

August 14, 2022

TO: Supreme Court Advisory Committee (SCAC)

FROM: Hon Roy B. Ferguson, 394th District Court

IN RE: Remote Court Proceedings

I preside over the 394th Judicial District, which includes five counties in far west Texas, covering roughly 20,000 square miles. It is a rural court of true general jurisdiction. We transitioned to remote proceedings within a week of the March 13, 2020 lockdown, and as a result never ceased operations. Although I fully reopened for in-person proceedings in 2021, over 95% of my current docket remains remote, by request of the litigants and attorneys. Attorneys in my court *overwhelmingly* want remote proceedings to continue. In a poll I conducted last year, 98.3% of all attorneys who appeared remotely in the 394th District Court during the lock-down wanted remote proceedings to continue post-pandemic. Justice Busby asked that we share our experiences with remote proceedings over the last three years. As a Commissioner of the Texas Access to Justice Commission, a member of the Remote Proceedings Task Force, and an early adopter of remote proceedings, I am pleased to do so.

I have observed three major impacts of implementing remote proceedings in the 394th Judicial District Court: (1) greatly increased litigant participation, (2) transformed court efficiency, and (3) expanded options for representation. Many people in rural areas are for the first time able to access the court system in a meaningful way. Remote proceedings have revolutionized the legal system, and constitute the greatest improvement in access to justice since *Gideon* gave every criminal defendant the right to free legal representation.

I have seen a fundamental shift in appearance rates in all areas of litigation. Default judgments, failures to appear, criminal bond forfeitures, and DWOPs are all down. This results in higher quality of justice, and in turn frees up the Court's time to focus on resolving cases rather than chasing down missing parties.

In child welfare cases, parents and foster families now appear for almost every hearing. Historically, having both parents at a hearing was rare. One parent may be incarcerated or in a rehab center. And as rare as it was to have both parents attend in person, having foster families in the courtroom was even more so. It almost never happened. Most foster placements are outside of the District, hours away from the courthouse of venue. The home may have multiple foster children attending school. Foster parents have the statutory right to address the court at each hearing. With in-person hearings, it was effectively impossible for them to do so. Furthermore, all attorneys usually reside outside the county of venue – most (including the CPS representatives) traveling up to 3 hours from El Paso to the courthouse. Those attorneys must leave their homes at 5 am to make a 9 am in-person setting. Expecting a foster family to make the same trip was not realistic. Now, I require that foster families have Zoom access in order to receive a placement in my jurisdiction. They appear at over 90% of our hearings, vastly

improving the court's ability to monitor the child and quickly address problems. I've had same-day emergency hearings numerous times, and once I was able to remove a child from an out-of-county foster placement within hours of a violent incident. I am also able to hold more frequent permanency hearings, helping all involved better respond to and protect the needs of the child. And the child can now appear remotely for all settings without missing two days of school.

In other family law cases, the Texas Family Code requires that the court review all agreed property divisions and custody orders to confirm that they are just and right, and in the best interest of the child, respectively. The trial court should also never enter void orders, or ones that violate Texas law. These requirements take on greater importance with the many self-represented litigants who attempt to use the Supreme Court's family law forms. Self-represented litigants now account for a majority of family law parties in my jurisdiction. Nonlawyers typically do not understand the Family Code, and usually make major mistakes in preparing their documents. I've seen nonparties awarded custody of the children, unenforceable possession orders, requirements that the ex-husband vet the ex-wife's future boyfriends, and child support orders that allow the paying parent access to the primary parent's bank records in order to veto expenditures of the child support funds. In addition, "agreed" orders may serve to perpetuate abuse of a powerless spouse. I've seen and corrected indigent mothers who get custody of the children "agreeing" to waive child support; parties unwittingly forfeiting separate property; violently abusive spouses strongarming 100% of the marital estate; and registered sex offenders and drug addicts getting unrestricted standard possession. Historically, only one party appeared to "prove-up" the agreement, which hampered the court's ability to correct erroneous orders. Now, both parents appear remotely for the final hearing—sometimes even from other countries. As a result, the average pro-se divorce in my court is completed within 75 days (two weeks after expiration of the statutory "cooling-off period"). I am better able to detect and correct violations of Texas law or proposed orders that potentially harm children, which results in a dramatically higher quality of justice and avoids future corrective litigation that unnecessarily bogs down court dockets.

My criminal caseload has enjoyed an even greater positive impact. The 394th includes over 20% of the US-Mexico border, and contains numerous Border and Customs checkpoints. The main checkpoint on Interstate 10 between El Paso and Sierra Blanca lies within Hudspeth County and historically results in approximately 500 felony indictments per year. As a result, over 90% of those cases involve out-of-state defendants. The vast majority are low-level drug charges resolved by misdemeanor plea bargains with small fines. Without the option for remote proceedings, these defendants must return, in person, up to three times at great expense, to enter a plea agreement—wasting funds that they could use to pay fines and resolve cases more quickly. A substantial number of out-of-state defendants who *wanted* to resolve the charges were financially unable to make the trip. This resulted in bond forfeitures and warrants, requiring extradition to Texas from their home states—not because they were dangerous, but because they were poor.

Approximately 75% of our felony criminal defendants qualify for court-appointed counsel under the Court's indigency standards, but there are few private attorneys in the District available for

felony court-appointments—none in Hudspeth County, none in Culberson County, one in Presidio County, one in Jeff Davis County, and two in Brewster County—in an area larger than nine states and bisected by an interstate highway. We therefore created the Far West Texas Regional Public Defender Office four years ago to provide low-income defendants with representation. However, in cases involving multiple defendants, the PDO can only represent one defendant. Drug conspiracy cases, and, most recently, dozens of human trafficking cases, involve multiple co-defendants, all of whom require their own attorney. Without remote proceedings, I am unable to find enough attorneys who are willing to assist for the paltry funds paid for such representation. The counties cannot afford to pay travel costs and time, and I cannot compel unwilling attorneys to accept such representation. Having the option of remote proceedings in the last two years enabled the court to move these cases, because we could appoint attorneys anywhere in the State. I hold writ hearings and grant mandatory release of unconstitutionally incarcerated defendants on a daily basis for the four jails in the District, rather than waiting until I have a free day to make it to that county—even when sitting by assignment in other parts of the State. Finally, by allowing defendants to appear for court from jail or prison in other counties, cases are resolved more quickly without forcing law enforcement to transport prisoners back and forth on competing bench warrants. Remote appearances are faster, cheaper, more efficient, and better for all aspects of the justice system. Both defendants and attorneys strongly favor continuation of remote proceedings in criminal cases in far west Texas.

Remote proceedings revolutionized multicounty court efficiency, where one judge presides in multiple courthouses. Previously, I would travel every day, up to four hours per day, from county to county, holding hearings and dockets. This meant that approximately three weeks per month were filled with mundane settings and driving, leaving only one week per month available for jury trials. Now, through remote proceedings, those regular dockets are stacked with multiple counties on the same day, without lost travel time, and are often all completed within a week to ten days, leaving two or even three weeks for jury trials and other contested matters. Unlike many Texas courts, my dockets are current, and my jury trial backlog is shrinking rapidly. (Although I held one fully remote jury trial during the lock-down, it was by agreement and request of the parties. I do not intend to force remote jury trials on anyone. All my jury trials are in-person.)

Far west Texas is a “legal desert.” Two of my counties have no attorneys in private practice at all. In order for residents to obtain legal representation, they must retain lawyers from outside the District. Prior to the lockdown, only the wealthiest litigants could afford to hire these lawyers, and if the case dragged on, the litigant with the deepest pockets often won simply through attrition. (We called it, “out money’ing the other side.”) With remote proceedings, we now have lawyers (many board-certified in their practice areas) appearing in cases here from Dallas, Houston, Austin, and San Antonio, for litigants who would otherwise struggle to find and afford representation. These lawyers often call the clerk to find out whether we are still using remote proceedings before accepting representation. I’ve been told by those lawyers that if I go back to in-person, they will withdraw from pending cases and refuse all future representation in the area. The travel time is simply cost-prohibitive for their clients, for most residents of the region, and for *all* low-income residents. (It’s important to note that the same result would occur if lawyers

were given control over whether a proceeding was remote or in person. Remote proceedings would be weaponized against lower-income Texans, and in-person proceedings would be reduced to a litigation tactic.)

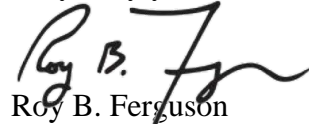
This cost savings is not unique to rural areas. When I practiced in Houston, I would commonly get on the highway before sunrise to make an 8:30 am setting downtown, and would then sit and wait for half a day or more for my case to be called—all at the expense of one client. With remote proceedings, we eliminated cattle-call dockets. Lawyers know what time their case will be called, and can appear, participate, and leave with a minimum of wasted time. In remote rural areas, this can save as much as 90% of legal fees for each hearing. For most Texans, this alone is the difference between having representation, and not. And to my recollection, I have not had a single withdrawal of counsel for nonpayment since implementing remote proceedings.

The attorneys and parties strongly favor remote proceedings for *evidentiary hearings* as well. For the last six months, I have offered lawyers and litigants the option of remote or in-person format for all requested evidentiary hearings. To date, they have requested in-person proceedings less than 5% of the time, and when notified by the court that a hearing would be in-person anyway, at least one party has objected *every* time.

Simply put, litigants, lawyers, court staff, clerks, jails, and law enforcement are better served in rural areas through the availability of remote proceedings.

I would be happy to attend a Committee meeting (remotely or in-person) and discuss my experiences with remote proceedings, if requested. Until then, I remain,

Very truly yours,

A handwritten signature in black ink, appearing to read "Roy B. Ferguson", with a stylized flourish at the end.

Roy B. Ferguson

Judge, 394th Judicial District Court