

Judicial Council's Code of Civil Procedure Section 367.9 Working Group (367.9 Working Group)

Summary of Materials from Working Group Meeting on August 25, 2022

August 29, 2022

Presented/Provided Item	Source	Description
<i>Using Remote Technology In Special Proceedings of a Civil Nature In Criminal Courts</i>	<ul style="list-style-type: none"> Hon. Ann Moorman, Judge of the Superior Court, County of Mendocino Mr. Michael Fermin, Chief Assistant District Attorney, San Bernardino County District Attorney's Office Ms. Laura Arnold, Deputy Public Defender, Santa Barbara County Public Defender's Office 	Full PowerPoint presentation created and delivered by the Criminal case type group during the meeting.
<i>General Civil Data</i>	Hon. Theodore Zayner, Judge of the Superior Court, County of Santa Clara	Full PowerPoint presentation created and delivered by Judge Zayner during the meeting.
<i>Survey Results: Trials Using Remote Technology</i>	Mr. Craig Peters, Attorney at Law, Altair Law	Full PowerPoint presentation created and delivered by Mr. Peters during the meeting.
<i>Remote Jury Trials: Attorney Interview</i>	Mr. Peter Stirling Doody, Attorney at Law, Higgs Fletcher & Mack LLP	Full PowerPoint presentation created and delivered by Mr. Doody during the meeting.
<i>Remote Civil Trials</i>	Mr. Oliver Dunlap, Principal and Shareholder, Bartko Zankel Bunzel & Miller	Full PowerPoint presentation created and delivered by Mr. Dunlap during the meeting.
<i>Tribal Perspective on Remote Proceedings</i>	Ms. Dorothy Alther, California Indian Legal Services	Full PowerPoint presentation created and delivered by Ms. Alther during the meeting.
<i>Interpreters Providing Services in Remote Proceedings</i>	Ms. Janet Hudec, Certified Court Interpreter Superior Court of California, County of Madera Mr. Tyler Nguyen, Certified Court Interpreter Superior Court of California, County of Sacramento	Full PowerPoint presentation created and delivered by Ms. Hudec and Mr. Nguyen during the meeting.

Using Remote Technology In Special Proceedings of a Civil Nature In Criminal Courts

367.9 Working Group

Hon. Ann C. Moorman, Ms. Laura Arnold, Mr. Michael Fermin

August 25, 2022

What cases are we talking about?

- ▶ **Civil Commitment - SVP, MDO, NGRI, WIC 6500, etc.**
 - ▶ Often adversarial in nature
 - ▶ Petition filed by D.A. and defended by court-appointed counsel
 - ▶ Respondent alleged to be dangerous due to a mental disorder or developmental disability, requiring involuntary confinement for treatment
 - ▶ Duration of confinement ranges from one year to indeterminate (no end date)
 - ▶ Implicate liberty interests, requiring procedural due process protection akin to criminal proceedings, including, in some schema, right to jury trial

What cases are we talking about?

(continued)

- ▶ **Conservatorship & AOT (Assisted Out-patient treatment)**
 - ▶ Generally, not adversarial due to diminished capacity of respondent and short duration
 - ▶ Usually* prosecuted by County Counsel (or D.A.) and defended by court-appointed counsel
 - ▶ Respondent alleged to be “gravely disabled” due to a mental disorder, requiring involuntary treatment and placement, including secure facility.
 - ▶ Duration of conservatorship is one year
 - ▶ Implicates liberty interests, requiring procedural due process protection akin to criminal proceedings, including right to jury trial
- ▶ **Contempt**, stemming from civil proceedings (i.e. spousal support, child support, family law orders, real property disputes, etc.)

How are these different from actions involving declaration of rights, injunctive relief, and/or monetary damages?

- ▶ Involve loss of liberty and other fundamental rights, including control over one's brain chemistry (involuntary medication/treatment) and body (side effects of medication/treatment, loss of medical decision-making authority, loss of control over property; loss of ability to enter engage in contracts including marriage; lifelong firearm prohibition, loss of driving privileges, etc.)
- ▶ Involve particularly vulnerable respondents, in terms of mental and physiological condition and, in some cases, cognitive functioning. In contrast with classic "civil" litigants, nearly all respondents in these proceedings are indigent and represented by appointed counsel.

How are these different from actions involving declaration of rights, injunctive relief, and/or monetary damages? (continued)

- ▶ Often heard by criminal division judges or judges with direct assignment to this case type.
- ▶ These are very crowded dockets, not allowing opportunity for notice and hearing as required by SB 241.
- ▶ Non-critical hearings (scheduling, settlement, review, discovery, motions) occur in respondent's absence
- ▶ Fewer statutory timelines governing these proceedings versus criminal or juvenile justice cases. Due process guarantees that the respondent be personally present at trial on a petition, absent a valid waiver.

Competency Proceedings (PC 1370/1370.1)

- ▶ Due to connection to criminal proceeding, the respondent is often **incarcerated in jail throughout duration of proceedings** and even after commitment order, until placement is determined, *and* respondent is physically transported and placed.
- ▶ **Placement may include JBCT (Jail Based Competency Treatment)**
- ▶ Limited in scope - respondent is committed solely for the purpose of competency “restoration” and must be returned to committing court if not restored, or if believed to lack capacity to attain competency within specified time.
- ▶ After a finding of incompetency Respondent is **usually assessed by DSH as requiring placement for treatment in a secure facility**; i.e., a state hospital, vs. outpatient/community.
- ▶ Competency can be the gateway to conservatorship (LPS/*Murphy*), WIC 6500 commitment, or state prison.

Who Are We Talking About?

(The Respondents)

- ▶ Housed in state hospital or board & care facilities (locked facilities)
- ▶ Diagnosed with severe mental disorders/developmental disabilities impairing cognition or behavioral regulation requiring involuntary confinement and treatment
- ▶ Many have physical conditions that require, wheelchairs, gurneys, and other physical assistance
- ▶ Many require frequent administration of medication or other assistance

Who Are We Talking About?

(The Respondent), continued

- ▶ Many have behavioral issues triggered by strange surroundings
- ▶ Many are infirm due to age or mental or physical incapacity
- ▶ Waiting in a courtroom is not tolerable for many due to external stimuli
- ▶ Many lack insight into their condition and may be resistant to treatment
- ▶ Many have been victims of abuse, neglect or institutionalization

Remote Appearances & Remote Testimony have been and continue to be used liberally, statewide, usually on a case-by-case basis

- ▶ Most counties have a “hybrid” model, with some respondents appearing in court with attorney and others appearing by video from treatment facility (or jail) and attorney generally appearing by video from a different location.
- ▶ Counsel rarely appears from same location as the respondent/client.
- ▶ Courts with technological capacity generally provide “break-out rooms” through video platforms upon request of the attorney, although not necessarily for as much time as is needed for meaningful communication.
- ▶ Respondents are not required to appear remotely without their consent or over their attorneys’ objection; however, there are consequences to electing in-person appearance due to COVID-measures in facilities and jails (quarantine upon return from court) calling into question whether this “consent” is truly informed and voluntary.

When Physical Appearance Required (What Judicial Officers See)

- ▶ Respondents Uprooted from stable housing
- ▶ Transported long distances often across the state to an unfamiliar place
- ▶ Housed in jails not treatment centers or facilities, often for weeks
- ▶ They lose their room or their housing entirely
- ▶ They lose their place in their programming
- ▶ They receive no mental health treatment while housed locally
- ▶ They receive no medical treatment while housed locally
- ▶ The unfamiliarity of the surroundings and personnel cause instability, disruptive behavior and treatment set-backs
- ▶ Disruptions in court often occur interfering with their own and others' proceedings

SOME DATA FROM LOS ANGELES COUNTY

- ▶ Los Angeles County has been holding remote hearings in these cases *for over two decades*
- ▶ Los Angeles County caseloads in these case types *far* exceed any other county in California
 - ▶ Los Angeles has *an entire courthouse* dedicated to holding only Mental Health proceedings
 - ▶ In 2019 this courthouse handled 46,000 mental health proceedings in 4 courtrooms
- ▶ Today, over 30% of all Mental Health hearings held in Los Angeles County Superior Court are held remotely.
 - ▶ In 2021 approximately 21,500 hearings were held remotely in Los Angeles County Superior Court
 - ▶ In 2022 thus far approximately 15,000 hearings were held remotely

Best Practices for Judicial Officers by Judicial Officers

- ▶ Evidence supports the importance of “trauma competence” in judicial proceedings
- ▶ Reducing trauma produces better outcomes in court, promotes treatment
- ▶ Using remote technology, participants can see the Judge better and feel a better connection to the judge
- ▶ Remote technology allows participation in a familiar environment
- ▶ Expert testimony by treating DSH professional from the placement
- ▶ Remote proceedings ensures timely testimony and continuation of treatment to others by these professionals

The Judiciary Strongly Supports the Flexibility to Continue Remote Proceedings

- ▶ Remote proceedings occur with consent of all parties and counsel
 - ▶ Patients/clients/defendants prefer remote; those who want to appear in court are allowed
 - ▶ In-person proceedings have not been eliminated
- ▶ Counsel agree/consent to remote proceedings
- ▶ Expert witnesses prefer remote proceedings
- ▶ Lay witnesses prefer testifying remotely to avoid time and expenses and/or trauma themselves

The Judiciary Strongly Supports the Flexibility to Continue Remote Proceedings (continued)

- ▶ Other witnesses, family, and the public
 - ▶ Civil commitment hearings can be attended by broader public
 - ▶ Greater attendance by families or public
 - ▶ Reduces trauma and stress for lay witnesses
- ▶ Retaining Remote Proceedings Is essential to a Trauma Informed Judiciary and to Maintain Par with Caseloads

Judges See Other Positive Outcomes

Reduction in Hearing Delays

- ▶ Caseloads are increasing (“sky rocketing”)
- ▶ Remote proceedings reduce COVID-induced backlog in mandatory hearings
- ▶ Local sheriff departments have staffing shortages which result in delays in transport
- ▶ COVID and transmissible disease still occurring (quarantines delay proceedings)
- ▶ Remote proceedings ensure timely hearings while protecting the health of the individual, public, and personnel

Miscellaneous

Resource savings

- ▶ Reduction in travel expenses by DSH personnel and other professionals
- ▶ Reduced reliance on sheriff departments tasked with retrieving, housing and transporting individuals.
- ▶ Board and Care Personnel Do Not have to transport
- ▶ Lay witness travel consumes time and resources

The Bench Believes Better Technology = Better Experience

Audio and Video platforms continue to improve

- ▶ The investment in tablets and technology by DSH has vastly improved user experience
- ▶ Continued investment better technology by the Courts has reaped significant benefits

Audio quality difficulties remain, causing strains on court reporters

- ▶ Respondents' Disorganized speech or speech impediments require vibrant audio
- ▶ Poor audio can interfere with highly technical testimony

Attorney Perspective

► Advantages for Attorneys

- **Convenience** - can appear in hearings in multiple courtrooms/courthouses in a single day & coverage is easier to coordinate when assigned attorney is on leave
- **Efficiency** - other work can be completed in office, including client communication/record review/etc. while waiting for cases to be called
- Efficiency for backlog/high-volume caseload
- Alleviates some **staffing issues** caused by pandemic - attorneys quarantined due to COVID can still appear remotely from home

Advantages

- ▶ Best thing about pandemic
- ▶ Convenient for witnesses/respondents in treatment
- ▶ Scheduling for long-distance travel
- ▶ Efficiency for backlog/high-volume caseload

Attorney Perspective (continued)

► Disadvantages for Attorneys

- Confidential communication prior to and during the hearing is not always facilitated by the court, even upon request of counsel.
- Technology deficits and user-error - difficulty hearing client
- Symptomatic clients are able to speak out freely in a manner contrary to their best interests
- Attorneys cannot effectively support symptomatic clients during the hearing or afterward, due to client “leaving” the meeting room and attorneys having to remain to handle other cases on calendar
- Examination of witnesses can be compromised in remote testimony situations - body language and other intangibles are lost, impeachment and refreshing of recollection with documents is challenging, reporter’s ability to create verbatim record of oral proceedings may be impaired, and confidentiality of proceedings (conservatorship) cannot be ensured

Disadvantages

- ▶ Technological challenges
- ▶ Lag/bandwidth issues
- ▶ Equipment/technology limitations
- ▶ Video testimony not as effective as live
- ▶ Technical concerns more acute when jury present

Client Perspective - Civil Commitment & Conservatorship/AOT

► Advantages

- Travel not required for patient, treatment team members, family, witnesses
- Access to justice is improved, as patients are reportedly more willing to participate in their cases if they can appear remotely from the treatment facility
- Patient and treatment staff need not wait around all day for their cases to be called.
- No post-appearance quarantine required

► Disadvantages

- Patients are not given a copy of their minute orders by the courts
- Impaired attorney/client communication prior to, during, and after hearings - reduced understanding of what is happening in their cases/lives
- Technology issues & attendant disruption/anxiety

Competency proceedings are different!

Advantages for clients who can appear remotely

- ▶ Court hearing doesn't result in loss of tx bed and return to DSH "waitlist"
- ▶ No disruption (often prolonged) of treatment, resulting in decompensation. This is particularly positive for those whose symptoms are acute and require administration of antipsychotic medications.
- ▶ Prevents trauma inherent to incarceration/shackling/etc., in-person court attendance, and abuse/harm known to occur when individuals with SMI or DD are required to be confined in jails
- ▶ Reduced risk of exposure to COVID-19 & no quarantine upon return from court
- ▶ Reduced delays in proceedings due to transportation difficulties

Disadvantages of Remote Appearances in Competency Cases

- ▶ Competency proceedings, like juvenile justice proceedings, are quasi-criminal in nature and entirely respondent/client/patient centered - question is current mental status.
 - ▶ Far too frequently, **symptoms of SMI are “masked” during remote appearances/assessments as compared to assessments made in-person.** This can lead to **erroneous assessments** as to patient/respondent’s current mental condition, necessitating delays and protracted litigation (and incarceration in jail of the committed person) regarding current trial competency.
- ▶ Clients who are acute or whose cognitive functioning is impaired have been found to lack the ability to rationally cooperate with counsel or understand the nature of the proceedings. These challenges are augmented when attorney and client are not appearing from same location.
- ▶ Attorneys believe that their clients’ feelings of **mistrust and isolation are exacerbated** when they lack in-person contact for support and “real communication” before, during, and after court hearings

Suggestions for the Governor & Legislature

- ▶ Flexibility is needed, particularly during the pandemic. The determination as to whether to permit remote appearances/testimony should be made by the litigants and their attorneys, subject to court approval.
- ▶ Courts must be required to provide minute orders to litigants appearing remotely, rather than delegating that duty to counsel for the committed person.
- ▶ Confidential communication between attorney and client must be facilitated by courts prior to, during, and after a hearing, at the request of the attorney or client.
- ▶ Remote appearances and testimony should rarely be used in jury trials or other evidentiary hearings, and they should never be permitted without informed, intelligent and voluntary consent of the respondent, or, in the case of an IST respondent, the consent of their attorney, acting in the client's best interest.

Suggestions for the Governor & Legislature (continued)

- ▶ Assessments of competency are most accurate when made in-person, whether by evaluators or by the court.
- ▶ Quality of technology/platforms should be uniform statewide, and patients in treatment facilities should be provided tablets/ipads, etc., so they can appear remotely from the facility while still maintaining confidentiality.
- ▶ While counsel need not always appear from the same location as the client (assuming confidential communication is facilitated by the court) respondents in these proceedings should never appear in person with their attorney appearing remotely, and vice versa.

367.9 Working Group

General Civil Data

HON. THEODORE C. ZAYNER

Remote Criminal Evidentiary Hearing Feedback

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- ▶ Fully remote criminal evidentiary hearing in 2020
 - ▶ Monday – Thursday, 8:30 – 1:30
 - ▶ At least six sessions
 - ▶ Attorneys and witnesses remote
 - ▶ Defendant remote from CDC

Remote Criminal Evidentiary Hearing Feedback

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- ▶ In-person
 - ▶ Court reporter
 - ▶ Courtroom clerk
 - ▶ Deputy
 - ▶ Interpreters
 - ▶ Judge

Remote Criminal Evidentiary Hearing Feedback

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- ▶ Videoconferencing platform
 - ▶ Zoom preferred for easier functionality
 - ▶ Managing the lobby
 - ▶ Muting participants
 - ▶ Sending the link to participants

Remote Criminal Evidentiary Hearing Feedback

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- ▶ Recommendations
 - ▶ Remind attorneys to use hardwire connection
 - ▶ Work with IT on attorney/party access
 - ▶ Access and provide link
 - ▶ Communicate and encourage in advance

Remote Criminal Evidentiary Hearing Feedback

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- ▶ Recommendations
 - ▶ Judge should co-host
 - ▶ Judge should actively manage lobby for witness moderation
 - ▶ Anyone other than witnesses should be admitted with no questions asked

Remote Criminal Evidentiary Hearing Feedback

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► Opinions Expressed

- People should be able to access remote hearings the same way they do in a courtroom
- Enhancing access to justice indicates that remote hearings should be encouraged/facilitated when possible
- Judge controlling pace of courtroom is another form of courtroom management

Assembly Bill 253: Court Reporting Evaluation

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Santa Clara County Superior Court reporters and the Santa Clara County Superior Court believe that remote appearances and remote court reporting are suitable additions or options to in-person appearances; however, thought must be given to adequacy of technology, flexibility of the platform, and court rules for decorum of the proceedings.

*~Assembly Bill 253: Remote Court Reporting Evaluation,
August 17, 2021*

Santa Clara County
Superior Court
Reporter
Recommendations

- ▶ Individual microphones
- ▶ Permanent/semi-permanently affixed cameras with frontal view of:
 - ▶ Judicial officer
 - ▶ Witness
 - ▶ Jury box
 - ▶ Counsel tables
 - ▶ Lectern/podium/speaking place
 - ▶ Audience

Santa Clara County
Superior Court
Reporter
Recommendations,
continued

- ▶ Studio-quality speakers
- ▶ Hard-wired internet access
- ▶ Wired external speakers and microphone
- ▶ High-quality, high-def camera
- ▶ Immediate IT access

Santa Clara County
Superior Court
Reporter
Recommendations,
continued

- ▶ Immediate external means of communication
- ▶ Admin rights to allow:
 - ▶ Direct access to the courtroom (cannot have access limited)
 - ▶ Admin rights to allow muting or halting rights of other participants

Santa Clara County
Superior Court
Reporter
Recommendations,
continued

- ▶ Back-up live reporter
- ▶ Access to other participants via video, not audio only
- ▶ Day calendar availability in advance
- ▶ Judicial officer reminders required for speaking order and decorum



SURVEY RESULTS: TRIALS USING REMOTE TECHNOLOGY

MR. CRAIG MICHAEL PETERS, ATTORNEY AT LAW, ALTAIR LAW



SURVEY BREAKDOWN

- A survey was delivered to 2,026 people
- 815 opened it, 109 clicked on it, 97 responded
- Respondents asked to rate effectiveness and desirability of three parts of a trial being done under different courtroom scenarios in the categories of:
 1. Jury Selection
 2. Opening/Closing
 3. Witnesses
- Positive and negative effects remote appearances have on things like availability of jurors for jury pools, cost savings, and ease of scheduling
- Any other information that may be helpful to the working group



JURY SELECTION



SCENARIO 1: ONLY JUDGE IN COURTROOM, JURORS AND ATTORNEYS
REMOTE, COURT REPORTER IN COURTROOM
(93 RESPONSES)

3.03★
average rating



SCENARIO 2: ONLY JUDGE IN COURTROOM, JURORS AND ATTORNEYS
REMOTE, COURT REPORTER REMOTE
(92 RESPONSES)

2.97★
average rating



SCENARIO 3: ONLY JUDGE AND ATTORNEYS IN COURTROOM, JURORS REMOTE, COURT REPORTER IN COURTROOM (91 RESPONSES)

2.59★
average rating



SCENARIO 4: ONLY JUDGE AND ATTORNEYS IN COURTROOM, JURORS
REMOTE, COURT REPORTER REMOTE
(90 RESPONSES)

2.36★
average rating



SCENARIO 5: EVERYONE IN COURTROOM (94 RESPONSES)

9.20★
average rating





OPENING AND CLOSING

SCENARIO 1: ONLY JUDGE IN COURTROOM, JURORS AND ATTORNEYS
REMOTE, COURT REPORTER IN COURTROOM
(93 RESPONSES)

2.94★

average rating



SCENARIO 2: ONLY JUDGE IN COURTROOM, JURORS AND ATTORNEYS
REMOTE, COURT REPORTER REMOTE
(90 RESPONSES)

2.70★
average rating



SCENARIO 3: ONLY JUDGE AND ATTORNEYS IN COURTROOM, JURORS
REMOTE, COURT REPORTER IN COURTROOM
(91 RESPONSES)

2.80★

average rating



SCENARIO 4: ONLY JUDGE AND ATTORNEYS IN COURTROOM, JURORS
REMOTE, COURT REPORTER REMOTE
(90 RESPONSES)

2.46★

average rating



SCENARIO 5: EVERYONE IN COURTROOM (95 RESPONSES)

9.39★
average rating



WITNESSES



SCENARIO 1: ONLY JUDGE IN COURTROOM; WITNESSES, JURORS, AND
ATTORNEYS REMOTE; COURT REPORTER IN COURTROOM
(87 RESPONSES)

2.89★
average rating



SCENARIO 2: ONLY JUDGE IN COURTROOM; WITNESSES, JURORS, AND
ATTORNEYS REMOTE; COURT REPORTER REMOTE
(87 RESPONSES)

2.85★
average rating



SCENARIO 3: ONLY JUDGE AND ATTORNEYS IN COURTROOM, WITNESSES
AND JURORS REMOTE, COURT REPORTER IN COURTROOM
(87 RESPONSES)

2.59★
average rating



SCENARIO 4: ONLY JUDGE AND ATTORNEYS IN COURTROOM, WITNESSES
AND JURORS REMOTE, COURT REPORTER REMOTE
(87 RESPONSES)

2.49★

average rating



SCENARIO 5: JUDGE, ATTORNEYS, AND JURORS IN COURTROOM; WITNESSES
REMOTE; COURT REPORTER IN COURTROOM
(90 RESPONSES)

5.86★
average rating



SCENARIO 6: JUDGE, ATTORNEYS, AND JURORS IN COURTROOM; WITNESSES
REMOTE; COURT REPORTER REMOTE
(90 RESPONSES)

5.03★
average rating



SCENARIO 7: JUDGE, ATTORNEYS, AND WITNESSES IN COURTROOM; JURORS
REMOTE; COURT REPORTER IN COURTROOM
(88 RESPONSES)

2.83★
average rating



SCENARIO 8: JUDGE, ATTORNEYS, AND WITNESSES IN COURTROOM; JURORS
REMOTE; COURT REPORTER REMOTE
(88 RESPONSES)

2.75★
average rating



SCENARIO 5: EVERYONE IN COURTROOM (93 RESPONSES)

9.23★

average rating



367.9 Working Group

ATTACHMENT – General Civil Cases Open-Ended Survey Responses

August 25, 2022

Question: Please provide any comments or suggestions you feel might be helpful to the Working Group.

I feel witnesses remote while everyone else in the courtroom works well for scheduling and so witnesses can testify without masks.

I think having remote jurors is a big mistake bc it's harder for them to pay attention, hard for attys to know who's responding to what, hard for jurors to read witness demeanor, etc. My opinion would be to prohibit remote jurors for trials.

I prefer live trials. However, short witnesses (i.e. foundational/record, etc) remote/zoom appearances are very helpful and allows for efficient use of everyone's time. In my last trial we brought two witnesses on via zoom to lay the foundation for records and bills. As for the Court reporter, I have no problem with the reporter working remotely as long the set up allows for efficient reporting.

A Day in Court is a Day "in Court". We should not allow the emergency rules, adopted during the COVID 19 pandemic, to turn a Court Trial into a Court TV.

I do not trust any part of having jurors remote.

Nothing takes the place of live testimony allowing the jurors to observe body language. Also when a jury is not in the same room as the judge and witnesses I think their attention can wander and they will be less involved. I am totally against remote trials.

I am not interested in continuing remote trials.

Having remote jurors sounds like a recipe for disaster in any scenario.

there is value in face time. It is important to serve our clients that we are able to pick up on the nuances of body language and our system deserves the full attention of the participants.

Jurors need to be in the courtroom with the attorneys and judge. Some or many witnesses can be remote

The Code should be amended to permit witnesses that are not experts to appear remotely without a stipulation, at the election of the party calling the witness.

We have lived with this pandemic for years; we have to keep functioning normally

I feel that remote appearances for jurors is really difficult for certain members of the community.

Witness availability and cost reduction is a key issue that needs to be considered. However in trying multiple cases to verdict over the past 2+ years one of the biggest struggles we've had is consistently getting in-person court reporters. I think that is likely the biggest issue to be addressed because without a reporter we're generally stuck in a holding pattern that only results in loss of time money and resources to the litigants and the Court.

It is just not a jury trial if you have jurors remote. No sense of community of jurors is created and no way to make sure they are doing their job as oppose to something else.

Better to have jurors and attorneys in court as attorneys must always see and hear juror reaction to evidence presentation.

technology is great, especially when necessary like Covid or on a witness by witness basis but there is no way that witnesses pay attn while remote. We cannot even ensure they pay attn in the courtroom, much less remotely. I don't even know how this is even a discussion. Yes as an option but not as a change in the way we conduct trials. No way.

negative aspects of every scenario include risk of infection from prolonged, close proximity to numerous persons w/ unknown health status

I am very concerned about jurors being remote and not paying attention. There is also a huge potential for jurors to do their own research while watching testimony. There is also a huge potential for jurors to be doing something totally unrelated to the trial and being totally detached and distracted that they will not be able to make a decision based on the evidence. The only way I see this working is with software similar to Examsoft (used for tests and the bar exam when I was in law school) that locks the user out of everything else except the feed to the trial. This would also require proctors to monitor the jurors to ensure they are not accessing mobile devices or watching TV off screen. Monitoring of jurors would likely increase the cost of trials and the burden on court staff.

It seems unlikely that a jury will sufficiently coalesce if they are remote because they are separate. Therefore I do not support any combination where the jury is remote.

During voir dire, remote jurors makes sense because it increases the jury pool. Certain witnesses are fine to be remote, but percipient witnesses should be in the courtroom with the jury.

With today's technology, remote appearances seem appropriate given the unique challenges affecting health and economic issues. I notice direct savings to the clients with remote appearances and the ability to run my practice more effectively. Additionally, going remote throughout the state can have a consistent and effective system, with variations dictated by local rules. I know that I save money by running my practice remotely, and these savings are passed down to my clients. Additionally, more jurors would likely be more willing to serve if their service was remote. I see savings in time, money, and sanity for both the Courts and the people in having remote appearances with benefits to the environment due to not having to commute. I see no cons except for those who would want in-person appearances due to the lack of being able to 'read' someone for truthfulness. This is the only con I can think of, and I don't think it is something that cannot be overcome. Virtual appearances are a 'newer' way of communicating and doing business. Virtual workplaces are relatively new and will take time for some to get on board in understanding and appreciating the full potential.

I think there has to be some appreciation for complexity of case and significance of perspective witness testimony. The more complex and valuable the case, the greater the justification for in person. For crucial witnesses, the significance of the physical presence of witnesses and jurors to assess credibility goes up. I think these factors need to be addressed.

A real trial by jury means every person is present. There is no reasonable way to monitor what is happening if the lawyers cannot see how what is happening is affecting the jurors or how to evaluate the witnesses. Our present Supreme Court believes that we have to act now in a way that our Founding Fathers believed and acted. The King of England would have liked remote trials. That is clearly not what the Founding Fathers would have wanted. They obviously wanted clear and open trials where everybody gets to see and observe everybody. J. Michael Brown
jmb@mbrown-law.com

Better attention is paid when everyone is present in the same courtroom/location. There is less chance for technical difficulties and distraction from the presentation of the evidence.

I feel Judge, Jury, and Attorneys should always be in the courtroom. Witnesses, Court Reporters, the Public, and Witnesses could be remote or in person.

It is significantly easier to assess the credibility of witnesses in person and I believe witnesses take their oath more seriously when in the formal setting of a courtroom. Jury selection in person also allows you more opportunities to read the body language of potential jurors and know who to follow up with in questioning. It also ensures jurors cannot access their phones or computers and multitask during any part of trial.

Everyone should be in the courtroom, with the exception of some witnesses for good cause.

Too hard to tell what jurors are doing (paying attention, getting comments from housemates, etc) when they are remote. At least one will always take advantage of that system.

As with students, jurors do not pay attention on zoom.

The only "remote" thing I would allow for is a witness when it deals with a need for remote due to medical issues or expert travel (i.e. for good cause).

Remote jurors bad. Remote witnesses good.
Respect for the rule of law will vitiate with time if there is remoteness to the trial process. Witnesses may from time to time be allowed to provide remote testimony, but only as an exception. The court reporter can be remote should it be necessary, but otherwise there is no good reason that the court reporter should not be physically in the courtroom as it gives more serious meaning to the process.
Depending on the conditions at any given time, doing whatever necessary to keep cases going to trial.
Remote trials should be the rare exception.
Remote anything is finicky, tending to fail with poor connection, slow internet, and large numbers of people appearing remotely. Further, you cannot pick up on a witness/juror's body language. And it's really hard to focus on the screen and live people at the same time. I teach a hybrid law class, and it's terrible.
if a witness cannot attend, remote is fine but only for a specific witness if the parties agree. Otherwise, everyone should be in the court room.
If the reporter goes remote, what options are there for the court and counsel to have real-time/live feed of the testimony on a screen in front of them? I have partaken in 3 civil trials since Covid, 2 jury and 1 bench. Court used MS Teams to bring in witnesses. This helped for a bunch of reasons but most importantly for efficiency of the court to keep the trial moving swiftly. I would recommend though that the court provide guidelines or instructions on how to prep a witness to make sure they are ready to appear via MS Teams (ie mic and cameras check, email copies of all necessary exhibits). For remote jurors, my concern would be ensuring you have their attention. if the court can use a system like the CA Bar where the computer is locked for all functions except for the program displaying the courtroom, then I might be open to it. BUT really think it's a bad idea to let the jurors go remote. If there is a jury there in person, then counsel for both sides should be there in person. However, if there is a co-counsel that would like to question a witness remotely, then that could be acceptable.
Full in person trials without a vaccine requirement necessarily excludes persons concerned about COVID. Having lawyers in the courtroom while jurors remote has no real benefit. While full remote trials are less than ideal, they do work. In person trials WITH vaccine requirements work also.
My biggest concern is having Jurors remote, as I am concerned they will be more prone to distractions.
I'm fine with some witnesses being remote, but it should not be an across the board rule. Let the parties decide
Allowing the court reporter to be remote is not tremendously consequential. However, the attorneys, judge, jurors and witnesses all need to be present in person.
everyone in courtroom is best with occasional witnesses remote

REMOTE JURY TRIALS: ATTORNEY INTERVIEW

Mr. Peter Doody, Attorney at Law, Higgs Fletcher & Mack LLP

COMMENTS AND OBSERVATIONS

First trial over one month and went to verdict;
second trial settled after three weeks

Voir dire difficult—attorney cannot evaluate
jurors' body language

During voir dire, jurors distracted

Prospective jurors influenced by spouse in
room, making comments

DURING TRIAL

Second attorney needed for reaction to evidence

Screen is limited to document when exhibit shared

Occasional Wi-Fi issues

Trial attorney “handcuffed” to computer screen

Communication by court via email to counsel

OVERALL IMPRESSIONS

Poor substitute for live jury trial

Portions of live trials boring;
concern regarding remote jurors'
attentiveness

Trial from *To Kill a Mockingbird*
could never have been filmed

OLIVER DUNLAP
PRINCIPAL AND
SHAREHOLDER,
BARTKO ZANKEL
BUNZEL & MILLER

Remote Civil Trials

Clients

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What Works

- ▶ Reduced business disruption while allowing daily trial monitoring
- ▶ Increase in involvement = more in-trial case resolution

What Doesn't Work

- ▶ Not receiving a full or fair trial:
 - ▶ Juror attentiveness
 - ▶ Juror ability to fully and fairly evaluate witnesses
 - ▶ Inability to fully confront witnesses

Courts

3

What Works

- ▶ More efficient/less disruptive witness testimony
- ▶ Fuller trial days/less downtime for witness schedules = shorter trials

What Doesn't Work

- ▶ Challenging public access questions sufficiency of audio vs AV access
 - ▶ Similar issues related to potential need for multiple access lines
- ▶ Access/AV issues magnified when exhibits and testimony sealed

- ▶ Requirement of different systems for submission; extensive advance work
- ▶ Court clerks can't monitor participants while handling other trial tasks
 - ▶ Multiple lines/access points needed for different third-party witnesses, public, and parties/counsel

Counsel

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What Works

- ▶ Avoids trial continuances based on witness availability
- ▶ Allows greater flexibility in trial day schedule
- ▶ Can reduce litigation and trial costs (need for war rooms and equipment)
- ▶ More desirable for shorter trials; less so for more complicated trials

What Doesn't Work

- ▶ Issues magnified when sealing and third parties involved
 - ▶ Sealing of documents/testimony requires certain third parties be excluded at select times, necessitating multiple remote feeds and links
 - ▶ Similar complications vis-à-vis use of official deposition transcripts at trial or to impeach

Counsel

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- Concerns about potential witness interference or tampering at remote sites/off screen
- Concerns about parties having to cover costs to supplement courthouse resources for remote or hybrid proceedings


What Doesn't Work for Civil Hybrid

- ▶ Least favored format.
- ▶ Ability to adequately confront key witnesses
 - ▶ Parties may try to game the system with witness availability

- Pre-testimony preparation/document sharing with remote witnesses related to service and pre-trial access issues
 - Sealed boxes or binders?
 - What if the courier fails to deliver?
- Sealing and remote access concerns related to additional costs for vendors; multiple access lines

Tribal Perspective on Remote Proceedings

Ms. Dorothy Alther, Legal Director,
California Indian Legal Services



The primary mission of California Indian Legal Services is to protect and advance Indian rights, foster Indian self determination, and facilitate tribal nation building.

Dorothy Alther, Legal Director, California Indian Legal Services

WHO WE ARE AND WHO WE SERVE

Eighteen attorneys

Represent Low Income Native Americans and Tribes. Also, contract with Tribes for Legal Services.

109 Tribal Nations across 34 Counties in California

All tribal nations and members must have access to California's judicial system

Court users in every case type who rely on access to self-help and other assistance centers

Survey and Outreach

All California Indian Legal Services (CILS) attorneys

Attorneys with other organizations who represent tribal nations (ICFPP)

Several tribes without funds for counsel but make efforts to appear

Larger tribal nations located outside California who appear in California

Benefits of Remote Proceedings

Improved court access, removing barriers (lack of transportation, financial resources for vehicles)

Attorney resources better utilized (tribal nations around the state; multiple appearances enabled without associated travel/expense)

More consistent appearances by unrepresented tribal members and out-of-state tribes (fewer bench warrants/better outcomes)

Increased access/support from family (tribal social structures family centric)

Increased remote access to self-help centers and form assistance improves participation in family, domestic violence, and civil harassment proceedings

Children appear more comfortable/more honest during remote proceedings

Challenges of Remote Proceedings

Unstable, inconsistent, or no internet connection

Lack of devices and technology (computers, cell phones)

Inconsistent platforms from county to county (Teams/Webex; Zoom/BlueJeans)

Lack of clear instructions on how to appear (required forms, sign-on info); signs, links, instructions are helpful

Poor audio quality in the courtroom (inadequate microphones/cameras; phone-only technology)

Evidentiary hearings (difficulty providing documentary evidence, evaluating credibility, ensuring confidentiality)

Additional Observations

Resource-limited counties should be supported with improved technology

Court Connect in Los Angeles County receives more positive reviews than other platforms

In hybrid proceedings, speakers should be on a separate device

California Rule of Court 3.672 may make appearing remotely more difficult for appearances in Indian Child Welfare Act cases

Additional Attorney Outreach

California Indian Legal Services attorney staff

Indian Child & Family Preservation Program attorneys

Private attorneys

All comments provided in attachment

INTERPRETERS PROVIDING SERVICES IN REMOTE PROCEEDINGS

SURVEY FOCUSED ON 4 AREAS

MEANINGFUL ACCESS



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graph TD; A[MEANINGFUL ACCESS] --> B[EFFECTIVENESS]; B --> C[EQUIPMENT/ENVIRONMENT]; C --> D[CHALLENGES];
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EFFECTIVENESS

EQUIPMENT/ENVIRONMENT

CHALLENGES

An interpreter ***must*** use his or her best skills and judgement to ***interpret accurately without embellishing, omitting, or editing.***

When interpreting for a party, the interpreter ***must*** interpret everything that is said during the ***entire proceedings.***

When interpreting for a witness, the interpreter ***must*** interpret everything that that is said during the witness's testimony.

MODES OF INTERPRETING

Simultaneous- interpreting in real time with average 3-5 word lag.

Consecutive- interpreting mode where a speaker makes a statement (recommended no more than 80 words), the interpreter then renders the statement after a pause.

Hybrid simultaneous and consecutive- combination of both modes. Usually done when the Court is addressing the limited English court-user, the interpreter interprets in simultaneous mode. Limited English court-user responses are interpreted in consecutive mode.

Sight translation- oral reading of documents from original language to the target language.

VIDEO REMOTE INTERPRETING (VRI) VS. HYBRID REMOTE INTERPRETING

VIDEO REMOTE INTERPRETING (VRI)

VRI is when the interpreter is separated from the proceedings.

Pre-pandemic- VRI meant that the only person not in the courtroom was the interpreter. All other participants were present in the courtroom.

Post pandemic- VRI means that the interpreter is appearing remotely. Other participants may physically be in the courtroom or may be appearing remotely.

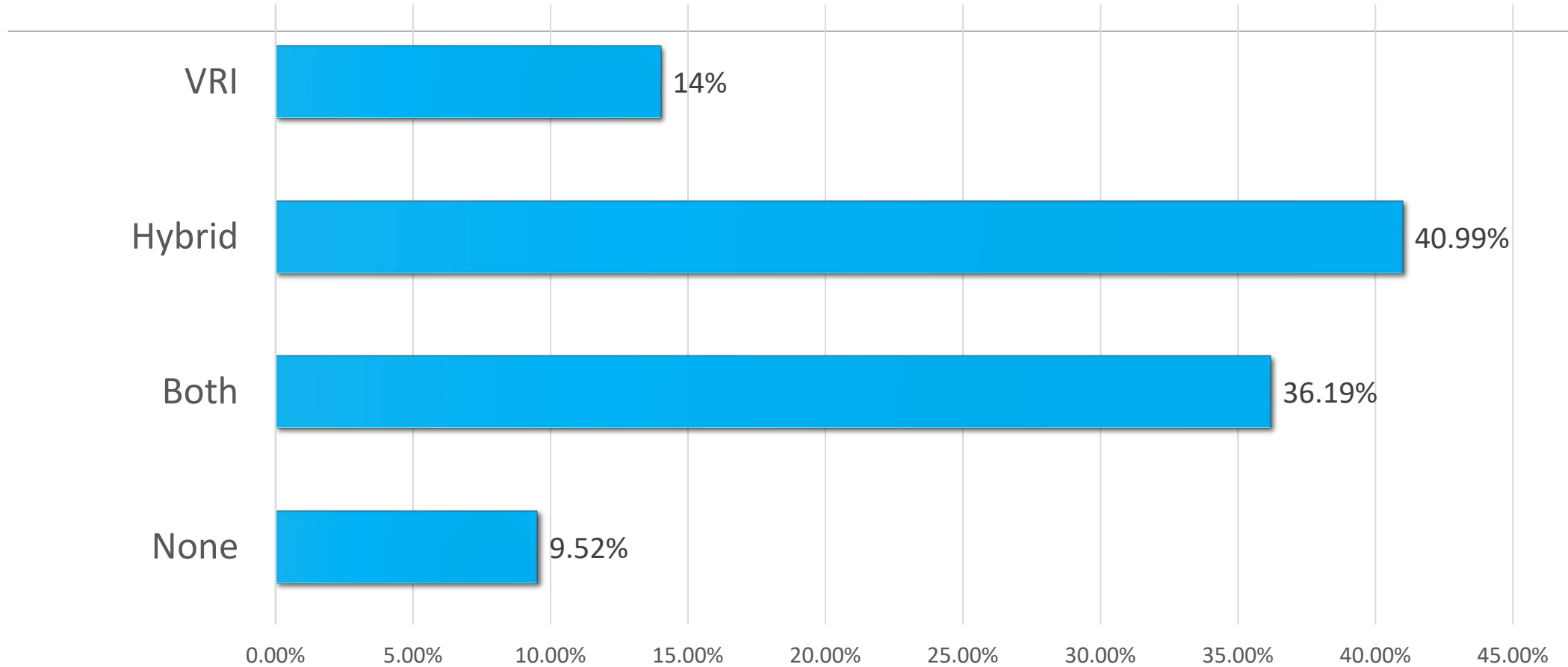
HYBRID REMOTE INTERPRETING

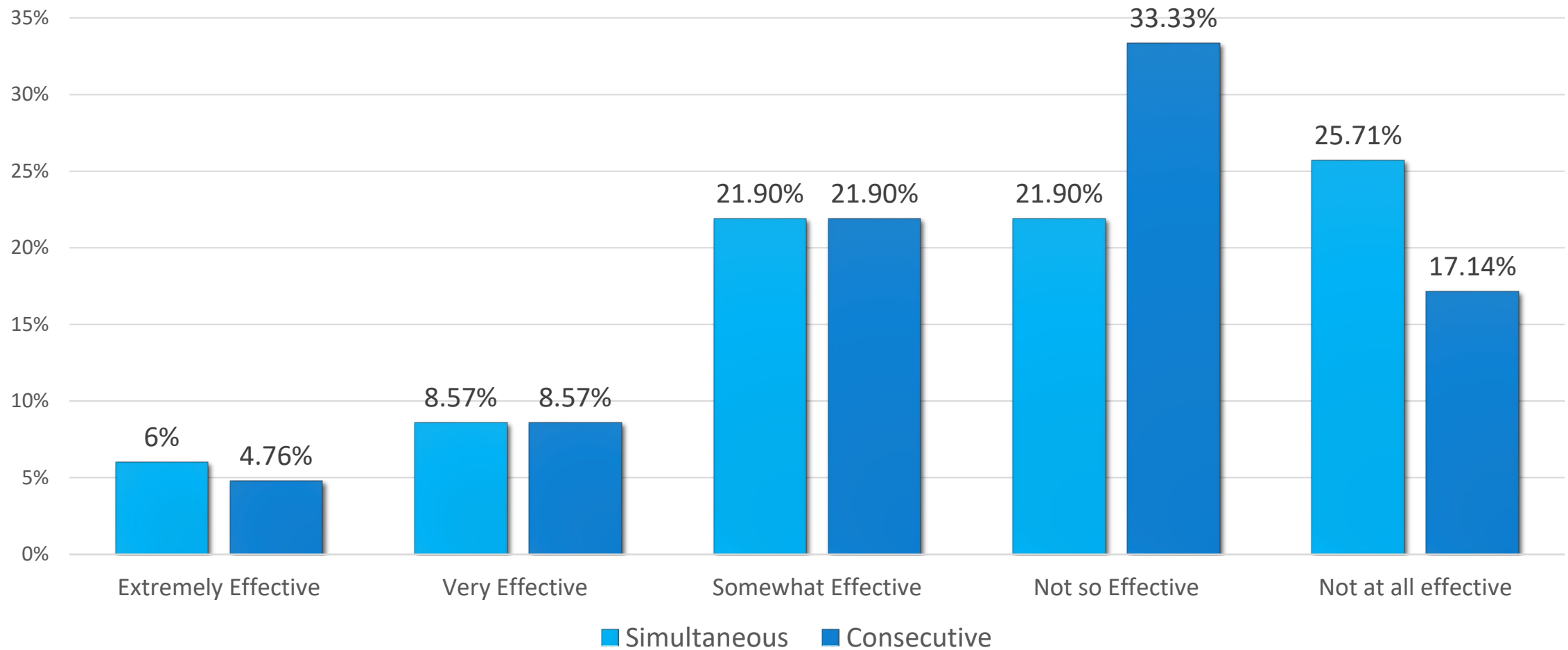
The Interpreter is in courtroom while some participants are in physically present in the courtroom and others appear remotely.

Pre-pandemic- happen very seldom for case types under special circumstances or security reasons. For example; Hague Convention or criminal arraignments

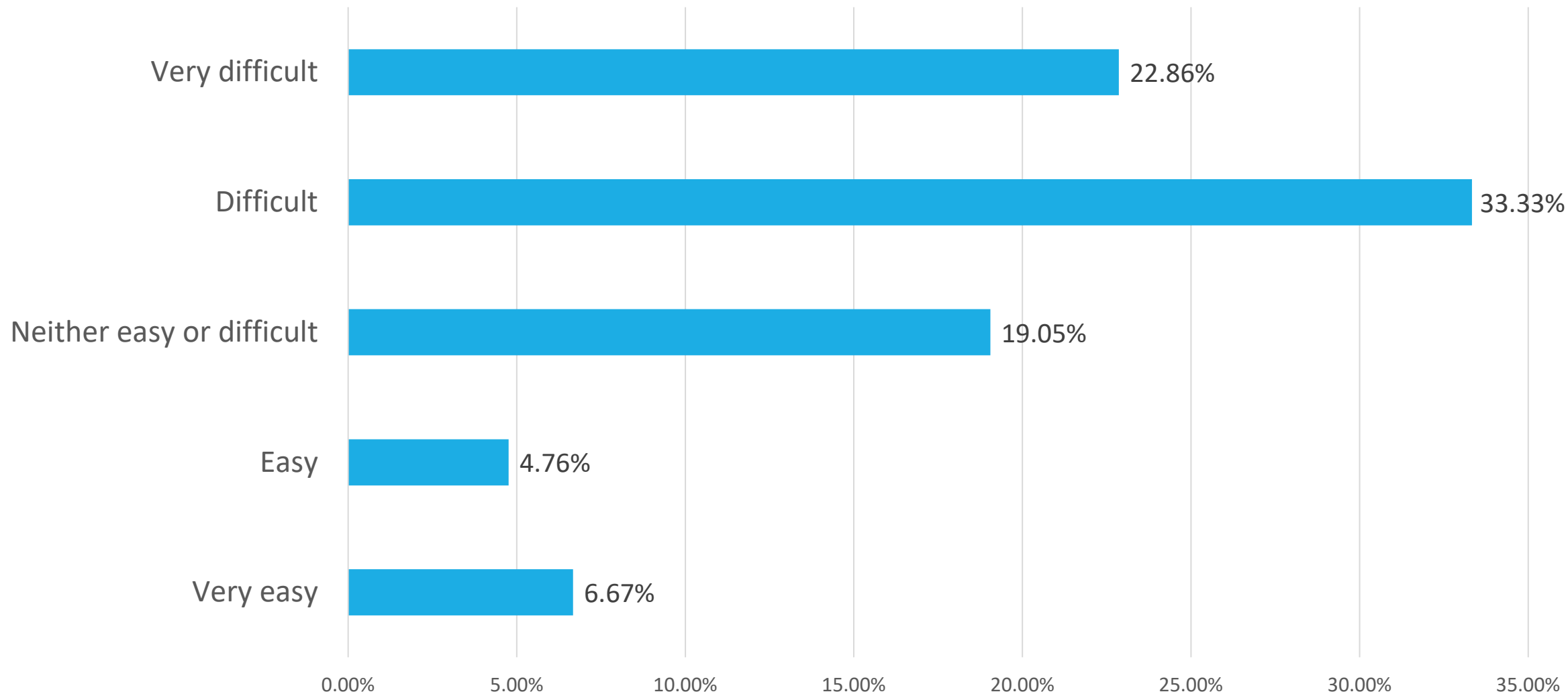
Post pandemic- happening more often in civil, family, delinquency, and dependency.

VRI, Hybrid, or Both?

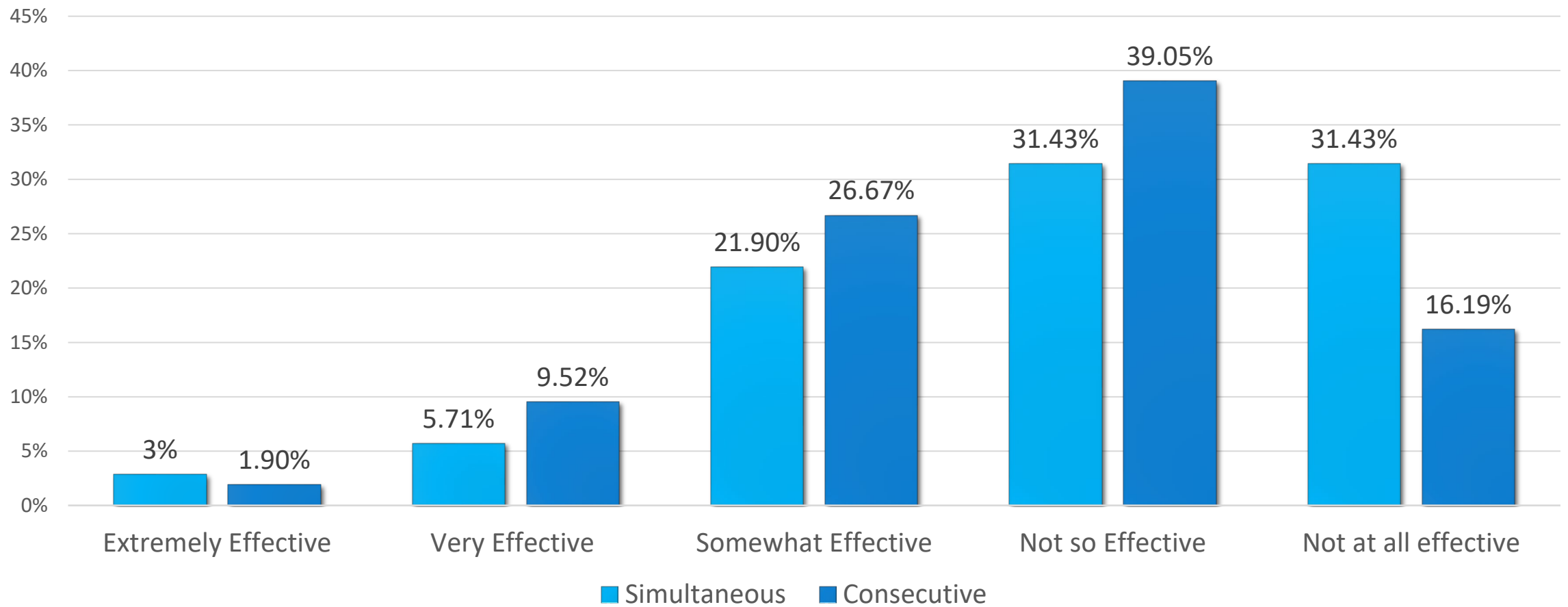




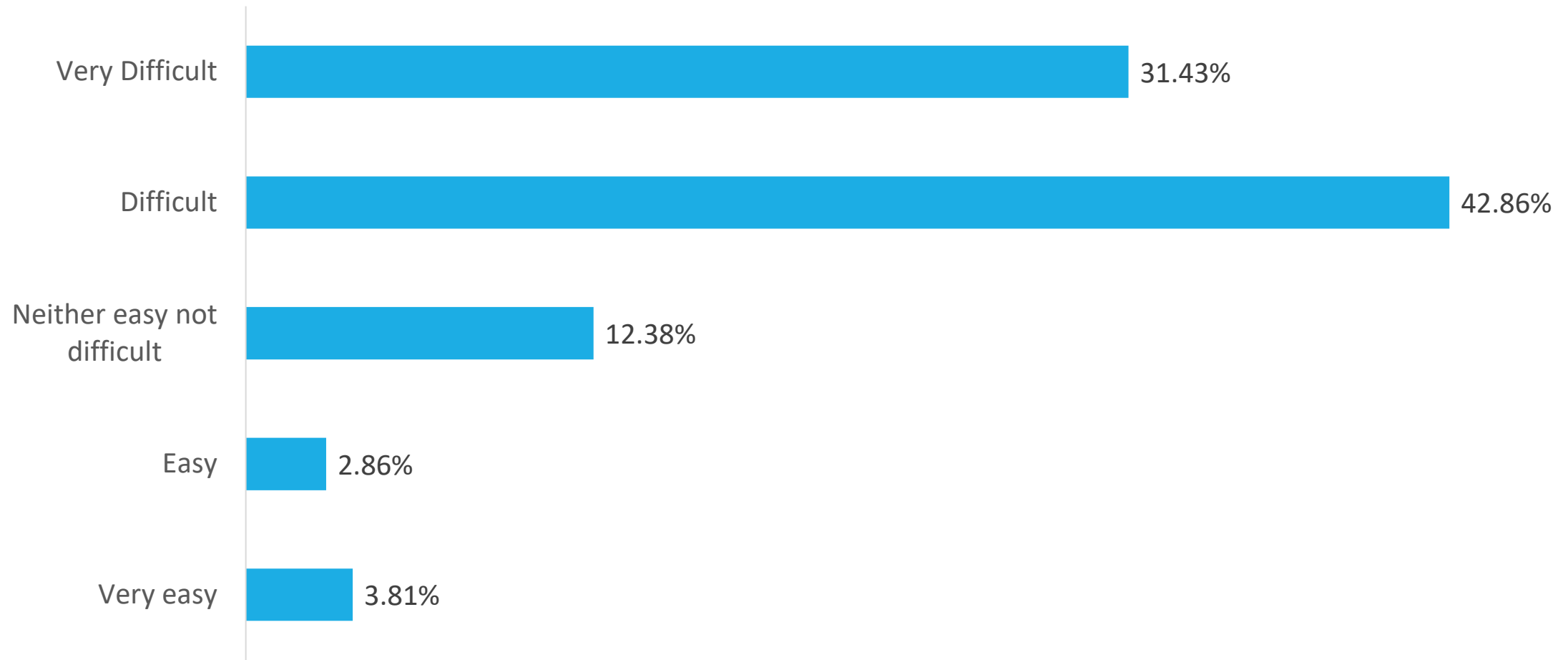
EFFECTIVENESS OF VRI



DIFFICULTY OF PERFORMING VRI



Effectiveness of Hybrid



DIFFICULTY OF PERFORMING HYBRID

EQUIPMENT/ ENVIRONMENT

A thin, vertical blue line is positioned to the right of the text, extending from the top of the word 'EQUIPMENT' down to the bottom of the word 'ENVIRONMENT'.

EQUIPMENT REPORTED

VRI

Laptop
Headphones with mic
Mic
Phone
Tablet

HYBRID

Laptop
Court audio
Phone
Earphones
TV screen
Large screen
Ipad

EQUIPMENT CHALLENGES

Court provided laptops lack cameras.

Computer or laptops are shared with other staff

Interpreters often use their own equipment because the court doesn't provide

Lack of proper headphones/earphones

Courts refuse to use simultaneous feature on Zoom platform.

Courts refuse to try apps that will enable simultaneous feature.

Older laptops/desktops are prone to picture freezing, lags, echoes, background noise, interference/feedback, and connectivity failures.

No private quiet room.

Laptop and phone combo is more difficult to use. Difficulty in assessing if anyone can fully hear, or not clear when there is a disconnection.

Cellphone receptions depending on area is not good. Court users with subpar equipment is prone to connection failures.

When using computer/phone combo, court-user will ask something while interpreting and I am not able to hear.

REPORTING IMPEDIMENTS TO PERFORMANCE

An interpreter ***must assess at all times*** his or her ability to perform interpreting services. If an interpreter has any ***reservation*** about his or her ability to satisfy an assignment competently, the interpreter must immediately disclose that reservation to the court or other appropriate authority.

California Rules of Court 2.890 (h)



VRI VS. IN-PERSON



HYBRID VS. IN-PERSON

MOST IMPORTANT NEEDS FOR REMOTE INTERPRETING

VRI

Good internet connection

Private quiet room

Good camera/video quality capabilities.

Good integrated audio capabilities/quality with USB headphones port and microphone.

Simultaneous software capabilities.

Time to check that everything is working, all participants are connected (heard and seen), instruct participants to speak clearly, and allow time for interpretation.

Remote appearances should be prescheduled.

Uniformed platform

Mechanism that will allow private communication if needed.

HYBRID

Good internet connection

Clear view of all remote participants and participants present in the courtroom. Each participant should have their own camera.

Good quality audio. All participants should be at a microphone. Microphone should have mute feature.

Time to check that everything is working, all participants are connected (heard and seen), instruct participants to speak clearly, and allow time for interpretation.

Mechanism that will allow private communication if needed.

If limited English court-user is appearing remotely, the interpreter should also appear remotely to allow for simultaneous interpretation software.

APPROPRIATE CASE TYPES

Brief routine matters - they require little from all participants, not complicated, and straight to the point such as: drug reviews, arraignments, bail hearings, pre-trial date confirmations, and continuances.

Attorney client conferences or probation interviews

Special circumstances such as distance.

CASE TYPES NOT APPROPRIATE FOR REMOTE

Trials

Evidentiary hearings

Testimony

Complex motions

Preliminary hearings

Sentencings

Any case type that will be longer than 20-30 minutes