



National Family Judiciary Remote Hearing Survey

Insights on the impact of remote hearings in the age of COVID-19



2020 survey conducted by OurFamilyWizard

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I. Introduction

The COVID-19 pandemic hit the family court systems fast and hard. Family courts were closed and hearings were postponed as government officials scrambled to manage an unprecedented public health crisis.

With the initial shock of the first wave behind, many courts started exploring the concept of remote proceedings to chip away at the mounting backlog of cases. Today, as the pandemic continues, family courts across the United States are still holding remote proceedings to administer justice while also safeguarding the health of their communities. This refreshing acceptance of technology and innovation within the family law space has enabled the wheels of justice to continue turning as the world strives to recover a sense of normalcy.

To gain insight around how the pandemic and the resulting shift to remote hearings have impacted individual judges and the judicial process as a whole, OurFamilyWizard surveyed family law judges across the country. Specifically, the survey included questions about:

- Frequency and type of remote hearings
- Preferred technology platforms
- Key challenges
- Access to justice
- Open courts
- Pro se litigants
- Security of remote hearings
- Future use of remote hearings

Responses identified actionable best practices to ensure successful remote hearings, which remain highly relevant in the foreseeable future as courts move into 2021 operating under continued pandemic-driven restrictions. We also asked the judges to offer their opinions on the long-term potential of remote hearings beyond the pandemic and if and how remote hearings could benefit the judicial process and/or improve access to justice overall.

This survey was designed to elicit a comprehensive range of perspectives on the use and effectiveness of remote hearings and the supporting technology. What follows is a consolidated view of the responses we received and some of the insights that the OurFamilyWizard team drew from them.

II. Prevalence of Remote Hearings

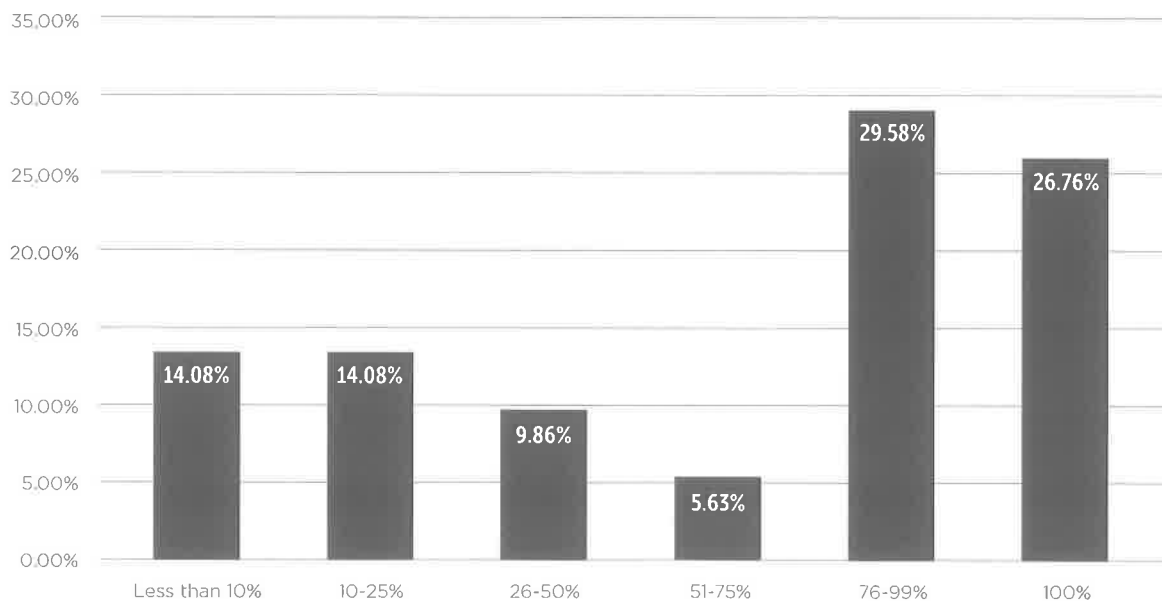
First, we wanted to understand the basics of remote hearings in the family law arena today, nearly one year since the COVID-19 pandemic forced courts to shut down. We consistently heard that hearings are being conducted remotely, yet we found a variance in the extent to which individual judges are leveraging remote hearings. Based on the responses, it seems that the complexity of the underlying matter can determine whether a hearing can be held remotely. There was also a diversity in the types of technology used to conduct remote hearings.

Question 1

What percentage of cases are you hearing remotely?

More than half of the judges responded that at least 50% of their cases are being heard remotely.

Percentage of Cases Being Heard Remotely

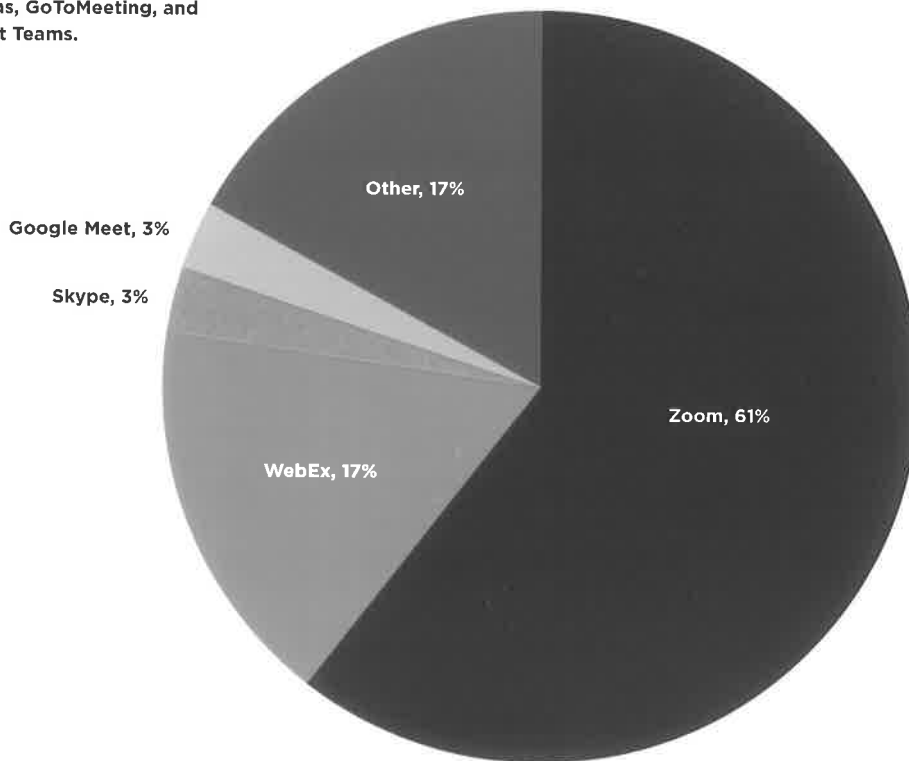


Question 2

What technology are you using most frequently to conduct remote hearings?

Some courts have mandated the use of specific technology, while others have left it up to the individual judges to choose the technology they wish to use. Zoom is by far the most popular technology being utilized to hold remote hearings. This is likely due to the fact that much of the public is already familiar with Zoom, which cuts down on the training required to minimize technical difficulties. It is worth noting that WebEx seems to have sizable adoption, but the use of other popular video conferencing platforms, like Skype and Google Meet, remains low.

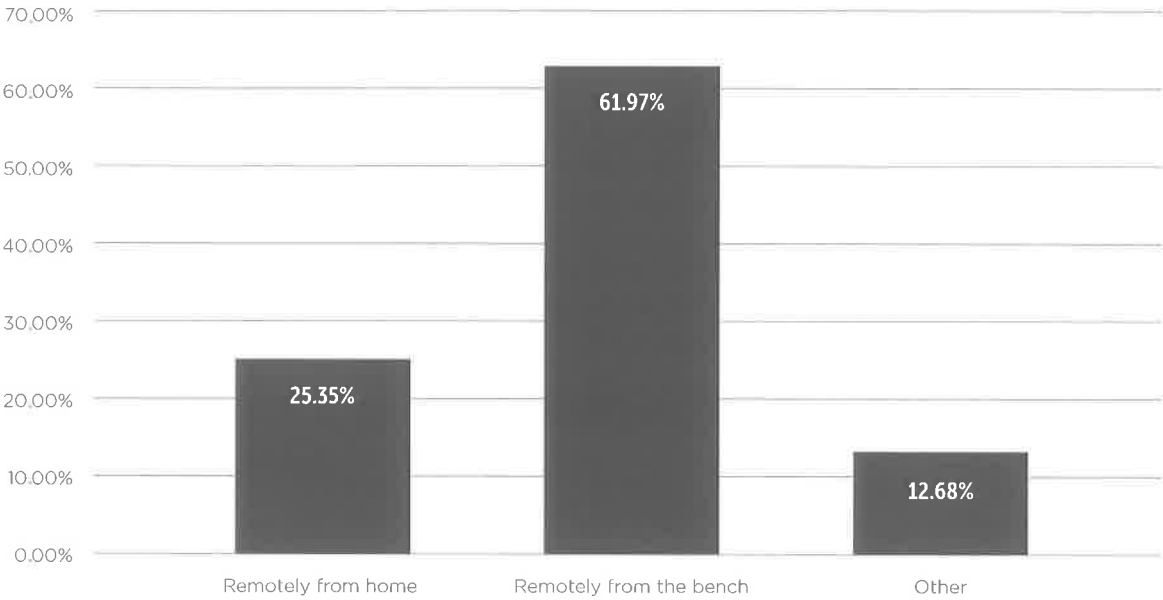
The "Other" category included BlueJeans, GoToMeeting, and Microsoft Teams.



Question 3

How are you conducting the majority of your remote hearings?

We found that most cases are being conducted remotely from the judge's bench, although about a quarter of judges are overseeing hearings from their homes. Of the responses received from those who selected the category of "Other," judges indicated that they are also holding remote hearings from their offices or chambers.

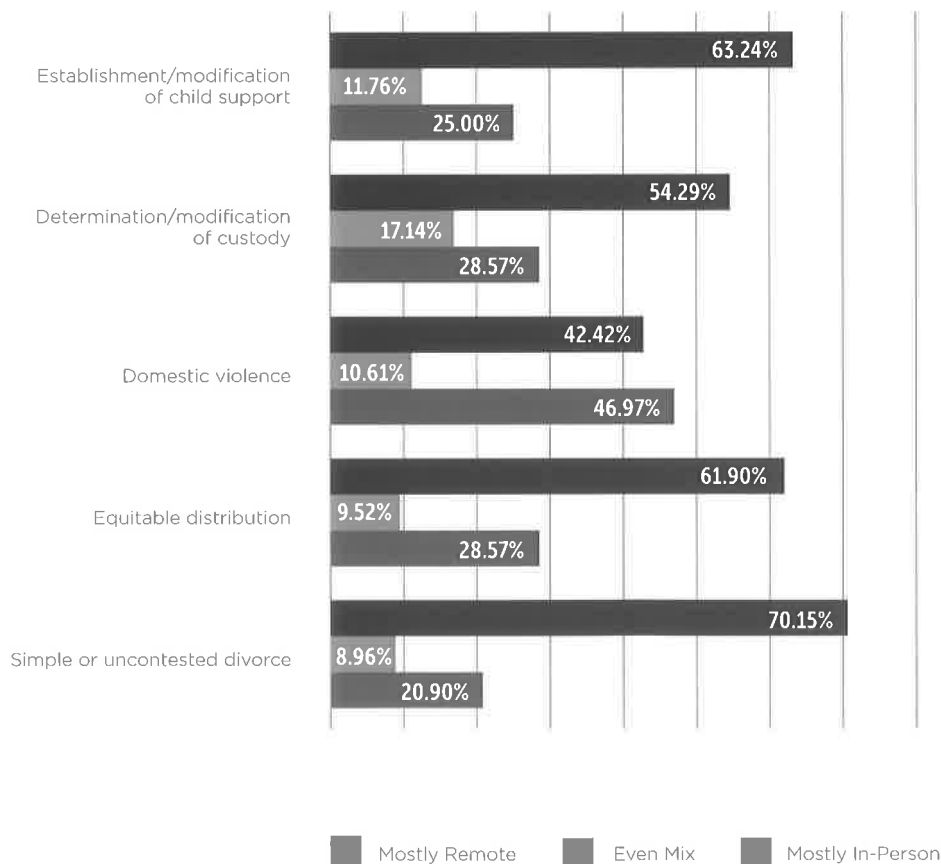


Question 4

For the following hearing types, please select the most accurate option for how you are managing them.

We explored trends by hearing type to better understand why judges are hearing some cases remotely and not others. Based on the responses to this question, there seems to be a clear correlation between the complexity of the legal issues at hand and how those respective issues are being heard. Many judges reported that simple or uncontested divorces were often being conducted remotely, while matters perceived as complicated or extremely sensitive were often still being heard in person (or postponed until an in-person hearing could be held safely).

For courts still impacted by closures, this means that these more complicated matters are being scheduled out farther into the future when courts will presumably be open. Other factors that seem to influence the manner of appearance include whether the hearing was non-evidentiary or evidentiary and the number of exhibits that would be required.



III. Maximizing the Success of Remote Hearings

The survey revealed that there are very real challenges to leveraging remote hearings, both in the short-term and moving forward beyond the pandemic. Overcoming these challenges to ensure successful remote hearings and equitable access to justice for all types of litigants requires redefined expectations and protocol. The judges offered insights and ideas on how best to approach this.

Question 5

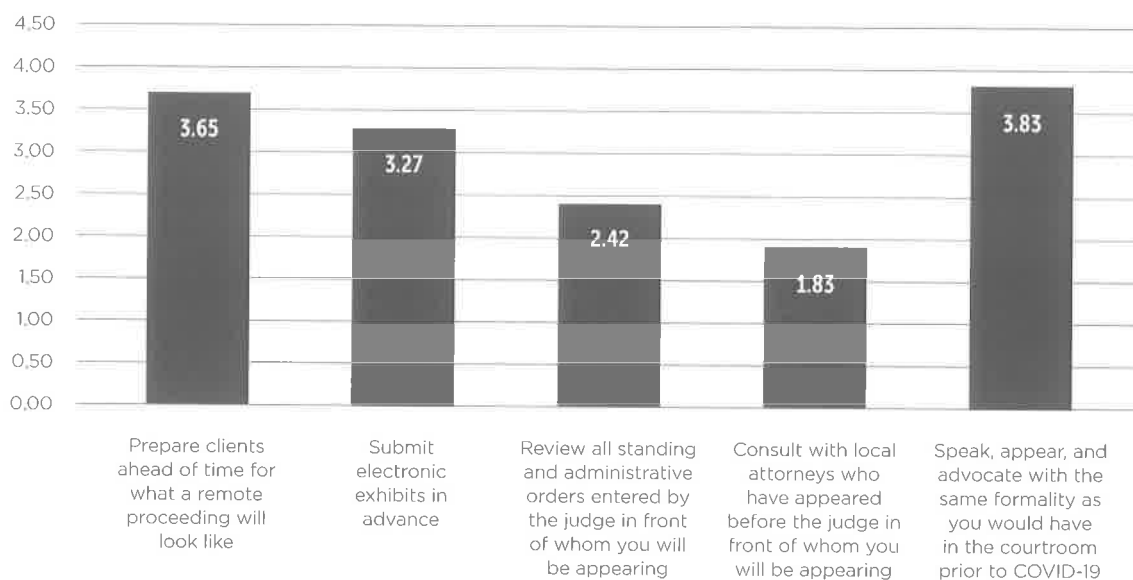
What characteristics or practices are critical to a successful remote hearing?

Survey responses revealed that most judges feel the single most important thing an attorney can do to ensure a successful remote hearing is to speak, appear, and advocate with the same formality as is expected for in-person proceedings. In fact, in a later question (Question 8) that probes into whether judges will continue holding remote hearings after the pandemic, the lack of formality is one of the most cited reasons not to do so.

” I am not in favor of remote hearings unless a situation such as the current pandemic presents. Remote hearings lessen the formality of the proceedings, prevent the court from excluding witnesses with a reasonable degree of certainty and inhibit the finder of fact from adequately being able to access witness demeanor. - *Responding Judge*

What also surfaced as highly important is adequate preparation for each hearing. Preparation should involve setting expectations with the clients, walking them through what a remote proceeding will look like, letting them know what is required of them, and instructing them how to login and use the conferencing software. Adequate preparation also includes ensuring the judge and relevant parties have timely and frictionless access to all exhibits and evidence, if possible in the preferred or requested format.

Ranked from 1 (least important) to 5 (most important)

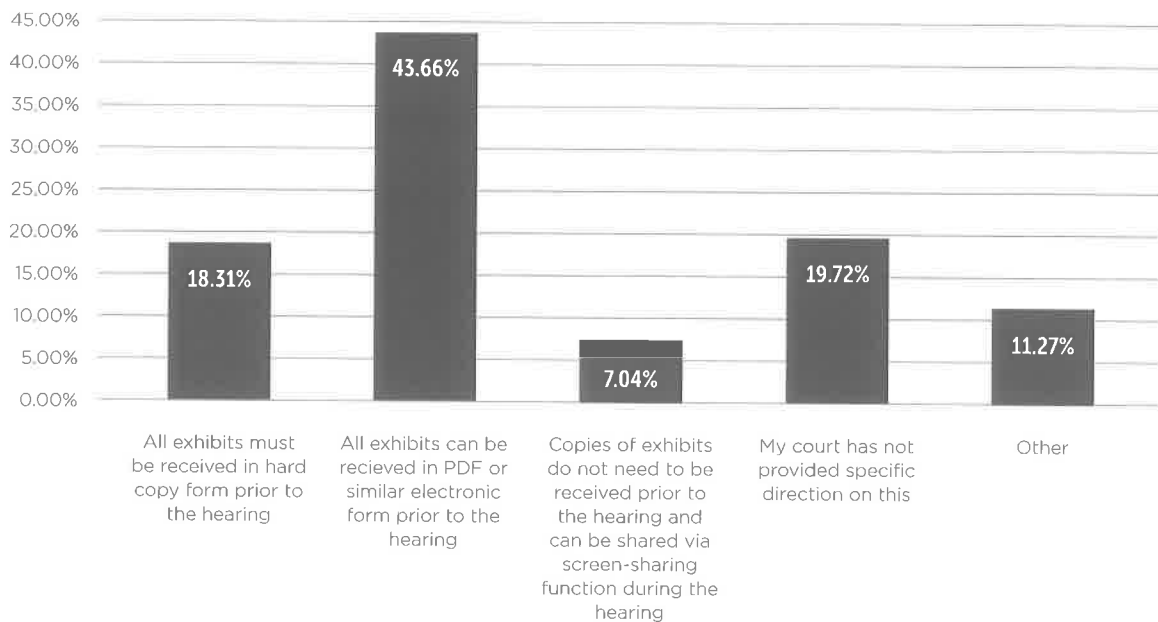


| | 1 | 2 | 3 | 4 | 5 |
|---|--------|--------|--------|--------|--------|
| Prepare clients ahead of time for what a remote proceeding will look like | 26.76% | 28.17% | 30.99% | 11.27% | 2.82% |
| Submit electronic exhibits in advance | 16.90% | 30.99% | 26.76% | 12.68% | 12.68% |
| Review all standing and administrative orders entered by the judge in front of whom you will be appearing | 8.45% | 11.27% | 16.90% | 40.85% | 22.54% |
| Consult with local attorneys who have appeared before the judge in front of whom you will be appearing | 4.23% | 8.45% | 9.86% | 21.13% | 56.34% |
| Speak, appear, and advocate with the same formality as you would have in the courtroom prior to COVID-19 | 43.66% | 21.13% | 15.49% | 14.08% | 5.63% |

Question 6

Has your court provided direction on how to present and/or share evidence/exhibits for a remote hearing? If so, what is the protocol?

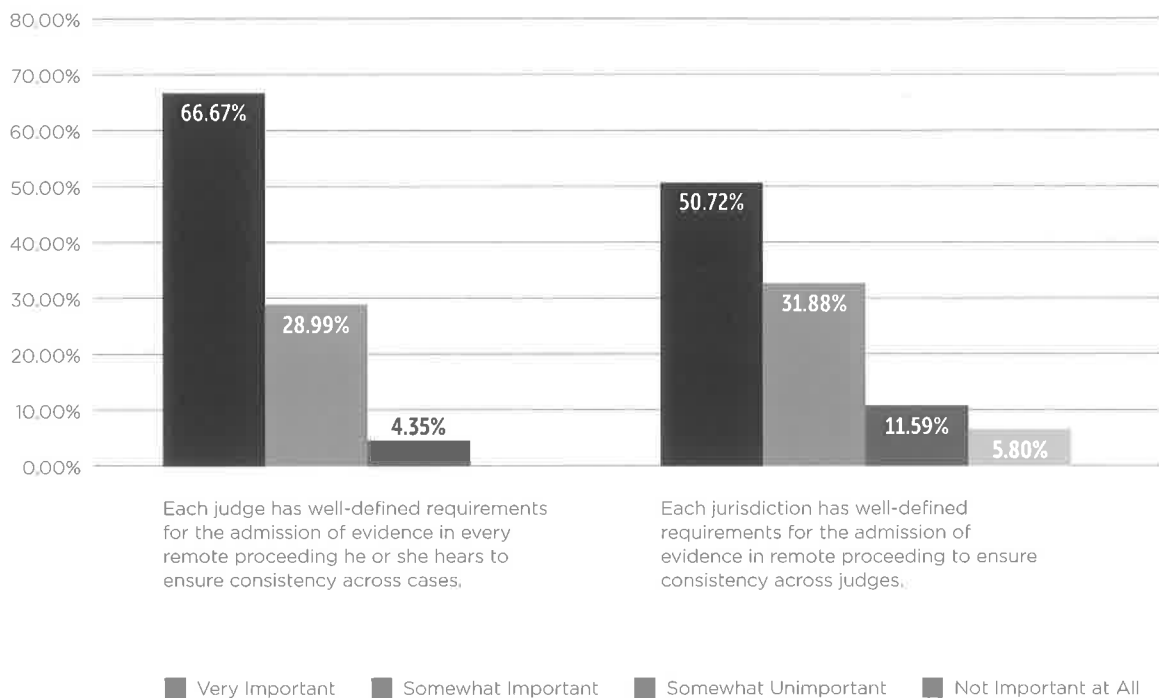
Nearly half of the judges surveyed (44%) cited that receiving the documents electronically prior to the hearing is their preferred timing and method of receiving evidence. However, a significant portion of judges (18%) said they prefer to receive hard copies of all documents prior to the hearing. Therefore, attorneys should likely complete due diligence prior to an evidentiary trial to confirm the judge's preference. While some judges commented that their respective courts have issued direction on how to submit evidence, nearly 20% indicated that their respective courts have not issued any direction, leaving specifications up to the individual judge.



Question 7

Indicate the importance of each of the following statements about how to submit evidence for a remote hearing.

Most (67%) felt that each judge should have well-defined requirements for the submission of evidence in every remote proceeding they hear to ensure consistency across cases. At the same time, more than half of respondents (51%) indicated that requirements on how to submit evidence for a remote proceeding should also be clearly defined at the jurisdiction level. This suggests that perhaps one way to ensure a smoother hearing process is for courtrooms and jurisdictions to issue formal protocol around evidence submission to ensure consistency on each level.



IV. The Future of Remote Hearings, Post-Pandemic

Despite the challenge of shifting to a remote setting and the persistent challenges of online interaction, many judges reported that they may continue to leverage remote hearings even after restrictions on in-person hearings are lifted.

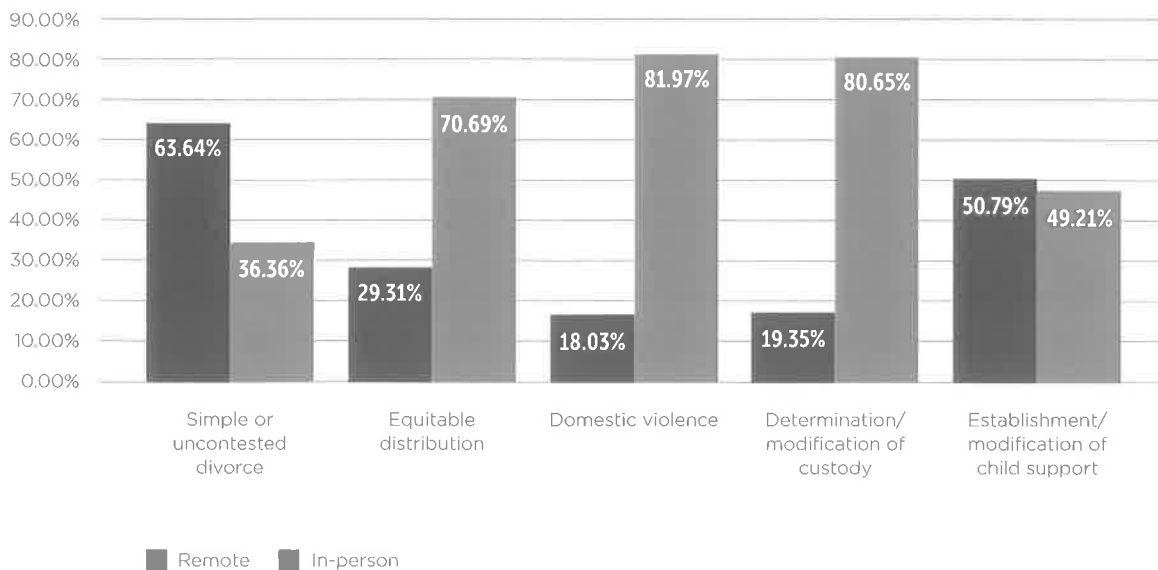
Question 8

Select the motion/hearing types you plan to continue hearing remotely even after courts are back open.

Many judges plan to continue using remote hearings in cases of simple or uncontested divorce (64%) and establishment or modification of child support (51%). However, the vast majority of judges indicated that they would resume overseeing cases involving domestic violence (82%) as well as cases of determination or modification of custody (81%) and equitable distribution (71%) in-person post-pandemic.

The variation in response here most likely ties to the level of comfort the particular judge has with leveraging technology in general, the amount of support the judge has received from court staff during the shift to remote hearings, and the judge's personal experience with remote hearings to date. Many judges cite lack of formality and difficulty in reading body language online as insurmountable challenges to remote hearings.

” Remote hearings are great! I can mute lawyers and litigants where I can't in court. - *Responding Judge*



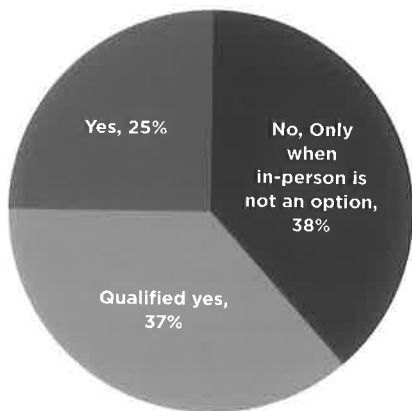
Question 9

Have remote hearings improved or impeded access to justice?

As indicated by the responses to this question, remote hearings have the potential to improve an individual's access to justice. Appearing at a remote hearing is easier for most litigants, as it mitigates—and sometimes even eliminates—the genuine challenges involved in attending an in-person hearing. Simply put, remote hearings are often easier to “show up” for as they don't place as great of a burden on litigants to do things like travel to and from the courthouse or take as much time off from work.

However, over half of the judges who responded to the survey specified that remote hearings promote access to justice only if all litigants are set up for success. Prerequisites of a successful hearing include technology that enables video, a stable and sufficient internet connection, and an adequate understanding of how to use the chosen video conferencing software.

For justice to be accessible, courtrooms and family law professionals need to actively participate in ensuring that this access and support is readily available. This requires significant commitment, including deliberate outreach, education, and allocation of courtroom resources such as staff, space, and equipment.



Judges who responded with a “Qualified yes” to Question 9 listed the following qualifications:

- Access to reliable technology and internet connection
- Free training and support for those not comfortable using chosen platform/technology
- Case is not too complex to be handled remotely
- If virtual courtroom management could be tightened up
- If credibility could more easily be ascertained over video

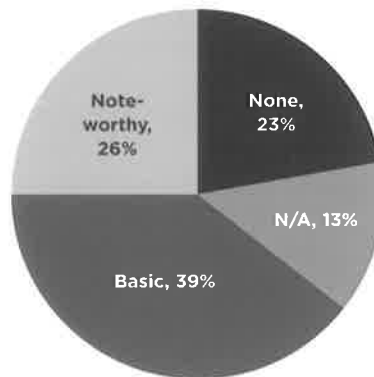
” While we lose formality, we gain participation. Remote hearings let litigants, particularly self-represented litigants, participate more, and more participation equates to more access to justice. - *Responding Judge*

Question 10

What specific guidance/protocol/resources has your court made available to pro se litigants to help them engage more effectively in the remote hearing process?

Most courts seem to be relying on sending information about the mechanics of remote proceedings to litigants (via email and direct mail in most cases) in their orders and/or placing the information on their websites. However, briefly mentioning that resources are available to a pro se litigant is likely not adequate in many instances. Much of the information they need is likely hard to find and access.

To truly empower pro se litigants to be successful in remote hearings, there must be a well-coordinated, deliberate effort to ensure sufficient awareness about how to access and use available resources among those whom the resources are intended to help. Depending on the bandwidth of the staff available to support such heavy outreach, this may be very difficult to achieve for many jurisdictions.



Here is the breakdown of the responses:

- 1. None** - 23% of judges stated that they are not doing anything specifically in terms of supporting pro se litigants to be successful in the remote environment (this likely means that judges are not doing anything beyond what they are doing for represented individuals).
- 2. N/A** - 13% stated they are not doing remote hearings, or they indicated N/A, which we are assuming either means they are doing nothing or that they are not doing remote hearings.
- 3. Basic** - 39% stated they are providing links, login, and instructions prior to the hearing, either directly or via the court's website.
- 4. Noteworthy** - 26% stated they are doing something beyond basic like having dedicated staff, allocated rooms/technology on premise, and trainings. The three things that stood out were:
 - Offering technology/internet connection to those who don't have access to it (i.e., setting up special rooms/kiosks in the courthouse).
 - Proactively reaching out to pro se litigants and/or making court staff available to provide training on the platform and technical support, as needed.
 - Partnering with non-profits and soliciting volunteer attorneys to assist/support pro se litigants.

Question 11

How do you believe that courts can best ensure that remote proceedings are both secure and also open to the public to the same extent as they traditionally have been?

After ensuring access to justice, ensuring open access to the public seems to be the biggest elephant in the room relative to remote hearings. Most judges surveyed feel that doing this is important, but very few have ideas on how it can be done.

While it seems like a few distinct groups emerge from the notable responses (see below), the reality is that almost all of the judges have thought about this challenge. Some of the skepticism and disinterest likely stems from the overwhelming concern that most court proceedings are required to be open to the public. It is seemingly impossible to have secure, open remote proceedings, yet the powers that be (i.e., various government entities, IT departments, and others) have not adequately solved this problem, nor has the judiciary been absolved of their association with the problem.

Here are a few observations:

- Some judges say it is not possible to ensure that remote proceedings are both secure and open to the public to the same extent as they when hearings are held in person.
- Many judges simply don't know how to solve the problem but are seemingly open to the possibility of hearing from others on the topic.
- Some judges seem less interested in exploring the topic.
- Some judges have been actively thinking about this topic but don't have any good solutions.
- Some judges believe that providing links to the public via website or upon request and/or YouTube is sufficient.

Here are a few notable responses to Question 11:

- "That is a very difficult question and we do not know that answer."
- "Good question, I have no answer."
- "I don't believe remote hearings are secure nor can they ever be as secure as in-person hearings."
- "I don't think they can be, and I'm alright with that."
- "That is a question that we have struggled with and I have no answer."
- "That is a very difficult question and I do not have a good answer for it. I am an advocate for us returning to in person hearings as soon as possible."
- "Courts do not have the ability to ensure the security of proceedings (though we can prevent most unauthorized interference with a proceeding) but we are also simultaneously under statewide administrative orders to livestream hearings on YouTube (with the exception of a few specific hearing types), at least until the public is free to enter courtrooms again."