

ACCESS TO JUSTICE TRANSFORMED

Texas courts look to new strategies to narrow the access to justice gap during the COVID-19 pandemic.

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We thank the *Texas Bar Journal* for focusing this issue on access to justice. Texas lawyers understand the importance of helping our most vulnerable neighbors meet their civil legal needs, and they donate substantial time and money each year to assist. Yet the needs far outstrip available resources, and they have only grown during the pandemic. Fortunately, the pandemic has also provided an opportunity to explore new strategies that will help narrow the justice gap. Two strategies that have shown particular promise are remote access and eviction diversions.

Remote Access to Courts and Counsel

Throughout our nation's history, citizens and their lawyers who desired an impartial civil resolution of disputes had to go in person to the courthouse, typically in the center of town, where their cases would be decided by judges and juries in courtrooms. Navigating this system is challenging for many low-income Texans who cannot afford to hire lawyers to help them address their basic civil legal needs. It is estimated only 10% of the civil legal needs of poor Texans are being met through legal aid, pro bono, and the private bar. Even those who make more than the income eligibility guidelines for legal aid find it very difficult to afford representation. As a result, the number of self-represented litigants in our courts has increased substantially. According to a 2018 report by the National Center for State Courts, or NCSC, a majority of cases (72%) involved at least one self-represented litigant.

This system, with its promise and challenges, continued until March 2020, when COVID-19 led to a wide-ranging shutdown in our country. In many ways, our legal system will never be the same. The Texas Supreme Court and Court of Criminal Appeals immediately issued the "First Emergency Order Regarding the COVID-19 State of Disaster" on March

13, 2020. That order, building upon experience with Hurricane Harvey, authorized courts to change deadlines and procedures, allow those involved in a proceeding to participate remotely, and conduct proceedings in different locations. This flexibility to alter routine processes has allowed courts to continue administering justice in the new reality. Since that time, the Texas Supreme Court has issued 50 emergency orders related to the pandemic.

By necessity, almost overnight, access to the courts transformed. With outstanding help from the Texas Office of Court Administration, or OCA, which had already acquired Zoom licenses for all Texas courts, local judges and court personnel transitioned quickly to hearing cases virtually. Incredibly, 2,113,368 virtual hearings took place in Texas from April 2020 through January 2022 with 7,145,219 participants attending, according to data compiled by the OCA. Thanks to the hard work of our judges, court staff, and administrators and the help and patience of our attorneys, Texas has led the nation in keeping the wheels of justice turning during the pandemic.

Although some kinds of proceedings are best conducted in person, the option of remote hearings has provided enormous benefits for expanding access to justice. A December 2021 study by the NCSC explored the use of remote hearings in Texas courts during a 12-month period. The study showed that some major advantages of virtual hearings for litigants include the ability to participate without taking time off from work, finding childcare, or dealing with transportation issues. Remote video technology also allows clients to access lawyers anywhere in the state who are willing to provide free or low-cost legal services, and it allows those lawyers to provide representation more quickly and efficiently without the need to travel.



Significantly, the NCSC study shows that litigant attendance at remote hearings in civil and family cases tends to be higher, and there are fewer default judgments. The same is true of criminal cases, which have seen a decrease in failures to appear. Additionally, more participants—such as family members—are able to attend hearings. Anecdotally, judges report that there is more engagement by litigants and participants in the hearings.

The study also found that remote proceedings can take longer than in-person hearings, largely due to technology-related issues and lack of preparation by participants. But another reason for longer remote proceedings is that they increase access to justice, as litigants and witnesses can more easily attend and participate in hearings.

Creative ideas are emerging in courts throughout the country to help bridge the digital divide identified in the report and make remote hearings more efficient. For example, courts can use “technology bailiffs” to better prepare remote hearing participants for their hearings and handle technology glitches that may occur. Additionally, some Texas courts have loaned computer equipment and tablets to court participants, and others have set up remote hearing stations for those who may not have access to personal computer equipment.

The Courts and Legal Aid Diverting Evictions for Texans

The pandemic has impacted every part of our society. It has destroyed lives and livelihoods and has highlighted the serious problem of housing insecurity. Many Texans lost their jobs at the beginning of the pandemic and found themselves struggling to pay rent and make ends meet. Many more were unable to make their mortgage payments, risking foreclosure.

To address this challenge, the Texas Supreme Court established the Texas Eviction Diversion Program through its Twenty-Seventh Emergency Order, which has been renewed several times (most recently in the Fiftieth Order). With funding allocated by Gov. Greg Abbott through the Texas Department of Housing and Community Affairs, or TDHCA, this voluntary program sought to reduce evictions due to non-payment of rent by enabling landlords and tenants to agree upon a resolution. If eligibility requirements were met, past-due rent obligations and utility delinquencies could be covered in full and the eviction case dismissed. The program became available in all Texas counties on February 15, 2021. Justice of the peace courts throughout the state transformed to deal with the tsunami of evictions facing Texas families.

The Texas program has been widely successful, with more than 300,000 households receiving rent and utility payment relief. The program benefited families facing evictions as well as landlords who were owed rent payments, and it has become a national model. As of January 2022, almost all of the available funds have been expended to help Texans.

The TDHCA also provided the Texas Access to Justice Foundation with \$20 million to establish an Emergency Rental Assistance Program, which provides funding that enables legal aid programs, pro bono programs, and law school clinics to represent low-income Texans facing eviction. These programs are working to find creative solutions to the eviction crisis in the new environment of online hearings and trials. These funds have been used to develop housing stability clinics and a full range of legal services as part of an effort to maintain housing and improve housing stability for Texas families.

The pandemic also increased the need for legal help with other serious problems, such as domestic abuse. Children and the elderly facing domestic violence had to quarantine in their homes with the people who were attacking their safety and well-being.

Legal aid providers have reinvented themselves to meet these increased needs for basic civil legal services. Legal aid programs help more than 100,000 families annually. The providers had to change their service models to meet the needs of low-income communities that often lack digital access. No longer could people physically go to a legal aid office to seek services, so providers have built an infrastructure to ensure that those who needed assistance could get the help they needed. During the fall of 2020, Gov. Abbott’s Office provided \$4.2 million in Coronavirus Aid, Relief and Economic Security, or CARES, Act funds to help legal aid programs create the necessary infrastructure to meet these new challenges.

It has also been challenging for veterans to obtain legal aid at VA clinics or hospitals, which had been very efficient delivery points but were closed during the pandemic to all but patients. We appreciate the support of the Texas Legislature, which understood the need and provided additional funding to serve veterans impacted by COVID-19.

In summary, justice in this country looks very different than it did just two years ago, and it continues to change as we blend remote and in-person hearings. During this transformation, the courts look forward to working with the bar to ensure that access to our courts is available to all Texans, regardless of means. **TBJ**



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