Utah Supreme Court's
Advisory Committee on the Rules of Juvenile Procedure

Meeting Agenda

David W. Fureigh, Chair

Location: Webex Meeting

Date: January 6, 2023

Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of December 2, 2022, meeting minutes.	Tab 1	David Fureigh
Discussion & Action: Rule 6. Admission to detention without court order. • *Amend Rule 6 as proposed by Judge Steven Beck and as further amended by the group. Committee members agreed to share the proposed amendments with members of the law enforcement community and solicit their input. Judge Beck has been invited back to discuss the feedback from law enforcement.*	Tab 2	Judge Steven Beck All
Discussion & Action: Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503. • *Comment period closed December 1, 2022* o No comments received	Tab 3	All
Discussion: Rules of Evidence and Rules of Juvenile Procedure. • *Committee members will continue a discussion regarding the intersection of the Rules of Evidence and the Rules of Juvenile Procedure.*	Tab 4	All

Discussion & Action: Rule 29C. Victim restitution orders. • *Committee member Bill Russell proposes a new rule to address the variety of ways juvenile courts are addressing victim restitution claims and orders. At the December 2022 meeting, committee members agreed to share the proposed rule with other prosecuting attorneys and gather feedback.*	Tab 5	All
Discussion: The Judicial Council's Green Phase Working Group Report. • *The committee will review the report and recommendations, including recommendations to amend rules of procedure, made to the Judicial Council by its Green Phase Working Group regarding the ongoing use of virtual meeting technology in court proceedings.*	Tab 6	All
Discussion: Old business or new business		All

https://www.utcourts.gov/utc/juvenile-procedure/

Meeting Schedule:

February 3, 2023	March 3, 2023	April 7, 2023
May 5, 2023 (In-person)	June 2, 2023	August 4, 2023

TAB 1

Utah Supreme Court's
Advisory Committee on the Rules of Juvenile Procedure

Draft Meeting Minutes

David W. Fureigh, Chair

Location: Webex Meeting

Date: December 2, 2022

Time: 12:00 p.m. – 2:00 p.m.

Attendees: David Fureigh, Chair Judge Paul Dame Sophia Moore William Russell Michelle Jeffs Janette White Chris Yannelli Mikelle Ostler Carol Verdoia, Emeritus Member	**Excused Members**: Arek Butler Jordan Putnam Judge Debra Jensen Kristin Fadel Matthew Johnson
	Guests: Judge Michael Leavitt
Staff: Raymundo Gallardo Kiley Tilby, Recording Secretary	

1. **Welcome and approval of the November 4, 2022 Meeting Minutes:** (David Fureigh)

   David Fureigh welcomed everyone to the meeting and welcomed Judge Leavitt as a guest regarding the first agenda item. Mr. Fureigh then asked for approval of the November 4, 2022, meeting minutes. Sophia Moore moved to approve the minutes. Michelle Jeffs seconded the motion, and it passed unanimously.

2. **Discussion – Rules of Evidence and Rules of Juvenile Procedure:** (Judge Leavitt; All)

   David Fureigh reminded the committee of the proposed change to the Rules of Evidence to take out references to juvenile court proceedings, and to amend Rule 101 and 1101 of the Utah Rules of Evidence. Mr. Fureigh stated Judge Leavitt wanted to bring the changes to the juvenile rules committee. At the last committee meeting, William Russell brought up a few concerns and provided a document setting forth some considerations and talking points with regard to a few of the juvenile rules that may need some further discussion as a result of the proposed change to the Rules of Evidence. Mr. Fureigh inquired of the committee if there needs to be any changes made to the Rules of Juvenile Procedure, or if there are any further recommendations for Judge Leavitt to take back to the Rules of Evidence committee.

   Judge Leavitt clarified that it was always his intent to amend Rule 101, 1101, 412, and 615 of the Rules of Evidence. Specifically, his intent is to propose changes to those rules clarifying the definitions section in Rule 101 that it includes juvenile court, make changes to Rule 1101 in the scope section, and remove any reference to juvenile court in Rule 412 and 615. Judge Leavitt represents he is trying to maintain what he thinks has been the rule all along and clarify the rules of evidence to indicate that if there are changes that need to be made in juvenile court, that the Juvenile Rules Committee make those changes. Judge Leavitt stated he appreciates Mr. Russell's analysis because it is helpful but indicates he does not believe those specific changes would need to take place now in order for him to move forward with his proposed changes to the Rules of Evidence.

   Judge Leavitt further represented he made an additional proposed change to Rule 101(c) to clarify what is already outlined in Rule 1101 of the Rules of Evidence. Specifically, the change states, "To the extent the above definitions and the Utah Rules of Juvenile Procedure conflict, the provisions of the Utah Rules of Juvenile Procedure shall govern." Judge Leavitt stated he believes this language is consistent with Rule 1101 and would give this committee the authority to make any changes that need to be made regarding the applicability in delinquency proceedings.

Chris Yannelli represented he likes the change that has been made to Rule 101(c) and appreciates that it gives this committee the flexibility to go through the rules that Mr. Russell has identified and make changes as needed.

Judge Dame stated there are already a number of rules that modify applicability of the Rules of Evidence in juvenile court proceedings, including Rule 90, Rule 13(b), Rule 22(k), and Rule 27A. Judge Dame is in favor of Judge Leavitt's approach as he believes it will provide clarity and would also give authority to this committee to make modifications as necessary regarding the applicability of any of the Rules of Evidence. Judge Dame outlined his support for the proposed changes and expressed appreciation to Judge Leavitt for bringing it to this committee's attention.

William Russell indicated his support to the amendment of Rule 101(c) to make it more specific. Mr. Russell stated as previously pointed out by Judge Dame, it gives this committee the ability to go back and look at each rule and create a freestanding juvenile rule for their evidentiary or practice needs. Mr. Russell then went through his concerns to the rules that the change may affect. Mr. Russell specifically pointed out Rule 609 as it uses the word "conviction," and indicates that rule may need to be immediately addressed.

Judge Dame pointed out that Rule 101(b)(7) addresses that concern as it specifically defines "conviction" to include an adjudication in a juvenile delinquency case or proceeding. Mr. Russell expressed concern that it may be in conflict with part (c) of that rule and may be a convoluted.

Mr. Russell further stated if the committee majority thought Rule 404(c) was as offensive to the juvenile court as he personally believes it is, the committee would need to discuss and vote on whether to eliminate Rule 404(c). Under Judge Leavitt's proposed amendment, Rule 404(c) would be fully invoked in juvenile court. Mr. Russell clarified that he is in support of Judge Leavitt's proposed amendments, in large part, with a few exceptions as he had previously outlined.

Judge Leavitt stated Mr. Russell has valid points and indicates the purpose of his proposed amendment is to clarify that the Rules of Evidence apply in juvenile court proceedings, and then allow this committee the ability to make changes to the Rules of Juvenile Procedure as they see fit. Judge Dame and Mr. Russell expressed appreciation to Judge Leavitt for bringing it to the committee's attention and for his willingness to accept feedback.

Judge Leavitt was excused from the meeting.

The committee had continued discussion on how to move forward knowing the proposed amendments to the Rules of Evidence would likely go into effect within the next few months. The committee agreed they would like to take a closer look at the Rules of Juvenile Procedure that the change may impact, including those rules specifically outlined by Mr. Russell, and put it on as a discussion item at the next meeting.

3. **Discussion & Action – Rule 6. Admission to detention without court order:** (All)

Mr. Fureigh stated a few committee members had circulated the proposed change to Rule 6 to various law enforcement agencies for feedback. Michelle Jeffs sent an e-mail to the committee regarding some comments from Weber County. Mr. Fureigh stated he went through the comments, and it appears law enforcement is concerned about declaring that they considered other alternatives and that language may be too broad. Law enforcement also expressed concern about declaring that on a form without having all the information and the lack of ability to make that determination in an already tense situation. Mr. Fureigh turned it over to Ms. Jeffs and Mr. Yannelli on their thoughts and the information they gathered from law enforcement agencies.

Ms. Jeffs conveyed that she has spoken to some of the chiefs throughout Weber County and their main concern is regarding the declaration that they considered reasonable alternatives. Ms. Jeffs stated law enforcement expressed concern of not being equipped to make that declaration based on the information they have. If there is a safety concern with victims, a law enforcement officer would have to vet what the reasonable alternatives would be and determine if the alternatives would be safe. Law enforcement does not believe they would have time to make that decision.

Ms. Jeffs further reported law enforcement is concerned about the statement regarding bias and questioned the purpose of having to sign a declaration to that effect. There were a few officers who wanted some further explanation regarding what it means to sign under criminal penalty, and what the consequence would be if a judge contradicted that finding. Ms. Jeffs is still waiting to hear back from Davis County regarding their feedback and input.

Mr. Yannelli stated he is still waiting on feedback from Salt Lake County. However, the feedback from the Fourth District has been much like the feedback Ms. Jeffs received. Mr. Yannelli represents there were several law enforcement agencies who stated they did not like the proposal but were not able to articulate why. Those who were able to articulate why they did not like it had similar concerns regarding the bias and alternatives language. Mr. Yannelli reports law enforcement agencies will normally call ahead to the detention center, explain the circumstances surrounding the individual that is being taken to detention, and ask the detention center if it were someone they would accept.

Mr. Yannelli further outlined law enforcement concern that if there is an individual who was deemed dangerous or a threat to the community, what other alternatives is law enforcement supposed to consider? Will they get in trouble if they do not consider other alternatives? Will there be training provided on those alternatives and the steps law enforcement will need to take to be in compliance with this declaration? Mr. Yannelli outlined Spanish Fork Police Department indicated they would sign it without issue, but that was the minority position, as other departments found the proposal to be insulting. Mr. Yannelli requested some additional time to follow up with Salt Lake County.

Judge Dame inquired if it would be appropriate to forward the information from law enforcement to Judge Beck and invite him to the next meeting so he can have a better understanding of what appears to be predominantly negative feedback from law enforcement. Mr. Fureigh stated it would be his suggestion to invite Judge Beck to the next committee meeting since it was his proposed change.

The committee will get final input from Salt Lake and Davis County and invite Judge Beck to the next committee meeting to discuss where to go from here.

4. **Discussion & Action – URJP Rule 18:** (Judge Paul Dame; Sophia Moore)

Mr. Fureigh stated at the last committee meeting, the committee decided to proceed with potentially amending Rule 18 to require a bilingual notice form be sent out for service in juvenile court proceedings. Mr. Fureigh represents Judge Dame and Sophia Moore agreed to work on the proposed language and their proposals have been provided in the materials. Mr. Fureigh also inquired of Raymundo Gallardo if there was an update regarding the creation of the form.

Mr. Gallardo indicated there was no update in regard to the form as he was waiting for the committee to make the amendments and then would work with the forms committee whenever we are ready to develop the form. The committee discussed wanting to ensure the form was ready and available prior to the amendment going into effect. Mr. Gallardo represented the amendment would not go into effect until May 1, 2023, and if the approval process goes beyond that date, it would not be until November 1, 2023. Mr. Gallardo will work with the forms committee to ensure the form is ready and available prior to the amendment going into effect.

Mr. Gallardo stated in reviewing the style guide, the style guide recommends using the word "will" when referencing the court. Mr. Gallardo proposed changing the language in line 75 and 105 of the amended rule to "will" instead of "must." Judge Dame reviewed the style guide and is agreeable to making that change.

Mr. Fureigh asks for approval of the amendment to Rule 18. Ms. Moore moves to approve the rule, with the changes as proposed by Mr. Gallardo. Janette White seconded the motion. No opposition is received, the motion carries. Mr. Fureigh represents he will take the proposed amendment to the Supreme Court and if they approve it, it will be sent out for comment.

5. **Discussion & Action – Rule 29C. Victim Restitution Orders:** (William Russell)

Mr. Fureigh stated the final agenda item was a proposed new rule to Rule 29 regarding victim restitution orders. Raymundo indicated he changed some of the "shall" language to "must" and "will" to comply with the style guide.

Mr. Russell indicated that as he previously mentioned at the last meeting, he has noticed a disparity of process in his district, as well as the districts throughout the state, regarding how restitution is handled. Mr. Russell expressed concern that a victim impact statement, loaded into CARE by a probation officer months before disposition, would be deemed adequate notice for the defense to respond without documentation. Mr. Russell stated the statute is clear restitution must be handled within 90 days of disposition and that the request for victim restitution must be submitted. Mr. Russell indicated the statute is not clear what is meant by "submitted" and does not clarify if it must be submitted to the court or served. Mr. Russell believes the due process clause would say the claim for restitution would need to be served on the parties. The source of the frustration is there is no process, and practitioners and judges don't know what to do with the restitution process and cases are sometimes being left languish until the 90 days has run. Mr. Russell has no intention of depriving victims of legitimate claims for restitution but believes it's important to have a process so the courts can move through these claims expeditiously.

Mr. Yannelli asks for clarification to Mr. Russell's proposed rule that restitution shall be based on the minor's ability to pay. Mr. Russell stated that subparagraph (e) of his proposed rule indicates the court will make a finding on the minor's ability to pay. Mr. Russell stated the victim must have documentation, which is required by statute and file a request for victim restitution which the statute is silent on. Mr. Russell then stated the next prong would be for the court to find causation, which is required by case law, under the proximate cause analysis that the conduct of the juvenile proximately caused the claimed damage sought in restitution. Finally, the court would have to make a finding that the minor has the ability to pay.

Mr. Yannelli inquired if the proposal would be that they litigate the case, and then hold a separate restitution hearing where the prosecutor would have to show the offense proximately caused the victim's material loss. Judge Dame responds that is how it should be done right now under due process and further stated if the parties agree on a restitution amount, no evidentiary hearing would be required. Judge Dame further stated the proposal would need to address restitution in non-

adjudicated offenses where the minor agreed to pay restitution and proposed to make a change to subparagraph (e) to include that language. Mr. Russell agreed.

Mr. Yannelli stated he understands the issue with the victim impact statement. However, the way he reads subsection (c) from a prosecution stand-point, is that the victim impact statement uploaded into CARE is not sufficient for victim restitution. Mr. Yannelli is concerned that victims are being sent the victim impact statement and asked what financial and material loss they have, but this proposed rule would indicate that is no longer sufficient.

Judge Dame expressed the same concern. Judge Dame stated the victims are provided with the victim impact statement, which is a form given by probation, which outlines what the victim is asking for. This proposed rule would indicate if the victim didn't comply with a separate rule, then they would be barred from being entitled to restitution. Mr. Yannelli also stated on the victim impact statement, it specifically asks the victim if there is anything else they want the court to know, which gives the victim the impression that they are communicating with the judge. Mr. Yannelli expresses appreciation for the work Mr. Russell put into the proposed rule and likes the structure it provides, but requests additional time to pass it around to other prosecutors for their feedback. Ms. Jeffs agreed and indicated she would pass it around in her jurisdictions as well.

Mr. Russell stated the reason he drafted the proposed rule was to elicit candid feedback. Mr. Russell represented he knew subparagraph (c) would be the biggest issue and the rule was not crafted as a "fix all," but he tried to demonstrate his frustration with probation seeking something for a victim without complying with the statute and without proper notice. Mr. Russell indicated appropriate documentation needs to be provided, defense counsel needs to be served, and the prosecuting attorney needs to file a Motion for Restitution. That way, as a member of the bar, they can look at the legal theory of causation and hopefully they have also looked at the minor's ability to pay. Mr. Russell represented that the lack of process or procedure now is a due process flaw, and he does not know how else to fix the problem other than to change the victim impact statement or to require the prosecutor to file a Motion for Restitution that has a law-trained pair of eyes looking at legitimate, provable amounts. Mr. Russell reiterated that he understands subsection (c) needs to be reworked, but there has to be a better way than the lack of process there is now.

Judge Dame indicated the lack of due process is a huge concern. Judge Dame stated that a victim, at an evidentiary hearing, would be required to show proof in order for the court to make an order of restitution. Judge Dame believes there is a case which establishes that victims can be a limited purpose party for purposes of restitution. Judge Dame expressed appreciation for the work that has gone into this and understands the frustration.

Mr. Russell outlined there are multiple issues surrounding restitution, and he tried to address them all in his proposed rule. Mr. Russell stated not all judges are holding formal hearings on restitution, the burden is not clear, and the concept of

admitting evidence is not uniformly followed. Mr. Russell represents part of the rule is to outline that due process requires a hearing, and there has to be admissible evidence to prove restitution is owed. Judge Dame inquired how a judge is ordering restitution without a formal hearing and evidence. Mr. Russell responded that the level of informality has been difficult for him to advise his attorneys on how to handle those situations. Mr. Russell expressed concern that informal does not mean no due process and he believes a procedure on how to handle that would be helpful.

Mr. Yannelli stated that from a prosecution standpoint, if there is no stipulation on a restitution amount, the next step would be to sit down with defense and try to figure out how to proceed. Mr. Yannelli also pointed out that he does not remember a time where restitution in juvenile court was more difficult to obtain than it is now under Utah Code 80-6-710. Mr. Yannelli indicated he is not stating that is good or bad, but that he has had to have many difficult conversations with victims where he has to advise them that they likely won't get the restitution they are requesting. Mr. Yannelli believes the pendulum has swung in favor of the minor and the victims are on the losing end. Mr. Russell responded that the process Mr. Yannelli described where two lawyers sit down in good faith occurs 80% of the time. However, his proposal would be to eliminate the radical variability out of the remaining 20% of the cases.

Janette White brought up the issue of notice and inquired if there was a way for a liaison from the court to get funding for CARE to provide notice of filings. Carol Verdoia stated she was told from the beginning that would not happen, but it would not hurt to ask. Mikelle Ostler represented part of the problem, from what she understood, was child welfare and delinquency are under the same case. If a child is dually adjudicated, CARE cannot send notice to everyone. They tried to assign attorneys by incident, but that did not affect what they could see in CARE. Ms. Verdoia also indicated attorneys shift often and it would be a moving target on who to provide notice to.

The committee was in favor of putting this on next month's agenda for the committee to get other feedback.

6. **Old business/new business:** (All)

No old or new business was discussed.

The meeting adjourned at 1:30 PM. The next meeting will be held on January 6, 2023 at 12:00 PM via Webex.

TAB 2

Petition to Amend Rule 6 of the Utah Rules of Juvenile Procedure

This petition is submitted pursuant to Rule 11-102(1) of the Utah Judicial Council Code of Judicial Administration

Proposed revisions:

Rule 6. Admission to detention without court order.

(a) Admission to detention without court order is governed by Utah Administrative Rules Title R547, Chapter 13, Guidelines for Admission to Secure Youth Detention Facilities.

(b) The form described in Utah Code section 80-6-203 must contain the following language above the signature line: "Pursuant to Utah Code section 78B-18a-104, I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge, that alternatives to detention have been considered, and that the reason the minor was not released is free from bias."

Rationale:

It is likely unconstitutional for an individual, including a minor, to be detained without a sworn probable cause statement. (See attached memorandum). Nevertheless, current procedure in Utah juvenile courts does not require a sworn statement. By adding the language in paragraph (b), the probable cause statement becomes a sworn declaration pursuant to Utah Code section 78B-18a-104 (this is the same or similar language that is contained on delinquency petitions generated through CARE).

The addition of the language "…that alternatives to detention have been considered…" relates to the requirement in Utah Code section 80-6-203(3)(c)(iii) that the form state the reason the minor was not released by the peace officer since it encourages reflection about alternatives to detention.

The addition of the language "…and that the reason the minor was not released is free from bias" addresses both Utah Code section 80-6-203(3)(c)(iii) and the problem of disproportionality in the detention rates of youth of color in Utah. Data show that youth of color are detained at a higher rate than white youth. In 2019, youth of color constituted 50.9% of the population in detention in Utah despite only representing 25.8% of the school-aged youth population. *Striving for Equity in Utah's Juvenile Justice System*, p. 26. In other words, youth of color are detained at a rate of approximately twice their proportion of the population. Often, juvenile court professionals lament disproportionality but argue they can only address the cases brought to them. Without conceding that point, and while it certainly will not eliminate the problem of disproportionality in detention rates, the proposed language is a very small step in the right direction to ensure that reasons for detaining youth are free from bias.

This petition received the unanimous endorsement of the Utah Board of Juvenile Court Judges at its meeting on April 8, 2022.

Thank you for your consideration,

Steven Beck (jbeck@utcourts.gov)

Rule 6. Admission to detention without court order.

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TAB 3

Rule 22. Initial appearance and preliminary ~~examination~~ hearing in cases under Utah Code section~~s~~ 80-6-503 and 80-6-504.

(a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before the court as directed in the summons.

(b) When any peace officer or other person makes an arrest of a minor without a warrant, the minor shall be taken to a juvenile detention facility pending a detention hearing, which shall be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor shall be taken to the place designated on the warrant. If an information has not been filed, one shall be filed without delay in the court with jurisdiction over the offense.

(c) If a minor is arrested in a county other than where the offense was committed the minor shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before a judge of the juvenile court.

(d) The court shall, upon the minor's first appearance, inform the minor:

(1) of the charge in the information or indictment and furnish the minor with a copy;

(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(3) of the right to retain counsel or have counsel appointed by the court;

(4) of rights concerning detention, pretrial release, and bail in the event the minor is bound over to stand trial in district court; and

(5) that the minor is not required to make any statement, and that any statements made may be used against the minor in a court of law.

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel

and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary ~~examination~~hearing. If the minor waives the right to a preliminary ~~examination~~ hearing the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(g) If the minor does not waive a preliminary ~~examination~~hearing, the court shall schedule the preliminary ~~examination~~hearing. ~~The time periods of this rule may be extended by the court for good cause shown.~~ The preliminary ~~examination~~ hearing shall be held within a reasonable time, but not later than 10 ~~ten~~ days after the initial appearance if the minor is in custody for the offense charged. ~~and the information is filed under Utah Code section 80-6-503.~~ The preliminary ~~examination~~ hearing shall be held within a reasonable time, but not later than 30 days after the initial appearance if~~:~~

~~(1) the minor is in custody for the offense charged and the information is filed under Utah Code section 80-6-503; or~~

~~(2)~~ the minor is not in custody. The time periods of this rule may be extended by the court for good cause shown.

(h) A preliminary ~~examination~~ hearing may not be held if the minor is indicted. If the indictment is filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-50~~3~~4.

(i) A preliminary ~~examination~~ hearing shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

(j) If from the evidence the court finds probable cause under Utah Code section 80-6-504 ~~to believe that the crime charged has been committed, that the minor has committed it, and the information is filed under Utah Code section 80-6-503~~, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(k) The finding of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary ~~examination~~hearing.

(l) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and discharge the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(m) At a preliminary ~~examination~~hearing, upon request of either party, and subject to Title 77, Chapter 38, Victim Rights, the court may:

(1) exclude witnesses from the courtroom;

(2) require witnesses not to converse with each other until the preliminary ~~examination~~ hearing is concluded; and

(3) exclude spectators from the courtroom.

Rule 22. Initial appearance and preliminary hearing in cases under Utah Code sections 80-6-503 and 80-6-504.

(a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before the court as directed in the summons.

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(c) If a minor is arrested in a county other than where the offense was committed the minor shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before a judge of the juvenile court.

(d) The court shall, upon the minor's first appearance, inform the minor:

(1) of the charge in the information or indictment and furnish the minor with a copy;

(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(3) of the right to retain counsel or have counsel appointed by the court;

(4) of rights concerning detention, pretrial release, and bail in the event the minor is bound over to stand trial in district court; and

(5) that the minor is not required to make any statement, and that any statements made may be used against the minor in a court of law.

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel

and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary hearing. If the minor waives the right to a preliminary hearing the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(g) If the minor does not waive a preliminary hearing, the court shall schedule the preliminary hearing. The preliminary hearing shall be held within a reasonable time, but not later than 10 days after the initial appearance if the minor is in custody for the offense charged. The preliminary hearing shall be held within a reasonable time, but not later than 30 days after the initial appearance if the minor is not in custody. The time periods of this rule may be extended by the court for good cause shown.

(h) A preliminary hearing may not be held if the minor is indicted. If the indictment is filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(i) A preliminary hearing shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

(j) If from the evidence the court finds probable cause under Utah Code section 80-6-504, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(k) The finding of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary hearing.

(l) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and

discharge the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(m) At a preliminary hearing, upon request of either party, and subject to Title 77, Chapter 38, Victim Rights, the court may:

(1) exclude witnesses from the courtroom;

(2) require witnesses not to converse with each other until the preliminary hearing is concluded; and

(3) exclude spectators from the courtroom.

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: October 17, 2022

Utah Courts

Rules of Juvenile Procedure – Comment Period Closed December 1, 2022

URJP022. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503. Amend. The proposed amendments to Rule 22 include: (1) adding reference to Utah Code section 80-6-504 to the title; (2) changing the term "preliminary examination" to "preliminary hearing;" (3) in paragraph (g), clarifying timelines for scheduling preliminary hearings based on whether a youth is in custody, removing reference to Utah Code section 80-6-503, and moving the language allowing extension to time periods to the end of the paragraph; (4) updating paragraph (h) to reference 80-6-504 rather than 80-6-503 to correct a typographical error; and, (5) removing specific probable cause language and making reference to 80-6-504 instead.

This entry was posted in -Rules of Juvenile Procedure, URJP022.

« Rules of Appellate Procedure – Comment Period Closes December 11, 2022

Rules of Criminal Procedure – Comment Period Closed November 27, 2022 »

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- -Alternate Dispute Resolution
- -Code of Judicial Administration
- -Code of Judicial Conduct
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- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0101
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
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- CJA03-0109
- CJA03-0111
- CJA03-0111.01

TAB 4

URE/URJP INTERPLAY—DECEMBER 2022

Both URE 101(a) and URE 1101(a) clearly state that the Utah Rules of Evidence apply in all courts and judicial proceedings in the state, which includes the juvenile court. U.R.Juv.P. 43(a) also specifically adopts them unless otherwise provided by rule or law. It appears beyond dispute that child welfare proceedings, which are civil in nature, are governed by the Rules of Evidence unless a specific juvenile rule or statute states otherwise. The question now arises as to how to clarify for delinquency cases which, if any, rules of evidence that use the terms "criminal case," criminal proceedings," and "the defendant" should be adopted as juvenile rules using relevant terms such as "delinquency proceedings" and "the minor."

Committee member William Russell submits the following to the chair, staff and other members of the committee for review and discussion. They are based on his observations in practice as a juvenile court practitioner as well as discussions with others who have analogous professional experience. What follows reflects some of his individual views and preliminary positions, but is intended to be neither exhaustive of discussion points nor definitive in nature.

I. PRESENT URE WITH JUV TERMS

URE 412-AV's Prior Sexual Behavior & URE 615-Witness Exclusion

These two rules of evidence presently use terminology making them clearly applicable to Juv proceedings. If substantially adopted as Juv rules, the Evidence rules could delete those references.

II. PRESENT URE WITH CRIM/JUV IMPLICATIONS

URE 404-**Character evidence; Crimes or other acts.** Subsections (a) and (b) protect substantial due process and fairness rights of both the accused and the victim in criminal cases. Constitutional provisions may actually require them to be applied in delinquency cases, but no rule presently says this. Subsection (c) seems ill-suited to delinquency cases and some oppose its inclusion in the juvenile rules.

URE 410**-Pleas, plea discussions, and related statements.** Bars admission of withdrawn and "nolo contendre" pleas and colloquies with some exceptions. I have never seen nor heard of this rule being invoked in juvenile court, perhaps due to its fundamental nature. "No contest" is the analogous Juv plea.

URE 417-**Admissibility. . .victim targeting. . .**Allows limited admissibility of a defendant's expression and association in a criminal case to prove victim targeting. Consistency and fairness may mitigate in favor of inclusion in a juvenile rule.

URE 609-**Impeachment by evidence of a criminal conviction.** Prior adult felony/dishonesty/false statement convictions are admissible in civil and criminal cases to impeach any witness, subject to limitations. Juvenile adjudications can be used only in criminal cases, but not against the defendant. Reliability, consistency, fairness and constitutional considerations seem to weigh in favor of inclusion in a juvenile rule in some form, but with substantial revision. This one really befuddled me.

URE 612-**Writing used to refresh a witness's memory.** Provides for sanctions in a criminal case for failure to provide writings used to refresh a witness recollection. Reliability, consistency, fairness and constitutional considerations seem to weigh in favor of inclusion in a juvenile rule.

URE 616-**Statements made during custodial interrogations.** Reliability, consistency, fairness and constitutional considerations seem to weigh in favor of inclusion in a juvenile rule. Existing (and recently amended) Juv rule 27A already governs admission of these statements given by minors and the provisions of this rule of evidence could be added to 27A. There would likely be discussion as to whether the scope of existing URE 616 should be broadened to include misdemeanor as well as felony prosecutions in juvenile court. Reliability, consistency, fairness and constitutional considerations seem to weigh heavily in favor of inclusion in a juvenile rule.

URE 617-**Eyewitness identification.** Provides a process to challenge and litigate eyewitness identification in a criminal trial. Reliability, consistency, fairness and constitutional considerations seem to weigh heavily in favor of inclusion in a juvenile rule.

III. PRESENT JUVENILE RULES RELATED TO EVIDENCE

15(c)-minor's statements in preliminary inquiry meetings not admissible to prove guilt

29A-process to admit CJC recordings in delinq trials

37A- process to admit CJC recordings in CW trials

40-order of presentation at trials

43-rules of evidence apply unless otherwise provided

45-court not to review dispositional reports until after adjudication

46-rules of evidence do not apply to dispositional hearings

IV. STRUCTURE AND REORGANIZATION OF THE JUVENILE RULES

Presently at least seven evidentiary rules are scattered about the Utah Rules of Juvenile Procedure. If multiple (as many as nine?) evidentiary rules are approved by the committee and submitted for consideration by the Supreme Court, it may be prudent to renumber, revise, and reorganize the current format. The committee may also want to consider the "large-cap add on" rules of 7 & 7A; 16 & 16A; 19, 19A, 19B & 19C; 25 & 25A; 27 & 27A; 29, 29A, & 29B; and 37, 37A & 37B.

TAB 5

Rule 29C. Victim restitution orders.

(a) Orders of victim restitution are governed by Utah Code section 80-6-710.

(b) To be considered by the court for a dispositional order as to a minor, the submission of a request for victim restitution must be in writing and filed by the prosecuting attorney or the victim in the juvenile court's CARE system and served on all parties, in the time and manner provided by statute and these rules. Failure to timely file and serve such request constitutes a bar on the entry of an order of victim restitution as to the minor.

(c) A Victim Impact Statement uploaded to the CARE system is not sufficient to be deemed a submitted request for victim restitution.

(d) If a request for victim restitution is filed, the documentation supporting the request described in Utah Code section 80-6-710(3)(a) and (b) must be attached to the written request.

(e) The court may enter an order of victim restitution as to the minor based upon a timely filed and supported request for restitution if the parties stipulate, or if the time to object under these rules has passed. If a timely objection to the request for victim restitution is filed by the minor, the court will hold a hearing to determine whether the adjudicated offenses proximately caused the victim's material loss, whether the supporting documents adequately prove such amounts, and the minor's ability to pay.

(f) At the hearing the prosecution bears the burden to prove with admissible evidence that, by a preponderance of the evidence, the adjudicated offenses proximately caused the victim's material loss stated in the written request, and whether the supporting documents adequately prove such requested amounts. Any party may present evidence of the minor's ability to pay restitution.

(g) At the conclusion of the hearing, the court will enter findings as to whether the prosecution has met its burden to prove, by a preponderance of the evidence, that the minor proximately caused the material loss requested as victim restitution, whether the documentation provided are sufficient to support the request, and whether the minor has the ability to pay any such ordered victim restitution.

TAB 6

GREEN PHASE WORKING GROUP

REPORT AND RECOMMENDATIONS TO THE JUDICIAL COUNCIL AND SUPREME COURT REGARDING ONGOING USE OF VIRTUAL MEETING TECHNOLOGY TO CONDUCT COURT PROCEEDINGS

October 14, 2022

Table of Contents

REPORT AND RECOMMENDATIONS TO THE JUDICIAL COUNCIL AND SUPREME COURT REGARDING ONGOING USE OF VIRTUAL MEETING TECHNOLOGY TO CONDUCT COURT PROCEEDINGS

Executive Summary

The Judicial Council directed the Green Phase Working Group (GPWG) to study the ongoing use of virtual meeting technology to conduct court proceedings. The GPWG now submits the following report and recommendations for the Council's consideration.

- The use of virtual hearings to conduct court proceedings is accompanied by benefits and drawbacks, which must be identified, monitored, and balanced to best ensure that the courts continue striving to provide the public an open, fair, efficient, and independent system for the advancement of justice.
- A 2022 survey of Utah court users shows an overwhelming preference for the continued use of virtual hearings across court user types and age groups in district, juvenile, and justice courts.
- After careful study, the GPWG favors an approach that prioritizes judicial discretion in determining whether a hearing will be in person or virtual and allows court patrons to request to participate in a different manner.
- Recommended best practices for continued use of virtual hearings revolve around adequate notification of which hearings are intended to be conducted virtually, education and technical assistance to overcome technological and user-centric barriers, clear communication regarding decorum expectations, and continuing coordination with patrons, practitioners, the public, and other stakeholders.

Introduction

During the COVID-19 pandemic, virtual meeting technology allowed the Utah judiciary to continue striving to provide the public an open, fair, efficient, and independent system for the advancement of justice, even while public health considerations significantly restricted in-person gatherings. Judicial officers and court staff have developed proficiency in the logistics of scheduling and conducting virtual hearings, which has revealed benefits and drawbacks related to using virtual meeting technology for court proceedings.

The Judicial Council directed the Green Phase Working Group (GPWG)[1] to study the matter and develop recommendations regarding the ongoing use of virtual meeting technology to conduct court proceedings. While virtual hearings will undoubtedly continue to be an important tool for the judiciary, the tool's effectiveness varies based on the situation and the parties involved. The goal has been to ascertain how virtual meeting technology can be employed into the future to advance the judiciary's mission without sacrificing the effectiveness inherent in in-person proceedings.

This report:

1. identifies prevalent benefits and drawbacks of virtual hearings;
2. explores the effect of virtual hearings on access to justice;
3. addresses technology considerations;
4. presents aggregate court user feedback on the use of this technology; and
5. recommends best practice considerations moving forward.

Recommendations from the GPWG are noted with a blue background throughout the report and are listed again at the end of the report.

Definitions

"Virtual hearing" means a court proceeding where the judicial officer, court staff, parties, and attorneys simultaneously appear and participate through the use of virtual meeting technology from different physical locations.

"Hybrid hearing" means a court proceeding where some participants are present together in the physical courtroom while other participants simultaneously appear and participate in the proceedings through the use of virtual meeting technology from a different physical location.

"Virtual meeting technology" means a software platform that enables more than one individual to simultaneously participate in the same meeting from different physical locations.

[1] **Appendix A** contains a list of GPWG members and staff.

Benefits and Drawbacks of Virtual Hearings

Virtual hearings have been critical to the operation of the judiciary during the pandemic. The use of technology allowed the courts to overcome the all-or-nothing choice between fully restricting access to the courts or exposing patrons, court staff, and judicial officers to a little-understood, highly contagious and deadly disease. Like any new technology, the benefits of virtual hearings came with drawbacks. The judiciary has learned a great deal about the utility and efficacy of virtual hearings since they became the default in 2020. Table 1 below outlines examples of the benefits and drawbacks of virtual hearings, as experienced by judicial officers, court employees, and court users throughout the state.

BENEFITS	
Access to Courts	• Some people will be able to attend a hearing who otherwise would not be able to do so. • Virtual hearings accommodate people who do not have a driver license but have access to virtual meeting technology. • The judiciary can draw from a larger pool of interpreters if interpreters do not have to attend court in person. • Extended family members and friends are able to attend proceedings such as adoptions. • News media outlets are able to cover hearings more regularly and across greater geographic diversity.
Convenience	• Court patrons can appear in court without needing to take time from work or home responsibilities. • Virtual jury selection is less disruptive to potential jurors.
Financial Savings	• Court patrons are less likely to lose wages for missing work if they are able to appear remotely. • Court patrons may avoid the need to pay for childcare or travel expenses to and from the courthouse. • Litigants may avoid having to pay their attorneys to travel to court or wait at the courthouse for their case(s) to be called.
Legal Representation	• Practitioners may be able to represent more clients if they travel less for hearings. • Litigants can draw from a larger pool of attorneys if attorneys do not have to travel to different geographic regions of the state / county / city. • Underserved communities have greater access to pro bono representation. • Attorneys in some civil cases may be able to have better communication with their clients in a virtual setting where the client better understands that the communication will be focused and efficient.
Efficiency	• Court patrons may spend less time unable to fulfill other responsibilities while waiting for their hearing.

	• Practitioners are able to accomplish more work when spending less time traveling to hearings / sitting in a courtroom waiting for their case(s). • Virtual hearings may be a more efficient use of resources than transporting people from jails, prisons, or other secure facilities.
Safety	• Virtual hearings offer an increased feeling of safety for victims of crime, petitioners for protective orders and civil stalking injunctions, parties in high conflict domestic cases, volunteers and others. • There are fewer law enforcement and public safety concerns than are involved with physically transporting inmates to a courthouse.
Comfort	• Some court patrons find appearing remotely for proceedings more comfortable / less intimidating, allowing them to be more authentic
Judicial Preference	• Some judicial officers prefer virtual jury selection over in-person jury selection.
Information	• In some kinds of cases, courts receive additional information to use in decision-making when people who would not be able to participate in person are able to appear virtually.
DRAWBACKS	
Loss of Court Efficiency	• For certain hearings, conducting the hearing virtually may take longer than doing the same work in person. • Fewer opportunities for counsel to visit while in the courthouse may result in fewer cases being settled on terms acceptable to the parties. • It can be difficult to negotiate with another party through a virtual platform.
Lack of Decorum	• Because virtual hearings are often viewed as less formal, some participants show a lack of decorum reflected in their dress, location when appearing, other activities going on in the background, interruptions, and lack of civility.
Lack of Focus	• Court participants sometimes try to multitask during virtual hearings and do not give their full attention to the court proceeding.
Constraints on Other Actions	• It is difficult or impossible to enforce certain court orders virtually. • It is difficult to serve parties who would be served at the courthouse if the hearing were in person. • It may be difficult to get defendants to report to jail when custody is ordered through a virtual hearing.
Resource Limitations	• Some jails are unable to accommodate the volume or timing of virtual hearings. • Lack of necessary equipment or insufficient access to the internet may limit or prevent some people from appearing through Webex.

Communication Friction	• Communication between attorneys and clients may suffer during virtual hearings and requires more planning to accommodate. • There are challenges using the Language Line (interpretation resource) in virtual hearings. • Obtaining victim and restitution information from prosecutors is more challenging in a virtual setting. • News media outlets obtain the highest quality recordings (particularly of higher profile case hearings) when recorded in person. • Judicial officers, attorneys, and jurors may miss important non-verbal cues that could be seen in person.
Technical Issues	• Technical problems sometimes interfere with hearings and may hinder access to court. • Virtual hearings use large amounts of bandwidth. • Interpretation sometimes suffers during virtual hearings. • The quality of the record may be diminished. • There is a learning curve for new participants.
Demands on Staff	• Non-IT staff are often required to provide impromptu technical support. • With the current system, scheduling virtual hearings requires additional work for staff.
Legal Concerns	• Virtual hearings may present constitutional deficiencies for some criminal hearings. • It can be difficult to judge the credibility of witnesses or ensure that witnesses are not impermissibly relying on extrinsic sources or aided by other individuals when providing testimony (despite amending the rule to include additional language in the oath). • It can be difficult to know whether another person is in the room with a virtual participant, trying to influence that participant.

Table 1 – Benefits and Drawbacks of Virtual Hearings

Access to Justice

Access to justice has been, is, and will continue to be a primary consideration when assessing court operations, including the use of virtual meeting technology. One of the benefits of virtual hearings has been an increase in access to justice for many people.

- Some parties find that it is much easier to participate in court proceedings virtually than to appear in person. Through the use of virtual hearings, barriers such as arranging transportation, finding daycare, or taking time off from work or other life responsibilities are reduced or eliminated. For some people, these barriers are the difference between being able to access court services and having to delay, or even forgo, court involvement, some of which affects physical safety. For others, these barriers could be the difference between a default judgment and the ability to meaningfully participate in their case. In some instances, it will be the difference between participation in an occupancy hearing and becoming homeless.
- Virtual hearings can reduce barriers by allowing court patrons to feel safe by appearing in a comfortable place and in a different location than the person they fear. Though a court patron in this situation may be capable of attending an in-person hearing, such a patron may reasonably view virtual hearings as increasing their access to the courts.
- Virtual hearings provide greater access for some court patrons and practitioners with disabilities. At least one attorney explained that he is often not able to attend in-person hearings because of his disabilities. The use of virtual hearings has allowed him to significantly expand his law practice because he is able to attend many more proceedings. This provides greater access to the attorney and his clients.
- For many people, virtual hearings provide greater access to justice simply because they are more convenient. While mere convenience may not override other considerations, it is still an important factor.

There are also aspects of virtual hearings that can impede access to justice. These obstacles must be understood and considered to ensure that the judiciary provides the best opportunities for the public to access court services.

- Some court patrons lack sufficient internet access, have limited means to purchase or maintain the necessary hardware, or are not comfortable with technology generally. This can impair or completely prevent the individual from appearing or effectively advocating their position in the case.
- Even for the users most comfortable with virtual hearings, technical problems outside of the individual's control can present barriers to accessing justice. Virtual platforms obviously depend on reliable networks and sufficient bandwidth. Some court patrons may use a less-than-optimal network that disrupts the hearing, making it difficult for the court to hear them and difficult for the patrons to follow what is taking place in the hearing. The demand for internal network bandwidth by court staff and judges

sometimes exceeds supply, causing disruptions to virtual hearings and other network uses.

- Virtual hearings are also more prone to create issues with the quality of the audio recording of the court proceedings. Disruptions from other court patrons in the same hearing, bandwidth constraints and fluctuations, and sometimes limitations of the virtual platform itself have compromised the quality of the audio recordings that constitute "the record." Recording quality concerns span the spectrum from minor annoyance in some cases to rendering the record completely useless during the transcription process. The diminishment of reliable recording quality is a clear and significant problem, particularly if issues in a case evade meaningful and complete appellate review due to a compromised recording.

The platform providers and our internal IT team have done much to improve the quality of the virtual hearing recordings and specific additional improvements are anticipated to be completed in the near future. With support from the Judicial Council, the IT and facilities teams are installing kiosks in courthouses throughout the state that provide reliable access to virtual hearings. The IT team has also been working hard to secure expanded bandwidth and provide support and training along with the necessary hardware and software.

Technology Considerations

Instituting virtual hearings in the Utah courts at the onset of the pandemic required the judiciary to purchase and roll out new technology, train judicial officers and employees, collaborate with system partners, and increase IT team support. A forward-looking and effective virtual hearings strategy will require additional and upgraded hardware and software, continual network monitoring and improvements, and significant time to fully implement.

Hardware and Software

The Utah courts have invested significant time and resources into establishing a baseline hardware and software foundation for conducting virtual hearings. These previous investments, coupled with planned upgrades, position the courts to continue using virtual and hybrid hearings into the future.

Early in the pandemic, the Utah courts determined that Webex was the virtual meeting technology platform best suited to the needs of the judiciary. The number of Webex accounts available to judicial officers and court employees has gradually increased since the beginning of the pandemic as licensing needs and available resources have allowed. The judiciary currently has approximately 1,900 Webex licenses for state and local courts. Most of the state courts' computers have been upgraded to meet the minimum standards for Webex, but some outdated computers remain in use and will need to be replaced.

Beyond the necessary software licensing and the computers to operate that software, other hardware and technology upgrades in the courtrooms statewide have been necessary to conduct efficient and effective virtual and hybrid hearings. Numerous courtroom upgrades such as rolling media carts, additional monitors to display proceedings to the parties, and video cameras have been purchased and installed to support both virtual and hybrid hearings. In the near future, additional upgrades will be installed in courtrooms to better facilitate remote appearances, the presentation of evidence, and other related functionalities. Important additional upgrades to hardware and software are planned including: enabling simultaneous interpretation; allowing Webex audio to be recorded directly to the courts' official audio recording platform "For The Record" (FTR); and cloud migration of FTR data.

Network Requirements

The increased use of virtual court hearings and meetings has at times placed a nearly overwhelming load on the courts' network capabilities and bandwidth. This voluminous data transmission burden has resulted in slow network response times for critical systems to function well. It is anticipated that these challenges will not be fully resolved until an ARPA-funded[2] network upgrade is completed in December 2024. This upgrade is intended to optimize system performance through the creation of discrete network connections to route network traffic for the courts' internal applications (CORIS, CARE, etc.) separately from external applications (Webex, Google services, etc.).

[2] "ARPA" is the American Rescue Plan Act of 2021 (H.R. 1319), enacted on March 11, 2021.

Other Technology-related Considerations and Challenges

While the advancements and expanded use of technology are critical to the successful ongoing use of virtual and hybrid hearings, there are some challenges that the courts should anticipate and prepare for:

- judicial officer and court staff training will remain a significant need;
- reliance for support from the IT team will increase and add additional pressures on a small support staff tasked with handling high support volume;
- supply chain issues for hardware and devices will likely present ongoing challenges into the foreseeable future; and
- upgrades such as Webex kiosks, permanent cameras in all courtrooms, an accessible and intuitive public portal, FTR migration to the cloud, simultaneous interpretation, and other changes will be implemented gradually through December 2024, which will require the courts to adopt some short-term solutions while coping with the necessary time to complete these critical technology upgrades.

GPWG Recommendation
Continue to invest in IT staff necessary to support virtual and hybrid hearings and to provide training to employees, judges and commissioners.

Court User Survey

During the summer of 2022, the Utah State Bar's Access to Justice Commission, in partnership with the Utah Judicial Council, conducted a limited survey of court users (primarily in the Third District) about their experiences with virtual hearings from the fall of 2021 through the spring of 2022. The results, which provide useful information for the judiciary, are found in "*Utah Survey of Court Users: The Impact of Remote Hearings on Access to Justice, June 2022.*"[3]

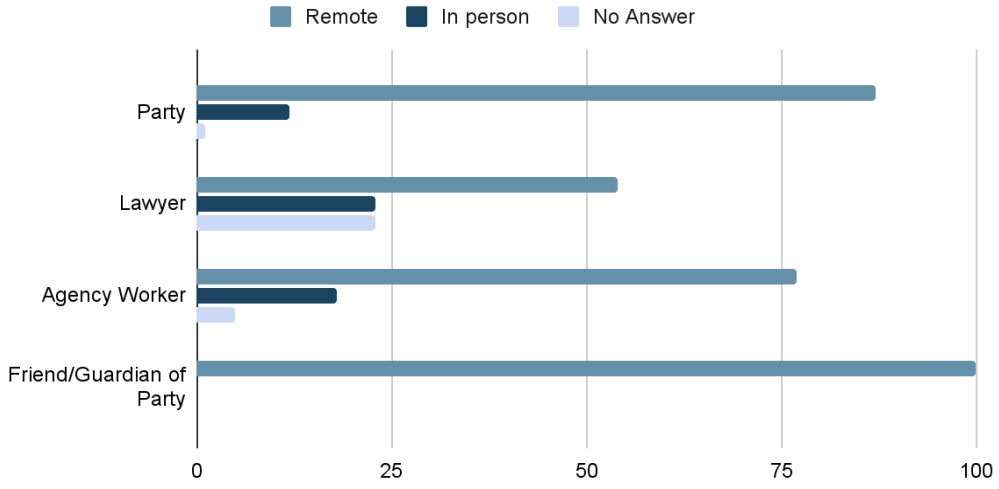
At the time the report was published, a total of 212 individuals had provided survey responses, including 116 parties, 68 lawyers, 22 government agency workers, and 5 friends/guardians of a party. These individuals participated in a variety of hearings in district court (criminal and civil), juvenile court (delinquency and child welfare), and justice court (criminal, traffic, and small claims).

The most conclusive survey result was that 75% of respondents across all types of survey participants expressed a preference for virtual hearings.[4] Parties were the most likely group to prefer virtual hearings (87%), followed by agency workers (77%) and lawyers (54%).[5] See Figure 1.

While the preference of court users is only one consideration among many, it is strong evidence that there is value in conducting certain court proceedings through virtual hearings.

Figure 1. Hearing Preference by Type of Participant

Source: Utah Survey of Court Users: The Impact of Remote Hearings on Access to Justice, June 2022.



[3] See **Appendix B** for the Utah State Bar Access to Justice Commission full survey report.
[4] Respondents were asked "For your court hearing or activity today, which do you prefer?" and were given two choices: "I prefer participating in person at the courthouse" and "I prefer participating remotely (by video, phone, or virtually)."
[5] 100% of "friends / guardians of party" preferred virtual hearings, though the sample size of this group was five individuals.

Judicial Discretion vs. Patron Preference

There are many approaches the Judicial Council could adopt regarding the ongoing use of virtual hearings. In discussing various approaches, the GPWG weighed three main considerations: patron preference, consistency, and judicial discretion.

Consistency. There is value in having a consistent approach throughout the state. Court patrons know what to expect and can plan accordingly. Attorneys know whether a hearing is likely to be quick because it is virtual or whether the hearing will involve significant travel time to and from the courthouse. This is especially helpful for attorneys who practice in front of multiple judicial officers in different districts. It matters even more for non-profit legal service providers; they provide legal services across the state and have minimal administrative support to keep track of and cope with varying requirements. These agencies and other stakeholders have expressed a preference for statewide consistency.

Patron Preference. Public perception and participation are significantly impacted by the type of hearing. When attorneys, parties, and other court patrons can choose whether to access court remotely or in person, they are better able to manage their work and family obligations, schedules, finances, transportation, and personal safety. Court administration in Ohio has found that court users rank the courts higher in access and fairness when they are allowed to choose the venue because it allows them to participate in the process instead of just having the court process happen to them.

Judicial Discretion. Every hearing involves unique circumstances and people, and the judicial officer is in the best position to determine whether a virtual hearing or in-person hearing best serves the interests of justice given those unique factors. Additionally, our state comprises diverse geographic regions with unique strengths, needs, and characteristics. It is difficult to craft a single approach to determining whether hearings will be held virtually or in person that adequately serves the needs of all districts. Maximizing judicial discretion also allows judges to consider the impact virtual or in-person hearings have on their individual staff members.

The GPWG discussed and ultimately rejected an approach used by some states that establishes presumptions or mandates for every type of hearing. Though this approach establishes consistency, it almost completely ignores judicial discretion and the reality that every case is different. The GPWG also worried that complete judicial discretion discounts the feedback received from external stakeholders and leads to practices that are inconsistent for similar types of hearings.

In an effort to give appropriate weight to all three of these considerations, the GPWG recommends the following approach.

1. **Judicial discretion**
   Judicial officers consider the factors discussed 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.

2. **Court Patron Requests**
    a. Where an in-person hearing is scheduled and a participant requests that they be allowed to participate virtually, the judicial officer must allow them to participate virtually if the participant shows good cause, which permission shall not be unreasonably withheld.
    b. Where a virtual hearing is scheduled and a participant requests that they be allowed to participate in person, the judicial officer must allow them to participate in person if the participant shows good cause, which permission shall not be unreasonably withheld.
3. **Good Cause**
   A good cause standard should be established, as discussed below in "Amending Court Rules."
4. **Court Technology**
    a. Courtroom technology must provide remote participants the same opportunity as in-person attendees to hear, view, and participate in the court proceeding.
    b. Each district should develop a digital evidence plan to standardize how digital evidence is managed within the district.
5. **Remote Attendee Obligations**
    a. 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.
    b. Remote attendees must observe the same courtroom decorum as those attending in person, including appropriate courtroom attire, behavior, and language.
    c. Remote attendees must appear from a location that does not disrupt the court proceeding and allows the attendee to participate without distractions.
    d. Attendees must never appear in a court proceeding while operating a vehicle.
    e. Attorneys appearing remotely must be on time and not delay a court proceeding by overscheduling remote appearances.

GPWG Recommendation
Judicial officers should have discretion to determine whether a hearing will be in person or virtual. If a court patron requests to participate in a way other than the way identified by the judicial officer and demonstrates a valid reason, the judicial officer should be required to grant the request. Court rules should be adopted to implement this approach.

Considerations for Judicial Officers

Juvenile Courts

Addressing the individual needs of children and families is one of the foundational components of the Utah Juvenile Court. This approach extends to and influences decisions on appropriateness and effectiveness of conducting a hearing in-person or virtually. Maintaining judicial discretion in making these decisions is vital to preserving the defining characteristics of the juvenile court and ensuring an individualized approach to each case.

While the decisions on in-person and virtual hearings should be made based on unique circumstances of each case and each hearing, some juvenile court proceedings are more suitable to conduct virtually while other proceedings are more suitable for an in-person setting.

Virtual

The following juvenile court hearing types may be more appropriate to conduct virtually.

- Delinquency:
  - Detention Hearings
  - Expungements
  - Entire delinquency cases (*contingent on the factors listed below)*
  - Entire delinquency cases where minors are in an out-of-county placement
- Child Welfare:
  - Custody of Refugee Minor cases (CCS Petitioner)
  - Immigrant Status cases
  - Child Welfare Reviews *(contingent on the factors listed below)*
  - Child Welfare Post Termination Reviews

In Person

The following juvenile court hearing types may be more suitable to conduct in-person.

- Delinquency:
  - Trials
  - Evidentiary Hearings
  - Hearings on Motions to Suppress that include testimony
  - Competency hearings
  - Order to Show Cause/Contempt hearings
  - Criminal Information or Bind over cases that involve evidence
  - Any case where a party requests an in-person appearance
- Child Welfare:
  - Trials
  - Evidentiary hearings
  - Shelter hearings
  - Adjudication/Pretrial hearings
  - Disposition

    - Permanency hearings
    - Voluntary Relinquishment
    - Order to Show Cause/Contempt hearings
    - Any case where a party requests an in-person appearance
- Other Cases/Hearings
    - Treatment Courts
    - Petitions for Marriage
    - Judicial Bypass petitions
    - Emancipation petitions
    - Protective Orders
    - Adoption *(with an option for virtual attendance for family members out of the area)*

In making decisions on scheduling an in-person or virtual hearing, juvenile court judges should consider:

- 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 (out of county, etc);
    - 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;
    - youth is in a remote out of home placement and transport is not feasible; and
    - youth or parent display a lack of understanding of court processes or orders.
- Hearing Circumstances:
    - whether the hearing is a procedural or substantive type hearing;
    - whether evidence is being presented; and
    - whether witness testimony is required.

Juvenile court judges should additionally consider comfort level, preferences, and health accommodations of parties and teams. It may be beneficial at the time the next hearing is being scheduled to provide an opportunity for parties and participants to express their preferences regarding an in-person or virtual setting.

GPWG Recommendation
Juvenile court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.

Justice and District Courts

Post-pandemic, justice court judges and district court judges will continue to have the option to use in-person and virtual hearings to effectively accomplish the mission of the courts. While the state courts IT department has made significant improvements to the technology and hardware that make virtual hearings possible, the judiciary should continue to make additional investments in technology to better accommodate virtual hearings, facilitate hybrid hearings, and improve the evidence-presentation process for all hearing types in every courtroom throughout the state. Regardless of the type of hearing, an accurate audio record must be maintained.

Judicial discretion is paramount when deciding whether to hold an in-person or virtual hearing. Given the unique characteristics of each court, court location, and case, district court judges must have individual discretion to determine which hearing type will best promote the open, fair, and efficient administration of justice in each proceeding. In-person and virtual hearings offer different benefits and efficiencies, so judges will need to decide whether proceeding in person or virtually will best address the unique circumstances of each hearing.

It is also important to understand the technical limitations that impact virtual hearings. For example, some county jails have limited capacity for virtual hearings and cannot accommodate the number or length of virtual hearings a court may desire to hold.

The GPWG recommends justice court judges and district court judges consider principles of procedural fairness, factors outlined in court rule, and the following factors where relevant (listed in no particular order):

- 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 civil proceeding, etc.)?
- Do the parties have a stated preference for a certain type of hearing? If so, how and when do parties state their hearing-type preference?

- 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 from 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?

GPWG Recommendation
Justice court judges and district court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.

Appellate Courts

The appellate courts have only one hearing type to consider in evaluating moving into a post-pandemic judicial environment—oral arguments. Oral arguments never have witnesses and very rarely utilize any form of evidentiary exhibits.

Likewise, procedural fairness in appellate hearings is accomplished by parties being able to clearly present their arguments and communicate with the members of the bench, and respond in rebuttal where appropriate, to opposing counsel's arguments. This of course has historically been accomplished by in-person oral arguments. Throughout the COVID-19 pandemic this was accomplished entirely via virtual hearings.

One aspect of procedural fairness that was not considered prior to the pandemic was that our appellate courts hear cases from all eight judicial districts while being housed in the Third District. This presents the question: how does this geographical arrangement impact litigants? For example, represented parties of an appeal originating in the Fifth District would possibly pay more for their appeal as their counsel is required to travel several hundred miles to Salt Lake City. Allowing for virtual appearances for these parties and attorneys, if able to be done equitably, would eliminate a procedural hurdle for the geographically distant party and increase procedural fairness.

Utah's appellate courtrooms are currently undergoing a significant technology overhaul that will allow both parties, as well as the appellate judges, to appear in person or virtually. The

technology allows one party to appear virtually while the other appears in-person, and allows one or more judges to appear remotely while the others appear in-person.

Considerations for Deciding on In-person vs. Virtual Oral Argument

- What are the locations of parties and the costs 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 argument 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 on remote vs. in-person?

GPWG Recommendation
Appellate court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.

Recommended Best Practices for Virtual Hearings

The experiences of judicial officers and court staff with virtual hearings over the past two years helped the GPWG identify best practices for the ongoing use of virtual hearings. The following pages of this report provide both court-wide recommendations and recommendations for specific groups including judges and court staff, court patrons, attorneys, and the prison and jails.

Court-wide Recommendations:

1. 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.
2. 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).
3. 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.
4. 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.
5. 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.
6. 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.

Recommendations for Specific Groups — Judicial Officers & Court Staff:

JUDICIAL OFFICERS & COURT STAFF		
1	**Notices:** *Contents*	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): • 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: – 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 *(see Recommendation #5)*; • the process for submitting and presenting evidence *(see Recommendation #8)*; and • how to request interpretation or accommodation *(see Recommendation #12)*.
2	**Notices:** *Plain Language*	Notices should be easy to understand (i.e., in plain language, avoiding abbreviations or having standard abbreviations; etc.).
3	**Notices:** *Hearing Changes*	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:** *Self-Represented Parties*	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.
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.

JUDICIAL OFFICERS & COURT STAFF		
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:** *Evidence*	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:** *Expectations*	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, etc.). These expectations could be provided in a flier, district-level standing order, or the Judicial Council may want to create a rule.
10	**Instructions:** *Hearing Processes*	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 (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, how to present evidence, etc.)
11	**Instructions:** *Use of Webex*	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, how to present evidence, etc.
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.

JUDICIAL OFFICERS & COURT STAFF		
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 the virtual hearings.

Recommendations for Specific Groups — Court Patrons:

COURT PATRONS		
1	Decorum Expectations	Participants **SHOULD**: 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 (i.e., children, pets, etc.); 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. Participants **SHOULD NOT**: 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.
2	Technology Expectations	Participants **SHOULD**: 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.

Recommendations for Specific Groups — Attorneys:

ATTORNEYS		
1	Expectations	Expectations for attorneys should be outlined and disseminated. For example, attorneys **SHOULD**: a) **Title & Name** — ensure their Webex name displays their title followed by their full name (i.e., 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.

Recommendations for Specific Groups — Prison & Jails:

PRISON & JAILS		
1	Stakeholder Meetings	Stakeholder meetings should be held to discuss and establish best practices between the courts and the prison / 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 remaining room. 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.

Amending Court Rules

Court Rule Amendment Recommendations - Appearing in Court

A foundational principle of our pre-pandemic understanding was that appearing in court meant being physically present in the courtroom. In limited circumstances judicial officers and practitioners would utilize phone conferences, and, with exception to some in-custody first appearances taking place remotely from jails, video conferencing was seldom used across the state. As a result, most rules and practices did not contemplate the use of virtual meeting technology or—at a minimum—indicated a strong preference for in-person appearances. With the rapid advancement in courtroom technology experienced over the last several years, this strong preference for in-person appearances seems to be an increasingly outdated approach to the administration of justice.

Pursuant to the Utah Constitution, the Supreme Court is obligated "to adopt rules of procedure and evidence" and the Judicial Council is obligated "to adopt rules for the administration of the courts of the state." Court rules are essential to the mission of the Utah judiciary to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law. Throughout the pandemic the interpretation of the meaning of this mission has evolved. The Supreme Court and Judicial Council amended or suspended application of certain rules to accommodate necessary pandemic-related changes to previously established practice. In large part, court rules are still built on a pre-pandemic understanding of the needs of judicial officers, court staff, and patrons. This section will provide recommendations our rulemaking bodies should consider when creating and amending rules in a post-pandemic judiciary.

Recommendations to Supreme Court

The Green Phase Workgroup acknowledges that many of the necessary changes found in this section implicate the direct authority of the Utah Supreme Court. As presented in *Judicial Discretion v. Patron Preference,* the GPWG recommends the Supreme Court establish a "good cause" standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The GPWG recommends the Supreme Court charge its various advisory committees with defining the "good cause" standard through rule. The Supreme Court's advisory committees are uniquely suited for this task because of their diverse practitioner composition, and practice of incorporating stakeholder comments into their decision-making process. Finally, the GPWG recommends that the Supreme Court establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the "good cause" standard as defined in the relevant procedural rules. Because the "good cause" standard may vary between procedural rule chapters, it will likely be necessary for each procedural rule chapter to define an appeal process.

GPWG Recommendation
The Supreme Court establish a "good cause" standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The Supreme Court should define "good cause" and establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the "good cause" standard as defined in the relevant procedural rules.

Recommendations to the Judicial Council

During the pandemic, districts accommodated email filing for self-represented litigants who were not able to file electronically because in-person filing was not an option. That practice proved helpful to many self-represented litigants. The GPWG discussed whether the courts should continue to allow email filing by self-represented litigants. Due to the significant workload email filing adds to clerical staff, the GPWG recommends that all initial filings by self-represented litigants be made in person or via US mail. The GPWG also recommends that the Judicial Council amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, the GPWG recommends that a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.

GPWG Recommendation
All initial filings by self-represented litigants should be made in person or via US mail. The Judicial Council should amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.

Constitutional Considerations

Rulemaking bodies should explore the constitutional concerns surrounding the use of in-person and virtual hearings, most importantly whether in-person and virtual hearings are constitutionally equivalent. For example, Rule 26(a)(1) of the Utah Rules of Juvenile Procedure provides that minors have a right "to appear in person and to defend in person or by counsel." Rule 17.5 of the Utah Rules of Criminal Procedure identifies certain types of hearings that can be held via contemporaneous transmission, while prohibiting others, and allowing for waiver of the prohibition with mutual agreement of the parties. Our historical analysis of when parties were entitled to in-person hearings may not be current with recent technological advances and the availability of virtual resources. The GPWG recommends that the judiciary's rulemaking bodies balance the increasing need for opportunities to improve access to justice, while simultaneously ensuring court rules and practices do not violate principles of due process.

Initial Rule Amendments to Consider

In addition to rule-making bodies providing guidance on the new “good cause” standard, there are other procedural and administrative rules that may benefit from amendment or clarification. The GPWG has formulated a list of the rules with the most perceptible need for attention, which is included under **Appendix C** of this report.

Stakeholder Input

The GPWG distributed a draft of this report to community stakeholders and government agencies, requesting their feedback.

Community Stakeholders

The most common feedback from community stakeholders was that options for virtual participation in court proceedings should continue and that court patrons should be able to request the opportunity to participate virtually even if the judicial officer has determined that the proceeding will be in person. Stakeholders explained that even though virtual hearings have some limitations and are not the best option in all circumstances, they have significantly expanded access to justice.

Multiple stakeholders expressed appreciation for virtual hearings while also noting a need for additional technical support for virtual hearing participants. Many participants will not have experience with Webex and may experience difficulties accessing a virtual hearing and navigating through Webex. Resources with detailed explanations about how to participate in a virtual hearing and employees or volunteers dedicated to assisting virtual hearing participants would help people overcome difficulties prior to and during their virtual hearing.

Two stakeholders noted that the health concerns regarding the pandemic are still very real and very serious for some people and asked for appropriate consideration of the circumstances of those people.

Stakeholders provided many additional recommendations, which are listed below.

- Coordinate with community organizations likely to provide access to technology and support efforts to strengthen these services.
- Provide dedicated staff to assist users experiencing technical problems with a virtual hearing.
- Establish consistent policies to determine whether hearings will be virtual or in person.
- Each court should have a single, consistent link used to access virtual hearings.
- For virtual calendars involving multiple cases, establish a consistent way to notify the court that a participant is prepared for their case to be called and a way to notify a participant that their case will be called next.
- Provide greater access to breakout rooms for conversations with clients and for negotiations among parties.
- Make reasonable accommodations for patrons with disabilities.
- Allow hearing participants to participate virtually upon a finding of good cause even if the court has determined the hearing will be in person.
- Provide better instructions accessing a virtual hearing and explaining the expectations for participants. This may be a short video or an information sheet.
- Provide links for all public virtual hearings in a central location on the courts' website.

- Establish consistent procedures for entering evidence in virtual hearings.
- Ask virtual hearing participants if another person is in the room in order to determine whether someone is trying to influence the participant.
- Develop procedures for patrons to participate in virtual hearings without sacrificing privacy.
- Expand the availability of court kiosks for pro se people to use for printing, scanning, and filing documents.
- In both virtual hearings and in-person hearings, allow appropriate time for participants to process questions and communicate with the judicial officer.
- Shift the approach of courts to make judicial officers seem approachable and encourage staff to help people navigate the complexities of court.
- Consider offering extended hours to accommodate people who work during the day.

Government Agencies

The Utah Department of Corrections (UDC) expressed hope that the courts would not change policies that would result in them needing to conduct more transports. UDC noted that increasing the number of transports would impact their capacity to handle other work. The Division of Juvenile Justice and Youth Services similarly expressed a hope that detention hearings could be held virtually. They noted that for youth in a community placement in their county, their case managers would plan to request in-person hearings when they felt it was necessary.

Future Questions

The judiciary will continue to learn about the utility of virtual hearings in coming months. Periodic review of these recommendations and policies based on these recommendations is important. The judiciary should 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.

GPWG Recommendation
The judiciary should 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.

There will certainly be additional questions that arise regarding the use of virtual hearings. The GPWG is willing to consider and make recommendations on any additional issues that would be helpful to the Judicial Council and Supreme Court.

Recommendations

- Continue to invest in IT staff necessary to support virtual and hybrid hearings and to provide training to employees and judicial officers.
- Judicial discretion vs. patron preference

1. **Judicial discretion**
   Judicial officers consider the factors discussed 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.
2. **Court Patron Requests**
   a. Where an in-person hearing is scheduled and a participant requests that they be allowed to participate virtually, the judicial officer must allow them to participate virtually if the participant shows good cause, which permission shall not be unreasonably withheld.
   b. Where a virtual hearing is scheduled and a participant requests that they be allowed to participate in person, the judicial officer must allow them to participate in person if the participant shows good cause, which permission shall not be unreasonably withheld.
3. **Good Cause**
   A good cause standard should be established, as discussed below in "Amending Court Rules."
4. **Court Technology**
   a. Courtroom technology must provide remote participants the same opportunity as in-person attendees to hear, view, and participate in the court proceeding.
   b. Each district should develop a digital evidence plan to standardize how digital evidence is managed within the district.
5. **Remote Attendee Obligations**
   a. 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 court may choose to require only audio transmission.
   b. Remote attendees must observe the same courtroom decorum as those attending in person, including appropriate courtroom attire, behavior, and language.
   c. 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.

- Juvenile court judges should consider the following factors when deciding whether a hearing will be 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 (out of county, etc);
        - 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;
        - youth is in a remote out of home placement and transport is not feasible; and
        - youth or parent display a lack of understanding of court processes or orders.
    - Hearing Circumstances:
        - whether the hearing is a procedural or substantive type hearing;
        - whether evidence is being presented; and
        - whether witness testimony is required.
    - Judges should additionally consider comfort level, preferences, and health accommodations of parties and teams.
- Justice court judges and district court judges should consider the following factors when deciding whether a hearing will be 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 civil proceeding, etc.)?

    - Do the parties have a stated preference for a certain type of hearing? If so, how and when do parties state their hearing-type preference?
    - 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 from 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 should consider the following factors when deciding whether a hearing will be in person or virtually.
    - What are the locations of parties and the costs 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 argument 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 on remote vs. in-person?
- 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:** *Contents*	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): • 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: – 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;

JUDICIAL OFFICERS & COURT STAFF		
		• how to file, serve, and present evidence; • what patrons should tell their witnesses; • contact information for technical assistance *(see Recommendation #5)*; • the process for submitting and presenting evidence *(see Recommendation #8)*; and • how to request interpretation or accommodation *(see Recommendation #12)*.
2	**Notices:** *Plain Language*	Notices should be easy to understand (i.e., in plain language, avoiding abbreviations or having standard abbreviations; etc.).
3	**Notices:** *Hearing Changes*	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:** *Self-Represented Parties*	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.
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:** *Evidence*	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.

JUDICIAL OFFICERS & COURT STAFF		
9	**Instructions:** *Expectations*	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, etc.). These expectations could be provided in a flier, district-level standing order, or the Judicial Council may want to create a rule.
10	**Instructions:** *Hearing Processes*	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 (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, how to present evidence, etc.)
11	**Instructions:** *Use of Webex*	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, how to present evidence, etc.
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 the virtual hearings.

- Best practices for court patrons

COURT PATRONS		
1	Decorum Expectations	Participants **SHOULD**: h) remember that a virtual courtroom is subject to the same

COURT PATRONS		
		standards of behavior and decorum as in-person court; i) dress appropriately for a court appearance; j) be focused on the proceedings by pre-arranging care for other obligations that may need attention during the hearing (i.e., children, pets, etc.); and k) 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. Participants **SHOULD NOT**: l) speak over another party or an interpreter; m) interrupt when joining a virtual hearing that has already started (remain muted until their case is called); and n) eat, drink, smoke, or drive during the hearing.
2	Technology Expectations	Participants **SHOULD**: g) **Location** — plan on joining the virtual hearing from a suitable location that is quiet, private, and allows the participant to focus; h) **Camera** — have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions; i) **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); j) **Audio** — be aware of and try to minimize background noises; k) **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 l) **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	Expectations for attorneys should be outlined and disseminated. For example, attorneys **SHOULD**: g) **Title & Name** — ensure their Webex name displays their title followed by their full name (i.e., Defense Attorney Atticus Finch); h) **Camera** — have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions; i) **Audio** — be aware of and try to minimize background noises, and

ATTORNEYS		
		use a quality microphone to help ensure an accurate record; j) **Attire** — dress appropriately for a court appearance; k) **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 l) **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 / jails, including: d) 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; e) 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 remaining room. f) 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.

- The Supreme Court should establish a "good cause" standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The Supreme Court should charge its various advisory committees with defining the "good cause" standard through rule. The Supreme Court should establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the "good cause" standard as defined in the relevant procedural rules. Because the "good cause" standard may vary between procedural rule chapters, it will likely be necessary for each procedural rule chapter to define an appeal process.
- All initial filings by self-represented litigants should be made in person or via US mail. The Judicial Council should amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.
- The judiciary should 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.

APPENDIX A

Green Phase Working Group Members

- Hon. Ryan Harris, *Utah Court of Appeals*
- Hon. Renee Jimenez, *Third District Juvenile Court*
- Hon. Michael Leavitt, *Fifth District Juvenile Court*
- Hon. Richard Mrazik, *Third District Court*
- Hon. Don Torgerson, *Seventh District Court*
- Hon. Danalee Welch-O'Donnal, *Grand County Justice Court*
- Brody Arishita, *Chief Information Officer*
- Linda Ekker, *Clerk of Court – Sixth District*
- Becky Faatau, *Judicial Assistant – Third District*
- Brett Folkman, *Trial Court Executive – First District*
- Chris Morgan, *Trial Court Executive – Sixth District*
- Joyce Pace, *Trial Court Executive – Fifth District*
- Russell Pearson, *Trial Court Executive – Eighth District*
- Nathanael Player, *Self-Help Center Director*
- Glen Proctor, *Trial Court Executive – Second District*
- Calli Stephensen, *Judicial Assistant – Fourth District*
- Shannon Treseder, *Clerk of Court – Second District*
- Pleasy Wayas, *Self-Help Center Attorney*

Green Phase Working Group Staff

- Shane Bahr, *District Court Administrator*
- Michael Drechsel, *Assistant State Court Administrator*
- Ron Gordon, *State Court Administrator*
- Meredith Mannebach, *Assistant District Court Administrator*
- Daniel Meza Rincon, *Assistant Juvenile Court Administrator*
- Jim Peters, *Justice Court Administrator*
- Neira Siaperas, *Deputy Court Administrator*
- Nick Stiles, *Appellate Court Administrator*
- Sonia Sweeney, *Juvenile Court Administrator*

APPENDIX B

Survey Report

Utah Survey of Court Users:
The Impact of Remote Hearings
on Access to Justice, June 2022

UTAH SURVEY OF COURT USERS: THE IMPACT OF REMOTE HEARINGS ON ACCESS TO JUSTICE

June 2022

PREPARED BY

Pamela Beatse, JD
Access to Justice Director | Utah State Bar

David McNeill, PhD, MBA
Researcher | Utah Access to Justice Commission

Appendix B - Utah Survey of Court Users

Access to Justice Commission:
Court User Survey Workgroup

Justice Christine Durham, Amy Sorenson, Pamela Beatse, Nancy Sylvester, Keenan Carroll, Judge Susan Eisenman, Judge Clem Landau, David McNeill, Judge Richard Mrazik, Kim Paulding, Nathanael Player, Keri Sargent.

Acknowledgment

Members of the Court User Survey Workgroup of the Access to Justice Commission would like to thank everyone who responded to the survey. They would like to thank the Third District judicial teams and judges who are participating in this Court User Survey project including District Court Judge Richard Mrazik, Justice Court Judge Clemens Landau, and Juvenile Court Judge Susan Eisenman. They would also like to thank the National Center for State Courts, in particular Danielle Hirsch, Alisa Kim, and Zachary Zarnow, and the Utah Courts team, in particular Heidi Anderson, Todd Eaton, and Jace Kinder, who gave support and technical assistance building and distributing the survey.

KEY RESULTS

77% of participants are from the **Third Judicial District**.

75%
Utah Court Participants Prefer Remote Hearings

Treated with Courtesy and Respect
Court patrons and practitioners think the court treats them professionally.

Done in Reasonable Amount of Time
Participants believe their activities are completed in timely manner.

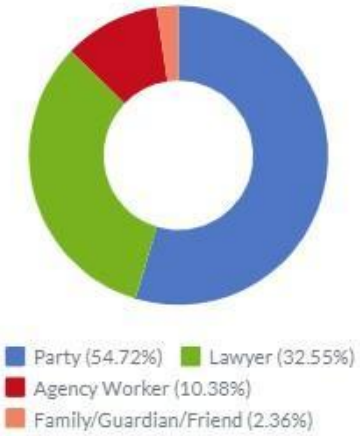
Quality Sound and Video
Respondents say Webex sound and video are ample to conduct activities.

Benefits of Remote Hearings

1. Increased Job Stability
2. Economic Savings
3. Improved Access to Court
4. Personal Safety

Professionally conducted. Clear audio and video. Saves a lot of time, money and travel.

Categories of Survey Participants



Appendix B - Utah Survey of Court Users

Contents

Summary

When Governor Gary Herbert declared a state of emergency to enable the State of Utah to respond to novel coronavirus disease 2019 (COVID-19) on March 6, 2020, the landscape of justice changed rapidly. Since March 13, 2020, the Utah Supreme Court and the Utah Judicial Council have issued numerous Administrative Orders governing court operations during the pandemic to protect the public from the spread of disease. During this time, and out of necessity, the Utah State Courts relied on the use of Webex to conduct remote hearings and other court business statewide. Along the way, tools and processes were initiated to allow for fully remote hearings. Some are now working on returning to in-person hearings.

In the fall of 2021, the Access to Justice Commission ("ATJ Commission") began studying remote hearings in Utah by conducting a survey of Utah court patrons and practitioners. The ATJ Commission initially partnered with the National Center for State Courts as part of a national review. The Commission then narrowed its focus to a Utah-specific survey. The data from this survey is the basis for this report. The focus of this study was determining whether and how remote hearings resulted in access to equal justice for people in Utah.

Based on the data collected, Utah court patrons and practitioners strongly prefer remote hearings, at least for some types of court hearings and activities. Court operations over Webex are done with courtesy and in a timely manner. While there are occasional issues, Webex sound and video are highly rated. Most importantly, remote hearings have increased access to equal justice for many people. Survey respondents list benefits that include being better able to provide representation in rural Utah, not having to miss work, and not having to pay for childcare and travel as strong benefits. Based on these due process and convenience factors, Utah courts should work to include remote access moving forward.

Method

A sample of data from Utah court patrons and practitioners was collected through two different online surveys. The first was prepared by the National Center for State Courts as a Utah-specific questionnaire using Qualtrics ("NCSC Survey").[6] Data through the NCSC survey currently includes 101 responses, collected from September 24, 2021, through June 5, 2022, with continuing responses anticipated.

The second was developed by the Access to Justice Commission Court User Survey Workgroup using SurveyMonkey ("ATJ Survey").[7] Data from the ATJ survey currently includes 119 responses, collected from March 14 through June 5, 2022, with responses continuing to

[6] National Center for State Courts Qualtrics Court User Survey *available at* https://ncsc2.iad1.qualtrics.com/jfe/form/SV_bIYBug4VwsbQhnM.
[7] Access to Justice Commission SurveyMonkey Court User Survey *available at* https://utahcourts.surveymonkey.com/r/CTT5WB3.

accumulate. At present there are 220 individual records. Seven responses were excluded due to incomplete information, for a total sample of 213.

Limitations

There are limitations to the data collected through this survey of Utah court patrons and practitioners. Survey responses were primarily collected through a pilot program in the Third Judicial District. The combined responses are sufficient to draw several conclusions, but the data is less certain for some types of court use. For example, certain districts are under- or unrepresented, in part as a natural consequence of state population distribution and in part due to the constraints of the pilot study. Surveys were mostly collected by sending a link by email, reducing responses from call-in users. In addition, the survey did not collect any responses from jurors or witnesses, so it includes limited information on the efficacy of remote hearings for jury trials or complex litigation. To keep the survey small, important questions were not asked and they merit further study such as the impact of remote hearings on privacy or on victims of abuse.

Survey Participants

Surveys were sent or given to parties (plaintiffs and defendants), lawyers, agency workers, family members, and friends after they appeared in a Utah court. Agency workers include people from the Department of Child and Family Services, the Division of Juvenile Justice Services, and other court advocates. The sample population is based on respondents' ability and willingness to participate, not a scientific or fully representative sample. One district court, one justice court, and one juvenile court judicial team sent surveys to their court patrons.[8] Starting in April, the Access to Justice Office of the Utah State Bar sent surveys to participants in the Third District immediate occupancy and debt collection calendars. The ATJ Office also sent surveys to volunteer attorneys in their programs. Links to the online surveys were provided through a variety of channels, including by email, text message, insertion in the Webex chat, and QR code.

Survey Content

The NCSC survey included 24 multipart questions and took approximately 5 minutes to complete. The ATJ survey was reduced to 19 questions that were included in the NCSC survey. The typical time spent completing this survey was 2 minutes and 2 seconds.

Both surveys included qualitative and quantitative questions about demographics, accessing remote proceedings, type and location of court use, their preferences, and other aspects of their experiences. The objective was to understand how court patrons and practitioners experienced virtual services in Utah courts. Data includes matching responses combined from surveys.

Survey Data and What It Tells Us

The 213 survey respondents combined from the NCSC and ATJ Surveys represent a population of parties (116), lawyers (69), agency workers (22), and family members and friends (5) who are diverse in their age, method of accessing the remote hearing, location, and type of court use. They represent actual court patrons and practitioners who appeared in a Utah district, justice, or juvenile court from fall 2021 to spring 2022. The NCSC Survey was slanted towards plaintiffs and defendants who comprised 90% of NCSC Survey respondents. The ATJ Survey respondents included more nonparties: 55% lawyers and 19% agency workers. Because court uses include juvenile matters, respondents included minors.

Respondents provided feedback in these key areas:

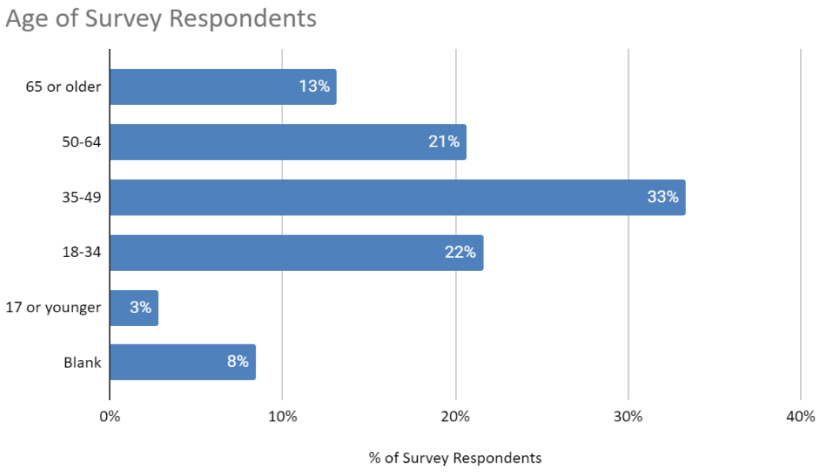
1. Stating a preference to participate in-person or remotely.
2. Evaluating whether the court team treated everyone with courtesy and respect.
3. Assessing if they got their court business done in a reasonable amount of time.
4. Rating the quality of Webex sound and video.

Age of Respondents

There were 199 respondents who self-identified their age by selecting from a range of ages. Most people were between 18 years and 49 years old (55%):

- 47 respondents aged 18 - 34 years (22%)
- 72 respondents aged 35 - 49 years (33%)

Minor children aged 17 or younger were 3% of the sample. The remainder included 21% respondents aged 50 - 64, 13% aged 65 or older and the remaining 8% did not respond to this field.



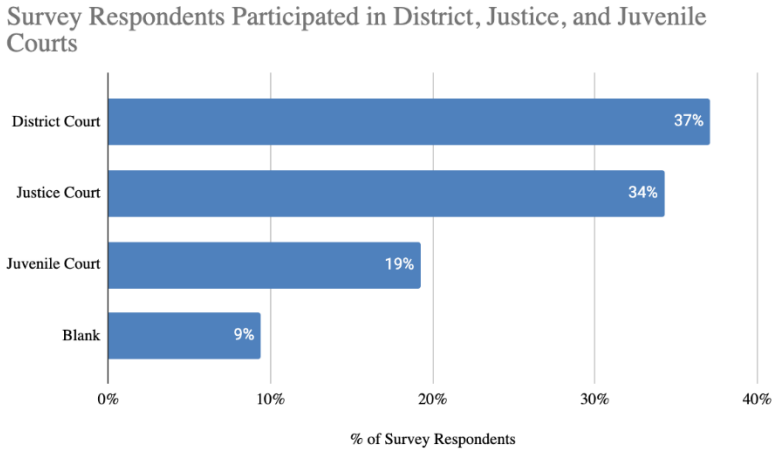
Accessing Court Hearings or Other Activities

The combined survey provided these options for how respondents accessed court: face-to-face at the courthouse, remotely using a court kiosk, remotely using a personal computer or laptop, remotely using a cell phone, iPad, or tablet, remotely from jail, prison, or detention center, remotely from a hospital, and other. Most respondents appeared remotely either using a personal

computer or laptop (109) or using a cell phone, iPad, or tablet (71). There were some respondents who attended in-person (9) or used a court kiosk (2).

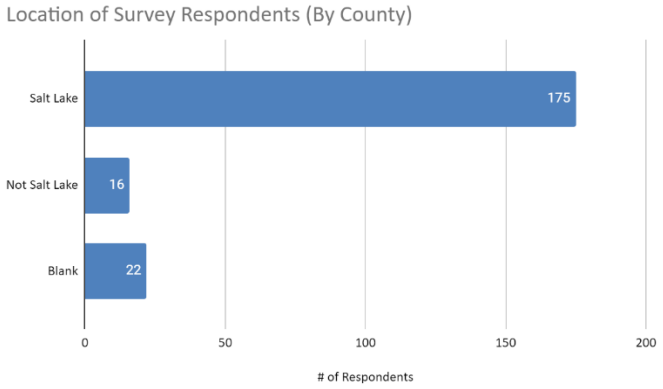
Locations Where Respondents Attended Court

Respondents appeared in district court (37%), justice court for small claims or criminal cases (34%), and juvenile court (19%).



The ATJ Survey asked specifically about judicial district, while the NCSC did not. The ATJ Survey included responses from the 1st, 2nd, 3rd, 4th, 5th, and 7th Districts; however, most were from the Third District (77%).

All respondents were able to self-identify by county, but most were from Salt Lake County (176 responses in Salt Lake County, 22 blank for this field, and 16 responses from outside of Salt Lake County).



Types of Court Use

Patrons and practitioners used the court for a wide variety of civil and criminal legal matters, including conducting administrative business such as making a payment.

This is the breakdown:

Types of Court Use	Total
Traffic/Ticket	53
Criminal/probation	35

Civil matter	26
DCFS/Child welfare case	23
Landlord/Tenant/Eviction	12
Juvenile delinquency	11
Divorce/Custody/Support	7
Other: firearm at SLC international security check, infraction possession of marijuana, DUI, adoption, DASLC operations	5
Specialty court (Drug, Mental health, Veterans)	4
Other: Domestic Violence/Sexual Abuse	4
Small claims	3
Protective Order or Civil Stalking Injunction	3
Multi-issue hearing (criminal + civil)	2
Guardianship/Conservatorship	1
Estate/Trust	1
To make a payment	1

Open-Ended Responses

The survey asked this open-ended response question, "Please provide additional comments or suggestions about your experience today," to allow respondents the opportunity to further comment on their experiences and give additional insights. Most people gave positive comments about their experiences but there were a few negative reactions. Overall, these open-ended responses tell a story of why there is such a strong preference for remote hearings, suggestions for continuing remotely, some of the problems, and why remote hearings remove access to justice obstacles for many.

Here are some examples of participant open responses received:

Ease: "Much easier to do virtually than find time, transportation, parking."

Less Intimidating: "I felt the judge was more relaxed with the virtual court. I was much more comfortable at my work rather than standing in front of him. I felt it much easier to speak to him though I could see him and he could see me it was much calmer."

Increased Representation: "I would not have been able to accept and represent in this case if it were not conducted remotely as it was in St. George and I am in Salt Lake."

Better Access: "Love WebEx. Very efficient and allows for the best access to justice."

Economic Savings: "I appreciate the flexibility and savings in gas!"

New Standard: "I think it's nice to do the small cases remotely. The big cases could be used for the court such as criminal prosecutions since they require a lot of time …. Not everyone has the gas money nor the time to attend a hearing due to the demands from their job. It should be the new standard going forward after the pandemic so you guys can handle case loads faster."

Too Lax: "The hearing was a couple of weeks ago, and I thought the time permitted for argument was excessive and the judge should have done more to require opposing counsel to conduct himself with professionalism and civility."

No Covid Restrictions: "Court hearings should be in person, perhaps other than simple scheduling matters. No Covid restrictions should be imposed on any participants. Mask wearing should be discouraged, particularly for parties, attorneys, and judges."

Tech Issues: "Horrible. I was never able to join the court proceedings because I never received the email with the link. I received an email a few days before, saying that an additional email would be sent to me, but I never received that email, and thus, could not join the court proceedings. This is not my fault at all."

Need Clear Instruction: "… It may benefit a defendant to have a knowledge of each step involved in a case provided by the prosecution, including any possible deviations. Step by step knowledge of procedures would have greatly reduced the intimidation. (A 'timeline', printed chronological order of appointments and the purpose of each would save court staff countless hours answering the same questions that inevitably are asked and give confidence to all parties.)"

Inefficiency of In-person: "Remote hearings should be the default, except where testimony or evidence need be presented. In-person attendance is wasteful and inefficient."

Job Stability: "Webex allows my clients to attend more hearings and still keep their jobs. It is vastly more efficient."

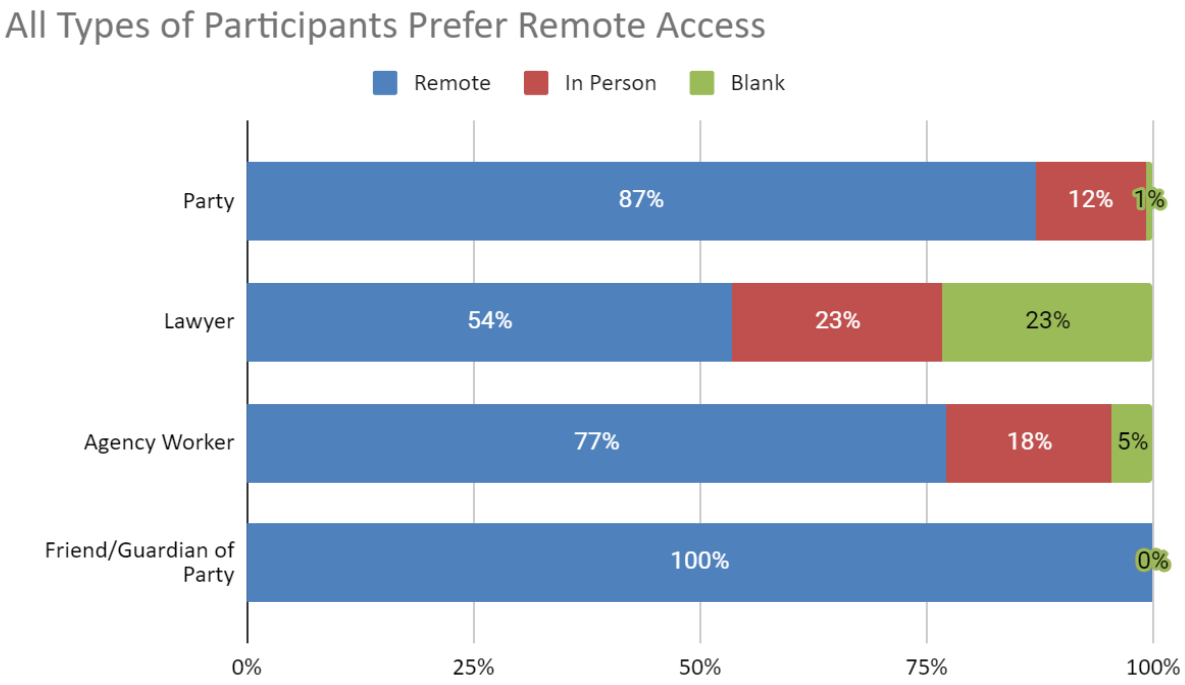
Time & Money Savings: "Professionally conducted. Clear audio and video. Saves a lot of time and travel."

Key Findings

This court user survey reveals important benefits to holding remote hearings. Remote hearings have made court more accessible, whether the participant was young or old, in the metro area or more rural, in small claims or district court. Participants believe remote hearings are usually handled professionally and they feel respected. They recognize Webex provides adequate sound and video. They appreciate the convenience as well as the savings in time and money.

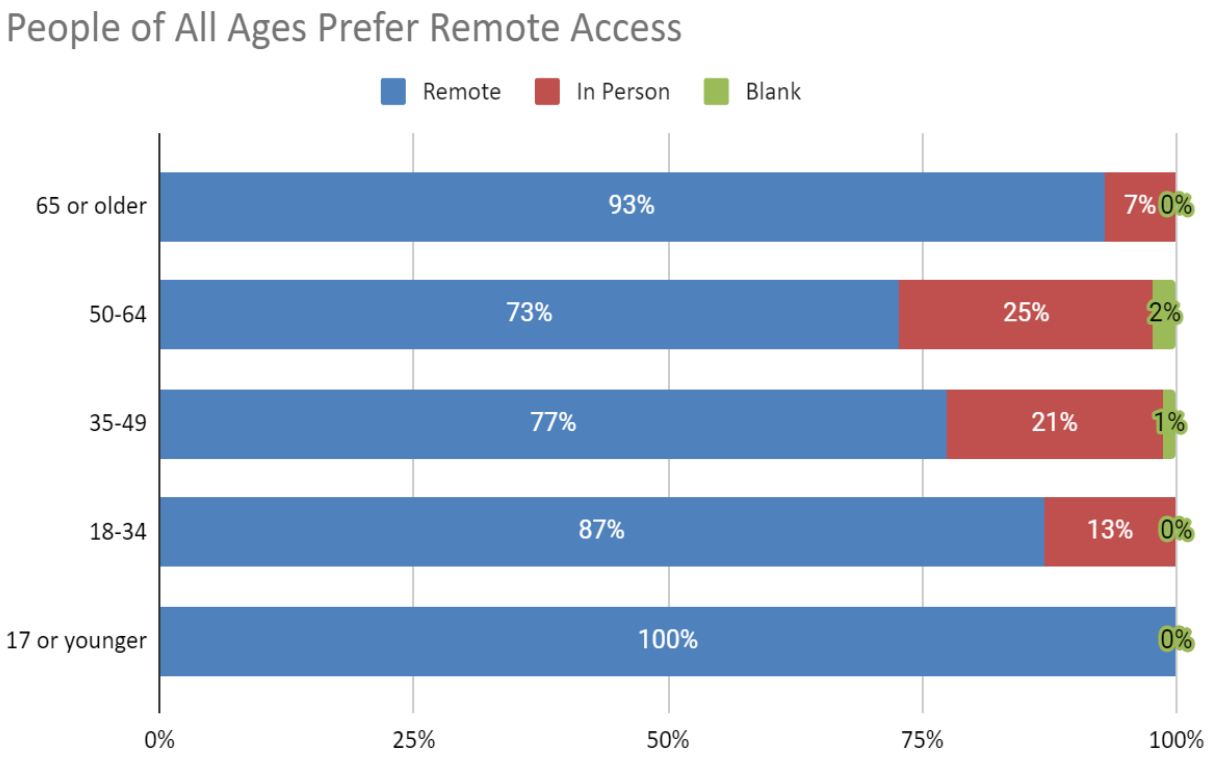
1. **75% of all Utah participants prefer remote hearings** regardless of how they accessed court, their age, or location.

The most conclusive finding from the Court User Survey is that every type of participant strongly prefers remote access. Seventy-five percent of all survey respondents prefer remote hearings and only sixteen percent selected in-person (the other nine percent left this field blank). Comparing this preference by type of participant reveals interesting information. Based on this



breakdown, it becomes clear that lawyers are participants who most want court to be in-person. Yet even this category shows that the majority of lawyers prefer remote access. Moreover, the people with the most to gain or lose – plaintiffs and petitioners, defendants and respondents, and their family, guardians, or friends – overwhelmingly prefer remote court hearings. This same trend can be found when considering preference of access by age.

The robust preference for remote access is found in every age range. As one might expect, younger users would rather appear in court remotely. In fact, 100% of participants under the age of 17 selected this option. More surprisingly, 93% of older adults 65 years or over also expressed a clear preference for attending virtually. Perhaps this is due to mobility, transportation, or other factors, but it dispels the stereotype of older people struggling with technology. Participants aged 50-64 were the most likely to select the in-person option, and still 73% of this range preferred remote hearings. Ultimately, no matter what age the participant was, they prefer to access court remotely by either computer, laptop, or phone.



Even the type of court did not impact this preference for remote access by court patrons and practitioners. In fact, 78% of district court, 84% of justice court, and 85% of juvenile court participants all expressed preference for remote hearings. This data displays the importance of asking and acting on information instead of doing what might seem easier or more intuitive.

2.

Utah survey participants are **treated with courtesy and respect** by the court.

There is a clear showing that survey participants feel they are treated with courtesy and respect by the judicial team and the judge. In the survey, respondents were asked to rate this by strongly agreeing, agreeing, being neutral, disagreeing, or strongly disagreeing. Out of 213 responses, 84% agreed with this statement with 70% "strongly agreeing."

Utah survey participants get **court business done in a reasonable amount of time** whether they participate remotely or in-person.

Survey participants were asked if they were able to get their court business done in a reasonable amount of time by strongly agreeing, agreeing, being neutral, disagreeing, or strongly disagreeing. Out of 213 responses, 76% agreed with this statement with 58% "strongly agreeing." While this is somewhat lower than their courtesy and respect rating, it is still a very positive response.

The **quality of Webex sound and video are suitable** for conducting the court business of Utah survey participants.

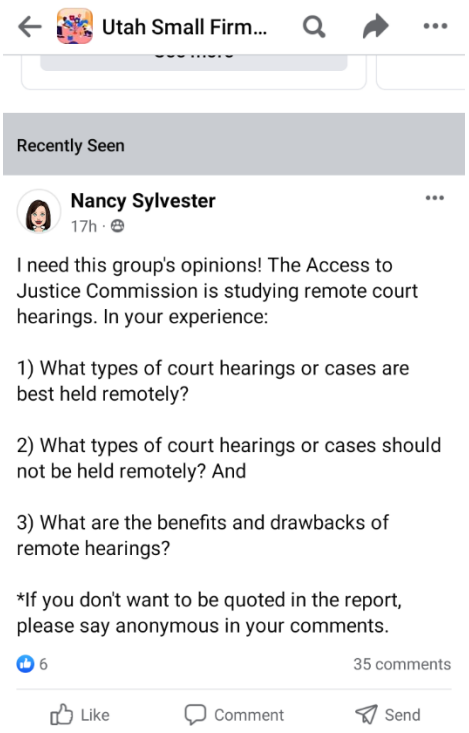
The Webex platform provides adequate sound and video quality, which allows survey respondents to participate in remote hearings. The NCSC and ATJ Surveys asked this question differently, so responses cannot be combined.[9] However, the results show participants generally had a very positive view of Webex sound and video quality. For example, 72% of NCSC Survey respondents said they experienced no issues with being able to hear or be heard. Sound quality was rated even higher by ATJ Survey respondents: only 2 people said the sound quality was "Very Bad" and nobody selected "Bad." This means that less than two percent negatively rated Webex sound quality. Moreover, 81.3% of NCSC Survey respondents said they experienced no issues with being able to see or be seen. Again, video was rated even higher by ATJ Survey respondents: less than one percent gave a negative rating; only 1 respondent said the quality was "Very Bad" and none selected "Bad." This data shows most participants were satisfied that they could adequately hear and/or see during their remote hearing.

Snapshot: Dialogue from Lawyers in the Field

The data from the combined surveys provides useful information, yet it does not allow for conversation. The Court User Survey Workgroup recognized this and wanted to provide a channel for lawyers to discuss their personal experiences with remote court hearings. To collect this more qualitative information, they posted a query to the Utah Small Firm Attorney Network (USFAN), which is a Facebook group with over 900 Utah lawyers. USFAN actively discussed the merits and drawbacks of remote hearings. They also gave several suggestions on which types of hearings or cases were best suited for remote court. Other group members could respond and

[9] The NCSC Survey asked, "Were there any issues with the sound or audio that made it difficult to hear or be heard?" and "Were there any issues with the video that made it difficult to see or be seen?" The possible responses to both were "All of the time," "Most of the time," "Some of the time," or "None of the time." "The ATJ Survey asked, "If you ATTENDED BY WEBEX, rate the quality of the SOUND" and "If you ATTENDED BY WEBEX, rate the quality of the VIDEO." The possible responses to both ATJ questions were "Very bad," "Bad," "Neutral," "Good," "Very Good," and "Not Applicable."

react to each comment.[10] Some interesting themes, considerations, and suggestions are represented in their dialogue.



The group strongly supported the continuation of remote court for most hearings. As to which are best done remotely, many agreed evidentiary hearings, especially those involving witness testimony or complex, voluminous documents should be done in-person whenever possible. For instance, Scott Wiser received 15 "likes" for this comment, "I think Webex should be the default for everything short of trials and evidentiary hearings, and even then Webex appearances should be liberally granted for good cause …." Some advocated for remote hearings being the standard even when they include live testimony. Melissa Bean explained, "I've been pleased with almost everything by remote access – even live testimony … I honestly can't think of many cases that would necessitate in-person hearings." Yet others noted technology issues can sometimes require reconstructing the record to make sure it is clear. Many suggested a hybrid approach where the lawyer and/or the parties could choose.

Group members acknowledged there can be drawbacks to remote hearings. Common weaknesses discussed were the lack of spontaneous negotiations and problem-solving or the occasional technical glitch. There was also some back-and-forth debate on the ability of the judge to make assessments of the truthfulness and character of witnesses. Marco Brown said he believed that the judge really needs to see a witness live and in-person. There were counterviews, e.g., "I find that having the four parties on the screen actually allows the judge to really 'see' a party's tells[11] much easier than in court."

A significant part of the Group's dialogue centered on issues involving access to equal justice and fairness. Many people highlighted the benefits of remote hearings:

1. Remote hearings allow *greater access to lawyers*, especially in rural areas. Justin Caplin shared, "An attorney can take hearings in Kanab and Cedar and Beaver, Panguitch, and even more remote cities and counties without having to drive 1 to 3 hours each way."
2. All participants receive a *cost savings in transportation and childcare*.
3. Clients have *lower legal costs*. Christopher M. Guymon explained, "Instead of charging my client for 1+ hours per hearing, I often only need to charge .2 or .3 hours, so often I

[10] Some patterns and key ideas from the USFAN group are presented here, and the full Facebook dialogue, with replies and reactions, is attached as Exhibit A.
[11] Webster's Dictionary defines a "tell" as an inadvertent behavior or mannerism that betrays a poker player's true thoughts, intentions, or emotions. In this context, the commentor is likening a party's revealing gestures, expressions, etc., to a poker player's tell.

would say remote hearings save my clients a significant amount of money." Jill Coil added, "It's also allowed my attorneys to take in more clients. Now with us going back to court case load must go down which means we can't serve as many."

4. Remote hearings *help stabilize jobs for clients who do not have to miss work.* This is true because "A party can participate in a remote hearing from home or from the office without having to take a half day or full day off from work to drive downtown, especially when the majority of time at the courthouse is waiting for the other several cases to be called before theirs."
5. Appearing virtually or on the phone *saves time and is more convenient* for clients and practitioners. "As a single parent and solo practitioner," Sarah Larsen said, "I have really appreciated having most things remote" as it saves her time from not having to commute to be with her family.

Some lawyers noted that when dealing with indigent people or those who are incarcerated, additional issues need to be considered. If they do not have access to internet or a phone, it is important to have these resources available to them in a convenient and private location. Also, allowing incarcerated people to conduct "any and all civil hearings" remotely is important because "they have to pay separately for transport on civil issues," said Brandon L. Merrill. While these anecdotal experiences and ideas are not quantitatively verified, they provide context and important qualitative information to help fill in some of the information missing from the Court User Survey.

Snapshot: A View from the Bench

Judges were not included the Court User Survey. However, Utah Judge Angela Fonnesbeck shared a view "of the benefits and pitfalls of Webex or other virtual hearing platforms, and how they coincide with professional ethics and a lawyer's responsibilities to the court and clients" in the July/August Utah Bar Journal.[12] Judge Fonnesbeck acknowledges remote hearings have expanded access to equal justice for many people. She notes that for court patrons it is a less costly option that reduces the cost of legal representation, limits time away from work and removes transportation issues.[13] Remote hearings also benefit lawyers by increasing productivity and preventing delays. Even witnesses benefit, especially if they are out-of-town or need protection.

Yet there are drawbacks to the system. Judge Fonnesbeck explains that presenting evidence and properly identifying people can be challenging.[14] Technology problems can make it difficult to hear or participate. She suggested there are also negative intangible consequences to virtual hearings like the informal nature of the proceedings including people wearing pajamas, revealing clothing, or appearing in public places.[15] Judge Fonnesbeck gives concrete ways that many of these obstacles in remote hearings can be overcome by following the guidelines and rules

[12] Judge Angela Fonnesbeck, *Navigating the Half-Empty/Half-Full Dichotomy of Virtual Court Hearings,* July/August Vol. 35, No. 4 Utah Bar Journal, 13-16, p. 13 (2022).
[13] *Id*.
[14] *Id*. at 14.
[15] *Id*.

provided in the Utah Code of Judicial Administration and the Supreme Court Rules of Professional Practice.[16] Ultimately, she expressed that virtual hearings "have both virtue and vice that can be successfully navigated by the court, the attorneys, and the participants" as long as they each actively work together.[17] This balanced and nuanced approach can maximize the advantages and minimize the shortcomings of remote hearings.

Comparison with Other State Reporting

Utah responses align with similar data collected from other states which did not have the same study limitations. For example, the DC Bar Foundation commissioned a study on the perspectives of family law litigants on remote hearings and published the report in December 2021.[18] The DC report showed that "remote hearings worked well for most people. Most study participants reported being satisfied with their remote proceedings" in a diverse array of family law case types, including child custody, child support, domestic violence, and divorce.[19] Specifically, the DC report found that:

- 73% appreciated not having to find and pay for transportation to/from the courthouse,
- 62% appreciated not having to take time off work or school,
- 60% appreciated not having to find childcare, and
- 72% felt safer and less threatened by the opposing party.[20]

The Texas Office of Court Administration partnered with the National Center for State Courts to study the use of remote hearings and the impact on judicial workload.[21] The Texas report also highlighted the benefits of remote hearings for court users including "not needing to take time off work, locate transportation, or find childcare." and noting it can be "emotionally easier" for some parties to not be in the same room.[22]

While Utah has a court environment that is distinct from these states, the similarity of these findings further validate this report: providing options and support for remote hearings improves the court experience and increases access to justice for many patrons and practitioners.

Obstacles to Participation in Remote Hearings

While remote hearings promote access to justice for many, there are obstacles to participating in remote hearings. Commonly cited examples include language barriers, accessibility, and

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[16] *Id*. at 15-16.
[17] *Id*. at 16.
[18] DC Bar Foundation, *Litigant Perspectives on Remote Hearings in Family Law Cases: A Survey Study Conducted with the DC Family Law Learning Network*, (December 2021), accessed June 12, 2022, *available at* https://www.dcbarfoundation.org/_files/ugd/3ddb49_2c2da451535e4f9f8de6ab2baf575a54.pdf.
[19] *Id*. at i.
[20] *Id*. at 8.
[21] National Center for State Courts Court Consulting Division, *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload*, accessed June 12, 2022, *available at* https://www.ncsc.org/_media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf.
[22] *Id*. at 9.

technological challenges.[23] These obstacles have been and continue to be overcome through strategic planning and targeted resources.

Court patrons may be non-English speakers or have only a limited understanding. They also may lack full literacy or comprehension. Potential solutions include providing translation services, making court documents and instructions available in other languages, and preparing explainer videos that can be distributed online, via email, and by text message.

Court patrons and practitioners may have a recognized disability under the Americans with Disabilities Act[24] or experience other accessibility issues. These are often referred to as the "digital divide" meaning lack of or poor connectivity to internet or Wi-Fi signal, limited access to email, restrictions on phone minutes or data plans and other barriers to remote access.[25] Solutions to accommodate ADA disabilities can include offering closed captioning, keyboard accessibility, screen reader support, and having automatic transcripts available.[26] To bridge the digital divide, having a call-in only option for remote hearings is essential. Other solutions include court use kiosks and working with libraries and other community partners to help provide access.

Remote hearings require some level of technical proficiency in either internet or phone use. For some it can be challenging to access the necessary technology. However, similar to the above discussion on accessibility, having strong partnerships with libraries, social service providers, and other community partners can help provide needed support. Other solutions include providing explainer videos and clear instructions written in plain language. Having staff available to provide support and troubleshooting if video or sound issues occur can help correct problems that may arise.

Acknowledging there are obstacles to remote hearings is not a sufficient reason to require in-person attendance at court. Instead, this recognition can be the touchstone for change and progress. In fact, organizations like the National Center for State Courts continue to develop and release guidelines, best practices, and ways to overcome problems to effectively manage hybrid and fully remote hearings. These efforts become even more important when looking at the barriers many Utah communities face when seeking legal representation.

Barriers to Accessing Legal Representation

Deciding whether Utah State Courts will go back in-person or continue to offer remote attendance will affect all Utahns. However, it will hit some Utah communities much more than

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[23] See e.g., California Commission on Access to Justice, *Remote Hearings and Access to Justice During Covid-19 and Beyond*, PPP & Cal Remote Hearings Guide - NCSC (National Center for State Courts), accessed June 12, 2022, *available at* https://www.ncsc.org/__data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf.

[24] 42 U.S. Code § 12101 et seq.

[25] USLegal.com definition: "digital divide," *available at* https://definitions.uslegal.com/d/digital-divide/#:~:text=Digital%20divide%20refers%20to%20the,technology%20and%20those%20who%20cannot.

[26] California Commission on Access to Justice, *supra*.

others. There is a vast divide in how many lawyers are available based solely on where the person needing legal representation lives. This division plainly emerges when comparing the cases filed per attorney to the number of attorneys available in each Utah county.

Utah has 29 counties, and there are 8677 active attorneys in Utah.[27] In its directory, the Utah State Bar lists the county associated with each lawyer's preferred address. Legal representation deficiencies in many counties appear when this information is compared to the number of 2021 Utah district, justice, and juvenile court cases filed.

Table 1: Lawyers by County Compared to Cases Filed

Utah County	# of Active Attorneys	Cases Per Attorney (District, Justice, and Juvenile for FY2021)
Beaver	1	5,043
Garfield	2	1,487
San Juan	5	1,439
Juab	6	1,240
Emery	6	758
Kane	6	594
Piute	1	533
Box Elder	27	489
Duchesne	13	483
Carbon	21	387
Millard	14	377
Sevier	17	350
Sanpete	16	316
Tooele	53	304
Daggett	2	298
Rich	4	265
Uintah	34	262
Grand	17	254
Wayne	2	251
Iron	62	221
Weber	321	168
Morgan	11	154
Cache	166	133
Wasatch	74	120
Washington	340	117
Utah	1260	77
Davis	656	77
Summit	204	46

Table 1 shows access to legal representation by county where the red shades indicate the least access to attorneys and the blue shades signify the greatest access.

As the reds lighten and then turn to blue, the communities have an increasing ability to find a lawyer.

(See next page for blue shading)

[27] Active attorneys are those included in the Utah State Bar attorney database who are in good standing and listed as "AttUnder3," "AttActive," or "AttEmerit."

Utah County	# of Active Attorneys	Cases Per Attorney (District, Justice, and Juvenile for FY2021)
Salt Lake	5211	39

A person living in Salt Lake County can hire a local lawyer located near where they live and by the courthouse. A person living in Iron or Uintah County most likely can choose from several lawyers.

However, a person living in Beaver, Piute, Garfield, or San Juan will almost certainly struggle to find an attorney unless they can pay for and hire an out-of-town lawyer. Making the decision to continue offering remote hearings, at least for some people, cases, and circumstances can alleviate this disparity.

Recommendations

1. Utah courts should continue offering remote hearings. At a minimum, remote hearings are strongly preferred and more efficient for at least some hearings and types of actions.
2. Non-binary options for remote participation should be available, where some parts of the case may be held virtually or by video while other parts are in-person. This will remove barriers to making an appearance in court for both patrons and practitioners.
3. Hybrid options for appearing remotely should be used for ADA accommodations; resolving mobility issues for older adults; reducing the economic impact of in-person court caused by getting time off work; the cost of traveling to court and obtaining childcare; and promoting patron safety.
4. Clear explainers of common court procedures (like how to use Webex) should be created using plain language. These materials should be provided in written form and by video, which is then emailed and texted to court users as well as posted online. Written instructions can be translated into other languages as well.
5. Utah courts should conduct further study to determine which hearings and types of actions are best done remotely and which are better held in-person. They may consider expanding this court user survey to additional judicial teams statewide for this purpose.

APPENDIX C

Rule Amendment Proposals:

Utah Rules of Criminal Procedure
Utah Rules of Civil Procedure
Utah Rules of Juvenile Procedure
Utah Rules of Evidence
Utah Rules of Appellate Procedure
Utah Code of Judicial Administration

Rule Amendments — Utah Rules of Criminal Procedure	
Rule 17 – The trial. Rule 17.5 – Hearings with contemporaneous transmission from a different location.	Need to consider **Rule 17** and **Rule 17.5** in full. At the time of this report, the Supreme Court's Advisory Committee on the Rules of Criminal Procedure is reviewing these rules.
Rule 17(a) – The trial.	At the time of this report, the Supreme Court's Advisory Committee on the Rules of Criminal Procedure is reviewing this rule. ***Previously suspended / amended by the Administrative Order, dated 4/11/2022, as follows:*** *In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to meaningfully interact with counsel of record in real time. "Trial participants" is defined to include the judge and testifying witnesses. The defendant's waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.*
Rule 17.5(b) – Hearings with contemporaneous transmission from a different location.	At the time of this report, the Supreme Court's Advisory Committee on the Rules of Criminal Procedure is reviewing this rule. ***Previously suspended for infractions by the Administrative Order, dated 4/11/2022, as follows:*** *Rule 17.5(b)...is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.*
Rule 6 – Warrant of arrest or summons.	Need to consider **subsection (e)(1)(E)**, and potentially **subsection (e)(1)(D)**.
Rule 14 – Subpoenas.	Need to consider **subsection (a)(8)**.
Rule 15.5 – Out of court statement and testimony of	Need to consider **Rule 15.5** in full — how, if at all, does

Appendix C – Rule Amendments

child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.	Webex impact this?
Rule 27 – Stays of sentence pending motions for new trial or appeal from courts of record. **Rule 27A** – Stays pending appeal from a court not of record - Appeals for a trial de novo. **Rule 27B** – Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.	These rules address appearances, using the term "appear as required." Clarification may be helpful.
Rule 41 – Unsecured Bonds.	Need to consider s**ubsection (b)(2)** use of "appears in court." Clarification may be helpful.

Rule Amendments — Utah Rules of Civil Procedure	
Rule 26.3 – Disclosure in unlawful detainer actions.	***Previously temporarily amended by the Administrative Order, dated 4/11/2022, as follows:*** *In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures.*
Rule 55 – Default.	***Previously temporarily amended by the Administrative Order, dated 4/11/2022, as follows:*** *The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.*
Rule 7A – Motion to enforce order and for sanctions. Rule 7B – Motion to enforce order and for sanctions in domestic law matters.	Need to consider **Rule 7A(c)(4)** and **Rule 7B(c)(4)**.
Rule 28 – Person before whom depositions are held. Rule 30 – Depositions upon oral questions. Rule 31 – Depositions upon written questions.	Need to consider **Rule 28**, **Rule 30**, and **Rule 31** in full.
Rule 32 – Use of depositions in court proceedings.	Need to consider **subsection (a)(3)**, which creates a potentially unnecessary distance limitation for depositions.
Rule 43 – Evidence.	Need to consider **Rule 43** in full.
Rule 77 – District courts and clerks.	Need to consider **Rule 77** in full.

Rule Amendments — Utah Rules of Juvenile Procedure	
Rule 7 – Warrants.	Need to consider **subsection (d)(1)**.
Rule 9 – Detention hearings; scheduling; hearing procedure	**Rule 9** does not currently reference how one is to appear for the detention hearings. Clarification may be helpful.
Rule 13 – Shelter hearing.	**Rule 13** does not currently reference how one is to appear for the shelter hearing. Clarification may be helpful.
Rule 18 – Summons; service of process; notice.	**Subsections (a)(3)** & **(b)(3)** each deal with appearances, but (b)(3) specifically says "appears in court."
Rule 22 – Initial appearance and preliminary examination in cases under Utah Code section 80-6-503.	**Rule 22** states that "the minor shall appear before the court as directed in the summons" (per Rule 18).
Rule 23A – Hearing on factors of Utah Code section 80-6-503; bind over to district court.	Rule 23A(c) states: The court may consider any written report or other materials that relate to the minor's mental, physical, educational, trauma, and social history. Upon request by the minor, the minor's parent, guardian, or other interested party, the court shall require the person preparing the report, or other material, **to appear and be subject to direct and cross-examination**.
Rule 26 – Rights of minors in delinquency proceedings.	Need to consider **subsection (a)(1)**, which requires a minor to appear "in person."
Rule 34 – Pretrial hearing in non-delinquency cases.	Need to consider **subsection (f)** requires appearing in-person or by counsel.
Rule 29B – Hearings with remote conferencing from a different location (delinquency).	Need to consider **Rule 29B** in full..
Rule 37B – Hearings with remote conferencing from a different location (child welfare).	Need to consider **Rule 37B** in full.
Rule 50 – Presence at hearings.	Need to consider **Rule 50** in full.

Rule Amendments — Utah Rules of Evidence	
Rule 615 – Excluding Witnesses	**Rule 615** governs a party's request to exclude a witness from a proceeding while another witness is testifying. Some practitioners have reported problems with multiple witnesses appearing from a single location making enforcement of the exclusionary rule difficult or impossible.

Rule Amendments — Utah Rules of Appellate Procedure	
Rule 29 – Oral Arguments	**Rule 29** details how oral arguments are to be held. The rule already contemplates oral arguments being held via video conference (subsection (a)(3)), however, it does not provide a standard for approving or denying a request.

Rule Amendments — Utah Code of Judicial Administration	
Rule 2-205 – Expedited rulemaking procedure. Rule 11-105(5)(B) – Supreme Court Action on Rule Modifications.	***Previously suspended by the Administrative Order, dated 4/11/2022, as follows:*** *Rules 2-205 and 11-105(5)(B) of the Utah Rules of Judicial Administration are suspended to the extent they require a rule amendment that has been adopted on an expedited basis to be immediately published for comment and to be published for 45 days. Rule amendments will be published for public comment as directed by the body that adopts the rule, including reducing the time for public comment.*
Rule 4-404(2)(B) – Jury Selection and Service. Rule 4-404(6)(C)(I) – Jury Selection and Service.	***Previously suspended / amended by the Administrative Order, dated 4/11/2022, as follows:*** ***[(2)(B)]*** *The calculation of time for determining juror terms of availability under rule 4-404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.* ***[(6)(C)(I)]*** *The summons may be by first class mail delivered to the address provided on the juror qualification form, by email to the email address provided on the […] form, or by telephone.*
Rule 4-503 – Mandatory Electronic Filing	The Judicial Council should amend this rule to accommodate email filing in some circumstances.
Rule 2-103 – Open and closed meetings.	While the Judicial Council already provides notice to the public about its meetings (through the Utah Public Notices website), the Judicial Council should consider including in

	that notice the Webex link to the meeting.