

STATUTORY PROBATE COURTS



STATE OF TEXAS

Guy Herman, Presiding Statutory Probate Judge

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March 21, 2022

Chief Justice Tracy Christopher
Fourteenth Court of Appeals

Re.: Remote Proceedings

I, as the presiding Statutory Probate Judge and on behalf of the unanimous consent of the 19 statutory probate court judges, write in support of permanent rules permitting remote proceedings by agreement of the parties and subject to the discretion of the judge. Having conducted proceedings remotely for the past two years, we know they are an effective tool in promoting judicial efficiency, access to justice¹, and can be a significant savings for parties. However, in some cases, they can also cause undue delays and “zoom fatigue” for judges², so judicial discretion is key to managing these proceedings.

Many uncontested hearings that come before the Probate Courts require fewer than 5 minutes before the judge. In larger counties³, parties and attorneys must navigate downtown, find and pay for parking, walk to the courthouse and wait through security lines in order to appear for these very brief hearings. It is easy to conclude that remote proceedings save the communities we serve time and money. In addition, attorneys can move from hearing to hearing around the state easily without having to travel, thus making their practices more efficient and cost-effective for their clients.

An unanticipated effect of remote proceedings is increased participation by parties in guardianships, mental health proceedings, and even show cause for compliance. Proposed wards in guardianships almost never appear in-person for their own hearing. However, we have seen marked increase participation via remote access by those whose capacity and rights are being determined. Surprisingly, even those who are cited to appear to show cause for noncompliance appear in greater numbers remotely giving the court the opportunity to help them get back into compliance or determine that a removal is necessary.

We realize the benefits of remote proceedings are not without their complications. Lack of access to technology and unfamiliarity or difficulties with technology can delay

¹ *The Impacts of the COVID-19 Pandemic on State & Local Courts Study 2021: A Look at Remote Hearings, Legal Technology, and Access to Justice*, Thompson Reuters Institute, 2021. The study found 77% of judges surveyed felt access to justice increased or stayed the same with virtual proceedings.

² *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload Final Report*, December 2020, the National Center for State Courts, Court Consulting Division, and the State Justice Institute.


³ Harris County Probate Court One reports having heard 5,595 uncontested hearings for the two year COVID period from March 2020 to February 2022.

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hearings. Judges must also manage their remote systems and become troubleshooters for participants, which requires greater attention that can lead to judicial fatigue⁴. For these reasons, we believe judges must have final discretion to determine whether and how to proceed with a remote appearance or proceeding.

The continuation of remote proceedings benefits the courts and the public, and has become irretrievably intertwined in the modern administration of justice. It is our hope that new rules will be established quickly so that we may continue without interruption.

Sincerely,



Guy Herman
Presiding Statutory Probate Judge

⁴ *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload Final Report*, December 2020, the National Center for State Courts, Court Consulting Division, and the State Justice Institute.