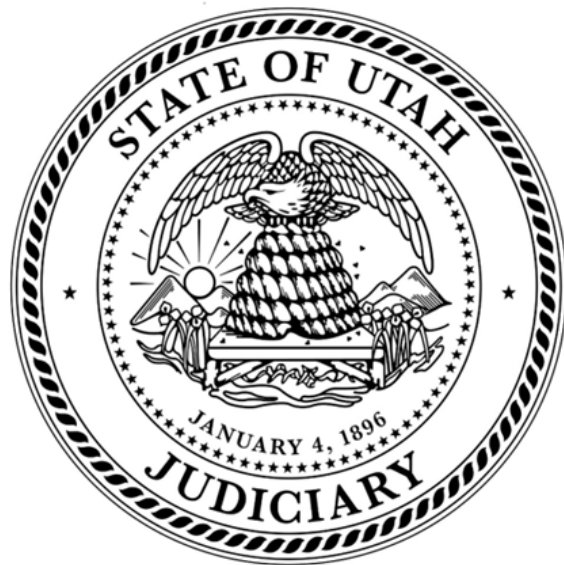


UTAH STATE COURTS

UTAH JUDICIAL COUNCIL

FINDINGS AND RECOMMENDATIONS REGARDING ONGOING USE OF VIRTUAL MEETING TECHNOLOGY TO CONDUCT COURT PROCEEDINGS

November 10, 2022



In February 2022, the Judicial Council established the Green Phase Working Group and directed it to study and make recommendations about the ongoing use of virtual meeting technology in court proceedings. The Judicial Council acknowledges the exhaustive work of the members and staff of the Green Phase Working Group. Their work culminated in a detailed, insightful, and instructive report containing recommendations and best practices regarding the use of virtual court hearings. On October 24, 2022, the Judicial Council adopted the recommendations and best practices with a few adjustments. Below are the findings and recommendations of the Judicial Council which reflect the adjustments made during their October 24, 2022 meeting. The full text of the Green Phase Working Group report is also attached. Where there are differences between this document and the report, this document governs.

Investments in IT Staff

The Judicial Council needs to continue to invest in resources necessary to support virtual and hybrid hearings and to provide training to employees and judicial officers.

Judicial Discretion

Judicial officers should consider the factors noted below in “Considerations for Judicial Officers” and other information relevant to the case, hearing, and parties and then determine whether a hearing will be in-person or virtual.

Hearing Participants Preference

The Judicial Council recommends the Supreme Court consider establishing a rule that allows hearing participants to request permission to appear opposite the decision of the judicial officer.

Guidelines

A judicial officer, courthouse, district, or bench may establish presumptions or guidelines for holding certain types of hearings in person or virtually.

Courtroom Technology

Courtroom technology must provide remote participants the same opportunity as in-person attendees to hear, view, and participate in the court proceeding.

Each district should develop a digital evidence plan to standardize how digital evidence is managed within the district.

Remote Attendee Obligations

A person who attends a court proceeding virtually must use a device and an internet connection that will contemporaneously transmit video and audio with sufficient quality to ensure a clear, verbatim record of the proceeding. If that technology is unavailable, the person must attend the court proceeding in person. The judicial officer may choose to require only audio transmission.

Remote attendees must observe the same courtroom decorum as those attending in person, including appropriate courtroom attire, behavior, and language.

Remote attendees must appear from a location that does not disrupt the court proceeding and allows the attendee to participate without distractions. Attendees must never appear in a court proceeding while operating a vehicle.

Considerations for Judicial Officers

Juvenile Court Judges and Commissioners

Juvenile court judges and commissioners should consider the following factors when deciding whether a hearing will be held in person or virtually.

- Individual needs of youth and parents
 - access to technology, including availability of Webex kiosks or other similar accommodations to facilitate participation in a virtual hearing;
 - transportation and travel challenges, including distance of residence from the courthouse;
 - accommodation for youth enrolled in school; and
 - accommodation for working parents
- Case Circumstances
 - feasibility of a virtual hearing or transport for an incarcerated parent;
 - whether a case is high-profile;
 - whether a youth or parent would benefit from face-to-face interaction with the judge;
 - youth or parent lack of engagement;
 - whether a youth is in a remote out-of-home placement and transport is not feasible; and
 - whether a youth or parent display a lack of understanding of court processes or orders
- Hearing Circumstances
 - whether the hearing is a procedural or substantive;
 - whether evidence is being presented; and
 - whether witness testimony is required
- Comfort level, preferences, and health accommodations of parties and teams

Justice Court Judges and District Court Judges and Commissioners

Justice court judges and district court judges and commissioners should consider the following factors when deciding whether a hearing will be held in person or virtually.

- Does an existing statute, rule, or principle of law require an in-person hearing? Can the mandatory nature of that requirement be waived by the parties (or by a single party)?
- Do all parties have sufficient access to technology for virtual hearings?
- What is the substantive or procedural importance of the hearing?
- Which type of hearing best promotes access to justice for the parties?
- Are the parties more comfortable with a virtual hearing (e.g., high-conflict domestic cases, protective order hearings, and civil stalking injunction hearings)?

- Does the type of hearing allow the parties to have access to counsel of their choice?
- Would the parties or their counsel be required to travel long distances for an in-person hearing?
- Is there a significant cost to a party for an in-person hearing (e.g., money, time, lost work, child care, cost of transportation from jail for a civil proceeding, etc.)?
- Do the parties have a stated preference for a certain type of hearing?
- Are the judge and court staff able to manage a virtual or hybrid courtroom effectively?
- Does the hearing make efficient use of judicial resources, facilities, and court personnel?
- Will a party be prejudiced by requiring an in-person, virtual, or hybrid hearing?
- Will the type of hearing unreasonably delay the progress of the case, increase expense, or complicate resolution of any issue?
- Will the type of hearing unreasonably limit the court's ability to assess credibility, voluntariness, or comprehension?
- Is there a fairness concern because one party has easier access to the courthouse, or greater facility with technology, and is seeking a strategic advantage?
- Does the type of hearing allow for greater access to effective interpretation services?
- Is there enough time to give notice for people to make appropriate arrangements—especially where there is a change from one hearing type to another?
- Does the type of hearing—particularly virtual and hybrid hearings—allow parties to share documents?
- In virtual and hybrid hearings, will the participants have prior or simultaneous access to documents, photos, etc., that are submitted to the courtroom?

Appellate Court Judges

Appellate court judges should consider the following factors when deciding whether a hearing will be held in person or virtually.

- What are the locations of parties and the cost of travel? Does requiring one party to travel a significantly greater distance to the courthouse create fairness issues?
- What are the unintended impacts of having appellate courts that operate from only one courthouse in the state? Does this geographic reality impact decisions to file appeals?
- Would in-person or virtual oral arguments increase the diversity of the appellate bar? Would it increase the diversity of the appellate bench?
- Which method(s) do the parties prefer for making their oral arguments?
- Which method does the appellate bench prefer for holding oral argument? Because oral argument is designed to be an opportunity for judicial officers to ask questions presented in briefing, does this preference hold more weight than the preference of the parties?
- Does the type of case matter in making the decision?

Filings by Self-Represented Litigants

Because in-person filing was not possible during the pandemic, districts accommodated email filing by self-represented litigants who were not able to file electronically. That practice proved helpful to self-represented litigants and also added to the workload of staff. Ideally,

self-represented litigants would be able to file electronically through MyCase. However, that functionality will not be available for approximately 18 months. The Judicial Council asked its Policy, Planning, and Technology Committee to draft an amendment to the Code of Judicial Administration Rule 4-503 that establishes a statewide policy regarding email filing by self-represented litigants. That rule will govern the use of email filing until MyCase is fully functional.

The Judicial Council's Management Committee decided it is important to maintain consistency in the judiciary's approach to email filing between now and the time that an amended Rule 4-503 takes effect. As determined by the Management Committee, the interim statewide policy is self-represented litigants who are not able to file electronically may make any filing through email. This policy is effective immediately.

Data Collection

The judiciary will gather and analyze data, including data from court patrons and stakeholders as well as data about virtual and in-person hearings, to see how virtual hearings are serving the public and advancing the mission of the judiciary.

Best Practices

Court-wide best practices

Each court location should update judicial officers, court staff, patrons, attorneys, and community partners (e.g., the prison and jails) on relevant Webex updates and process changes. This may include a page on the court website for updates and regular revisions to posted Webex guides.

Each court calendar should clearly indicate if a hearing is scheduled to be held in person or through a virtual or hybrid hearing. If the calendar setting is for a virtual or hybrid hearing, the Webex link for the hearing should be included on the calendar for the parties, public, and media to access, as appropriate (i.e., some hearings — such as adoptions — are not open to the general public or media and would therefore not have a publicly-accessible Webex link). A party who shows up at the courthouse for a virtual hearing — whether due to calendaring confusion or inability to access a virtual hearing on their own — should be provided access to participate in the virtual hearing. To facilitate this access, kiosks should be available at every courthouse for patrons to participate in virtual hearings as needed.

To address current challenges with the courts' network bandwidth, it is recommended that court employees working at a court location avoid using the wireless network and instead connect to the wired network whenever and wherever possible.

Court employees working at the same court location who attend a virtual meeting should gather as a group in a single location to attend the meeting from a single device and network connection as this reduces bandwidth pressure on the courts' network.

The public wireless networks in each court location share a statewide connection, resulting in

limited capacity to support parties, attorneys, and members of the public who may expect to use the courts' public wireless network to attend remote hearings. These court participants should connect to virtual hearings using networks other than the courts' public wireless networks at the courthouse.

Best Practices for Judicial Officers and Court Staff

JUDICIAL OFFICERS & COURT STAFF		
1	Notices: <i>Contents</i>	<p>All notices for virtual hearings should include at a minimum the following information (taking into consideration Rule 43 of the Utah Rules of Civil Procedure):</p> <ul style="list-style-type: none"> • the date and time of the hearing; • the type of hearing – virtual, hybrid, or in-person; • the purpose of the hearing; • how to join the hearing, including: <ul style="list-style-type: none"> – the Webex link (or how to access that link); – if permitted, how to call-in for the hearing; – whether participant video must be enabled; – how to access virtual hearing kiosks at a court location; • what to expect at a virtual hearing; • how to file, serve, and present evidence; • what patrons should tell their witnesses; • contact information for technical assistance (<i>see Recommendation #5</i>); • the process for submitting and presenting evidence (<i>see Recommendation #8</i>); and • how to request interpretation or accommodation (<i>see Recommendation #12</i>).
2	Notices: <i>Plain Language</i>	Notices should be easy to understand (i.e., in plain language, avoiding abbreviations or having standard abbreviations; etc.).
3	Notices: <i>Hearing Changes</i>	If a hearing is changed from in person to virtual or vice versa after notice was sent, a new timely notice should be provided to all participants.
4	Notices: <i>Self-Represented Parties</i>	If a self-represented party has provided an email address, notices should be sent by email. When possible, MyCase should be the preferred method for such communication.

JUDICIAL OFFICERS & COURT STAFF		
5	Technical Assistance for Virtual Hearing Participants	Each court location should have a technical assistance phone number that is included on every hearing notice. Ideally this number should be specific to each court location, but at a minimum should connect the participant to a qualified individual who can: a) assist the participant to resolve technical issues; and b) communicate immediately with the judicial officer's judicial assistant that the participant is attempting to connect to the virtual hearing but is experiencing technical issues.
6	Calendar Capacity	Virtual hearings may take longer and should be scheduled appropriately.
7	Webex Greeting	Participants should be greeted by a screen in Webex to confirm for participants and the public that they are in the right virtual location. For example, the screen could display the name of the judge, the time hearings are scheduled to begin, and what to do while waiting.
8	Instructions: <i>Evidence</i>	Judicial officers and judicial assistants should provide participants with clear instructions on how to submit and present evidence to the court during a virtual hearing.
9	Instructions: <i>Expectations</i>	If possible, any specific expectations of the parties should be clearly communicated to the parties in advance (e.g., if a camera is required for the party's participation in the hearing, if parties are expected to have spoken/negotiated before the hearing or if breakout rooms will be available for that purpose). These expectations could be provided in a flier, district-level standing order, or rule.
10	Instructions: <i>Hearing Processes</i>	The judicial officer or judicial assistant should provide hearing-specific instruction on virtual hearing processes (e.g., how a party/attorney should inform the court when their case is ready to be called). "How to" materials could be created for attorneys new to virtual hearings (e.g., how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with the opposing side in advance of the hearing, use of breakout rooms, how to present evidence).
11	Instructions: <i>Use of Webex</i>	The courts should provide clear instructions explaining how to use Webex. "How to" materials could be created for all Webex users. Materials for attorneys new to virtual hearings might include how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, and how to present evidence.

JUDICIAL OFFICERS & COURT STAFF		
12	Interpretation & Accommodation	When an interpreter is needed, judicial assistants should make arrangements for simultaneous interpretation if possible (or direct the party or attorney on how to arrange for simultaneous interpretation). The process for requesting other accommodations should be clearly communicated to participants.
13	Ongoing Training	Judicial officers and judicial assistants should receive ongoing training on Webex and other necessary virtual hearing technology.
14	Experience Sharing	The courts should provide regular opportunities for judicial officers, court staff, patrons, and stakeholders to share their feedback on the use of virtual hearings.

Best Practices for Court Patrons

COURT PATRONS		
1	Decorum Expectations	<p>Participants SHOULD:</p> <ul style="list-style-type: none"> a) remember that a virtual courtroom is subject to the same standards of behavior and decorum as in-person court; b) dress appropriately for a court appearance; c) be focused on the proceedings by pre-arranging care for other obligations that may need attention during the hearing (e.g., children and pets); and d) if late for a hearing, remain in the Webex proceeding until the judicial officer has finished calling through the other scheduled hearings before alerting the judicial officer. <p>Participants SHOULD NOT:</p> <ul style="list-style-type: none"> e) speak over another party or an interpreter; f) interrupt when joining a virtual hearing that has already started (remain muted until their case is called); and g) eat, drink, smoke, or drive during the hearing.

COURT PATRONS		
2	Technology Expectations	<p>Participants SHOULD:</p> <ul style="list-style-type: none"> a) Location – plan on joining the virtual hearing from a suitable location that is quiet, private, and allows the participant to focus; b) Camera – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions; c) Lighting – avoid camera angles that position a window or other bright light behind the participant (this often results in poor video quality and obscures the participant’s face); d) Audio – be aware of and try to minimize background noises; e) Calling in on a non-smartphone – avoid joining a virtual hearing via a non-smartphone, as it will limit Webex functionality (e.g., the participant won’t be able to be moved into a separate virtual room to talk with an attorney); and f) Bandwidth – use a network with sufficient bandwidth for a stable connection to the virtual hearing OR use a computer kiosk at the courthouse to join a virtual proceeding.

Best Practices for Attorneys

ATTORNEYS		
1	Expectations	<p>Expectations for attorneys should be outlined and disseminated. For example, attorneys SHOULD:</p> <ul style="list-style-type: none"> a) Title & Name – ensure their Webex name displays their title followed by their full name (e.g., Defense Attorney Atticus Finch); b) Camera – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions; c) Audio – be aware of and try to minimize background noises, and use a quality microphone to help ensure an accurate record; d) Attire – dress appropriately for a court appearance; e) Simultaneous hearings – log into multiple simultaneous hearings only if the attorney can effectively manage participation in each hearing, ensuring appropriate, timely, and responsive communication with each court; and f) NEVER drive during an appearance.

Best practices for jails and prisons

PRISON & JAILS		
1	Stakeholder Meetings	Stakeholder meetings should be held to discuss and establish best practices between the courts and the prison and jails, including: a) communication processes to notify the correctional facility if a hearing will be in person or virtual so appropriate transportation or virtual appearance can be arranged; b) the need for each correctional facility to provide at least two Webex-equipped rooms per court calendar to facilitate attorney-client communication in a breakout room, while the court moves forward with other cases in the main room; and c) the need for each correctional facility to have a dedicated phone that an interpreter can use to provide simultaneous interpretation during the hearing to an inmate with limited english proficiency.