

A Virtual Step Forward: Remote Court Hearings in Response to the COVID-19 Pandemic

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“To the extent possible, we should be seeing the court as a service and not a location.” – Arizona COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup (the Plan B Workgroup) Survey Respondent

Back in March 2020, Arizona Supreme Court Chief Justice Robert Brutinel was adamant that Arizona’s courts remain open for business. Governor Doug Ducey had just issued a statewide stay-at-home order, affecting nearly every aspect of daily life: COVID-19 outbreaks were growing, local businesses were closing, schools were shutting down, and the courts were figuring out how to navigate a new world where litigants could still access justice without ever stepping inside a courtroom.

Implementing Virtual Court Hearings

For an institution built on precedent, the pandemic presented the Arizona Judicial Branch with an unprecedented problem: How do we keep court participants and staff safe when it was not safe to be in the same room? The solution was to hold hearings virtually.

Hearings are official court proceedings, traditionally held in a courtroom in front of a judge. In a typical court hearing, there may be dozens of people in the courtroom, including litigants, attorneys, victims, jurors, witnesses, and court staff. Among many other things, hearings can involve the status of a case, dispositive motions or impose a criminal sentence. Hearings are

held at a variety of times and for different case types: everything from divorces and adoptions to civil lawsuits, order of protection matters, and criminal prosecutions.

When the pandemic hit, almost immediately, many Arizona judges transitioned from in-person hearings to remote audio and video platforms. The courts procured 200 Zoom licenses for use statewide, with another 90-plus licenses for Administrative Office of the Courts (AOC) employees. From May 2020 through August 2021, court employees held 19,621 Zoom meetings with 217,947 participants. By the time the AOC surveyed Arizona’s courts in May 2021, of 366 respondents, more than 90% had been part of a hearing using a technology-based platform.

GOAL 1

Promoting Access to Justice

The Arizona Judiciary leads the nation in identifying and implementing best practices to transform the judicial branch from a system designed for judges and lawyers to a system open (and understandable) to all participants, regardless of their financial status, physical limitations, or ability to obtain legal representation. While the judicial branch has made significant improvements in promoting access to our courts, more is needed to ensure equal access to justice for all Arizonans.

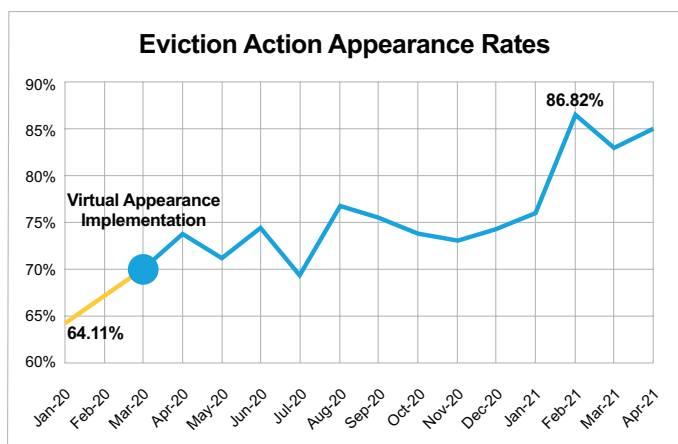
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(2019-2024)**

Benefits to Remote Participation

“[Remote hearings] save litigants missing important work and missing school, and allow more litigants to appear who otherwise might not ... given limited transportation and other barriers. If we want to make the court accessible to everyone, permitting a great deal more remote hearings will allow that for the reasons above and will greatly benefit the public who simply cannot take off work or miss school.”

– Plan B Workgroup Survey Respondent

The potential of technology to increase access to justice is profound. One data-based example is appearance rates in eviction actions filed in the 26 Maricopa County Justice Courts. Before the pandemic, the defendant typically failed to appear for their court date at least a third of the time. In 2019, the failure to appear rate in such cases ranged from one-third to approaching 40%. After implementing remote appearance options as a result of COVID-19 in mid-March 2020, failure to appear rates decreased significantly, to as low as about 13% in February 2021. The change in appearance rates is shown below:



The number of eviction cases filed dropped significantly during this period, from about 6,000 filings in July 2019 to less than 1,500 in May 2020. However, the appearance rate climb remains a powerful example of how changes caused by the pandemic increased access to justice and have the potential to continue to do so in the future.

“Litigants like [being able to appear remotely] because it reduces cost for travel time and time off work. Attorneys like it because it reduces the problems associated with having to be in multiple courts on any given morning.” – Plan B Workgroup Survey Respondent

Data and court participant survey responses suggest the power and convenience that using technology to allow individuals to appear in court hearings may have

post-pandemic. When asked in May 2021, based on their experience, how the ability of parties to appear using technology-based platforms changed appearance rates, more than 40% of respondents said it increased appearance rates, with 25% saying there was no change. Only 7% said that expanded use of technology decreased appearance rates, with the remainder unsure.

Challenges – The Digital Divide

Allowing remote appearances solved many COVID-related public health concerns, but it also came with challenges.

Arizona’s court system consists of 150 courts across the state, with each court operating slightly differently; the landscape is as diverse technologically as it is geographically. For example, while broadband coverage is widespread in Maricopa County, rural courtrooms and participants may lack access to Wi-Fi for video platforms, or spotty cell coverage needed for teleconferences.

Beyond these limits, some court participants lack access to digital devices, while others are not technologically savvy or have limits on the ability to properly use technology. Transitioning to a remote environment also raised issues with how best to provide remote interpretation services and ensure compliance with various requirements, including the Americans with Disabilities Act.

With significant emphasis on employing and expanding technology, it is recommended that courts remain mindful of the digital divide (the gap between those who have ready access to technology and the internet and those who do not) and actively seek opportunities to bridge this gap. Courts also should continue to consider the limitations of their users to better assist those needing accurate and timely information about a pending case.

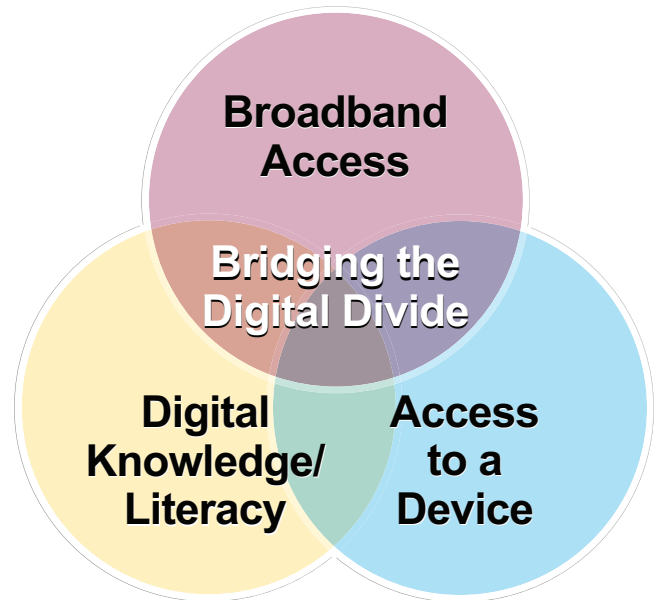
Looking Forward

“We cannot and should not bring back hearings to in-person just because that’s always how we’ve done things.” – Plan B Workgroup Survey Respondent

While many challenges specific to the pandemic will subside, courts should retain the sense of urgency and momentum that prompted changed during COVID to continue mitigating access to justice impediments. Allowing parties to appear through virtual platforms has significantly increased appearance rates. This practice should continue, where appropriate, post-pandemic, albeit with constant appreciation for and efforts to bridge the digital divide. Courts should continue education (both internally and for the public) and public outreach through non-traditional means, such as virtual workshops, online trainings, and on-demand videos and interviews.

Courts should continue to build on the success of remote hearing options to increase participation, including to:

- Explore the continued use and expansion of technology to remotely conduct court hearings that previously would have been held in person, including the use of video conferencing services for court hearings, meetings, and educational programs.
- Examine options for remote interpreter services through the expansion of technology, while ensuring that critical services provided in English are also provided to Limited English Proficient participants.
- Explore livestreaming functionality of these platforms, which can be used for public viewing of court hearings.



Courts should continue to account for and actively pursue opportunities to minimize the digital divide, including:

- **Broadband Access**

- Courts should explore opportunities to provide public Wi-Fi access within or near court facilities, or other public facilities such as libraries.
- Courts should explore providing reimbursement for data plans for use by prospective jurors who otherwise would be unable to participate remotely in jury selection.
- Courts should explore and promote public-private partnerships or programs that offer reduced or no-cost internet access to eligible users.

- **Access to a Device**

- Courts should seek opportunities to expand onsite access to computers or other devices to court users, including self-service kiosks in courthouses and surrounding community locations.

- Courts should explore local or public-private programs that provide broadband-enabled devices to court participants as well as provide on-site remote appearance rooms for the public who would not otherwise have access to technology.
- Courts should ensure that court websites and electronic forms are mobile device friendly and easily usable by the public.

- **Digital Knowledge / Literacy**

- Courts should create simple plain-language guides, in English and Spanish, providing easy-to-follow instructions for all applications and platforms.
- Courts should host or partner with community-based agencies to provide technological awareness and training offerings.
- Courts should provide easy-to-use alternatives to digital platforms, e.g., depository boxes, off-site cash payment systems, etc.



Along with serving as co-chair of the Plan B Workgroup, Judge Thumma served as a Superior Court judge from 2007-2012 before being appointed to the Arizona Court of Appeals, where he has served as the chief judge. He chairs the American Bar Association’s Judicial Division Appellate Judges Conference; is a Uniform Law Commissioner, where he chairs the Drafting Committee on Updating the Uniform Determination of Death Act; and is an advisor to the American Law Institute’s *RESTATEMENT OF THE LAW (THIRD) OF TORTS: REMEDIES*. He chairs the Arizona Commission on Access to Justice and is co-editor of the *ARIZONA APPELLATE HANDBOOK*. He was named 2021 Judge of the Year by the Arizona Supreme Court.

Data and recommendations excerpted from “Post-Pandemic Recommendations,” COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup, Arizona Supreme Court, June 2, 2021. Available at <https://www.azcourts.gov/Portals/216/Pandemic/2021/Post-PandemicRecommendations.pdf?ver=2021-06-08-192520-583>.