

APPENDIX G

Remote Conferencing— Findings and Recommendations

Introduction

The Civil Justice Improvements (CJI) Committee carefully considered the potential benefits that courts can reap from applying communications technology to civil litigation.¹ In doing so, the Committee was mindful that, given the proclivity of courts to honor traditions, there could be a tendency to try to adapt technology to preexisting processes and modes of operation without a sufficient look at new and better ways to meet judicial responsibilities. Within the tech world, this is known as “paving the cow path”—just replicating the preexisting process in a new format instead of making deeper adjustments.

The use of communication technology to hold hearings, both by telephone and video teleconferencing technology, is widely available to reduce cost and delay in civil litigation.² The following Findings and Recommendations aim to encourage courts to embrace these technologies enthusiastically and effectively.

Findings and Recommendations

FINDING 1

Telephonic communication can reduce cost and delay in the civil justice system.

RECOMMENDATION 1.1

To the extent possible and appropriate, courts should expand use of telephonic communication for civil case conferences, appearances, and other straightforward case events.

RECOMMENDATION 1.2

The higher the stakes of the hearing or case event, the better technology needs to be (e.g., transition from use of telephonic conferencing to video conferencing as complexity of case event increases).

COMMENTARY

Telephonic conferences reduce travel time and costs for litigants and counsel. This technology is already fully developed, involving minimal implementation costs for users. Indeed, telephones are universally available, convenient to lawyers and self-represented litigants, and efficient in terms of avoiding travel, wait times, and scheduling delays in cases involving a large number of parties. Vendor-based systems such as CourtCall or existing phone systems can be used depending on resources and existing technological capabilities. Hence, the CJI Committee believes that telephone hearings should be encouraged throughout the court system where appropriate.³

Examples of inappropriate situations include where there are poor connections, a hearing requires reference to multiple documents, the subject matter is complex, or issues of witness credibility are involved. Videoconferencing, with its capacity to bring motion and picture quality to a conference, should be used to address complexities and special concerns that are likely to arise in a hearing. The following Findings and Recommendations address videoconferencing in greater detail.

FINDING 2

Videoconferencing can reduce cost and delay in more complex litigation events.

RECOMMENDATION 2.1

Courts should use videoconferencing in civil litigation when appropriate and in proportion to the needs of the appearance.

RECOMMENDATION 2.2

Whenever videoconferencing is used for a hearing, all parties should participate in that manner unless the judge allows otherwise.

COMMENTARY

As more individuals have access to modern personal computers and handheld devices, videoconferencing has become a trend in our society. While friends, families, and businesses increasingly use videoconferencing to communicate and conduct commerce, courts largely have not resorted to videoconferencing to conduct civil hearings except in narrow circumstances. Video appearances have been used in criminal proceedings such as when an accused is incarcerated. Videoconferencing has been utilized for international witness appearances and for language interpretation. Significantly, videoconferencing has been used for evidentiary hearings, including real time testimony by witnesses, in thousands of federal administrative adjudications in the last decade.⁴ The Administrative Conference of the United States reports that videoconferencing has saved the government \$59 million annually and \$596 million over the last ten years. Moreover, an Administrative Conference study determined that the use of videoconferencing has no effect on the outcome of cases.⁵

Despite the widespread use of videoconferencing in federal agencies, it has not been as widely employed by state courts in civil cases. While there is little empirical research on the extent to which videoconferencing is used in state courts, there are some reports that highlight savings from the use of videoconferencing in the criminal system.⁶ It is reasonable to infer that reduced travel time and transportation costs experienced by criminal courts using videoconferencing will also be gained in the civil justice system.⁷

The CJI Committee recognizes several barriers to the use of videoconferencing. These include infrastructure costs (for example, set up and maintenance), local culture habits and attitudes, usage fees, and a general preference for in-person interaction.⁸ Numerous courts are implementing more advanced videoconferencing systems that address these concerns through increased functionality, increased ease of access, and lowered costs for users.⁹

Many states must consider deploying scarce judicial resources to urban and rural areas of the state. In Oregon, judges use videoconferencing technology to hear certain cases (small claims, post-conviction civil cases, other non-jury proceedings).¹⁰ Videoconferencing can also stretch scarce resources¹¹ and ensure judicial availability after disaster events. In addition, this resource may provide a means for a specialized court to operate across intrastate jurisdictional lines for certain hearings,¹² such as a statewide commercial case docket. Of course, videoconferencing should not merely be used for judicial convenience.

Recommendation 2.2 encourages a policy that, whenever videoconferencing is used for a hearing, all parties must participate in that way unless the judge determines otherwise. This course of action will ensure that all parties on the same footing with no one having a visual advantage over another.

FINDING 3

Videoconferencing can positively affect access to justice for litigants, particularly self-represented litigants.

RECOMMENDATION 3.1

Cost and convenience to litigants should be taken into account when implementing videoconferencing.

COMMENTARY

The *Landscape of Civil Litigation* informs us that in roughly 75 percent of all civil cases, there is at least one party who is not represented by a lawyer. In this context, travel costs and work absences associated with attending a court hearing can deter self-represented litigants from effectively pursuing or defending their legal rights. Technology,¹³ and videoconferencing in particular, can help mitigate these obstacles, offering significant cost savings for self-represented litigants and generally resulting in increased access to justice through courts that “extend beyond courthouse walls.”¹⁴

Recognizing that videoconferencing cuts down on travel expenses, courts must consider whether utilizing this technology creates significant other costs to litigants. For example some vendors charge a fee per each videoconference appearance.¹⁵ Hence, courts and parties must evaluate whether the costs of videoconferencing would neutralize any potential access to justice gains. To minimize costs, libraries, public Wi-Fi locations, and other locations¹⁶ could serve as appropriate bases for litigants to access the courts.

Notes

1. The CJI Committee's Court Operations Subcommittee, chaired by Committee member Judge Jennifer Bailey, generated these Findings and Recommendations.
2. The Committee recognizes that a number of other technology-based solutions can reduce cost and delay in civil cases. The Conference of Chief Justices' [Resolution 13: The Emergence of E-Everything](#) promotes a number of these solutions, and effective judges often employ various solutions in their own jurisdictions. Institute for the Advancement of the American Legal System (IAALS), [Working Smarter, Not Harder: How Excellent Judges Manage Cases \(Jan. 2014\)](#).
3. For examples of court rules that address the use of telephonic appearances see [CAL. R. 3.670 Telephone Appearance \(2016\)](#) (permitting appearance to the extent feasible in civil cases); [Washington County CT. Supp. R. 4.106\(1\) Post Conviction Relief-Hearings on Motions and Demurrers \(OR. 2015\)](#) (requiring oral arguments be heard by phone unless otherwise ordered).
4. [Administrative Conference of the United States, Administrative Conference Recommendation 2014-7, Best Practices for Using Video Conferencing for Hearings \(2014\)](#).
5. [Administrative Conference Of The United States, Administrative Conference Recommendation 2011-4, Agency Use Of Video Hearings: Best Practices And Possibilities For Expansion](#).
6. [Administrative Office of Pennsylvania Courts \(AOPC\), Press Release, PA Courts Expand Use of Videoconferencing, Save \\$21 Million Annually in Defendant Transportation Costs, June 2011; Pope, B. & Ziemke, D., Your Return on a Safer Tomorrow: The Potential Cost Savings from Further Investment in Videoconferencing Technology within Wisconsin's Justice Community, \(2003\)](#).
7. For an article describing the use of videoconferencing in one jurisdiction, see Kiesel, P., *Two Places at Once (Pants Optional)* in L.A. Daily Journal (Sept. 5, 2014).
8. See Dunn, M. & Norwick, R. Report of a Survey of Videoconferencing in the Courts of Appeals, Federal Judicial Center (2006) (discussing judicial experiences with VTC and implementation).
9. A 2010 national survey on videoconferencing provides a snapshot into the dynamics of videoconferencing in state courts. See [McMillan, J., Videoconferencing Survey: 2010 Results, Nat'l. Center for State Cts. \(2010\)](#).

10. [*Oregon Judicial Department, Supplemental Local Rules, Washington County Court: 20th Judicial District \(Feb. 2013\).*](#)
11. Kloepfel, E. et al., *Videoconferencing: An Assessment of Benefits*, State of Missouri, Office of the State Courts Administrator (2011).
12. [*Planning & Policy Advisory Committee, Videoconferencing Subcommittee, \(PPAC\). Bridging the Distance: Implementing Videoconferencing in Wisconsin \(2005\).*](#)
13. [*NEW HAMPSHIRE SUPREME COURT TASK FORCE ON SELF-REPRESENTATION, CHALLENGE TO JUSTICE: A REPORT ON SELF-REPRESENTED LITIGANTS IN NEW HAMPSHIRE COURTS \(2004\).*](#)
14. [*Graff, G., Courts as Conversations: An Argument for Increased Engagement by Court Leaders, Executive Session for State Court Leaders in the 21st Century 5 \(2012\).*](#)
15. [*CourtCall, Remote Court Appearances: For Attorneys*](#) (last accessed June 30, 2016).
16. [*City of San Antonio, Kiosk Court*](#) (last visited June 30, 2016).