

## “Other Side” Workgroup Recommendations – [Civil/Family](#)

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The Other Side Workgroup has identified three phases of strategies:

1. **Short Term Strategies** – strategies to employ now and during mostly remote work for employees and judges
2. **Transitional Strategies** – strategies to employ as we are transitioning to/from remote work to full capacity in court locations where there is no “Stay at Home” order, but social distancing protocols are likely still in place
3. **Long Term Strategies** – strategies to employ on the “other side” of the pandemic when employees and judges are at full capacity in court locations

During initial meetings, only short-term and some transitional strategies were identified.

### Short Term (Now) Strategies & Actions

Strategies	Statewide Actions	Local Actions
1. No expansion of in-person hearings at this time.		
2. Seek input from Civil bar (MDLA, MAJ) and MSBA Civil Litigation section on initial transition plan for expanding remote work on civil cases.	Convene a call with partners and MJB (include Legal, IT, CSD, Supreme Court designee, 2 District Court Judges (metro and non-metro)) to discuss the following: <ol style="list-style-type: none"> <li>1. Get input from Civil bar on strategies and timing for civil jury trials.</li> <li>2. Discuss extending practice of suspending oral argument on special term motions and decide upon the written submissions of the parties.</li> </ol>	Local courts discuss implementation with local bar.
3. Seek input from Family bar and MAJ on initial transition plan for expanding remote work on family cases.	Convene a call with partners and MJB (include Legal, IT, CSD, Supreme Court designee, 2 District Court Judges (metro and non-metro)) to discuss the following: <ol style="list-style-type: none"> <li>1. Get input from Family bar and MAJ on strategies for remote hearings, ensure partners can support remote video hearing technology, explore federal grants for technology for legal aid, increased use of pre-court mediation, ODR, etc.</li> <li>2. Work with all partners to ensure they can support video technology.</li> </ol>	Local courts discuss and implement strategies with all partners, especially local bar/legal aid, to ensure they can support video technology.

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<p>4. Collaborate with legal aid representatives to get input on strategies for resolving cases often before them.</p>	<p>Appeals from administrative agencies be resolved on the record, if waiver of appearance from the parties for oral argument.</p> <p>SCAO Civil Legal Services liaison consult with legal aid to discuss strategies for civil cases, including appeals from administrative agencies, conciliation court appeals, evictions, OFP, etc. Include judges or others as needed in these conversations.</p>	<p>Outreach to local legal aid partners to discuss process for waivers of hearing appearances.</p>
<p>5. Defining statewide remote hearing definition and minimum standards for Civil/Family cases.</p>	<p>For Civil cases, remote hearings can be held via multiple types of technology, including but not limited to ITV, video conference via WebEx, Virtual Meeting Room (VMR), Zoom, or telephone.</p> <ul style="list-style-type: none"> <li>• Parties in civil cases can appear remotely or waive appearance.</li> <li>• If parties do appear, give a time limit for oral argument</li> <li>• The parties and attorneys do not need to be visible to the judge (can join via phone), unless specifically noted otherwise in this document.</li> </ul> <p>For Family cases, remote hearings can be held via multiple types of technology, including but not limited to ITV, video conference via WebEx, Virtual Meeting Room (VMR), Zoom, or telephone.</p> <ul style="list-style-type: none"> <li>• The parties and attorneys do not need to be visible to the judge (can join via phone), unless specifically noted otherwise in this document.</li> <li>• Permitting others (advocates, etc.) to attend hearings remote.</li> </ul> <p>Deploy survey of employees and judges to assess remote hearing experience (including audio, video, how many hearings can reasonably be done in a day, are participants understanding directions, able to access technology, resolve the matter, etc.)</p>	<p>Selecting the right technology solution for the hearing type (e.g. whether lobby/waiting room is needed).</p> <p>Courts/judges establish remote hearing standards and communicate those to court customers.</p>
<p>6. Expand remote hearings in Civil in the following priority order:</p> <p>a. Non-testimonial Civil Motions (video or audio conferencing)</p>	<p>Distribute statewide script for remote hearings, other best practices</p> <p>Expand outreach and communication efforts statewide, including through social media, bar association, community groups.</p>	<p>Develop a plan for remote hearing calendars, communicate these plans to local partners.</p>

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<ul style="list-style-type: none"> <li>b. Minor Settlement/Wrongful Death distribution of proceeds (video or audio conferencing)</li> <li>c. Property disputes</li> <li>d. Name Changes (video conferencing required)</li> <li>e. Other uncontested</li> </ul>	<p>Be inclusive and consistent between parties, participants and attorneys. Find a way to present consistency between counties, districts, etc. Attorneys that work in multiple jurisdictions are currently frustrated with the difference in what hearings are being held during the COVID-19 phase.</p>	<p>Expand outreach and communication efforts with local agencies, community groups, about process changes once strategy and local details are clearer.</p>
<p>7. Expand remote hearings in Family. All hearings can be done remotely.</p>	<p>Distribute statewide script for remote hearings, other best practices Expand outreach and communication efforts statewide, including through social media, bar association, community groups.</p> <p>Be inclusive and consistent between parties, participants and attorneys. Find a way to present consistency between counties, districts, etc. Attorneys that work in multiple jurisdictions are currently frustrated with the difference in what hearings are being held during the COVID-19 phase.</p>	<p>Develop a prioritization plan for remote hearing calendars, communicate these priorities to partners. Specific hearing times should be provided, as feasible. Expand outreach and communication efforts with local agencies, community groups, about process changes once strategy and local details are clearer.</p>
<p>8. Expand paper review process for Civil/Family, including:</p> <ul style="list-style-type: none"> <li>a. Civil motions - suspend oral arguments on special term motions and decide upon the written submissions of the parties.</li> <li>b. Administrative agency appeals</li> <li>c. Defaults based on public notice</li> <li>d. Implied Consents</li> <li>e. Minor Settlements (at discretion of the judge)</li> <li>f. All signing should be done electronically</li> </ul>	<p>Create statewide checklists for judges to clarify paper processes.</p> <p>Default based on public notice: For service by publication, change the content of the notice: instead of "appear in court on this date," it is "contact court administration by this date with our objections."</p> <p>NOTE: Leverage process on Implied Consents in 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> districts for license reinstatement opportunity.</p> <p>Include language in the order that the order’s effectiveness is stayed until a particular date to address any objections from the parties.</p>	
<p>9. Set up Remote Hearing support center for court customers to contact if they are experience issues.</p>	<p>Set up support center.</p>	<p>Update documentation with information on statewide support center.</p>

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10. Assess effectiveness of increasing use of adjunct judicial officers to conduct regional/statewide hearings.	Review court data and develop a plan for adjunct judicial officer assistance, seeking cost effective options.	
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### Transitional (transitioning back to workplaces) Strategies

***The current presumption is that this “transitional” time period begins when the Governor’s Stay at Home order expires. The current presumption is that this is in early May.***

1. Do not immediately move to jury trials in Civil cases. Transition to ramp up jury trials with lessons learned from criminal jury trial pilots.
  - a. Establish a moratorium on civil jury trials until September 2020.
  - b. Conversation should occur with the Civil bar before the moratorium is established to seek feedback on this moratorium and timeline.
2. Do not initially increase in-person hearings for Civil/Family cases.
  - a. While under public health official recommendations for social distancing, civil case hearings other than OFP or HRO will generally be prioritized for courtroom availability lower than criminal and CHIPS cases.
  - b. This should be re-evaluated regularly as public health recommendations change.
3. Continue to do remote hearings and leverage what we’ve learned in the mostly-remote phase. Encourage as much to be resolved remotely as possible.
  - a. Pretrial hearings should continue to be done remotely rather than canceled.
4. Conduct remote video conference civil court trials and evidentiary hearings at the discretion of the judge. Judges should report on their experience, including assessing their ability to make credibility determinations, accept exhibits, etc., through remote video technology.
  - a. In determining whether a civil court trial or evidentiary hearing is appropriate for remote video conference, judges should consider: including whether the parties object, whether both parties are represented by counsel, how central

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- are credibility determinations to the case, comfort with technology of the judge and participants, the plan for sharing and managing exhibits, and using a pretrial order to address issues unique to a remote video technology.
- b. Guidelines should be developed, based on judge feedback, to potentially expand the remote videoconferencing court trials.
  - c. Leverage guidelines and lessons learned to potentially expand to conducting remote hearings (e.g. conciliation court).
5. Distribute to districts the Implied Consent procedures from 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> districts to evaluate and put into practice in their district.
  6. Explore and begin planning for Online Dispute Resolution.
    - a. Discuss potential case types to prioritize with Civil bar, civil legal services, and ADR board
    - b. Might be most applicable with self-represented litigants.
    - c. Explore disputes that could have applicability, including, but not limited to: conciliation court, minor criminal, and civil/family in general.
  7. Expand use of Adjunct Judicial Officers, Judge specialization to address backlogs for statewide or regional approaches to case resolution
    - a. Planning for this should begin now to prepare and address potential barriers
    - b. Consider adding volunteer conciliation referees
    - c. Consider adding temporary referees, as feasible financially
    - d. Consider expanding the use of current adjunct judicial officer beyond county/district, addressing judicial resource allocation from a statewide level
  8. Expand hours to address Civil/Family backlog
    - a. Consider late afternoon/evening remote calendars
    - b. Consider prioritizing expanding remote conciliation court calendars at evening or weekend
  9. Continue paper process reviews listed above (short term strategies).

**Long Term (Other Side) Strategies & Actions**

Not yet discussed by the workgroup.