



# Effective Practices in Virtual Hearings for Kentucky Judges and Court Staff

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A special thank you goes to Judge Roy Ferguson (Texas 394<sup>th</sup> Judicial District Court, Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio Counties) for his contribution to the tips in this article.

## Introduction

Virtual hearings, many argue, are here to stay. While pandemic surges are unpredictable, courts will likely continue to hold hearings remotely. The convenience component is very attractive to stakeholders, such as attorneys who practice in multiple courthouses or caseworkers who travel between jurisdictions, and the judges who rely on them. At the same time, holding virtual hearings require different levels of knowledge, engagement, and resources than in-person hearings.

As a starting point, the capability to provide virtual hearings is an effective practice for several reasons. First, it provides an alternative for individuals who are unable to travel to the courtroom to participate in a hearing. Parents who are involved in the child welfare system, participants with transportation limitations, and other court involved individuals often have scheduling challenges with work, childcare, and court mandated services. Other court involved individuals may have similar requirements as part of their case plans, conditions for release, etc.

Soon after the pandemic started, researchers assisted courts in identifying common topics and themes faced by courts and offered general recommendations.<sup>1</sup> Drawing on existing research, this technical assistance bulletin identifies successful approaches of courts in the conduct of virtual hearings and offers recommended effective practices. It was developed and organized with practicality in mind, taking into account the realities facing the Kentucky courts.

The authors are grateful for the participation of the Kentucky judges and court staff in the identification of both effective practices and challenges. More information about the survey and methodology for the research is listed below and is a key aspect of this publication. Those who conduct virtual hearings daily understand what is working, have experienced and overcome challenges, and are the experts. As with any good publication, it is imperative those doing the work inform the final product as much as possible. The authors hope this publication is useful and provides guidance in years to come.



**Tips from Judge Ferguson:** Throughout this publication, there are tips from Judge Roy Ferguson, who is perhaps best known as “the judge in that cat lawyer Zoom call.” Judge Ferguson presides over the largest judicial district in Texas, covering roughly 20,000 square miles and including over 20% of the US-Mexico Border.

Prior to his election in 2012, Judge Ferguson served Far West Texas through private practice in Marfa. He is an avid proponent of equal access to justice for all Texans, and a frequent educational speaker to lawyers and judges across the country. An early adopter of technological innovation, Judge Ferguson has conducted over 1,000 virtual hearings and presided over a fully virtual jury trial and several virtual grand jury empanelments.

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<sup>1</sup> See for example: Summers, A. & Gatowski S.I. (2021). *Virtual (Remote) Hearings in Child Welfare Cases: Perspectives from the Field*, <http://dx.doi.org/10.13140/RG.2.2.31706.88003>, and National Center for State Courts (2021). *Study of Virtual Child Welfare Hearings Impressions from Judicial Interviews*, [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0018/65520/Study-of-Virtual-Child-Welfare-Hearings-Judicial-Interviews-Brief.pdf](https://www.ncsc.org/__data/assets/pdf_file/0018/65520/Study-of-Virtual-Child-Welfare-Hearings-Judicial-Interviews-Brief.pdf).

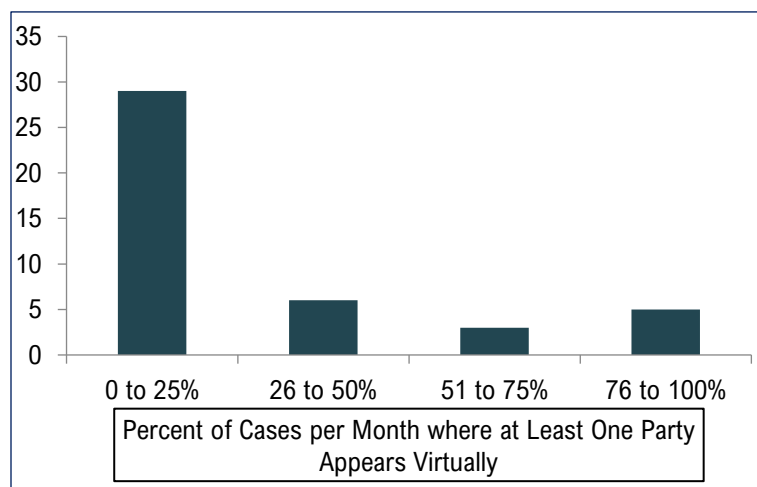
## Methodology

NJC Staff worked closely with the Kentucky Administrative Office of the Courts (AOC) to develop a survey for judges and court staff. The purpose of the survey was to understand how courts are currently using virtual hearings, and what if anything judges and court staff want to learn more about in order to develop a best practice guide for the state. The AOC distributed the survey on behalf of NJC to judges and court personnel selected to participate.

Overall, the survey had sixteen questions for respondents to answer. The survey asked about practices implemented before, during, and after virtual hearings. For each of these timeframes, respondents could rate their level of agreement with their own courts use of identified virtual hearing practices. Respondents could then provide more context about how their court has worked to improve these practices. Respondents who disagreed that their court implements some of these practices were also invited to provide context about why their court does not implement those practices.

The AOC emailed survey invitations to judges and court staff multiple times. Overall, there were 43 valid responses to the survey, with the majority of respondents identifying as judges (58%), and all other respondents identifying clerks (42%).

**Figure 1** *The majority of respondents reported a relatively low percent of cases are conducted virtually.*



Survey respondents were asked to indicate the total number of hearings per month heard in their court, and to estimate the number of cases that are conducted each month with one or more parties appearing virtually. Most respondents indicated that 25% of their cases or fewer included at least one of the parties attending court virtually. On average, respondents reported hearing 191 cases each month that included at

least one virtual party, and an average of 738 cases per month total. Clerks reported hearing far more total cases per month on average (1,012) compared to judges (552).

Throughout this document, results from the Kentucky Courts Virtual Hearing Survey are incorporated to demonstrate how courts are using these practices already and identify potential challenges courts are currently facing in implementing virtual hearings. Additional survey results are presented in the Appendix.

## Effective Practices

The following effective practices were created with both the survey data and current research in mind. While current economic and staffing realities may prevent some of these practices from being immediately implemented, they are shared as suggested goals.

### Access to Justice; Access to Technology

***Effective Practice #1 –Ensure your court along with the community services it works with consider and provide access to technology as a basic need for court involved families.***

In 2020, Casey Family Programs released a resource list related to the importance of access to technology for families involved in child welfare. Furthermore, the organization stated that “computers and internet access should be considered basic needs for youth and families involved with child welfare” and that policies and budgets should be “revised accordingly.”<sup>2</sup> The resource list points out the importance of access to technology for parents to find and keep jobs and housing. Additionally, families need access to reliable internet and computers for educational access and monitoring.<sup>3</sup>

If the social service agency or provider cannot supply reliable internet access, courts can explore or suggest additional options for parties to increase access to justice, such as:

- Some courts have found funding to offer tablets to parties, or to establish virtual participation stations inside the courthouse.
- Parties might access Wi-Fi at a public building such as their attorney’s office or at a fast-food restaurant or café, as long as confidentiality can be maintained as needed.
- Parties might be able to borrow equipment from a family member or friend.
- Parties might be able to participate from a vehicle or quiet outdoor area to maintain confidentiality.

The survey results indicate that access to stable internet and video-conferencing equipment is a barrier to participating in virtual hearings for some court users in Kentucky.

As one judge wrote:

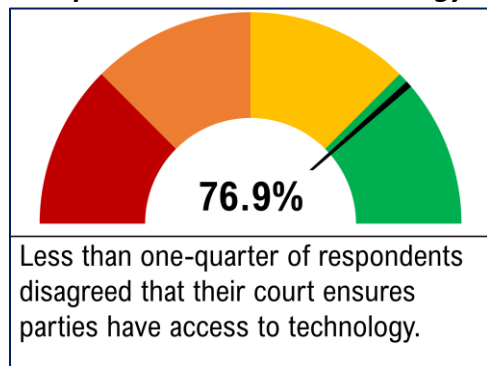
***“Parties in my district do not have access to technology. Many don’t have a computer or internet access to participate remotely. That leaves us with a lot of audio-only phone participants, and they can’t see the exhibits and it’s tough to know if I even have the right party participating in the hearing.”***

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<sup>2</sup> Casey Family Programs, (2020). *How can youth and families involved with child welfare access needed technology* (2020). Available at: [https://www.casey.org/media/20.07-QFF-SF-Access-to-tech-resource-list\\_fnl.pdf](https://www.casey.org/media/20.07-QFF-SF-Access-to-tech-resource-list_fnl.pdf).

<sup>3</sup> Id.

**Figure 2: Some courts cannot ensure that parties can access technology**



Judges and clerks in our survey reported different attitudes about the court's role in ensuring parties have adequate access to technology. One judge indicated that ensuring access to technology is not the judge's responsibility, while another judge listed ensuring that all parties have access to reliable equipment and access to reliable internet connection as the top two best practices for virtual hearings.

If families struggle to have the appropriate technology or internet bandwidth to attend a hearing, it is likely they are also struggling to meet basic needs to fulfill the

case plan set out by the child welfare agency. Judges should be aware of the implications of access to technology, both for ensuring due process during virtual hearings, and as a factor that might influence decision making about the case.



**Tips from Judge Ferguson:** Remember that it's the judge's duty to promote access to justice, and ethical obligation (in the Canons) to ensure litigants have the opportunity to meaningfully participate and to be heard.

### ***Effective Practice #2 – Ensure all parties have instructions for virtual hearings with notice.***

Proper notice is a necessary requirement for any hearing and without it, courts face unnecessary delays and continuances. Virtual hearings require an elevated level of information including instruction on software use, passwords, links, and login details. This requires the court to plan ahead and keep detailed records of all the links used for each hearing and which links were sent to whom.

#### **Components of proper notice should include:**

- 
- |                            |                       |                                      |
|----------------------------|-----------------------|--------------------------------------|
| • Time and date of hearing | • Link to the hearing | • Call-in phone number for hearing   |
| • List of parties involved | • Login Instructions  | • Phone number for technical support |
- 

The notice could also include supplemental material that explains how a virtual hearing is different and what the parties can expect. The court should encourage attorneys to review this with their clients, especially when it comes to courtroom conduct and expectations. Discussions of proper courtroom conduct will be addressed later but setting that expectation early could prevent problems during the hearing.

Courts should keep track of delays and continuances related to notice and use this information to improve their notice form. For example, the court could survey parties periodically, either



directly or through their attorneys, to identify sources of confusion or miscommunication in their notices.

While the responsibility for notifying parties of the hearing should not solely fall on the court when the parties have attorneys, delays resulting from notice issues impact the court directly, and impact the families served. Courts can monitor and improve notice processes to minimize these impacts, possibly with the help of the court improvement program or another technical assistance provider.

Many of the respondents surveyed noted the importance of proper notice, and specified the components mentioned above as best practices for virtual hearings. Judges specifically recommended:

- *“Consistency in meeting information so that litigants know how to access”*
- *“Instructions for logging in”*
- *“Communication to all parties on how to participate”*
- *“[Timely] send the docket link to all parties”*
- *“ Making sure participants know what is expected from them. Exhibits and demeanor.”*

Almost all of the survey respondents agreed or strongly agreed that their court ensures that links to the hearing are correctly sent to all participants. One judge who disagreed mentioned that their court tries their best, but “inevitably one is missed.” One judge observed that some attorneys who are unable or unwilling to search for the link will claim that the court did not send it. **Using a single static link can eliminate this concern and ensure that all parties have access to the virtual court link, even if they misplace their notice.** This practice requires that the waiting room is enabled (default on some platforms), and that a court officer has the ability to admit and remove parties as needed. Several survey respondents indicated that their courts are already following this practice:

*“Website includes Zoom links for all Family Court Judges.”*

*“We use the same meeting information each week in each county so that the clerks and all attorneys know well in advance what the Zoom meeting info will be and can easily pass it on to litigants.”*

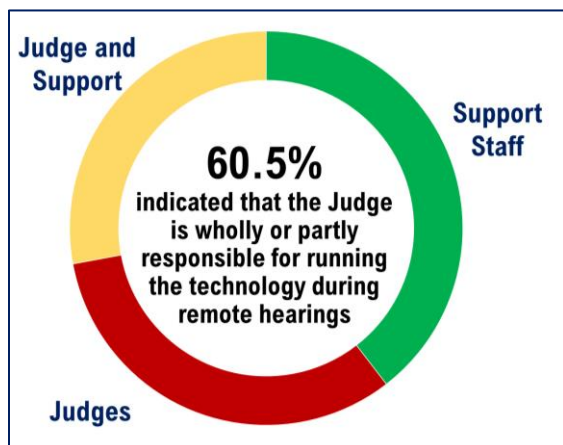


**Tips from Judge Ferguson:** Have thorough local rules and procedures on participation, and send them to all participants, especially self-represented participants, along with every setting notice. Include detailed “how-to” information about downloading the app, logging on, and changing app settings, as well as expectations for dress and location (for example, a quiet, private indoor location that is not a moving vehicle).

## Judicial Leadership and Courtroom Management

***Effective Practice #3 – Identify and designate the person in the court with the best ability to run virtual hearings. Maximize staff and technology capabilities to hold the best virtual hearing possible***

**Figure 3: Judges are often the ones running the technology.**



It is important for judges to hear cases virtually, and as they would in person, to minimize multi-tasking. Judges' work requires attention and focus to stay on track, meet needs of the families, listen to the participants, and view the evidence. There are a number of research studies demonstrating negative effects of multi-tasking in general. These studies show that by switching tasks, response times slow and brain connectivity is reduced.<sup>4</sup> For a judge who is trying to understand the complex status of a case and all those involved in the case, multi-tasking is something that can diminish focus and impact the judge's decision-making.

The majority of respondents in this survey indicated that judges are assuming responsibility for running the technology used for their virtual hearings. As indicated above, this is not ideal for a number of reasons. Successful virtual hearings require many tasks from the person managing the technology, including:

- Verifying that the technology is working before every hearing
- Admitting parties and removing parties from the virtual conference as needed
- Ensuring that parties names are accurate
- Muting and unmuting participants as needed
- Sharing exhibits and other important documents
- Monitoring nonverbal communications, such as chat windows, if enabled
- Other responsibilities as needed

Therefore, courts should appoint and train a staff member other than the judge to operate the technology during virtual hearings whenever possible. Judges can work with the court administrator to appoint someone with either a high level of technical skills, or someone with the capacity and interest in learning these skills to run the technology during a virtual hearing. Once that person is chosen, it is important that the individual's responsibilities are reviewed. There may be current tasks they are not able to do while handling virtual hearings. Taking the time to reevaluate that person's responsibilities, and reassigning tasks to others as deemed

<sup>4</sup> Madore KP, Wagner AD. Multicosts of Multitasking. Cerebrum. 2019 Apr 1;2019:cer-04-19. PMID: 32206165; PMCID: PMC7075496. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7075496/>



appropriate, increases the likelihood of success for the entire staff. Courts should also appoint a back-up for the person who is in charge of technology in case the primary person is unable to perform the duties at any point in time.

The survey results indicate that some courts are moving away from virtual hearings unless it is absolutely necessary, while other courts continue to use virtual hearings regularly. Most of the respondents indicated that no more than 25% of their caseload is conducted through virtual hearings. However, nearly 27% of respondents indicated that more than half of their caseload is still conducted virtually, and some comments indicated that, at least in some courts, virtual hearings are here to stay.



**Tips from Judge Ferguson:** Consider standing orders that incorporate virtual requirements and require attorneys to assist their clients and witnesses, so that they aren't trying to learn the app while you are in a hearing.

### Hearing Quality and Process

***Effective Practice #4 – Utilize platform features, file sharing and other capabilities to allow for confidential and safe conversations between parties, attorneys, and the court.***

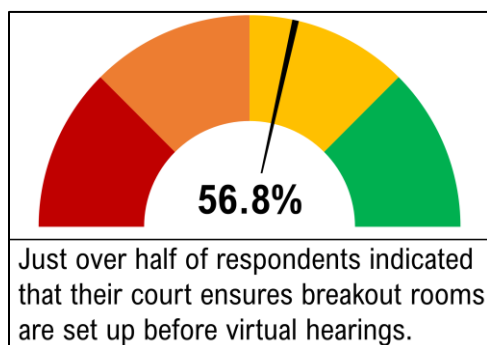
In order to fully benefit from the technology of a virtual hearing, the platform itself matters.

While courts may have to rely on whatever

platform they are able to procure, platforms that allow for breakout rooms are important for a number of reasons. These virtual rooms allow the parties to meet with their attorney, something that typically occurs just before a hearing starts. Additionally, it allows the judge to

have the type of conversations with attorneys that would typically be held at the bench. Without these options, it may lead to a continuance that could be otherwise prevented by allowing a short break for everyone to confer in their respective breakout rooms.

***Figure 4: Courts have an opportunity to expand use of breakout rooms***



More than half of the survey respondents indicated the breakout room links were not set up prior to the hearing. Several respondents commented that they do not use breakout rooms at all. There may be a reluctance to set up breakout rooms either because the judge or staff does not know how or because no one has requested it. However, as stated above, it is a way to continually improve the court process for all involved and it should be explored when possible. Those who have gone back to primarily holding in-

*"We use Teams and we have not found a good way to use breakouts."*

*"No one has ever requested a breakout room."*

*"I do not believe that my judges have taken advantage of using break out rooms."*

person hearings may find breakout rooms increase the efficiency of the occasional virtual hearings and may even increase the requests for the virtual hearings.

The use of break-out rooms can vary between courts and hearing types. However, breakout rooms can provide the digital equivalent of a conference room for activities that would normally happen during in-person court, such as providing a space for attorneys to quickly confer privately with their client or allow a space for mediation or settlement negotiations.

Breakout rooms are not the only feature courts should consider, of course. Courts should periodically assess platforms and software packages to ensure these products meet the court's evolving needs, including needs related to confidentiality in both storage (reports, exhibits, etc.) and presentation (screen share, document sharing, etc.). While one platform may work for courts for the video conferencing aspect of a hearing, for instance, the judge and court staff may find it difficult to share information on the screen when necessary and may require another software option. By taking note of the gaps as they happen, it may be possible for courts to find a platform that is more efficient and comprehensively meets the needs of the court.

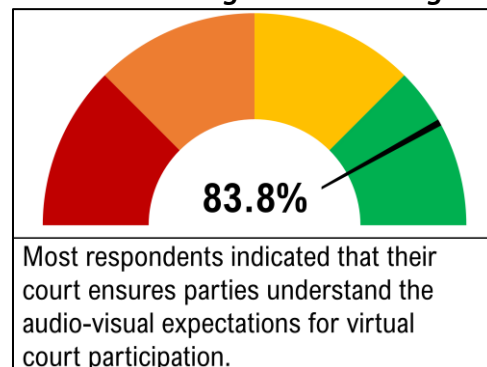


**Tips from Judge Ferguson:** Use the waiting room and only admit people who are in the hearing underway. Do not admit all persons on a multi-case docket and expect to have any control over the proceeding. Use smaller dockets, and only admit people as their case is called. Be sure to include the admittance policy in the detailed instructions for participating in a virtual hearing, so that parties know they should expect to stay in the waiting room.

***Effective Practice #5 – Establish and communicate courtroom decorum that can be consistently reiterated as situations arise.***

Just as expectations are set in the physical courtroom, they can also be set for the virtual hearing. This should be done at the beginning of the hearing as the judge is calling the case. By setting these expectations early, the judge is reminding parties they are in a court room, even if it is virtual. Some judges will use a virtual background of the courtroom to send that message, but it likely is worth stating on the record.

***Figure 5: Courts are communicating their expectations regarding video and audio during virtual hearings***

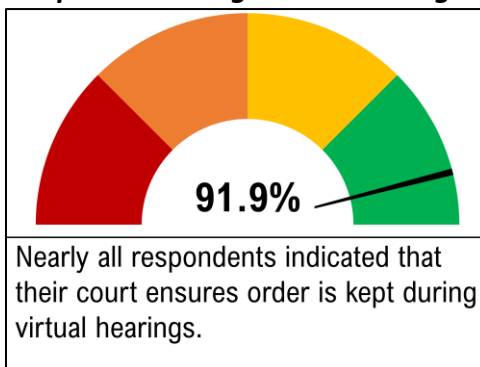


Most respondents indicated that their court ensures parties understand the audio-visual expectations for virtual court participation.

Setting standards for how, where, and when parties appear in court is an exercise of judicial leadership. Just as it is unacceptable for stakeholders or parties to be talking to one another in the back of the courtroom, it is not expected they would conduct side conversations – even on mute – during virtual proceedings.

The majority of survey respondents indicated that their court ensures order is kept, and that parties understand the expectations for virtual court participation including audio and visual expectations. In the open-ended comments, respondents mentioned practices they use to ensure order is kept during the proceedings, including requiring disruptive parties to appear in person.

**Figure 6: Most courts are able to keep order during virtual hearings**



*“Participants are regularly more rude or disrespectful during virtual appearances than they would be in person. Further they are more distracted and often listening to input from individuals off camera. The court is unable to control the confidentiality or the safety of witnesses.”*



**Tips from Judge Ferguson:** Expanded colloquy at the beginning of each hearing, explaining the process and order. Advise parties how to object (when parties shout over someone who is talking, this kills the mics and keeps the record from being useful).  
Adjust orders on The Rule as to Witnesses to expressly order attorneys to ensure their witnesses comply, especially in live-streamed hearings.

### Survey Respondent Consensus

The best practices presented above combine existing research and the results of the Kentucky Court Virtual Hearing Survey to understand what courts can do to ensure that their virtual hearings are successful. In addition to the data presented above, respondents also listed out their top three best practice recommendations for ensuring successful virtual court hearings. Most of these are encompassed in the five effective practices listed.

### Policies and Procedures

As Figure 7 demonstrates, the most common recommendations centered around policy and procedure. Consistent with [Effective Practice #4](#), the court needs time to ensure that exhibits and other important documents are digitized to share as needed during the hearing. Because of this additional step, courts need to receive documents in a timely manner. Judges and staff can work to minimize filing concerns by setting clear policies and procedures for filing documents and exhibits for virtual hearings.

**Figure 7: Survey Respondents' Recommendations Focused on Policy and Practice, Capital Investments, and Training**



Clear policies are necessary to guide procedure. They are also important for maintaining order in the court, consistent with [Effective Practice #5](#). Survey respondents identified standardization and consistency as important components of virtual court rules – just as they are for in-person court. Clear policies allow for consistent procedures and also guide fair decision-making around implementation of sanctions.

Courts that make use of virtual hearings should also consider clear policies on communicating with parties to ensure that they have the hearing information. Consistent with [Effective Practice #2](#), courts can work to streamline their notice processes for virtual hearings and make sure that all of the relevant information is included in the notice.

### **Capital Investments**

When many courts turned to virtual hearings in early 2020 so that they could continue serving their communities with little disruption, judges and staff made good use of the equipment they already had in the court environment. However, as courts move away from emergency policies and begin incorporating virtual hearings into standard practice, additional capital investments could benefit courts and community members alike.

Survey respondents identified reliable equipment and internet service as key best practices for successful virtual hearings. Regular testing and review of technology can help courts identify the most worthwhile improvements to make within their budget. Courts should also take care when selecting technologies for virtual hearings. Different platforms offer different features, such as cloud storage, easy file sharing, and automated transcriptions. Careful planning can help courts to avoid investing in redundant technologies.

For some courts, the concern might center more around parties' access to technology than access for judges and court staff. Consistent with [Effective Practice #1](#), some courts have created or identified programs that provide technology access for parties. When technology barriers cannot be resolved, some courts might choose to restrict the use of virtual hearings to ensure that parties receive a fair hearing unencumbered by technology delays. When possible, courts can implement practices to ensure that all parties have access to the technology they need as a prerequisite for approving virtual hearings.

### **Training**

As with any new change in practice, using virtual platforms to conduct effective hearings requires training. Consistent with [Effective Practice #3](#), survey respondents identified training in virtual platform technology as an important best practice. Staff need to know how to work the technology needed for virtual hearings to be successful. While COVID-19 forced the swift adoption of virtual collaboration platforms like Zoom and Teams, ongoing training can help courts to maximize their efficiency in setting up and running virtual hearings and can ensure that staff have the skills and confidence they need to manage the virtual environment. Additionally, most of the platforms used for virtual meetings have built in tools that can help maintain order and efficiency in the virtual courtroom, such as the use of waiting rooms, breakout rooms, and the ability for the host to mute, rename, and remove parties as needed to maintain order.

### **Conclusion**

The COVID-19 pandemic changed what court looks like for courts across the nation. Now, more and more courts are finding that virtual hearings have enhanced their ability to deliver justice in a timely and efficient manner for their communities. Virtual hearings are different than in-person court hearings and require additional attention and planning. When done well, virtual hearings can expand access to justice and increase court efficiency. As with any court hearing, virtual hearings require careful planning and commitment from staff, and they require clear policies and procedures. The best practices recommended above outline some of the ways that courts have successfully navigated virtual hearings and provide additional considerations for courts looking to expand their use of this technology.

## Appendix

We asked respondents to indicate whether they disagree or agree that their court ensures several steps have been taken to prepare for virtual hearings (see Table 1). The majority of respondents indicated agreement that their court takes all of the listed steps. The greatest areas of opportunity were ensuring exhibits were received prior to the hearing and using break-out rooms.

Nearly one-third of respondents (32.5%) disagreed or strongly disagreed that their court ensures that all documents and exhibits have been received prior to a virtual hearing. Several respondents indicated that they often do not receive the exhibits until right before a hearing, especially for hearings involving incarcerated clients and self-represented litigants. However, some judges indicated that they take a proactive approach to ensuring exhibits are filed in advance of hearings:

*“We've set policies for tendering potential exhibits prior to trials.”*

*“Orders require exhibits to be filed 10 days in advance of hearing.”*

We asked respondents to indicate whether they disagree or agree that their court ensures certain goals during virtual hearings (see Table 1). The majority of respondents indicated agreement that their court ensures all of the listed goals. No major areas of opportunity were identified, but courts might consider some of the issues raised by respondents who disagreed with one or more statements related to practices during the hearing. Parties lack of quality video connection during virtual hearings poses a challenge for courts conducting these hearings.

*“We could probably do a better job ensuring parties are in a confidential location when confidential matters are addresses.”*

*“So many times, a person’s confused look tips me off that they don’t understand even if they say they do. Without being able to see them I don’t feel confident in their understanding of the proceedings or the next step.”*

Nearly all participants agreed that after the hearing, their orders are issued and distributed in a timely manner. Among those who disagreed, one judge provided the following comment:

*“Sometimes we simply provide copies of the orders to parties who appear in court (or give them the opportunity to get a copy), instead of mailing everything to someone who appeared in person. Because remote appearance is considered equal to in-person appearance, we sometimes don't also mail orders to the party after-the-fact.”*



**Table 1. Kentucky Courts Use of Identified Best Practices**

<b>Prior to virtual hearings, my court ensures that:</b>	<b>Agree (%)</b>
Parties have access to technology	76.9%
<b>All documents and exhibits have been received</b>	<b>67.5%</b>
The docket is scheduled for timeliness and efficiency	87.5%
Links to the hearing have been correctly sent to all participants	90.0%
<b>Links to necessary break-out rooms are set up</b>	<b>56.8%</b>
Attorneys have communicated with their clients prior to the hearing (when applicable)	76.3%
<b>During virtual hearings, my court ensures that:</b>	<b>Agree (%)</b>
<b>Parties understand the expectations and requirements related to video and audio (e.g., Parties should be muted unless speaking, video must remain on)</b>	<b>83.8%</b>
<b>Technical difficulties are promptly addressed</b>	<b>83.8%</b>
The hearing conforms to applicable law and court rules	94.4%
Parties have the ability to be heard	91.9%
Order is kept	91.9%
Privacy and confidentiality concerns are addressed as needed	88.9%
Parties understand the decisions made in the hearing	89.5%
Parties understand the next steps	92.1%
Parties have input in when the next hearing is scheduled (if applicable)	94.4%
<b>After virtual hearings, my court ensures:</b>	<b>Agree (%)</b>
Orders/decisions are completed and signed in a timely manner	92.1%
Orders/decisions are distributed to parties in a timely manner	92.1%



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