



Serving Court Customers

New Approaches
for New Generations

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Introduction

Every day state courts provide access to justice for millions of people. In March 2020, when the pandemic began its spread across the globe, court leaders could choose either to limit or close access to the courts, or they could keep courts functioning through innovative mitigation strategies designed to protect public health and preserve access to justice. At the same time, courts already knew that our approach to the work of delivering justice needed change in order to adapt to the attributes shared by the generations we serve today and into the future. Court systems in every state and territory implemented extraordinary innovations in a fraction of the time they would have taken pre-pandemic, resulting in sweeping changes to court proceedings and operations. These changes increased access to justice. As we look forward to the end of the pandemic, courts must take stock of the gains achieved and plan how to institutionalize the many improvements in serving today's court customers. The Conference of State Court Administrators (COSCA) believes that making pandemic era successes permanent is essential to bolster public trust and confidence in the courts among current and future court customers.



Courts Must Provide Justice by Means that Work for Customers who Function in the Digital Age

While many state court systems have embraced diversity, expanded access to justice initiatives, and implemented drug treatment courts and other collaborative justice initiatives, prior to the pandemic, courts nonetheless have historically been “late to the harvest of American ingenuity,” failing to meet user needs and expectations.¹ This has been particularly true with respect to Millennials and Generation Z, who unlike their predecessors came of age in an “e-everything” world and likely do not remember a world without smartphones and the Internet. By contrast, Baby Boomers who are now between the ages of 55 and 75,² became adults before the time of the Internet and smartphones.

Courts cannot abandon the analog expectations of many Boomers, but we must be dedicated to meeting the ways the following generations interact with the world, including with courts. The digital transformation was part of the early life experiences of Generation X (GenX), the relatively small group (65.2 million in 2019) sandwiched between the giant cohorts of the Baby Boomers and Millennials, who became adults with cell phones and digital technology in their work and home lives.³ Millennials born between 1981

and 2000, who will constitute 75% of the workforce by 2025, are the most prevalent court customers of today and the future. Those in GenX and Millennials are the most prevalent court customers today. They do not inhabit an analog world and neither do most of the judges and staff working in the judicial system.

Winston Churchill is credited with saying “[n]ever let a good crisis go to waste” as World War II was ending and the United Nations was being formed. As courts continue to respond to the global pandemic, looking for a silver lining during a crisis and seeking opportunities where they might not have been before is salient. Coincident with the pandemic it must be recognized that customer expectations have changed in the twenty-first century regarding how large sectors of the population seek to interact with those providing services and information. Approaching customer service in the courts and improving public trust and confidence is more likely to be successful if the courts meet the expectations of customers today and in the future.

Customers of all ages use technology to access goods and services in many aspects of their lives. This

¹ Chief Justice John G. Roberts, *2014 Year-End Report the Federal Judiciary*, United States Supreme Court (December 31, 2014), accessed at <https://www.supremecourt.gov/publicinfo/year-end/2014year-endreport.pdf>

² *Generational Differences in the Workplace*, Purdue University global Inc. (2020) accessed at <https://www.purdueglobal.edu/education-partnerships/generational-workforce-rences-infographic/>

³ *Ibid.*



includes owning smartphones⁴ and tablets,⁵ accessing the internet,⁶ and using social media.⁷ Some minority populations only access the Internet by smartphones.⁸ In April 2019, the Pew Research Center reported extensive use of social media by adult Americans. The report found that 73% of adults used YouTube, 69% Facebook, 37% Instagram, 28% Pinterest, 27% LinkedIn, 24% Snapchat, 22% Twitter, 20% WhatsApp and 11% Reddit.⁹ However, courts have been slow to shift to modern communication methods to reach today's customers.¹⁰

Before the pandemic, in-person appearance at court dockets packed with litigants appearing for a single

appearance time was the norm, filing paper documents and mailing paper notices and orders to litigants was routine, wet signatures and notarized documents were required, and expensive newspaper publication for legal notices were mandated by statute or rule. The pandemic made all of these impractical, and courts migrated away from them through emergency order or amendments to rules or statutes. The temporary shifts made to accommodate court users during the pandemic reflect how court customers expect to interact with courts, regardless of a public health emergency.

⁴ In GenZ (teenagers to early twenties), 95% own a smartphone on which they spend an average of 4 hours and 15 minutes daily; 64% say they are constantly connected online, and 57% admit they feel insecure without their mobile phone. (Anne Freer, *A Look at Gen Z Mobile Behaviors – 64% of Mobile Users are Always Connected*, Business of Apps (June 19, 2019) accessed at <https://www.businessofapps.com/news/a-look-at-gen-z-mobile-behaviours-64-of-mobile-users-are-always-connected/#:~:text=Gen%20Z%20spend%20an%20average,compared%20to%2074%25%20of%20millennials.&text=Compared%20to%202015%2C%20Gen%20Z,more%20on%20their%20mobile%20devices.>) Of Millennials who will turn 25 to 40 years old in 2021, 93% own smartphones, compared with 90% of GenX, 68% of Boomers, and 40% of Silents. (Emily A. Vogels, *Millennials stand out for their technology use, but older generations also embrace digital life*, Pew Research Center (September 9, 2019), page 1, accessed at <https://www.pewresearch.org/fact-tank/2019/09/09/us-generations-technology-use/>).

⁵ Ownership of computer tablets is reported by 55% of GenX, 53% of Millennials, 52% of Boomers, and 33% of Silents. (Vogels at 2).

⁶ Almost 100% of Millennials report using the Internet, which 19% of them access exclusively through a smartphone as do 17% of GenX, 11% of Boomers, and 15% of Silents. (Id. at 3).

⁷ The great majority of Millennials (86%) use social media, as do most GenX (76%), Boomers (59%), and even many Silents (28%). (Id. at 2).

⁸ Across generations, “25% of Hispanics and 23% of Blacks are ‘smartphone only’ internet users.” (Andrew Perrin and Erica Turner, *Smartphones help Blacks, Hispanics bridge some - but not all – digital gaps with whites*, Pew Research Center (August 19, 2019), accessed at <https://www.pewresearch.org/fact-tank/2019/08/20/smartphones-help-blacks-hispanics-bridge-some-but-not-all-digital-gaps-with-whites/>).

⁹ Andrew Perrin and Erica Turner, *Share of U.S. adults using social media, including Facebook, is mostly unchanged since 2018*, Pew research Center (April 10, 2019), accessed at <https://www.pewresearch.org/fact-tank/2019/04/10/share-of-u-s-adults-using-social-media-including-facebook-is-mostly-unchanged-since-2018/>

¹⁰ Conference of Court Public Information Officers, *2014 CCPIO New Media Survey*, (August 6, 2014), accessed at https://ccpio.org/wp-content/uploads/2014/08/CCPIO-New-Media-survey-report_2014.pdf.



The Virtues of Virtual Court Services and Court-Customer Communications

A gradual transition that maintains traditional court practices but increasingly meets the way Millennials and GenX engage in “normal” life will give the courts the best opportunity to interact meaningfully with the increasing numbers of customers from these generations.

Estimates show that nearly one percent of the population enter a courthouse in the United States every day.¹¹ With the advent of the public health emergency, court systems recognized the urgent need to minimize the number of people who physically entered the courthouse in an effort to reduce the spread of the virus. While few court systems had offered or were moving toward remote services before the pandemic, seemingly overnight use of video platforms such as Zoom, Teams, and WebEx became the norm for meetings and court proceedings. Courts purchased licenses for judges and staff, stood up internal policies, created usage directions for court staff and the public, and published online directories for public viewing of court proceedings.

Many in the courts doubted that they would be able to successfully dispense justice online. Experience proved the skeptics were wrong. While some courts experienced more difficult initial transitions than others, many of the fears used to caution against extensive use of technology did not materialize.

Judges adapted, often more quickly than they thought. Attorneys and litigants realized time savings and productivity gains, no longer needing to spend significant time traveling to the courthouse or waiting in courtrooms for routine hearings and conferences.

Virtual Hearings and Non-Jury Trials

More than 30 states suspended in-person proceedings for weeks or months after the pandemic hit in March 2020. New Jersey, Connecticut, Delaware, New Mexico, and Alaska mandated their use and states including New York, California, and Texas urged use of virtual proceedings while suspending conflicting court rules.¹²

In Texas, through September 2021 more than 2,000 judges had conducted more than 1.8 million virtual court hearings with over 6 million participants, logging more than 5 million hours since the beginning of the pandemic.¹³ In April 2021, judges and lawyers who are members of the Texas Supreme Court Remote Proceedings Task Force testified before Texas lawmakers that, during the pandemic, rules that would inhibit remote proceedings had been suspended but the change needed to be made permanent in order to achieve what Texas Chief Justice Nathan L. Hecht called a “new normal;” “We really are determined to

¹¹ Information provided by the Texas Office of Court Administration from data collected from trial courts.

¹² Matt Reynolds, “Courts attempt to balance innovation with access in remote proceedings,” ABA Journal online magazine (February 1, 2021), citing information from NCSC, accessed at <https://www.abajournal.com/magazine/article/courts-attempt-to-balance-innovation-with-access-in-remote-proceedings>

¹³ Information provided by the Texas Office of Court Administration



take what we learned in the pandemic and build on it.”¹⁴ Despite Texas’ efforts to resume some in-person proceedings, judges continue to hold almost ninety thousand virtual court hearings per month.

The Florida Supreme Court created the Virtual Courtroom Directory to find online virtual hearings and livestreams of trial and oral arguments statewide. According to Florida Supreme Court Chief Justice Charles Canady, “The Virtual Courtroom Directory offers safe access to proceedings statewide. People have a front-row seat into our courts from wherever they are, and they can see that justice continues even in challenging circumstances.” With more than 1,700 Zoom licenses, between March and December 2020, Florida courts held more than 200,000 virtual Zoom hearings and other events involving 2.6 million participants and expected, “largely through remote proceedings” to dispose of 2.8 million cases during fiscal year 2021.¹⁵

Some contend that virtual court hearings increase barriers to access to justice. Courts have found the opposite in most instances. Having parties and attorneys appear by video or phone¹⁶ is convenient and avoids many of the barriers that challenge people when coming to court in person; they do not need to find transportation or pay for parking, take time off of work or find childcare.¹⁷ For those who may not have devices or technology to participate in video hearings, the phone is an option for the great majority of people with access to a telephone.¹⁸ Also, attorneys are able to participate easily in hearings in multiple locations, essentially scheduling consecutive hearings that would otherwise be impossible if they needed to physically transport themselves between courthouses.

The Arizona Judicial Branch found that appearance rates through virtual court proceedings drastically improved, especially in case types with typically high default rates. A recent public opinion poll by the

¹⁴ Katie Buehler, “Texas Plans to Allow Remote Proceedings after Virus,” Law360 (April 15, 2021), accessed at <https://www.law360.com/articles/1374645/texas-plans-to-allow-remote-proceedings-after-virus>

¹⁵ The Virtual Courtroom Directory is found at <https://courtrooms.flcourts.org/>. Data as well as comments by Florida Chief Justice Canady are from the Court’s announcement, “Expanded Public Access to Florida’s Courts via the Virtual Courtroom Directory” published April 19, 2021, accessed at <https://www.floridasupremecourt.org/content/download/732616/file/04-19-2021-Virtual-Courtroom-Directory-Final.pdf>

¹⁶ Data from the Texas Judicial Branch shows that, of the over 6 million participants in virtual court hearings, almost 99 percent of those individuals have joined with audio and video.

¹⁷ NCSC’s 2021 State of the State Courts survey of public opinion finds that “a majority of respondents believe that courts should continue to hold hearings by video because it allows them to hear more cases and resolve cases more quickly, and it makes it easier for people to participate without having to travel to a courthouse, take time off work and find childcare.” The survey also finds “that large numbers of respondents indicate that barriers to getting to a physical courthouse exist, including a remarkable 49 percent who indicated that the distance they would need to travel to reach their courthouse would be a problem for them.” <https://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide/state-of-the-state-courts>

¹⁸ NCSC’s 2021 State of the State Courts survey found, “Overall, 88 percent of voters report having some form of internet service at their home, and 82 percent say they have high-speed broadband service – both small increases from a year ago. Additionally, 95 percent say they have a cell phone of some sort (unchanged from last year), and 88 percent say they have a smartphone that provides them with the ability to connect to the internet and perform critical tasks such as sending and receiving e-mails or reviewing documents sent to them. Only 3 percent say they have no internet service at home or on their phone.” https://www.ncsc.org/__data/assets/pdf_file/0021/70581/SoSC-Analysis-2021.pdf



Branch found strong public support (68 percent) for continuing the virtual services.¹⁹ The level of support did not vary significantly when comparing rural versus urban residents. While the level of support was greatest among younger court users, the oldest residents indicated strong support (over 60 percent) for virtual services.

Several state court systems have considered how to systemically incorporate virtual court proceedings post-pandemic. The Minnesota Judicial Council recently adopted a policy that requires certain proceedings to be presumptively held with remote participation. COSCA believes states should evaluate which proceedings should presumptively be held remotely and adopt rules to do so if possible.

Virtual Jury Selection and Trial

Remote jury trials are a new frontier opened up by the pandemic. Although during the pandemic many courts have conducted hearings and trials without a party and often without a judge or court employee in the courthouse, most have resisted remote jury trials. However, in Texas, as of October 2021, courts had

conducted more than 75 virtual jury trials with one significant impact of the virtual process being more potential jurors appearing for service, adjusting from a range of 25 to 30 percent for in-person service to 60 to 80 percent for virtual service.²⁰ These increases in jury participation have resulted in more diverse juries. In addition, notwithstanding the occasional Zoom appearance through a cat filter,²¹ the Texas courts reported that judges appear to find Zoom proceedings may provide an opportunity for better rulings, perhaps a more level playing field, and certainly better access to interpreters who are scarce in much of rural Texas but can now appear without time consuming and costly travel around the state.²²

The Supreme Court of Florida permits remote civil jury trials if all parties consent and remote criminal jury trials with consent under limited, specified circumstances.²³ Vermont recently authorized a pilot project for voluntary remote civil jury trials.²⁴ In general, even where courts have resisted the practice of remote jury trials, a more open response has developed regarding remote jury selection. The Florida Supreme Court order provides for remote juror disqualifications, excusals, and postponements.

¹⁹ Survey outcome data provided by the Administrative Office of the Courts Executive Office, December 3, 2021.

²⁰ Arya Sundaram, "How Texas Courts Went Virtual," Texas Observer (February 10, 2010), comments of David Slayton, Administrative Director for the Texas Office of Court Administration, accessed at <https://www.texasobserver.org/how-texas-courts-went-virtual/>

²¹ <https://www.youtube.com/watch?v=KxlPGPupdd8>

²² Arya Sundaram, "How Texas Courts Went Virtual," Texas Observer (February 10, 2010), comments of David Slayton, Administrative Director for the Texas Office of Court Administration, accessed at <https://www.texasobserver.org/how-texas-courts-went-virtual/>

²³ Florida Supreme Court Order AOSC20-23 Amendment 9, issued February 17, 2021, accessed at <https://www.floridasupremecourt.org/content/download/719444/file/AOSC20-23-Amendment-9.pdf>

²⁴ Vermont Supreme Court Administrative Order No. 52, *Pilot Project for Remote Civil Jury Trials*, issued August 3, 2021, accessed at <https://www.vermontjudiciary.org/sites/default/files/documents/PROMULGATED%20AO%2052%20-%20Pilot%20Project%20for%20Remote%20Civil%20Jury%20Trials.pdf>



The Illinois Supreme Court adopted Guidelines on Remote Jury Selection in Civil Trials with model rules and documents for the process.²⁵ The Circuit Court for Oregon’s Multnomah County (Portland) issued an order requiring jurors to appear remotely for jury selection in civil and criminal trials although the trials would be conducted in person.²⁶

The court orders authorizing remote jury selection and/or trials have recited the pandemic as an animating purpose for these novel practices. Their success argues strongly for broader adoption past the end of the pandemic. The NCSC State of the State Courts 2021 Poll²⁷ found that sixty percent of respondents indicated that they were definitely or would probably appear remotely for jury service if courts offered the service. While remote jury trials may be slower to become mainstream, COSCA believes that courts should consider the role that virtual jury selection may play in increasing juror participation and diversity, as well as providing a more efficient and convenient process for prospective jurors.

Online Dispute Resolution

Taking virtual hearings one step further into the virtual world is online dispute resolution (ODR).

As defined by the NCSC, ODR “is a public-facing digital space for parties to resolve their dispute or case. Court-implemented ODR is hosted or supported by the judicial branch and designed specifically to meet the needs of the public (not lawyers, judges, or court staff). ODR can include tools for gathering legal information, exploring options, and managing a case from start to finish without setting foot in a courthouse.”²⁸ Often the parties and court interact asynchronously. ODR can assist direct party-to-party negotiations, involve mediation support, automatically populate settlement agreement forms, and automatically transfer cases that do not resolve.

Many people expect to conduct their work life, social life and personal tasks whenever they want, often outside the 8 to 5 workday paradigm. They shop online, collaborate on work projects online, and post on social media at all hours. The ability to address court case issues on an asynchronous, self-scheduled timeline is one of the primary attractions of ODR.

While courts had begun to use ODR before March 2020,²⁹ the pandemic gave a strong incentive to stand up new ODR systems as an effort to keep people out of courthouses and provide an online forum to resolve matters. Michigan was one of the early state courts to

²⁵ Illinois Circuit Court Remote Jury guidelines accessed at <https://www.illinoiscourts.gov/circuit-court/remote-jury-information>

²⁶ In the Circuit Court for the State of Oregon for Multnomah county, Presiding Judge Order No. 2101-00000 Order for Remote Jury Selection, issued September 10, 2021, accessed at <https://www.courts.oregon.gov/courts/multnomah/Documents/210100000%20-%20PJO%20-%20ORDER%20RE%20REMOTE%20JURY%20SELECTION.pdf>

²⁷ National Center for State Courts, State of the State Courts 2021 Poll. (November 2021), accessed at <https://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide/state-of-the-state-courts>.

²⁸ NCSC website, ODR, <https://www.ncsc.org/odr>.

²⁹ See JTC Resource Bulletin, Case Studies in ODR for Courts, Version 2.0 Adopted 28 January 2020, https://www.ncsc.org/__data/assets/pdf_file/0033/39579/JTC-Resource-Bulletin-Case-Studies.pdf.



accelerate its ODR pilots to implement the successful program statewide in the early days of the pandemic.³⁰ ODR clearly meets contemporary court customers where they are comfortable: online, on their own time, and with less complexity than traditional court processes that remain an option should online efforts not fully resolve the dispute.

Virtual Remote Interpreting

Prior to the pandemic, in-person interpreters were the norm, although some courts were using video remote interpreting. Courts struggled to find sufficient interpreters to cover needed languages, especially in rural areas. During the pandemic when most proceedings went online, most courts shifted to Video Remote Interpreting (VRI). VRI allows remote, consecutive or simultaneous interpreting by highly qualified interpreters who do not need to travel to the court. Some video platforms allow simultaneous interpretation to occur during the proceeding in a virtual audio “room” that is heard and seen by the individual with limited English proficiency but not by the rest of the hearing participants.

As part of the NCSC effort to provide pandemic resources for courts, the Language Access Services Section of NCSC issued Video Remote Interpretation Solutions and Resources for Courts.³¹ The online publication includes links to information and resources

for VRI though Zoom and Cisco WebEx, a section on VRI FAQs, and links to other VRI resources. NCSC maintains a database of qualified interpreters from the different state courts which is a vital resource for finding interpreters in a multitude of languages.³² One example of a state with active training in this area is New Mexico’s online VRI training along with a VRI Bench Card for spoken languages and another for American Sign Language.³³

VRI is convenient, efficient, and by allowing interpreters to be located anywhere they can connect by video VRI greatly expands courts’ access to language services beyond the resources provided by local interpreters. Interpreters do not need to build in transportation time to physically travel to different hearings. Courts no longer need to pay travel time for interpreters. Because VRI multiplies existing language access resources through the efficiencies of reduced travel and virtual appearances, VRI greatly increases access to justice for litigants and witnesses who have limited English proficiency. The pandemic drove courts toward adoption of VRI that should be a regular part of court operations after the pandemic.

³⁰ Nicole Wilmet, Michigan’s MI-Resolve Online Dispute Resolution Program Now Available Statewide. (August 3, 2020), accessed at <http://blog.aboutrsi.org/2020/uncategorized/michigans-mi-resolve-online-dispute-resolution-program-now-available-statewide/>.

³¹ *Video Remote Interpretation Solutions and Resources for Courts, Version 1*, NCSC Language Access Services Section published June 2020.

³² *National Database of State Court Interpreters*, NCSC website (requires user name and password), accessed at <https://vri.azurewebsites.net/>

³³ Video Remote Interpreting Resources, New Mexico Language Access Services website, accessed at <https://languageaccess.nmcourts.gov/training-resources/>





Serving the Majority of Court Customers Who Are Self-Represented in Civil Cases

Over the last three decades, state courts have seen the dramatic rise of self-represented litigants (SRLs) in civil cases. Today, self-represented litigants comprise the majority court user in many civil case types; research shows that over three-quarters of the cases involve at least one SRL.³⁴ Most court rules and processes, however, continue to be designed with the assumption that lawyers represent parties in most cases. Court rules and procedures have been slow to reflect the needs of the SRL.

The pandemic heightened the importance of simplifying court processes with large backlogs looming across the country. In July 2021, CCJ and COSCA passed a resolution “In Support of Process Simplification.”³⁵ It states, “The COVID-19 pandemic demonstrated that courts could make large-scale meaningful changes to streamline and improve existing policies and procedures. Many courts implemented emergency changes to allow self-represented litigants to email or eFile documents, increased adoption of self-certification for documents and reduced notary requirements, and reduced requirements for wet signatures.” It also provides, “process simplification must be focused on all court

users. The experience of court users directly relates to public trust and confidence in courts. If court processes are clear to understand and follow, it is more likely that a user’s experiences with the court systems will leave them feeling more fairly treated than if they are required to navigate burdensome processes that are not easy to understand and do not clearly explain how they can resolve the legal dispute.”

The Civil Justice Improvement survey data resulted in 13 recommendations most of which focused on changes to how courts manage cases, especially by reducing complexity for the high volume of relatively routine cases. Recommendation 13 directed courts “to increase convenience to litigants by simplifying the court-litigant interface and creating on-demand court assistance services” that might include interactive, web-based, court business portals; partnerships with private enterprises, libraries, and senior centers; online, real-time court assistance services by phone or Internet; and use of remote hearings by audio or videoconferencing.³⁶

The Michigan Supreme Court’s Justice for All Task Force recently reported that, “[p]rocess simplification

³⁴ Civil Justice Improvements Committee, Hon. Thomas A. Balmer, Chair, *Call to Action: Achieving Civil Justice for All*, National Center for State Courts (2016), pp. 8-9. In a 2016 report, the NCSC Civil Justice Committee examined almost one million civil cases resolved between July 1, 2012 and June 30, 2013, making up about 5% of the nation’s civil cases. Of all cases, 64% were contract, largely (83%) debt collection, landlord-tenant, and mortgage foreclosure, 16% were small claims valued at \$12,000 or less, 9% were “other civil” meaning agency appeals, domestic or criminal-related cases, with just 7% torts and 1% real estate. Only in torts cases were both parties represented by attorneys in a majority (64%) of the cases while overall at least one party, usually the defendant, was not represented by an attorney in 76% of the cases.

³⁵ Found at https://ncfsc-search.squid.cloud/s/redirect?collection=ncsc-meta&url=https%3A%2F%2Fccj.ncsc.org%2F__data%2Fassets%2Fpdf_file%2F0017%2F67013%2FResolution-3_Process-Simplification.pdf&auth=QhoO%2BTendMBaeYE%2FYakKIA&profile=_default&rank=3&query=%2C2021+%7Cf%3A%22%24%2B%2B+pdf+%24%2B%2B%22.

³⁶ Id. Pp. 37-38.



is taking place in many parts of Michigan to make legal and court processes and procedures easier in landlord-tenant, debt collection, mortgage foreclosure, small claims, and family cases. A great deal of technology has been deployed to assist with this effort, including efilings software, video conferencing, websites, and platforms for automated document preparation and online dispute resolution. The COVID-19 pandemic has increased the speed at which change is occurring, especially as court processes have been moved online.”³⁷

Do Not Require Non-Lawyers to Litigate Like Lawyers

Small claims rules have long been designed with the self-represented party in mind, using simplified processes and relaxed rules of evidence. Several courts have adopted informal domestic relations trial rules which relax the rules of evidence, authorize the judge to ask questions of parties instead of by the opposing party, prohibit cross examination and objections, and outline the roles for any lawyers at the trial.³⁸ Informal trials are less adversarial, usually involve no additional witnesses, and are shorter to complete.

As permitted by a rule adopted by the Oregon Supreme Court in 2013, the Deschutes County, Oregon Circuit Court has had the Informal Domestic Relations Trial (IDRT) rule which “allows parties to choose a simplified trial or hearing format. In Deschutes County, when a family case is at issue, the parties are offered a choice; they may proceed using the traditional trial or IDRT.”³⁹

A 2017 evaluation of the IDRT program concluded, “While no panacea, this important innovation provides a less adversarial and more user-friendly family law dispute resolution regime for many disputes. It is particularly attractive to SRLs who struggle to navigate the complexities of the traditional trial model. Families reconstituting and requiring the assistance of the court need and deserve accessible, fair, and customer-friendly innovations like IDRT” and the report cited similar programs in, Alaska, Idaho, Iowa, Michigan, Utah, and Australia.⁴⁰

Success with these informal trials raises the question why case types with large proportions of SRLs continue to use formal trial processes, including required adherence to the rules of evidence? In debt collection, family law, and housing cases, requiring self-represented individuals to learn to behave like lawyers during the life of their cases imposes an unreasonable expectation on them. Instead, allowing litigants to provide any evidence they believe relevant and letting the judge, who is expert in the rules of evidence, determine the weight and credibility of specific evidence, and having the judge ask questions to understand the facts makes much more sense. This would provide significant improvement toward having a more understandable dispute resolution forum while improving the public trust and confidence in the courts.

³⁷ “Strategic Plan and Inventory Report,” Michigan Supreme Court Justice for All Task Force (December 2020), at pp. 28-29, accessed at <https://courts.michigan.gov/News-Events/JusticeForAll/Final%20JFA%20Report%20121420.pdf>

³⁸ Alaska, Idaho, Oregon, and Utah courts have rules allowing informal domestic relations trials.

³⁹ William J. Howe III and Jeffrey E. Hall, *OREGON’S INFORMAL DOMESTIC RELATIONS TRIAL: A NEW TOOL TO EFFICIENTLY AND FAIRLY MANAGE FAMILY TRIALS*, *FAMILY COURT REVIEW*, Vol. 55 No. 1, January 2017, pages 71-72.

⁴⁰ Id. Note 39 at pages 79-81.



Self-Help for Those Helping Themselves

Most courts recognize the importance of providing self-help services, though relatively few programs had been using remote services pre-pandemic.⁴¹ The Self-Represented Litigation Network (SRLN) studied programs in eight states and examined data across the programs to demonstrate their efficacy and concluded from survey data that users overwhelmingly endorsed “remote delivery mechanisms” including phone, videoconferencing, text or online chat as preferential to face-to-face services.⁴² In addition to customers preferring remote services, these means of communicating also reduced costs for the courts and customers.⁴³

One example studied in the Resource Guide is the Self Help Assistance and Referral Program (SHARP) shared by four rural California counties that used videoconferencing in addition to telephone, email, and in-person assistance to self-represented litigants. SHARP has now expanded to 22 counties in California where, among other remote services, a legal assistant can serve

50 customers at a time in an online workshop through live videoconferencing and through a platform accessible to home computers and mobile devices that is under development.⁴⁴

Like the need to conduct remote hearings, courts shifted during the pandemic to stand up remote self-help services using phone, text, video, and chatbots quickly when in-person services were not possible. For example the Maryland Courts self-help pages include a link to an online chat box as well as providing a free telephone service to answer questions on civil case types including landlord-tenant, family law, small and large claims, expungement, debt, and foreclosure with assistance from Help Center lawyers completing forms and preparing SRLs for court or for mediation.⁴⁵ Many California courts provide, as in San Bernardino County, interactive forms with video guidance for divorce, landlord/tenant, and small claims cases.⁴⁶ The California Courts webpage also includes an interactive Google map linking to brick-and-mortar Self-Help Centers and Family Law Facilitators in every county in the state.⁴⁷

The Hawaii Judiciary collaborated with the State Bar and

⁴¹ In 2016, the Self-Represented Litigation Network (SRLN) published *Serving Self-Represented Litigant, A Resource Guide* “to provide information on technology and business process options for courts and other entities interested in providing services to self-represented litigants using electronic means in lieu of, or in addition to face-to-face alternatives such as walk-in services, workshops, and clinics. John Greacen, *Serving Self Represented Litigants; A Resource Guide*, Self-Representation Litigation Network (July 1, 2016),p.4, accessed at https://www.srln.org/system/files/attachments/Remote%20Guide%20Final%2008-16-16_0.pdf

⁴² *Id.* at p.15.

⁴³ *Id.* at pp. 11-14.

⁴⁴ *SHARP Tech Connect* accessible at <https://sharpcourts.org/about-sharp/sharptechconnect/>

⁴⁵ *Maryland Judiciary, Maryland Court Help Center*, accessed at <https://mdcourts.gov/helpcenter/mchc>

⁴⁶ Superior Court of California, county of San Bernardino Self-Help Forms and Kits page accessed at <https://www.sb-court.org/self-help/forms-and-form-kits>

⁴⁷ Map accessed at <https://www.google.com/maps/d/u/0/viewer?msa=0&ll=37.59349435770322%2C-120.267334&spn=7.423823%2C9.876709&mid=1K9YzD9rF71qBPREy-KhKC6Qelyo&z=7>



Legal Services Corporation to provide free, interactive interviews that create forms and legal documents free of charge.⁴⁸ The web page also has links to find brick-and-mortar self-help centers, self-help videos, and other information for SRLs. In addition to a very robust page with links to online assistance for SRLs, Utah provides assistance through email, a toll-free telephone help line, and text.⁴⁹ The Alaska Court System SRL pages include links to numerous online Zoom classes as well as a landlord tenant telephone helpline.⁵⁰ During the pandemic those courts already using remote delivery methods continued to seamlessly serve their customers, while others expanded beyond static text pages into the interactive world of video assistance for completing forms plus online chats and telephone assistance to meet court SRL customers where they expect to find court services.

Reminders: Text, Email, and Voice

Americans would likely miss many dental or hairdresser appointments without the use of text reminders. Court users should expect nothing less. Despite the way these court customers get most of their information, many

courts mail court notices to a physical address obtained from a driver's license or other list that may be several iterations behind a person's actual residence. Some courts have begun using text messages to customer cell phones reminding them of upcoming court hearings to increase appearance rates. For example, in New York City, text reminders to those who provided a cell phone number when given a summons between January 1, 2016, and June 14, 2017, reduced failures to appear by 21% to 26%, depending on the type of text message sent.⁵¹ Hennepin County, Minnesota reported in 2018 that use of text reminders reduced failures to appear over 18 months by 24%.⁵² Affordable text messaging software is abundantly available.⁵³

In May 2021, Massachusetts adapted a text messaging system originally designed to reduce the number of warrants issued for failure to appear for use in all court divisions, sending text reminders to participants four days and 12-hour prior to a scheduled court event. During a six-month introductory period, the failure to appear rate was 12.6% compared to national average of 35%.⁵⁴ In December 2020 the Illinois Supreme

⁴⁸ Legal Aid of Hawaii, *Self-Help Interactive Forms*, accessed at <https://www.legalaidhawaii.org/self-help-interactive-forms.html>

⁴⁹ Utah Courts Self-Help Center accessed at <https://www.utcourts.gov/selfhelp/contact/>

⁵⁰ Alaska Court System webpage, *Classes, Legal Clinics, Programs, and Resources*, accessed at <https://courts.alaska.gov/shc/classes.htm>

⁵¹ Bryce Cook, Binta Zahra Diop, Alissa Fishbane, Jonathan Hayes, Aurelie Ouss, and Anuj K. Shah, *Using Behavioral science to Improve Criminal Justice Outcomes, Reducing Failures to Appear in Court*, University of Chicago Crime Lab (January 2018), p.16, accessed at <https://www.ideas42.org/wp-content/uploads/2018/03/Using-Behavioral-Science-to-Improve-Criminal-Justice-Outcomes.pdf>. Also see *Behavioral nudges reduce failure to appear for court*, *Science* (October 8, 2020), p.3, accessed at <https://perma.cc/U7LZ-KCKN>.

⁵² Margaret Hagan, *If you text them, will they come?*, California Courts publication on research by Stanford Law School (2019), at pp. 14-16, accessed at <https://www.courts.ca.gov/documents/BTB25-5B-01.pdf>

⁵³ *Id.* At p. 16, providing an inventory with links to court text messaging systems in use in numerous states

⁵⁴ Commonwealth of Massachusetts webpage, *New Text Messaging reminder system for court users is now available across the Commonwealth*, accessed at <https://www.mass.gov/news/new-text-messaging-reminder-system-for-court-users-is-now-available-across-the-commonwealth>



Court approved a new court rule to facilitate expansion of text messaging by authorizing courts to send reminders of court dates, probation-related events, court-required appointments, new court filings, and general court announcement. As noted by Chief Justice Anne M. Burke, “The pandemic has forced courts to innovate more rapidly than ever before to develop new efficiencies while also maintaining the health and safety of court users.”⁵⁵

The voice message or text reminder has become an expected part of customer service in many areas. Courts

are learning from other service providers (physicians, dentists, pet groomers) that missed appointments and the bad consequences that follow can be avoided to a surprisingly large degree with implementation of a simple, automatic telephone reminder system for court appointments.

Custom-Made Scheduling and Customer Friendly Expanded Hours

The typical way that courts schedule appearances conflicts with the expectations of those who prefer some

⁵⁵ Illinois Supreme Court Commission on Professionalism, *Supreme Court Authorizes Text Message Reminders in Illinois Courts*, 2Civility webpage December 9, 2020, accessed at <https://www.2civility.org/supreme-court-authorizes-text-message-reminders-in-illinois-courts/> quoting Illinois Supreme Court press release, *Illinois Supreme Court Adopts New Rule for Text Messaging Programs*, December 9, 2020, accessed at <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/379766ec-b38c-4ce7-bf15-bc0ff4e57b46/120920.pdf>



control over the scheduling to accommodate their lives and responsibilities. Courts often schedule a long list of cases that will be heard over a morning or afternoon block with the expectation that all parties for these cases will be present for the start of court, perhaps at 9 am, although the case may not be heard until noon. Those who are subject to such scheduling have very different experiences with appointments outside of court where they schedule appointments for car repairs, dentist visits, and even meetings with lawyers on days and times that fit their personal commitments. At the very least, an hourly schedule of court cases would mitigate a possible three-hour wait in court.

More analogous to most people's non-court life would be allowing the individual to schedule a hearing at their desired time. A court with a docket full of cases could post an online schedule with appropriate intervals depending on the average time for the type of cases on the docket and allow litigants to agree to a time slot they select. The court could schedule any case the parties did not schedule themselves in time slots not taken. Although this practice appears to be uncommon, it is followed in Thurston County, Washington, where parties schedule their cases from an online listing of available dates and times.⁵⁶

Courts have long adhered to a daily routine with weekday hours roughly from 8 am until 5 pm. All interactions with the clerk's office, all courtroom proceedings, and most administrative work follows this schedule. A few courts have adopted night hours in recognition of the daytime work obligations of many people who need to appear in court but the phenomenon is sufficiently rare that Manhattan's Criminal Courts night court, begun in 1907, is a tourist attraction.⁵⁷ In December 2020, the Lancaster County Court in Nebraska announced it would run a pilot night court from 4:30 pm to 6:30 pm one night every other month through 2021 to accommodate working people and those with child care needs.⁵⁸ The Pima County Consolidated Justice Court in Arizona holds night and weekend hours for those with outstanding failure to appear warrants, usually quashing the warrant and resolving the underlying case.⁵⁹

Where available, night court hours can make courts more accessible but still require people to obtain transportation to and from court while also requiring the investment of resources in the judge, court personnel, security for the court and the building, janitorial services, and other costs of running an in-person court. As many courts have learned during the pandemic, courts have the capability to have the judge appear online with a court reporter or operator of a digital court recording device from

⁵⁶ The schedule can be accessed at <http://tcwebservices.co.thurston.wa.us/OdyOpenSeats/reports/CAL-Open%20Seats%2034%20MC.pdf> accessed through the Thurston County Clerk's website at <https://www.thurstoncountywa.gov/clerk/Pages/default.aspx>. Instructions for scheduling the hearing and providing notice to other parties is also online at <https://www.thurstoncountywa.gov/sc/scdocuments/Service%20Brochure%20Web%20version.pdf>. See also The Supreme Court of Ohio *Task Force on Improving Court Operations Using Remote Technology*, recommendation 25 page 7, "Courts should consider implementing electronic scheduling by parties online, by themselves (with supervision by the court as needed)" accessed at <https://www.supremecourt.ohio.gov/Boards/iCourt/ReportVolume1.pdf>

⁵⁷ Associated Press, "City's Night Court Becoming a Tourist Attraction," New York Post (March 18, 2014) accessed at <https://nypost.com/2014/03/18/citys-night-court-becoming-a-tourist-attraction/>

⁵⁸ "Night Court" Lancaster (Nebraska) County website, accessed at <https://www.lancaster.ne.gov/384/Night-Court>

⁵⁹ Jesse Alejandro Cattell, "A Different Type of Night Court is Keeping People Out of Jail," Vera Institute of Justice Think Justice Blog (August 31, 2018), accessed at <https://www.vera.org/blog/a-different-type-of-night-court-is-keeping-people-out-of-jail>



home, with litigants appearing online through a home computer, tablet, or on a smart phone from any location. A contemporary “remote” night court would appear to have no facility or security costs, no additional staff costs, and enhanced convenience to court customers.

Without going to the extreme of 24-hour court, most courts now have the ability to provide customers with the option of more convenient hours online. A judge could run a night shift as often as the court’s docket made it necessary, which could be limited to particular case types that are most amenable to remote resolution. If needed, police officer appearances could be scheduled with the officer aware that a phone call would summon the officer to appear by smart phone or computer when the officer’s case comes up for resolution.

Continuing to operate with remote, online options while considering how to further meet customer expectations though flexible hours and scheduling will move courts further toward serving customers in the ways they expect and need to be served.

Closing the Digital Divide for Access to Courts

In testimony before the Texas legislature, judges identified ongoing challenges with virtual court proceedings that included limited Internet access in rural areas and the absence of vital support services during termination of parental rights hearings when those hearings take place online. Courts face a digital divide that tends to isolate rural and poorly resourced communities which more than ever demands a solution in an age of rapidly expanding

electronic court access. “In a May 2019 study, the Pew Research Center found that 29% of adults with household incomes of less than \$30,000 did not have a smartphone, 44% did not have home broadband services and 46% did not own a personal computer” while an April 2020 Pew study “found that 53% of Americans view the internet as a must-have during the pandemic.”⁶⁰

A September 2020 report by the Brennan Center for Justice that examined several pre-pandemic studies of challenges posed by remote legal practices cites data showing that “defendants whose hearings were conducted over video had substantially higher bond amounts set than their in-person counterparts, with increases ranging from 54 to 90 percent, depending on the offense,” while in immigration courts “detained individuals were more likely to be deported when their hearings occurred over video conference rather than in person” and “studies of remote witness testimony by children found that the children were perceived as less accurate, believable, consistent, and confident when appearing over video” while also noting that remote video proceedings may reduce the effectiveness of attorney-client communications.⁶¹ Conversely, the Brennan Center report recognizes that remote video proceedings can enhance access to justice as in Montana, where “the use of video hearings allowed legal aid organizations to reach previously underserved parts of the state.”⁶²

It is clear that, as courts adopt policies that encourage remote, virtual, video proceedings, the range of access to justice considerations that courts confront with in-court proceedings must be addressed for virtual proceedings. Access challenges in the virtual court environment implicate resource constraints, especially

⁶⁰ *Courts attempt to balance*, supra note 37.

⁶¹ Alicia Bannon and Janna Adelstein, “The Impact of Video Proceedings on Fairness and Access to Justice in Court.” Brennan Center for Justice (September 10, 2020) pp. 2-3, accessed at <https://www.brennancenter.org/sites/default/files/2020-09/The%20Impact%20of%20Video%20Proceedings%20on%20Fairness%20and%20Access%20to%20Justice%20in%20Court.pdf>

⁶² *Ibid.*



for those the Brennan Center report identifies as marginalized communities of color, low income, living in rural communities, with disabilities, with limited English proficiency, and without the skills needed to use technology.⁶³ Courts should find willing and able allies in school systems and government agencies providing essential services remotely when lobbying for funding to connect low-income, rural, and otherwise marginalized court customers with virtual proceedings.

CCJ and COSCA passed a resolution in July 2021 “In Support of Remote and Virtual Hearings.”⁶⁴ It includes principles to guide technological changes for post-pandemic court technology: ensuring all can participate, regardless of internet or bandwidth access, English proficiency or disability; being sensitive to privacy issues; allowing adequate time to address technology issues when scheduling hearings; and identifying what case types and hearing types are appropriate for virtual hearings. To ensure everyone can meaningfully participate in remote hearings, the resolution encourages court leadership, along with other government agencies, private funders, and other system partners, to support and provide financial resources for increased broadband and other solutions to address the digital divide.

During the pandemic many courts recognized the lack of Internet access, devices, or available cellular data for customers to participate in online proceedings. The New Jersey Judiciary equipped more than 21 state courthouses with special rooms that allow court users with limited or no access to technology to participate in judicial functions by using computers connected to their proceeding.⁶⁵ Other courts worked with community partners such as public libraries or community centers to provide computer and Internet access for court proceedings.

When using video platforms, courts should also provide telephone access options as just about everyone can use a telephone to participate and provide training on how to conduct hearings for when participants use multiple methods such as video, phone, or in-person to participate. In rural locations, courts may need to advocate to elected officials for increased broadband infrastructure as a critical need for rural residents to participate in court proceedings. One of the biggest complaints from judges and litigants alike is the fact that technical difficulties arise during virtual court hearings. Recent studies have shown that these technical difficulties can extend the length of a hearing.⁶⁶ Some courts have addressed these issues by instituting “technical bailiffs” to assist litigants or jurors similar to the way that a bailiff would do in a physical courtroom.⁶⁷

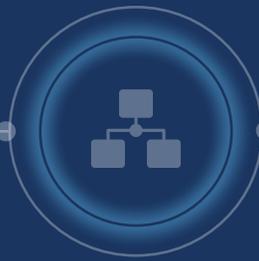
⁶³ *The Impact of Video Proceedings*, supra note 44, at page 10.

⁶⁴ Available at https://ncfsc-search.squiz.cloud/s/redirect?collection=ncsc-meta&url=https%3A%2F%2Fccj.ncsc.org%2F_data%2Fassets%2Fpdf_file%2F0016%2F67012%2FResolution-2_Remote-and-Virtual-Hearings.pdf&auth=vLXf2XNT4s2JdR2IS6gdg&profile=_default&rank=2&query=%2C2021+%7Cf%3A%22%24%2B%2B+pdf+%24%2B%2B%22.

⁶⁵ New Jersey Courts News Release, *Courthouse Technology Rooms Provide Access to Proceedings for Litigants and Attorneys*, March 15, 2021, accessed at <https://www.njcourts.gov/pressrel/2021/pr031521a.pdf>

⁶⁶ Sarah E. Duhart Clarke and Jessica Smith, *Virtual Court Proceedings in North Carolina, Adapting to a Global Pandemic*, March 2021 at plq14, accessed at <https://cjlil.sog.unc.edu/wp-content/uploads/sites/19452/2021/03/Virtual-Courts-Findings-Report-FINAL-3.15.2021.docx.pdf>; Superior Court of California, County of Los Angeles, *LA Court Connect, Advisory about Audio and Video Quality*, accessed at <https://my.lacourt.org/laccwelcome>

⁶⁷ The Supreme Court of Ohio *Task Force on Improving Court Operations Using Remote Technology*, supra 43. Courts should provide virtual assistants or kiosks that help users perform court-related functions (e.g., access forms, file documents, make payments, access information, participate in a remote hearing).n.67, at recommendation 43 p.8, “Courts should provide virtual assistants or kiosks that help users perform court-related functions (e.g., access forms, file documents, make payments, access information, participate in a remote hearing).”



The Transition to Digital Operations Creates Challenges and Opportunities in Recruiting and Retaining Court Employees

A full discussion of the ways courts may need to adapt to generational change in the workforce is beyond the scope of this paper. However, it is important to acknowledge that the same preferences and practices that are driving change in the way courts serve customers are also driving change in the courts' workforce.

Just as the public health emergency accelerated the movement of courts toward virtual interactions with customers, the pandemic drove courts toward remote work with employees working at home in greater numbers than many ever anticipated. In May 2020 the United States Supreme Court, long resistant to cameras in the courtroom, conducted argument in a case with Justice Bader Ginsburg on the phone from her hospital bed and Chief Justice Roberts managing remote work challenges such as Justices attempting to speak while muted.⁶⁸ Millions of YouTube viewers enjoyed replays of a Texas attorney inadvertently appearing through a filter as a cat during a court hearing on Zoom on February 9, 2021.⁶⁹ Despite such occasional frustrations, with practice courts have very successfully adapted to conducting virtual business demanded by pandemic circumstances.

The many examples of courts conducting remote hearings with attorneys and judges who are not physically in a courtroom show how "remote work" has altered court services. It may have been a challenging development for courts, but for employees the experience of remote work appears to align with the preferences of many. One study found, "The COVID-19 pandemic is, among other things, a massive experiment in telecommuting. Up to half of American workers are currently working from home, more than double the fraction who worked from home (at least occasionally) in 2017-18."⁷⁰ The New Jersey Judiciary reported that during the pandemic as much as 95% of employees were working from home.⁷¹ Even before the rapid expansion in working from home during the pandemic, experimental studies showed "job applicants place high value on the option to work from home" with one study showing that for applicants for call center jobs, "the average applicant was willing to take an 8% hourly wage cut in order to work from home."⁷²

As Americans in general and courts in particular achieve the elusive return to post-pandemic "normal" operations, courts have to address employees who have accomplished work without being at the court or office part-time or even full-time for up to a year or more. Those courts choosing to continue remote work, frequently referred to as "telework," will need to update telework policies, provide for technology and data security, determine if office space can be reduced as part-time teleworkers share offices, and how to

⁶⁸ Irin Carmon, *Misadventures in Teleworking are the Least of the Supreme Court's Problems*, *New Yorker*, (May 9, 2020), reprinted online and accessed at Intelligencer at <https://nymag.com/intelligencer/2020/05/supreme-court-virtual-arguments-coronavirus-pandemic.html>

⁶⁹ Video found at <https://www.youtube.com/watch?v=TDNP-SWgn2w>

⁷⁰ Katherine Guyot and Isabel V. Sawhill, *Telecommuting Will Likely Continue Long after the Pandemic*, *Brookings* (April 6, 2020) accessed at <https://www.brookings.edu/blog/up-front/2020/04/06/telecommuting-will-likely-continue-long-after-the-pandemic/>

⁷¹ "Working from Home During the Pandemic," NCSC online report quoting Acting Administrative Director Glenn Grant, accessed at <https://www.ncsc.org/newsroom/public-health-emergency/newsletters/from-inside-the-courts/judge-glenn-grant>

⁷² *Telecommuting supra*, n.44.



accomplish work scheduling and supervision of shared offices. Examples of existing court telework policies, many of which pre-date the pandemic, can be found in Georgia,⁷³ Maryland,⁷⁴ Texas,⁷⁵ and many other courts. As with many pandemic issues, NCSC has published a comprehensive survey of what courts should consider regarding telework, with sample policies covering a range of options.⁷⁶

Beyond teleworking, new ways for courts to operate may require the creation of new job classifications. There may be a need, for example, to create a Social Media Specialist position given that, “Proper use of social media involves photography, photo editing, the gathering of news and data from multiple sources, and staying in touch with all divisions of the court to have access to newsworthy events to be constantly updated on the website and social media accounts. These are time-consuming tasks that should not have to be squeezed into available time among a multitude of other time-sensitive tasks.”⁷⁷

The work of managers is also likely to change with generational changes in the workforce. According to research by Purdue University, for Boomers employers need to provide satisfying work and opportunities to contribute, emphasizing stability, while for GenX employees the employer should provide immediate feedback, flexible work arrangements, work-life balance, and opportunities for personal development, and for Millennials employers should establish personal relationships, manage by results, provide flexibility on work schedule and assignments, and provide immediate feedback.⁷⁸ Not all of these considerations hold true for all individuals, but generational differences will require the successful manager of personnel and court human resources policies to consider these differences during the transition from a Boomer workforce to Millennial, GenX, and GenZ workers.

⁷³ “Sample telework Policy(COURT), accessed at <https://georgiacourts.gov/wp-content/uploads/2020/03/Sample-Telework-Policy.docx>

⁷⁴ Department of Human Resources, 4.5 Policy on Telework, accessed at <https://www.courts.state.md.us/sites/default/files/import/employeehandbook/pdfs/telework.pdf>

⁷⁵ Office of Court Administration Teleworking Policy (September 2019), accessed at <https://www.txcourts.gov/media/1444894/telework-policy-signed-by-ds.pdf>

⁷⁶ Zach Zarnow, “Things a Court Manager Should Consider Regarding Telework,” NCSC August 2021, accessed at https://www.ncsc.org/__data/assets/pdf_file/0020/67700/Things-a-Court-Manager-Should-Consider-Regarding-Remote-Work-final-8-30-21.pdf.

⁷⁷ *Delivering Our Message*, *supra* note 21 at p.7.

⁷⁸ “Generational Differences in the Workplace,” Purdue University Global Inc.(2020), accessed at <https://www.purdueglobal.edu/education-partnerships/generational-workforce-differences-infographic/>





Conclusion

“In any given moment we have two options:
to step forward into growth or step back into safety.”

— Abraham Maslow

Courts have faced an awakening to the ways court practices do not match the expectations of court customers. The pandemic has alerted many courts to the possibilities of new practices that allowed courts to operate beyond the courthouse for purposes of health and safety. Continuing to operate with remote, online options and continuing to consider how to further meet customer expectations will move courts further toward serving those court customers in the ways they expect and need to be served.

Courts exist in a seminal moment — between the “old” ways and those thrust upon it by the pandemic. When the pandemic wanes, courts will face a choice as Maslow states. We can learn from the changes forced by the pandemic which meet customer needs or revert back to ways largely indistinguishable from the last century. Serving today’s customers who are largely self-represented and comfortable with technology requires courts to use electronic means (including social media) to communicate and to provide for remote participation for court proceedings and services. Including options to conduct court business on the customer’s timetable is essential and not necessarily during a nine-to-five workday. The option should become permanent of accomplishing court business without ever coming to a courthouse. Maintaining relevance and the public’s trust depends on courts facing the moment and stepping forward into growth. To do so, COSCA recommends the following actions by state courts.

- Continue and expand the use of virtual court proceedings by requiring certain proceedings to be presumptively remote.
- Explore whether virtual jury selection and trials are appropriate in certain case types to increase juror participation and diversity.
- Expand the use of online dispute resolution.
- Evaluate rules and internal practices and simplify processes.
- Provide remote self-help services including interactive text, video and voice assistance.
- Provide video remote interpreting.
- Adopt text messaging reminder software to remind litigants about court appearances and other court obligations.
- Offer flexible scheduling of court appearances by litigants.
- Bridge the digital divide when technology tools are used to access proceedings and services.
- Develop training and processes that assist litigants and counsel in adequately preparing for virtual court proceedings.
- Plan for challenges and opportunities concerning employees when transitioning courts to align services and functions with new customers and new service delivery models.

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