

The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload

FINAL REPORT

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COURT CONSULTING DIVISION | NATIONAL CENTER FOR STATE COURTS





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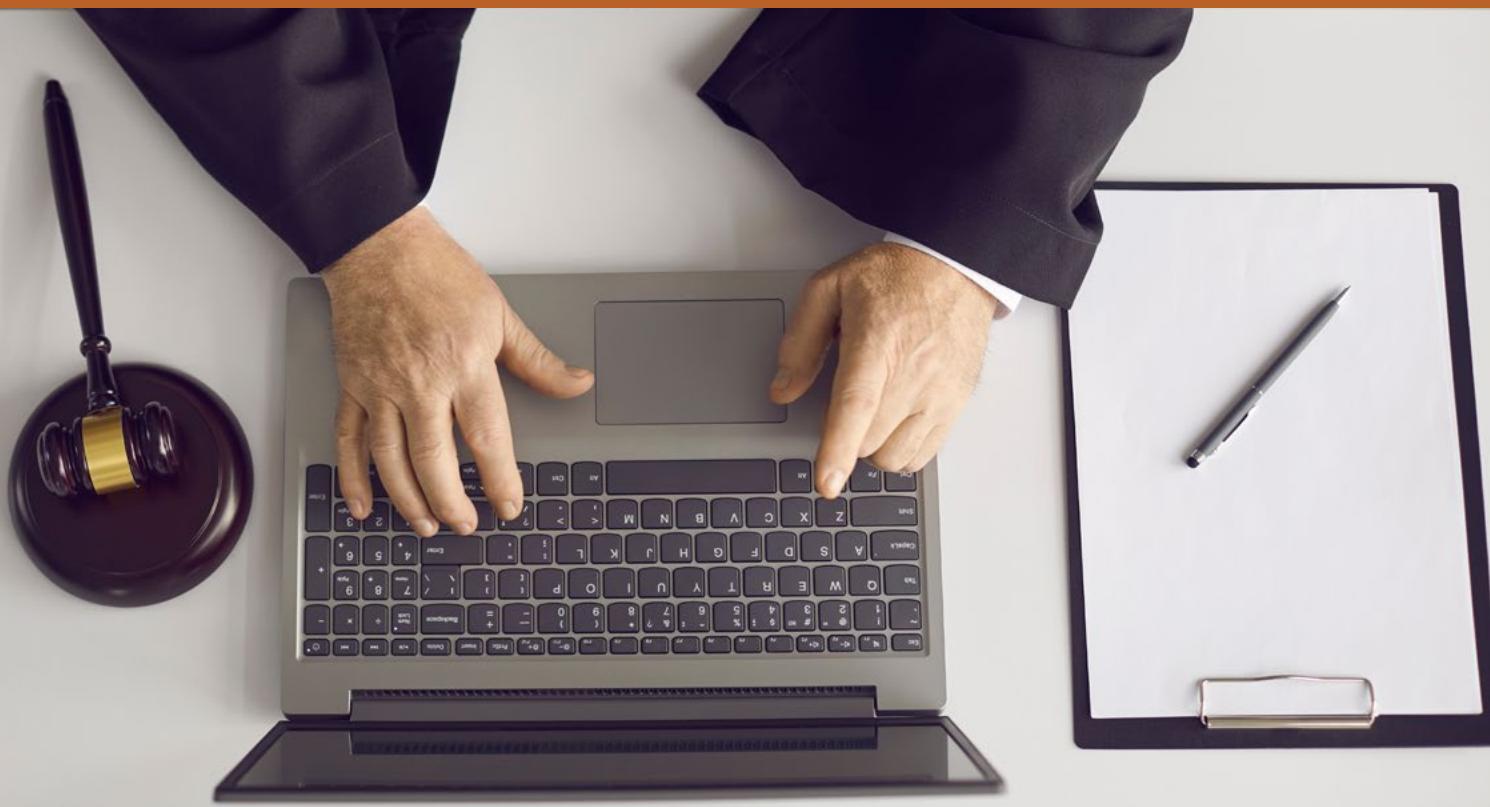
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Executive Summary

During the early months of the COVID-19 pandemic, the Texas state courts moved quickly to implement remote court hearings, in many cases to ensure ongoing access to the courts.

To date, little research has been conducted regarding the impact of implementing remote hearings on courts and court users. Being able to systematically measure differences in hearing length relative to in-person hearings and other consequences of remote hearings is essential for state court decision makers seeking to determine the extent to which remote hearings should be maintained post-pandemic.

The current project involves an analysis of a sample of eight Texas court jurisdictions to empirically investigate the implementation of remote hearings on the efficiency of judicial workload practices and to explore potential benefits, such as improved access to and quality of justice delivered through the courts. The participating judges tracked their work time for a three-week period in April 2021, indicating whether hearings were conducted in-person or remotely. During this time period, approximately 85% of all hearings were conducted remotely, and, as of December 2021, many Texas courts continue to hold most hearings in this manner. NCSC conducted three focus groups with a subset of participating judges to explore the results of the study.

Findings

Overall, this study found remote hearings tend to take about one-third longer (34%) than when hearings are held in-person. That is, on average, a hearing that takes about 30 minutes in-person takes about 40 minutes remotely. To explore the implications of these findings, NCSC staff held a series of three focus groups with 15 judges who fully participated in the time study. The main purpose of the focus groups was to gather judicial perspective on a range of issues related to court workload that involves both remote and in-person hearings. Several themes emerged from this study.

Hearing length. The time study indicated that remote hearings take longer than in-person hearings. Judges generally confirmed that their experience aligned with the study findings that remote hearings take longer and that the increased time is largely the result of technical issues, lack of preparation by parties, fewer default judgments due to the accessibility of attending hearings remotely, and increased numbers of parties in hearings.

Benefits of remote hearings. Texas judges reported that holding remote hearings has definite benefits for expanding access to justice for many litigants, despite taking somewhat longer on average. One major advantage to litigants is the added convenience of not needing to take time off work, locate transportation, or find childcare. In some jurisdictions, remote practice allows litigants, including those who are self-represented, to schedule hearings at specific times (or within short time windows). This practice provides court users greater precision and flexibility in scheduling a court appearance. Remote hearings may also expand access to courts for witnesses, victims, experts, and other court stakeholders who live in remote locations or who fear for their safety in court. Likewise, there is the opportunity for wider participation in many types of family-related cases, especially divorce, child welfare, and child protective services cases.

Challenges of remote hearings. Texas judges identified several technology-related problem areas in line with national patterns. A primary concern is the “digital divide,” the issue that people may have uneven access to the technology needed to participate in remote hearings (e.g., lack of a computer or internet access). Relatedly, litigants may have limited experience using online videoconferencing, causing delays in court proceedings. Trouble navigating the technology can deepen when inexperienced court users need to submit documents or use visual aids. Texas judges also reported having mixed success with the remote-hearing platform when cases involved interpreters. Because the Texas judges believe the use of remote hearings will remain a part of court practice going forward, they clearly recognize the need for ongoing attention to creative and inclusive solutions to access issues.

Proceedings that lend themselves to remote hearings. Judges were asked whether certain types of cases or types of hearings are more or less suited for remote hearings. Texas judges agreed that the type of case is less relevant than the type of hearing—in most instances. Generally speaking, remote hearings function most effectively with hearings that are short in nature and limited in scope, such as setting trial dates, status hearings, permanency hearings, discovery hearings, motions hearings of various types, self-represented divorce dockets (especially when parties have completed agreements), and non-evidentiary or non-witness cases. Additionally, in terms of case types that work well for remote dockets, judges indicated the type of matters that affect people's ability to get on with their lives, such as many probate proceedings, child protective services, and other family law cases, work well.

Impact of remote hearings on judges. Across the three focus groups, as well as during introductory discussions with judges conducted before the time study, the consensus is that remote proceedings will continue for the foreseeable future. Judges reported that, while remote hearings can be exhausting, they are beneficial to litigants in many ways and allow for broader inclusion of interested parties than in-person hearings. However, courts should also focus on ways to reduce judicial stress and "Zoom fatigue" when handling remote proceedings.

Implications of Findings and Recommendations

This exploratory study has revealed there are both benefits and challenges associated with the current case-processing practices used in handling hearings remotely. The need for ongoing attention to reducing technology problems was a recurrent theme during the Texas focus groups, one corroborated by other recent studies conducted elsewhere around the country.

A primary benefit of remote hearings is the opportunity to significantly improve the court experience for court users in select types of hearings and cases. Remote hearings are often more convenient because they allow for more precise scheduling and reduce obstacles to attending related to such issues as transportation, childcare, and work schedules. According to most judges and attorneys interviewed and surveyed across a variety of studies conducted since the pandemic began, remote hearings will be an ongoing reality in courts across the country.

Aside from technological concerns, courts will need to address other challenges with pre-hearing preparation associated with the swift move to remote practices. Texas judges noted a major focus in court administration involves improving the efficiency of remote hearings, including better use of judicial officer time, improved scheduling and notice of remote proceedings, and workable methods to respond to individual users' questions.

Recommendations

1. Judicial leadership should generate guidelines regarding how best to determine when a court proceeding should be conducted in-person or remotely.
2. Judges and court administration should determine the most effective way to schedule hearings that provide for the greatest efficiency in the court, while also being mindful of litigants' time.
3. Remote court participants will benefit from clearly delineated instructions and expectations for hearings.
4. Court systems should develop clearly written (and other formats) instructions for remote proceedings on courtroom decorum and expectations of litigants, including timeliness, dress code, and appropriate places from which to log into a hearing.
5. Before any hearing, the court should ensure that all required paperwork and agreements between parties have been appropriately completed.
6. Courts should not assume that all parties have access to the proper equipment (e.g., computers, tablets, smart phones) necessary to participate in remote court proceedings. If individuals do not have access to the appropriate technology, courts should make such equipment available to court users in a safe and easily accessible location.
7. When interpreters are used, the court should ensure that the non-English-speaking litigant's attorney has briefed the interpreter on the case and how to use the communication system.
8. Court systems should find ways to preempt judicial burnout from holding lengthy sets of back-to-back remote hearings. Judges should be encouraged to take regular breaks during and between hearings.
9. Since remote hearings appear to be permanent, court systems should consider hiring "technical bailiffs" or additional court staff responsible for setting hearing links, scheduling parties, contacting parties before the hearings, and addressing technical issues that arise during remote hearings.

I. Introduction

During the early months of the COVID-19 pandemic, the Texas state courts moved quickly to implement remote court hearings, in many cases to ensure ongoing access to the courts. On March 19, 2020, the Supreme Court of Texas and Texas Court of Criminal Appeals jointly issued Emergency Order 3 (20-944; 20-008) relating to court closures due to the pandemic.¹ The orders stated that “courts must not conduct non-essential proceedings in person contrary to local, state, or national directives, whichever is most restrictive, regarding maximum group size.”

There are currently approximately 1,500 Texas trial courts actively using Zoom to conduct remote hearings.² While state court leadership anticipates that the virtual delivery of court services will remain an integral part of court business practices in the years to come, many important yet unanswered questions remain about the impact on judicial workload.

Understanding the impact of remote hearings on judicial time and case management practices relative to in-person hearings is essential for state court decision makers to determine the extent to which remote hearings will be maintained post-pandemic. The current analysis is intended to assist in the design and conduct of the statewide workload assessment study that will be conducted in Texas in the fall of 2022. It is also hoped that the findings from the current study will aid other states as they weigh the value of the use of virtual versus in-person delivery of court services.

The current project involves an analysis of a sample of Texas courts to empirically investigate the implementation of remote hearings on judicial workload, as well as to explore potential benefits and challenges to this evolving style of work. This is not a traditional weighted caseload study in which the amount of time judges spend on different types of cases is measured and a judicial needs model is developed; rather, it is an exploratory effort to determine the differences between remote versus in-person hearings, in terms of both elapsed time for each and the judicially perceived strengths and weaknesses of these two modalities of court hearings.

¹ <https://www.txcourts.gov/media/1449339/209044.pdf>

² The Texas Judicial Branch purchased Zoom licenses for each judge early in the pandemic.

II. Time Study Participants

This limited-scope study was initially intended to include judicial officers from six jurisdictions of varying sizes (e.g., two large, two midrange, and two smaller). In the end, eight jurisdictions, including 52 judges, took part in the time study. Participating judges tracked and entered the time they spent on their judicial officer duties during the three-week period spanning April 12 through April 30, 2021. The participating jurisdictions and the number of judges from each county who participated are shown in Figure 1.

FIGURE 1:
Texas Jurisdictions and
Number of Judges
Included in the Limited-Scope
Study on Hearing Types

| Jurisdiction | Number of Judges Who Participated |
|-----------------------------|-----------------------------------|
| Brewster County (Small) | 1 |
| Collin County (Large) | 8 |
| Dallas (Large) | 1 |
| Lubbock County (Midrange) | 2 |
| Tom Green County (Midrange) | 6 |
| Travis County (Large) | 21 |
| Uvalde/Real County (Small) | 3 |
| Webb County (Midrange) | 10 |
| Total: 8 counties | 52 |



III. Developing the Study's Parameters

Before commencing the current study comparing remote to in-person court hearings, the National Center for State Courts (NCSC) began planning a statewide weighted caseload study for trial court judges in Texas. The statewide study was suspended due to the COVID-19 pandemic. During the first meeting of the statewide study's advisory committee, a set of 31 separate case types were selected, for which case weights are to be developed. The committee also identified four case-related event categories to distinguish judicial work at different points in the life of a case (e.g., pretrial, jury trial).

Given the more tightly focused nature of the current project, the NCSC team worked with the Texas Office of Court Administration (OCA) staff to collapse the case types into fewer categories for ease of data tracking and to expand the case event categories to differentiate whether hearings were conducted in-person or remotely.

Case Type Categories

The case type categories for the current study consisted of 12 categories shown in Figure 2; each case type was defined in the glossary provided to the study's participants. Appendix A provides a description of each of the 12 case types.

FIGURE 2:
Texas Case Types by Category

| Case Type |
|----------------------------------|
| Felony A |
| Felony B |
| Misdemeanor |
| Injury/Damage with Motor Vehicle |
| Injury/Damage no Motor Vehicle |
| Contract |
| Other Civil |
| Divorce |
| Other Family Law |
| Modifications/Enforcements |
| Delinquency |
| Child Protective Services |

Case-Related and Non-Case-Related Judicial Events

Disaggregating case-related work into meaningful events allowed NCSC staff to measure the amount of time spent by judges on hearings conducted at each stage of the court process. For the statewide study, the advisory committee identified four main event categories, shown in Figure 3 (Appendix B provides the definition of events). To determine the differences between in-person hearings and remote hearings, events were further broken down by the hearing modality (in-person vs. remote), for a total of eight distinct events.

FIGURE 3:
Texas Case-Related Events

| |
|-----------------------------------|
| Pretrial activities: IN-PERSON |
| Pretrial activities: REMOTE |
| Bench trial activities: IN-PERSON |
| Bench trial activities: REMOTE |
| Jury trial activities: IN-PERSON |
| Jury trial activities: REMOTE |
| Posttrial activities: IN-PERSON |
| Posttrial activities: REMOTE |

NCSC also collected information on non-case-specific activities, such as continuing education and judges' meetings, that are not directly related to a particular case, but are nonetheless essential to a judge's work. These activities, defined as non-case-related activities, are presented in Figure 4; Appendix C provides the definitions. For the current project, NCSC compared the average amount of time associated with this work in early 2021 to the amount of time spent on non-case-specific work measured in the last statewide workload assessment study conducted by NCSC in 2007. In the previous time study, the data showed between 2 and 2.5 hours per day were dedicated to non-case-related work. In the current study, this time was reduced to 1.75 hours per day, presumably due to judges' attending fewer meetings and engaging in less community outreach during the pandemic.

FIGURE 4:
Texas Non-Case-Related Events

| |
|---|
| Non-case-related administration |
| General legal research |
| Judicial education and training |
| Committees, meetings, and related time |
| Community activities and public outreach |
| Work-related travel |
| Vacation, sick leave |
| Lunch and breaks |
| Technology-related work or issues |
| Time study data tracking and reporting |
| Non-case-related specialty court activities |

IV. Average Hearing Times: In-Person versus Remote

At the heart of this inquiry is whether there are differences in the average time spent by judges in handling in-person and remote hearings. To answer this question, a three-week time study was conducted in which judges from the participating jurisdictions, including district court judges and judges from the county courts at law, tracked their time by case type and event. Data were collected using an online data collection instrument where judges entered discrete blocks of time spent on a particular type of case, event, and hearing modality. NCSC computed the average amount of time associated with remote and in-person hearings, by hearing event category and case type.

During the time study period, most proceedings in the participating courts were conducted remotely. In aggregate, 86% of the total time reported was identified as remote work, compared to 14% in-person. Another way to look at the data is by individual time entry to estimate the amount of time a judge spent on a remote or in-person hearing, with each entry representing a single block of work.³ When calculated, a similar pattern emerged, with 85% of individual time entries being conducted remotely compared to 15% in-person.⁴

Recall, judges were asked to record their time by case type and event category. They indicated whether they were working on pretrial events (e.g., arraignment, pretrial motions, scheduling conference); bench trial activities (i.e., all activity related to a trial where the judge is finder of fact); jury trial activities (i.e., all activity related to a trial where a jury is the finder of fact); or post-disposition events (e.g., sentencing revocation, guardianship review). This data collection strategy allowed NCSC staff to examine a wide range of case types and distinguish at what point in the life of a case the work was being done.

Using the time study data, NCSC staff computed the average times for in-person and remote pretrial events for each case type. This approach was adopted because while the participating jurisdictions' case management systems were able to provide an accurate count of the number

³ Participants were not instructed to enter each hearing as an individual event; however, participants did enter time in discrete event categories. For example, a judge might enter 20 minutes for a single arraignment or 60 minutes for three arraignments. Internal consistency by each judge in recording practice is assumed in this analysis. Focus group responses by participating judges provided strong support for this assumption.

⁴ In total, 1.25 million minutes of judicial time was collected during the time study.

of cases filed during the time study period, the systems did not track the number or type of hearings held. In addition, the case management data did not include information on manner of disposition (e.g., bench trial, jury trial) or whether an event occurred post-disposition. That is, counts do not exist of the number of bench or jury trials held during the study or the number of post-disposition events. These limitations restricted NCSC analysis to pretrial activity, as that occurs in all cases filed. Consequently, NCSC focused on the amount of time judges spent on pretrial matters in both remote and in-person environments.

In addition, it is likely that the measure of "pretrial event" time is aligned with individual "pretrial hearing" time for the case types examined. This assumption was tested and generally verified in two ways. First, the length of the time entries recorded by active judicial participants were calculated. Of the approximately 1,700 individual pretrial event times entered during the time study, about two-thirds were 30 minutes or less, in line with expected individual pretrial hearing length.

Second, focus groups were conducted in October with a sample of the participating judges. When judges were asked about their method for entering data, they tended to corroborate that in many cases hearing times were entered for each hearing, so that one time entry represents a single hearing. Of equal importance, all judges confirmed that they used a consistent method in entering time during the study. That is, they either entered time by individual hearing or they grouped similar hearings together as a single block of time (e.g., three hearings of the same type took a total of 60 minutes). This suggests time data were collected in individually consistent fashion among participating judges, thereby allowing for direct comparison between remote and in-person proceedings. In the remainder of this document, we will refer to remote and in-person pretrial "hearings," although we recognize that the time estimates will somewhat overstate the actual length of an individual hearing.

Figure 5 provides the average pretrial hearing times and the number of hearings examined for remote and in-person hearings by case type. In addition, the figure shows the percentage difference in time between remote and in-person hearings. For example, for Felony A (Person) cases, in-person hearings take an average of 40 minutes and remote hearings average 53 minutes, a difference of 34%.

FIGURE 5:
Pretrial Hearing Times and Number of Hearings by Case Type

| Pre-trial Hearing | ESTIMATED HEARING TIMES | | | NUMBER OF HEARINGS | |
|----------------------------|-------------------------|-----------|-----------------------|--------------------|--------------|
| | In-Person | Remote | Percentage Difference | In-Person | Remote |
| Felony A (Person) | 40 | 53 | 1.34 | 42 | 124 |
| Felony B (Property) | 31 | 40 | 1.27 | 51 | 138 |
| Injury Damage w/ Vehicle | 26 | 45 | 1.73 | 16 | 104 |
| Injury Damage - No Vehicle | 68 | 73 | 1.07 | 12 | 52 |
| Contract | 13 | 58 | 4.43 | 5 | 117 |
| Other Civil | 48 | 80 | 1.69 | 36 | 226 |
| Divorce | 30 | 65 | 2.16 | 28 | 195 |
| Other Family Law | 59 | 72 | 1.22 | 26 | 224 |
| Modifications/Enforcements | 64 | 47 | 0.73 | 17 | 107 |
| Delinquency | 94 | 104 | 1.11 | 4 | 71 |
| Child Protective Services | 102 | 132 | 1.29 | 9 | 82 |
| Overall Average | 52 | 70 | 1.34 | 246 | 1,440 |

Discussion

The analysis shows that remote hearings take longer than in-person hearings for 10 of the 11 case types examined. As can be seen, the difference in time between the two hearing modalities varies by case type. Overall, remote hearings tend to take about one-third longer (34%) than when hearings are held in-person.

Figure 5 also shows the number of hearings upon which the time estimates are based. While the study was limited in scope, the results do draw on a sizable overall number of hearings. Of course, given the time period in which the study was conducted, the majority of hearings were held remotely (85%). This means that for some case types, such as Contract, the sample of in-person hearings is small and suggests caution in extrapolating the results to all Contract cases. However, for most of the other case types the sample sizes are sufficient for placing reasonable confidence in the results.

To explore the implications of these findings, NCSC staff held a series of three focus groups with 15 judges who fully participated in the time study. The main purpose of the focus groups was to gather judicial perspectives on a range of issues related to court workload that involve both remote and in-person hearings. A unanimous belief was that the use of remote court proceedings will continue. The focus groups also agreed that all judges and court staff need efficient and effective processes to ensure court users receive equal access to justice regardless of how proceedings are held.

Specific topics included:

1. Hearing length.
2. Benefits of remote hearings for court users.
3. Challenges of remote hearings for court users.
4. Hearing types best suited for remote hearings.
5. The impact of remote hearings on judicial stress.

These topic areas are discussed below.

1. Hearing length.

Texas judges generally were not surprised with the findings showing that remote hearings take longer than those conducted in-person. This result fits with their perceptions from handling both types of hearings. When asked why, judges were quick to say the increased time is largely the result of technical issues from hearing participants, such as difficulty logging onto the Zoom platform, connectivity problems related to limited bandwidth, or difficulty sharing screens or uploading documents and exhibits. In many instances, resolution of technological issues fell to judges or court staff, who are not trained to address them. Regardless, judges and court staff have undertaken these additional tasks as part of their regular duties, even though it adds stress and reduces the time available for handling their remaining caseload.

This finding aligns with results from a recent study of Child Abuse and Neglect cases conducted in September 2020 by the Nevada Court Improvement Program (CIP).⁵ The study found that four of the five types of hearings examined took longer when conducted remotely. On average, remote hearings took about 39% longer. This finding is similar to what was found in the current study

⁵ A. Summers and S. Gatowski, *Nevada Court Improvement Program Remote Hearings Study* (2020). The study collected data on 123 hearings from five judicial districts and included 58 remote hearings and 65 in-person hearings.

for Texas judges handling Child Protective Services cases (Child Abuse and Neglect cases): remote hearings were 29% longer. As in Texas, the additional time in Nevada (relative to in-person hearings) was found to be largely due to technology-related issues.⁶

A comparable study of Abuse and Neglect cases conducted by the Utah Court Improvement Program in October 2021 also found that remote hearings take longer than in-person hearings.⁷ In this case, remote hearings were about 80% longer, with the primary reason for lengthier proceedings being technology related.

2. Benefits of remote hearings for court users.

Texas judges reported that holding remote hearings has definite benefits for many litigants, despite taking somewhat longer on average. One major advantage is the added convenience of not needing to take time off work, locate transportation, or find childcare. In some jurisdictions, remote practice allows litigants, including those who are self-represented, to schedule hearings at specific times (or within short time windows). This practice provides court users greater precision and flexibility in scheduling a court appearance. Remote hearings may also expand access to courts for witnesses, victims, experts, and other court stakeholders who live in remote locations or who fear for their safety in court. Likewise, there is the opportunity for wider participation in many types of family-related cases, especially Divorce, Child Welfare, and Child Protective Services cases.

For example, one judge stated that "many pro se cases lend themselves to Zoom dockets. A lot of times we have issues like non-service or other issues that take a small amount of time to figure out and do not require everyone to come to court." Another judge stated, "It is emotionally easier for the parties to get through a divorce if they are not in the same room. Divorces are still a drain, and participants even break down remotely, but it is easier to get through." This same judge indicated that, before the pandemic, only 25% of self-represented Divorce cases had all the documents necessary to proceed on their case at the originally scheduled hearing. During the pandemic, the judge began providing forms for the litigants to complete before their remote court hearing, so on the day of the hearing the parties have a completed agreement before the hearing begins. Since this change was made, nearly 90% of the self-represented divorce litigants appear prepared and ready to resolve their cases.

⁶ Technology delays occurred in 21% of remote hearings, compared to 3% of in-person hearings; delay time ranged from one to five minutes, with an average of two minutes (p. 5).

⁷ A. Summers and S. Gatowski, *Virtual Hearing Study—Utah* (2021). The study collected data on 158 hearings from four judges and included 80 remote hearings and 78 in-person hearings.

Judges across the board indicated that attendance at remote hearings for Civil and Family cases tends to be higher, reducing the number of default judgments that occur when one party does not appear for a hearing. A similar pattern of higher appearance rates was also noted for Criminal cases, with a consequent reduction in failures to appear (FTAs).

Relatedly, especially in family-related cases, more parties (e.g., immediate and extended family members) often appear for remote hearings. Texas judges stated that a benefit of broader attendance is the opportunity to explain the hearing process and provide opportunities for all interested parties to be heard more fully. There is some anticipation that the increased participation will reduce post-judgment disputes. Of course, as more people participate in hearings, the length of the hearings will also increase, but the quality of those hearings is also likely improved.

The Nevada CIP focus groups also found that the depth and breadth of discussion occurring in remote hearings was greater than that during in-person hearings, thus increasing the hearing length. The Nevada study noted that people who are less likely to attend an in-person court hearing, such as foster parents and kinship caregivers, are more likely to appear at remote proceedings because having a guaranteed login time is less disruptive to their schedules.

These findings echo a recently published report in which NCSC interviewed family court judges across the country.⁸ The judges indicated that parents attended remote hearings more frequently than in-person hearings, with the increase in participation attributed to “the convenience of not having to travel or find parking, not having to take time off from work, and the less intimidating atmosphere of the virtual courtroom.” Additionally, the report noted that incarcerated parents can participate in hearings more often due to the increased number of remote connections offered by jails and prisons and the elimination of transportation barriers.

Of particular importance, the increased involvement of parties likely improves their perceptions of procedural fairness, as research has demonstrated that simply having a voice in a proceeding improves one’s experience of fairness.⁹ As noted by the UK Judicial College, “the process, rather than merely the result (of remote hearings) is a significant consideration in terms of the delivery of real justice. An individual is more likely to accept an adverse conclusion where it has been arrived at after a process which has been transparently just, where the needs of all have been considered, and where they have felt engaged in the process and the outcome is explained.”¹⁰ Such attention to enhanced procedural fairness has the benefit of better acceptance of court decisions, a more positive view of the courts, and greater compliance with court orders.

⁸ National Center for State Courts, *Study of Virtual Child Welfare Hearings Impressions from Judicial Interviews*, (June 2021), p. 2.

⁹ J. Bowers and P. H. Robinson, “Perceptions of Fairness and Justice: The Shared Aims and Occasional Conflicts of Legitimacy and Moral Credibility,” *Wake Forest Law Review* 47 (2012): 47.

¹⁰ UK Judicial College, *Good Practice for Remote Hearings*, p. 1.

Judges also reported that remote hearings are generally viewed positively by attorneys. These views are confirmed by a June 2020 survey of Texas attorneys conducted by the Texas Office of Court Administration that found over 73% of respondents indicated remote hearings are effective, with only 12% indicating they are ineffective. The focus group participants said attorney support is particularly strong for out-of-town counsel, or in larger counties where attorneys often must travel long distances to get to court. In addition, remote proceedings have made scheduling easier and avoided unnecessary delays, especially in uncontested matters, like case status updates.

This perspective is confirmed in a study conducted by the Berkeley Research Group (BRG) in the summer of 2021 on the psychological impacts of remote hearings on legal professionals. During interviews, the authors found that the experience of remote hearings on attorneys, arbitrators, and expert witnesses has been largely positive for all parties involved. Further, those interviewed indicated that there are many efficiencies (for legal professionals) to be gained by holding court hearings remotely, especially where it concerns the time and cost of travel associated with expert witnesses. This study also found that "the relaxed setting of familiar surroundings such as the home office has had a noticeable psychological impact on expert witnesses and placed them at ease, which in turn allows for more considerate answers to the benefit of the court."¹¹

Texas judges noted three additional benefits of remote hearings related to more efficient use of resources, including better managing limited courtroom space, reducing the need to travel to different courthouses, and improving utilization of scarce court reporters, interpreters, and pro bono legal representatives. As to the first two issues, when judges share courtrooms or must travel between court locations, their ability to schedule hearings is obviously limited to the days that judge is assigned to a specific courtroom. In many rural parts of Texas, judges travel between multiple courthouse locations to hold in-person proceedings. This style of riding circuit can mean a judge may only visit some locations every other week or even once a month, thereby reducing access. Since holding hearings remotely does not require the use of a physical courtroom, there is more flexibility in scheduling hearings, and proceedings can be held in a more timely fashion regardless of location.

As to the third issue, judges reported the ability to use court reporters, interpreters, and pro bono lawyers who are not physically located in the courtroom because they can participate in the hearing via Zoom. This ability makes efficient use of scarce resources and further expands the ability to hold more hearings than if the participants were required to be in the same physical location as the judge.

¹¹ C. Bao, A. Masser, and S. Puchkov, *The Psychological Impact of Remote Hearings* (2021), p. 6.

3. Challenges of remote hearings for court users.

As noted above, judges stated that technology-related issues are the primary source of longer hearing times for remote proceedings. Texas judges identified several technology problem areas in line with national patterns.¹² A primary concern is the “digital divide,” or the issue that people may have uneven access to the technology needed to participate in remote hearings (e.g., lack of a computer or internet access). While judges reported that most litigants are able to participate in hearings via video and audio and in greater numbers than during in-person hearings due to other barriers, there remain litigants who experience access issues related to technology. Relatedly, litigants may have limited experience using online videoconferencing, causing delays in court proceedings. Trouble navigating the technology can deepen when inexperienced court users need to submit documents or use visual aids. Because the Texas judges believe remote hearings will remain a part of court practice going forward, they clearly recognize the need for ongoing attention to creative and inclusive solutions to access issues.

Another concern voiced by some Texas judges is that remote hearings as currently operating may not make the best use of judicial time. One example is that the structure of remote hearings reduces some of the more informal discussions among opposing counsel that can occur with in-person hearings. Negotiations that occur before a hearing can clarify and sometimes resolve issues without direct judicial involvement. However, this opportunity is often lost with remote hearings, and some judges find they must expend time discussing these issues with the parties during the hearing itself. One judge relayed that she was holding a hearing on a divorce case, and that the parties agreed on all but one issue, which could have been resolved without judicial involvement before the hearing. Instead, she needed to negotiate the issue during the hearing, which unnecessarily increased the hearing time. Some judges indicated that they had remedied this issue by admitting lawyers and litigants to the virtual courtroom and placing them in “breakout rooms” that function similarly to in-person meeting space.

Accessibility for non-English speakers during remote proceedings was another challenge, with several judges stating they had mixed levels of success with cases involving the need for interpreters. Some judges indicated that the interpreter function in Zoom is not ideal for courts and is difficult to use. One issue is that some parties in need of interpreter services lack access to the technology required to participate both visually and with audio. Another issue is that to use the interpreter function, all parties must be logged into the hearing through the Zoom app, as opposed to following a link to the hearing. If parties have not properly logged in to their remote hearing, the interpreter function is not available for parties who attend by phone only.

¹² See <https://www.ncsc.org/newsroom/public-health-emergency/pandemic-and-the-courts-resources> for a variety of resources created by NCSC and the CCJ-COSCA Rapid Response Team (RRT) to help state courts deal with challenges presented by the pandemic.

Further concerns expressed by Texas judges on this topic revolve around accommodating interpreter breaks during remote hearings. To preserve quality, interpreters need substantial breaks every 30-40 minutes. When problems occur, interpreters must spend part of their limited time helping their client resolve technology issues, reducing the time available for the hearing itself.

As the above examples illustrate, whether the specific issue is litigant access to technology, interaction between attorneys, or coordination with interpreters, the larger challenge of "pre-hearing preparation" remains a primary concern for remote hearings. Not surprisingly, a central theme among Texas judges is the need for greater attention to improving the efficiency of remote hearings, with the goals of better using judicial officer time, preserving access to justice, accommodating the needs of litigants, and overcoming obstacles to equal participation. One suggestion is using some form of preliminary contact (e.g., phone call, text message) between court staff and parties to learn about special needs in advance of the remote hearing, explain the process to be used, and point to existing resources developed by the court to facilitate meaningful participation. This approach has been used effectively in the United Kingdom, where court staff schedule pre-hearing conferences with the litigants or counsel in the days before the hearing.

4. Hearing types best suited for remote hearings.

Judges were asked whether there are certain types of cases or types of hearings that are more or less suited to the use of remote hearings. One theme was the essential need for judges to be able to conduct certain types of cases remotely if courts are closed or severely limited in their in-person proceedings. These are cases related to personal liberty or personal safety, such as bail hearings, domestic violence cases, or emergency child custody matters.

As courts move beyond mandatory COVID closures, the focus groups identified proceedings that remain amenable to remote hearing technology and procedures. Texas judges agreed that the type of case is less relevant than the type of hearing—in most instances. Generally speaking, remote hearings function most effectively with short hearings that are limited in scope, such as setting of trial dates, status hearings, permanency hearings, discovery hearings, motions hearings of various types, summary judgments, self-represented divorce dockets (especially when parties have completed agreements), and non-evidentiary or non-witness cases.

Additionally, in terms of case types that work well for remote dockets, judges indicated the type of matters that affect people's ability to get on with their lives, such as many Probate proceedings, Child Protective Services, and other Family law cases.

Though jury trials have successfully been conducted remotely in Texas, and it is reported that jurors especially like this format, the collective view among focus group participants is that jury trials are more effectively held in-person. Similarly, problem-solving courts, such as drug courts, are better suited to in-person hearings, though some have been handled remotely during the past 18 months.

Several judges indicated that it is not necessarily the type of hearing or the type of case that matters when determining whether to hold a hearing in-person or remotely; sometimes, the nature of the case or the makeup of the parties determines the most appropriate platform. For example, one judge who hears Child Protective Service cases argued that she often triages families' needs by having service providers available in the courtroom to address the needs of family members, such as substance abuse or mental health needs. While these professionals can be scheduled to attend a remote hearing, not having them physically present limits their ability to provide immediate assistance. Another judge relayed an incident in which a family member was yelling profanities during a remote hearing, and it was easier to mute that person remotely than to physically remove them from the courtroom.

Overall, the focus groups were supportive of Texas judicial leadership developing guidelines clarifying the types of hearings that would presumptively be held remotely. This approach would encourage general uniformity in practice throughout the state. However, as noted in the examples above, the judges would also like to preserve some discretion in selecting the type of venue to best address the needs and circumstances of particular litigants.

5. Impact of remote hearings on judicial stress.

Across the three focus groups, the consensus is that remote proceedings will continue for the foreseeable future. Currently, most Texas judges are responsible for all or most aspects of remote hearings, including setting up links, addressing technical issues, teaching parties how to use the hearing platform, and ensuring control of the hearings. Judges reported feeling more exhausted when conducting remote hearings. As one judge indicated, "I definitely get more exhausted by doing virtual hearings. As a judge, I am constantly on; but my performance and focus is just different. Holding remote hearings all day is very exhausting physically. But there is a perception that people need to see and feel they have had their day in court and that they are getting what they paid for."

A related factor is the ease of more tightly scheduling remote hearings. The move to remote hearings has changed court-scheduling practices in important ways. In the past, many courts would schedule a morning and afternoon in-person docket for a set number of hours. The judge would handle all matters scheduled for each block of time. Typically, gaps would appear during the session (e.g., party non-appearance), and the judge would get a series of short breaks during the day. With remote proceedings, many courts have moved to tighter scheduling of individual matters in 15- or 30-minute time-certain "appointments" (similar to a doctor's office). Many Texas judges report they now have a more individualized and tightly structured daily calendar than in the past, with the associated cost of fewer breaks throughout the day. They also note that the ease of virtual appearance in remote hearings makes it easier to quickly fill gaps in a daily docket that might emerge if a previously scheduled matter is postponed.

Of course, the converse to more individualized scheduling is greater convenience for litigants and attorneys. Rather than sitting through a three-hour morning docket waiting for their case to be called, a specific time slot means court users can more easily plan their day. For this reason, there will be interest in maintaining these new scheduling practices, making it incumbent on judges to adjust mentally and physically to new ways of doing business. A recent AJA white paper discusses the importance of mindfulness in judicial decision making and how that can affect procedural justice.¹³ While this paper focused on in-person proceedings, the same concepts apply to dealing with "Zoom fatigue." The stressors noted by Texas judges make the practice of mindfulness and self-care especially important during remote hearings. The use of decision aids or checklists is presented as a simple, yet effective, tool that can be used to be more mindful.

Implications of Findings and Recommendations

This exploratory study has revealed there are both benefits and challenges associated with the current case-processing practices used in handling hearings remotely. Driven largely by technology-related issues, the time study data collected from participating Texas judges show that remote pretrial hearings take an average of about 34% longer than similar in-person hearings. The need for ongoing attention to reducing technology problems was a recurrent theme during the Texas focus groups, one corroborated by other recent studies conducted in Nevada and Utah.

A primary benefit of remote hearings is the opportunity to significantly improve the court experience for court users in select types of hearings and cases. As noted, remote hearings are often more convenient because they allow for more time-certain scheduling and reduce obstacles to attending, such as transportation, childcare, and work schedules. By improving the court experience, the perception and reality is that the quality of justice is improved.

According to most judges and attorneys interviewed and surveyed across a variety of studies conducted since the pandemic began, remote hearings will be an ongoing reality in courts across the country. Aside from technological concerns, courts will need to continue to address other challenges with pre-hearing preparation associated with the swift move to remote practices. Texas judges noted a major focus in court administration is continuing attention to improving the efficiency of remote hearings, including better using judicial officer time, improved scheduling and notice of remote proceedings, and workable methods to respond to individual users' questions.

¹³ P. Casey, K. Burke, and S. Leben, "Minding the Court: Enhancing the Decision-Making Process," *International Journal for Court Administration* 5, no. 1 (2013): 45–54. DOI: <http://doi.org/10.18352/ijca.8>.

If the reliance on remote hearings is expected to be a reality for courts going forward, there is an unquestioned need for additional research to provide guidance to courts regarding how to make the process more efficient and effective for all participants, including judges. While some court administrators and individual judges have found ways to improve the process of conducting remote hearings, many of the topics covered in this exploratory analysis deserve further investigation, including:

- Which hearing types best lend themselves to being conducted remotely?
- Are there specific case types that are more efficiently and effectively conducted remotely?
- Are there best practices that contribute to more effective remote hearings?
- What can be done to decrease judicial burnout resulting from conducting virtual hearings?
- What are the experiences of court users, such as litigants, families, attorneys, and expert witnesses, participating in remote hearings?
- What technological assistance should be available to judges and court staff to ensure seamless remote hearings?





Recommendations

1. State and local judicial leadership should generate guidelines for determining when a court proceeding should be conducted in-person or remotely. These guidelines should include the type of docket, the subject matter of the hearing, the parties who will appear at the proceeding, and the potential legal consequences of the final adjudicative decision. For example, traffic dockets, in which a large volume of cases are likely to be heard, may lend themselves well to remote hearings; conversely, cases involving jailable offenses, evidentiary material, or criminal jury trials might be better heard in trial court. Judges also indicated that the personalities involved, or specific litigant situations, might also affect the decision regarding in-person versus remote hearings. For example, in a divorce case in which the parties are not amicable, it might be more effective to hold the hearing remotely.
 2. Court systems and judges should determine the most effective way to schedule hearings that provide for the greatest efficiency in the court, while also being mindful of litigants' time. Court users should be able to expect similar experiences across courtrooms, so scheduling considerations should be determined consistently.

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3. Remote court participants will benefit from clearly delineated instructions and expectations for their hearings. Not all court participants may have the necessary reading skills to comprehend the information, so this information should be provided through multiple media, including in writing and through video, such as YouTube. A survey conducted in Australia indicated that there were several aspects of the court experience that could be improved. More than a quarter of court users wanted to be better informed about when their matter would start and how long it would take. They wanted to understand what was expected of them and what the next steps would be.¹⁴ In the UK, some courts are also contacting the parties before their court hearing to ensure that they understand how to log into the hearing, how to navigate the platform in which the hearing is being conducted, what the hearing will entail, what is expected of them, what documents they will need to have and in what format, and any additional information they need for the hearing, so that they have an opportunity to have any questions answered.¹⁵ The documentation should include basic steps of how to connect to the platform, individual identifiers that are required, and the mechanics of using the platform's software.
 4. Court systems should develop clear instructions for remote proceedings on courtroom decorum and expectations of litigants, including timeliness, dress code, and appropriate places from which to log into a hearing. The instructions should be made available in both written and video format, and they could even include a checklist of items to address. Courts should also develop workable methods to respond to individual users' questions.
 5. Before any hearing, the court should ensure that all required paperwork and agreements between parties have been appropriately completed. For example, if couples seeking a divorce are expected to attend the hearing with completed agreement documents, this should be clearly communicated before the hearing; if completed documents are not provided to the court by a date certain, the hearing should not be held. Courts should explore technology platforms that simplify this experience.
 6. Courts should not assume that all parties have access to the proper equipment (computers, tablets, smart phones) allowing them to participate in remotely held court proceedings. Similarly, courts should consider the technical expertise of parties before scheduling remote hearings. All courts should provide safe and easily accessible computer systems for court users to attend remote hearings.

¹⁴ From Court User Satisfaction Survey, Family Court of Australia, Federal Circuit Court of Australia, Richard Foster, Chief Executive Officer, 2014, https://www.courtexcellence.com/_data/assets/pdf_file/0018/6093/user-satisfaction-survey.pdf

¹⁵ Personal experience by David Slayton, Vice President of the NCSC Court Consulting Division, based on consulting experience in the UK.

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7. When interpreters are used, the court should ensure that the non-English-speaking litigant's attorney has briefed the interpreter on the case and how to use the communication system. The court should ensure that all parties know how to log in to the system (for example, in Zoom, they need to be on a certain channel).
 8. Court systems should find ways to preempt judicial burnout arising from holding consecutive remote hearings. Judges should be encouraged to take regular breaks during and between hearings.
 9. Since remote hearings appear to be a permanent part of the justice system, court systems should consider hiring "technical bailiffs" or other court staff. These positions would be responsible for setting hearing links, scheduling parties, and addressing technical issues that arise during remote hearings. These positions could also be responsible for communicating with parties before the hearings to ensure that everyone knows what to expect during their hearings, has all the proper documentation available for the hearings, and has an opportunity to have any questions answered.



Appendix A: Texas Remote Hearing Study Case Type Categories

1. **Felony Group A** – Murder, homicide, attempted murder, assaultive offenses (Ch. 22, Penal Code), aggravated robbery/robbery, indecency with or sexual assault of a child, family violence assault.
2. **Felony Group B** – Automobile theft, burglary, drug sale or manufacture, drug possession, felony DWI, theft, all other felonies.
3. **Misdemeanor** – All misdemeanors, including DWI first or second offense, theft, theft by check or similar sight order, possession of marijuana or other drugs, family violence assault, other assault, traffic offenses, SWLS/DWLI, other misdemeanors.
4. **Injury or Damage Involving Vehicle** – Injury or damage involving a motor vehicle.
5. **Injury or Damage – Other than Vehicle** – Injury or damage other than from a vehicle, malpractice, and product liability.
6. **Contract – Other** – Accounts, consumer/commercial debt, contracts, and notes.
7. **Other Civil** – Tax cases, condemnation, civil cases relating to criminal matters, other civil cases, real property, administrative law, and government cases.
8. **Divorce** – Divorce with children, divorce without children.
9. **Other Family Law Matters** – IV-D Paternity, IV-D support order established, parent-child – no divorce, protective orders, non-divorce family cases, other family matters.
10. **Modifications and Enforcements** – Modifications and enforcements related to custody or other matters.
11. **Delinquency** – Juvenile delinquency cases.
12. **Child Protective Services** – Child protective services cases.

Appendix B: Texas Remote Hearing Study

Case-Related Activity Categories and Definitions

1. **Pre-Disposition/Non-Trial Disposition: In Court** – Includes all IN COURT on-bench and off-bench activity related to pretrial proceedings and non-trial dispositions. In probate cases, includes uncontested proceedings to appoint a fiduciary or to order supervision of a trust. Includes all off-bench research and preparation related to pre-disposition and non-trial disposition activities.
2. **Pre-Disposition/Non-Trial Disposition: Remote** – Includes all REMOTE on-bench and off-bench activity related to pretrial proceedings and non-trial dispositions. In probate cases, includes uncontested proceedings to appoint a fiduciary or to order supervision of a trust. Includes all off-bench research and preparation related to pre-disposition and non-trial disposition activities. This also includes time required to set up links, establish communication, etc.
3. **Bench Trial: In Person** – includes all IN-PERSON bench trial activity, including:
 - Bench trial: counted as a trial when the case is called (includes all time related to in-trial activities). Includes criminal trials, civil trials, contested divorces, contested adjudicatory or disposition hearings in juvenile cases, contested probate matters, etc.;
 - Any work by the judicial officer related to research, case review, writing findings of fact and conclusions of law on specific cases that have gone to trial is counted; and
 - Sentencing hearing following trial.
4. **Bench Trial: Remote** – includes all REMOTELY CONDUCTED bench trial activity, including:
 - Bench trial: counted as a trial when the case is called (includes all time related to in-trial activities). Includes criminal trials, civil trials, contested divorces, contested adjudicatory and/or disposition hearings in juvenile cases, contested probate matters, etc.;
 - Any work by the judicial officer related to research, case review, writing findings of fact and conclusions of law on specific cases that have gone to trial is counted;
 - Sentencing hearing following trial; and
 - Time required to set up for trial.

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5. **Jury Trial: In Person** – Includes all IN-PERSON on-bench and off-bench activity related to a bench or jury trial or another contested proceeding that disposes of the original petition in the case. In probate cases, includes contested proceedings to appoint a fiduciary or to order supervision of a trust. Includes all off-bench research and preparation related to trials. Includes sentencing following a bench or jury trial. Some examples of trial activities include:
 - Jury trial: counted as a trial when a jury is empaneled. Includes jury selection, arguments and evidence, jury deliberation, jury polling, announcement of verdict;
 - Any work by the judicial officer related to research, case review, writing findings of fact and conclusions of law on specific cases that have gone to trial is counted; and
 - Sentencing hearing following trial.
 6. **Jury Trial: Remote** – Includes all REMOTELY CONDUCTED on-bench and off-bench activity related to a bench or jury trial or another contested proceeding that disposes of the original petition in the case. In probate cases, includes contested proceedings to appoint a fiduciary or to order supervision of a trust. Includes all off-bench research and preparation related to trials. Includes sentencing following a bench or jury trial. Some examples of trial activities include:
 - Jury trial: counted as a trial when a jury is empaneled. Includes jury selection, arguments and evidence, jury deliberation, jury polling, announcement of verdict;
 - Any work by the judicial officer related to research, case review, writing findings of fact and conclusions of law on specific cases that have gone to trial is counted; Sentencing hearing following trial; and
 - Scheduling and technical set-up.
 7. **Post-Disposition Activities: In Person** – Includes all IN-PERSON on-bench and off-bench activity that occurs after the entry of judgment on the original petition in the case. In probate cases, includes all activity after a fiduciary is appointed or trust supervision is ordered. Includes all off-bench research and preparation related to post-disposition activity. Does not include trials de novo.
 8. **Post-Disposition Activities: Remote** – Includes all REMOTELY CONDUCTED activity that occurs after the entry of judgment on the original petition in the case. In probate cases, includes all activity after a fiduciary is appointed or trust supervision is ordered. Includes all off-bench research and preparation related to post-disposition activity. Does not include trials de novo.

Appendix C: Texas Remote Hearing Study

Non-Case-Related Activity Categories and Definitions

a. Non-Case-Related Administration

Includes all non-case-related administrative work such as:

- Staff meetings
- Judges' meetings
- Personnel matters
- Staff supervision and mentoring
- Court management

b. General Legal Research

Includes all reading and research that is **not** related to a particular case before the court.

Examples include:

- Reading journals
- Reading professional newsletters
- Reviewing appellate court decisions

c. Judicial Education and Training

Includes all educational and training activities such as:

- Judicial education
- Conferences

Includes travel related to judicial education and training.

d. Committee Meetings, Other Meetings, and Related Work

Includes **all work related to and preparation for** meetings of state and local committees, boards, and task forces, such as:

- Community criminal justice board meetings
- Bench book committee meetings
- Other court-related committee meetings

Includes travel related to meetings.

e. Community Activities and Public Outreach

Includes all public outreach and community service that is performed in your official capacity as a judge. This category does not include work for which you are compensated through an outside source, such as teaching law school courses, or personal community service work that is not performed in your official capacity as a judge.

Examples of work-related community activities and public outreach include:

- Speaking at schools about legal careers
- Judging moot court competitions

Includes travel related to community activities and public outreach.

f. Work-Related Travel

Includes only travel between courts during the business day. Time is calculated from the primary office location as determined by the Texas Supreme Court to the visited court.

Do not include commuting time from your home to your primary office location. Record travel time from your primary office location to judicial education and training, committee meetings, or community activities and public outreach in the applicable category. This is an account of minutes spent on travel only.

g. Vacation, Sick Leave, and Holidays

Includes all time away from work due to vacation, personal leave, illness or medical leave, and court holidays.

h. Lunch and Breaks

Includes all routine breaks during the working day.

i. Non-Case-Related Specialty Court Activity

Includes all work related to specialty courts that does not include meeting in-person or remotely with specialty court participants.

j. Technology-Related Work/Issues

Includes all time spent addressing technology-related issues that do not involve litigants.

k. NCSC Time Study

Includes all time spent filling out time study forms and entering time study data using the Web-based form.

