

Rule 241. Use of Remote Hearings in Civil Trials and Evidentiary Hearings

(a) Applicability. This Rule applies to civil trials and evidentiary hearings that require case participants to obtain approval to appear remotely, including by telephone or video conference, under Rule 45(c)(1)(i), (iii), and (iv).

(b) Testimonial Participation. The judge presiding over a matter may, upon request or the judge's own order, allow a case participant to testify by video conference for good cause shown and upon appropriate safeguards. Where the judge presiding over a matter or the testifying case participant does not have video conference services available, the judge may consider the presentation of testimony by telephone or other audio means in compelling circumstances for good cause shown and upon appropriate safeguards.

(c) Nontestimonial Participation. The judge presiding over a matter may, upon request or the judge's own order, allow a case participant who is not testifying to participate by telephone or video conference for good cause shown and upon appropriate safeguards.

(d) Costs. The judge may further direct which party shall pay the cost, if any, associated with the remote conference and shall take any action necessary to ensure that the cost of remote participation is not a barrier to access to the courts.

Adopted October 4, 2011, effective immediately; amended May 22, 2020; eff. immediately; amended Feb. 2, 2023, eff. immediately.

Committee Comments

(October 4, 2011)

(Rev. Feb. 2, 2023)

The presentation of in-person testimony remains of utmost importance in trials and evidentiary hearings described in Rule 45(c)(1). As such, showings of good cause and compelling circumstances may arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but is able to testify from a remote location. Advance notice should be given to all parties of foreseeable circumstances that may lead the proponent to offer testimony by contemporaneous transmission.

Good cause and compelling circumstances may be established if all parties agree that testimony should be presented by contemporaneous transmission; however, the court is not bound by a stipulation and can insist on in-person testimony.

Adequate safeguards are necessary to ensure accurate identification of the witness and protect against influences by persons present with the witness. Accurate transmission must also be assured.

Committee Comments

(May 22, 2020)

(Rev. Feb. 2, 2023)

The considerations that prompted the amendments to Rule 45, including the corresponding committee comments, apply to the changes to Rule 241. The use of video conference technology to conduct civil trials and evidentiary hearings increases accessibility to the courts, aids in the efficient administration of justice, avoids delays in trials, and more efficiently administers testimony for case participants who face an obstacle to appearing in person in court such as illness, disability, or distance from the courthouse. Accordingly, remote testimony in civil trials and evidentiary hearings must be given the same consideration as testimony presented physically in the courtroom or evidence deposition.

This rule adopts the definitions found in the Illinois Supreme Court Policy on Remote Appearances in Civil Cases. In particular, a case participant includes any individual involved in a civil case including the judge presiding over the case, parties, lawyers, guardians *ad litem*, minors in the care of the Department of Children and Family Services (DCFS), witnesses, experts, interpreters, treatment providers, law enforcement officers, DCFS caseworkers, and court reporters.

Due to the importance of trials and evidentiary hearings listed in Rule 45(c)(1), a showing of good cause is required for a case participant to testify or otherwise participate by video conference or for a case participant to participate in a nontestimonial manner by telephone. Good cause is likely to arise when a case participant is unable to attend a trial or evidentiary hearing for unexpected reasons, such as accident, illness, public health and safety, or limited court operations, but also in foreseeable circumstances such as residing or working far from the courthouse or having a disability that prevents an in-person court appearance.

A court has broad discretion to determine if video participation, including giving video testimony, and nontestimonial telephone participation are appropriate for a particular case. A court should take into consideration and balance any due process concerns, the ability to question witnesses, hardships that would prevent the case participant from appearing in person, the type of case, any prejudice to the parties if testimony occurred by video conference, and any other issues of fairness. A court must balance these and other relevant factors in an individual case.

As referenced in Rule 45(b)(3), adequate safeguards are necessary to ensure accurate identification of the case participant testifying remotely and to avoid improper influences by any individual who may be present with the case participant at the time of the testimony. Where a case participant testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying case participant, care must be taken to ensure the integrity of the examination. The testifying case participant may be examined by the court or counsel for any party regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a case participant should instruct the case participant that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented case participants may be similarly instructed by the court.

Where the court or case participant does not have video conference services, the court may consider the presentation of the testimony by telephone or other audio means but only upon a showing of good cause, including a showing of exigent, safety, or security circumstances, and compelling circumstances with appropriate safeguards. For nontestimonial participation by telephone, compelling circumstances are not required, and a showing of good cause is sufficient. Per Rule 45, Committee Comment (d), any procedure or process for requesting approval to participate remotely shall be easy. For settlement conferences and case types or proceeding types under Rule 45(c)(1)(ii) and 45(c)(1)(v), judges should apply the more liberal standard and approve requests to appear remotely without requiring a showing of good cause or hardship, unless otherwise provided by Supreme Court Rule.

In accordance with Rule 45, Committee Comment (f), courts should first consider obtaining and using video conference services that do not charge participants a fee for participating. If services that charge participants a fee are used, any fees associated with a remote court appearance should not impose a barrier and should be subject to waiver for case participants who cannot afford them.