

FIRST CIRCUIT POST-PANDEMIC OPERATIONS COMMITTEE REPORT

**Approved by the Judicial Council of the First Circuit
March 25, 2024**

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Executive Summary of the Final Report of the Post-Pandemic Operations Committee

March 25, 2024

Chief Judge David J. Barron convened the First Circuit Post-Pandemic Operations Committee (Committee) chaired by Chief Judges Arias-Marxuach and McConnell, of the Districts of Puerto Rico and Rhode Island, respectively, to consider which practices developed to host remote court proceedings during the Covid-19 pandemic should and could be retained post-pandemic.

The Committee considered the legal and policy implications of remote proceedings, as well as the First Circuit courts' practices during the pandemic, and was charged with identifying recommendations and, if appropriate, developing a draft model local rule for the districts within the First Circuit. See Report at p. 1, and Appendices 1 and 2 to the Report.

The Committee divided into Criminal, Civil/Bankruptcy, and Access to Justice Subcommittees. See Report at p. 1. The subcommittees were chaired, respectively, by Judges John A. Woodcock, Jr. (D.ME.), Samantha Elliott (D.N.H.), and Denise Casper (D.MA.).

To receive practitioners' views, detailed surveys were distributed to the district and bankruptcy bars. See id. at pp. 2-3. The survey responses show that criminal and civil practitioners largely agree which specific types of proceedings within their areas of practice lend themselves to being held remotely and which should be held in person, with strong support for remote scheduling and status conferences, and in-person trials.

Although bankruptcy practitioners are divided on whether contested and evidentiary matters should be conducted remotely at the request of the parties or not at all, they generally support the use of remote technology for routine, non-evidentiary motion hearings and conferences in bankruptcy cases and adversary proceedings. Id. at p. 3.

Regardless of the area of practice, the survey responses also show that experience with remote proceedings during the pandemic improved practitioners' view of such proceedings. Id. at p. 3. There is also broad support among the bar for providing remote public and media access to civil trials and motion hearings, as well as to criminal and bankruptcy proceedings. Id.

As explained in detail in Appendix 1 to the Report, the current legal framework gives courts more latitude to host remote court proceedings in civil and bankruptcy cases than in criminal cases. Rule 53 of the Federal Rules of Criminal Procedure prohibits "the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom," unless otherwise provided by statute or said rule, and other rules of criminal procedure specifically authorize certain remote proceedings subject to defendants' consent. See Appendix 1. There is no comparable bar in civil proceedings.

Mindful of this legal framework, the Report contains recommendations for remote criminal, civil, and bankruptcy proceedings. See Report at pp. 3-14. The recommendations identify and address a host of legal, technological, public access, and decorum issues, including, but not limited to, the following:

- Once it is determined that a criminal proceeding may lawfully be held remotely, the judge should ensure that Fifth Amendment protections and the defendant's Sixth Amendment right to counsel are protected, and consider, among other factors, the nature of the charge and proceeding, as well as the characteristics of the defendant and their relationship to counsel, the existence/preferences of witnesses/victims, and available technology, in exercising their discretion as to whether to hold a criminal proceeding remotely. See id. at pp. 4-7.
- Assuming holding a remote civil or bankruptcy proceeding is permissible under the governing rules and policies, see Appendix 1, the judge should consider the following in determining whether to hold a remote hearing: the type of hearing, including whether evidence will be presented, as well as other factors, including: travel required; whether parties are counseled; complexity, immediacy, and sensitivity of proceeding; cooperation of parties; and available staff and technological resources. See id. at pp. 7-10.
- A court should adopt routine procedures for scheduling remote proceedings. See id. at p. 10.
- For all remote proceedings, the judge should take measures to: ensure that all participants are able to access and use the technology employed, provide the appropriate accommodations, and confirm that participants have been given prior access to any needed documents or exhibits. Id. at p. 11. If remote public/media access is authorized, a warning against recording should be provided and advance registration should be considered. Id.
- In order to preserve appropriate decorum, the court should consider conducting the remote proceeding from the courtroom, if possible, and adopting standards for parties and attorneys participating in remote criminal, civil, and bankruptcy proceedings. See id. at pp. 11-12.
- Hybrid hearings, where one or more witnesses, parties, or attorneys, is/are appearing remotely, especially those that include the presentation of evidence to a remote witness, raise additional complexities that should be considered. See id. at pp. 12-14.

The Report also contains a model civil/bankruptcy local rule which districts may tailor and adopt. The model local rule suggests a process for scheduling remote civil and bankruptcy proceedings, and the factors to consider in determining whether to hold a remote hearing. See id. at pp. 14-16. It also addresses the method of public access, appearance and decorum, and hybrid hearings, and allows the court to identify the types of hearings that may be presumptively remote or in person. Id.

With regard to public access, the use of remote proceedings post-pandemic to provide such access is limited by the Judicial Conference of the United States' (JCUS) broadcast policy. See Appendices 1 and 3. The JCUS's current policy permits only audio remote public access of civil and bankruptcy proceedings in which a witness is not testifying. Because of the recent and potentially ongoing changes to national policies regarding public access for all federal proceedings, the relevant background and recommendations for providing remote public access to the greatest extent feasible consistent with these policies are included in Appendix 3 to the Report. It is recommended that the First Circuit's broadcast policy be updated to authorize the district courts and bankruptcy courts to adopt local rules to permit broadcasting of proceedings to allow remote public access, provided that such rules do not conflict with federal law, the Federal Rules of Criminal, Civil, or Bankruptcy Procedure or JCUS policy. See Appendix 3. It is further recommended that each district court and bankruptcy court in the First Circuit consider an amendment of their respective relevant local rule so that it continues to prohibit recording/broadcasting by any third party, but allows broadcasting by the court, as authorized by First Circuit policy. Finally, several related recommendations intended to ensure the continued solemnity and security of any such proceedings, and for continued technological innovation, are included.

The Committee is thankful for Chief Judge Barron's leadership and the extraordinary support provided by the staff of the Office of the Circuit Executive.

Introduction

The COVID-19 pandemic was an unprecedented event, which required changes to the way the federal courts fulfilled the obligation to deliver justice in a timely, efficient, and publicly accessible fashion. The statutory authorization to host participants and provide public access to certain criminal court proceedings remotely, provided by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, 134 Stat. 281, and related temporary policy changes endorsed by the Judicial Conference of the United States (JCUS), allowing for remote public access to civil and bankruptcy proceedings, were critical to the many strategies that courts across the country implemented in furtherance of its mission. Several tools utilized to continue essential court operations during the pandemic have been recognized as potentially more efficient methods of doing business in general. Recognizing the opportunity for the First Circuit to explore the impacts of the pandemic on court operations, specifically hosting remote court proceedings, and to consider which practices may be worthwhile and appropriate to retain on an ongoing or permanent basis, Chief Judge Barron, as Chair of the First Circuit Judicial Council, established the First Circuit Post-Pandemic Operations Committee (Committee), co-chaired by Chief Judge Arias-Marxuach, of the U.S. District Court for the District of Puerto Rico, and Chief Judge McConnell, of the U.S. District Court for the District of Rhode Island.

The Committee was charged with sharing information across First Circuit courts, examining the legal and practical complexities associated with remote proceedings, developing recommendations and, if appropriate, a model local rule that could potentially benefit not only the First Circuit courts but the federal judiciary. In doing so, the Committee considered: (1) the legal and policy implications of conducting remote proceedings before the enactment of the CARES Act, during its pendency, and after its expiration, and in relation to criminal, civil, and bankruptcy proceedings; (2) the differences between and policy implications of holding remote proceedings and providing remote access to proceedings; and (3) the impact of access to justice and public access requirements on remote court operations in the federal courts. Due to the differences in applicable laws, policies, and overall considerations, the Committee formed three subcommittees: (1) the Criminal Subcommittee; (2) the Civil/Bankruptcy Subcommittee; and (3) the Access to Justice Subcommittee.

In order to ensure that its recommendations considered the views of the bar, the Committee developed and distributed surveys soliciting opinions from members of the circuit's district and bankruptcy bars regarding their experiences with and opinions about the use of virtual technology to conduct various types of proceedings, public and media remote access to in-court proceedings, the impact of the pandemic on the use of virtual technology to hold court proceedings, preferred video platform(s), and the public access afforded by remote proceedings.¹ After considering the results of the surveys in the context of applicable laws, relevant national, circuit, and local court policies,² and available resources, each of the three subcommittees developed recommendations intending to inform decisions regarding when to hold remote proceedings and how to do so as effectively as possible, for participants to the proceeding and for the public and media, where appropriate. In addition, the Civil/Bankruptcy Subcommittee

¹ An analogous survey was also distributed to the circuit's district, magistrate, and bankruptcy judges soliciting their views on remote court operations and remote public access to court proceedings.

² Appendix 1 provides a summary of the legal and policy landscape of remote court operations and public access requirements with regard to criminal, civil, and bankruptcy proceedings, prior to and since the pandemic. Appendix 2 describes the First Circuit local rules and orders addressing remote court operations and remote public access adopted during the pandemic.

prepared a model local rule regarding remote proceedings that addresses issues including scheduling, relevant factors to consider, method of public access, appearance and decorum, hybrid hearings, and designation of presumptively remote proceedings.

Section I of this report includes a summary of the district and bankruptcy bar survey results. **Section II** provides recommendations for determining when a proceeding may appropriately be held remotely, addressing both criminal and civil/bankruptcy proceedings, respectively, as well as public access considerations,³ and for establishing procedures for scheduling remote hearings, ensuring appropriate decorum, optimizing technology, and planning for hybrid hearings. Finally, **Section III** offers a model local rule governing the scheduling and holding of video and telephonic proceedings in civil and bankruptcy hearings.

I. Surveys

The Committee decided that surveys soliciting opinions from members of the bar about continued remote operations would provide useful preliminary information. Partly based on similar surveys, including one conducted by the Federal Judicial Center, Committee staff developed the survey questions, which requested information on respondents' experiences and opinions regarding the use of virtual technology to conduct various types of proceedings, public and media remote access to in-court proceedings, the impact of the pandemic on the use of virtual technology to hold court proceedings, preferred video platform(s), and the public access afforded by remote proceedings. Committee Co-Chairs approved the final surveys, and, in December 2022, the surveys were distributed to the circuit's district and bankruptcy bars, via CM/ECF, with an explanation of the Committee's mission, and notification that the survey was anonymous. See supra note 1. Over one thousand members of the courts' district bar and over one hundred members of the bankruptcy bar responded to their respective surveys. Office of the Circuit Executive staff provided the Committee with an Executive Summary of the results of each survey. See Attachments 1, 2, and 3.

A. Highlights of the District Bar Survey⁴

The majority (75%) of respondents to the district bar's survey were civil litigators with five or more years of experience. Nearly three-quarters of respondents support the routine use of remote technology for civil scheduling and status conferences, and almost as many respondents agree that non-evidentiary motion hearings should be held remotely either as a matter of course or upon request. Most respondents agree that civil trials should be held in person.

Over three-quarters of respondents agree that the public and media should have remote access to civil trials, with slightly fewer respondents indicating the same for motion hearings. Roughly half of respondents favor public and media remote access to scheduling, status, pre-trial, and final pre-trial conferences.

As most respondents were civil practitioners, there were far fewer responses to the questions pertaining to criminal proceedings. Just under half of those who responded to these

³ Because of the recent and potentially ongoing changes to national policies regarding public access for all federal proceedings, the relevant background and recommendations for providing remote public access to the greatest extent feasible consistent with these policies are included in Appendix 3.

⁴ Additional detail on the survey responses may be found in the Executive Summary of Bar Survey Results and the District Bar's Survey Results. See Attachments 1 and 2.

questions indicated that some criminal proceedings are conducive to the use of virtual technology, while others should always be held in person. Almost all the respondents to the question indicated that criminal status conferences should be held remotely as a matter of course, with just under half of respondents agreeing that initial appearance/arraignments, detention hearings, non-evidentiary motion hearings, Rule 11 plea hearings, and pre-trial conferences should be held remotely upon request. A majority of respondents agree that trials, sentencings, and evidentiary motion hearings in criminal proceedings should be in-person, and that the public and media should have remote access to all of the enumerated criminal proceedings.

Over three-quarters of respondents have a more favorable view of the use of virtual technology to hold court proceedings than prior to the pandemic and prefer Zoom (both personally and for their clients) as their video platform.

Almost three-quarters of respondents indicated that there were participants who attended remote court proceedings who would not have attended in person and the same found no significant difficulty accessing remote court proceedings.

*B. Highlights of the Bankruptcy Bar Survey*⁵

Respondents were roughly evenly divided between consumer bankruptcy practitioners and business practitioners, both with five or more years of experience. Just under half of respondents generally favor the presumptive use of virtual technology for bankruptcy cases and adversary proceedings, respectively, with roughly two-thirds of respondents supporting the use of remote technology for all routine, non-evidentiary motion hearings and conferences in bankruptcy cases and adversary proceedings. Respondents are divided on whether contested and evidentiary matters in bankruptcy cases should be conducted remotely at the request of the parties or not at all, with over half of respondents indicating that trials should seldom or never be held remotely.

The majority of respondents agree that the public and media should have remote access to proceedings in bankruptcy cases and to all of the enumerated adversary proceedings.

Approximately three-quarters of respondents have a more favorable view of the use of virtual technology to hold court proceedings than prior to the pandemic and prefer Zoom (both personally and for their clients) as their video platform.

Almost three-quarters of respondents indicated that there were participants who attended remote court proceedings who would not have attended in person, and over three-quarters of respondents did not find that there was significant difficulty accessing the remote court proceedings.

II. Recommendations

During the pandemic, a number of courts in the circuit had adopted local rules and/or orders providing for remote proceedings and, in some cases, remote public access to civil, bankruptcy, and/or criminal proceedings, that remained in effect even after termination of the

⁵ Additional detail on the survey responses may be found in the Executive Summary of Bar Survey Results and the Bankruptcy Bar's Survey Results. See Attachments 1 and 3.

national emergency. See Appendix 2. Informed by governing law and policy, as well as the courts' and the bar's experiences with remote proceedings during the pandemic, the subcommittees developed, and the Committee adopted, the following recommendations. The Committee begins with providing recommendations for determining whether to hold remote criminal and civil/bankruptcy proceedings, respectively. Next, the Committee provides recommendations for scheduling and conducting all remote proceedings. Last, the Committee provides recommendations for determining whether and how to conduct hybrid proceedings.

A. Criminal Proceedings

Recommendation 1: A judge should determine whether the law allows for the criminal proceeding to be held remotely.

A judge must first determine whether the law allows for a remote proceeding, either with or without defendant's consent. See Appendix 1. In most cases, a videoconference criminal proceeding may be held only when a defendant consents to videoconference and does so after obtaining the advice of counsel. The Federal Rules of Criminal Procedure explicitly allow remote hearings with the defendant's consent for initial appearance pursuant to Rule 5(g), arraignment pursuant to Rule 10(c), proceedings resulting from an arrest in a district other than the district that issued the warrant pursuant to Rule 40(d), and all misdemeanor proceedings, including trial and sentencing, pursuant to Rule 43(b)(2). In contrast, proceedings involving "only a conference or hearing on a question of law" do not require a defendant to be present. See Fed. R. Crim. P., Rule 43(b)(3). In addition, other Federal Rules of Criminal Procedure and statutes offer some potential latitude in holding remote proceedings with the defendant's consent, including preliminary hearings, waiver of indictment, revocation hearings, detention hearings, and certain juvenile proceedings. See Appendix 1.

Recommendation 2: A judge should exercise sound judicial discretion in determining whether to hold a remote criminal proceeding, by considering the following factors and ensuring that Fifth Amendment protections and Sixth Amendment right to counsel are protected.

Once it is determined that a criminal matter may lawfully be heard remotely, including, when necessary, obtaining the consent of the defendant after seeking the advice of counsel, the factors outlined below should be considered.⁶ All federal crimes are serious, but some are more serious than others. A judge should consider the nature of the charge and other factors, including whether, for reasons unique to the case, it is one where it is important that a defendant be present in the courtroom or whether justice may be achieved by videoconference.

A primary consideration should be the views of defense counsel. The defense lawyer typically has unique insight into the defendant, the defendant's state of mind, capacity to make important decisions, self-restraint, knowledge of the criminal justice system, current conditions of confinement, need for the physical presence of counsel at the proceeding, defense counsel's

⁶ In response to the district bar survey, almost half (45%) of respondents (who found the question applicable) indicated that "some" criminal proceedings are conducive to being held using virtual technology, while others "should always" be held in person. See Attachments 1 and 2. Additionally, almost one-third (32%) of respondents (who found the question applicable) were generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for criminal proceedings, when authorized by applicable law and policies. See id.

need for a physical meeting with the defendant outside the proceeding, and the impact of an in-person or videoconference proceeding on the defendant's level of trust and comfort with the proceedings. The defense lawyer will often be in the best position to evaluate and advise the court which form of proceeding is in the defendant's best interest.

A second significant consideration should be the seriousness of the charges and the potential penalties faced by the defendant. In the exercise of discretion, in a case where a videoconference might otherwise be held, a judge might conclude, given the potential consequences for a defendant, the physical presence of the defendant in a courtroom is essential to assure the protection of the defendant's rights, to physically convey the judge's determination to remain neutral and fair, and to gain insight into the defendant's state of mind. For a defendant facing less serious charges and limited time, a judge may conclude that a videoconference proceeding suffices.

- **Advice of Counsel**

- The opinions of defense counsel about whether a videoconference proceeding is in the best interest of the defendant;
- Whether the defendant's attorney concurs with the defendant's decision to proceed by videoconference;

- **Nature of Charge**

- Seriousness of the charge;
- Number of counts;
- Statutory penalties (e.g., mandatory minimum terms of incarceration and potential guideline range);
- Existence of victims;

- **Nature of the Proceeding**

- Evidentiary or non-evidentiary hearing;
- Unresolved claims of restitution;
- If a sentencing, whether the defendant pleaded or was found guilty;
- Number of defendants;
 - Co-defendants' participation in proceedings by videoconference

- **Defendant's Characteristics and Relationship to Counsel**

- Need for competency evaluation;
 - Ability to conduct a fair and accurate competency evaluation by videoconference
- Cooperation with the government;
- History of criminality, resort to violence, and risk to society;
- Whether the defendant's attorney concurs with the defendant's decision to proceed by videoconference;
- The length of time the defense lawyer has represented the defendant;
- Whether the defendant and counsel have had opportunities to physically meet and consult before the videoconference proceeding;

- Whether a particular defendant is likely to benefit from the calming influence of the physical presence of counsel;
 - Whether a particular defendant is outspoken and undisciplined and may need the quick intervention of counsel;⁷
 - Whether a defendant would benefit from the physical presence of an attorney to prevent a defendant from undermining the defense of the charge or the sentence, if convicted;⁸
- **Participation of Victims, Family Members, and Others⁹**
 - Preference to be physically present or only by videoconference;
 - Victim's preference to speak or be present for the proceeding;
 - Participation in the proceedings by individuals who would otherwise be unable or would find it difficult to attend a proceeding in person (e.g., family members and victims who live a distance from the courthouse, members of the media and of the general public, members of traditionally marginalized groups, people who have limited or no access to the necessary technological devices, and people with disabilities);¹⁰
 - **Available Technology**
 - Whether the necessary technology is available and accessible;¹¹

⁷ Consideration of these factors would address many concerns that have been noted with respect to using virtual technology for remote criminal proceedings. *See, e.g., Judge Willie J. Epps & Cailynn D. Hayter, Zoomed in to Justice: Remote Proceedings During a Pandemic, 60 Judges' Journal 10 (2021)* (listing the following concerns: interference with defendant's ability to communicate privately with counsel, a lack of ability for defendant to advocate for himself, defendant's limited right to confront witnesses, minimizing the importance of nonverbal communication, and inability to limit or eliminate distractions when jurors receive evidence and deliberate remotely); *Alicia L. Bannon & Douglas Keith, Remote Court: Principles for Virtual Proceedings during the Covid-19 Pandemic and Beyond, 115 NW. U. L. REV. 1876 (2021)* (describing the difficulty with effective assistance of counsel when representing a defendant remotely); and *Deniz Ariturk, William E. Crozier & Brandon L. Garrett, Virtual Criminal Courts, U. Chi. L. Rev. Online (Nov. 16, 2020)* (questioning if virtual representation arrangements provide defendants with adequate legal representation that would be sufficient under the Fifth and Sixth Amendments). Multiple respondents to the district bar survey emphasized the importance of in-person court proceedings to promote communication between defendants and counsel. *See* Attachment 2.

⁸ *See supra* note 7.

⁹ The right of a victim to be present or observe public criminal proceedings is governed by the Federal Rules of Criminal Proceedings and statutes. *See, e.g.,* Fed. R. Crim. P., Rule 60(a)(2) (providing that the court must not exclude a victim from a public court proceeding, with a limited exception, and must make every effort to permit the fullest attendance possible by the victim and must consider reasonable alternatives to exclusion), (a)(3) ("The court must permit a victim to be reasonably heard at any public proceeding in the district court concerning release, plea, or sentencing involving the crime."); Fed. R. Crim. P., Rule 32(i)(4)(B); 18 U.S.C. § 3771(a)(3-4), (b)(1); and 34 U.S.C. § 20142(a) (providing, under certain circumstances, that the court must permit victims to watch closed circuit televising of criminal trial proceedings when the venue is changed out of state or more than 350 miles from the original location).

¹⁰ Notably, 70% of respondents for the district bar survey indicated that there were participants who had attended remote proceedings who would not have been able to do so in person. *See* Attachments 1 and 2. Further, one of the many benefits of remote proceedings is the ability to provide a way around some barriers that prevent people from going to a courthouse in person. *See* Epps & Hayter, *supra* note 7.

¹¹ Consideration of this factor accounts for the "digital divide," wherein remote proceedings could create obstacles for certain individuals who lack the necessary high-speed internet and are new to navigating these platforms. *See* Bannon & Keith, *supra* note 7; and Ariturk, et al., *supra* note 7.

The public have a constitutional right of access to criminal proceedings.¹² See U.S. CONST. AMEND. VI; *Presley v. Georgia*, 558 U.S. 209 (2010); *United States v. Gottesfeld*, 18 F.4th 1, 14 (1st Cir. 2021); *Waller v. Georgia*, 467 U.S. 39, 47 (1984) (right of public trial extends to suppression hearings where evidence is presented); and *United States v. Candelario-Santana*, 834 F.3d 8 (1st Cir. 2016). See also Appendix 1. A judge must consider and balance the constitutional right of the public to attend with the prohibition of taking photographs in the courtroom during judicial proceedings and the broadcasting of judicial proceedings from the courtroom.¹³ See Fed. R. Crim. P., Rule 53. See also Appendices 1 and 3.

- **The public interest in the case; and**
- **Requests by the press or media for access to the proceeding.**

B. Civil and Bankruptcy Proceedings

Recommendation 3: A judge should determine whether the law allows for the civil/bankruptcy proceeding to be held remotely.

While there is no similar broad proscription on the use of videoconferencing in civil and bankruptcy proceedings analogous to that governing criminal proceedings, see Appendix 1, a witnesses' testimony in a civil trial is required to be taken in open court unless a federal statute or rule provides otherwise. See Fed. R. Civ. P., Rule 43(a), and Appendix 1. Nonetheless, "[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." See *id.*

Similarly, for bankruptcy proceedings, "[a]ll trials and hearings shall be conducted in open court . . . [while] all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district" See Fed. R. Bankr. P., Rule 5001(b), and Appendix 1. Federal Rule of Civil Procedure 43 also applies to bankruptcy proceedings, and accordingly, with the appropriate safeguards, "the court may permit testimony in open court by contemporaneous transmission from a different location." See Fed. R. Bankr. P., Rule 9017, and Appendix 1.

Recommendation 4: A judge should exercise sound judicial discretion in determining whether to hold a remote civil/bankruptcy proceeding, by considering the following factors.

- **Evidentiary or non-evidentiary hearing:**

The court should consider the type of hearing, including whether evidence will be presented.¹⁴ For fully remote hearings, screen sharing is an effective way of presenting exhibits

¹² The authors of *Virtual Criminal Courts* suggest that virtual courts provide consistent, meaningful access to court watchers as well as to defendants to protect the public's trust and promote fair outcomes for defendants. See Ariturk, et al., *supra* note 7.

¹³ See *supra* note 10.

¹⁴ Almost three quarters of respondents of the district bar survey indicated that scheduling/status conferences should be remote as a matter of regular course, and nearly 70% of respondents believe that non-evidentiary motion hearings should be remote as a matter of regular course or as requested by the parties. See Attachments 1 and 2. Over 40% of respondents of the district bar survey indicated that evidentiary motion hearings should never or seldom be conducted remotely, while the majority of respondents indicated that jury trials and bench trials should never or

to a witness; however, the size of the video of the witness may be reduced, potentially impeding credibility determinations. The court and the parties should consider the volume and type of exhibits and the attorneys' facility with screen sharing and other technical functions required to present their case.¹⁵

- **Involvement of a self-represented party:**

Self-represented parties may not have access to the same professional grade technology and high-speed internet that the court and attorneys do.¹⁶ This may cause the self-represented party to feel they are at a perceived or actual disadvantage. It may also adversely impact that party's ability to present argument and evidence. Absent a self-represented litigant who has access to and is familiar with the necessary technology, the involvement of a self-represented litigant weighs against a remote proceeding.¹⁷ In the alternative, telephonic hearings may be easier to manage technically for self-represented litigants, particularly in bankruptcy proceedings.

- **Travel for attorneys and parties:**

The time and expense of travel to the courthouse is a factor the court may consider, particularly for non-evidentiary proceedings of short duration, such as status conferences and pretrial conferences.¹⁸ The geography of the jurisdiction, meaning the overall geographic size of the district and the distance of the courthouses from large population areas, may also influence the weight of these concerns. When convenience to the attorneys and parties is the main and deciding factor, there is a preference for a fully remote proceeding rather than a hybrid.¹⁹

seldom be conducted remotely (81% and 61%, respectively). See id. In response to the bankruptcy bar survey, more than two-thirds of respondents stated that routine motion sessions/hearings and scheduling/status/pre-trial conferences in bankruptcy cases should be conducted remotely as a matter of regular course, and 44% of respondents indicated that contested or evidentiary matters should seldom/never be conducted remotely. See Attachments 1 and 3. More than 60% of respondents of the bankruptcy bar survey indicated that scheduling/status/pre-trial and non-evidentiary hearings in adversary proceedings should be conducted remotely as a matter of course. However, there is less support for remote evidentiary adversary proceedings, with more than 35% of respondents stating that evidentiary motion hearings should seldom or never be held remotely, and nearly 55% of respondents indicating that trials should never be conducted remotely. See id.

¹⁵ For a discussion of the challenge of hybrid evidentiary hearings in which a witness testifies remotely for an in-court proceeding, see discussion of hybrid hearings, infra pp. 13-15.

¹⁶ Consideration of this factor addresses the unique position of self-represented litigants who must navigate new and challenging remote systems without the resources often available inside physical courthouses. See Bannon & Keith, supra note 7.

¹⁷ Other factors listed may apply to a self-represented litigant and may ultimately weigh in favor of remote hearings, such as a party with a medical condition that makes travel or appearance in person difficult. See Epps & Hayter, supra note 7 (noting that one of the many benefits of remote proceedings is the ability to provide a way around many barriers that prevent people from going to a courthouse in person).

¹⁸ Multiple respondents to the district bar survey noted that one of the benefits of conducting civil proceedings using virtual technology was the availability for out-of-state parties, witnesses, and families to attend proceedings. See Attachment 2.

¹⁹ For a discussion of the challenges of holding hybrid hearings when only some attorneys or parties wish to participate remotely, see the discussion of hybrid hearings, infra pp. 13-15.

- **Travel for witnesses:**

The time and expense of travel to the courthouse for witness testimony is a factor the court should consider, when the witness's testimony is short and exhibits are not complex.²⁰ However, in a civil trial, witness testimony is required to be taken in open court unless good cause is shown. See Fed. R. Civ. P., Rule 43. The committee notes provide that the inconvenience suffered by a witness does not alone justify remote testimony. See id., and Appendix 1.

- **Length, sensitivity, complexity, and immediacy of hearing:**

Shorter, simple proceedings like conferences can often be handled remotely, especially where the travel to the courthouse exceeds the time in front of the judge.²¹ The security features of remote platforms should also be considered for sensitive or sealed hearings. There may also be more complex matters that benefit from the ability to schedule a remote hearing with short notice – for example, the need to resolve a dispute prior to a scheduled deposition.

- **Level of cooperation between attorneys and parties:**

There may be benefits to holding even short, informal conferences in person. For example, when litigation is acrimonious, and parties are taking unreasonable positions regarding discovery, the case may benefit from getting counsel in the same room together and with the judge. In-person proceedings can also better address communication issues between counsel and client.

- **Available technology, resources, and accessibility:**

For fully remote hearings, the court resources involved are usually limited to the cost (if any) of the software used.²² There are some challenges that arise during fully remote, high-profile hearings, and such hearings may require additional clerk's office support to manage attendees.²³

Some parties and attorneys may require or benefit from accommodations for a disability or some other access issue personal to them. Such accommodations may weigh in favor of or against remote proceedings. For example, people who are deaf or experiencing hearing loss may prefer to appear remotely so that they can utilize their own assistive devices, while those with

²⁰ See supra note 14.

²¹ In response to the district bar survey, nearly three-quarters of respondents indicated that scheduling/status conferences should be remote as a matter of course. See Attachments 1 and 2. Similarly, over two-thirds of respondents to the bankruptcy bar survey indicated that chapter 13 routine motion sessions, routine motion hearings in other chapters (7, 11, 11 sub. V, 12), and scheduling/status/pre-trial conferences should be conducted remotely as a matter of regular course in bankruptcy cases. See Attachments 1 and 3. As to adversary proceedings, over 60% of respondents to the bankruptcy bar survey stated that scheduling/status/pre-trial conferences and non-evidentiary hearings should be conducted remotely as a matter of regular course. See id.

²² For a discussion of the court resource issues related to hybrid hearings, see the discussion of hybrid hearings, infra pp. 12-13.

²³ Widespread differences in court resources and judges' comfort levels with technology have created variation in the availability of remote technologies and can pose a challenge to the ability of judges to manage their courtrooms to ensure fair proceedings. See Bannon & Keith, supra note 7.

vision loss may find it preferable to appear in person rather than navigate a computer during a proceeding.

- **Public access:**

If public access is required and a court cannot provide remote public access, the hearing must either be held in person or broadcast into a courtroom where the public can view the hearing by coming to the courthouse, if the judge determines that such broadcasting meets the public access requirements. See Appendices 1 and 3.

C. Procedures Common to All Remote Proceedings

Recommendation 5: A judge/court should adopt routine procedures for scheduling remote proceedings.

Some judges may want to establish a presumption that certain proceedings, particularly civil/bankruptcy proceedings, are conducted remotely, such as preliminary pretrial conferences, status conferences, discovery disputes, and final pretrial conferences.²⁴ Such hearings could be scheduled and held remotely absent a court order to the contrary.²⁵

- **Recommendation 5A: A judge should exercise judicial discretion with party input to determine whether to hold a proceeding remotely.**

While the judge will make the ultimate determination as to whether a hearing is remote or in-person and may make the initial determination according to a default preference for certain types of hearings, it is appropriate to permit the parties to request a different format.

- **Recommendation 5B: A judge/court should establish procedures for parties to request in-person or remote proceedings via motion.**

While a judge may permit informal requests for in-person or remote hearings by contacting the clerk's office, the preferred method is to file a motion. Motions should be assented to or state the opposing counsel's position.

²⁴ Over one-third of respondents (36%) to the district bar survey indicated that some civil proceedings are conducive to being held using virtual technology, while others should always be held in person. See Attachments 1 and 2. Additionally, nearly 29% of respondents were generally in favor of the presumptive use of virtual technology for civil proceedings, when authorized by applicable laws and policies; and over 23% of respondents were generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for civil proceedings, when authorized by applicable laws and policies. See id. In response to the bankruptcy bar survey, almost half of respondents were generally in favor of the presumptive use of virtual technology for bankruptcy cases and adversary proceedings, when authorized by applicable laws and policies. See Attachments 1 and 3. Approximately 28% of respondents to the bankruptcy bar survey indicated that some bankruptcy cases and adversary proceedings are conducive to being held using virtual technology, others should always be held in person; while the remaining respondents were generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for bankruptcy cases and adversary proceedings (18%), or were opposed to judges' using virtual technology for bankruptcy cases and adversary proceedings, except in rare circumstances (6%). See id. See also supra note 14.

²⁵ Holding certain proceedings presumptively remote can enable the courts to tailor plans to the type of proceeding and experience of those involved. See Bannon & Keith, supra note 7.

D. Technology

Once it is determined that it is both lawful and advantageous, based on the factors provided, to hold a proceeding remotely, it is important to do so effectively and while preserving the integrity of the judicial proceeding.

- **Recommendation 6:** A judge/court should take steps to ensure that all participants are able to access and use the technology employed. See infra pp. 12-13. Further, a judge/court must make available simultaneous translation and other reasonable accommodations, if required by the participants.
- **Recommendation 7:** For evidentiary hearings, a judge/court should take steps to ensure that counsel is mindful of the need of all participants to have prior access to any documents or exhibits the court refers to, or, to the extent the exigencies of the case have not allowed for the prior distribution of documents, the court and counsel should be conscious of the need to develop a record that confirms that the parties and counsel have reviewed the documents and exhibits.
- **Recommendation 8:** At the outset of any remote hearing at which members of the public are in remote attendance, a court should issue a warning against recording. See Appendix 3. In addition, a court should consider some advance notice and registration for members of the press who wish to attend a proceeding remotely.
- **Recommendation 9:** A court should periodically review its videoconference platform settings.

The videoconference platforms have evolved to include more tools for managing, reducing, or eliminating the opportunity for interruptions. Courts should periodically review whether the configuration of default settings has been optimized for both attorney/party participation and crowd control – with the understanding that there are often tradeoffs between the two. For example, allowing screen sharing facilitates presentation of evidence but can allow an attendee to display something inappropriate to the proceeding.

E. Decorum

Recommendation 10: A judge/court should consider adopting standards for parties and attorneys participating in remote proceedings in order to ensure the dignity of the court proceeding.

The architecture of federal courtrooms enhances a sense of justice and encourages decorum. It is therefore important that efforts be made to ensure that the use of videoconferencing not diminish the impact of a judicial proceeding for the participants. Especially in criminal proceedings, judges should ordinarily conduct remote proceedings from a courtroom to promote decorum and ensure public access. Attorneys and participants, to the extent possible, should be in a location consistent with a judicial setting, be dressed for court, and should strive to participate in the hearing as if they are in court. The court should set expectations as to the attire, location, and activities of participants in remote proceedings in order

to ensure the dignity of the court proceeding. Attire for all participants should be consistent with in-court appearances. The location from which a participant appears should have a neutral background or should use an appropriate filter to conceal the background (unless there are concerns about third party influence on, for example, a witness). The setting should be quiet and free from distractions. Smoking, drinking alcohol, or eating on screen should be prohibited. A vehicle is not an appropriate place from which to participate in a hearing.

In criminal proceedings in which the defendant is incarcerated, the United States Marshals Service, the Bureau of Prisons, the state prisons, and county jails should be encouraged to work with the IT personnel at the clerks' offices to minimize technological issues and to provide a suitable space for a judicial proceeding, including a dedicated and private room for attorney-client consultation, see supra pp. 4-6 (discussing Sixth Amendment concerns), and staff available to assist with technology issues.

Remote participants should be familiar with the technology used to conduct the remote hearing, and the ability to mute and unmute themselves to minimize disruption when they are not speaking. As in court, they should not speak over someone who is speaking and must not interrupt unless making a legal objection.

F. Hybrid Hearings

Recommendation 11: In determining whether to hold a hybrid hearing, a judge should weigh the benefits to and convenience of the parties/attorneys participating remotely with the availability of the necessary technology.

A hybrid hearing, defined as any in-court hearing where one or more witness, party, or attorney is participating remotely, may raise additional considerations. At least in the criminal setting, hybrid hearings may offer some of the convenience of virtual hearings while minimizing some of the concerns. For example, in situations where a defendant is participating remotely, it would be preferable, if possible, for defense counsel to be present in the same remote location as the defendant. Similarly, at a sentencing hearing, if a victim or family member wishes to participate by videoconference, the court should seek to accommodate the individual's preference, after giving the parties an opportunity to object.

That said, judges, attorneys, and parties sometimes overestimate the capabilities of courtroom technology, and holding a hybrid hearing is far more technologically complex than holding a fully remote hearing. Courtroom technology is primarily designed to facilitate in-court proceedings in accordance with the federal rules, and those rules have long expressed a preference for live witness testimony. The expanded use of fully remote hearings has created an expectation that remote participation, in general, is functionally equivalent to in-person proceedings. While this expectation may be largely true for fully remote hearings, hybrid hearings present complications because of the need to integrate a remote hearing platform with the available courtroom technology.

At a minimum, the court may require the parties and participants to test the technology in advance. This is particularly important with international participants. The court can also set the expectation that a party relying on remote witnesses does so at their own risk, and if a witness is not able to appear due to technical failure, the party waives the right to that testimony, potentially conditioning such a waiver on whether the party calling the witness timely tested the technology.

Recommendation 12: In determining whether to hold a hybrid hearing at which exhibits would be presented to a remote witness, a judge should consider whether remote evidence presentation is appropriate. If the judge decides to hold such a hybrid hearing, the judge should tailor the available technology to the circumstances.

The major technological limitation to remote witness testimony is courtroom control of exhibits presented to a remote witness. Because the exhibits and the witness video occupy the same screen in the courtroom, there is generally some degree of compromise between the visibility of the witness and the visibility of the exhibit when the exhibit is presented using courtroom technology.

For example, an attorney may be examining a witness appearing by video. The attorney displays a photograph using an iPad connected to the courtroom's system. The witness and courtroom may see a split screen that displays the witness and photograph on the same monitor – but the photograph may be scaled in such a way that it is distorted or difficult to see by both the witness and the courtroom. In the alternative, the exhibit may take up the entire screen with a small thumbnail of the witness, which may be problematic if the witness needs to testify and have credibility assessed while the exhibit is on the screen. Depending on the system used, there may also be limitations on the ability of the parties to address issues about the exhibit by displaying it to the judge only and not the witness or jury.

This type of issue may be addressed by, most commonly, providing the witness with copies of the exhibits in advance of the proceeding to use primarily or as backup. Attorneys should be prepared to address any restrictions on the witness reviewing the exhibits in advance, including exhibits that may not be included with the advance set such as impeachment exhibits or exhibits used to refresh recollection. In addition, remote witnesses should be reminded of restrictions and expectations. The court may wish to address the witness with a colloquy and/or court order making it clear that the witness must be alone in the room, that they may not use the computer or device to communicate with anyone while testifying, and that they may not refer to notes or any documents other than an exhibit as directed by the attorney. The court can also set expectations in advance for the quality of the device and internet connection used, and the location of the person testifying. For example, a court might require a stable camera in a room, as opposed to a phone camera held by the witness in a car.

By addressing these challenges and limitations up front, there is likely a way to optimize the technology available for the circumstances specific to a particular case or testimony. In addition, once the parties and the court understand the limitations, that may influence their decision to pursue remote testimony. When a party proposes a remote witness, the court should inquire about the following:

- ❖ What is the reason for the witness's remote testimony? Convenience or necessity?
- ❖ What is this witness's role in the case? Is the witness a critical fact witness whose credibility will be important or is this a witness who will testify briefly to authenticate a document?
- ❖ What types of exhibits will a witness need to be able to view and testify about? How many exhibits will the witness have to manage if they are responsible for identifying documents in their possession? Are there audio/visual exhibits that the witness will have

to be able to view remotely? Is it important for the fact finder to be able to observe an exhibit and the witness's reaction to that exhibit at the same time?

- ❖ What technology does the witness have and what will they be using? How large is the screen the witness will have to view the courtroom, the attorneys, and the exhibits? The witness should test the technology with the court and counsel in advance of the proceeding using the equipment they will use and from the location in which they will be when providing their testimony.
- ❖ If there are concerns about the witness's compliance with the court-ordered restrictions on using notes or communicating with others, and remote testimony cannot be avoided, is there a possibility of connecting two cameras? Note that this would require additional technology and technological skill to incorporate two camera inputs and avoid any interference. Advanced testing would be necessary.

Recommendation 13: A judge/court should ensure that all parties agree to the remote attendance of a party or attorney.

When a party or non-speaking attorney requests to view or listen to a hearing remotely, all parties should agree to the remote viewing and understand that, because the audio is transmitted from all of the microphones in the courtroom, the remote viewer is privy to even whispered conversations near any courtroom microphone that has not been muted. It is easy for counsel and parties to forget that a remote viewer, even one appearing on a screen at the front of the courtroom, can hear such conversations. It is even easier to forget if the remote viewer does not have their video turned on. These conversations often occur before the hearing or during a recess and may contain privileged attorney client communications.

Recommendation 14: A judge/court should remind an attorney who appears for oral argument remotely, when opposing counsel will be present in the courtroom, that the remote attorney's view of the courtroom may be somewhat limited by the available cameras and views.

III. Proposed Model Local Rule

The Committee also approved a model local rule governing the scheduling and holding of video and telephonic hearings in civil and bankruptcy proceedings. The model local rule is intended to provide a framework for courts that wish to adopt a local rule to implement the recommendations discussed above. Individual courts will determine whether a local rule is appropriate and, if so, whether modifications are necessary to reflect local practices.

A. Model Civil/Bankruptcy Local Rule:

District/Bankruptcy Local Rule XX.X Video and Telephonic Hearings

- (a) Scheduling a Remote Hearing.** The court may schedule a video or telephonic hearing upon a motion by any party. Such a motion must be filed at least forty-eight (48) hours prior to the hearing. The requesting party must indicate whether or not the other parties assent and, if they do not assent, shall include a brief description of the basis for the objection. If necessary, the objecting party is permitted but not required to file its own objection within twenty-four (24) hours.

(b) Factors Considered. The court will consider the following factors when determining whether to hold a remote hearing:

- (1) Whether the Federal Rules of Civil Procedure permit the court to hold the hearing remotely;
- (2) The quality of technology available to necessary participants;
- (3) Whether the hearing is evidentiary or non-evidentiary;
- (4) The volume and types of exhibits involved;
- (5) The duration, expense, and difficulty of travel for attorneys and parties;
- (6) The duration, expense, and difficulty of travel for witnesses;
- (7) The length, sensitivity, complexity, and immediacy of the hearing;
- (8) The court staffing and resources required;
- (9) Accommodations for disabilities or medical conditions; and
- (10) Any other relevant factors.

(c) Public Access. The court will determine whether public access to a fully remote, public hearing will be provided remotely via audio stream or via video stream in a courtroom.

(d) Appearance and Decorum. A remote hearing is a court proceeding and all participants should dress in attire consistent with in-court appearances. The location from which a participant appears should have a neutral background, or a participant should use an appropriate filter to conceal the background unless otherwise specified by the court. Smoking, drinking, or eating during the hearing is prohibited. The setting should be quiet and free from distractions. Participants must also be familiar with the technology in use for the hearing, including the ability to mute and unmute themselves as necessary. The court may require participants to test their technology in advance of the hearing. Participants accept the risk that a technological failure may prevent them from participating in a hearing and may lead the court to require them to appear in person in court for future hearings.

(e) Hybrid Hearings. A party or witness may only appear remotely at an in-court proceeding upon a motion filed at least seven (7) days prior to the hearing. The requesting party must indicate whether or not the other parties assent and, if they do not assent, shall include a brief description of the basis for the objection. The motion must also include a statement that the remote participant has reviewed and understands the local court rules regarding the prohibition on recording, videotaping, and photography and agrees to be bound by them, and must address any of the relevant factors in LR XX.X(b), as well as the following additional factors:

- (1) The interactive requirements between the courtroom and the remote participant, including but not limited to general communication, argument, testimony, and evidence presentation;
- (2) Any need for private consultation between a remote participant and an in-court participant, and a proposal for how to accommodate this need;
- (3) The expected degree of remote participation; and

- (4) Any need for the remote participant to have a particular view of the courtroom, including the need to be able to see certain in-court participants.

(f) Presumptively Remote and In-Court Proceedings.

- (1) The following types of court proceedings will be scheduled as remote hearings unless the court determines that the factors identified in LR XX.X(b) weigh against a remote hearing: [*List hearings local court intends to schedule sua sponte as fully remote hearings, such as preliminary pretrial conferences, status conferences, hearings or conferences related to discovery disputes, and final pretrial conferences*].
- (2) The following types of court proceedings will be scheduled as in-court hearings unless the court determines that the factors identified in LR XX.X(b) weigh in favor of a remote hearing: [*List hearings local court intends to schedule sua sponte as in-court hearings, such as evidentiary hearings, hearings on dispositive motions, bench trials, and jury trials*].
- (3) Notwithstanding any presumptions regarding remote or in-court scheduling, the court retains authority to determine whether a hearing will be held in court or remotely. The parties are responsible for reviewing the hearing notice to determine whether proceedings will be held in court or remotely.
- (4) A party who objects to a hearing scheduled by the court sua sponte as an in-court or remote hearing must file a motion to change the type of court proceeding at least forty-eight (48) hours prior to the hearing. The requesting party must indicate whether or not the other parties assent and, if they do not assent, shall include a brief description of the basis for the objection. If necessary, the objecting party is permitted but not required to file its own objection within twenty-four (24) hours.

Appendix 1

Legal and Policy Landscape of Remote Court Operations and Public Access Requirements

A. Criminal Proceedings -- State of the Law

Prior to the enactment of the CARES Act, which temporarily allowed courts to conduct certain criminal proceedings by video and teleconference, see infra pp. 3-4, the authority to hold federal criminal proceedings remotely and/or to broadcast such proceedings was strictly limited. Federal Rule of Criminal Procedure 53 provides that "[e]xcept as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom." Further, Federal Rule of Criminal Procedure 43 establishes the general rule requiring a defendant's presence for most proceedings except for Rule 5 and 10 proceedings.¹ See Fed. R. Crim. P., Rule 43(a)(1-3) (stating that "the defendant must be present"); and Fed. R. Crim. P., Rules 5(g) and 10(c) (providing for the use of videoconferencing to conduct an initial appearance or arraign a defendant, if the defendant consents regardless of the offense charged). Proceedings involving "only a conference or hearing on a question of law" do not require a defendant to be present. See Fed. R. Crim. P., Rule 43(b)(3). If a defendant is charged with a misdemeanor offense, then the court may permit arraignment, plea, trial, and sentencing to occur by video/teleconference with the defendant's written consent. See Fed. R. Crim. P., Rule 43(b)(2). Additionally, video/teleconferencing is permitted to conduct an appearance for proceedings resulting from an arrest in a district other than the district that issued the warrant, if the defendant consents. See Fed. R. Crim. P., Rule 40(d).

In addition, other Federal Rules of Criminal Procedure and statutes offer some potential latitude in conducting remote proceedings with the defendant's consent. See, e.g., Fed. R. Crim. P., Rule 5.1(a)(1) (providing that a magistrate judge must conduct a preliminary hearing "unless the defendant waives the hearing"); Rule 7(b) (permitting an offense punishable by imprisonment for more than one year to be prosecuted by information if the defendant "in open court and after being advised of the nature of the charge and of the defendant's rights" waives prosecution by indictment); Rule 32.1(b)(1) (requiring the judge to give a person in custody for violating a condition of probation or supervised release "an opportunity to appear at the [preliminary] hearing"); 18 U.S.C. § 3142(a) (explaining that a judicial officer can order release or detention of a defendant pending trial "[u]pon appearance before a judicial officer of a person charged with an offense"); 18 U.S.C. § 3148(b) (explaining the circumstances under which a judicial officer

¹ However, Federal Rule of Criminal Procedure 43(c)(1)(B) establishes that a "defendant who was initially present at trial, or who had pleaded guilty or nolo contendere, waives the right to be present . . . in a noncapital case, when the defendant is voluntarily absent during sentencing[.]" Before the pandemic, many courts construed Rule 43(c)(1)(B)'s "voluntarily absent" language to include a consensual waiver of physical presence at sentencing in a noncapital case if the defendant was physically present for the plea or trial. See, e.g., United States v. Bethea, 888 F.3d 864, 866 (7th Cir. 2018); United States v. Ornelas, 828 F.3d 1018, 1021-23 (9th Cir. 2016); United States v. Velazquez, 772 F.3d 788, 799-800 (7th Cir. 2014); United States v. Salim, 690 F.3d 115, 122-24 (2d Cir. 2012) (acknowledging right to waive but concluding that defendant had not voluntarily waived right to physical presence); United States v. Mitchell, 502 F.3d 931, 987-88 (9th Cir. 2007); United States v. Bustillo-Sevilla, 2020 WL 1239669, at *1-*2 (N.D. Cal. Mar. 15, 2020); Bryan v. United States, 2019 WL 6790779, at *4 (D.S.C. Dec. 12, 2019); and United States v. Dhafir, 2011 WL 13289915, at *3 (N.D.N.Y. Mar. 15, 2011). See also United States v. Ramos-Gonzales, 857 F.3d 727, 733 (5th Cir. 2017) (Jones, J., concurring) ("Rule 43(a)(3) mandates the defendant's 'presence' at sentencing, and we have held that the defendant must first consent before the court may conduct sentencing by videoconference.").

can enter an order of revocation and detention "after a hearing"); and 18 U.S.C. §§ 5032, 5034, 5027, and 5042 (examples of juvenile delinquency proceedings, which are silent on video proceedings).

Generally, however, the more significant the proceeding, the greater the scrutiny as to whether a defendant may consent to waive physical presence, with guilty pleas; trials, both jury and bench; and sentencings typically deemed the most significant of criminal proceedings. *See, e.g., United States v. Bethea*, 888 F.3d 864, 867 (7th Cir. 2018) (holding that "the plain language of Rule 43 requires all parties to be present for a defendant's plea and that a defendant cannot consent to a plea via videoconference"); *Illinois v. Allen*, 397 U.S. 337, 339 (1970) ("One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial."); *United States v. Sepúlveda-Contreras*, 466 F.3d 166, 169 (1st Cir. 2006) ("[D]efendants have a right, guaranteed by the United States Constitution and the Federal Rules of Criminal Procedure, to be present during sentencing." (citation omitted)); and *United States v. Lattimore*, 525 F. Supp. 3d 142, 150-51 (D.D.C. 2021) ("[W]hatever due process rights a defendant may have in being physically present in a courtroom, the right is implicated to a lesser degree in a suppression hearing than in an actual trial.").²

The legislative history to Federal Rule of Criminal Procedure 5, expressly allowing initial appearance by videoconference, provides guidance on the relevant advantages and disadvantages of remote criminal proceedings. In the 2002 Advisory Committee notes to Federal Rule of Criminal Procedure 5, the Advisory Committee noted that it "carefully considered the argument that permitting a defendant to appear by videoconferencing [for an initial appearance] might be considered an erosion of an important element of the judicial process." *See* Fed. R. Crim. P., Rule 5, Adv. Comm. Notes (2002 Amendments). The Advisory Committee outlined the following concerns pertaining to videoconferencing of initial appearances: (1) "the setting itself may not promote the public's confidence in the integrity and solemnity of a federal criminal proceeding;" (2) "using video teleconferencing can interfere with counsel's ability to meet personally with his or her client at what, at least in that jurisdiction, might be an important appearance before a magistrate judge;" (3) "the defendant may miss an opportunity to meet with family or friends, and others who might be able to assist the defendant, especially in any attempts to obtain bail;" and (4) "the magistrate judge may miss an opportunity to accurately assess the physical, emotional, and mental conditions of a defendant." *See id.* The Advisory Committee balanced these considerations with the high volume of criminal proceedings, delays due to travel time, and the high-quality technology available in courtrooms. *See id.* The Advisory Committee

² Further, victims generally have a right to be present for public criminal proceedings. A court may not exclude a victim "from a public court proceeding involving the crime," with a limited exception, and, in determining whether to exclude a victim, the court must make efforts to permit the victim the fullest attendance possible with consideration of reasonable alternatives. *See* Fed. R. Crim. P., Rule 60(a)(2). *See also* 18 U.S.C. § 3771(a)(3), (b)(1) (same). The Federal Rules of Criminal Procedure specify that the court must permit a victim to be reasonably heard at proceedings "concerning release, plea, or sentencing involving the crime." *See* Fed. R. Crim. P. 60(a)(3). *See also* 18 U.S.C. § 3771(a)(4) (same) and Fed. R. Crim. P., Rule 32(i)(4)(B) ("Before imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard."). Additionally, under certain circumstances, if the venue of a criminal trial is changed to either out of state or more than 350 miles from the original location, a trial court must "order closed circuit televising of the proceedings" to the original location so that victims are able to watch the proceedings. *See* 34 U.S.C. § 20142(a).

determined that, "on balance and in appropriate circumstances, the court and defendant should have the option of using teleconferencing, as long as the defendant consents to that procedure." See id. The Advisory Committee noted that the question of when it would be appropriate for the defendant to consent is a matter for the defendant and court, and warned that deficient technology or equipment could cause the public to lose confidence in the "integrity and dignity of the proceedings." See id.

First enacted in March 2020, the CARES Act, Pub. L. 116-136, 134 Stat. 281, allowed courts to conduct certain criminal proceedings by video and teleconference with the consent of the defendant and after consultation with counsel, contingent upon a finding by the Judicial Conference of the United States (JCUS) that emergency conditions exist that materially affect either the federal courts generally or a particular district court of the United States. See Director Duff, March 27 and March 29, 2020 Memoranda re: CARES Act Provisions for Criminal Proceedings, <https://jnet.ao.dcn/about-ao/directors-office/cares-act-provisions-enacted-certain-criminal-proceedings> and <https://jnet.ao.dcn/about-ao/directors-office/update-cares-act-provisions-criminal-proceedings>. Accordingly, the CARES Act allowed for certain remote criminal proceedings during the course of the pandemic, despite both Federal Rule of Criminal Procedure 53 and the JCUS' prohibition on the broadcasting of court proceedings. See Guide to Judiciary Policy (Guide), Vol. 10, Ch. 4, §§ 410.10(a) and 420(b) (2020).³ The CARES Act provided that this authorization would end "on the earlier of (a) 30 days after the date on which the national emergency ends under the National Emergencies Act (50 U.S.C. § 1601 et seq.)⁴ or (b) when the [JCUS] finds that the federal courts are no longer materially affected."⁵ See Director Mauskopf, March 1, 2022 Memorandum re: Continuation of National Emergency & Remote Proceedings under CARES Act, <https://jnet.ao.dcn/about-ao/ao-directors-office/national-emergency-and-remote-proceedings-under-cares-act> (footnote added).

³ The CARES Act allowed for video and teleconferencing for the following criminal proceedings with the consent of the defendant or juvenile after consultation with counsel:

- Detention hearings under [18 U.S.C. § 3142](#).
- Initial appearances under [Fed. R. Crim. P., Rule 5](#).
- Preliminary hearings under [Fed. R. Crim. P., Rule 5.1](#).
- Waivers of indictment under [Fed. R. Crim. P., Rule 7\(b\)](#).
- Arraignments under [Fed. R. Crim. P., Rule 10](#).
- Probation and supervised release revocation proceedings under [Fed. R. Crim. P., Rule 32.1](#).
- Pretrial release revocation proceedings under [18 U.S.C. § 3148](#).
- Appearances under [Fed. R. Crim. P., Rule 40](#).
- Misdemeanor pleas and sentencings as described in [Fed. R. Crim. P., Rule 43\(b\)\(2\)](#).
- Juvenile proceedings under [18 U.S.C. § 403](#) (commonly known as the "Federal Juvenile Delinquency Act"), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.
- Felony pleas under [Fed. R. Crim. P., Rule 11](#).
- Felony sentencings under [Fed. R. Crim. P., Rule 32](#).

See JNET, COVID-19 Guidance: Criminal Proceedings FAQs, <https://jnet.ao.dcn/news-events/coronavirus-covid-19-guidance/coronavirus-covid-19-guidance-criminal-duty-faqs>.

⁴ A national emergency is declared by the President and can be terminated by: (1) enacting into law a joint resolution terminating the emergency; or (2) an issuance by the President of a proclamation terminating the emergency. See 50 U.S.C. § 1622(a)(1-2).

⁵ The CARES Act required local review and reauthorization by the chief judge of each court every 90 days. See CARES Act, Sec. 15002(b)(3).

On February 24, 2021, and again on February 18, 2022, the President notified Congress that COVID-19 continues to cause significant risk to the public health and safety of the nation, thus extending the national emergency into 2023. See Federal Register, Notice of February 24, 2021, <https://www.federalregister.gov/documents/2021/02/26/2021-04173/continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic>; and Federal Register, Notice of February 18, 2022, <https://www.federalregister.gov/documents/2022/02/23/2022-03972/continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic>. This action maintained the federal courts' authority to utilize video and teleconferencing for various criminal proceedings in certain circumstances under the CARES Act, in conjunction with the JCUS finding that "emergency conditions exist that materially affect the federal courts generally"

On February 10, 2023, the President provided notice of his intent to terminate the COVID-19 national emergency effective May 11, 2023. See Federal Register, Notice of February 10, 2023, <https://www.federalregister.gov/documents/2023/02/14/2023-03218/continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic>. However, Congress exercised its authority under the National Emergencies Act by passing a joint resolution, which by its terms sought to end the national emergency immediately upon its effective date. See [H.J.Res.7](#), and supra note 4. The President signed into law the joint resolution on April 10, 2023, providing that "the national emergency declared by the finding of the President on March 13, 2020, . . . is hereby terminated." See White House Briefing Room, Bill Signed: H.J.Res. 7, <https://www.whitehouse.gov/briefing-room/legislation/2023/04/10/bill-signed-h-j-res-7/>. Therefore, the authorization to conduct certain criminal proceedings remotely, provided under Section 15002(b) of the CARES Act, terminated on May 10, 2023,⁶ at which time videoconferencing and/or broadcasting of federal criminal proceedings reverted to what was permitted prior to the CARES Act enactment. See supra pp. 1-2.

B. Civil and Bankruptcy Proceedings -- State of the Law

Even prior to the pandemic, there was no blanket proscription against the use of videoconferencing in civil proceedings analogous to that provided by Federal Rule Criminal Procedure 53, supra p. 1. However, a witnesses' testimony in a civil trial is required to be taken in open court unless a federal statute, the Federal Rules of Evidence, the Federal Rules of Civil Procedure, or other rules adopted by the Supreme Court provide otherwise. See Fed. R. Civ. P., Rule 43(a). Nonetheless, "[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." Id. Despite this allowance, the 1996 Advisory Committee notes to Rule 43 emphasized "the importance of presenting live testimony in court" and provide that "[t]he very ceremony of trial and the presence of the factfinder may exert a powerful force for truth-telling, [and t]he opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition." See Fed. R. Civ. P., Rule 43, Adv. Comm. Notes (1996 Amendment). The Advisory Committee further provided that inconvenience for a witness does not alone justify remote testimony, but that "[t]he most persuasive showings of good cause and

⁶ The JCUS did not make a finding "that the federal courts are no longer materially affected" by the pandemic before the national emergency ended.

compelling circumstances" involve the unexpected inability of a witness to be present, such as an accident. See id.

Similarly, for bankruptcy proceedings, "[a]ll trials and hearings shall be conducted in open court and so far as convenient in a regular courtroom." See Fed. R. Bankr. P., Rule 5001(b). However, except as otherwise provided by statute, "all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby." See id. Federal Rule of Civil Procedure 43 also applies to bankruptcy proceedings, and accordingly, with the appropriate safeguards, "the court may permit testimony in open court by contemporaneous transmission from a different location." See Fed. R. Bankr. P., Rule 9017.

C. Access to Justice -- State of the Law

Criminal Proceedings - Public Access

Generally, court proceedings must be open to the public, including the news media. The Supreme Court of the United States has held that the press and public have a qualified First Amendment right to attend a criminal trial and other criminal proceedings. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) (finding that the public and representatives of the press have a First Amendment right to attend criminal trials, even if the prosecution and defense wish to close the proceeding); Globe Newspaper Co. v. Superior Court for Norfolk County, 457 U.S. 596 (1982) (same); Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I), 464 U.S. 501 (1984) (finding the First Amendment right also applies to jury *voir dire* in a criminal case); and Press Enterprise Co. v. Superior Court for the County of Riverside (Press-Enterprise II), 478 U.S. 1 (1986) (applying the First Amendment right to preliminary hearings in a criminal matter). However, this presumption of openness can be overcome by an "overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." See Press-Enterprise I, 464 U.S. at 510.

Additionally, the Sixth Amendment guarantees criminal defendants the right to a trial that is open to members of the public. See Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 379-80 (1979). The right was "created for the benefit of the defendant," as openness in criminal proceedings encourages "witnesses to come forward," "discourages perjury," and "ensure[s] that judge and prosecutor carry out their duties responsibly." See Waller v. Georgia, 467 U.S. 39, 46 (1984). This right extends to any stage of a criminal trial. See Presley v. Georgia, 130 S. Ct. 721, 724 (2010). The Sixth Amendment right to an open trial can be overcome only if doing so is necessary: (a) to serve an overriding or compelling governmental interest (such as protecting witnesses, preserving a defendant's right to a fair trial, or avoiding public disclosure of sensitive information); (b) there is no less restrictive means of protecting that interest; and (c) the scope and duration of the closure is kept as narrow as possible. See Waller, 467 U.S. at 39. The court must make findings sufficient to support the decision to close the court. See id. "In partial closure cases — i.e., where courtroom access is restricted but some members of the public are permitted to attend — the First Circuit has held that a 'substantial' interest, rather than a

'compelling' one, will justify partial closure." Bucci v. U.S., 662 F.3d 18, 23 (1st Cir. 2011) (citing United States v. DeLuca, 137 F.3d 24, 32-35 (1st Cir. 1998)).

There are criminal proceedings that do not require public access. The United States Supreme Court in Press-Enterprise II determined that the right of public access to preliminary criminal hearings, as opposed to grand jury proceedings, was based on whether: (1) the type of proceeding had historically been public; and (2) public access was important to its function. See generally 478 U.S. at 11-12. Further, the Sixth Amendment right to a public trial was found not to extend to the court's conferences with counsel about technical legal issues in a criminal case. See, e.g., U.S. v. Norris, 780 F.2d 1207, 1210-11 (5th Cir. 1986).

Civil Proceedings - Public Access

While the Supreme Court has not held that the public has a First Amendment right to access civil proceedings, a number of federal appellate courts have held as much, at least to some degree. See, e.g., New York Civil Liberties Union v. New York City Transit Authority, 684 F.3d 286 (2d Cir. 2012) (recognizing the qualified right to attend civil trials derives from the First Amendment); Publicker Indus., Inc. v. Cohen, 733 F.2d 1059 (3d Cir. 1984) (holding that the First Amendment provides a qualified right of access to civil trials); In re Continental Ill. Secs. Litig., 732 F.2d 1302, 1308 (7th Cir. 1984) (holding that the presumption of access applies to hearings held and evidence introduced in connection with a motion to terminate civil claims); In re Iowa Freedom of Info. Council, 724 F.2d 658 (8th Cir. 1983) (holding that the public has a First Amendment right of access to contempt hearings); and Newman v. Graddick, 696 F.2d 796 (11th Cir. 1983) (finding that "civil trials which pertain to the release or incarceration of prisoners and the conditions of their confinement are presumptively open to the press and public"). But see Courthouse News Service v. Quinlan, 32 F.4th 15, 20 (1st Cir. 2022) (citing to El Dia, Inc. v. Hernandez Colon, 963 F.2d 488, 495 (1st Cir. 1992) for the proposition that the First Circuit has "express[ed] doubt as to extension of qualified public right of access to civil proceedings").

The proposition from Press-Enterprise II, limiting the right to public access in some circumstances, has been applied in the civil context as well. See, e.g., B.H. v. McDonald, 49 F.3d 294, 299-300 (7th Cir. 1995) (finding that there was no right of public access to in-chambers conferences concerning implementation of consent decrees in civil cases under the reasoning of Press-Enterprise II). Further, the Federal Rules of Civil Procedure establish that while "[e]very trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom[, a]ny other act or proceeding may be done or conducted by a judge in chambers . . . anywhere inside or outside the district." See Fed. R. Civ. P., Rule 77(b). Lower federal courts have read the "juxtaposition of 'open court' as the manner of conducting trial with 'chambers' in relation to other proceedings" to conclude that the "public should ordinarily have access to a trial, as opposed to pre-trial activities." See Bao Xuyen v. Reverend Dr. Martin Luther King, Jr. County, 524 F. Supp. 3d 1113 (W.D. Wash. 2021); and Casequin v. Cat 5 Contracting, Inc., 2022 WL 1203207, at *1 (M.D. Fla. Apr. 22, 2022) ("Courts, particularly since the COVID-19 pandemic, have construed this rule to mean that a trial must be conducted in a manner for public access[.]").

Appendix 2

Court Operations in the First Circuit -- Relevant Local Rules and Orders

Following the First Circuit Judicial Council's 1996 resolution prohibiting broadcasting, most of the district and bankruptcy courts in the First Circuit adopted, and currently maintain, a local rule prohibiting the recording, photographing, or broadcasting by any means of court proceedings.¹

During the national emergency, two district courts in the First Circuit adopted orders allowing for telephone and/or video proceedings. The District of Puerto Rico adopted an order that expressly allows for "video and/or telephone conferences for hearings in civil and criminal proceedings, as allowed by the Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure"² Similarly, the District of Rhode Island adopted a local rule to permit videoconferencing to be used to conduct proceedings in civil cases "at the discretion of the presiding judge."³

Three district courts within the First Circuit adopted orders explicitly providing for remote access to civil, bankruptcy, and/or criminal proceedings to some degree, after the termination of the national emergency.⁴ In the District of Maine, remote audio access to civil and bankruptcy proceedings remains permitted until further order.⁵ The District of New Hampshire adopted an order outlining the procedures for any out-of-court videoconference or telephonic hearing scheduled in accordance with the federal rules for criminal or civil proceedings and including information for any member of the public wishing to access the hearing "[t]o the extent the public has a right to attend a scheduled hearing or conference"⁶ Additionally, the order provides that "[f]or any scheduled videoconference or teleconference criminal hearing in which the defendant is entitled to appear, the court will presume that the defendant consents to participate by video or telephone."⁷ The District of Rhode Island further amended its

¹ See [DME LR 83.8\(a\)\(3\)](#); [DMA LR 83.3\(a\)](#); [Bankr. DMA LR 9037-1\(b\)](#); [DNH LR 83.8\(a\)](#); [Bankr. DNH LR 5073-1](#); [DPR LR 83F\(b\)\(1-2\)](#); [Bankr. DPR LR 5073-1\(a\)](#); [DRI LR Gen 112](#); and [Bankr. DRI LR 5072-1\(e\)\(3\)](#). However, throughout the national emergency, and pursuant to the CARES Act authorizations and JCUS' suspension of its broadcasting policy, each of the district courts within the First Circuit issued a number of orders that allowed for remote proceedings for civil and criminal proceedings. See, e.g., District of Massachusetts' [General Order 23-3](#) and [General Order 23-4](#) (both issued March 10, 2023).

² See [DPR Order Misc. No. 20-0088](#) (December 19, 2022).

³ See [DRI LR Cv 78](#) (March 14, 2022). Additionally, the rule provides that "[i]f a video conference proceeding is authorized by the presiding judge, and the proceeding would otherwise be open to the public, the Clerk's Office shall make video and audio of the proceeding available as directed by the judge." See [id.](#)

⁴ The local rules of a few First Circuit bankruptcy courts contemplate the continued use of remote access. See [Bankr. DMA LR 9037-1\(b\)](#) (explaining that photographing or recording any proceeding is prohibited, including an appearance made by telephone or videoconference); [Bankr. DNH AO 5073-2](#) (including information regarding videoconferencing by parties); and [Bankr. DRI LR 9074-1](#) (describing specific requests that parties would need to file for remote attendance at court proceedings with different motions being filed for evidentiary or non-evidentiary hearings, respectively).

⁵ See [DME General Order 2023-01](#) (April 18, 2023).

⁶ See [DNH ADM-1, Order 23-9](#) (April 3, 2023).

⁷ See [id.](#) The District of New Hampshire also adopted a local rule allowing defense counsel to sign a document on behalf of a criminal defendant, with defendant's permission, for initial appearances or arraignments conducted by videoconference pursuant to Federal Rules of Criminal Procedure 5(g) or 10(c). See [DNH ADM-1, Order 23-11](#) (April 3, 2023).

broadcasting local rule to "permit the Clerk to make available a narrowcast⁸ transmission of civil proceedings held by videoconference pursuant to LR Cv 78[, see supra note 3,] and courtroom proceedings in civil and select criminal cases," clarifying that narrowcast transmission is not considered prohibited broadcasting under the federal rules or the Judicial Conference of the United States' policies.⁹

⁸ "Narrowcast" is defined in the rule as the "live transmission, through technical means controlled by the court, of ongoing court proceedings to a selected audience." See DRI LR Gen 112 (June 1, 2023) (citing In re Sony BMG Music et al., 564 F.3d 1, 2 n.1 (1st Cir. 2009)).

⁹ See id.

Appendix 3

JCUS and First Circuit Policy regarding Remote Public Access to Court Proceedings

Judicial Conference of the United States Policy

Prior to the pandemic and the Judicial Conference of the United States' (JCUS) temporary change in policy regarding broadcasting in federal courts, discussed *infra* pp. 1-2, the JCUS generally prohibited the "broadcast[ing], televis[ing], record[ing] and/or photograph[ing]" for "public dissemination" of criminal and civil proceedings in federal trial courts. See Guide to Judiciary Policy (Guide), Vol. 10, Ch. 4, §§ 410.10(a), and 420(b) (2020) ("A judge may authorize broadcasting, televising, recording, or taking photographs in the courtroom and in adjacent areas during investitive, naturalization, or other ceremonial proceedings. A judge may authorize such activities in the courtroom or adjacent areas during other proceedings, or recesses between such other proceedings, only: (1) for the presentation of evidence; (2) for the perpetuation of the record of the proceedings; (3) for security purposes; (4) for other purposes of judicial administration; (5) for the photographing, recording, or broadcasting of appellate arguments; or (6) consistent with pilot programs approved by the Judicial Conference (e.g., JCUS-SEP 2010, pp. 11-12).").

Due to the pandemic, the JCUS suspended its policy prohibiting the "broadcasting" of court proceedings to allow the public and media audio access to civil court proceedings. See Director Duff, March 31, 2020 Memorandum re: Use of Teleconference Technology to Provide the Public and Media Access to Court Proceedings, <https://jnet.ao.dcn/about-ao/directors-office/teleconference-technology-provide-access-court-proceedings>. The Administrative Office of the U.S. Courts also found that Federal Rule of Criminal Procedure 53 does not prohibit use of the video/teleconferencing of specified proceedings authorized by the CARES Act "to provide access to the usual participants and observers of the criminal proceedings identified in the Act," including the public and the press. See Director Duff, April 2, 2020 Memorandum re: Guidance on the Use of Video and Teleconference Technology to Provide Access to the Public and the Press in Criminal Proceedings, <https://jnet.ao.dcn/about-ao/directors-office/guidance-use-video-and-teleconference-technology-provide-access-public-and-press-criminal-proceedings>. With respect to civil and bankruptcy proceedings, the JCUS' suspension of its policy prohibiting "broadcasting" was originally set to expire upon the JCUS' finding "that the emergency conditions due to the emergency declared by the President with respect to COVID-19 are no longer materially affecting the functioning of the federal courts generally or a particular district." See Director Duff, March 31, 2020 Memorandum re: Use of Teleconference Technology to Provide the Public and Media Access to Court Proceedings, *supra*. This period was subsequently extended to "120 days after the [JCUS] finds that the emergency conditions due to the emergency declared by the President with respect to COVID-19 are no longer materially affecting the functioning of the federal courts generally or a particular district." See JCUS-SEP 2022, p. 11.

Effective May 24, 2023, the JCUS Executive Committee found that emergency conditions with respect to COVID-19 were no longer materially affecting the functioning of the federal courts generally or a particular district. See Director Mauskopf, May 8, 2023 Memorandum re: COVID-19 Exception Permitting Remote Audio Public Access to Civil and Bankruptcy Proceedings Available Through September 21, 2023, <https://jnet.ao.dcn/about-ao/ao->

[directors-office/covid-19-exception-permitting-remote-audio-public-access-civil-and-bankruptcy-proceedings-available-through-september-21-2023](#). Therefore, 120 days thereafter, on September 21, 2023, the temporary broadcasting policy exception for civil and bankruptcy proceedings expired. See id.

Based on "lessons learned during the pandemic," on September 22, 2023, the JCUS adopted the recommendation provided by the Committee on Court Administration and Case Management (CACM) to revise the broadcasting policy "to permit a judge presiding over a civil or bankruptcy non-trial proceeding, in his or her discretion, to authorize live remote public audio access to any portion of that proceeding in which a witness is not testifying, taking care to include measures, consistent with the parties' responsibilities, to safeguard any confidential, sensitive, or otherwise protected information." See id.; and Director Mauskopf, September 18, 2023 Memorandum re: Remote Access Policy Update, <https://jnet.ao.dcn/about-ao/ao-directors-office/remote-access-policy-update>. See also JCUS-SEP 2023, p. 10; and Guide, Vol. 10, Ch. 4, §§ 410.10(c), and 420(b). Notably, "the [JCUS] policy change addresses only public access and does not impact a judge's authority to use tele- and videoconferencing technology to facilitate civil and bankruptcy proceedings in the appropriate case with respect to case participants, including parties, counsel, witnesses, and interpreters." See Director Mauskopf, September 18, 2023 Memorandum re: Remote Access Policy Update, supra. The JCUS has instructed CACM to continue "exploring possible ways to further expand remote public access to civil and bankruptcy proceedings."¹ See id.

First Circuit Judicial Council Policy

On June 12, 1996, in response to the JCUS' urging for each circuit judicial council to adopt an order prohibiting broadcasting in district courts, the First Circuit Judicial Council adopted a resolution prohibiting "the taking of photographs and radio and television coverage of proceedings in the United States district courts within the circuit, except as otherwise provided for ceremonial occasions."² Additionally, each of the district courts in the First Circuit adopted local rules barring the photographing, recording, or broadcasting of court proceedings with, in some cases, exceptions for certain, ceremonial or special proceedings (e.g., naturalizations, investitures, or similar ceremonies) or as expressly authorized by the court. See Appendix 2.

In light of the JCUS' suspension of its broadcasting policy in response to COVID-19, in March 2020, the First Circuit Judicial Council suspended its 1996 resolution prohibiting the

¹ At CACM's request, in 2023, the Federal Judicial Center (FJC) convened a number of focus groups comprised of district, magistrate, and bankruptcy judges in order to gather information regarding the judges' experiences with providing remote public access to evidentiary civil and bankruptcy proceedings. See Summary of the March 2024 Report of the JCUS Committee on Court Administration and Case Management, at pp. 7-8. The FJC, which is preparing a written report of its findings, concluded that "the majority of participants generally did not report problems with or concerns about allowing remote public access to proceedings with witness testimony." See id. at p. 7. CACM has also agreed to ask its broadcasting subcommittee to consider developing a recommendation regarding expanded remote public access to contested bankruptcy proceedings, and requested that its cameras and broadcasting subcommittee examine whether there are certain platforms that are best suited to providing remote public audio access to proceedings and how to provide public access to entirely remote proceedings. See id. at pp. 10-11.

² Several judicial councils around the country adopted similar orders or policies pertaining to the prohibition of cameras in the courtroom, in response to the JCUS' broadcasting restrictions.

broadcasting of proceedings in First Circuit district courts to allow for contemporaneous audio access to district court proceedings, for so long as the COVID-19 emergency continued, as determined by the JCUS. Subsequently, on June 12, 2023, the First Circuit Judicial Council further suspended its current 1996 resolution to allow for public audio access to civil and bankruptcy proceedings in the First Circuit.

*Public and Media Access Recommendations*³

Recommendation 1: The First Circuit Judicial Council should consider adopting a policy that allows for judicial discretion as to broadcasting by the court for public access consistent with JCUS policy.

Due to the information learned throughout the pandemic, as reflected in the responses to this Committee's surveys, and given the change to JCUS policy, the Committee recommends that the First Circuit Judicial Council adopt a policy that allows for judicial discretion as to broadcasting for public access consistent with JCUS policy.

To that end, the Committee suggests the following language for any such policy:

The Circuit prohibits, unless otherwise allowed in this policy, photographing, recording or broadcasting of proceedings in the United States district courts within the Circuit except as otherwise provided for ceremonial occasions. This policy does not prohibit district courts and bankruptcy courts from adopting local rules to permit a court's broadcasting of civil proceedings to allow remote public access provided that such rules do not conflict with federal law, the Federal Rules of Criminal, Civil, or Bankruptcy Procedure or JCUS policy.

Recommendation 2: Each district court and bankruptcy court in the First Circuit should consider an amendment of their respective Local Rule so that it continues to prohibit recording/broadcasting by any third party, but allows broadcasting by the court, consistent with JCUS policy.⁴ See Appendix 2.

Using the District of Massachusetts' Local Rule 83.3(a) as a model, an example of an amendment (in the boldface, underlined text below) would be as follows:

Except as specifically provided in these rules or by order of the court, no person shall take any photograph, make any recording, or make any broadcast by any means, in the course of or in connection with any proceedings in this court, on any floor of any building on which proceedings of this court are or, in the regular course

³ The recommendations in this section regarding remote public and media access to court proceedings assume further expansion of JCUS policy to allow for video remote public access of court proceedings.

⁴ Over three-quarters of respondents to the district bar survey agree that the public and media should have remote access to civil trials, with slightly fewer respondents indicating the same for motion hearings, and roughly half of respondents favor public and media remote access to scheduling, status, pre-trial, and final pre-trial conferences. See Attachments 1 and 2. Additionally, the majority of respondents to the bankruptcy bar survey indicated that the public and media should be able to access bankruptcy case proceedings and adversary proceedings remotely. See Attachments 1 and 3.

of the business of the court, may be held. **Nothing in these rules shall prohibit the court from permitting remote public access to court proceedings in civil cases by broadcasting by any means under the control of the court, as authorized by First Circuit policy. Such broadcasting shall be at the discretion of the presiding judge in the case.**⁵

Recommendation 3:

(a) The solemnity and seriousness of the proceedings should be maintained.

The solemnity and seriousness of the proceedings should be maintained even as members of the public access proceedings that are now largely being held in person.⁶ Should video public access be authorized, the virtual "waiting room" for members of the public should instruct them that they are about to enter a court proceeding (which, as some courts have done, may be indicated by the court seal and/or text indicating the particular case name and case number) and that they must abide by the court's local rule barring the recording or broadcasting of the proceedings (which some courts have listed in full text on the waiting room screen) and should inform participants to mute and turn off their cameras unless otherwise instructed by the court. Formal calling of the case by the courtroom deputy to indicate the start of the court session is advisable and having the deputy clerk repeat aloud the local rule barring recording or broadcasting may also be prudent.

(b) Remote public access to in-person proceedings should follow the same rules of decorum that are recommended for remote or hybrid criminal, civil, and bankruptcy proceedings.

Recommendation 4: The control of the public gallery on the videoconferencing platform (e.g., Zoom) should remain in the court's control during the proceeding.

The control of the public gallery on Zoom should remain in the court's control during the proceedings as it would be if these members were present in the courtroom. Although the posting of the Zoom link for a particular proceeding could be listed on a court's public website or the case docket, some district courts (e.g., the District of Massachusetts) required public attendees to provide an email address to register for logging in for Zoom access to proceedings. Such registration was not particularly onerous as participants could do so on the same day as the

⁵ In the aftermath of the pandemic (and prior to expiration of the CARES Act authorization or suspension of the temporary exception to the JCUS policy), the District of Rhode Island adopted a local rule that expressly allows for videoconferencing in civil cases:

At the discretion of the presiding judge, videoconferencing may be used to conduct proceedings in civil cases. If a video conference proceeding is authorized by the presiding judge, and the proceeding would otherwise be open to the public, the Clerk's Office shall make video and audio of the proceeding available as directed by the judge.

DRI LR Cv 78. See DRI LR Gen 112 (as amended on March 14, 2022 to allow for "transmission of video and audio of proceedings by the Clerk's Office in civil cases at the presiding judge's discretion as outlined in LR Cv 78, and is not considered prohibited broadcasting").

⁶ See Report, § II (referencing technology and decorum for criminal, civil, and bankruptcy proceedings).

proceedings and such registration provides another opportunity to remind attendees that they will be attending a court proceeding subject to the rules of the court.

Recommendation 5: The courts in the circuit should explore other feasible technological options for remote public access that would have similar benefits to the Zoom conferencing platform (i.e., an application that is readily accessible; cost effective to the court; permits control of access by the court), but also have additional features that would be beneficial for this use (i.e., integrated into courtroom technology).⁷

The platform that each of the district courts in the First Circuit has used, Zoom, reflects what the bar overwhelmingly recommends as the preferred platform.⁸ Zoom is perhaps better known and more readily accessible than other platforms currently available and, since it has been in regular use by the courts, it is familiar to court personnel.⁹ However, the Zoom conferencing application was built for conferencing between active participants, which requires that the members of the public and the courtroom join a Zoom conference so that the courtroom becomes a participant in the videoconference. This arrangement requires more active court management to ensure that public remote viewers do not interrupt court proceedings (i.e., ensuring that attendees leave their cameras and audio off) or overhear matters that were not intended for the public proceedings (i.e., when in-person proceedings are in recess, but counsel and clients may still be in the courtroom). This is a particular concern for hybrid proceedings where proceedings are in person, but some members are observing by remote means. The degree of active management by court personnel could be reduced by using a webinar-style videoconference.

If the circuit seeks to prioritize remote public access to court proceedings, it may want to consider supporting the funding of courtroom technology upgrades that include dedicated technological options with appropriate programming and controls. An on-demand, external stream with native controls programmed into the courtroom control panel to ensure that judges and courtroom deputies can easily toggle the courtroom stream on and off, as well as visual indicators to court participants that the external, public stream is on, will reduce the unintended consequences of non-public proceedings or conversations being broadcast. Such upgrades may not be financially feasible at this point, but worth investigating if remote public access becomes a norm for the district courts in the circuit.

⁷ See [Judge Willie J. Epps & Cailynn D. Hayter, *Zoomed in to Justice: Remote Proceedings During a Pandemic*, 60 *Judges' Journal* 10 \(2021\)](#) (emphasizing the importance of maintaining a secure platform for engaging in remote proceedings).

⁸ Over three quarters of the respondents to the district bar survey and their clients, respectively, preferred Zoom. See Attachments 1 and 2. The majority of the respondents of the bankruptcy bar survey and their clients, respectively, preferred Zoom. See Attachments 1 and 3.

⁹ The Committee notes that videobroadcasting (as opposed to broadcasting with audio only) during the pandemic was better suited for public access given the nature of the district court proceedings. That is, unlike appellate court hearings, trial court matters can involve, for example, conferences or hearings with multiple attorneys for multiple parties, examination of witnesses, impact statements by victims or allocution by defendants where audio alone may not capture who is speaking or the manner of delivery, both critical to the public's understanding of the proceedings.



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MEMORANDUM

TO: Post-Pandemic Operations Committee Members -- Chief Judge Arias-Marxuach, Chief Judge McConnell, Judge Woodcock, Judge Casper, Judge Elliott, Magistrate Judge Robertson, Bankruptcy Judge Bostwick, Magistrate Judge Lynch, Monica Bigley, Tracy Uhrin, Frank Perry, Félix Martínez, and Julio Davila

CC: Chief Judge Barron, Susan Goldberg, Kelly McQuillan, and Michael Andrews

FROM: Florence Pagano, Gina Riccio, and Kristen Vogl

DATE: January 26, 2023

SUBJECT: First Circuit Judicial Council Post-Pandemic Operations Committee -- Executive Summary of Bar Survey Results

I. Executive Summary of District Bar's Survey Results (Attachment 2)

The results of the District Bar's Survey are summarized below, by survey question. Major themes include:

- Three-quarters of respondents are civil litigators with five or more years of experience.
- Roughly one-third of respondents favor the use of virtual technology for some civil proceedings, but not others, and are generally in favor of the presumptive use of virtual technology for civil proceedings, respectively.
- Nearly three-quarters of respondents support the routine use of remote technology for civil scheduling and status conferences, and almost as many respondents agree that non-evidentiary motion hearings should be held remotely as a matter of regular course or upon request.
- The vast majority of respondents agree that civil trials should never or seldom be held remotely.
- Over three-quarters of respondents agree that the public and media should have remote access to civil trials, with slightly fewer respondents indicating the same for motion hearings, and roughly half of respondents favor public and media remote access to scheduling, status, pre-trial, and final pre-trial conferences.

- Far fewer respondents answered the questions pertaining to criminal proceedings, noting that they were civil practitioners.
- Of those respondents who answered, just under half indicated that some criminal proceedings are conducive to the use of virtual technology, while others should always be held in person.
- Almost all of those who responded to the question indicated that criminal status conferences should be held remotely as a matter of course, with a third to a half of respondents agreeing that initial appearance/arraignments, detention hearings, non-evidentiary motion hearings, Rule 11 plea hearings, and pre-trial conferences should be held remotely upon request.
- A majority of those who answered the question agree that trials, sentencings, and evidentiary motion hearings in criminal proceedings should seldom or never be remote.
- A significant majority of those who answered the question agree that the public and media should have remote access to all of the enumerated criminal proceedings.
- Over three-quarters of respondents have a more favorable view of the use of virtual technology to hold court proceedings than prior to the pandemic, and the same prefer Zoom (both personally and their clients) as their video platform.
- Almost three-quarters of respondents indicated that there were participants who attended remote court proceedings who would not have attended in person, and the same did not find that there was significant difficulty accessing remote court proceedings.

Executive Summary by Survey Question - District Bar's Survey

Q1: What kind of litigator are you?

- One thousand and sixty-four attorneys responded to the survey, with over three quarters of respondents (76%) being civil litigators with five (or more) years of experience, and over 17% of respondents being criminal litigators with five (or more) years of experience. The remaining respondents were civil litigators with fewer than five years of experience (6%) and criminal litigators with fewer than five years of experience (nearly 1%).

Q2: If you are a litigator with fewer than five years of experience, have you virtually attended court proceedings in which you were not involved as an attorney for educational or other purposes?

- Over 87% of respondents found the question not applicable. Approximately 7% of survey respondents indicated that they were litigators with fewer than five years of experience and had not virtually attended court proceedings for educational or other purposes, and 6% indicated that they were litigators with fewer than five years of experience and had virtually attended court proceedings for educational or other purposes.
- Comments:
 - Several respondents noted that they had the opportunity to observe senior attorneys, specifically on cases in which they assisted with drafting and research.
 - One respondent indicated that he or she was senior attorney and stated that this was a good way to keep the newer lawyers happily engaged.
 - Two respondents noted that it would be helpful or great for others to observe virtual court proceedings.

Q3: Please indicate your overall view about using virtual technology (videoconferencing and teleconferencing) for civil proceedings, outside of the circumstances of a pandemic or other emergency.

- Over one-third of respondents (36%) believe some civil proceedings are conducive to being held using virtual technology, while others should always be held in person. Nearly 29% of respondents are generally in favor of the presumptive use of virtual technology for civil proceedings, when authorized by applicable laws and policies. Over 23% of respondents are generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for civil proceedings, when authorized by applicable laws and policies. The remaining respondents found the question not applicable (9%) or were opposed to judges' using virtual technology for any civil proceedings, except in rare circumstances (2%).
- Comments:
 - The respondents' comments proportionally matched the percentages indicated above about their overall views about using virtual technology for civil proceedings.
 - Multiple respondents noted the environmental benefit of remote proceedings.
 - Some respondents stated that a determination needs to be made on a case-by-case basis between the judge and the attorneys as to whether to hold civil proceedings using virtual technology.
 - Several respondents noted various concerns with witness credibility during virtual hearings, including the potential for a witness to be coached off-screen or difficulties with assessing witness credibility.

Q4: For each of the following civil proceedings, please mark the box as to how often remote proceedings should be conducted:

- Nearly 75% of respondents indicated that scheduling/status conferences should be remote as a matter of regular course, and approximately 68% of respondents believe that non-evidentiary motion hearings should be remote as a matter of regular course or as requested by the parties. Almost half of respondents (47%) believe that initial pre-trial conferences should be remote as a matter of regular course, while 26% of respondents indicated that final pre-trial conferences should be remote as a matter of regular course. Over one-third of respondents indicated that evidentiary motion hearings (38%) and mediations (37%) should be conducted remotely as requested by the parties. The majority of respondents believe that jury trials and bench trials should never or seldom be conducted remotely (81% and 61%, respectively).
- The specific findings can be found in the chart below.

	NEVER	SELDOM	AS REQUESTED BY THE PARTIES	OFTEN	AS A MATTER OF REGULAR COURSE	NOT APPLICABLE	TOTAL
Scheduling/Status Conference	0.96% 9	0.85% 8	8.81% 83	8.28% 78	74.73% 704	6.37% 60	942
Non-Evidentiary Motion Hearing	2.66% 25	5.53% 52	25.85% 243	17.66% 166	41.91% 394	6.38% 60	940
Evidentiary Motion Hearing	21.11% 198	21.43% 201	38.06% 357	5.44% 51	7.36% 69	6.61% 62	938
Mediation	10.39% 97	14.24% 133	37.37% 349	8.89% 83	22.16% 207	6.96% 65	934
Initial Pre-Trial Conference	2.98% 28	7.87% 74	23.40% 220	12.13% 114	47.02% 442	6.60% 62	940
Final Pre-Trial Conference	13.71% 129	17.32% 163	27.84% 262	8.61% 81	25.61% 241	6.91% 65	941
Bench Trial	40.32% 379	21.06% 198	25.43% 239	2.23% 21	4.15% 39	6.81% 64	940
Jury Trial	66.38% 624	14.15% 133	9.68% 91	0.32% 3	2.13% 20	7.34% 69	940

Q5: If you wish, please explain why, in your experience, it is or is not appropriate to use virtual technology for particular types of civil proceedings.

- Many respondents noted the benefits of conducting civil proceedings using virtual technology, including its efficiency, cost-effective and expeditious nature, convenience, availability for out-of-state parties, witnesses, and families to attend proceedings, and accessibility for individuals with disabilities.
- Multiple respondents emphasized that virtual technology should be used for non-evidentiary matters, but not for evidentiary matters or trials.
- A few respondents noted the following negative aspects of remote proceedings: the potential prejudicial impact resulting from difficulties in introducing and using evidence; the impersonal nature of the bar after remote court proceedings were established; the ability of jurors or witnesses to engage in unethical behavior; and the barriers to communication and the argument process.

Q6: For each of the following civil proceedings, please mark the box below to indicate whether the public and media should be able to access the in-court proceeding remotely:

- Over three quarters of respondents (79% and 78%, respectively) indicated that the public and media should be able to access jury trials and bench trials remotely, and approximately two-thirds of respondents (67% and 66%, respectively) indicated that the public and media should be able to access in-court evidentiary motion hearings and non-evidentiary hearings remotely. Approximately half of respondents (50%, 49%, and 48%, respectively) indicated that the public and media should be able to access in-court final pre-trial conferences, scheduling/status conferences, and initial pre-trial conferences remotely.

Q7: If you wish, please explain why, in your experience, it is or is not appropriate to permit the public and media to access particular types of civil proceedings remotely:

- Multiple respondents mentioned the need for confidential or sensitive information to be protected.
- Multiple respondents noted that the public and media should be able to access civil proceedings remotely in the interest of full transparency.

- Several respondents noted an ongoing concern that the public or media may improperly record proceedings.
- A few respondents stated that, if the parties or attorneys were in-person, then the public or media should be able to attend in person. However, if parties or attorneys were attending remotely, then the public or media could attend civil proceedings remotely.
- Some respondents noted concerns with the public or media having easier access to certain proceedings (e.g., status and pre-trial conferences), such as the potential for the public or media to misunderstand proceedings or take certain statements out of context and the need for the court and parties to speak "off the record."

Q8: Please indicate your overall view about using virtual technology (videoconferencing and teleconferencing) for criminal proceedings, outside of the circumstances of a pandemic or other emergency.

- Approximately 48% of respondents found the question not applicable. Over 23% of survey respondents (45% of respondents who found the question to be applicable) believe some criminal proceedings are conducive to being held using virtual technology, while others should always be held in person. Approximately 17% of survey respondents (32% of respondents who found the question to be applicable) are generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for criminal proceedings, when authorized by applicable law and policies. Six percent of respondents are generally in favor of the presumptive use of virtual technology for criminal proceedings, when authorized by applicable laws and policies. The remaining respondents (6%) are opposed to judges' using virtual technology for any criminal proceedings, except in rare circumstances.
- Comments:
 - Most respondents who commented noted that they did not practice criminal law.
 - Some respondents suggested that discretion of whether virtual technology should be used for criminal proceedings should be left to the defendant.
 - Multiple respondents stated that it is important for defendants to have their day in court and that remote proceedings limit communication with counsel.

Q9: For each of the following criminal proceedings, please mark the box as to how often remote proceedings should be conducted:

- Approximately 39% of respondents found the question not applicable. The majority of respondents who found the question applicable (92%) believe that status conferences should be conducted remotely as a matter of regular course, often, or as requested by the parties. A plurality of respondents who found the question applicable believe that the following criminal proceedings should be conducted remotely as requested by the parties: non-evidentiary motion hearings (49%), initial pre-trial conferences (43%), Rule 11 plea hearings (40%), final pre-trial conferences (38%), detention hearings (36%), and initial appearances/arraignments (32%). A majority of respondents who found the question applicable believe that the following criminal proceedings should seldom or never be conducted remotely: trials (85%), sentencings (67%), and evidentiary motion hearings (61%).
- The specific findings can be found in the chart below.

	NEVER	SELDOM	AS REQUESTED BY THE PARTIES	OFTEN	AS A MATTER OF REGULAR COURSE	NOT APPLICABLE	TOTAL
Initial Appearance/ Arraignment	10.40% 81	10.40% 81	19.38% 151	4.88% 38	15.66% 122	39.28% 306	779
Detention Hearing	13.75% 107	13.11% 102	22.11% 172	2.70% 21	9.00% 70	39.33% 306	778
Status Conference	2.83% 22	1.93% 15	20.05% 156	7.58% 59	28.28% 220	39.33% 306	778
Non-Evidentiary Motion Hearing	5.78% 45	5.78% 45	29.53% 230	6.16% 48	13.61% 106	39.15% 305	779
Evidentiary Motion Hearing	24.81% 193	12.34% 96	18.38% 143	1.67% 13	3.98% 31	38.82% 302	778
Rule 11 Plea Hearing	17.01% 132	9.02% 70	24.36% 189	2.84% 22	7.35% 57	39.43% 306	776
Initial Pre-Trial Conference	7.46% 58	4.24% 33	25.96% 202	5.91% 46	16.97% 132	39.46% 307	778
Final Pre-Trial Conference	12.85% 100	8.87% 69	22.88% 178	3.34% 26	12.98% 101	39.07% 304	778
Trial	44.81% 350	7.17% 56	6.15% 48	0.26% 2	2.94% 23	38.67% 302	781
Sentencing	28.66% 223	12.34% 96	14.52% 113	1.41% 11	4.24% 33	38.82% 302	778

Q10: If you wish, please explain why, in your experience, it is or is not appropriate to use virtual technology for particular types of criminal proceedings:

- Many respondents noted that they did not practice criminal law and could not respond to the question or referenced their answer to Questions 3, 4, or 8, see supra pp. 12-14.
- Multiple respondents emphasized the importance of in-person court proceedings when defendants are required to be present, if the court is required to make credibility determinations, for evidentiary or contested hearings, and to promote communication between defendants and counsel. A few of these respondents also noted the impersonal nature of virtual court proceedings and the potential negative impacts on how defendants are perceived.
- A few respondents noted the benefits of conducting routine or simple court proceedings remotely.
- Some respondents noted that the defendant's preference should be taken into consideration by the court on whether to appear in person or remotely.

Q11: For each of the following criminal proceedings, please mark the box below to indicate whether the public and media should be able to access the in-court proceeding remotely:

- Approximately 36% of respondents found the question not applicable. The majority of respondents who found the question applicable indicated that the public and media should be able to access all of the listed in-court proceedings remotely, as follows: sentencings (88%), trials (87%), initial appearances/arraignments (80%), Rule 11 plea hearings (80%), detention hearings (78%), non-evidentiary motion hearings (75%), status conferences (61%), evidentiary motion hearings (77%), initial pre-trial conferences (60%), and final pre-trial conferences (60%).

Q12: If you wish, please explain why, in your experience, it is or is not appropriate to permit the public and media to access particular types of criminal proceedings remotely:

- Most respondents who commented stated that they did not practice criminal law.

- Multiple respondents noted the importance of transparency of the courts, the ability to increase public access, and the ease of access for victims.
- Some respondents noted concerns with improper recording of proceedings, the potential for the public or media to misunderstand the proceedings or take certain statements out of context, the need for the court and parties to speak "off the record," and issues with the client's or the family's safety.
- A few respondents stated that, if the court proceeding is held in person, the public and/or media should be able to attend in person. However, if the court proceeding is held remotely, the public and/or media should be able to attend the proceeding remotely as well.

Q13: Which of the following statements best describes your views, before and after the onset of the pandemic, about the use of virtual technology (videoconferencing and teleconferencing) to hold court proceedings?

- Over 81% of respondents' views about the use of virtual technology to hold court proceedings are more favorable than they were prior to the pandemic. Approximately 15% of respondents' views have not changed, and only 4% of respondents found that their views about the use of virtual technology to hold proceedings are less favorable than they were prior to the pandemic.
- Comments:
 - The majority of respondents who commented noted the effectiveness, efficiency, and ease of use of virtual technology to hold court proceedings. Some respondents also highlighted that the technology is already in place and is a "game changer," especially for parents.
 - Multiple respondents noted that virtual technology should only be used for routine or non-evidentiary proceedings and that anything more complicated or contested should be in-person. Additionally, the same respondents emphasized a lack of immediate and personal exchanges and interactions when proceedings are held remotely.
 - Some respondents noted experiencing difficulties with document presentation and witness examination during remote court proceedings.
 - A few respondents noted that remote proceedings can have a negative effect on the rights of defendants or can undermine the democratic concept of due process, or did not approve of using virtual technology at all.

Q14: Which of the following video platforms do you prefer using?

- The majority of respondents (78%) prefer Zoom, 14% of respondents prefer Microsoft Teams, 4% of respondents prefer WebEx, and the remaining respondents prefer an unlisted platform (2%), Google Hangouts (1%), or Skype (<1%), or found the question not applicable (1%).
- Comments:
 - Multiple respondents noted that they did not have a preferred video platform.
 - Two respondents stated that they did not prefer any of the enumerated video platforms.
 - One respondent noted a preference for the telephone.
 - One respondent stated that the participants' familiarity with the video platform is the most important determination.

Q15: If you have participated in remote proceedings in this federal district court, were you satisfied with the level of technological information/assistance with videoconferencing technology?

- Most respondents (71%) indicated that they are satisfied with the level of technical information/assistance with videoconferencing technology, while 28% of respondents found this question not applicable, and 2% of respondents are not satisfied with the level of technological information/assistance provided.
- Comments:
 - Multiple respondents noted that court staff were helpful, knowledgeable, and responsive to technological issues.
 - A few respondents noted poor experiences with remote proceedings, including a having "not a good experience" with a nine-day bench trial, audio issues, and Internet connectivity issues.

Q16: To your knowledge, which of the following video platforms generally do your clients prefer using to attend remote proceedings?

- Most respondents (77%) indicated that their clients prefer using Zoom to attend remote proceedings, while approximately 11% of respondents indicated that their clients prefer Microsoft Teams. Approximately 8% found the question not applicable, and the remaining respondents indicated that their clients preferred using an unlisted platform (2%), WebEx (2%), Skype (<1%), or Google Hangouts (<1%).
- Comments:
 - Multiple respondents indicated that they do not know what video platform their clients prefer using to attend remote proceedings.
 - Three respondents stated that their clients prefer using Zoom and Microsoft Teams.
 - Two respondents noted that, if the client is incarcerated, the client has no choice.

Q17: To the best of your knowledge, are there participants who attended remote court proceedings that would not have been able to do so in person?

- Most respondents (70%) indicated that there were participants who attended remote proceedings that would not have been able to do so in person, 17% of respondents indicated that there were not, and 13% of respondents found this question not applicable.
- Comments:
 - Respondents who commented noted that: family members have been able to attend remote proceedings; remote proceedings have helped bridge the gap between the mainland and Puerto Rico; remote proceedings have made representing clients out of state easier; both lay and expert witnesses can more easily attend proceedings; and remote court proceedings are helpful for out-of-state witnesses that are unable to travel, are efficient and convenient, and are helpful for many different health reasons.

Q18: Have you found that a significant number of clients or members of the public have not had access to or knowledge about necessary technology, or otherwise have had problems accessing remote court proceedings?

- The majority of respondents (73%) indicated that they have not found that a significant number of clients or members of the public have had problems accessing remote court proceedings. Nineteen percent of respondents indicated that a significant number of

clients or members of the public have had problems accessing remote court proceedings, and 9% found the question not applicable.

- *If your answer to this question was yes, do you have any recommendations for steps the court could take to address this issue:*
 - Multiple respondents suggested offering telephonic appearances, having dedicated staff members to facilitate and troubleshoot remote access, creating infographics to show how to use the technology, creating specific spaces in the courthouse for clients to access the equipment, and holding classes to train the public on how to use the court-provided technology.
 - A few respondents noted that it would be helpful for the court to publish prominently on the home page of its website how attendees can register to attend remote proceedings.
 - Multiple respondents stated that elderly clients or members of the public have more difficulty using technology to access remote proceedings and that some people do not have the proper equipment (e.g., phone, computer, high-speed Internet) to access remote proceedings.
 - Some respondents noted that remote technology should not be used.

Q19: Please provide any additional information you think is relevant regarding remote court proceedings in the federal courts.

- The majority of respondents who commented were in favor of continuing with remote court proceedings to some degree. Specifically, respondents noted: cost savings for the client and reduced travel expenses; efficiency; greater access to justice; improved scheduling options; ease of access for family and friends; no loss of quality of court hearings; avoidance of delays due to weather, travel, or illness; and the ease of remote court proceedings for indigent defendants who live out of state.
- Multiple respondents also noted their disfavor with remote court proceedings, citing to a lack of sufficient substance or urgency, words being lost due to bandwidth and speaking over each other, the invaluable nature of being in the same room, erosion of the public faith in the courts, abuse of the remote court system, and some proceedings being best conducted in person.
- Respondents suggested that:
 - Virtual technology should be adopted as part of the Local Rules;
 - Virtual technology should be free and easy to understand and access;
 - Guidelines should be created to establish which hearings will always be by videoconferencing, which will never be held remotely, and which will be left to the discretion of the judges or suggestion of the parties;
 - Virtual technology should be permitted when lead counsel are out-of-state, especially for conferences and non-evidentiary hearings;
 - A technological upgrade should be given to detention facilities to allow easy communication with counsel;
 - There should be greater standardization of the use of virtual technology;
 - The court should make rules about what to do if Zoom fails and a client or attorney is not able to connect and attend a hearing; and
 - There should be clear instructions for members of the public to access remote proceedings, including instructions on how to download the Zoom application onto a cell phone.

II. Executive Summary of Bankruptcy Bar's Survey Results (Attachment 3)

The results of the Bankruptcy Bar's Survey are summarized below, by survey question. Major themes include:

- Just over half of respondents are primarily consumer bankruptcy practitioners and just under half are primarily business practitioners, both with five or more years of experience.
- Just under half of respondents are generally in favor of the presumptive use of virtual technology for bankruptcy cases and adversary proceedings.
- Roughly two-thirds of respondents support the routine use of remote technology for all routine motions and conferences in bankruptcy cases.
- Respondents are divided on whether contested and evidentiary matters in bankruptcy cases should be conducted remotely at the request of the parties or seldom/never conducted remotely.
- The majority of respondents agree that the public and media should have remote access to proceedings in bankruptcy cases.
- Just under two-thirds of respondents support the routine use of remote technology for scheduling/status/pre-trial conferences and non-evidentiary motion hearings in adversary proceedings, with over half of respondents indicating that trials should seldom or never be held remotely, and under half of respondents indicating that evidentiary and dispositive motion hearings should be held remotely at the request of the parties.
- The majority of respondents agree that the public and media should have remote access to all of the enumerated adversary proceedings.
- Over three-quarters of respondents have a more favorable view of the use of virtual technology to hold court proceedings than prior to the pandemic.
- Just under two-thirds of respondents prefer Zoom as their video platform, with over two-thirds of respondents indicating that their clients prefer Zoom.
- Almost three-quarters of respondents indicated that there were participants who attended remote court proceedings who would not have attended in person, and over three-quarters of respondents did not find that there was significant difficulty accessing the remote court proceedings.

Executive Summary by Survey Question - Bankruptcy Bar's Survey

Q1: What kind of bankruptcy practitioner are you?

- One hundred and one attorneys responded to the survey, with over half of respondents (55%) being primarily consumer bankruptcy practitioners with five (or more) years of experience, and 43% of respondents being primarily business bankruptcy practitioners with five (or more) years of experience. The three remaining respondents were primarily business bankruptcy practitioners with fewer than five years of experience (2%, two respondents) and a primarily consumer bankruptcy practitioner with fewer than five years of experience (1%, one respondent).

Q2: If you are a practitioner with fewer than five years of experience, have you virtually attended court proceedings in which you were not involved as an attorney for educational or other purposes?

- Most practitioners (89%) found this question to not be applicable. Five respondents (6%) indicated that they had virtually attended court proceedings in which they were not involved as an attorney for educational or other purposes, while four respondents (5%) had not done so.

Q3: Please indicate your overall view about using virtual technology (videoconferencing and teleconferencing) for bankruptcy cases and adversary proceedings, outside of the circumstances of a pandemic or other emergency.

- A plurality of respondents (approximately 49%) were generally in favor of the presumptive use of virtual technology for bankruptcy cases and adversary proceedings, when authorized by applicable laws and policies. Approximately 28% of respondents believe some bankruptcy cases and adversary proceedings are conducive to being held using virtual technology, while others should always be held in person. The remaining respondents (18% and 6%, respectively) were generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for bankruptcy cases and adversary proceedings, when authorized by applicable laws and policies or were opposed to judges' using virtual technology for bankruptcy cases and adversary proceedings, except in rare circumstances.
- Comments:
 - Several respondents appreciated the general use of virtual technology for bankruptcy cases and adversary proceedings, noting its efficiency and cost-savings.
 - A plurality of respondents who commented noted that non-evidentiary hearings should be held by video or audio technology while trials and evidentiary hearings are best conducted in person.

Q4: For each of the following proceedings in bankruptcy cases, please mark the box as to how often remote proceedings should be conducted:

- Over 67% of respondents stated that chapter 13 routine motion sessions, routine motion hearings in other chapters (7, 11, 11 sub. V, 12), and scheduling/status/pre-trial conferences should be conducted remotely as a matter of regular course in bankruptcy cases. Approximately 45% of respondents stated that contested matter/evidentiary motion hearings should be conducted remotely as requested by the parties, while 44% of respondents stated that they should seldom or never be conducted remotely. Approximately 31% of respondents indicated that chapter 11 major hearings should be conducted remotely as requested by the parties, while 25% of respondents indicated that they should seldom or never be conducted remotely, and 22% of respondents indicated that they should be held remotely as a matter of regular course.
- The specific findings can be found in the chart below.

	NEVER	SELDOM	AS REQUESTED BY THE PARTIES	OFTEN	AS A MATTER OF REGULAR COURSE	NOT APPLICABLE	TOTAL
Chapter 13 Routine Motion Session	3.19% 3	6.38% 6	11.70% 11	7.45% 7	67.02% 63	4.26% 4	94
Routine Motion Hearing in Other Chapters (7, 11, 11 sub. V, 12)	1.05% 1	7.37% 7	14.74% 14	8.42% 8	67.37% 64	1.05% 1	95
Scheduling/Status/Pre-Trial Conference	1.05% 1	5.26% 5	13.68% 13	10.53% 10	68.42% 65	1.05% 1	95
Chapter 11 Major Hearing (including first day orders, cash collateral, sales, plan confirmation, etc.)	12.63% 12	11.58% 11	30.53% 29	7.37% 7	22.11% 21	15.79% 15	95
Contested Matter/ Evidentiary Motion Hearing	22.92% 22	20.83% 20	44.79% 43	2.08% 2	9.38% 9	0.00% 0	96

Q5: If you wish, please explain why, in your experience, it is or is not appropriate to use virtual technology for particular types of proceedings in bankruptcy cases:

- Multiple respondents noted the efficiency of virtual technology.
- A number of the respondents who commented stated that it is important for counsel and witnesses to be in front of the court in an evidentiary context.
- Multiple respondents who commented noted the potential for technical difficulties.

Q6: For each of the following proceedings in bankruptcy cases, please mark the box below to indicate whether the public and media should be able to access the in-court proceeding remotely:

- The majority of respondents indicated that the public and media should be able to access in-court chapter 13 routine motion sessions, routine motion hearings in other chapters (7, 11, 11 sub. V, 12), scheduling/status/pre-trial conferences, chapter 11 major hearings, and contested matter/evidentiary motion hearings remotely. Responses were most favorable (74%) for the public's and media's attending in-court routine motion hearings in other chapters remotely and least favorable (61%) for the public and media attending in-court scheduling/status/pre-trial conferences remotely.

Q7: If you wish, please explain why, in your experience, it is or is not appropriate to permit the public and media to access particular types of proceedings in bankruptcy cases remotely:

- Most respondents who commented supported the public's and media's accessing proceedings in bankruptcy cases remotely, in the interest of transparency.
- A few respondents noted that the public and media should not be able to access confidential proceedings, or suggested that the court monitor who joins the proceedings or that the parties have the ability to know who is observing.

Q8: For each of the following proceedings in adversary proceedings, please mark the box as to how often remote proceedings should be conducted:

- Approximately 63% and 61% of respondents indicated that scheduling/status/pre-trial conferences and non-evidentiary motion hearings, respectively, should be conducted remotely as a matter of regular course. A plurality of respondents indicated that evidentiary motion hearings (49%) and dispositive motion hearings (39%) should be

conducted remotely as requested by the parties. The majority of respondents (over 54%) indicated that trials should seldom or never be conducted remotely.

- The specific findings can be found in the chart below.

	NEVER	SELDOM	AS REQUESTED BY THE PARTIES	OFTEN	AS A MATTER OF REGULAR COURSE	NOT APPLICABLE	TOTAL
Scheduling/Status/Pre-Trial Conference	1.04% 1	5.21% 5	15.63% 15	14.58% 14	62.50% 60	1.04% 1	96
Non-Evidentiary Motion Hearing	3.16% 3	4.21% 4	14.74% 14	15.79% 15	61.05% 58	1.05% 1	95
Evidentiary Motion Hearing	20.83% 20	14.58% 14	48.96% 47	7.29% 7	7.29% 7	1.04% 1	96
Dispositive Motion Hearing (including motions for summary judgment, motions to dismiss, etc.)	10.42% 10	16.67% 16	39.58% 38	10.42% 10	21.88% 21	1.04% 1	96
Trial	31.91% 30	22.34% 21	38.30% 36	2.13% 2	4.26% 4	1.06% 1	94

Q9: If you wish, please explain why, in your experience, it is or is not appropriate to use virtual technology for particular types of proceedings in adversary proceedings:

- Most respondents who commented noted that substantive hearings should be conducted in person, noting that it is important to observe witness's demeanor in evidentiary hearings, while routine hearings can be conducted remotely.
- A few respondents stated that there are multiple positive reasons for conducting proceedings remotely (e.g., reduced costs and travel time).
- One respondent stated that, as every proceeding is different, the parties should agree on whether proceedings should be held virtually or in person.

Q10: For each of the following proceedings in adversary proceedings, please mark the box below to indicate whether the public and media should be able to access the in-court proceeding remotely:

- The majority of respondents indicated that the public and media should be able to access in-court scheduling/status/pre-trial conferences, non-evidentiary motion hearings, evidentiary motion hearings, dispositive motion hearings, and trials remotely. Responses were most favorably (73%) for the public's and media's attending in-court dispositive motion hearings remotely and least favorable (62%) for the public's and media's attending in-court scheduling/status/pre-trial conferences remotely.

Q11: If you wish, please explain why, in your experience, it is or is not appropriate to permit the public and media to access particular types of proceedings in adversary proceedings remotely:

- Most respondents who commented supported the public's and media's accessing proceedings in bankruptcy cases remotely, in the interest of transparency.
- A few respondents stated that the written public record was sufficient or noted concern with unauthorized video or audio recording.

Q12: Which of the following statements best describes your views, before and after the onset of the pandemic, about the use of virtual technology (videoconferencing and teleconferencing) to hold court proceedings?

- Over 82% of respondents' views about the use of virtual technology to hold court proceedings were more favorable than they were prior to the pandemic. Approximately 12% of respondents' views had not changed, and only 5% of respondents found that their views about the use of virtual technology to hold proceedings were less favorable than they were prior to the pandemic.
- Comments:
 - Most respondents praised virtual technology for court proceedings for efficiency, cost savings, convenience, and environmental benefits.
 - Only one respondent noted disfavor with virtual technology, stating that "a lot is lost when things are 100% remote."

Q13: Which of the following video platforms do you prefer using?

- The majority of respondents (63%) preferred using Zoom, 20% of respondents preferred using Microsoft Teams, 6% of respondents preferred using WebEx, and the remaining respondents (approximately 10%) either found this question to be not applicable or did not have a video platform preference.
- Comment:
 - One respondent indicated that the telephone was the preferred platform.

Q14: If you have participated in remote proceedings in this federal bankruptcy court, were you satisfied with the level of technological information/assistance with videoconferencing technology?

- Most respondents (78%) indicated that they were satisfied with the level of technological information/assistance with videoconferencing technology, while 17% of respondents found this question to not be applicable, and 4% of respondents were not satisfied with the level of technological information/assistance provided.
- Comments:
 - Almost all of respondents who commented noted the helpful nature of the court and staff either prior to or during proceedings that were held remotely.

Q15: To your knowledge, which of the following video platforms generally do your clients prefer using to attend remote proceedings?

- Seventy percent of respondents indicated that their clients prefer using Zoom to attend remote proceedings, while approximately 13% of respondents indicated that their clients prefer Microsoft Teams. The remaining respondents (approximately 16%) indicated either that the question was not applicable, that Google Hangouts or WebEx were preferred, or that they did not know what their clients preferred.

Q16: To the best of your knowledge, are there participants who attended remote court proceedings that would not have been able to do so in person?

- Most respondents (73%) indicated that there were participants who attended remote proceedings that would not have been able to do so in person, 18% responded that there were not, and 9% of respondents found this question to not be applicable.
- Comments:
 - All of respondents who commented noted health, financial, and geographical benefits of remote proceedings.

Q17: Have you found that a significant number of clients or members of the public have not had access to or knowledge about necessary technology, or otherwise have had problems accessing remote court proceedings?

- The majority of respondents (78%) indicated that they did not find that a significant number of clients or members of the public had problems accessing remote court proceedings. Fifteen percent of respondents indicated that a significant number of clients or members of the public did have problems accessing remote court proceedings, and 7% found the question to be not applicable.
- *If your answer to this question was yes, do you have any recommendations for steps the court would take to address this issue:*
 - One respondent suggested that the court to set up the equivalent of "Zoom phone booths" for a party to have privacy, use equipment, and be in a safe place.

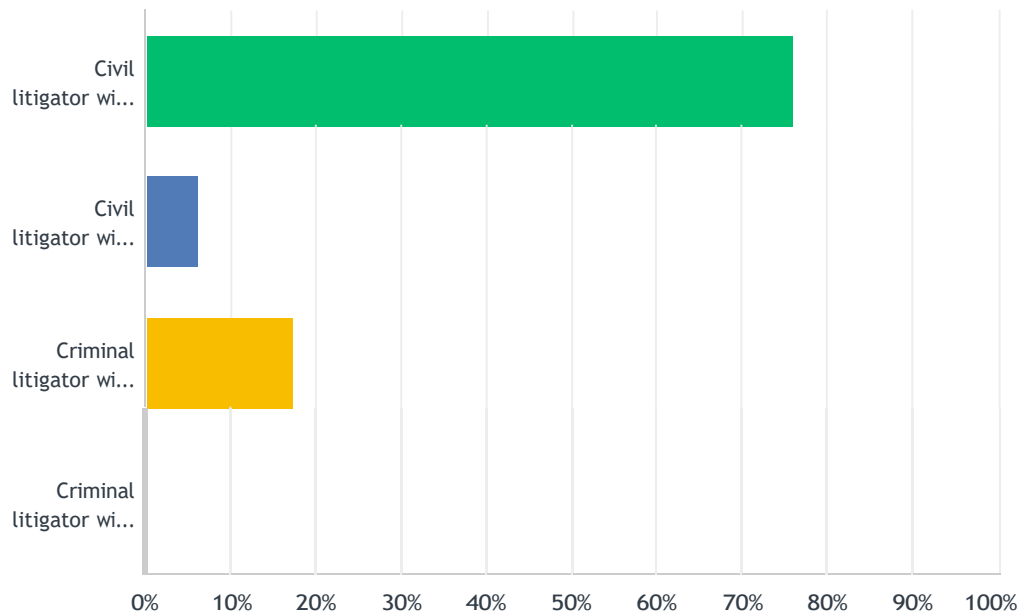
Q18: Please provide any additional information you think is relevant regarding remote court proceedings in the federal courts.

- Almost all respondents who commented were in support of continuing the use of virtual technology for court proceedings.

District Bar's Survey Results¹

Q1 What kind of litigator are you?

Answered: 1,064 Skipped: 2

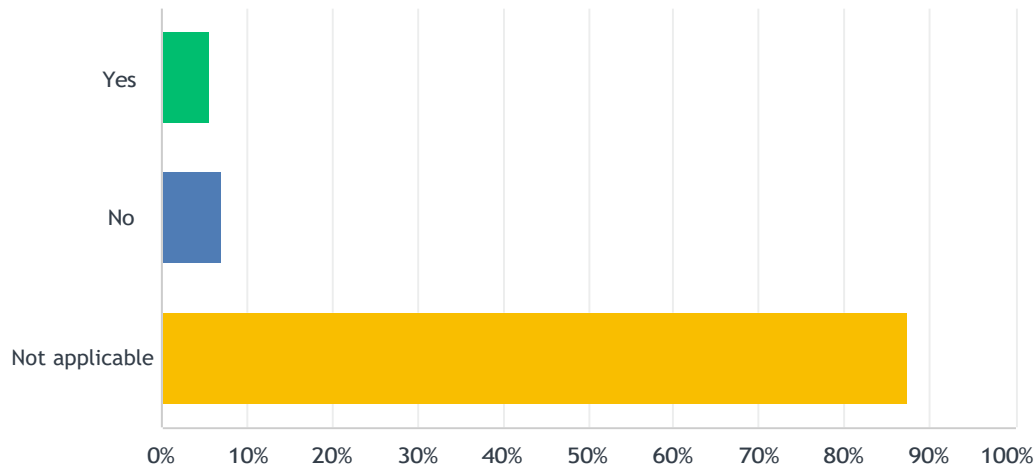


ANSWER CHOICES	RESPONSES	
Civil litigator with five (or more) years of experience	75.94%	808
Civil litigator with fewer than five years of experience	6.11%	65
Criminal litigator with five (or more) years of experience	17.29%	184
Criminal litigator with fewer than five years of experience	0.66%	7
TOTAL		1,064

¹ The District Bar Survey results have been redacted to preserve the anonymity of the responses.

Q2 If you are a litigator with fewer than five years of experience, have you virtually attended court proceedings in which you were not involved as an attorney for educational or other purposes?

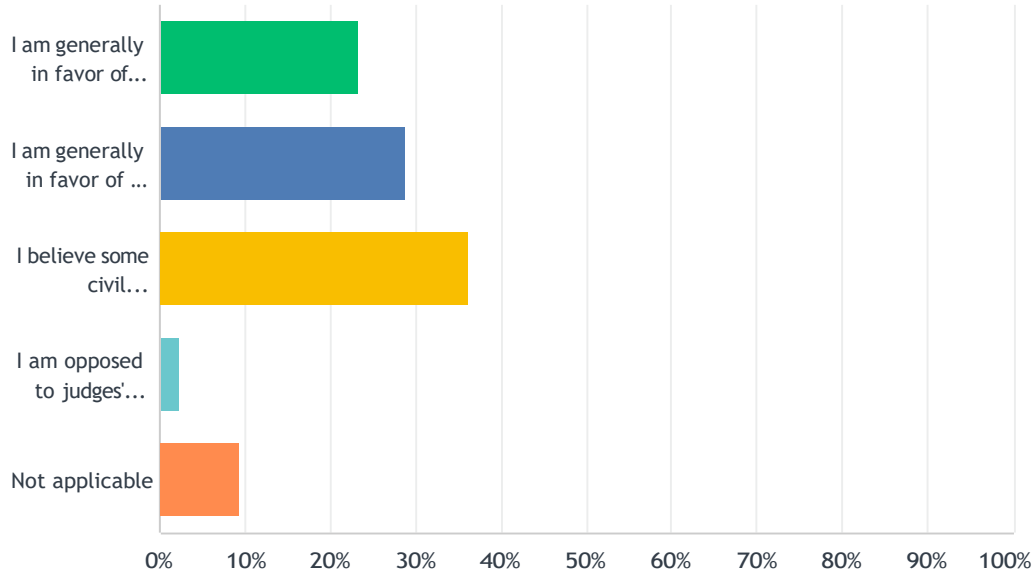
Answered: 894 Skipped: 172



ANSWER CHOICES	RESPONSES	
Yes	5.59%	50
No	6.94%	62
Not applicable	87.47%	782
TOTAL		894

Q3 Please indicate your overall view about using virtual technology (videoconferencing and teleconferencing) for civil proceedings, outside of the circumstances of a pandemic or other emergency.

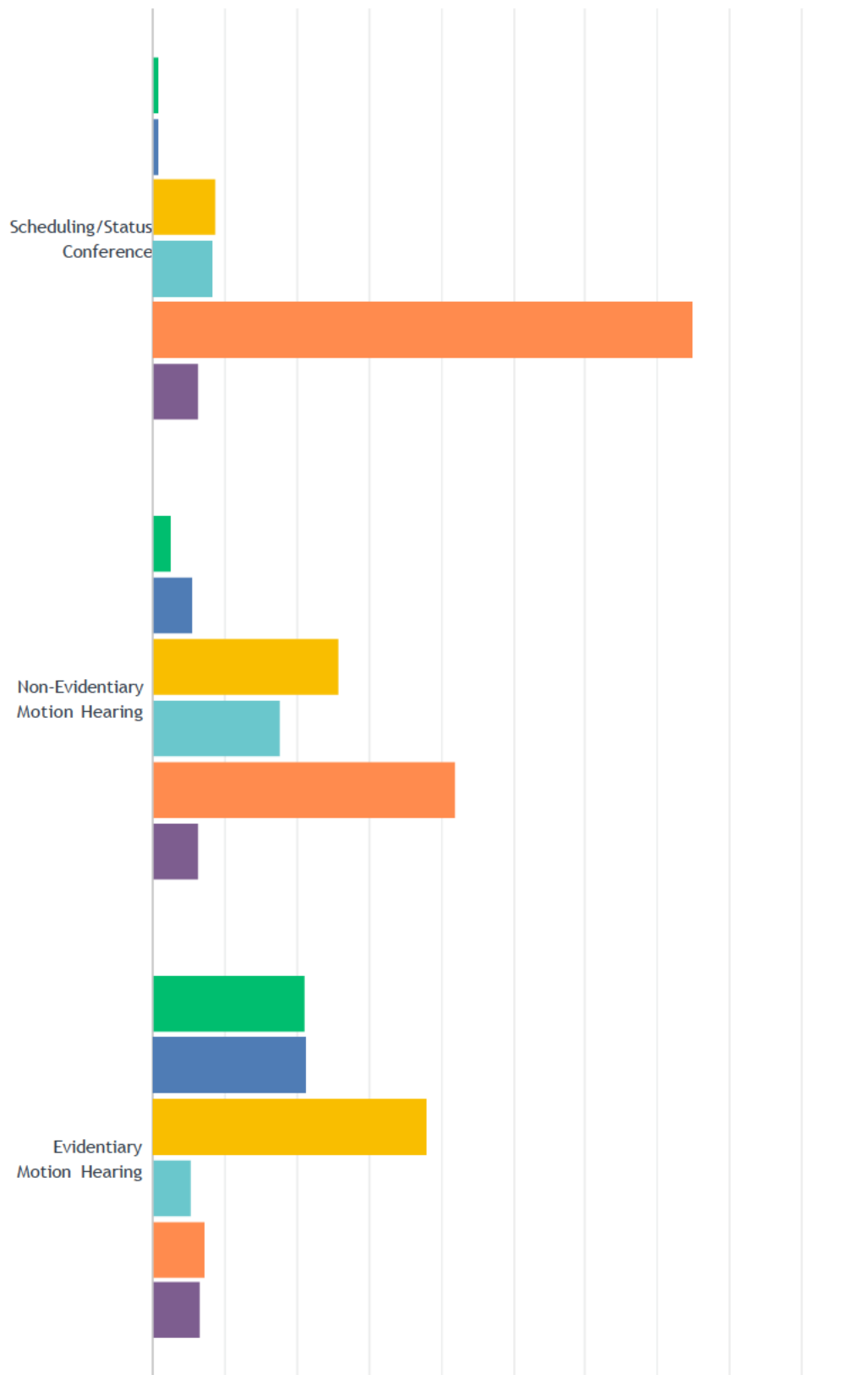
Answered: 982 Skipped: 84

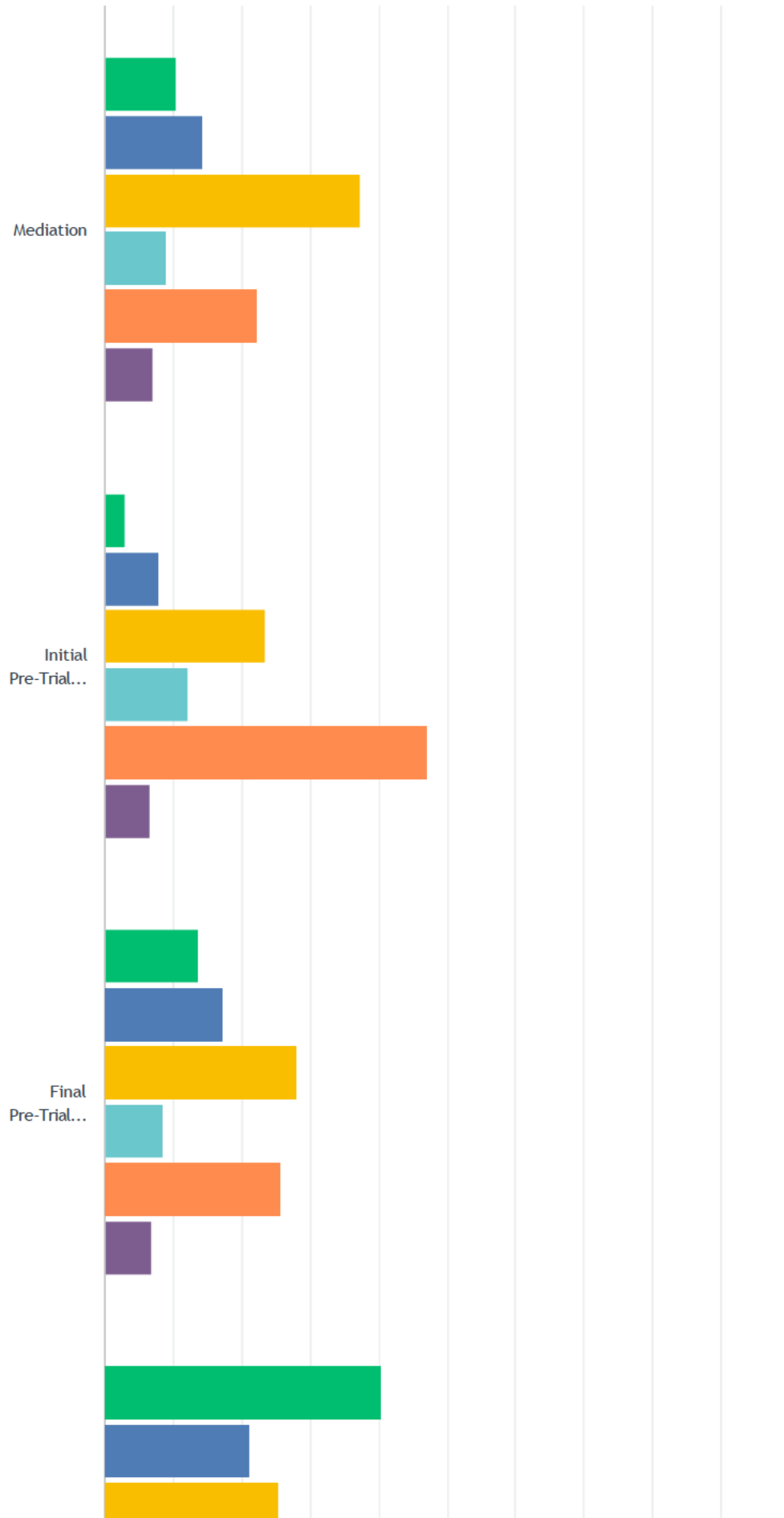


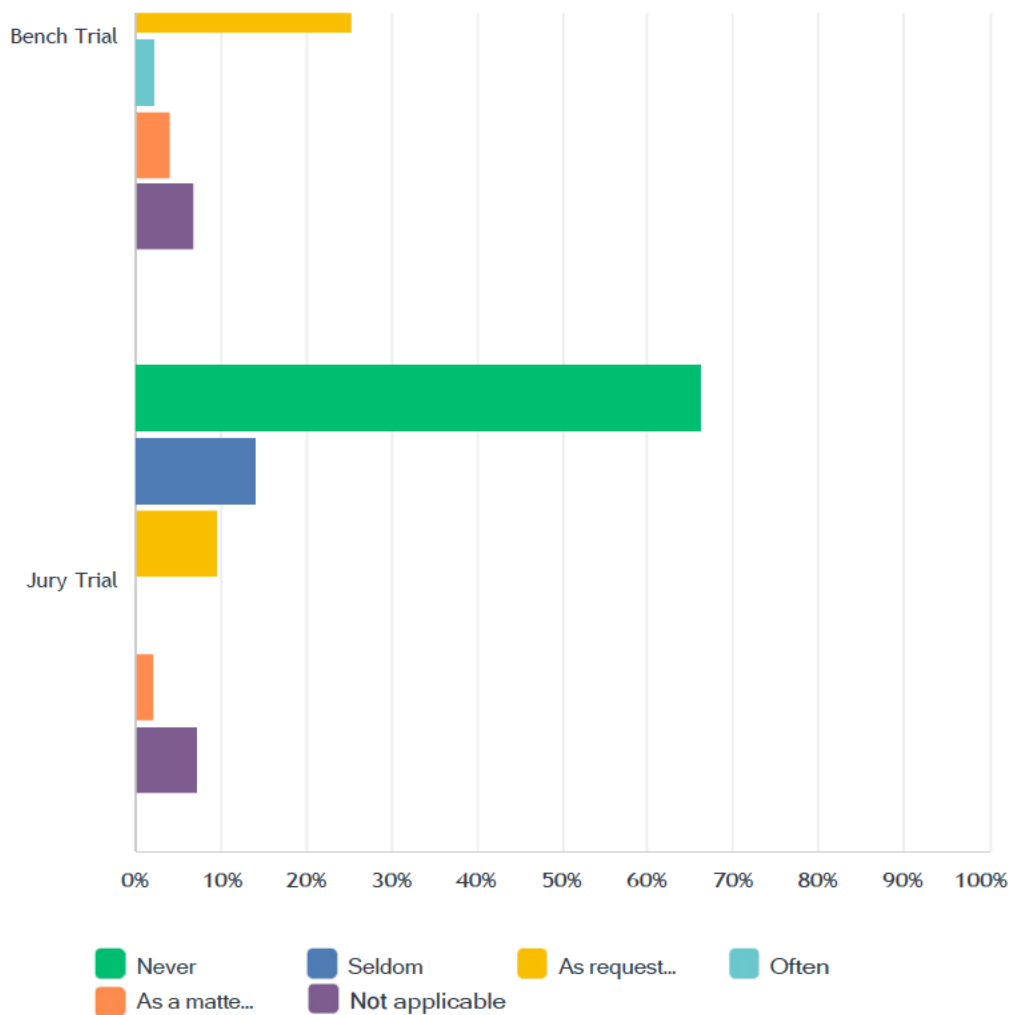
ANSWER CHOICES	RESPONSES	
I am generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for civil proceedings, when authorized by applicable laws and policies.	23.32%	229
I am generally in favor of the presumptive use of virtual technology for civil proceedings, when authorized by applicable laws and policies.	28.82%	283
I believe some civil proceedings are conducive to being held using virtual technology, while others should always be held in person.	36.25%	356
I am opposed to judges' using virtual technology for any civil proceedings, except in rare circumstances.	2.24%	22
Not applicable	9.37%	92
TOTAL		982

Q4 For each of the following civil proceedings, please mark the box as to how often remote proceedings should be conducted:

Answered: 943 Skipped: 123







	NEVER	SELDOM	AS REQUESTED BY THE PARTIES	OFTEN	AS A MATTER OF REGULAR COURSE	NOT APPLICABLE	TOTAL
Scheduling/Status Conference	0.96% 9	0.85% 8	8.81% 83	8.28% 78	74.73% 704	6.37% 60	942
Non-Evidentiary Motion Hearing	2.66% 25	5.53% 52	25.85% 243	17.66% 166	41.91% 394	6.38% 60	940
Evidentiary Motion Hearing	21.11% 198	21.43% 201	38.06% 357	5.44% 51	7.36% 69	6.61% 62	938
Mediation	10.39% 97	14.24% 133	37.37% 349	8.89% 83	22.16% 207	6.96% 65	934
Initial Pre-Trial Conference	2.98% 28	7.87% 74	23.40% 220	12.13% 114	47.02% 442	6.60% 62	940
Final Pre-Trial Conference	13.71% 129	17.32% 163	27.84% 262	8.61% 81	25.61% 241	6.91% 65	941
Bench Trial	40.32% 379	21.06% 198	25.43% 239	2.23% 21	4.15% 39	6.81% 64	940
Jury Trial	66.38% 624	14.15% 133	9.68% 91	0.32% 3	2.13% 20	7.34% 69	940

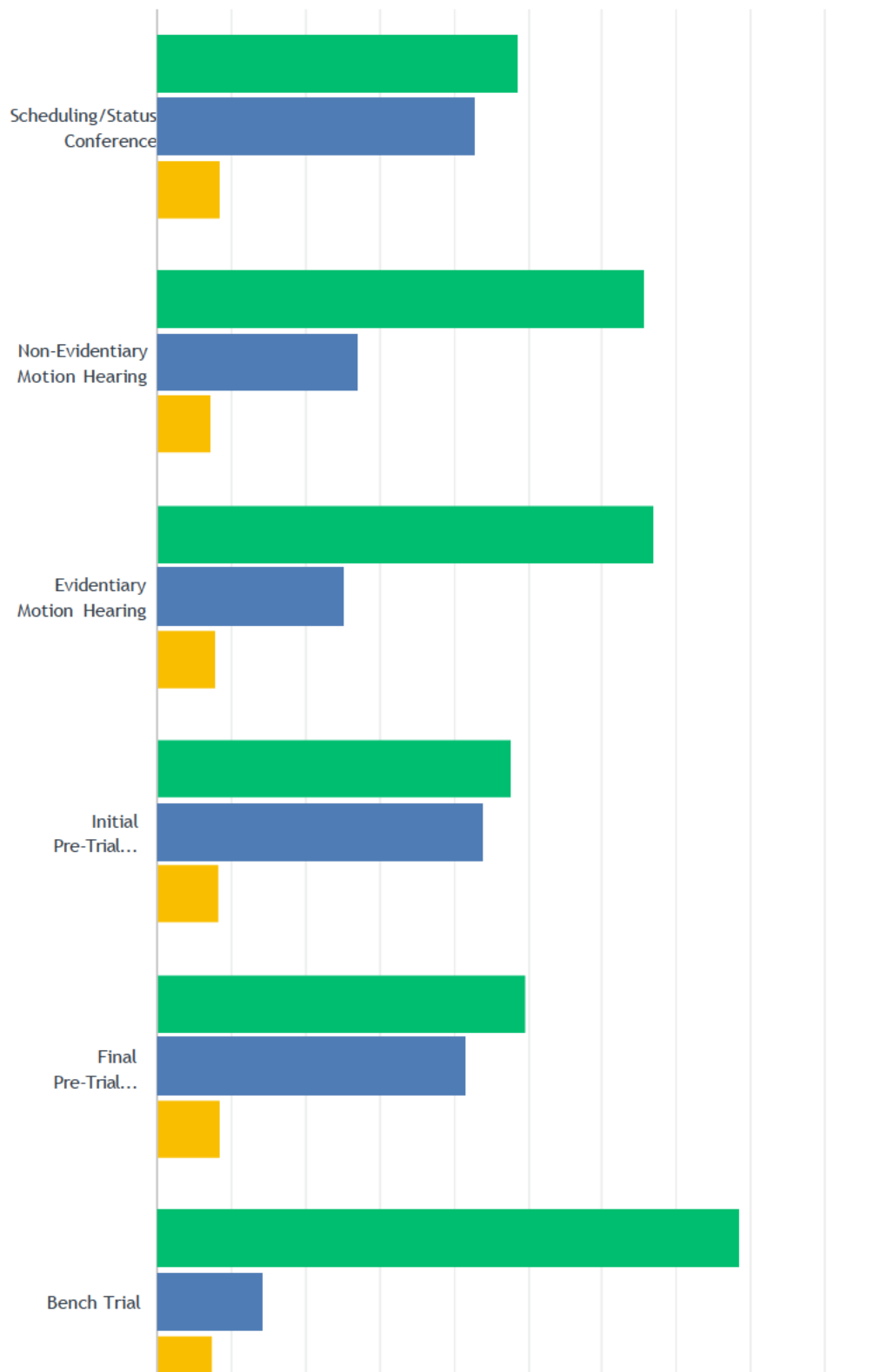
Q5 If you wish, please explain why, in your experience, it is or is not appropriate to use virtual technology for particular types of civil proceedings:²

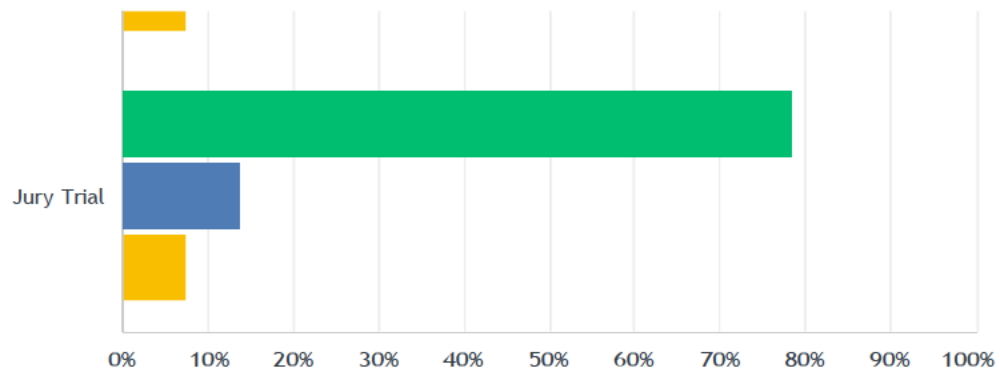
Answered: 205 Skipped: 861

² The responses to this question have been omitted.

Q6 For each of the following civil proceedings, please mark the box below to indicate whether the public and media should be able to access the in-court proceeding remotely:

Answered: 933 Skipped: 133





■ Yes
 ■ No
 ■ Not applicable

	YES	NO	NOT APPLICABLE	TOTAL
Scheduling/Status Conference	48.71% 452	42.78% 397	8.51% 79	928
Non-Evidentiary Motion Hearing	65.66% 610	27.13% 252	7.21% 67	929
Evidentiary Motion Hearing	66.92% 621	25.11% 233	7.97% 74	928
Initial Pre-Trial Conference	47.79% 443	43.91% 407	8.31% 77	927
Final Pre-Trial Conference	49.73% 461	41.64% 386	8.63% 80	927
Bench Trial	78.36% 728	14.21% 132	7.43% 69	929
Jury Trial	78.56% 729	13.90% 129	7.54% 70	928

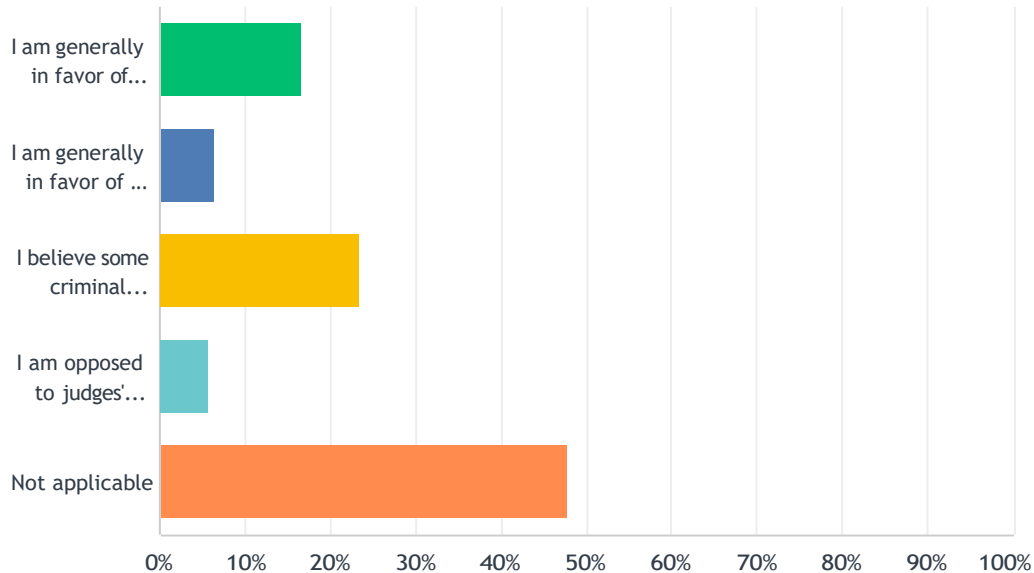
Q7 If you wish, please explain why, in your experience, it is or is not appropriate to permit the public and media to access particular types of civil proceedings remotely:³

Answered: 166 Skipped: 900

³ The responses to this question have been omitted.

Q8 Please indicate your overall view about using virtual technology (videoconferencing and teleconferencing) for criminal proceedings, outside of the circumstances of a pandemic or other emergency.

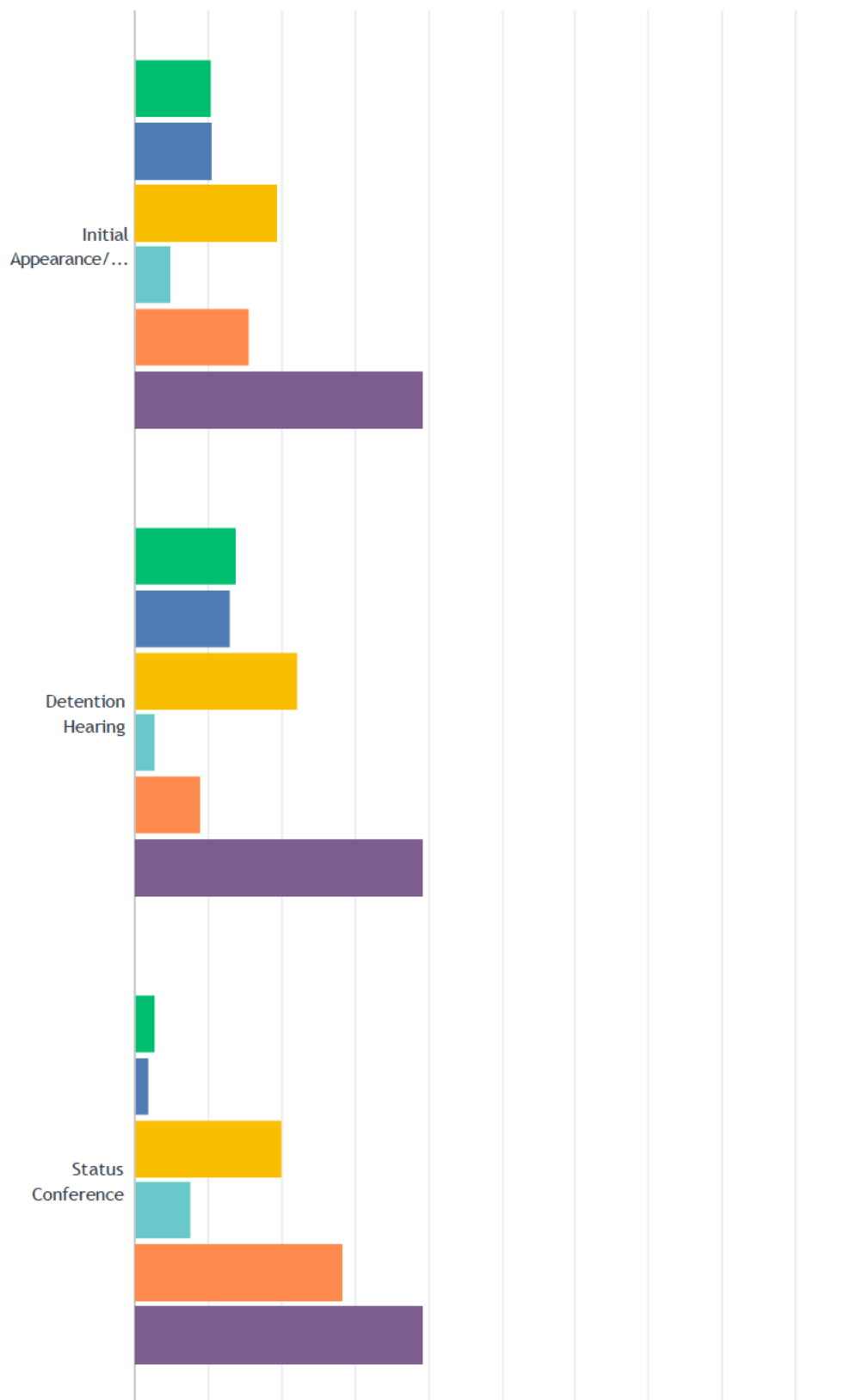
Answered: 960 Skipped: 106

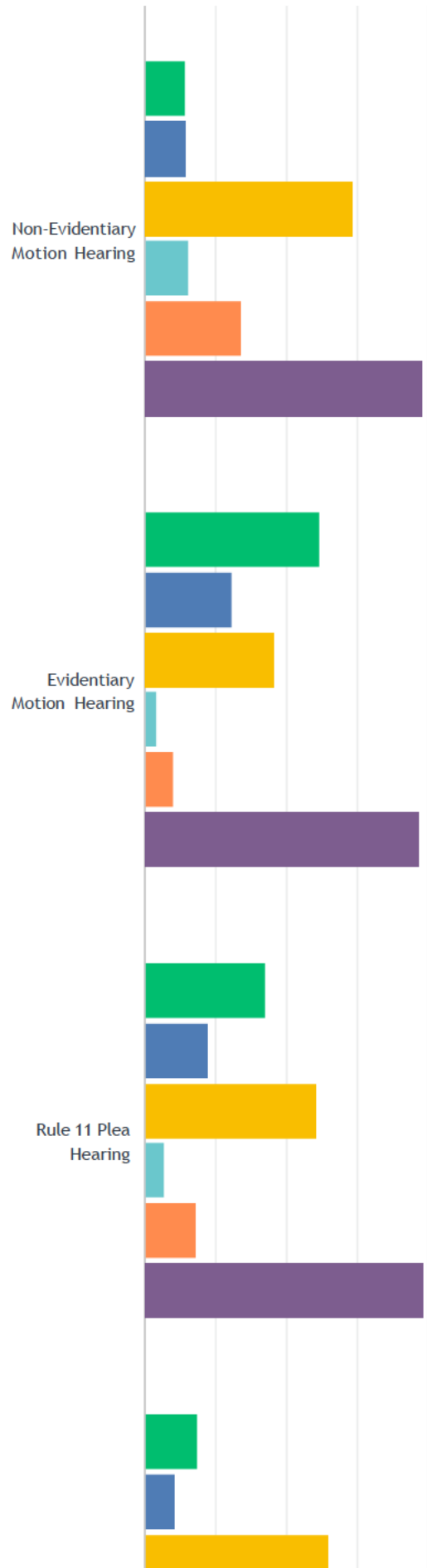


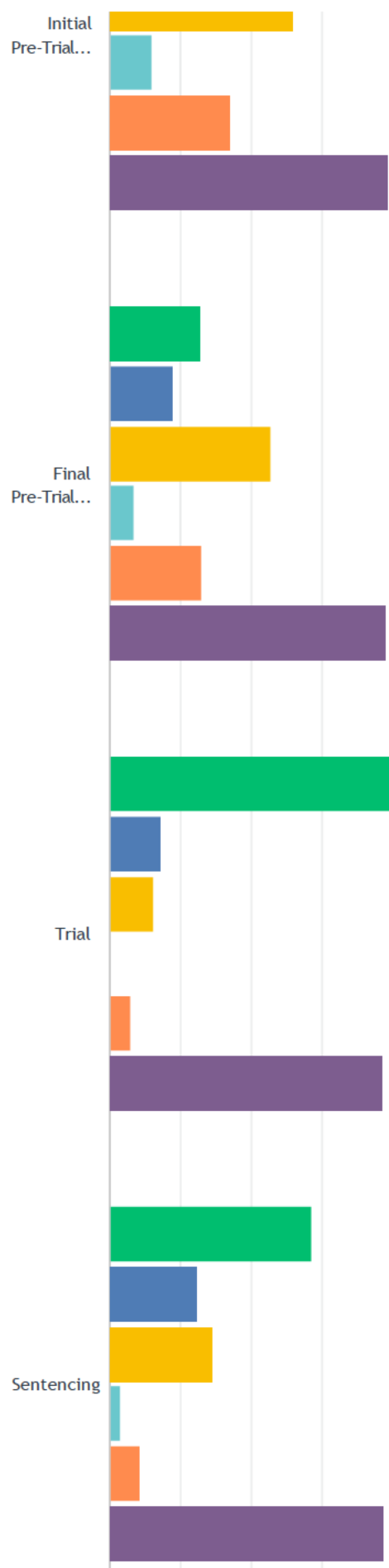
ANSWER CHOICES	RESPONSES	
I am generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for criminal proceedings, when authorized by applicable law and policies.	16.56%	159
I am generally in favor of the presumptive use of virtual technology for criminal proceedings, when authorized by applicable laws and policies.	6.35%	61
I believe some criminal proceedings are conducive to being held using virtual technology, while others should always be held in person.	23.44%	225
I am opposed to judges' using virtual technology for any criminal proceedings, except in rare circumstances.	5.83%	56
Not applicable	47.81%	459
TOTAL		960

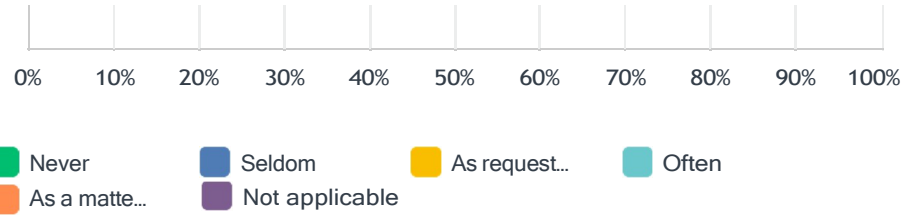
Q9 For each of the following criminal proceedings, please mark the box as to how often remote proceedings should be conducted:

Answered: 785 Skipped: 281









	NEVER	SELDOM	AS REQUESTED BY THE PARTIES	OFTEN	AS A MATTER OF REGULAR COURSE	NOT APPLICABLE	TOTAL
Initial Appearance/ Arraignment	10.40% 81	10.40% 81	19.38% 151	4.88% 38	15.66% 122	39.28% 306	779
Detention Hearing	13.75% 107	13.11% 102	22.11% 172	2.70% 21	9.00% 70	39.33% 306	778
Status Conference	2.83% 22	1.93% 15	20.05% 156	7.58% 59	28.28% 220	39.33% 306	778
Non-Evidentiary Motion Hearing	5.78% 45	5.78% 45	29.53% 230	6.16% 48	13.61% 106	39.15% 305	779
Evidentiary Motion Hearing	24.81% 193	12.34% 96	18.38% 143	1.67% 13	3.98% 31	38.82% 302	778
Rule 11 Plea Hearing	17.01% 132	9.02% 70	24.36% 189	2.84% 22	7.35% 57	39.43% 306	776
Initial Pre-Trial Conference	7.46% 58	4.24% 33	25.96% 202	5.91% 46	16.97% 132	39.46% 307	778
Final Pre-Trial Conference	12.85% 100	8.87% 69	22.88% 178	3.34% 26	12.98% 101	39.07% 304	778
Trial	44.81% 350	7.17% 56	6.15% 48	0.26% 2	2.94% 23	38.67% 302	781
Sentencing	28.66% 223	12.34% 96	14.52% 113	1.41% 11	4.24% 33	8.82% 302	778

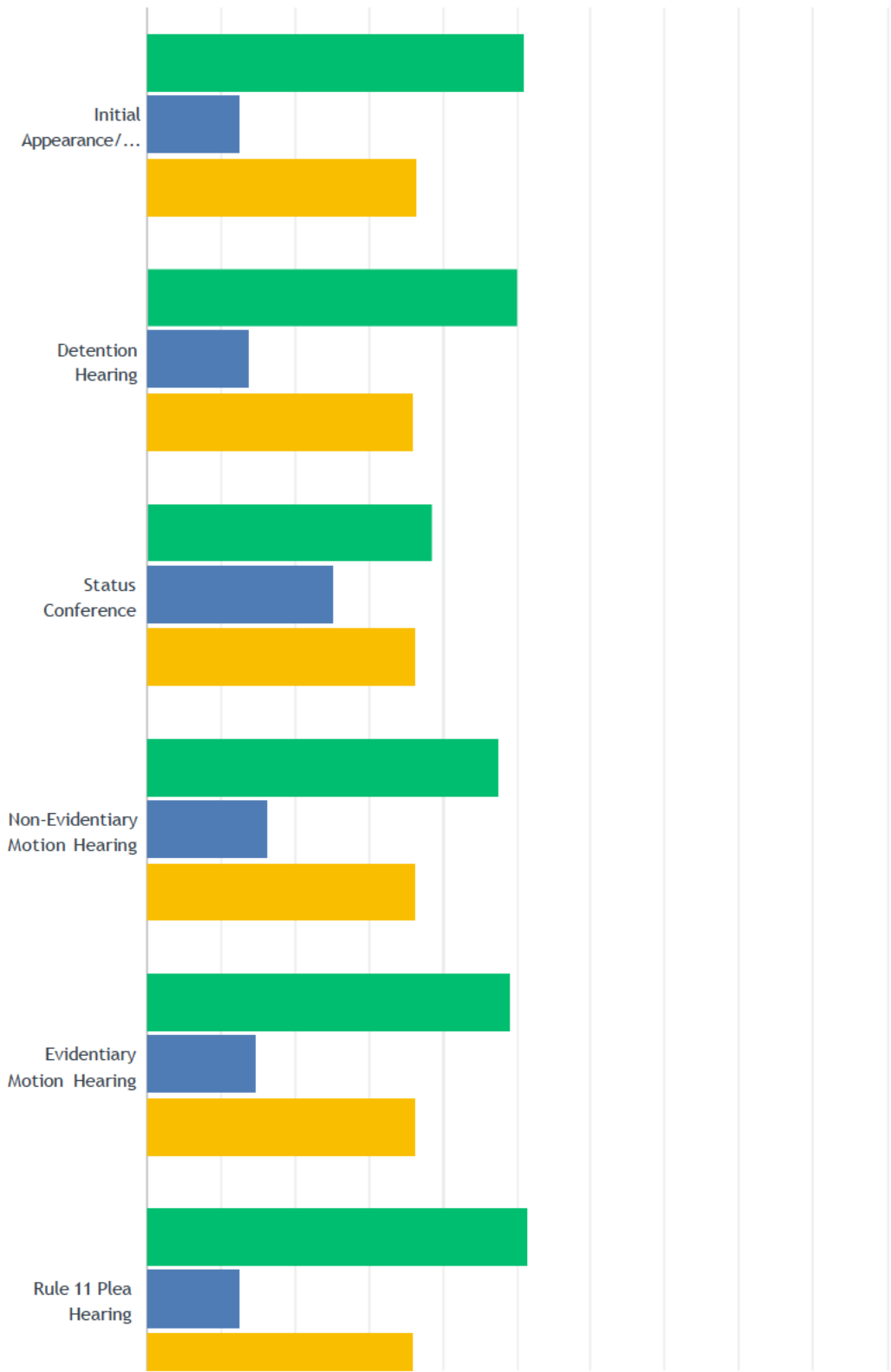
Q10 If you wish, please explain why, in your experience, it is or is not appropriate to use virtual technology for particular types of criminal proceedings:⁴

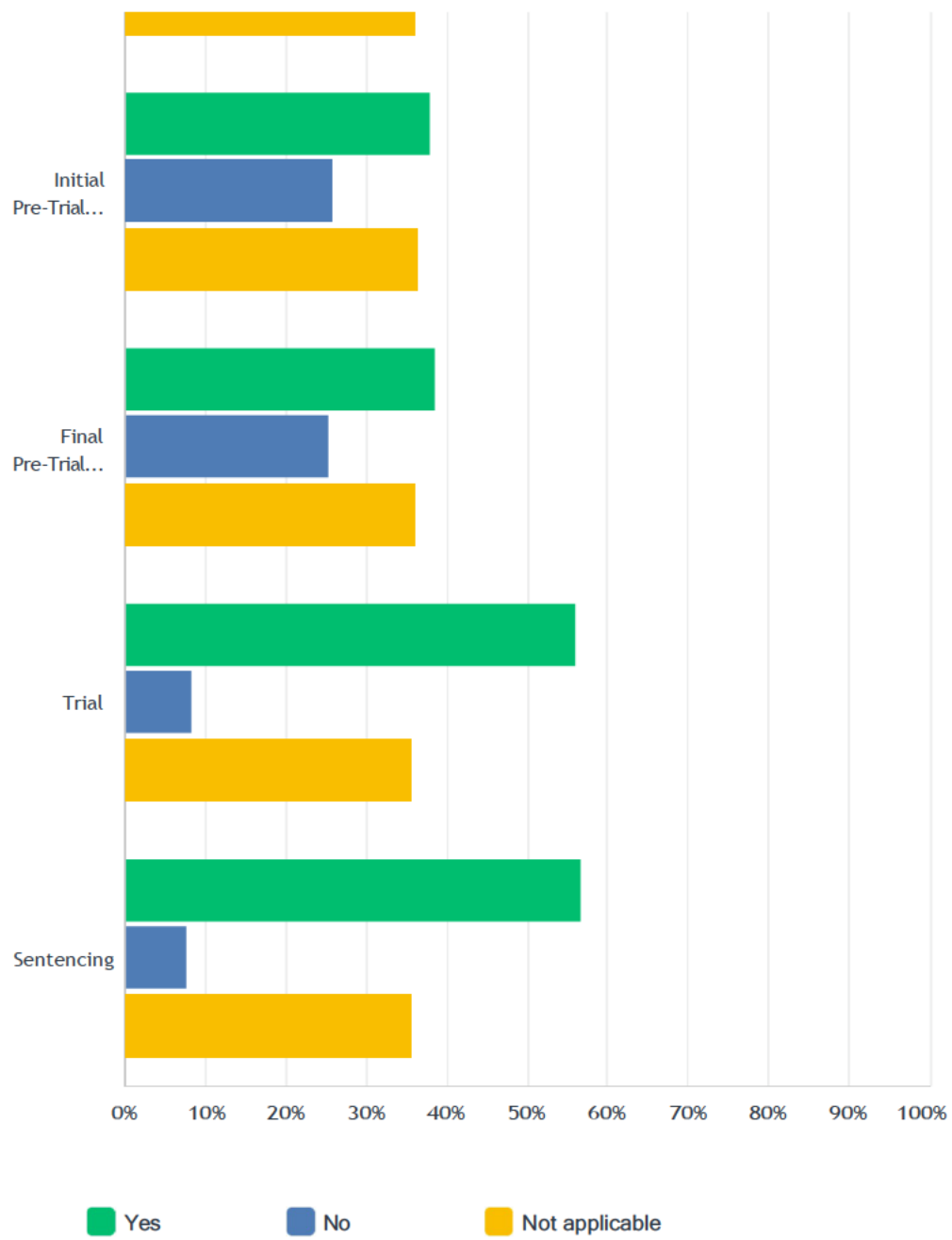
Answered: 123 Skipped: 943

⁴ The responses to this question have been omitted.

Q11 For each of the following criminal proceedings, please mark the box below to indicate whether the public and media should be able to access the in-court proceeding remotely:

Answered: 783 Skipped: 283





	YES	NO	NOT APPLICABLE	TOTAL
Initial Appearance/ Arraignment	51.03% 398	12.56% 98	36.41% 284	780
Detention Hearing	50.13% 391	13.85% 108	36.03% 281	780
Status Conference	38.69% 301	25.06% 195	36.25% 282	778
Non-Evidentiary Motion Hearing	47.63% 371	16.17% 126	36.20% 282	779
Evidentiary Motion Hearing	49.10% 383	14.74% 115	36.15% 282	780
Rule 11 Plea Hearing	51.35% 400	12.58% 98	36.07% 281	779
Initial Pre-Trial Conference	37.92% 295	25.71% 200	36.38% 283	778
Final Pre-Trial Conference	38.51% 300	25.42% 198	36.07% 281	779
Trial	56.17% 437	8.23% 64	35.60% 277	778
Sentencing	56.74% 438	7.64% 59	35.62% 275	772

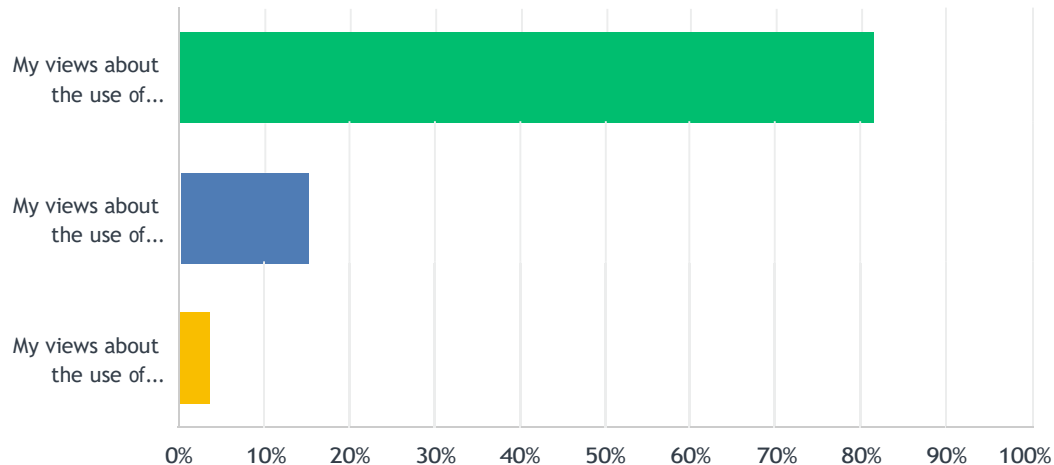
Q12 If you wish, please explain why, in your experience, it is or is not appropriate to permit the public and media to access particular types of criminal proceedings remotely:⁵

Answered: 114 Skipped: 952

⁵ The responses to this question have been omitted.

Q13 Which of the following statements best describes your views, before and after the onset of the pandemic, about the use of virtual technology (videoconferencing and teleconferencing) to hold court proceedings?

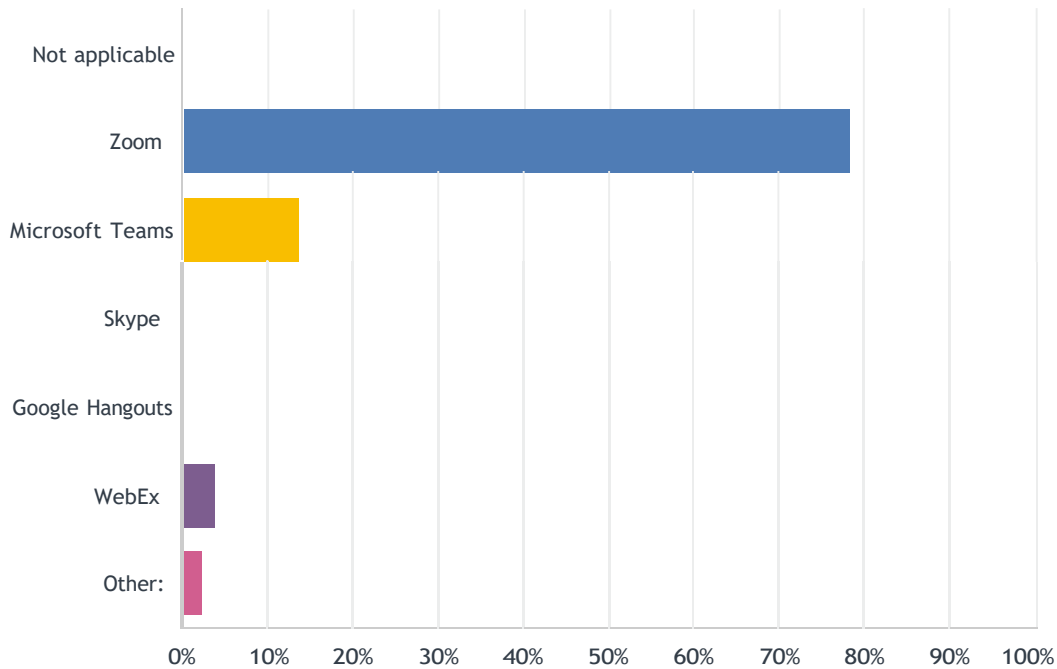
Answered: 965 Skipped: 101



ANSWER CHOICES	RESPONSES	
My views about the use of virtual technology to hold court proceedings are more favorable than they were prior to the pandemic.	81.35%	785
My views about the use of virtual technology to hold court proceedings have not changed since the onset of the pandemic.	15.13%	146
My views about the use of virtual technology to hold court proceedings are less favorable than they were prior to the pandemic.	3.52%	34
TOTAL		965

Q14 Which of the following video platforms do you prefer using?

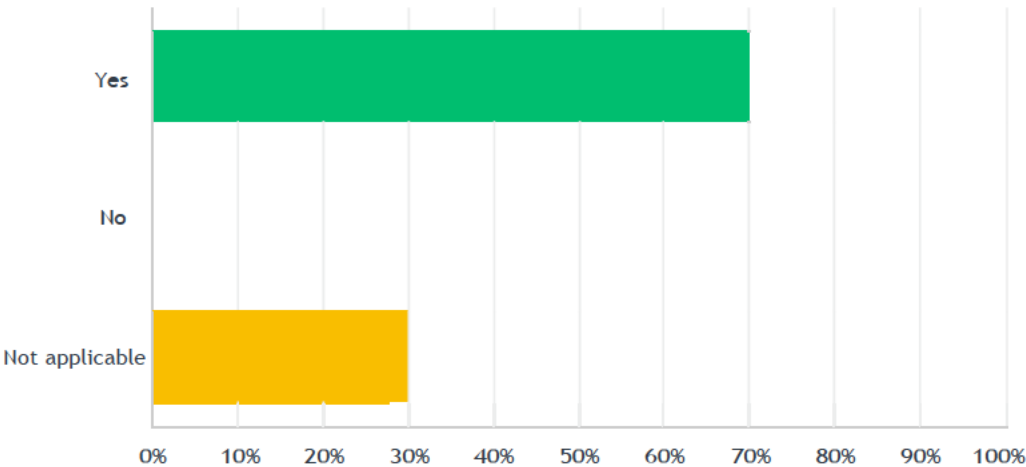
Answered: 959 Skipped: 107



ANSWER CHOICES	RESPONSES	
Not applicable	1.36%	13
Zoom	78.21%	750
Microsoft Teams	13.56%	130
Skype	0.21%	2
Google Hangouts	0.52%	5
WebEx	3.86%	37
Other:	2.29%	22
TOTAL		959

Q15 If you have participated in remote proceedings in this federal district court, were you satisfied with the level of technological information/assistance with videoconferencing technology?

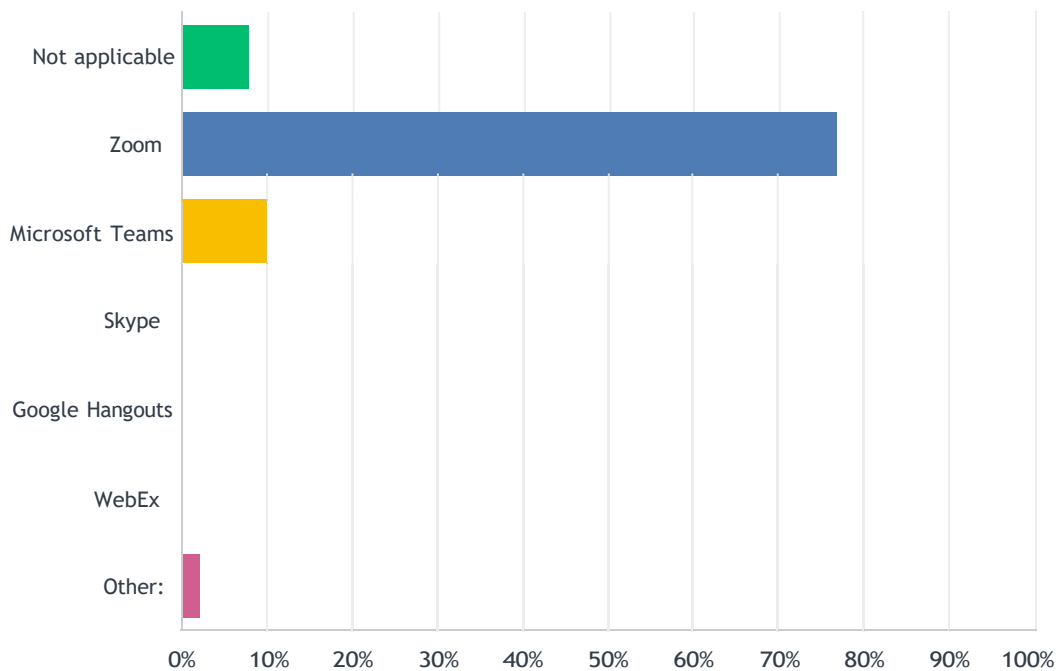
Answered: 960 Skipped: 106



ANSWER CHOICES		RESPONSES	
Yes		70.52%	677
No		1.77%	17
Not applicable		27.71%	266
TOTAL			960

Q16 To your knowledge, which of the following video platforms generally do your clients prefer using to attend remote proceedings?

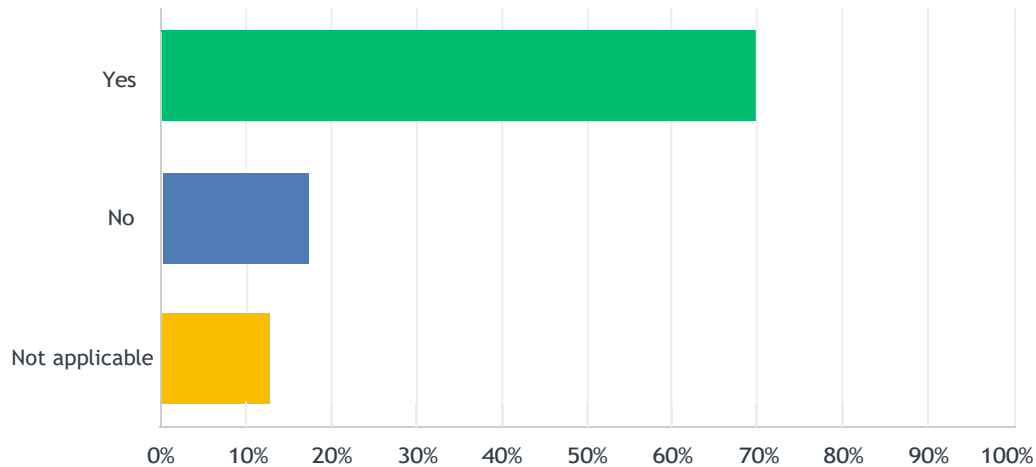
Answered: 949 Skipped: 117



ANSWER CHOICES	RESPONSES	
Not applicable	7.80%	74
Zoom	76.82%	729
Microsoft Teams	10.85%	103
Skype	0.21%	2
Google Hangouts	0.21%	2
WebEx	1.90%	18
Other:	2.21%	21
TOTAL		949

Q17 To the best of your knowledge, are there participants who attended remote court proceedings that would not have been able to do so in person?

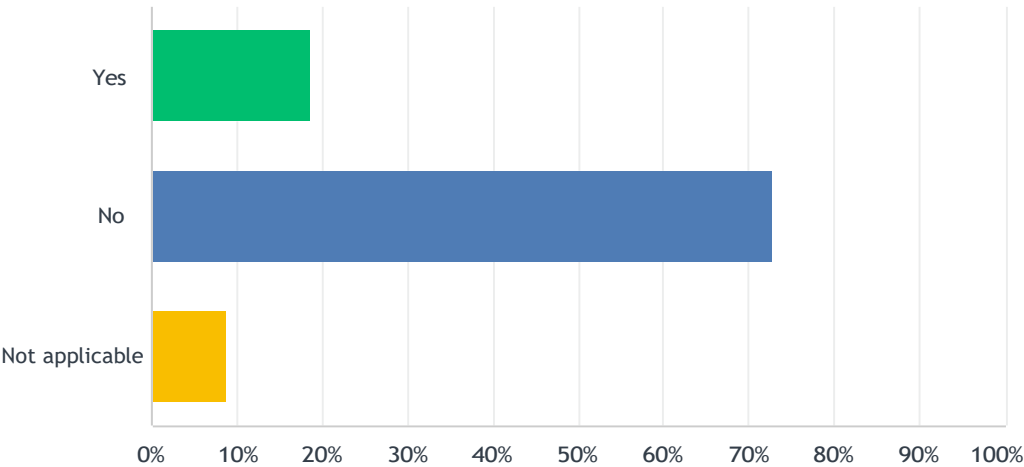
Answered: 954 Skipped: 112



ANSWER CHOICES	RESPONSES	
Yes	69.81%	666
No	17.30%	165
Not applicable	12.89%	123
TOTAL		954

Q18 Have you found that a significant number of clients or members of the public have not had access to or knowledge about necessary technology, or otherwise have had problems accessing remote court proceedings?

Answered: 952 Skipped: 114



ANSWER CHOICES	RESPONSES	
Yes	18.49%	176
No	72.79%	693
Not applicable	8.72%	83
TOTAL		952

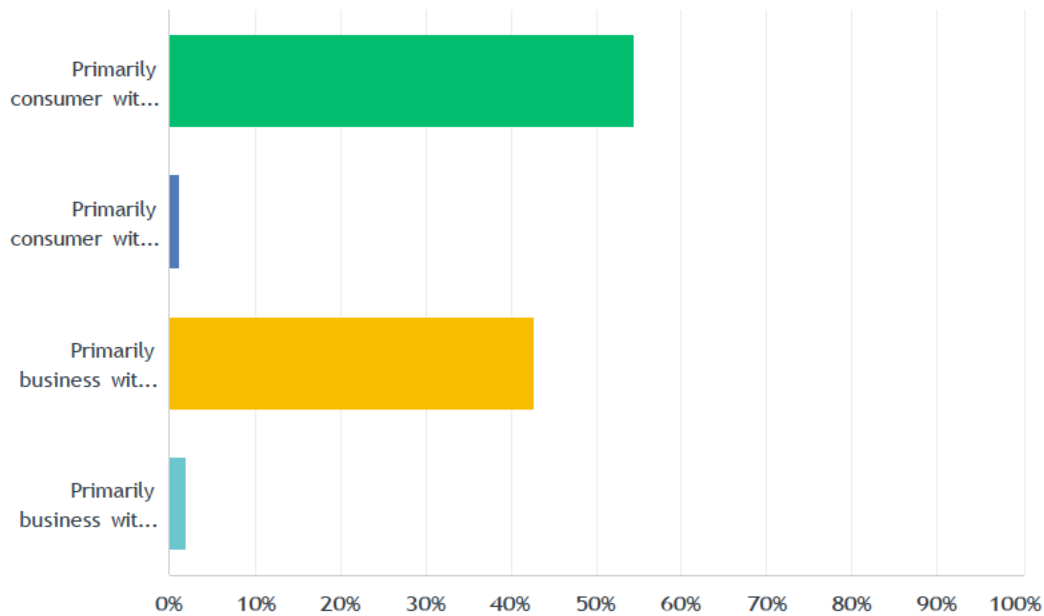
Q19 Please provide any additional information you think is relevant regarding remote court proceedings in the federal courts.⁶

Answered: 108 Skipped: 958

⁶ The responses to this question have been omitted.

Bankruptcy Bar's Survey Results¹**Q1 What kind of bankruptcy practitioner are you?**

Answered: 101 Skipped: 1

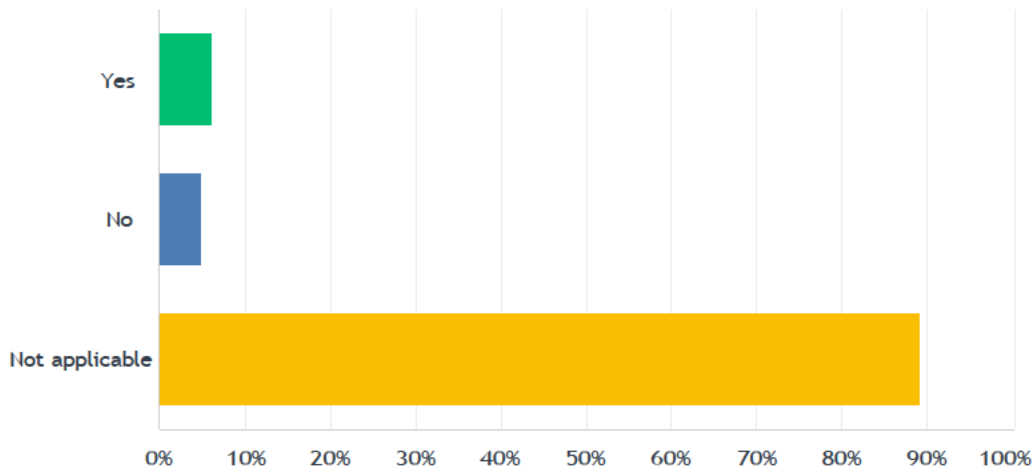


ANSWER CHOICES	RESPONSES	
Primarily consumer with five (or more) years of experience	54.46%	55
Primarily consumer with fewer than five years of experience	0.99%	1
Primarily business with five (or more) years of experience	42.57%	43
Primarily business with fewer than five years of experience	1.98%	2
TOTAL		101

¹ The Bankruptcy Bar Survey results have been redacted to preserve the anonymity of the responses.

Q2 If you are a practitioner with fewer than five years of experience, have you virtually attended court proceedings in which you were not involved as an attorney for educational or other purposes?

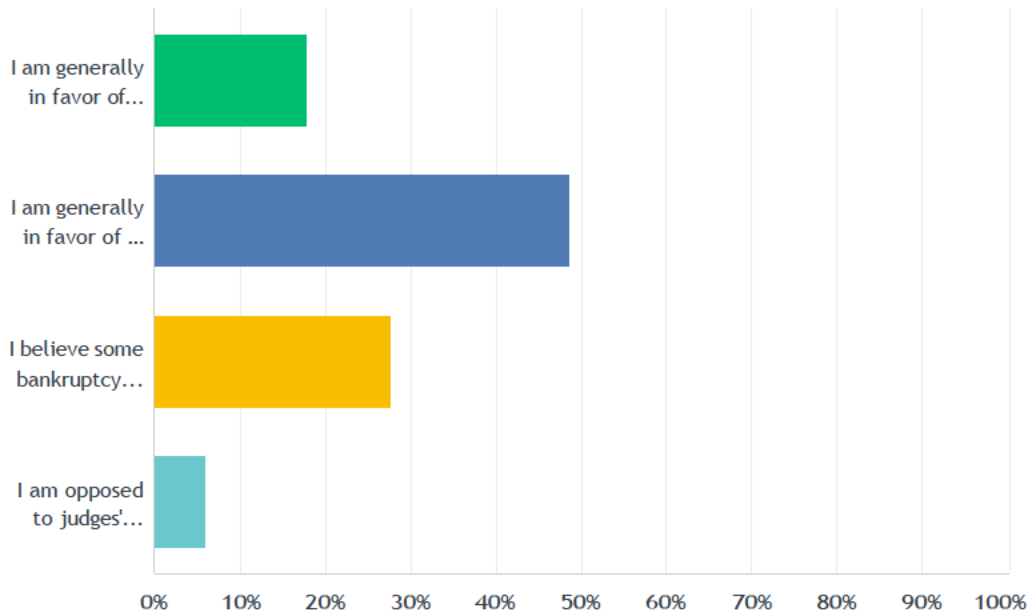
Answered: 82 Skipped: 20



ANSWER CHOICES	RESPONSES	
Yes	6.10%	5
No	4.88%	4
Not applicable	89.02%	73
TOTAL		82

Q3 Please indicate your overall view about using virtual technology (videoconferencing and teleconferencing) for bankruptcy cases and adversary proceedings, outside of the circumstances of a pandemic or other emergency.

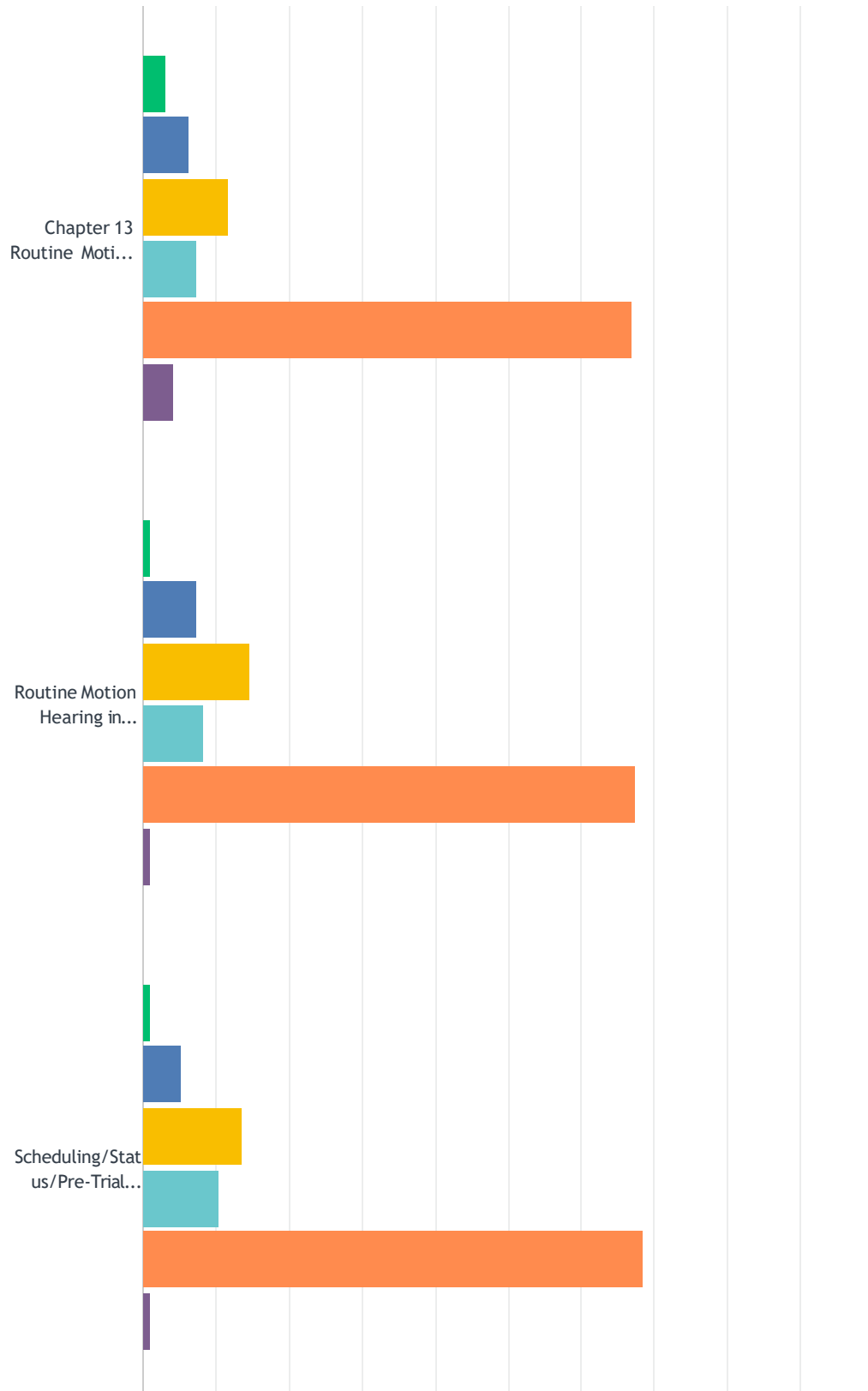
Answered: 101 Skipped: 1



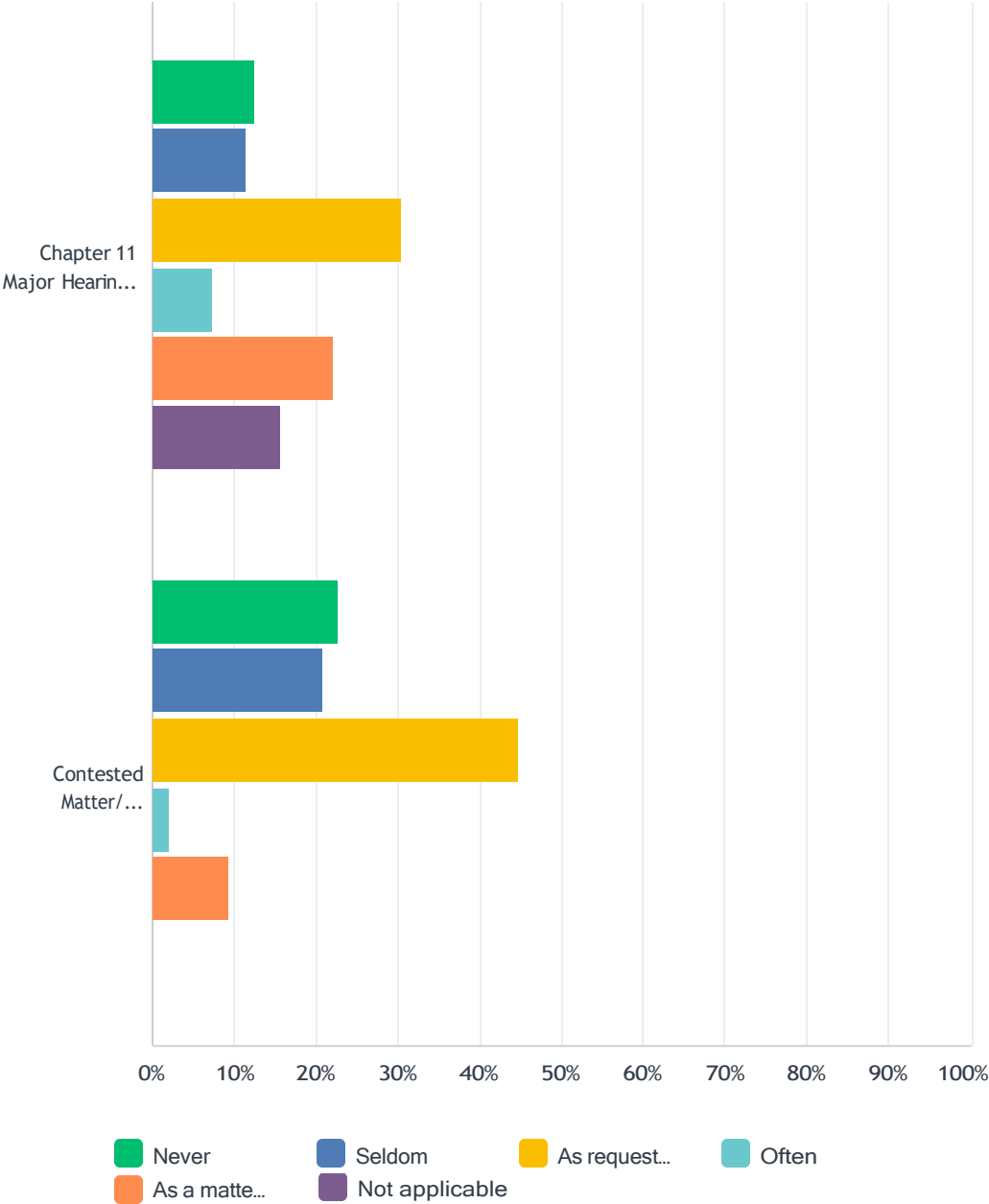
ANSWER CHOICES	RESPONSES	
I am generally in favor of individual judge discretion, taking into account counsel's input, about the use of virtual technology for bankruptcy cases and adversary proceedings, when authorized by applicable laws and policies.	17.82%	18
I am generally in favor of the presumptive use of virtual technology for bankruptcy cases and adversary proceedings, when authorized by applicable laws and policies.	48.51%	49
I believe some bankruptcy cases and adversary proceedings are conducive to being held using virtual technology, while others should always be held in person.	27.72%	28
I am opposed to judges' using virtual technology for any bankruptcy cases and adversary proceedings, except in rare circumstances.	5.94%	6
TOTAL		101

Q4 For each of the following proceedings in bankruptcy cases, please mark the box as to how often remote proceedings should be conducted:

Answered: 96 Skipped: 6



First Circuit Judicial Council Post-Pandemic Operations



First Circuit Judicial Council Post-Pandemic Operations

	NEVER	SELDOM	AS REQUESTED BY THE PARTIES	OFTEN	AS A MATTER OF REGULAR COURSE	NOT APPLICABLE	TOTAL
Chapter 13 Routine Motion Session	3.19% 3	6.38% 6	11.70% 11	7.45% 7	67.02% 63	4.26% 4	94
Routine Motion Hearing in Other Chapters (7, 11, 11 sub. V, 12)	1.05% 1	7.37% 7	14.74% 14	8.42% 8	67.37% 64	1.05% 1	95
Scheduling/Status/Pre-Trial Conference	1.05% 1	5.26% 5	13.68% 13	10.53% 10	68.42% 65	1.05% 1	95
Chapter 11 Major Hearing (including first day orders, cash collateral, sales, plan confirmation, etc.)	12.63% 12	11.58% 11	30.53% 29	7.37% 7	22.11% 21	15.79% 15	95
Contested Matter/ Evidentiary Motion Hearing	22.92% 22	20.83% 20	44.79% 43	2.08% 2	9.38% 9	0.00% 0	96

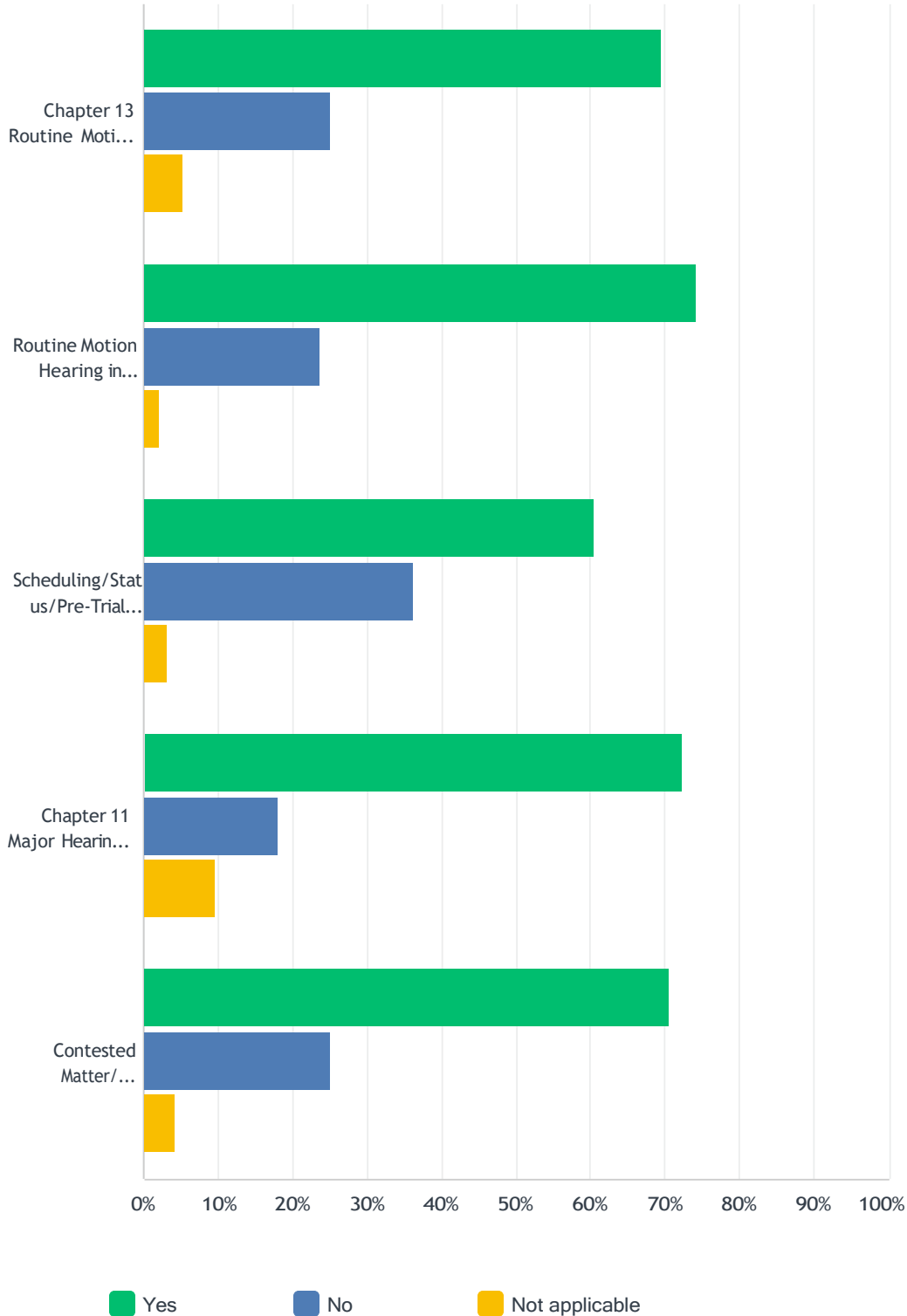
Q5 If you wish, please explain why, in your experience, it is or is not appropriate to use virtual technology for particular types of proceedings in bankruptcy cases:²

Answered: 22 Skipped: 80

² The responses to this question have been omitted.

Q6 For each of the following proceedings in bankruptcy cases, please mark the box below to indicate whether the public and media should be able to access the in-court proceeding remotely:

Answered: 95 Skipped: 7



First Circuit Judicial Council Post-Pandemic Operations

	YES	NO	NOT APPLICABLE	TOTAL
Chapter 13 Routine Motion Session	69.47% 66	25.26% 24	5.26% 5	95
Routine Motion Hearing in Other Chapters (7, 11, 11 sub. V, 12)	74.19% 69	23.66% 22	2.15% 2	93
Scheduling/Status/Pre-Trial Conference	60.64% 57	36.17% 34	3.19% 3	94
Chapter 11 Major Hearing (including first day orders, cash collateral, sales, plan confirmation, etc.)	72.34% 68	18.09% 17	9.57% 9	94
Contested Matter/ Evidentiary Motion Hearing	70.53% 67	25.26% 24	4.21% 4	95

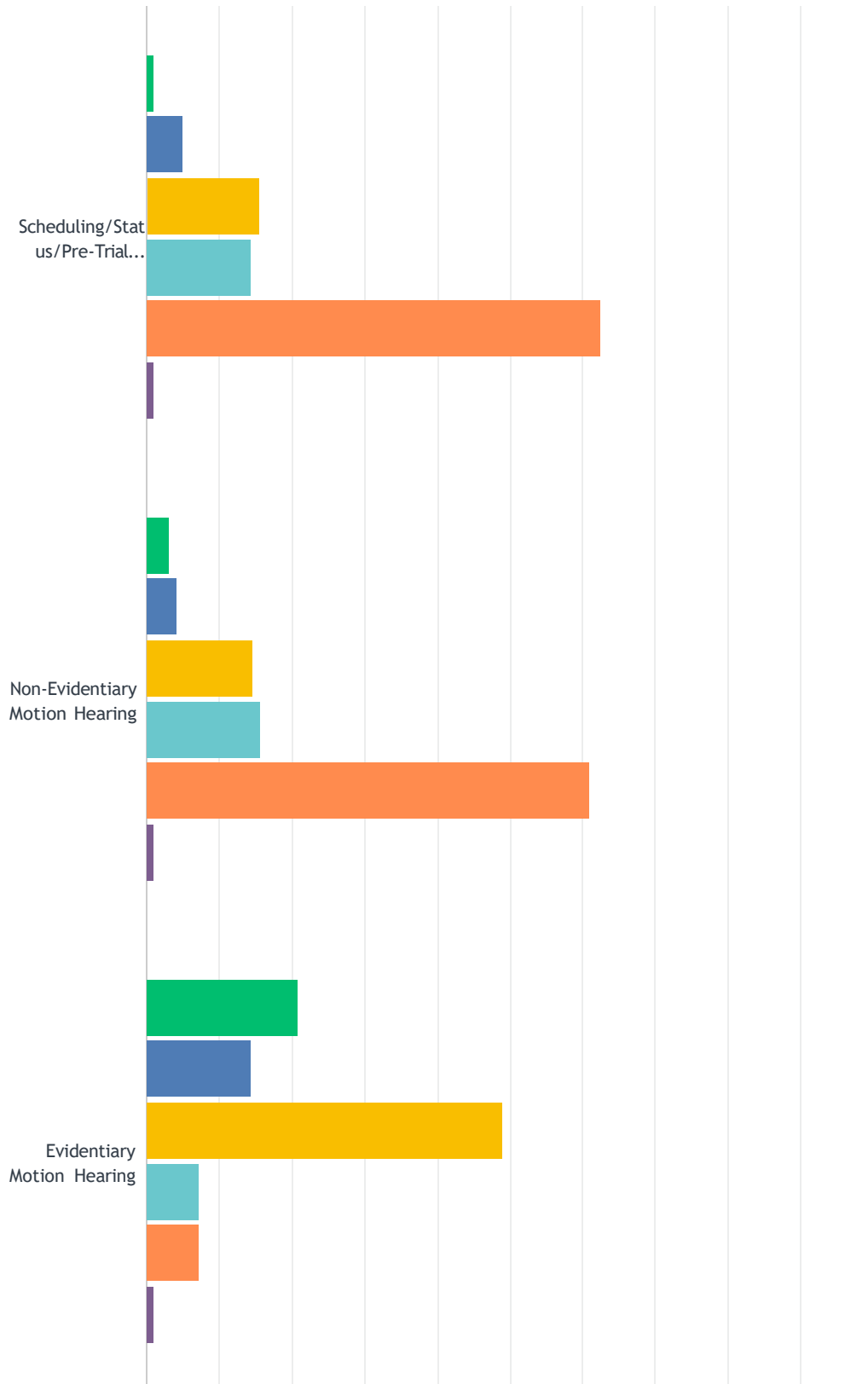
Q7 If you wish, please explain why, in your experience, it is or is not appropriate to permit the public and media to access particular types of proceedings in bankruptcy cases remotely:³

Answered: 23 Skipped: 79

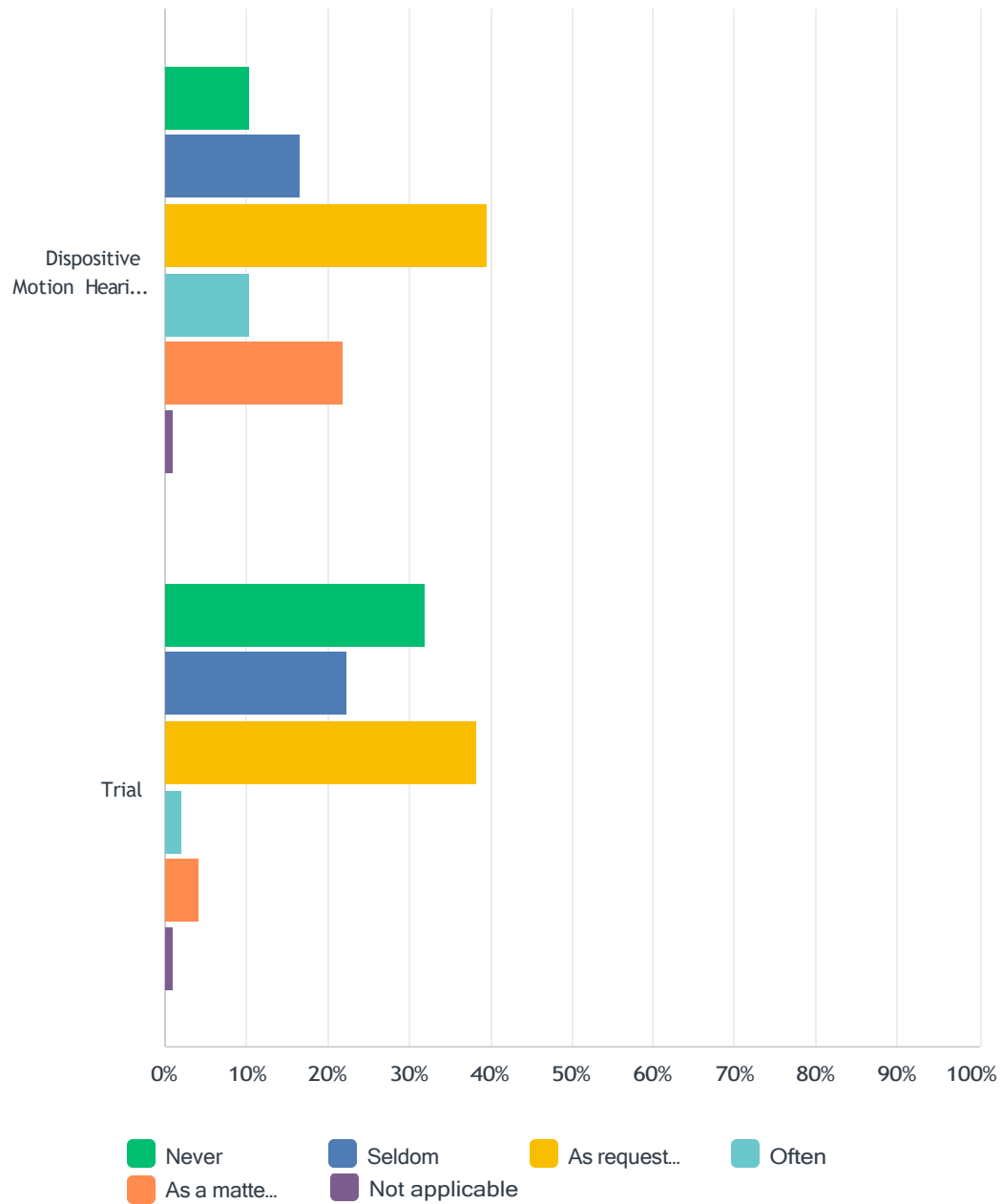
³ The responses to this question have been omitted.

Q8 For each of the following proceedings in adversary proceedings, please mark the box as to how often remote proceedings should be conducted:

Answered: 96 Skipped: 6



First Circuit Judicial Council Post-Pandemic Operations



First Circuit Judicial Council Post-Pandemic Operations

	NEVER	SELDOM	AS REQUESTED BY THE PARTIES	OFTEN	AS A MATTER OF REGULAR COURSE	NOT APPLICABLE	TOTAL
Scheduling/Status/Pre-Trial Conference	1.04% 1	5.21% 5	15.63% 15	14.58% 14	62.50% 60	1.04% 1	96
Non-Evidentiary Motion Hearing	3.16% 3	4.21% 4	14.74% 14	15.79% 15	61.05% 58	1.05% 1	95
Evidentiary Motion Hearing	20.83% 20	14.58% 14	48.96% 47	7.29% 7	7.29% 7	1.04% 1	96
Dispositive Motion Hearing (including motions for summary judgment, motions to dismiss, etc.)	10.42% 10	16.67% 16	39.58% 38	10.42% 10	21.88% 21	1.04% 1	96
Trial	31.91% 30	22.34% 21	38.30% 36	2.13% 2	4.26% 4	1.06% 1	94

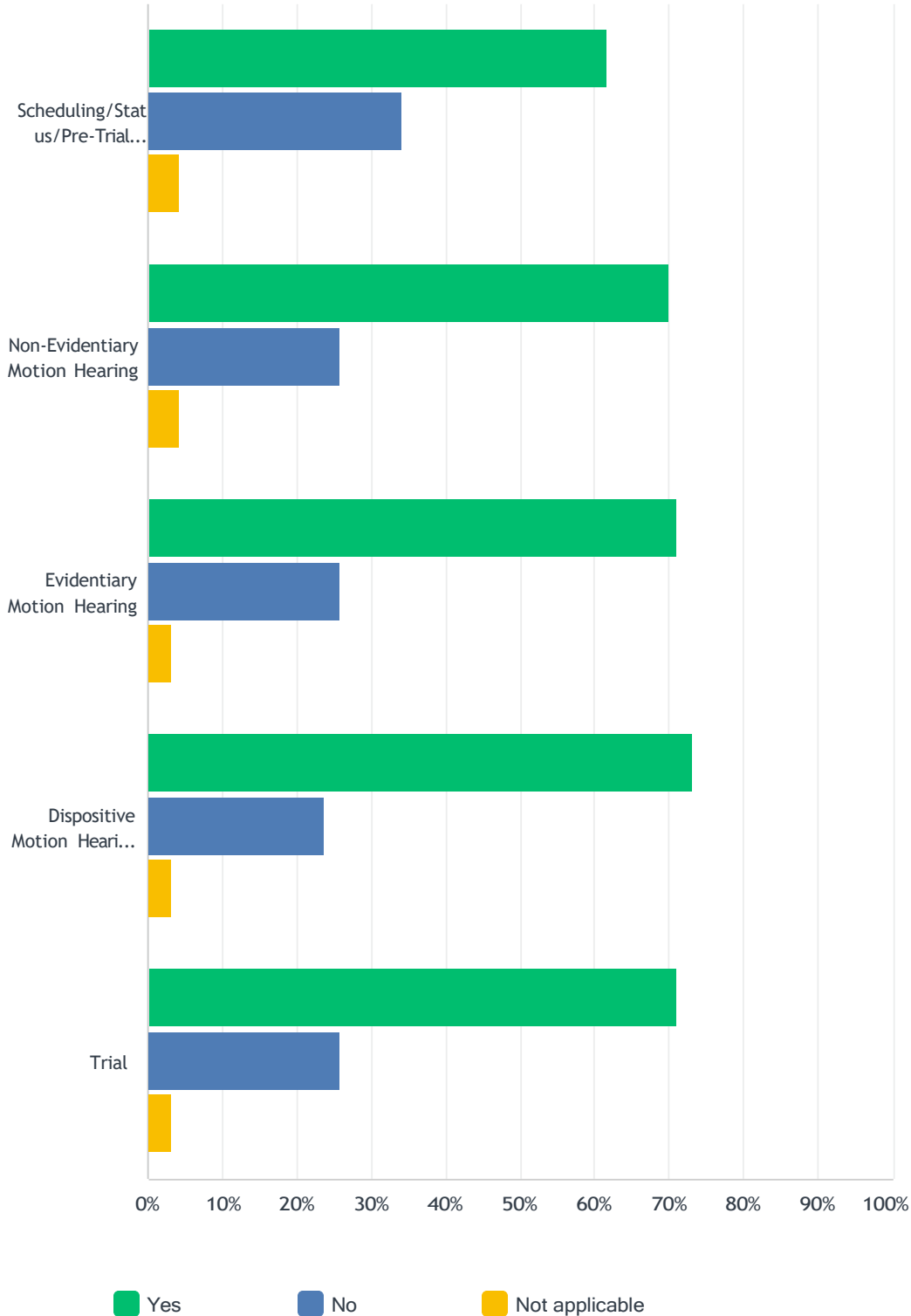
Q9 If you wish, please explain why, in your experience, it is or is not appropriate to use virtual technology for particular types of proceedings in adversary proceedings:⁴

Answered: 12 Skipped: 90

⁴ The responses to this question have been omitted.

Q10 For each of the following proceedings in adversary proceedings, please mark the box below to indicate whether the public and media should be able to access the in-court proceeding remotely:

Answered: 94 Skipped: 8



First Circuit Judicial Council Post-Pandemic Operations

	YES	NO	NOT APPLICABLE	TOTAL
Scheduling/Status/Pre-Trial Conference	61.70% 58	34.04% 32	4.26% 4	94
Non-Evidentiary Motion Hearing	69.89% 65	25.81% 24	4.30% 4	93
Evidentiary Motion Hearing	70.97% 66	25.81% 24	3.23% 3	93
Dispositive Motion Hearing (including motions for summary judgment, motions to dismiss, etc.)	73.12% 68	23.66% 22	3.23% 3	93
Trial	70.97% 66	25.81% 24	3.23% 3	93

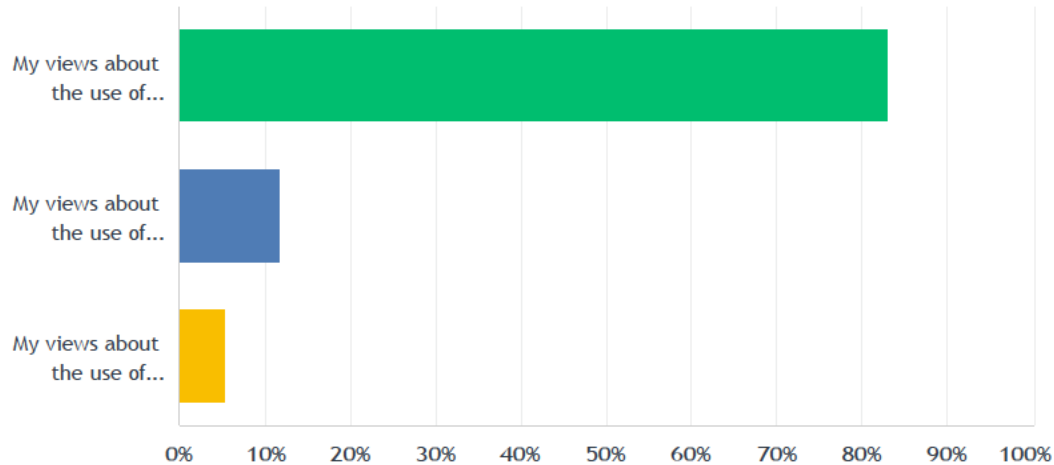
Q11 If you wish, please explain why, in your experience, it is or is not appropriate to permit the public and media to access particular types of proceedings in adversary proceedings remotely:⁵

Answered: 14 Skipped: 88

⁵ The responses to this question have been omitted.

Q12 Which of the following statements best describes your views, before and after the onset of the pandemic, about the use of virtual technology (videoconferencing and teleconferencing) to hold court proceedings?

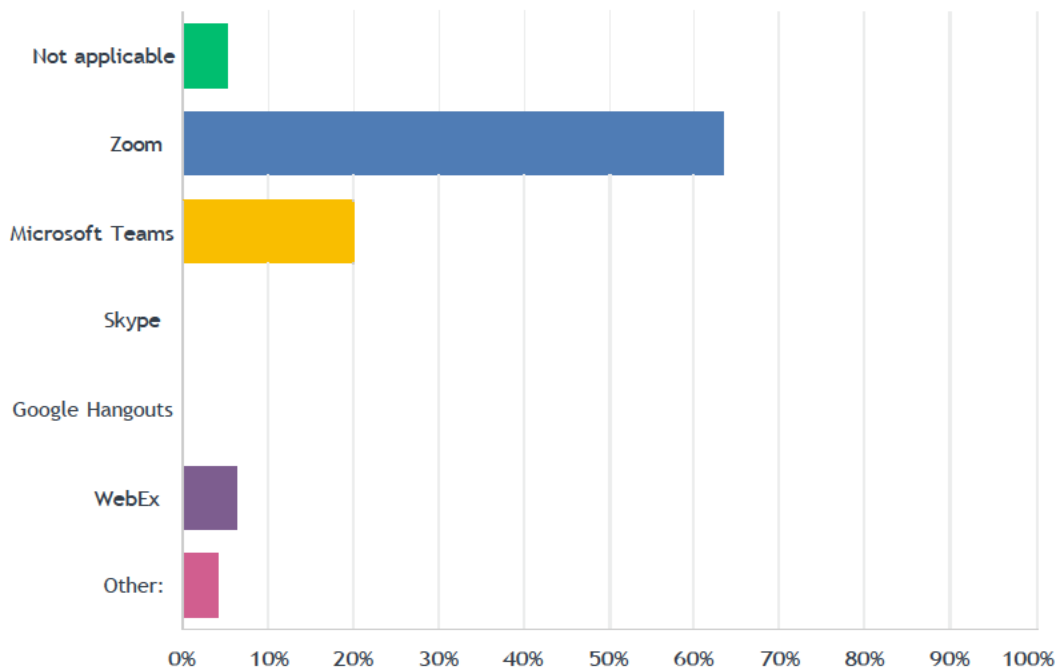
Answered: 94 Skipped: 8



ANSWER CHOICES	RESPONSES	
My views about the use of virtual technology to hold court proceedings are more favorable than they were prior to the pandemic.	82.98%	78
My views about the use of virtual technology to hold court proceedings have not changed since the onset of the pandemic.	11.70%	11
My views about the use of virtual technology to hold court proceedings are less favorable than they were prior to the pandemic.	5.32%	5
TOTAL		94

Q13 Which of the following video platforms do you prefer using?

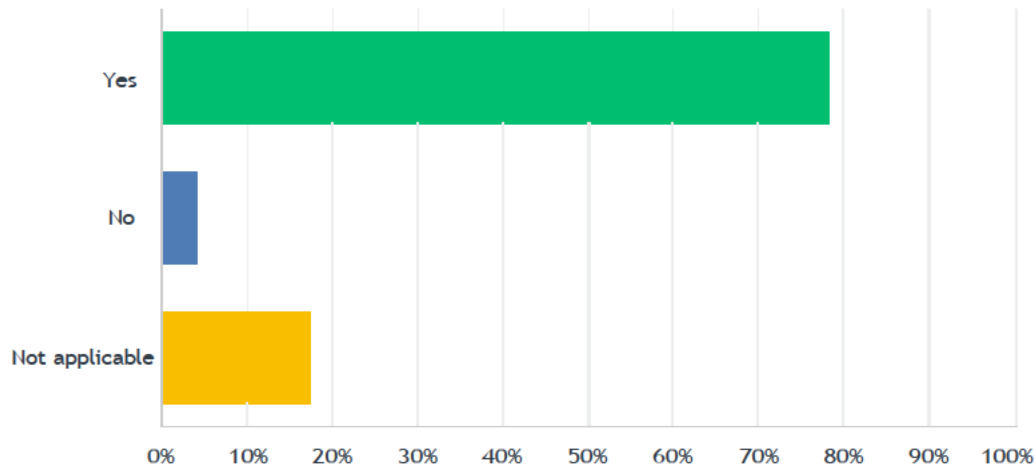
Answered: 93 Skipped: 9



ANSWER CHOICES	RESPONSES	
Not applicable	5.38%	5
Zoom	63.44%	59
Microsoft Teams	20.43%	19
Skype	0.00%	0
Google Hangouts	0.00%	0
WebEx	6.45%	6
Other:	4.30%	4
TOTAL		93

Q14 If you have participated in remote proceedings in this federal bankruptcy court, were you satisfied with the level of technological information/assistance with videoconferencing technology?

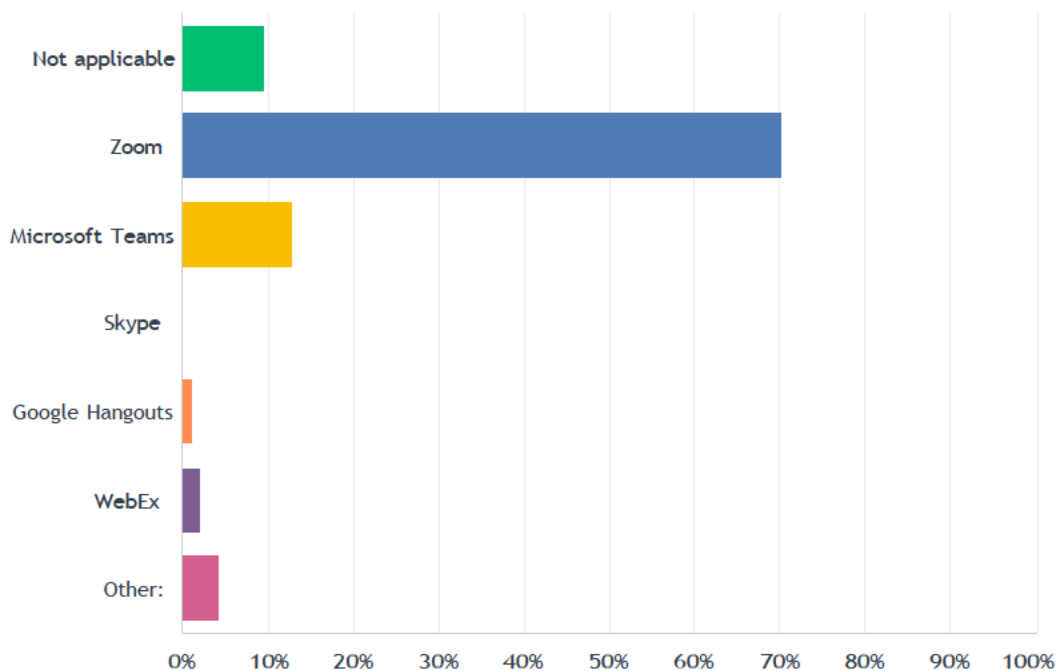
Answered: 92 Skipped: 10



ANSWER CHOICES	RESPONSES	
Yes	78.26%	72
No	4.35%	4
Not applicable	17.39%	16
TOTAL		92

Q15 To your knowledge, which of the following video platforms generally do your clients prefer using to attend remote proceedings?

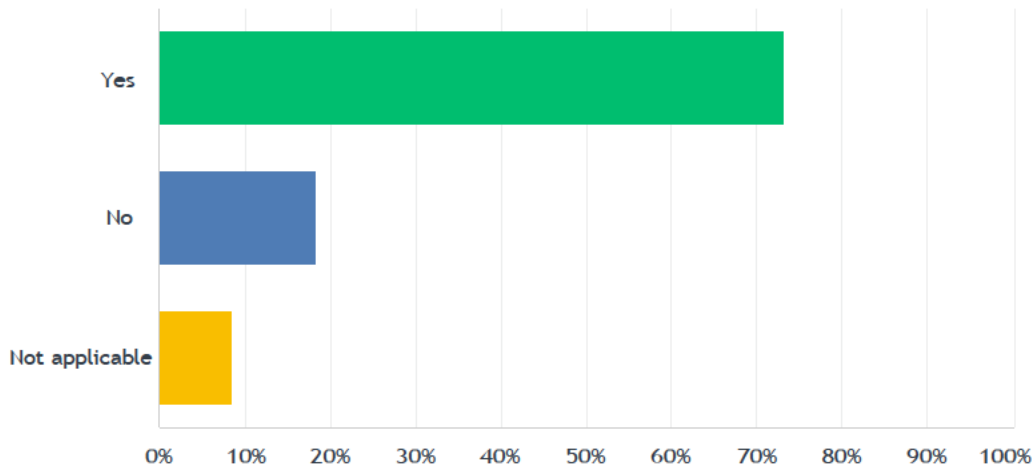
Answered: 94 Skipped: 8



ANSWER CHOICES	RESPONSES	
Not applicable	9.57%	9
Zoom	70.21%	66
Microsoft Teams	12.77%	12
Skype	0.00%	0
Google Hangouts	1.06%	1
WebEx	2.13%	2
Other:	4.26%	4
TOTAL		94

Q16 To the best of your knowledge, are there participants who attended remote court proceedings that would not have been able to do so in person?

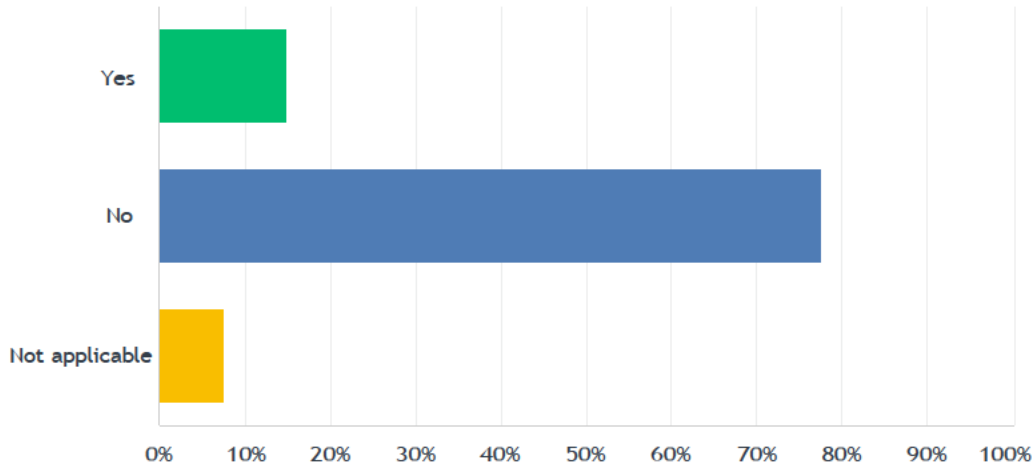
Answered: 93 Skipped: 9



ANSWER CHOICES	RESPONSES	
Yes	73.12%	68
No	18.28%	17
Not applicable	8.60%	8
TOTAL		93

Q17 Have you found that a significant number of clients or members of the public have not had access to or knowledge about necessary technology, or otherwise have had problems accessing remote court proceedings?

Answered: 94 Skipped: 8



ANSWER CHOICES	RESPONSES	
Yes	14.89%	14
No	77.66%	73
Not applicable	7.45%	7
TOTAL		94

Q18 Please provide any additional information you think is relevant regarding remote court proceedings in the federal courts.⁶

Answered: 12 Skipped: 90

⁶ The responses to this question have been omitted.