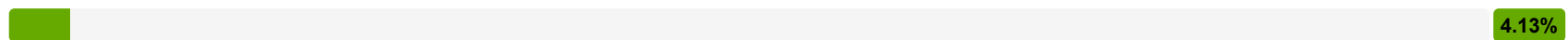
Adobe Connect (0.83% / 1 vote)



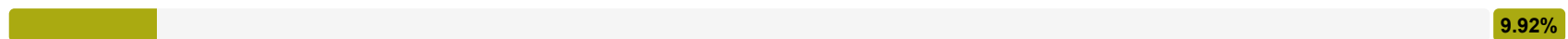
Cisco WebEx (9.09% / 11 votes)



Google Meet (4.13% / 5 votes)



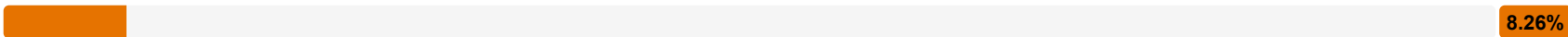
GoToMeeting (9.92% / 12 votes)



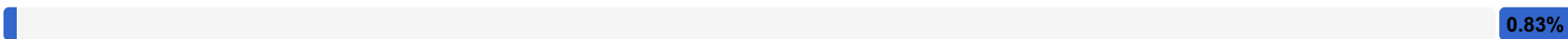
Microsoft Teams (3.31% / 4 votes)



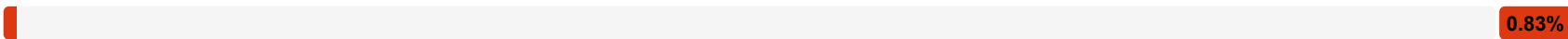
Skype (8.26% / 10 votes)



None (0.83% / 1 vote)



Other (0.83% / 1 vote)



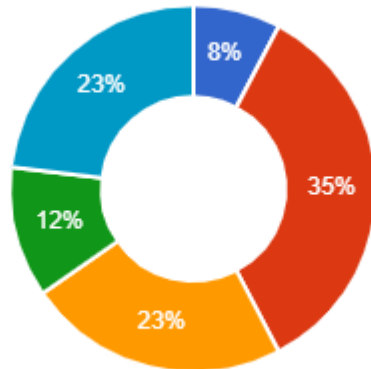
► How many of your proceedings have you personally conducted using virtual technology either at Court or otherwise?

Total Responses: 615

Toggle Charts

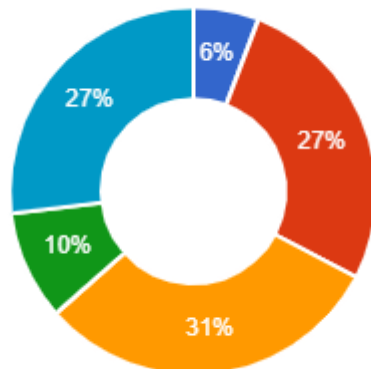
How many of your proceedings have you personally conducted using virtual technology either at Court or otherwise?

Criminal Arraignments



All Many Some None Not Applicable

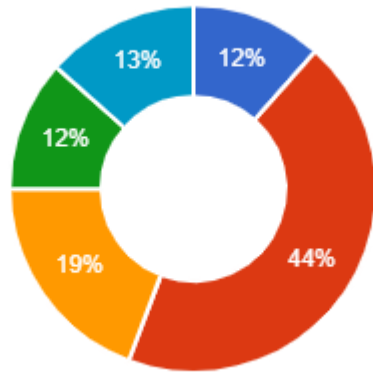
Criminal Pleas



All Many Some None Not Applicable

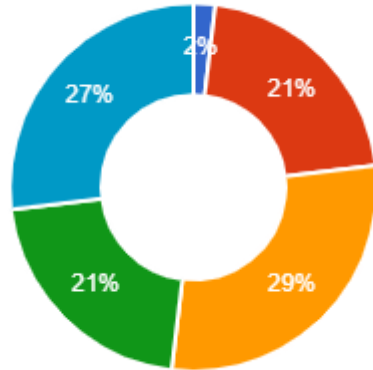


Pretrial Conferences



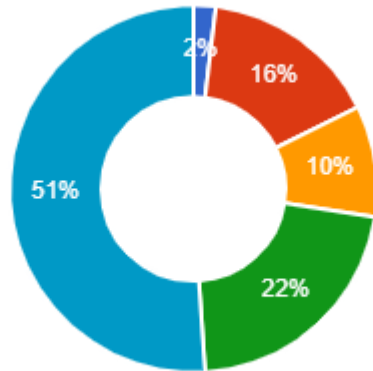
All Many Some None Not Applicable

Criminal Sentencing



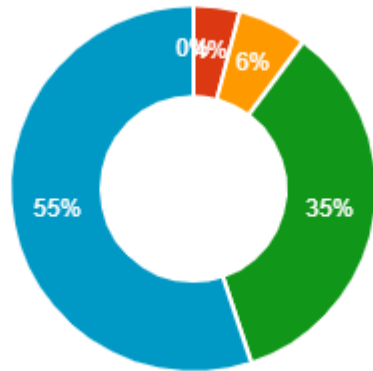
All Many Some None Not Applicable

Traffic Arraignments



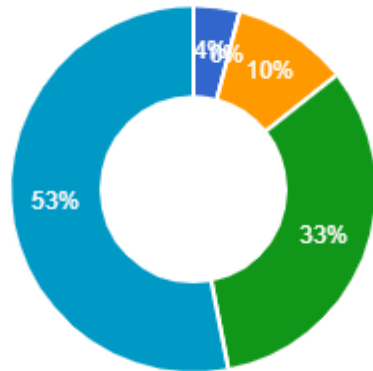
All Many Some None Not Applicable

Traffic Trials



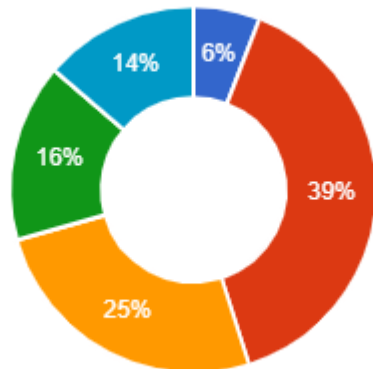
All Many Some None Not Applicable

Preliminary Examinations



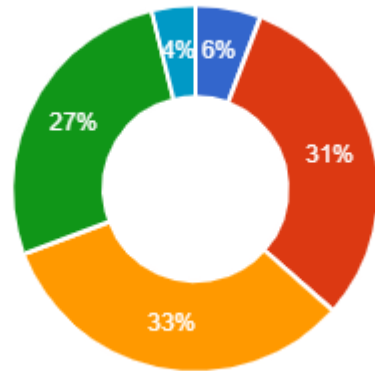
All Many Some None Not Applicable

Civil (including Small Claims) Trials or Proceedings



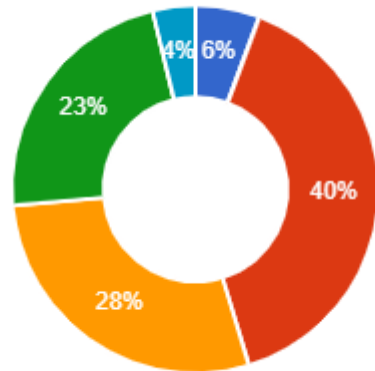
All Many Some None Not Applicable

Bench Trials



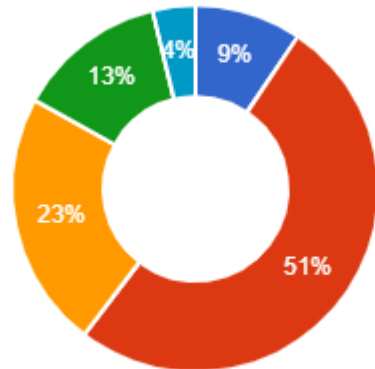
All Many Some None Not Applicable

Evidentiary Hearings/Motions



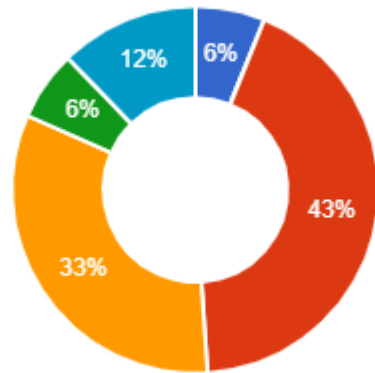
All Many Some None Not Applicable

Non-Evidentiary Hearings/Motions



All Many Some None Not Applicable

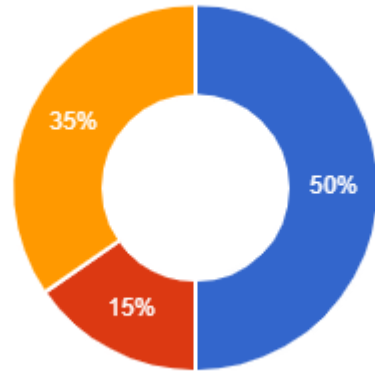
Other Proceeding Types



■ All ■ Many ■ Some ■ None ■ Not Applicable

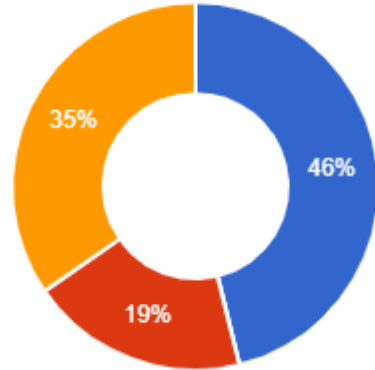
Which types of proceedings would you be open to continue conducting virtually?

Criminal Arraignments



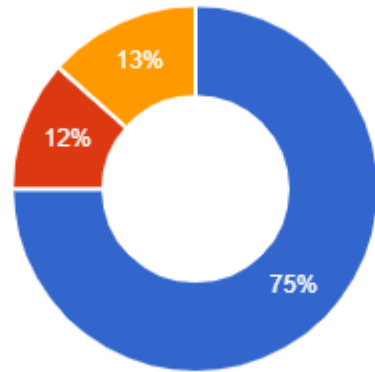
Yes No Not Applicable

Criminal Pleas



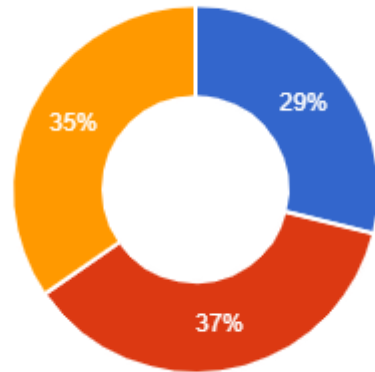
Yes No Not Applicable

Pretrial Conferences



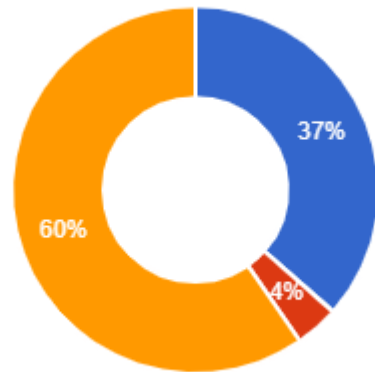
Yes No Not Applicable

Criminal Sentencing



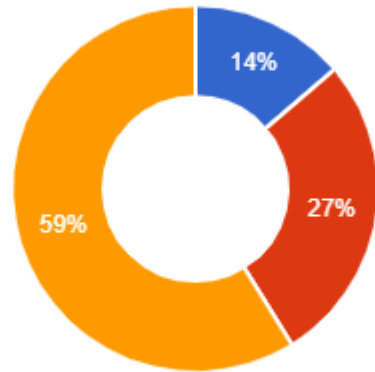
Yes No Not Applicable

Traffic Arraignments



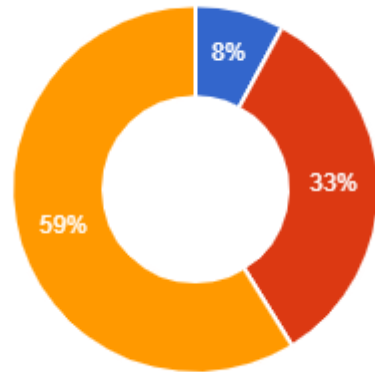
Yes No Not Applicable

Traffic Trials



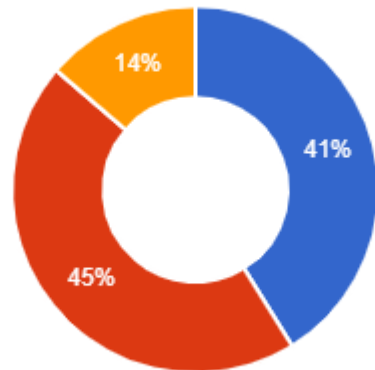
Yes No Not Applicable

Preliminary Examinations



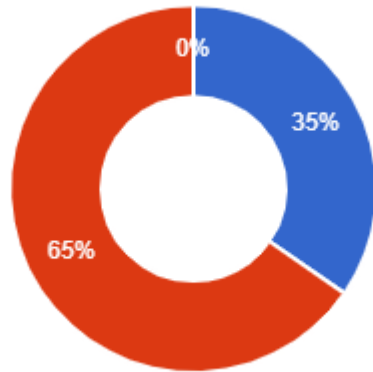
Yes No Not Applicable

Civil (Including Small Claims) Trials or Proceedings



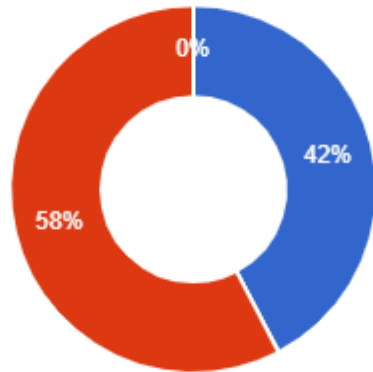
Yes No Not Applicable

Bench Trials



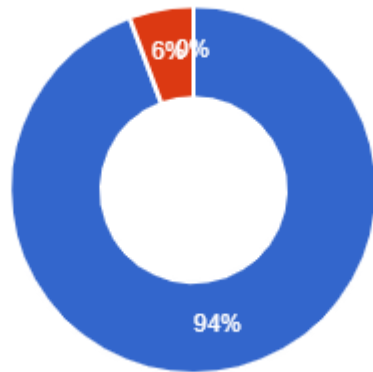
Yes No Not Applicable

Evidentiary Hearings/Motions



Yes No Not Applicable

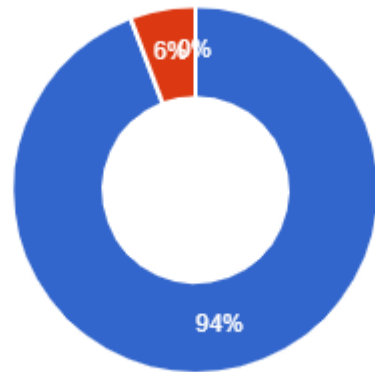
Non-Evidentiary Hearings/Motions



Yes No Not Applicable

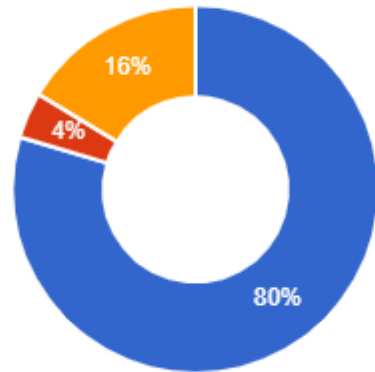


### Non-Evidentiary Hearings/Motions



■ Yes ■ No ■ Not Applicable

### Other Proceeding Types



■ Yes ■ No ■ Not Applicable

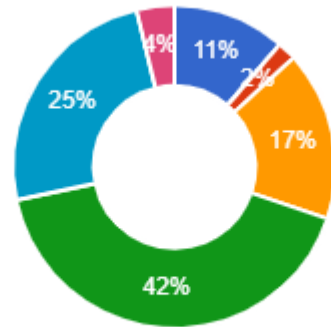
▶ During the virtual proceedings in which you have participated, how often do the following scenarios occur?

Total Responses: 265

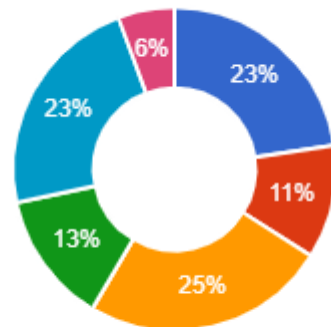
Toggle Charts

During the virtual proceedings in which you have participated, how often do the following scenarios occur?

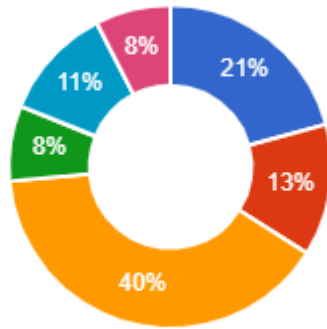
Each participant (not the court) controls his or her own audio (muting or unmuting)



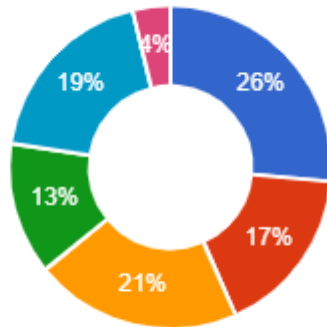
Usage of a waiting room



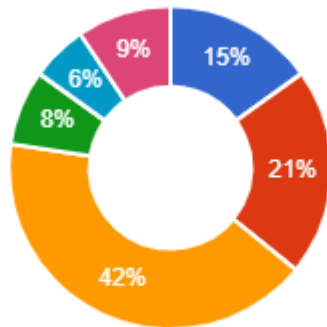
Usage of a breakout room



Usage of a chat feature



Usage of participants' screen sharing

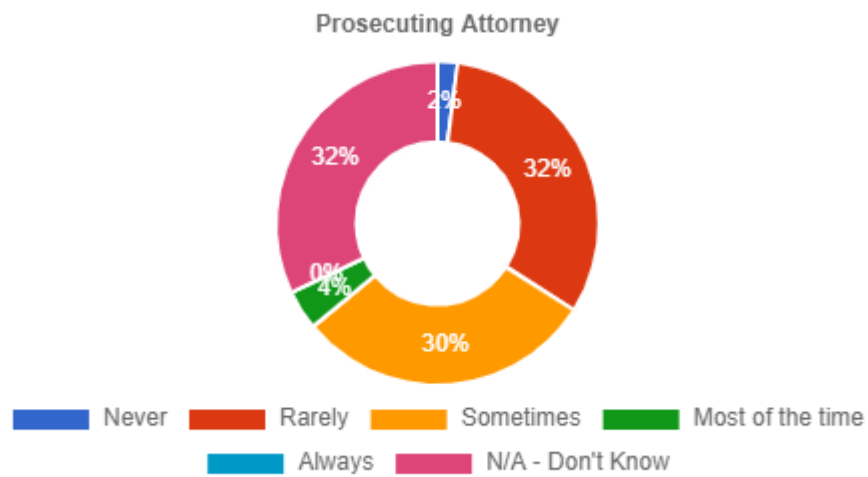
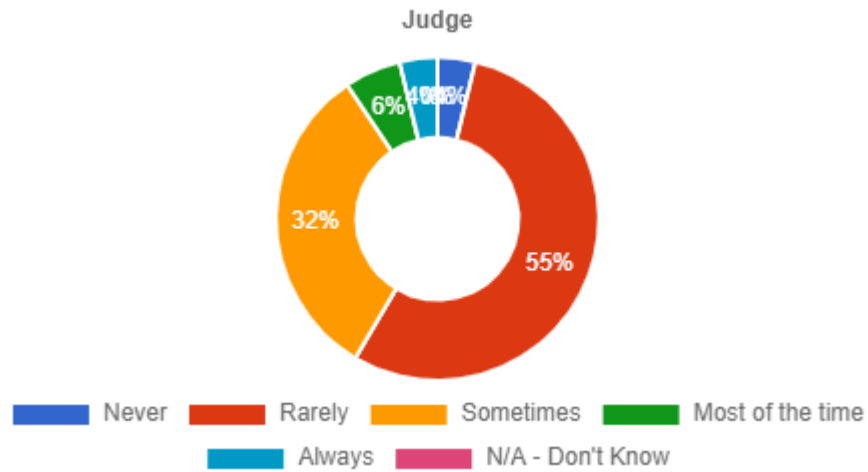


► During virtual proceedings, how often do the following participants have audio or video connection issues?

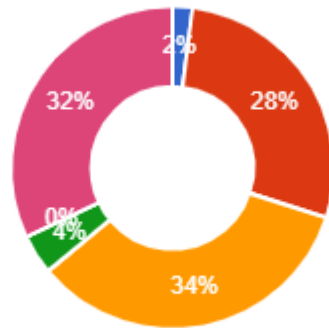
Total Responses: 305

Toggle Charts

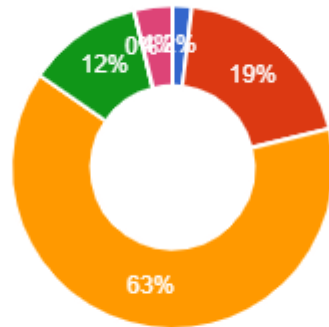
During virtual proceedings, how often do the following participants have audio or video connection issues?



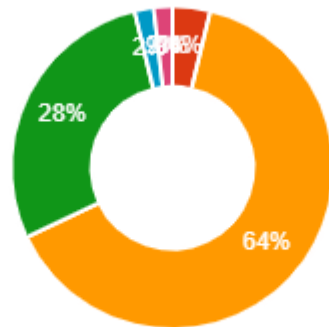
### Public Defender



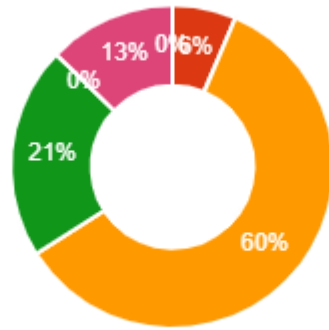
### Other Attorney or Counsel



### Litigants



Others



- Never
- Rarely
- Sometimes
- Most of the time
- Always
- N/A - Don't Know

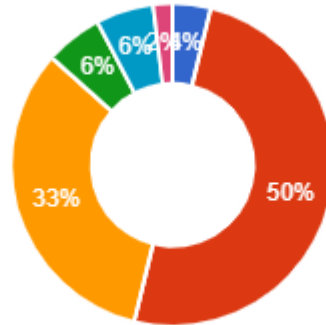
► During virtual proceedings in Court, if a key participant has audio or video connection issues, how does the court respond?

Total Responses: 199

Toggle Charts

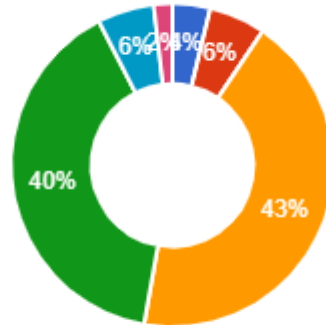
During virtual proceedings in Court, if a key participant has audio or video connection issues, how does the court respond?

Adjourn the proceeding



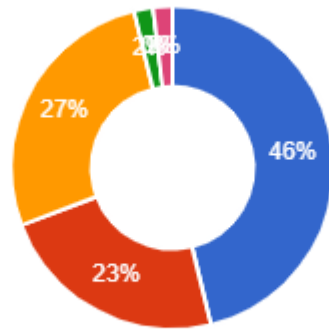
Never Rarely Sometimes Most of the Time  
Always N/A - Don't Know

Have the participant call in by telephone for audio only connection

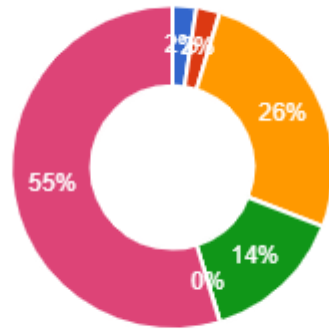


Never Rarely Sometimes Most of the Time  
Always N/A - Don't Know

Proceed as usual



Other





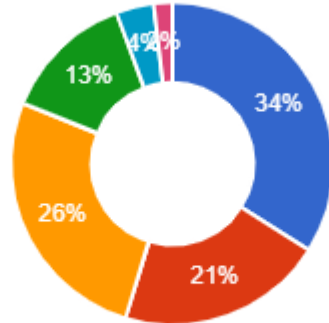
► During virtual proceedings in Court, how often do the following scenarios occur?

Total Responses: 210

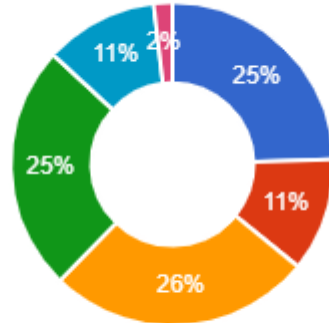
Toggle Charts

During virtual proceedings in Court, how often do the following scenarios occur?

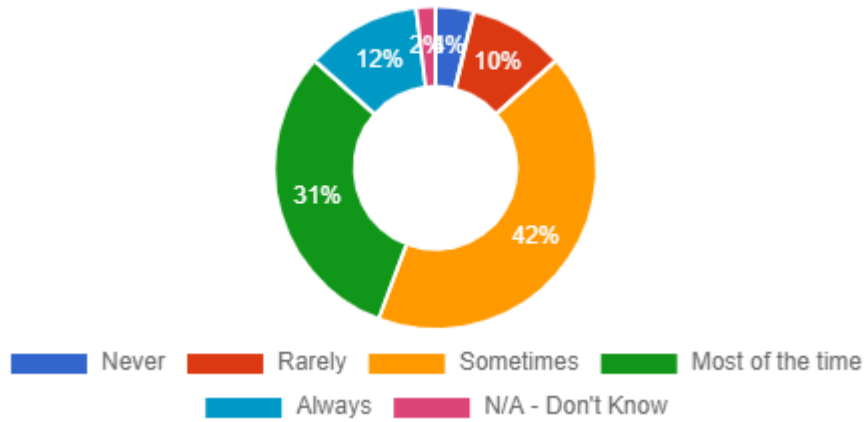
All participants, including the judge, join the virtual proceeding remotely from their personal residence(s) or other non-court location(s).



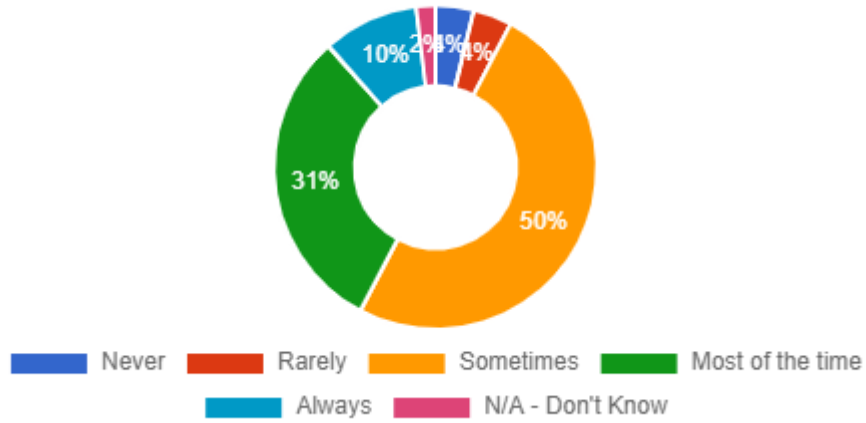
The judge participates from the bench, but all others participate remotely.



The judge and one court staff member participate from the bench, but all others participate remotely.



The judge and several others are in the courtroom, but at least one person participates remotely.



Virtual Advocacy Commission  
 Research Assignment - February 18, 2022

Practice Type	Pros and Cons	IT Challenges	Virtual vs. In-Person
Criminal	<p>Pros: Saves time spent commuting, seems more efficient.</p> <p>Cons: Can't be next to your client.</p>	<p>The internet throughout the office needs to be fully connected.</p>	<p>Virtual: Status Conferences, Motions for OR Release/Adjustment in bail</p> <p>In Person: Bail revocation hearings, all trials, OSC's</p>
Criminal	<p>Pros: convenience for both litigators and participants, makes balancing work and life easier.</p> <p>Cons: frustrating tech issues, inability to monitor and control client, lack of gravitas.</p>	<p>Reliable audio/visual equipment would have to be a priority. Specifically, it is almost never sufficient to rely on a laptop mic to deliver appropriate sound quality.</p>	<p>Virtual: status conferences, specialty court hearings for participants that earn it, maybe misdemeanor pleas.</p> <p>In-person: basically everything else.</p>
Criminal	<p>Virtual hearings dehumanize criminal defendants. <a href="https://law.stanford.edu/press/stanford-criminal-justice-center-publishes-report-examining-consequences-of-virtual-criminal-courts/">https://law.stanford.edu/press/stanford-criminal-justice-center-publishes-report-examining-consequences-of-virtual-criminal-courts/</a></p> <p>The impact of such dehumanizing is less marked in Status Conferences and Motions to Confirm where the process involves less judicial/client engagement. But the net positives are so minimal in the actual and perceived procedural fairness to criminal defendants as to be not worth mentioning.</p>	<p>I don't think it is possible to address the client-focused issues through the IT process.</p>	<p>As noted - Status Conferences and Motions to Confirm are not as problematic as other hearings.</p> <p>All substantive hearings should occur in person</p>
Family	<p>Pros - reduces barriers for clients in terms of work schedule, child care, transportation, parking, etc. to allow participation; the different between a virtual hearing and in person can be 1/2 to full day of missed work time</p> <p>Cons - the lack of personal connections and the ability for client to talk to lawyer, social worker, judge, and anyone else in the court house to be sure questions are answered and feedback heard</p>	<p>For clients - the biggest barrier is high speed internet connections and ideally computers. It's possible to join a hearing by smart phone but it's much harder to participate in a meaningful way and see the other participants. From time to time staff/stakeholders also have internet or power outages that interfere.</p>	<p>Trials/evidentiary/contested hearings - in person; status or review could be virtual; in juvenile dependency permanency hearings - especially if there is a change in plan proposed also would benefit from being in person.</p>

Virtual Advocacy Commission  
Research Assignment - February 18, 2022

Practice Type	Pros and Cons	IT Challenges	Virtual vs. In-Person
Criminal	<p>Better for clients; better for attorneys; better for judges. My clients can appear from anywhere. Clients who reside out of state (or in state but far away) don't have to travel hundreds of miles for, at most, a one hour hearing. Clients who have jobs can attend court hearings without risking their jobs by taking a break/meal and appearing virtually. Appearing virtually makes them feel more comfortable which may undermine the gravitas of judicial proceedings. Indigent clients may not have the means to appear virtually.</p> <p>I can appear in multiple jurisdictions each day or appear for only one case without having to consider travel time. In addition to preparing for everything else for a case, I also have to worry about technical difficulties and preparing my clients for appearing remotely (i.e. appropriate email addresses, backgrounds, clothing, etc.)</p> <p>There's greater judicial efficiency as I do not bulk up the calendar with multiple cases to consolidate trips and I have more information readily available to prevent unnecessary continuances. It can be difficult to empathize or humanize a series of faces in a box.</p>	<p>No means by indigent clients to appear virtually. No way to determine whether nonappearance is due to technical issues or unreliability of client. Language barrier that prevents simple technical assistance.</p>	<p>First appearances, 72s, Arraignments, and Bail Hearings should be exclusively virtual. Status conferences and Entries of Plea should be held virtually by default with the option for in person. Orders to Show Cause and Bail Revocation Hearings should be in person exclusively. Motion hearings and all other hearings should be at the option of the Court and parties.</p>
Criminal	<p>Pros: saves time for travel between locations; allows for single counsel to cover more hearings in a day, which means less need for coverage by others; saves clients who live far from court from having to travel/secure transportation/miss work</p> <p>Cons: Limits ability for defense counsel to communicate with clients real time, or to meet prior to hearings to prepare or answer last-minute questions; often seems to be less formal; does not allow for parties to quickly confer and address issues; inconsistent requirements re: who has to appear for Zoom hearings leads to confusion and anger from clients when they are told to appear in person; having to train clients on use of Zoom (or other technology such as DocuSign) takes up a significant amount of effort in some cases, particularly for client's without the resources to have a reliable computer; clients who don't have reliable access to internet/technology are treated poorly by Judges who perceive that they aren't taking the process seriously</p>	None	<p>Virtual: SCs (if they exist at all, which is a different issue), Motions to Confirm In-person: Everything else</p>

Virtual Advocacy Commission  
 Research Assignment - February 18, 2022

Practice Type	Pros and Cons	IT Challenges	Virtual vs. In-Person
Juvenile	<p>Second Judicial District Court, Family - Juvenile Division. Pros are that it's easier for parents and children to navigate virtual court hearings with school, scheduling, and transportation; there are fewer courtroom safety incidents; it is less traumatizing for very young kids or low-level offenders to appear at court over zoom than in person.</p> <p>Cons are 1) children who are out of custody miss out on the gravitas and accountability that comes from showing up to a court hearing and appearing in front of a judge, technological issues often impede their ability to hear or participate effectively, and it is often unclear whether they or their parents are giving the hearing the full attention it deserves; 2) in custody children suffer from further isolation and are further dehumanized by appearing over a screen, away from counsel, rather than in court, next to counsel, where they can see and be seen by those making big decisions about their lives; further, these decisions should be made while the children have their guardians in the same room as them, not appearing on a different video screen; 3) there is a natural dehumanization and compartmentalization that occurs and likely impacts decision making when judges, attorneys, court staff, etc., look at a child over a Zoom screen and make decisions about him/her when distanced by a computer; 4) probation department lacks the ability to threaten kids with a remand as an effective accountability tool or to make them show up to court for a review hearing to explain their noncompliance in the presence of the judge; 5) virtual hearings create an unfair situation where the in-custody kids (a higher percentage of whom are lower-income minorities) are participating in court hearings from a detention cell, away from their counsel, away from their parents, while the out of custody kids are sitting on a couch in their living room with their mom and dad next to them.</p>	N/A there should not be virtual hearings.	All hearings should be in person.

Virtual Advocacy Commission  
Research Assignment - February 18, 2022

Practice Type	Pros and Cons	IT Challenges	Virtual vs. In-Person
Family	<p>Pros (family law specific): clients don't have to take off an entire day or half day from work; they don't have the hassle of travelling, especially those that have to rely on public transportation; parking around the courthouse is scarce; they don't have to find childcare; if they are sick or have a sick child, they can still attend the hearing; we have had more participation in mediation, since it is easier for clients to attend; participants that have traditionally not appeared are attending now because it is easier. If a client forgets we have a hearing, it is much easier to call or text and have them jump on zoom or call in instead of them miss the hearing entirely.</p> <p>Cons: it is sometimes difficult to form a bond with a client you have never met in person; client control gets a little difficult when you're not sitting next to them. Thankfully that issue doesn't come up often; clients are sometimes too casual when they appear over Zoom; sometimes clients have internet connection, adequate data issues.</p>	<p>Sometimes clients struggle with not having enough data on their phone; sometimes they don't have a good internet connection; sometimes they are not tech savvy, so we have to walk them through how Zoom works.</p>	<p>I think we have been successful in holding almost all hearings virtually, including trials. That being said, trials likely should be in person. Longer contested matters could also be in person. Otherwise, it seems like family law has been able to seamlessly conduct all other hearings virtually.</p>
Criminal	<p>Pros: Convenience for our out of town client's, For 48 hour hearings it is greater control regarding addressing one client at a time, and to be able to relay information to investigators or lawyers. I believe a calendar may go faster but have no data to support it.</p> <p>Cons: when clients are admitted, they tend to not know court decorum so a reminder as they log on or wait in a waiting room would be good, connectivity, audio, and visual.</p>	<p>The best WiFi and recording equipment is necessary.</p>	<p>48 hour hearings, please, stipulated sentences/dispositions, motions to confirm, non-"contested" hearings.</p>
Criminal	<p>I much prefer to be in the presence of my client. Although perhaps more convenient not to go court, it comes at the expense of the personal touch that being next to the client gives as well as being able to address the client's questions easily.</p>	<p>It is not so much a question of IT challenges. It is a question of being right there next to the client - no amount of IT improvement can change that.</p>	<p>I am not sure there are any types of cases or hearings that should be virtual when COVID is not a consideration. The importance of standing next to the client and being present to answer any questions or issues directly cannot be overstated.</p>

Virtual Advocacy Commission  
Research Assignment - February 18, 2022

Practice Type	Pros and Cons	IT Challenges	Virtual vs. In-Person
Family	<p>Pros: Increased client attendance at hearings. Does not require client to leave work/children, travel, park, and find court room. Most clients do have at minimum smart phones to participate.</p> <p>Cons: It requires significant "wrangling" from the attorney to get the zoom link to the client, coordinate them being on the hearing, prompt them to log in. Also, the court is often trying to connect the client to the hearing. Con-zoom court does not portray the solemnity of the court process and is often not taken as seriously by clients.</p>	Met these two pandemic years.	Hospital hearings and AOT could remain video. Family court review hearings. Permanency hearings, evidentiary hearings, and any TPR related matters including settlement and trial should likely be held in person given the serious nature of the rights at stake.
Appellate	As an appellate lawyer the ability to present oral argument via zoom or bluejeans is appreciated and convenient though live oral arguments are preferred where there is not a countervailing health or safety reason that precludes live arguments. Unlike trial, appellate argument is based on a closed record.	In my world existing systems work well. Technology will improve.	Trials, sentencings, probation revocation hearings (where revocation is not stipulated) and evidentiary hearings requiring witness testimony should be live unless "historic circumstances" require "unusual, temporary accommodations." Chaparro v. State, 137 Nev. Adv. Op. 68.
Criminal	<p>Virtual hearings could be useful in some circumstances for clients who live remotely. However, in my experience, criminal defendants are usually required to appear in person at the district court level. The only clients who appear in person are at the jail, so the benefits of virtual hearings at a district court level are extremely limited.</p> <p>The drawbacks of appearing, by zoom, from the jail are apparent. It is much easier to sentence a picture of a person, rather than a person themselves, to prison. The "courtrooms" at the jail are loud and distracting. They do not carry the dignity of full court proceedings. An attorney must choose between appearing from a distance, at a podium at the jail, next to their client where they have client communication, or to appear on their own computer, where they can be better seen and heard, but cannot speak to their client.</p>	For substantive criminal matters, I don't believe there is any reasonable substitute for in-person court. While the Nevada Supreme Court did allow for virtual criminal proceedings in Chaparro v. State, this opinion was clearly limited to the "extraordinary circumstances" of the Covid-19 pandemic	I believe that, if the parties stipulate to allow it, in the criminal sphere, virtual hearings would be appropriate for felony arraignments, status hearings, and some misdemeanor criminal matters. However, virtual proceedings should be the exception, not the norm.

Virtual Advocacy Commission  
Research Assignment - February 18, 2022

Practice Type	Pros and Cons	IT Challenges	Virtual vs. In-Person
Criminal	<p>The pros are that they are more accessible for our clients. Showing up in person to every hearing can cause great financial hardship and causes issues with daycare, time off, etc. Zoom hearings can be scheduled around peoples work breaks/lunches, etc. For me personally, virtual hearings offer me more flexibility to take care of my kids/family while also being more cost and time effective. Traveling to court is at least 20 mins both ways which costs not only gas and wear and tear on the car, but also work efficiency as that is time taken away from working on other cases/issues. This holds true for the clients as well as their time is already tight with testing and other requirements that in person court hearings just adds to that time crunch.</p>	<p>I think most issues are addressed, but keeping up with the latest technology, i.e. the laptops and cell phones would be a must. Slow or outdated hardware would kill any ability to work remotely.</p>	<p>I believe all status hearings, most hearings when the client is still in custody, and any non major district court hearing (arraignments, DUI grads, probation discharges, etc) should stay online. In person should be limited to contested hearings with evidence/witnesses, sentencing, trials.</p>
Criminal	<p>Pro: It allows me to handle my own cases personally, without relying on coverage. It also allows my clients to appear from wherever, which can be vital for clients who have mobility issues or are struggling with transportation.</p> <p>Con: There's definitely a less-personal touch. it's also uncomfortable when not all parties are online - if one party appears in person, it gets awkward. Also, there can be issues with the sound or video quality.</p>	<p>well certainly some clients are so indigent they don't even have smartphones or other technology that can permit them to appear remotely. The court discussed permitting kiosks in the waiting areas, but at that point, the client might as well just go into the courtroom itself.</p>	<p>I think that Trials and other Evidentiary Hearings MUST be in person. High-level sentencing, too. However, for most things (misdemeanor pleas, OSC's, etc) when the client is out of custody, if they want to appear remotely, I think they should be allowed without issue.</p>
Criminal	<p>Pro: It allows me to cover more of my own cases and work on other items while I am waiting for my case to be called. Clients do not have to give up an entire day or half day of work for a 5 min hearing.</p> <p>Cons: It is not used consistently. Would be great for out of state clients, but the court is not permitting that. Difficult to control clients. Have no ability to resolve last minute issues with clients or DA. Clients have less of an understanding and leads to more continuances. Unequal justice when the in custody clients are not permitted to have an in-person hearing while out-of-custody clients have to.</p>	<p>My clients do not know how to use Zoom. They do not all have access to the internet, a quiet place.</p>	<p>Status hearings, arraignments, and motions to confirm could be done virtually. But contested bail hearings with witnesses, evidentiary hearings, trial motions, and trials should remain in person</p>



# **Nevada Judges of Limited Jurisdiction Suggested Virtual Courtroom Standards and Guidelines**

**May 5, 2020**

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NJLJ Virtual Suggested Courtroom Standards and Guidelines

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V200505

## **NJLJ Suggested Virtual Courtroom Standards and Guidelines Committee**

Hon. Stephen Bishop  
Hon. Richard Glasson  
Hon. Kevin Higgins  
Hon. Cynthia Leung

Hon. Mason Simons  
Hon. Diana Sullivan  
Hon. E. Alan Tiras

### **Governing Authority**

SCR Part IX authorizes judicial officers to conduct most proceedings remotely, whether physically present in the courtroom or elsewhere.<sup>1</sup> The guidance provided here is designed to encourage Nevada Justice and Municipal Courts conducting remote proceedings to do so based on developed standards and guidelines. Before utilizing “virtual courts,” it is strongly recommended that all judges carefully review SCR Part IX and NRS 178.388(4).

The Nevada Judges of Limited Jurisdiction (“NJLJ”) has identified some current practices from various courts around the state and country. These guidelines are not the only way to conduct court proceedings virtually, but they are examples of what courts are doing and what may be working. They are offered to assist each court and judicial officer to develop their own procedures. These Nevada Judges of Limited Jurisdiction Virtual Courtroom Standards and Guidelines (“NJLJ Suggested Virtual Courtroom Guidelines”) provide guidance designed to support audio and video recording for authorized virtual proceedings.

Different courts throughout the State are using different video conferencing services<sup>2</sup> and there is no one best service for all courts. Each court should evaluate the options available and make its own individual determination of the service and processes that are best suited for them.

This document breaks down a proceeding into subparts, set forth here in a mostly chronological order. Each subpart is further broken down into a “Standards” and a “Suggested Guidelines.” “Standards,” as the name suggests, sets forth the general/theoretical underlying principles a court should consider and be prepared to meet. “Suggested Guidelines,” in contrast, are some methods which the committee has found to be the most successful. These suggested processes are not the only way to successfully run a virtual court. Different courts operate under different circumstances and, likewise, courts may have different processes in place to meet the standards to accomplish these goals.

Thanks to the State Court Administrative Office of the State of Michigan for their work in developing their State’s Virtual Courtroom Standards and Guidelines.

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<sup>1</sup> SCR Part IX-B(B) Rule 4 allows trials upon a showing of “good cause.”

<sup>2</sup> Common video conference service providers include Zoom ([see Exhibit A - Appendix 1](#)), GoToMeeting ([see Exhibit A - Appendix 2](#)) BlueJeans ([see Exhibit A - Appendix 3](#)), and WebEx ([see Exhibit A - Appendix 4](#))

## **Business Processes in Support of Virtual Courtroom**

Courts must be able to support their fundamental business processes when establishing a virtual courtroom. This includes the ability to operate as if the court were using its traditional brick and mortar courthouse. The court needs to account for electronically filing documents, electronically signing orders to document the court's hearings, and maintaining the decorum of the court.

### **A. Prior to Hearings**

#### **1. Remote Filing**

##### **Standard**

The court needs to account for electronically filing documents, electronically-signing orders to document the court's hearings, and maintaining the decorum of the court. Courts may have different business processes in place to accomplish these goals.

##### **Suggested Guidelines**

If in-person filing of court pleadings is limited, the court may issue an Administrative Order to allow for court pleadings to be accepted for filing by other means such as U.S. mail, e-filing, e-mail, facsimile or other forms of electronic conveyance. NRS Chapters 720 and 721 permit electronic signatures on documents. This may be in the form of a document signed in person by the party and submitted to the court electronically (by fax or preferably email) or by utilizing an electronic signature service for authentication and transmission purposes.<sup>3</sup>

#### **2. Notice & Providing Video Conference Meeting Information**

##### **Standard**

The court shall provide adequate notice to the parties and the public. The court should also ensure that the parties are able to participate remotely.

##### **Suggested Guidelines**

The amount of time required to be considered adequate notice may vary depending on the court and type of proceeding. Generally, it is preferable to give more notice than less.

The court should provide (or otherwise make available) to the parties, all information necessary to appear via videoconference. The court can provide the video conference

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<sup>3</sup> An example of this type of service is DocuSign ([www.DocuSign.com](http://www.DocuSign.com)).

hearing information to parties in the following ways:

- a. The court may post instructions and session links on its website<sup>4</sup>.
- b. The court may issue an order allowing or directing appearances via videoconference.<sup>5</sup> Such order may contain the necessary information to appear via videoconference.
- c. Court staff may phone the parties in advance and obtain the e-mail address to which the meeting code/invitation and any password can be sent.
- d. If the party does not have e-mail or the ability to join by video, court staff may provide the telephone number to join the meeting and the meeting code so that they can participate via phone.
- e. The court may design a new document that lists the court proceeding, court date, time of hearing, and the video conference meeting ID.
- f. The court may utilize more than one of these options.

Courts should post their daily dockets (on the court's website, if available) and indicate on the docket which hearings are being held virtually. Instructions on how to access virtual hearings should also be provided. Dockets should provide easily locatable information to access to the court's calendar on its website and/or links to live streams of its hearings.

### 3. **Exhibits**

#### **Standard**

The court must make necessary arrangements for the parties to offer physical, documentary and intangible evidence. This includes methods to: (1) allow the parties to submit their evidence to the court; (2) make the proffered evidence available to the opposing party to inspect the evidence; and (3) allow the opposing party the ability to object to the proffered evidence.

#### **Suggested Guidelines**

Materials that are intended to be used as evidence at or during a hearing should not be filed with the court.

Proposed exhibits should be submitted in advance of the hearing for introduction into evidence as exhibits and for all parties and necessary witnesses to view and examine.

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<sup>4</sup> There are potential problems with posting the meeting identifiers in a public place. People may appear at the proceedings with the intent to disrupt the proceedings. This can be minimized by using restrictive settings (including chat, screen sharing and audio muting) with the videoconferencing service and by removing disruptive persons from the sessions. Please see discussion below and Footnote 6.

<sup>5</sup> See Exhibit B (Forms)

Courts can allow exhibits to be numbered and submitted to the court so they can be marked and logged before the hearing.

At the most basic, the court may require the parties, prior to the hearing, to: (1) mark and submit all expected exhibit(s) to the court; and (2) provide duplicates of the marked exhibits to opposing counsel.

Submission of exhibits may also be made via electronic means. Such means can include email to a designated email account. Other available technologies to submit exhibits include Dropbox or Box. If using one of these technologies, the court may, during the proceedings, share the screen with the attorneys or parties, as the case may be, to allow them to offer, inspect and/or object to the exhibit. Alternatively, the court may open the document and share its screen with the parties. After appropriate consideration, the exhibit may be admitted as a part of the record.

#### **4. Setting up the Proceedings**

##### **Standard**

The court must ensure the technology used for teleconferencing hearings is properly set up to allow the court to properly conduct the hearing, and also allow the public and the press the ability to observe the hearing. This includes providing the appropriate identifying information to the participants.

##### **Suggested Guidelines**

The hearing sessions should be set up by the court. This allows the court to ensure the information necessary to access the hearing is provided to the participants.

There are two (2) commonly available procedures used to set up the hearing sessions and there are benefits and drawbacks to each:

- (a) Publicly posting the information necessary to fully participate in the hearing. One way this can be accomplished is posting the hearing information on the court's website allowing the parties to click on the link to attend. This method risks exposing the court proceedings to potential hacking or disruption (e.g., "zoom bombing"). This risk can be mitigated depending on the settings used.<sup>6</sup> This method, however, is very simple to set up and maintain and does not require much additional effort by the court leading up to the proceeding. Both participants and observers are admitted into the proceeding and no separate streaming of the proceeding is generally necessary to allow public viewing. In some circumstances,

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<sup>6</sup> Possible setting options to reduce this risk are discussed later, under security concerns.

such as particularly controverted or high-profile cases, demand for public viewing may exceed the number of participants that the video conferencing service may allow. In such cases, the court should consider live-streaming the proceedings.

- (b) Keeping access to the hearing limited and streaming the hearing live. This method avoids disruption of the hearing by keeping the virtual courtroom secure by not providing the information necessary to participate in the hearing this information to the public or press. In this scenario, participants (e.g., litigants, witnesses and/or attorneys) appear by invitation only and are the only individuals allowed to participate in the virtual hearing. The court, however, should consider establishing a live stream to allow the public to view the proceedings. This method requires more coordination between the court and the participants to ensure that each participant has the accurate information for the session. There is also a potential issue with witnesses subject to the Exclusionary Rule having access to the video stream-

## **5. Party's Notification of Intention to Appear Virtually**

### **Standard**

Depending on how the court sets up virtual hearings, the court needs to know who will be appearing in order to build its calendar and provide the appropriate links or invitations to the correct persons and, depending on the proceeding, to provide the court with documentation for the judge's review at the proceeding.

### **Suggested Guidelines**

In order to help the court staff to build the proceeding calendar (particularly for traffic and similar arraignments), it is beneficial to have the participants notify the court prior to the session of their intention to appear<sup>7</sup>. Identifying information such as name, citation or case number, addresses, phone and email may be desired by the court and collected as well as a copy of the party's ID (driver's license or other) and any documents that they would like the court to be able to consider at the proceeding (such as a current driver's license, proof of insurance and/or registration) should be provided in adequate time for the information and documentation to be entered into the court's case management system to be made available for the judge at the proceeding.

Certain courts may require additional documentation from defendants which may be ordinarily submitted to the court during the proceeding to, instead, be executed and

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<sup>7</sup> Again, the timing here may vary depending on the court and nature of the proceeding.

submitted in advance and made a part of the file. The court may, of course, disregard unnecessarily submitted documentation.

## **B. Conducting the Virtual Hearing**

### **1. Logging In to the Hearing**

#### **Standard**

The court must be able to sufficiently authenticate the identity of the participants (i.e., identify and confirm the individuals participating the hearing are who they purport to be). The court must also ensure the participants are properly participating in the hearing.

#### **Suggested Guidelines**

When the participants log in, the court should utilize and display on the image of the individual those identifiers which are necessary to identify the party (e.g., their legal name.) Other personal identifiers (e.g., social security numbers, dates of birth, etc.) which might allow for identity theft should not be displayed.

A member of the court staff should review the identity of all participants to ensure that the appropriate identifiers are presented or withheld, as the case may be. Instructions on how the participants properly identify themselves should be provided to the participants either directly (perhaps using the email invitation) and/or on or through the court's website.

When hosting hearings, the court may enable a "Waiting Room" function if included in the video conference service provider's product. The "Waiting Room" allows the host to filter participants prior to admission into the virtual courtroom session, by controlling who is admitted to the hearing and preventing participation by individuals who have no reason to address the court or other parties. This allows the court to keep the courtroom secure while still allowing the public to view proceedings via an outside streaming service.<sup>8</sup>

### **2. Consent to Virtual Hearing**

#### **Standard**

The court should ensure the parties to the virtual hearing have consented to conducting the hearing virtually. All procedures associated with remote hearings must be consistent with a party's constitutional rights.

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<sup>8</sup> See, however, Section A(4), above, discussing potential issues with violations of the Exclusionary Rule.

### **Suggested Guidelines**

Prior to the hearing, the court, may wish to issue an order including a deadline for the parties to object to a virtual hearing. This deadline can be included in an order setting the virtual hearing and/or the order providing the information necessary to attend the virtual hearing.

At the start of the hearing, the court should address on the record that the parties are waiving any right they may have to be present in the courtroom for the proceeding. In addition, if there is a victim involved, the court must ensure that the victim's right to be present is addressed on the record.

At the start of each hearing, the court should verify with each participant that they are able to proceed and are aware of the procedure for participation, including the time and method of participating.

Criminal defendants have a right to be present (personally or by video) for each critical stage of a criminal proceeding. A defendant has the right to be physically present at trial but may waive the right and appear by video. Victims have a constitutional and statutory right to be present.<sup>9</sup>

If a party objects to a virtual hearing, the court may continue the matter to a later date, when personal appearances can be had.

In certain limited cases it may be necessary to conduct a videoconference hearing without the consent of the parties. If such action becomes necessary, the court should make detailed findings explaining the necessity of conducting the virtual hearings and explain why alternatives (e.g. postponement) is not feasible.

Even when the court is legally permitted to conduct a hearing virtually without the consent of a party, the court may wish to seek consent.

### **3. Making the Record**

#### **Standard**

Proceedings conducted via videoconferencing technology must be recorded by the court, except for those hearings not required to be recorded.<sup>10</sup> The required recording must be sufficient to produce a verbatim written transcript as if the hearing were held in person in the courtroom.

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<sup>9</sup> See Article 1, Section 8A of the Nevada Constitution (e.g., “Marsy’s Law”).

<sup>10</sup> NRS 4.390 *et seq.*



For purposes of generating a transcript, courts may use the recording of a remote proceeding generated using a remote meeting service provider. NRS 4.390 *et seq.* authorizes courts to use audio and video recording equipment for making a record of court proceedings. The recording created is used to produce a transcript.

### **Suggested Guidelines**

#### a. Recording the Hearing

When conducting a virtual hearing, it is recommended the videoconferencing system feed directly into the court's recording system.

Some vendors may also create an audio transcript or create a log for use in further transcription. Such a transcript is likely to be created automatically by a speech recognition algorithm and may not be accurate.

Where a direct feed into the recording system is not possible due to equipment limitations, a microphone should be placed near the speaker.

Alternatively, courts using JAVS (or other similar recording system) may be able purchase software<sup>11</sup> to record virtual hearings. Some versions of this software allow operators to listen to monitoring streams and make time-stamped notes, either manually or through quick keys. courts using other digital recording systems are encouraged to explore similar options for those programs.

Alternatively, the court may engage a stenographer (court reporter) who may be invited to attend the proceeding as a participant to make a transcribed record of the proceedings. Courts using a court reporter to stenographically record the proceedings will not need to separately record the virtual proceedings because the court reporter's recording and notes are the official recording from which the transcript is prepared. The court reporter recording a proceeding continues to have the same ability and responsibilities to interrupt and clarify as if all participants were physically present in a courtroom.

The court should monitor the hearing to ensure the sound is functioning, speaking is clearly heard, and the video is recording to ensure the record is captured appropriately and thoroughly for future transcription. Judges may wish to assign staff to host or co-host each hearing to facilitate this responsibility.

An additional option to record the proceedings is to utilize the recording function built-in to some of the videoconferencing systems. If the court wishes to do so, it is recommended that the recording be stored on a local system which is backed up

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<sup>11</sup> An example of such software is Notewise.

frequently. It may be possible to map a drive to the court's server and to have those files backed up in the ordinary course.

b. Calling the Case

To assist in complying with logging standards, when calling the case the judge should establish and adhere to certain verbal practices including:

1. Stating the case number and title;
2. Indicating the start and end time of the hearing;
3. Requiring each participant to state and spell their name;
4. Reminding all participants to speak slowly, clearly, and one at a time.

c. Using the "Chat Feature"

Certain video conferencing services have a private messaging "chat" feature that may be used to create the log. Depending on the videoconferencing service, the court, through the host (or co-host), can allow the host and participants to "chat" with everyone, with only the host, with everyone publicly or privately, or with no one. The chat function allows participants to type text (comments) during the proceeding. It is up to the court to allow or limit the function. For example, a private chat between an attorney and client may be desirable; however, a chat between the court and one attorney could allow for ex parte communication or comments to be made that are not included in the official record. If a court elects to enable the chat feature, public chats (not private chats) may be saved.

It is important to remember that different videoconference vendors' programs may operate differently and any content created using the "chat feature" may not be saved along with the recording. The chat file may include a time-stamped log of the chat messages, showing who the message was from and the time it was sent.

Assuming the program does record content created in the "chat feature," the person in charge of recording may create the log by typing notes into the "chat" feature including the name of the court, name of the judge, case number, case name, parties present, witnesses called, and any other essential notations during the hearing. When a transcriber is producing a transcript from one of these recordings, looking at the play timeline at the bottom of the screen will allow him or her to obtain the time of any witnesses speaking and assist in the production of an accurate transcript.

Judges should use caution when using the chat feature to ensure there is no ex parte communication between the judge and one party.

d. Using the Video

There are commonly two methods to watch the video feed: “gallery” view and “speaker” view. Different vendors may use different terms to describe these options. The “gallery” view allows the court to observe multiple participants at once, albeit in smaller size. The “speaker” view provides a larger image, but only of the participant the software identifies as the speaking participant.

The court should use the “gallery” view of participants, if available. The “gallery” is preferable to the “speaker” view, because when multiple people talk at once, the software may have difficulty determining which participant is speaking. Using the “gallery” view will prevent the program from doing so, and will allow the court to see all of the participants and the court reporter/recorder to know who was speaking.

e. Managing the Speaking Participants

The court must be vigilant in ensuring quality recording so an accurate transcript can be prepared. There is often a slight time delay when participating via telephone or videoconferencing. This delay can be up to a few seconds. Thus, the parties may be more likely to overlap when talking. The court should frequently remind parties to talk slowly and to not interrupt. If overlap occurs, the court should ask parties to repeat what they said and encourage parties to only speak when they have been prompted to do so, unless there is an objection or some other reason to speak out of turn. At a minimum, parties appearing telephonically should be instructed to identify themselves each time they speak.

f. Attorney-Client Communications

Many video videoconferencing services giving the host the ability to create “breakout rooms” accessible only to designated participants. These “breakout rooms” can be set up for use for private attorney-client communications. The court should ensure the “breakout rooms” used for such attorney-client communications are not recorded. When finished with their communication, the attorney and the client may then rejoin the main meeting.

g. Order and Decorum

The judge is responsible for maintaining order and decorum just as he or she does in the physical courtroom.

1. General Considerations: Reminding the attendees the court expects a certain level of decorum and professionalism will solve many issues before they occur. At a minimum, the court should consider reminding the attendees of the following:
  - a. The proceeding is live. Anything said during the proceeding may be overheard by all of those observing.
  - b. The proceedings are being recorded. Everything said will be captured and made part of the record just as in a physical courtroom.
  - c. Courtroom decorum rules still apply. Those participating should continue to operate as if they were inside the courthouse. Standards, including decorum, demeanor, and dress code, still apply.
  - d. All participants (including court staff) participating in virtual proceedings should have a professional background. courts are encouraged to use pictures of their courtroom as the background.
  
2. Muting: Videoconferencing services include a number of features allowing the host to control who may enter a virtual hearing and who may speak during it. The host of the proceeding typically has the ability to mute or unmute all participants in the virtual courtroom. Some of the videoconferencing services allow the designation of a co-host; judges can be the host and a staff member, either a clerk or recorder/operator, can be the co-host and manage participants. The host can also engage a feature to mute participants upon entry into the virtual courtroom. Judges should advise participants they are using such feature. If the court elects to mute participants or attorneys, the court must be vigilant to ensure such muting does not prevent the party or attorney from making objections or otherwise participating. Many services offer a “hand raising” feature, which notifies the host (i.e. the court) of the individual’s desire to speak. The individual may “click” or activate the “raise hand” feature, which will notify the court and the court may then unmute the individual.
  
3. Disruptive Participants: Most videoconferencing services allow a host to remove a participant if needed. If the court is using the “waiting room” feature, a participant can frequently be returned to the “waiting room.” The removed participant cannot rejoin the meeting on their own and can only be readmitted by the court host. Alternatively, the court may disable the video and mute the microphone of the offending participant. The court should be

aware excluding an individual from a virtual hearing may be viewed equally as seriously as excluding an individual from an in person hearing and will likely be reviewed under the same standards. Before excluding an individual, the court should warn the person such behavior is inappropriate and continued behavior will result in exclusion from the hearing. The court should also make a clear record what constituted the offending behavior.

h. Other Useful Features

1. *Play Sound when a Participant Enters or Leaves a Meeting:*  
Depending on the videoconferencing service, the court may be able to configure settings to play a sound when someone enters or leaves a proceeding. This will help the court and the recorders and operators track the participants in the hearing.
2. *Limiting Accessibility:* In some circumstances it may be necessary to discuss matters with only some participants (e.g. the court may need to speak to attorneys without a witness hearing; or the court may need to address a matter with only court staff). Some videoconferencing services allow the host to temporarily remove a participant from the virtual courtroom, while the rest of the participants continue the meeting. When the participant(s) are put on hold, their video and audio connections will be disabled.

C. Public and Press Access

Standard

Access to proceedings must be provided to the public either during the proceeding or immediately after via access to a video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule.

Suggested Guidelines

The court may choose to create a live streaming account<sup>12</sup>. Information about public availability of court proceedings via live streaming must be accessible to the public and the Press. This can be accomplished by any or all of the following methods: (1) press release; (2) standing order posted at the court; (3) posting the information on the court's website; or (4) another method to effectively communicate access to court proceedings.

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<sup>12</sup> YouTube ([www.youtube.com](http://www.youtube.com)) is often chosen for this purpose.

Alternatively, as discussed above, although more vulnerable to security issues, the court may post links directly on its website (or otherwise) providing a link to the proceeding itself. It is possible, depending on the service subscription, to have issues with allowing sufficient persons to view the proceedings

## **D. Preserving the Record**

### **Standard**

The court must ensure the record of a virtual hearing is preserved in, at least, the same manner as the record of any other hearing.

### **Suggested Guidelines**

Most vendors will provide a method to record and store an audiovisual recording of the proceeding. It is advisable, in any case, to make backup recordings and store the backups in a secure location. Many services offer some limited cloud recording and storage.

If feasible, it is recommended, in addition to the service provided storage, the court also utilize its own audiovisual recording system to record the proceeding (e.g. if the court usually utilizes JAVS (or other audiovisual recording system), the court should continue to utilize JAVS, but also retain the vendor's recording, as a backup).

Depending on the videoconferencing service, the proceeding recording may be stored in the cloud or on a local computer. It is advisable, in any case, for backup recordings to be made and stored in a secure location. Many services offer some limited cloud recording and storage. If feasible, it is also recommended, in addition to the service provided storage, the court also utilize its own audiovisual recording system to record the proceeding.

Before conducting too many virtual hearings, it is advisable for the court to consult with the person/people who transcribe the court's hearing, to ensure the virtual hearings do not create excessive difficulty for the transcriptionist.

## **E. After the Hearing**

### **Standard**

After the hearing, parties may need to interact with court clerks for various reasons (e.g. sentencing documentation, additional hearing settings, etc.). Such access should be provided with access as soon as possible post-hearing (and preferably as an adjunct part of the hearing) to avoid potential future communication issues.

### **Suggested Guidelines**

It is recommended allowing parties access to court clerks in a virtual setting adjunct to the hearing. The court should provide the parties with the information necessary to access the virtual meeting at the end of the hearing session.

A perhaps preferable alternative would be to have the court clerk waiting in a breakout room for the parties to provide the post hearing de-brief.

## **F. Security Concerns**

### **Standard**

Security incidents are reported to have occurred nationwide involving the use of video and teleconferencing platforms<sup>13</sup>. The court should take steps to minimize the risk of hacking or disruption.

### **Suggested Guidelines**

The following steps may be used to help lessen the risk of hacking, disruption or hijacking of court proceedings:

1. Do not make meetings open to the public. If available, use the “waiting room” feature and control the admittance of guests.
2. For a separate private meeting, use the scheduling options to create a meeting for a specific time, and with a unique Meeting ID that is shared only with the invited participants.
3. Do not share any Meeting ID on an unrestricted, publicly available social media post. Only provide the Meeting ID and password(s) directly to specific litigants.
4. Manage screen sharing options by limiting screen sharing to “Host Only.”

## **G. Troubleshooting**

### **Troubleshoot an Audio Echo in a Meeting**

There are three common causes of an audio echo, or feedback, during a video conference meeting:

1. The participant called in by phone and is using his or her computer’s audio at the same time;

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<sup>13</sup> Federal, State, and Local Law Enforcement Warn Against Teleconferencing Hacking During Coronavirus Pandemic

2. There are participants with computer or telephone speakers that are too close together; or
3. There are multiple computers with active audio in the same conference room.

In each instance, the feedback can normally be eliminated if there is only one audio source.

## **F. Conclusions and Informal Tips**

We acknowledge that we were driven to create these guidelines in the midst of an unfortunate circumstance (i.e., COVID-19 pandemic of 2020) which created a need to consider modification of our processes and procedures from our norm. Virtual courts offer one potential way for the courts to be able to continue to provide services to the public is through the use of the virtual proceedings described above. Admittedly, this is less than ideal and may simply be an undesirable or unsuitable process for some courts and judges. Others may find this technology and procedures appropriate for certain of their proceedings but not for others. Still other courts may find that they can use the technology for most, if not all, of their proceedings. Each court, and indeed each judge, is different and may have different preferences, ideas, skills and aptitudes making the adoption of these guidelines a strictly personal decision. As long the court remains committed to the high calling of serving and protecting the public's constitutional rights, judges are discharging their duties.

For courts adopting some form of virtual court proceedings, please make every effort to be patient with staff, parties, witnesses and yourself. Remember how it took time to get comfortable being on the bench, in a physical courtroom; in the same way, it will take time and practice to become comfortable in a virtual court setting.

Even though it is easy to develop an informality working in this way, it is important that the public, attorneys and the judge remember a virtual hearing is still a court proceeding and important work is being done. Try to be as formal as you normally on when on the bench with a courtroom full of people. Take control of your virtual courtroom as you do your physical courtroom.



Exhibit A - Appendix 1  
Zoom

Due to the ongoing updates and changes, please see the current information on our website, [www.njlj.org](http://www.njlj.org).

Exhibit A - Appendix 2  
GoToMeeting

Due to the ongoing updates and changes, please see the current information on our website, [www.njlj.org](http://www.njlj.org).

Exhibit A - Appendix 3  
BlueJeans

Due to the ongoing updates and changes, please see the current information on our website, [www.njlj.org](http://www.njlj.org).

Exhibit A - Appendix 4  
WebEx

Due to the ongoing updates and changes, please see the current information on our website, [www.njlj.org](http://www.njlj.org).

## Exhibit B

### Sample Forms

Due to the ongoing updates and changes, please see the current information on our website, [www.njlj.org](http://www.njlj.org).

## Exhibit C

### Limited Selection of Legal Authority to Justify Virtual Hearings

“[T]he Constitution... is not a suicide pact.” *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160, 83 S. Ct. 554, 563 (1963). Circumstances can exist to justify allowing witnesses to testify at trial, from behind a screen or via closed circuit television, without violating the confrontation clause. *See e.g. Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157 (1990); *Coy v. Iowa*, 487 U.S. 1012, 108 S.Ct. 2798 (1988).

The confrontation clause protects a defendant’s right to confront witnesses at trial, but not at other hearings. *See e.g. State v. Zamzow*, 374 Wis.2d 220, 892 N.W.2d 637 (2017); *Peterson v. California*, 604 F.3d 1166 (9<sup>th</sup> Cir. 2010); *State v. Lopez*, 314 P.3d. 236 (N.M. 2013). Indeed, even in Nevada, hearsay is admissible in certain cases. NRS 171.196(6). The right to confrontation “has never been held to be absolute.” *People v. Gonzales*, 54 Cal. 4th 1234, 1266, 144 Cal. Rptr. 3d 757, 791, 281 P.3d 834, 863 (2012).

Nevada law favors appearance by telephonic means. SCR Part IX-A(A) R.2. Indeed, Nevada law permits appearances in criminal cases via telephone “in all criminal proceedings and hearings except trial” for a “party or witness.” SCR Part IX-A(A) R.4(1). The court is empowered to permit such telephonic appearances even at a trial. SCR Part IX-A(A) R.4(2); SCR Part IX-A(A) R.4(3). Similarly, the court is empowered to permit a witness to appear via audiovisual transmission equipment in criminal proceedings. SCR Part IX-A(B) R.4.