



# LITIGANT PERSPECTIVES ON REMOTE HEARINGS IN FAMILY LAW CASES

## A Survey Study Conducted with the DC Family Law Learning Network

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**DC Bar Foundation**

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# EXECUTIVE SUMMARY

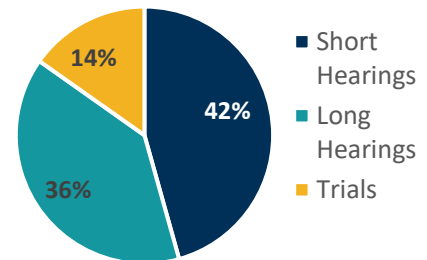
## Study Purpose

During the COVID-19 pandemic, the Superior Court of the District of Columbia was forced to close its physical courthouse to limit the spread of disease. Since summer 2020, the Court's Domestic Relations Branch has conducted its proceedings virtually, using videoconferencing software. During this time, legal services attorneys noticed how, for many low-income litigants, remote court hearings seemed to facilitate access to the court system, and therefore better access to justice, and they wondered about the sustainment of virtual proceedings. As systems begin to stabilize in the wake of the initial pandemic-related disruption, and as Court leadership began to consider and define future operations, program directors from 7 legal services organizations collaborated to systematically gather feedback from their clients, so that litigants' voices could be incorporated into the Court's planning process.

## Study Participants

Attorneys from these organizations administered an online survey to clients who had participated in a remote hearing for a family law matter. **A total of 189 litigants completed a survey.** They represented:

- Clientele from **6 legal services organizations**
- **Diverse case types**, including child custody, child support, domestic violence, and divorce, with a small number having received advocacy in criminal cases related to sex trafficking
- **A mix of remote proceedings: short hearings** (e.g., status hearings), **long hearings** (e.g., evidentiary hearings), and **trials**
- Notably, 76% of litigants reported connecting to their remote hearing from home, and 14% needed language interpretation services. Therefore, the **study sample is comprised primarily of English speakers with internet access and some technological capacity.**



## Results

**Remote hearings worked well for most people. Most study participants reported being satisfied with their remote proceedings.** Specifically, litigants generally agreed that:

- They had the necessary technology and were able to connect without much difficulty.
- They were able to hear well, could understand what was happening, and felt comfortable.
- They felt heard by the judge and satisfied with the time they had to tell their side of the story.
- While litigants' experiences did not vary significantly by the type of proceeding, satisfaction was lowest among litigants who participated in a remote trial.

**Virtual court appearances eased several challenges that low-income litigants often face with in-person court appearances, thereby facilitating their access to justice.** Compared to in-person hearings, litigants reported that remote hearings:

- **Alleviated logistical & financial challenges.**
  - 73% appreciated not having to find and pay for transportation to/from the courthouse,
  - 62% appreciated not having to take time off work or school,
  - 60% appreciated not having to find childcare.
- **Increased feelings of safety and security, especially among those with domestic violence cases.**
  - 72% felt safer and less threatened by the opposing party.
  - Legal aid attorneys observed that litigants seemed less nervous, as compared to being in the physical courtroom, and were therefore better able to articulate their statements.
- **Saved time and resources.**
  - 61% appreciated having to wait less time for the hearing to start,
  - 54% liked having a more precise appointment time for their hearing.
  - Legal aid attorneys mentioned that the virtual courtroom calendar enabled them to spend less time in transit or waiting for their case to be called and more time on case work.

**Despite the benefits of remote hearings, virtual courtrooms still had some limitations.** Litigants and attorneys noted that remote environments cannot fully replace in-person interactions. Virtual appearances can make it easier to miss important nonverbal cues, especially when parties join without video, which can complicate the assessment of credibility. Virtual courtrooms can challenge some types of communication—for example, having quick, private exchanges between attorneys and clients and hearing language interpretation. Videoconferencing can also leave some litigants feeling unheard.

**Overall, litigants and attorneys agreed that, because of these benefits, the virtual platform was preferable for shorter hearings and those that do not involve the issuance of permanent orders. However, in-person settings were preferable for evidentiary hearings and trials.**

## Conclusion

Results highlight the notable benefits of remote court appearances, particularly in supporting low-income litigants' ability to meaningfully engage with the family law court without forcing them to make unsustainable trade-offs. Results also underscore the challenges of conducting court proceedings virtually and how these drawbacks might impact litigants' access to justice and the quality of justice the Court is able to dispense. As part of its planning, the Court might consider: (1) making remote platforms the default venue for non-evidentiary hearings, especially those that are brief to check status or schedule a future appearance date; (2) once it is safe to do so, reinstating in-person venues as the default for evidentiary hearings, trials, and any other proceedings that involve the introduction of evidence or the issuance of permanent orders; (3) enhance the Court's capacity to provide technical support to litigants with remote hearings, especially those in need of language interpretation. Please see the full report for more details.

# INTRODUCTION

## BACKGROUND

Like most public institutions around the country during the COVID-19 pandemic, the Superior Court of the District of Columbia was forced to close its doors to limit the spread of disease. Since summer 2020, the Court’s Domestic Relations Branch (“DR Branch”) has been conducting its proceedings remotely, using videoconferencing software, while the courthouse has been closed. In summer 2021, when vaccines were widely available and public spaces had begun to “re-open,” Court leadership began to consider whether and how to resume in-person proceedings. Like many other work environments, the pandemic had upended typical operations and leaders were considering what the “new normal” should be.

Legal services organizations that participate in the **Family Law Learning Network**, whose attorneys provide legal representation to low-income litigants and those most at risk of falling through the cracks in the civil justice system, recognized this moment as an opportunity. Anecdotally, they had learned about ways in which virtual court appearances seemed to improve their clients’ access to the court system, and they wondered whether this benefit of remote hearings was broadly true. Understanding the brief window during which Court leadership would consider and define future operations, these organizations formulated a plan to systematically gather client input so that litigants’ voices could be incorporated into the Court’s planning process.

**What is the Family Law Learning Network?** The **Family Law Learning Network (FLLN)** was initiated by the DC Bar Foundation in 2019 as part of broader strategic efforts to promote synergies between civil legal aid providers in DC and to strengthen data-driven practices in the legal services field. The FLLN currently involves 6 legal services organizations that provide assistance to low-income litigants in family law cases. FLLN partners have participated in 18 months of training and technical assistance regarding research and evaluation best practices, led by NPC Research. FLLN partners and collaborators for this study include:



## THIS STUDY

This purpose of this study was to gather input from litigants in family law cases and then share this information with Court leadership to inform decisions regarding process improvements that would increase access to justice for low-income DC residents.

The study was a collaborative effort among the 6 FLLN partner organizations, one other legal services organization that works with family law cases, and a research company that coordinates and manages the FLLN. The study leveraged the power of this network in a few ways. First, having 7 organizations collect data from their clients yielded a larger and more representative study sample, in a shorter time and with less burden, than any single organization could have generated alone. Second, the FLLN coordinators at NPC Research guided all aspects of the study, including design, instrument development, data management, and analysis, which both ensured the research process was robust and technically appropriate and alleviated the burden on the legal services organizations to manage and analyze the data.

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The study was a collaborative effort, leveraging the skills and resources of 7 legal aid organizations.

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### Design & Implementation

Study collaborators jointly developed the survey instrument, relying heavily on the experience and observations of the attorneys who had been in the virtual courtroom. To ensure accessibility for all clients who wanted to participate in the study, and with the hope of receiving feedback from a diverse group of litigants, the survey was translated into Spanish, French, and Amharic. The survey, in all four languages, was programmed into a user-friendly online survey engine, and a survey hyperlink was created for each organization to disseminate to its clients. Each organization invited any current and previous clients who had participated in a remote hearing to complete a survey. To boost response rates, reminder emails were sent to those who did not initially respond. Litigants who completed a survey were given a \$25 Visa gift card as a thank you for their time.

The survey was launched on July 27, 2021, and it closed on November 12, 2021.

### Survey Respondents

**A total of 189 litigants completed a survey.** Of these, 179 completed the English survey, and 10 completed the Spanish version. This study sample included clients from 6 of the 7 participating legal services organizations.

## THIS REPORT

This report presents the results of the online survey and, as context, offers a brief summary of a focus group with the FLLN partners, reflecting the perspectives of attorneys who work on family law cases. Recommendations, based on study findings, are offered in the final section.



# LITIGANT SURVEY RESULTS

## WHO COMPLETED A SURVEY?

The 189 litigants who completed a survey represented a diversity of case types, hearing types, circumstances, and receipt of legal representation. Litigant characteristics are shown in Exhibit 1.

**Case type.** More than half of litigants attended remote hearings for child custody matters, one third for domestic violence cases, 1 out of 7 for child support issues, and 1 out of 10 for divorce. Eleven litigants had hearings for criminal cases,<sup>1</sup> and 6 litigants had another type of case.<sup>2</sup>

**Hearing type.** A little less than half of litigants participated in remote *short hearings*, defined as taking 20 minutes or less and usually involving scheduling or status updates. Just over one third participated in remote *long hearings*, defined as taking more than 20 minutes and involving people being asked questions or presenting evidence. An additional 14% participated in remote trials.

**Legal Representation.** Half of the litigants had representation from an attorney during their remote hearing. Nearly one quarter spoke with an attorney but were not represented by one during the hearing, and another quarter did not speak to an attorney at all.

**Language access.** Fourteen (7%) litigants reported using interpretation services during their hearing (9 of these litigants were satisfied with these services). An additional 13 litigants (7%) reported that they needed interpretation services but did not receive them. The majority (83%) of litigants who completed a survey reported that they did not need interpretation services. As a result, findings of the current study may not adequately reflect the experiences of litigants who have limited proficiency with English.

**Exhibit 1. Litigants had diverse circumstances.**

Litigant Characteristic	#	(%)
<b>Case Type<sup>a</sup></b>		
Child custody	100	(53%)
Domestic violence	60	(32%)
Child support	31	(16%)
Divorce	20	(11%)
Criminal case	11	(6%)
Another kind of case	6	(3%)
<b>Hearing Type</b>		
Short hearing (<20 minutes)	79	(42%)
Long hearing (>20 minutes)	68	(36%)
Trial	27	(14%)
Don't remember	11	(6%)
Missing information	4	(2%)
<b>Representation Status</b>		
Represented during hearing	93	(49%)
Talked with attorney before hearing only	42	(22%)
Did not talk with attorney	51	(27%)
Missing information	3	(2%)

<sup>a</sup> Litigants could indicate more than one type of legal matter.

<sup>1</sup> One FLLN partner organization provides victim advocacy in criminal cases for victims of sex trafficking.

<sup>2</sup> Other kinds of cases included, for example, obtaining an anti-stalking order, recouping past alimony payments, and removing the name of a non-parent from a child's birth certificate.

## LITIGANTS' CHOICE OF LOCATION TO ATTEND REMOTE HEARINGS

### Litigant Location

Litigants were asked where they were when they attended their remote hearing and why they chose that location. As seen in Exhibit 2, three-quarters of litigants attended their hearing from their home. Smaller numbers of litigants attended their hearing from their place of employment (6%), the home of a friend or family member (6%), their car (2%), or a shelter (1%). Five litigants (3%) connected to their hearing from their lawyer's office, and another 5 (3%) used a remote hearing site offered by the Court.

#### Exhibit 2. Most litigants attended remote hearings from home.

Location	#	(%)
My home	144	(76%)
My job	12	(6%)
Home of a friend or family member	11	(6%)
My lawyer's office	5	(3%)
Remote hearing site (official court location)	5	(3%)
Car	4	(2%)
Shelter	2	(1%)
Another place <sup>a</sup>	4	(2%)
Unknown/missing information	2	(1%)
<b>Total</b>	<b>189</b>	<b>(100%)</b>

<sup>a</sup> Most other places were locations specific to the litigant. One was the library.

**Official Remote Hearing Sites.** Although only 5 litigants connected to their hearing from the DC Superior Court's remote hearing sites, 69 (37%) litigants reporting knowing that these sites were available. All 189 litigants were asked how likely they were to use the Court's official hearing site to attend a remote hearing now or in the future, and responses were mixed. Nearly half (45%) indicated that they were likely or very likely to do so, while one third (33%) said they were unlikely or very unlikely, and 22% were unsure.

### Reason Location was Chosen

Litigants were offered a list of possible reasons that might have contributed to their choice of location for their remote hearing, and they were offered a space to write in additional reasons that were not listed. As illustrated in Exhibit 3, access to the internet (50%) and access to a computer or smart phone (45%) were the most prominent reasons for the chosen location. Because most of the litigants attended from their homes, this finding suggests that the current study sample consists largely of litigants with internet access and some technological capacity.

Additionally, 36% of litigants selected their location based on privacy, 21% factored in safety considerations, and 18% wanted a location separate from the opposing party. Among the 39 litigants who indicated that safety was the primary reason for their location, nearly half (46%) were involved in domestic violence cases. Safety with regard to COVID-19 transmission was explicitly written into the open-text field by a few litigants, all of whom connected from their homes. Lastly, 15 (8%) litigants indicated that their location depended, at least in part, on having someone available to watch their children while they appeared at the hearing (or staying at home negated their need for childcare).

Importantly, 1 out of 4 litigants (25%) chose their location because they had no other option. Most of these litigants connected from their homes, although several connected from their jobs, suggesting difficulty in taking time off work to attend the hearing but managing a virtual appearance from their place of work.

### Exhibit 3. Internet access, safety, and privacy influenced litigants' location.

Reason	#	(%)
Access to the internet	94	(50%)
Access to a computer or phone	85	(45%)
Privacy	68	(36%)
Safety	39	(21%)
Separate location from the opposing party	34	(18%)
Childcare	15	(8%)
Another reason <sup>a</sup>	11	(6%)
COVID-19 precautions	3	(2%)
I had no other option	47	(25%)

Note. Percentages sum to more than 100% because litigants could select more than one.

<sup>a</sup> Other reasons included, for example, convenience, quiet environment, and having to be at work.

## LITIGANTS' EXPERIENCE OF REMOTE HEARINGS

### Experience by Hearing Type

Litigants were shown a list of possible experiences related to their hearings and asked to indicate the extent to which each experience was true for them. To do this, litigants indicated their level of agreement with each statement on a 5-point scale: 1 (strongly disagree), 2 (disagree), 3 (unsure), 4 (agree), and 5 (strongly agree). Average ratings for each statement are shown in Exhibit 4. (The percentage of litigants indicating each response is shown in Exhibit A1 in the appendix.)

In Exhibit 4, the dark blue/top bar shows the average rating for each statement across all litigants who completed a survey. Overall, litigants reported that they had the necessary technology to participate, were able to hear well, and could understand what was happening during their remote hearing. They generally reported feeling comfortable during their remote hearing and heard by the judge, and having enough time to tell their side of the story. They also tended to agree that their hearing started on time. Litigants generally disagreed with statements about difficulty connecting to the virtual platform or finding a safe or private place to participate, which likely reflects that most of the survey respondents were able to connect to their hearing from their home. Results were mixed and average ratings hovered around “unsure” (3) in response to the statement, “I would prefer to have an in-person hearing because I would be able to tell my side of the story better.”

Analyses examined whether litigants' experiences varied by the type of remote hearing they attended. In Exhibit 4, the teal/second bar shows the average rating for litigants who participated in a short hearing, the light teal/third bar shows the average rating for litigants with a long hearing, and the yellow/bottom bar shows the average rating for those who participated in a trial. While the average rating for trials tended to be a little lower (indicative of a poorer experience) than the ratings for short and long hearings, this difference was statistically significant for only one statement, “I felt comfortable during my remote hearing.”<sup>3</sup> Overall, litigants' experiences did not tend to vary significantly by hearing type.

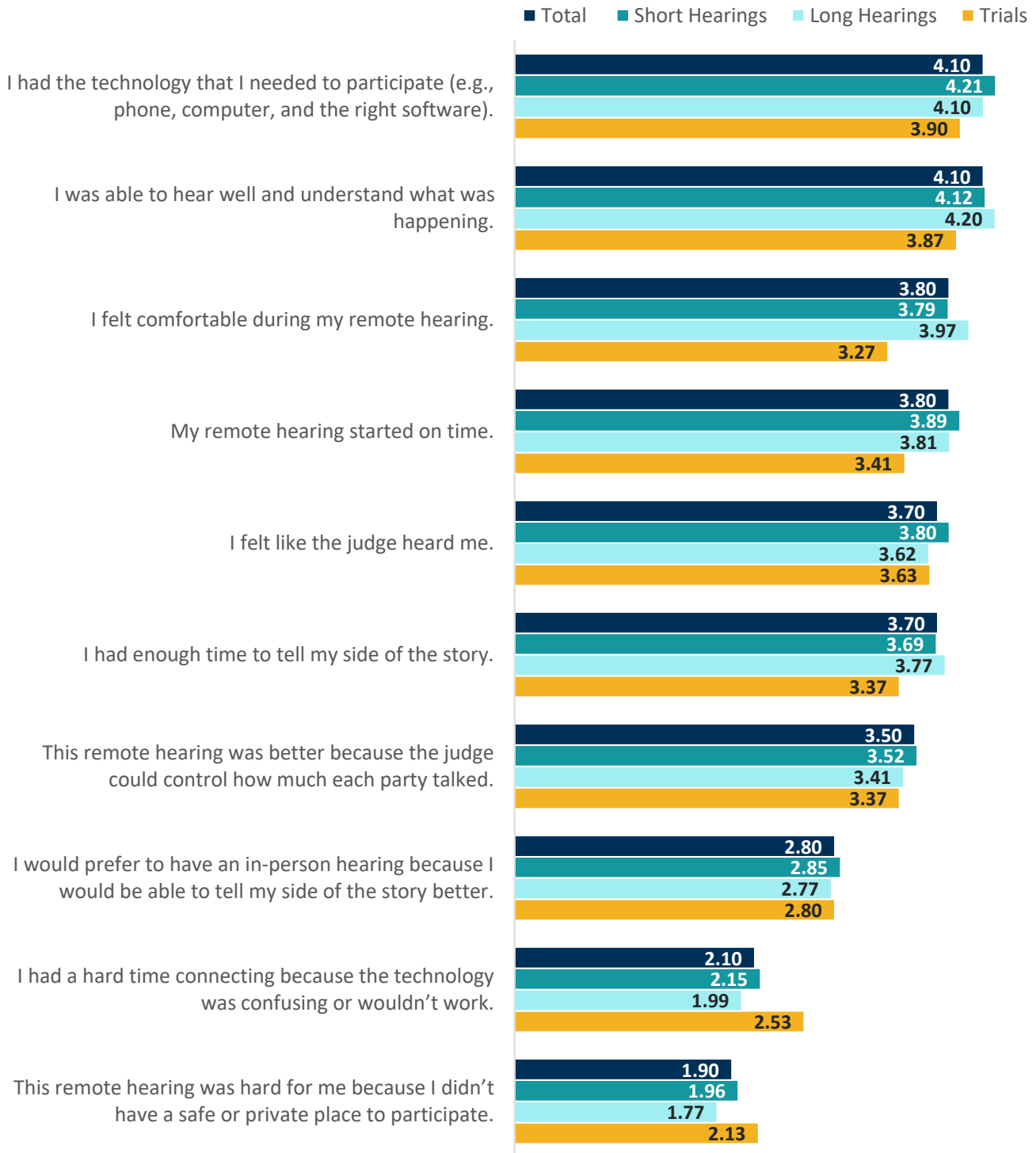
### Communicating with the Attorney During the Hearing

The 93 litigants who had legal representation were asked how easy it was to communicate with their attorneys during the remote hearing. They rated their experience as very easy, easy, difficult, or very difficult. Of these litigants, 93% stated that it was easy (46%) or very easy (47%) to communicate with their attorney, while 7% thought it was difficult (5%) or very difficult (2%). This result is likely evidence of the work that legal services attorneys and the Court have done to ensure that the virtual courtroom operates fairly. However, some litigants still experienced challenges in a virtual setting. As one stated, “I wasn't given the option to ask for a breakout room to speak privately to my attorney. This is easier in in-person hearings.”

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<sup>3</sup>  $F(2,165) = 3.023, p < .05$ .

### Exhibit 4: Litigants generally appreciated remote hearings, regardless of type.



1 = strongly disagree; 2 = disagree; 3 = unsure; 4 = agree; 5 = strongly agree

## REMOTE VERSUS IN-PERSON HEARINGS

### Challenges Associated with Court Appearances

Of the 189 litigants who completed a survey, 148 (78%) indicated that they had also participated in an in-person hearing at the courthouse before the shutdown. These litigants were asked to consider a list of common challenges associated with court appearances and, for each one, indicate whether having a remote or in-person hearing alleviated some of the difficulty. Exhibit 5 shows, for each challenge, the percentage of litigants who felt that a remote hearing was better (teal/left bar), the percentage who felt that an in-person hearing was better (yellow/right bar), and the percentage who thought there was no difference (gray/middle bar).

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Litigants reported that remote hearings eased many challenges with court appearances.

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A majority of litigants felt that remote court appearances eased several challenges that had financial implications for them. For example, 73% of litigants appreciated that remote hearings alleviated the need to pay for transportation to and from the courthouse, 62% appreciated that virtual hearings required them to miss less (or no) work, and 57% valued not having to find or pay for childcare. One litigant appreciated her remote hearing because *“I loved that I didn't have to travel and go through security. I loved that my kids were home and I didn't need to find childcare. I loved I could get a drink of water if needed and being in the comfort of my home during a stressful time.”*

More than half of litigants also noted that the logistics of remote hearings made attendance easier, most notably having a better sense of when their hearing would happen (54%) and having to wait less time for their hearing to start (61%). One litigant mentioned, *“Remote hearings help with getting things done in a timely manner.”* These perceptions are compared to the in-person calendar that would be called en masse (or groups of cases given the same starting time), and litigants would have to wait in the courtroom, sometimes for hours, until their case was called. One litigant stated that her remote hearing *“was far less stressful than going to the courthouse.”*

Importantly, remote hearings also seemed to offer a layer of safety and comfort for some litigants.

Nearly three quarters (72%) of litigants reported feeling safer and less threatened by the opposing party during a virtual appearance. As one litigant reported, *“I felt safe not having to be near the opposing party, and not having him see me. Even seeing him on video was upsetting so I'm very glad I didn't have to go through that in person which would've been far worse.”* Another offered, *“It was smooth and I like that the opposing person could not see my emotions of the divorce. I felt like it helped my mental health and healing process. I felt free, yet protected.”* Roughly half (48%) of litigants felt that they could speak more freely during a remote hearing, compared to 22% who found it easier to speak in person. These results are important given that many family law cases involve situations in which there is a power imbalance between the parties or a history of abuse and victimization.

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72% of litigants reported feeling safer and less threatened by the opposing party during a remote hearing.

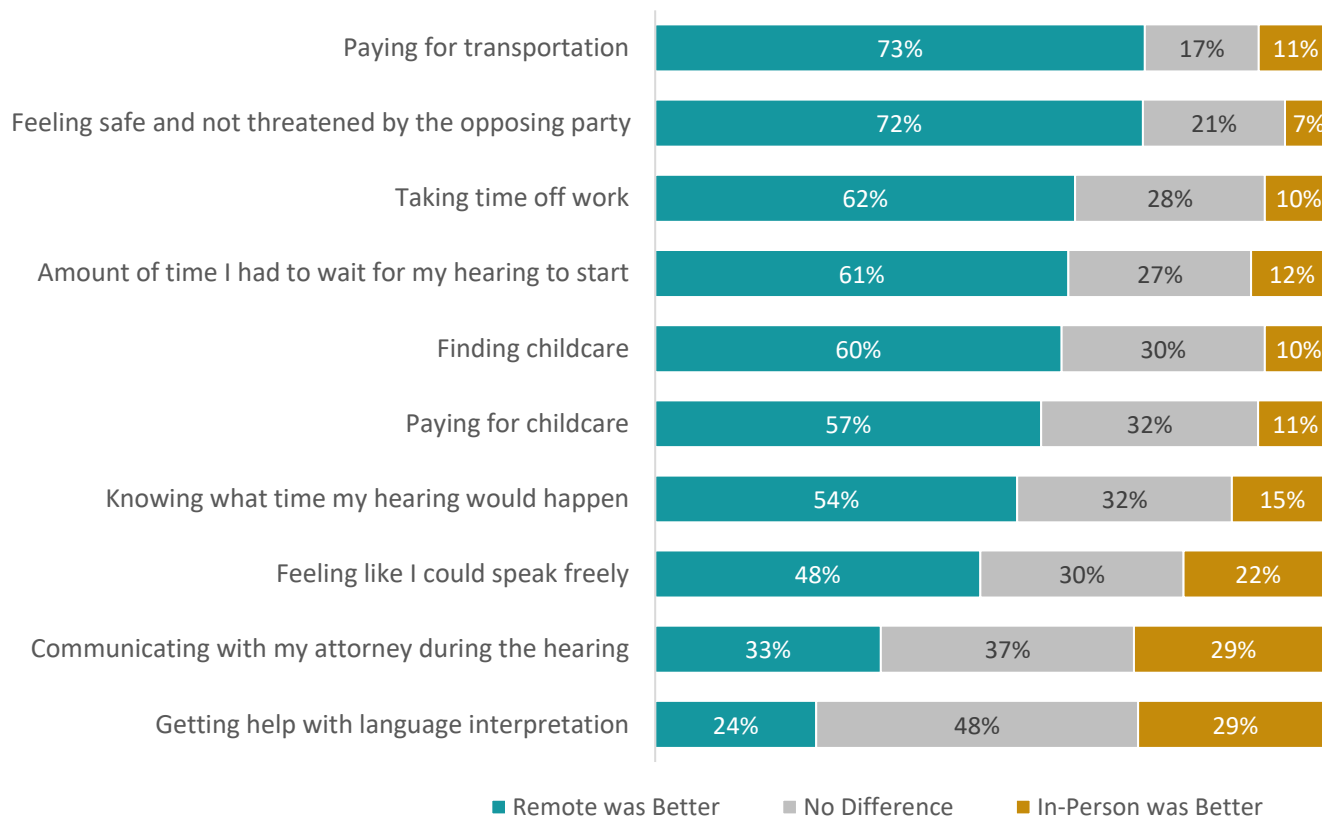
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In contrast, when given an open text field to offer any other comments about their remote hearing, a couple of litigants pointed out that, while remote hearings are more convenient, they can make it

harder to detect subtle but important cues in the parties' behavior. One litigant said of her hearing, "You couldn't get the slight behaviors and reactions. They give a lot of information." Another offered, "I most likely would have made a completely different decision if it had been an in-person court hearing, just being able to see the opposing party would have helped [me] get a true reading of a decision which is still affecting me to this day."

With regard to communication challenges—specifically, communicating with their attorney and receiving language interpretation services—litigants' preferences for remote or in-person hearings were fairly evenly divided, with many feeling that there was no difference between the settings.

### Exhibit 5. Remote hearings eased many challenges with court appearances.



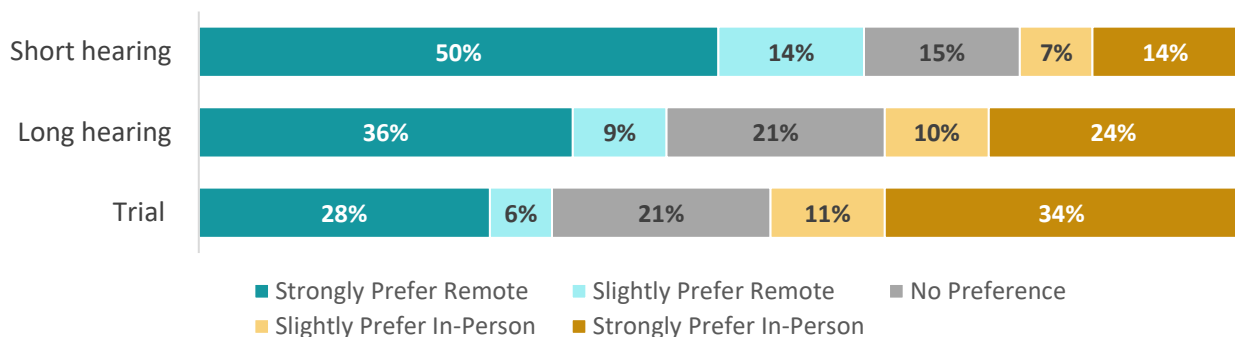
Note. Responses from the 148 litigants who had both a remote and an in-person hearing. "Communicating with my attorney during the hearings" includes only those litigants who had an attorney represent them during the hearing (93 litigants). "Getting help with language interpretation" includes only those litigants who indicated needing or receiving interpretation services (27 litigants).

## Preference for Remote or In-Person Hearings

When asked about their preferences of settings for different types of hearings, litigants tended to prefer remote hearings and in-person trials. This result was especially true for short hearings, for which 64% of litigants preferred to appear virtually, while 21% wanted to be in person. For long hearings, 45% preferred a remote setting, and 34% preferred in-person. However, for trials, 45% thought that an in-person setting was preferable and 34% preferred to appear virtually. As one litigant explained, *“I have had great experiences with remote hearings. My only fear is trial, where there is a lot of information and a very long time to be remote. Some people’s connections were bad so to have an extensive trial completely remotely might be difficult.”* Exhibit 6 illustrates these findings, with the litigants who preferred the remote platform shown on the left (teal bars) and litigants who preferred the in-person format shown on the right (yellow bars).

Some litigants stated a clear preference for in-person short and long hearings, and these individuals also tended to report negative experiences with their most recent remote hearing. In general, these litigants reported that they did not have the appropriate technology, their remote hearing did not start on time, they did not feel comfortable during their remote hearing, and they did not have enough time to tell their side of the story. They felt that they would be able to tell their story better in person.

**Exhibit 6. Litigants preferred remote hearings and in-person trials.**

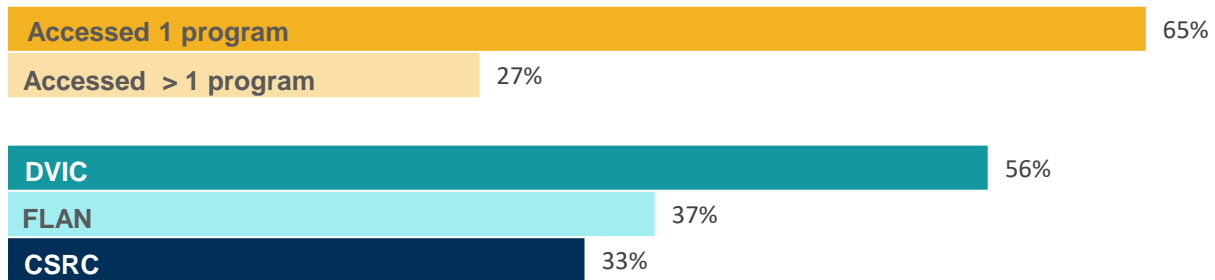




## USE OF EXISTING LEGAL SERVICE PROGRAMS

**Use of DVIC, FLAN, and CSRC.** Litigants were asked whether they had used any of the existing legal services programs working with the Domestic Relations Branch—namely the Domestic Violence Intake Center (DVIC), the Family Law Assistance Network (FLAN), or the Child Support Resource Center (CSRC). Use of these programs was widespread among the litigants in this study, with 65% having accessed at least one of the services. Notably, 27% had accessed more than one of them. As seen in Exhibit 7, 56% of the litigants had used the DVIC, 37% had used FLAN, and 33% had accessed the CSRC.

**Exhibit 7. The majority of litigants had accessed at least one of the existing programs.**



# LEGAL SERVICE PROVIDER PERSPECTIVES

NPC facilitated two focus group discussions with FLLN partners centered around attorneys' experiences of remote hearings in the DR Branch. Themes largely echoed those from the litigant survey.

## Benefits of Remote Hearings

FLLN partners mentioned that, although transitioning to virtual services and courtrooms during the pandemic presented some initial implementation challenges, once these early operational kinks were straightened out, the **virtual courtroom ran smoothly**. Moreover, the remote hearings had benefitted their clients in several ways. Major benefits included reducing stress, increasing safety, and alleviating many of the practical obstacles associated with in-person court proceedings.

Attorneys underscored that the court process—especially the experience of being in the crowded courtroom in front of the judge—is very stressful for most litigants and that this anxiety is in addition to the (often considerable) stress associated with their actual case. Attorneys observed that **litigants' stress levels appeared lower during remote hearings than during in-person hearings**. Clients seemed to be more comfortable speaking from their home and were better able to articulate their statements because they were less nervous. As a result, judges got clearer answers to questions. Moreover, in cases that involved allegations of domestic violence or other threats, attorneys reported that their clients felt safer appearing virtually. In remote hearings, clients were relieved that they did not have to be in the same room as the opposing party or worry about being followed out of the courthouse.

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Attorneys thought that remote hearings helped their clients to feel safer and less nervous.

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Attorneys noted that **remote hearings alleviated many of the practical challenges that their clients often encounter with in-person court appearances**. Clients did not have to pay for transportation to and from the courthouse, deal with public transit delays, or pay parking fees. Because remote hearings did not involve travel and waiting time, clients rarely had to miss work or school or find childcare. Taken together, these differences can save clients a great deal of time and resources.

FLLN partners reported that some of these practical benefits extended beyond litigants. In particular, the **virtual courtroom created efficiencies that allowed attorneys to spend more time on case work** and, in some instances, serve more clients. Not traveling to the courthouse, not waiting through the docket for their case to be called, and being able to log in at the scheduled time for their remote hearing freed up considerable time for attorneys, expanding their ability to provide services.

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Remote hearings created efficiencies for attorneys, which freed their time to provide services.

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## Challenges of Remote Hearings

In describing the challenges of remote hearings, FLLN partners reported that some clients experienced issues with technology or with language access, both of which made the entire process more difficult. In addition, attorneys noted the ways in which virtual services and the virtual courtroom, although convenient, fall short as replacements for in-person interactions.

Attorneys acknowledged that, although many clients were able to connect to the virtual platform, **others struggled with the technology.**

Some clients did not have the right equipment or sufficient internet connectivity, and some were unfamiliar with the videoconferencing software. These difficulties sometimes meant that litigants could not turn their cameras or microphones on and off, their faces were distorted due to virtual backgrounds, their speech was garbled due to poor connection, or that they ultimately had to connect by phone (without video) because they were unable to log into the videoconferencing platform. While technology challenges tended to occur among clients with lower technological capacity or experience, they could arise for anyone at any time (e.g., internet bandwidth issues). To circumvent these challenges, and because no technological support resources were available through the Court, attorneys have had to provide technical support for their clients. For example, they often walk clients through the remote hearing process and explain the virtual platform (e.g., how to log in, how to mute/unmute) ahead of time to try to familiarize them with the platform. Several of the FLLN organizations do not have accounts for the videoconferencing software used by the Court, so they are not able to practice in the actual platform with clients and they have had to rely on documents that show pictures of what the platform will look like.

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The most notable challenges observed by attorneys pertained to technology and language access.

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Another often-cited **challenge pertained to language access for litigants** with limited proficiency with English and for those who are hearing-impaired (and need American Sign Language interpretation). Attorneys mentioned that language interpretation services were harder to secure for remote hearings and that the virtual courtroom made interpretation more difficult to do and to understand. For example, having a Spanish interpreter repeating the opposing counsel's comments in Spanish is more difficult to parse out over the speaker than in person, which ultimately makes the entire discussion harder to follow. If a hearing-impaired litigant cannot get the video to work or cannot adjust the size of the interpreter on the screen, then they cannot see the interpreter. Attorneys also noted that the Court's general phone line that provides instructions for how to log into a remote hearing only provides instructions in English.

When discussing challenges of remote hearings, attorneys also described some **challenges of remote representation and the virtual courtroom generally.** Attorneys felt that building rapport and trust with their clients, and being able to develop a strong client relationship, was much easier in person. They also felt they could more effectively attend to their clients' needs during in-person hearings. For example, they could better discern when their client was uncomfortable and ask for time to confer with them the hallway, intervene if the client was speaking about something that would not help their case, or help field direct questions from the judge without interrupting. Although breakout rooms can

provide space for private conversations, remote settings cannot accommodate these communication needs as fluidly as is possible in person. One attorney stated, *“There’s a balance that interpersonally happens with our client when we’re standing next to them that is difficult to recreate [virtually].”* Likewise, attorneys reported that not being in person with opposing counsel inhibited the negotiation of last-minute settlements, which were common in the courthouse pre-pandemic.

The virtual courtroom sometimes created the **circumstances for procedural justice issues**. For example, in remote hearings, it is not possible to know if other people are in the room, but off camera, who might influence the litigant. Attorneys recalled such incidents, including a hearing in which one of the parties was testifying while being coached by someone else and another hearing in which the children, who were central to the case, were present while the parent was testifying. Attorneys agreed that these issues can negatively affect the judge’s ability to assess credibility and they underscored that this problem is exacerbated when one or both parties appear by phone without video.

Another procedural issue raised by attorneys pertained to **how evidence is introduced**. As one attorney put it, *“[Remote hearings] have uprooted usual practices with regard to introducing evidence in court.”* In the absence of formal procedures for virtual proceedings, judges have implemented different practices. Some require documents to be uploaded to a shared drive (e.g., DropBox), others require documents be sent to chambers, some review submitted evidence ahead of time and consider it to be “quasi-admitted,” and others follow the existing rules of evidence more closely. This variability in practice has created confusion about how to submit evidence and how to address evidence submitted by the opposing party.

Finally, the **virtual courtroom sometimes lacked the decorum of the actual courthouse**. Attorneys reported that litigants’ behavior was generally more restrained when they were in front of the judge in person and that litigants were more likely to interrupt and shout at each other when they appeared virtually. Furthermore, litigant’ homes are not controlled environments. Although many remote hearings proceeded without incident, the likelihood of disruptive background noises and general interruptions was higher than in the courthouse.

## Sustaining Remote Hearings

FLLN partners were asked whether they thought remote hearings should continue. In their discussion, they commented on the necessity to balance what is required of low-income litigants to be able to meaningfully access the court system with what is needed by judges to effectively dispense justice. They agreed that short hearings in which the proceedings are generally fast and no permanent orders are issued (e.g., initial hearings, status hearings) should be held in the virtual courtroom, unless parties request otherwise. This approach would maximize convenience and efficiency with minimal risk of consequential procedural issues. They also agreed that evidentiary hearings and trials (i.e., any proceeding that involves the introduction of evidence or testimony) should be conducted in person, unless there is a clear reason to conduct them remotely. Although they understood that in-person hearings carry added costs for litigants, the attorneys felt that the high-stakes nature of long hearings and trials justified the inconvenience. Overall, attorneys agreed that the Court should develop a policy

that clearly delineates the default setting for each type of hearing and how litigants can request a different arrangement.

Attorneys were asked if there were any other modifications made to the court process during the pandemic that they would like to see continue, and they named three.

- First, they appreciated that remote hearings **enabled the parties to call witnesses or experts from far away locations** and that these people could provide testimony from wherever they were. Being able to access witnesses and experts without the need for travel often made it possible to introduce important evidence. They hoped that the flexibility to allow non-local witnesses to appear virtually would remain possible, even if evidentiary hearings and trials reverted to in-person settings.
- Second, during the shutdown, the Court began **permitting service and filings by email or other electronic means**, which eased the process for litigants (and counsel). Although they recounted a couple of instances in which this feature was misused (such a pleading filed on a client's behalf from the opposing party's email address), attorneys generally thought that the benefits outweighed the risks, provided there were processes in place to assess the reliability of the information. They believed that this approach removed obstacles to filing and would increase access for litigants, especially those without attorneys.
- Finally, attorneys expressed considerable appreciation for the **ability to request and receive transcripts and docket information from court staff via email**. This process has created notable efficiencies for them and has increased their ability to conduct outreach to pro se litigants who could benefit from their services.

# SUMMARY & RECOMMENDATIONS

This study presents data from 189 surveys completed by litigants, across 6 different legal services organizations, who participated in a remote hearing for a family law matter, and data from focus group discussions with attorneys, from 7 legal services organizations, who have represented clients in remote hearings and trials. Themes emerged regarding the major benefits and challenges of remote hearings, and the perceptions of litigants and attorneys were largely consistent. Overall, both groups saw considerable benefit to remote hearings and agreed that virtual platforms increased access and reduced barriers for many low-income litigants. They also offered caveats regarding when the virtual courtroom falls short of replacing in-person interactions.

While remote hearings were implemented to safeguard against COVID-19 transmission, virtual court appearances often had other benefits for litigants that improved their ability to access the court system. In-person court appearances can present a host of challenges for low-income litigants. Spending a day in the courthouse is difficult for people whose jobs may not be flexible or offer paid time off, for whom transportation to and from the courthouse may be cumbersome or expensive, and for whom childcare is not readily available. Remote hearings can ease some of these financial impacts. Moreover, survivors of domestic violence or people in relationships with a power imbalance may not feel safe to be in the same room as the opposing party, and virtual appearances may offer these litigants an additional buffer against potential retraumatization. Virtual court appearances may alleviate some of these burdens, increasing litigants' ability to participate in their case, while still enabling the legal process to proceed.

Litigants generally reported feeling satisfied with their remote hearing. Most litigants felt they could hear well and understand what was happening, felt comfortable, and had a safe and private place to participate, suggesting that the processes put into place by the Court and the services provided by the attorneys are working well for many people. Most litigants reported that they had the necessary technology and were able to connect to the remote hearing, suggesting that the virtual platform was manageable by at least those litigants with the appropriate equipment. Litigants' experiences were not substantially different based on whether they had participated in a short hearing, long hearing, or trial, although satisfaction with remote trials tended to be slightly lower.

In addition to confirming the litigants' reports of the challenges alleviated by virtual appearances, attorneys offered some examples of how the virtual courtroom can add complexity to assessing the credibility of parties and can create the conditions for procedural justice problems. For this reason, attorneys felt that the remote platform was very appropriate for shorter hearings (e.g., initial hearings, status hearings), where maximizing convenience for litigants was important and there was minimal

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“This is a great option for folks who feel unsafe in the presence of the defendant. Also, taking an entire day off work and travelling to the DC courthouse, finding and paying for parking can be quite taxing for someone who is already in a state of panic.”

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- Litigant

downside. Alternatively, they felt that longer, evidentiary hearings and trials were better suited for an in-person venue, because as one attorney stated, *“Big decisions should not be made without people having the option of coming in person so that judges can assess the parties’ credibility in person.”* Interestingly, attorneys’ recommendations aligned with litigants’ preferences. In general, litigants tended to prefer remote platforms for short hearings and in-person venues for trials.

One area in which attorney and litigant perceptions did not align pertained to communication during the hearing. Whereas attorneys described difficulty having fluid, efficient, and private communication with their clients during remote hearings, their clients generally reported the opposite. Among those litigants who had representation during their hearing, over 90% felt that it was easy to communicate with their attorney. This difference likely reflects attorneys’ more nuanced understanding of the court process and heightened sense of when client communication would be beneficial or appropriate, and therefore increased recognition of the number of times such communication would have happened in person but did not happen in the virtual courtroom. However, litigants are less likely to recognize these opportunities and perhaps are only aware of when they feel a need to communicate with their attorney—and the majority of them felt that this need was met.

**Conclusion.** Study results highlight the notable benefits of remote court appearances, particularly in terms of supporting low-income litigants’ ability to meaningfully engage with the family law court without forcing them to make unsustainable trade-offs. Results also underscore the challenges of conducting court proceedings virtually and how these drawbacks might impact the families that the Court is seeking to serve and the quality of justice the Court is able to dispense. The COVID-19 pandemic created an urgency to transition to virtual operations as rapidly as possible, and the DR Branch succeeded in setting up a smoothly operating virtual courtroom. However, as with many institutions that were forced into a similar shift, implementation often preceded the establishment of formalized procedures or next-stage planning. As the Court leadership plans for the coming months and the potential resumption of in-person proceedings, we hope that these study results will enable them to incorporate litigant input into the decision-making process and the development of accompanying court policy.

**Study limitations.** The majority of litigants who completed a survey indicated that they connected to their remote hearing from their homes. Therefore, the current study sample may reflect litigants who are low-income, but who also have internet access and the necessary technology and know-how to navigate online. Litigants with these characteristics are likely to be more comfortable in virtual settings, and their perspectives may not generalize to litigants with less technological capacity or access.

## RECOMMENDATIONS

The following recommendations are offered based on study results.

- Consider making remote platforms the default venue for non-evidentiary hearings, especially those that require short periods of time to check status or schedule a future appearance date. Allow litigants the option to request an in-person hearing when they would prefer one, provided that health and safety regulations allow in-person events.

- For remote hearings, consider ways to support both parties' ability to appear by video. When one party appears by video and the other appears by phone without video, this difference may create or exacerbate a power imbalance. When either party appears by phone without video, it can make it difficult to assess credibility.
- Once in-person operations are safe to resume, reinstitute in-person venues as the default for evidentiary hearings, trials, and any other proceedings during which evidence is introduced or testimony is given. Allow litigants to request a virtual appearance if they have a reasonable need for the accommodation. Continue to allow witnesses to appear virtually.
- Continue to provide hearing appointment times, rather than setting a single start time for a large number of cases, to minimize the amount of time litigants and attorneys spend waiting.
- Create formal, standardized procedures for the introduction of evidence for hearings and trials that occur virtually. Consider ways to streamline and support the presentation of evidence during the hearing or trial so that all parties can review it adequately.
- Enhance the Court's ability to provide technical support to litigants with remote hearings. This help might involve a dedicated staff position to assist litigants to connect to the videoconferencing software before their hearing begins, similar to how telehealth appointments involve an assistant ensuring that the patient is connected before the doctor joins. This help might also include the creation of an explainer video that walks litigants through the login process, shows the videoconferencing screens, and explains the functionality of the different buttons (e.g., mute, camera). This video could be accessible on the Court's website so that litigants could view it before their hearing date. Ideally, the video would have audio available in multiple languages.
- Expand the Court's general phone line to provide remote hearing connection instructions in languages other than English. Spanish, French, and Amharic would be important to include.
- Consider ways to enhance the language interpretation services for remote hearings. This might include concurrent interpretation with the parties connected to two different audio platforms (one in English and one in the other language), to minimize the confusion caused by simultaneous talking. Ensure that hearing impaired litigants are able to type questions and responses, as well as receive written information. Ensure that visually impaired litigants are able to hear all parties and the judicial officer adequately.
- Increase legal services organizations' access to the videoconferencing software used by the Court, even a non-functional "mock" account, so that they can familiarize their clients, especially those who need extra technical support, with the platform in advance of their hearing date.



# APPENDIX

**Exhibit A1: Average Scores on Statements about Remote Hearing Participation**

Statement	Strongly Agree # (%)	Agree # (%)	Neither/ Unsure # (%)	Disagree # (%)	Strongly Disagree # (%)
I had the technology that I needed to participate (e.g., phone, computer, and the right software).	87 (48%)	68 (37%)	3 (2%)	4 (2%)	20 (11%)
I had a hard time connecting because the technology was confusing or wouldn't work.	9 (5%)	22 (12%)	18 (10%)	66 (36%)	68 (37%)
My remote hearing started on time.	58 (32%)	75 (42%)	14 (8%)	18 (10%)	15 (8%)
I felt comfortable during my remote hearing.	65 (36%)	66 (37%)	20 (11%)	10 (6%)	18 (10%)
I was able to hear well and understand what was happening.	70 (39%)	81 (46%)	16 (9%)	5 (3%)	6 (3%)
I had enough time to tell my side of the story.	55 (31%)	65 (36%)	22 (12%)	17 (10%)	19 (11%)
I felt like the judge heard me.	52 (29%)	70 (39%)	22 (12%)	15 (8%)	19 (11%)
This remote hearing was better because the judge could control how much each party talked.	39 (21%)	60 (33%)	49 (27%)	14 (8%)	20 (11%)
This remote hearing was hard for me because I didn't have a safe or private place to participate.	7 (4%)	9 (5%)	20 (11%)	59 (32%)	88 (48%)
I would prefer to have an in-person hearing because I would be able to tell my side of the story better.	30 (17%)	23 (13%)	40 (22%)	46 (25%)	42 (23%)

Note. Shaded cells denote responses endorsed by at least 25% of litigants.



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