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OPINION

Texas courts were strikingly well-prepared for COVID-19

Technology upgrades and legislation on court procedures after a disaster put the Texas judiciary in a strong position to continue operating during the pandemic.



By Thomas R. Phillips, Wallace B. Jefferson and Paul W. Green
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Although governments at all levels have struggled to respond to COVID-19, Texas courts have remained largely open, processing cases electronically and conducting thousands of hearings since the March shutdown. And while many governmental initiatives — school closings, dining and entertainment restrictions, even mandatory face coverings — have generated controversy, changes to judicial operations have been widely accepted, and court functions have been both accessible and safe.

The pandemic once threatened to close our courtrooms. That prospect brought home the importance of the judicial system to the everyday lives of

millions of Texans. Texas families have faced eviction, uncertainty about child-custody and visitation arrangements, disputes about medical decisions, and discord over educational and safety choices. Those accused of crimes and society as a whole are entitled to prompt resolution of guilt or innocence. And the pandemic itself is at the root of many disputes about whether contracts are capable of performance, and who should bear the loss if they are not. For these pandemic-related disputes and ordinary judicial business, the courts must remain open.

When the pandemic's enormous scope became apparent, Texas law was far better structured to deal with COVID-19's consequences than it would have been a generation ago. In the wake of 9/11, several devastating hurricanes, and multiple threatened pandemics, the Texas Legislature had in recent years overhauled the state's disaster response laws.

Among other reforms, a 2009 law authorized the Texas Supreme Court to "modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of the disaster declared by the governor." Within hours of Gov. Greg Abbott's March 9 disaster declaration, the Texas Supreme Court promulgated its first emergency order, which has since been supplemented by 26 additional orders. Among other things, these orders implemented these temporary changes:

- Amended child visitation schedule changes due to school closures.
- Imposed a moratorium on home evictions.
- Created an innovative eviction diversion program enabling tenants to remain in their homes and landlords to be paid using \$167 million in CARES Act funding.
- Placed restrictions on consumer debt cases that permitted families to keep their stimulus fund checks.
- Extended deadlines for bringing and prosecuting lawsuits.
- Increased legal aid funding by \$4.2 million to assist low-income Texans facing eviction, domestic violence or employment issues related to COVID-19.

Because the Supreme Court of Texas began broadcasting its arguments online in 2007 and implemented a statewide electronic filing system three years later, Texas judges have led the way in working aggressively to keep their courts open and functioning. Thus, even though the Supreme Court's orders

suspended all but a handful of experimental jury trials and put controls on most in-person court proceedings, the courts at all levels made aggressive use of internet hearings.

The use of the internet and new communications applications have made remote court proceedings much more effective than would have been possible in the telephone era. Indeed, remote hearings are so much cheaper and more efficient than personal courthouse appearances that in-person pre-trial proceedings may eventually go the way of paper filings.

Perhaps more significantly, and somewhat ironically, the keys to the courthouse doors are in the hands of ordinary Texans like never before. Almost immediately after the shutdown, the state distributed Zoom licenses and conducted training on that platform for all its judges.

Moreover, the Supreme Court encouraged all courts to create YouTube channels, which the Office of Court Administration has collected in an online directory. Today, hundreds of Texas courts livestream proceedings at streams.txcourts.gov. To date, over half a million Texas proceedings have been livestreamed, far more than in any other state.

To facilitate civic understanding about the importance of our courts, some judges have used social media and podcasts to engage the community. The ability to observe virtual court proceedings and interact virtually with judges could do much to enhance public understanding of and confidence in the rule of law.

Texas has been fortunate that Texas Supreme Court Chief Justice Nathan Hecht has served throughout the pandemic as president of the Conference of Chief Justices, an organization of the high court judges of all the states. In this role, Hecht oversaw the creation of a national Pandemic Rapid Response Team to provide resources and webinars for state and local court leaders on how to address case backlogs and conduct fair and effective virtual proceedings during the pandemic. Through his leadership role, Texas has shared innovations with other states.

The Texas judiciary has kept justice alive in these trying times. But we must not rest. Before the next pandemic, every Texan should have the technological means to enter Texas courthouses virtually. Only then can the goal of liberty and justice for all be assured in times of crisis.

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