M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered February 2, 2023.

(Deleted material is struck through, and new material is underscored.)

Effective immediately, Illinois Supreme Court Rules 45, 90, 101, 218, 241, and 286 are amended, as follows.

Amended Rule 45

Rule 45. Remote Appearances in Circuit Court Proceedings

(a) Definitions.

(1) The terms "remote" or "remotely" mean the participation of all or some case participants in a court proceeding by telephone, video conference, or other electronic means. Except as otherwise specifically provided in this rule, a remote appearance or court proceeding shall be equivalent to an in-person appearance or court proceeding for all purposes.

(2) The term "in-person" means the participation of all or some case participants in a court proceeding by being physically present in the courtroom.

(3) "Case Participant" means any individual participating in a court proceeding including, but not limited to, the parties, criminal defendants, minors, lawyers, guardians *ad litem*, guardians, youth in the care of the Department of Children and Family Services (DCFS), witnesses, experts, interpreters, treatment providers, probation officers, pretrial officers, DCFS caseworkers and contract service providers, court reporters, clerks of court, and the judge presiding over the case. This term does not include jurors, the public, or members of the media that are not a party or witness in the case.

(4) For purposes of this rule:

(i) "Civil Matters" shall mean the following case types as defined in the Manual on Recordkeeping, adopted by the Supreme Court under M.R. 1218, as most recently amended: Arbitration (AR), Chancery (CH), Eminent Domain (ED), Eviction (EV), Foreclosure (FC), Government Corporation (GC), Guardianship (GR), Law: Damages over $50,000 (LA), Law: Damages $50,000 or less (LM), Mental Health (MH), Miscellaneous Remedy (MR), Probate (PR), Small Claim (SC), Tax (TX), Adoption (AD), Dissolution with Children (DC), Dissolution without Children (DN), Family (FA), Contempt of Court (Civil) (CC), Civil Law Violation (CL), Miscellaneous Criminal (non-classified criminal actions) (MX), and Order of Protection (OP).

(ii) "Criminal Matters" shall mean the following case types as defined in the Manual on Recordkeeping, adopted by the Supreme Court under M.R. 1218, as most recently amended: Criminal Felony (CF), Criminal Misdemeanor (CM), Conservation (CV), Driving Under the Influence (DT), Domestic Violence (DV), Major Traffic (MT), Ordinance (OV), Quasi-Criminal (QC), Minor Traffic (TR), and Contempt of Court (Criminal) (CC).

(iii) "Juvenile Delinquency Matters" shall mean the Juvenile Delinquent (JD) case type as defined in the Manual on Recordkeeping, adopted by the Supreme Court under M.R. 1218, as most recently amended.

(iv) "Juvenile Abuse, Neglect, and Dependency Matters and Juvenile Intervention Matters" shall mean the Juvenile Abuse and Neglect (JA) and Juvenile (JV) case types as defined in the Manual on Recordkeeping, adopted by the Supreme Court under M.R. 1218, as most recently amended.

(b) General Provisions.

(1) A judge presiding over a case in which the option to appear remotely without any advance approval is permitted may, in the exercise of the judge's discretion, require a case participant to attend a court proceeding in person for reasons particular to the specific case, including the failure of a case participant to follow applicable standards of decorum. When exercising such discretion, the judge shall inform case participants on the record if they are required to attend a future court proceeding in person.

(2) When a circuit decides that in-person appearances are necessary for a particular case type or proceeding type, the Chief Judge shall by local rule exempt the case type or proceeding type from offering the option to appear remotely without any advance approval, in accordance with paragraph (b)(7). Case participants may then appear remotely in exempted case types or proceeding types only with the approval of the judge presiding over the matter.

(3) When a case participant testifies or otherwise participates in a trial or evidentiary hearing remotely, appropriate safeguards must be in place to ensure accurate identification of the case participant and to protect against inappropriate influences, including, but not limited to: persons communicating with the case participant without the court's knowledge and the case participant's inappropriate access to materials or information (such as documents or the Internet) during the case proceedings. The judge presiding over the matter shall confirm that such safeguards are available and operational prior to permitting the case participant to participate remotely.

(4) All summonses and notices for court proceedings that case participants are permitted to attend remotely shall include information necessary for a case participant to appear in person or remotely, including any information necessary for case participants to access the applicable technology platform to appear remotely.

(5) Where the option to appear remotely exists, courts shall not deny access to case participants who choose to participate by appearing in person or who cannot appear remotely without assistance and shall allow individuals who come to the courthouse to participate by appearing physically in the courtroom. If the courtroom, case type, or proceeding type cannot accommodate an in-person case participant, then courts shall inform case participants of this

limitation in advance, if possible, and supply the appropriate technology and technical support for anyone who comes to the courthouse so that they may participate remotely.

(6) Courts shall ensure that any fees associated with the remote appearance technology platform utilized by the court, if any, are not a barrier to accessing the courts.

(7) Within 90 days of the effective date of this rule, the chief judge of each circuit shall submit to the Supreme Court, through its Administrative Office, a local rule explaining in plain language the option of participating in court proceedings remotely. The rule shall at a minimum address:

(i) How to join a remote proceeding, either by phone, video conference, or other electronic means;

(ii) Where to find information and assistance for remote proceedings;

(iii) What case types or proceeding types, if any, are exempted under paragraph (b)(2);

(iv) How to make the request to appear remotely, where applicable;

(v) What standards of decorum will be expected by the circuit for case participants in remote proceedings; and

(vi) How the above information will be made available to the public, case participants, and other justice system partners. This should include, but not be limited to: the circuit's website, posting in public areas, and/or any other easily accessible means.

Any amendments to the local rule must be submitted to the Administrative Office prior to implementation.

(c) Civil Matters and Criminal Matters That Do Not Involve the Possibility of Jail or Prison Time.

(1) Case participants shall be permitted to attend court via the circuit court's available remote appearance technology without any advance approval, except for the following proceeding types, which shall require the approval of the judge presiding over the matter:

(i) Evidentiary hearings, except for *ex parte* evidentiary hearings (such as emergency orders of protection hearings);

(ii) Settlement conferences;

(iii) Bench trials;

(iv) Jury trials; and

(v) Any case type or proceeding type exempted from remote participation in accordance with paragraphs (b)(2) and (b)(7).

(d) Criminal Matters That Involve the Possibility of Jail or Prison Time and Juvenile Delinquency Matters.

(1) Case participants shall be permitted to attend court via the circuit court's available remote appearance technology without any advance approval for the following proceeding types:

(i) Initial appearances;

(ii) In Juvenile Delinquency Matters, initial or subsequent appearances at which

continued detention of a minor will be determined;

(iii) Status hearings;

(iv) Waiver of a preliminary hearing;

(v) Arraignments on an information or indictment at which a plea of not guilty will be entered;

(vi) Presentation of a jury waiver;

(vii) Non-evidentiary hearings; and

(viii) Hearings conducted under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.*) at which no witness testimony will be taken.

(2) Case participants shall be permitted to attend the following proceeding types via the circuit court's available remote appearance technology only with the approval of the judge presiding over the matter. In addition, before the defendant or minor may attend the following proceedings remotely, the court must have accepted the defendant's or minor's waiver of an in-person appearance in accordance with paragraph (d)(3):

(i) Negotiated pleas;

(ii) Evidentiary hearings;

(iii) Sentencing hearings;

(iv) Probation revocation hearings;

(v) Arraignments or other proceedings or appearances at which a plea of guilty will be entered;

(vi) Hearings conducted under the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq.*);

(vii) Bench trials or stipulated bench trials; and

(viii) Any case type or proceeding type exempted from remote participation in accordance with paragraphs (b)(2) and (b)(7).

(3) Waiver of defendant's or minor's in-person appearance at court proceedings.

(i) In proceedings where a waiver of a defendant's or a minor's in-person appearance is required for a remote appearance, the decision whether to waive an in-person appearance shall belong to the defendant or minor and not to defense counsel.

(ii) Whether the waiver of defendant's or minor's in-person appearance at court proceedings is made orally, in writing, in person, or remotely is exclusively within the discretion of the judge presiding over the matter. However, when made orally in person or remotely, the waiver must be stated on the record.

(iii) Before a waiver of the defendant's or minor's in-person appearance is accepted by the judge presiding over the matter, it shall be the judge's responsibility to ensure that the defendant's or minor's waiver is knowing and voluntary and has been discussed with counsel prior to the hearing. The judge presiding over the matter shall ensure that the record is clear that the defendant or minor understands:

(A) That the defendant or minor has a right to be physically present in the courtroom

for the proceeding;

(B) That remote appearance means the defendant or minor, the court, or other case participants will participate via telephone, video conference, or other electronic means;

(C) That in matters open to the public, any remote appearance may be viewable by the public over the Internet or other method of streaming or broadcasting (if applicable);

(D) That a remote proceeding may result in the defendant or minor and his or her counsel not being physically present together during the proceeding;

(E) That the legal effect of the remote proceeding will be the same as an in-person proceeding; and

(F) That the defendant or minor has discussed the waiver with counsel.

(iv) If the judge presiding over the matter finds the waiver to be knowing and voluntary, the prosecution shall be given an opportunity to object and state the grounds for that objection for the record. The decision to accept a waiver of in-person appearance at court proceedings is exclusively within the discretion of the judge presiding over the matter, and the judge shall put the reasons for that ruling on the record.

(v) A waiver of in-person appearance can be revoked at any time.

(4) In Criminal Matters that involve a possibility of jail or prison time, jury trials shall not be held remotely, except that witnesses, in case-specific situations, may be permitted to testify remotely with the approval of the judge presiding over the matter and by agreement of the parties.

(5) Nothing in this rule supersedes or abrogates any existing rule or statute designed to allow for the remote testimony of a particular witness in an otherwise in-person trial so long as the statutory and constitutional requirements for that witness's remote testimony are satisfied.

(6) Nothing in this rule modifies or alters crime victims' rights under article I, section 8.1, of the Illinois Constitution (Ill. Const. 1970, art. I, § 8.1). The Illinois Constitution grants to victims the right to be present in the same manner as the defendant. If the defendant appears remotely, then the victim shall be afforded the opportunity to appear either in person or remotely.

(7) Nothing in this rule modifies or alters any existing rules or statutes allowing remote appearances or requiring in-person appearances in Criminal Matters that involve the possibility of jail or prison time or Juvenile Delinquency Matters.

(e) Juvenile Abuse, Neglect, and Dependency Matters and Juvenile Intervention Matters.

(1) In Juvenile Abuse, Neglect, and Dependency Matters and Juvenile Intervention Matters, case participants shall be permitted to attend court via the circuit court's available remote appearance technology without any advance approval, except for the following proceeding types, which shall require the approval of the judge presiding over the matter:

(i) Evidentiary hearings;

(ii) Adjudication hearings;

(iii) Permanency hearings;

(iv) Disposition hearings;

(v) Termination of parental rights hearings; and

(vi) Any case type or proceeding type exempted from remote participation in accordance with paragraphs (b)(2) and (b)(7).

Adopted Nov. 30, 2022, eff. Jan. 1, 2023.

Committee Comments
(Revised Feb. 2, ~~Jan. 1,~~ 2023)

In enacting Rule 45 in May 2020, the Supreme Court recognized that telephone and video conference appearances can be used effectively and appropriately for both civil and criminal cases. The Committee Comments at that time stated that the use of remote participation was subject to the discretion of the court and that the court had wide latitude to allow remote appearances without a showing of good cause or any particular level of hardship. The Committee Comments emphasized that remote appearances should be easy to request and liberally allowed. The original Rule adopted the definitions in the Supreme Court Policy on Remote Appearances in Civil Cases, in particular the definition of case participant.

In 2022, the Illinois Judicial Conference determined that the use of remote appearances in both civil and criminal cases should be further encouraged and promoted. At the same time, the Supreme Court desired that courts continue their use of telephone and video conferences which was so prevalent during the COVID-19 pandemic and assisted circuits in obtaining necessary technology. For these reasons, the Illinois Judicial Conference presented a proposal to amend Rule 45 which identified non-evidentiary case proceeding types which were suited to remote appearances and provided that case participants should be given the opportunity to appear remotely without any advance court approval in those proceeding types. However, the proposal as set forth in paragraphs (b)(1) and (b)(2) afforded discretion to individual judges on a case-by-case basis and circuits by local rule to determine when an in-person appearance is necessary.

In proposing new Rule 45, the Illinois Judicial Conference sought to build on the effective use and acceptance of remote appearances in both criminal and civil cases by the courts since the enactment of Rule 45. The proposal continued to adopt the definitions in the Supreme Court Policy on Remote Appearances in Civil cases and where appropriate the original Committee Comments.

a. Individual circuits are encouraged to submit their local rules in advance of the deadline outlined in paragraph (b)(7). The 90-day deadline specified in paragraph (b)(7) is to afford circuits time to implement new technology, but courts may still comply with the Rule by offering the option to appear by telephone. A model local rule is available on the Supreme Court website to assist circuits in submitting and publishing their individual local rules in accordance with Rule 45.

b. When exercising discretion under paragraph (b)(1), the judge presiding over the matter shall consider whether the in-person appearance is necessary, the nature and purpose of the proceeding, the impact this decision will have on the case participant's ability to participate in the proceeding, and other issues of fairness and due process.

c. When exercising discretion under paragraph (b)(2), circuits shall consider whether there is a necessity for the exemption and the impact that the exemption may have on the ability of all case participants to participate in court proceedings and on the ability of lawyers to efficiently and cost effectively serve people, particularly those in need.

d. In accordance with the prior Committee Comments to the original Rule 45, any procedures and processes for seeking an approval for a remote appearance shall be easy, and an approval should be liberally granted without requiring a showing of good cause or any particular level of hardship, unless otherwise provided by Supreme Court Rule (for example, Rule 241, on the use of remote appearances in civil trials and evidentiary hearings).

e. In remote proceedings, as in in-person proceedings, courts must maintain order and ensure that the proceedings are conducted with dignity, decorum, and without distraction. The local rules should set forth the standards of decorum and expectations as to appropriate behavior with the use of telephone and video conferencing.

f. Courts should first consider obtaining and using free telephone or video conference services before considering fee-based services. Services that are free for case participants to use are readily available. Any fees associated with the use of a particular remote appearance platform should not impose a barrier on a case participant who is not able to pay that cost and should be subject to waiver for case participants who cannot afford them. If a court chooses to use a service that requires the payment of fees, the court should consider whether the costs can be waived by the service, paid by another party, or paid by the court, or if the court should also use a free service. The focus should be on increasing accessibility to the courts and not on imposing an additional barrier to a remote court appearance in the form of a fee. The court or circuit clerk shall not impose their own fees for case participants to appear remotely.

g. Courts should consider related processes that may need to be adjusted to accommodate remote appearances, including, but not limited to, how case participants submit and obtain orders after remote appearances and how to best assist the public in accessing remote technology.

Amended Rule 90

Rule 90. Conduct of the Hearings

(a) Powers of Arbitrators. The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

(b) Established Rules of Evidence Apply. Except as prescribed by this rule, the established rules of evidence shall be followed in all hearings before arbitrators.

(c) Documents Presumptively Admissible. All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the

money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof:

(1) bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of the property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written statement of any expert witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person or remotely, including by telephone or video conference, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure;

(6) any other document not specifically covered by any of the foregoing provisions, and which is otherwise admissible under the rules of evidence.

The pages of any Rule 90(c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package. A template Notice of Intent Pursuant to Supreme Court Rule 90(c) is provided in the Article I Forms Appendix.

(d) Opinions of Expert Witnesses. A party who proposes to use a written opinion of any expert witness or the testimony of any expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than 30 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222(d)(6).

(e) Right to Subpoena Maker of the Document. Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, section 2-1101, shall be applicable to arbitration hearings and it shall be the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time and place set for the hearing.

(f) Adverse Examination of Parties or Agents. The provisions of the Code of Civil Procedure relative to the adverse examination of parties or agents, section 2-1102, shall be applicable to arbitration hearings as upon the trial of a case.

(g) Compelling Appearance of Witness at Hearing. The provisions of Rule 237, herein, shall be equally applicable to arbitration hearings as they are to trials. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven days prior to the hearing. Remedies upon a party's failure to comply with notice pursuant to Rule 237(b)

may include an order debarring that party from rejecting the award.

(h) Prohibited Communication. Until the arbitration award is issued and has become final by either acceptance or rejection, an arbitrator may not be contacted ex parte, nor may an arbitrator publicly comment or respond to questions regarding a particular arbitration case heard by that arbitrator. Discussions between an arbitrator and judge regarding an infraction or impropriety during the arbitration process are not prohibited by this rule. Nothing in this rule shall be construed to limit or expand judicial review of an arbitration award or limit or expand the testimony of an arbitrator at judicial hearing to clarify a mistake or error appearing on the face of an award.

(i) Remote Appearances. The provisions of Rule 241 herein shall be equally applicable to arbitration hearings where evidence will be presented. A party or witness may be allowed to participate ~~appear~~ remotely, including by telephone or video conference.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended March 26, 1996, effective immediately; amended March 28, 2002, effective July 1, 2002; amended December 5, 2003, effective January 1, 2004; amended October 14, 2005, effective January 1, 2006; amended June 4, 2008, effective July 1, 2008; amended June 22, 2017, eff. July 1, 2017; amended Sept. 29, 2021, eff. Oct. 1, 2021; amended Feb. 2, 2023, eff. immediately.

Committee Comments
(January 1, 2006)

Paragraph (h) is directed toward eliminating the problem of party or attorney use of information/feedback obtained during posthearing *ex parte* communication. Such communication could hinder the program goal of parties participating in good faith and could possibly influence the decision of the parties to accept or reject an award. This rule is not intended to restrict the ability of a party to communicate *ex parte* with a nonneutral party-arbitrator when used outside of court-annexed mandatory arbitration.

Administrative Order

In re Discovery Rules

The order entered March 28, 2002, amending various rules and effective July 1, 2002, shall apply to all cases filed after such effective date as well as all cases pending on such effective date, provided that any discovery order entered in any such case prior to July 1, 2002, shall remain in effect unless and until amended by the trial court.

Order entered November 27, 2002, effective immediately.

Committee Comment
(March 28, 2002)

This rule is amended to conform to the changes in terminology made in Supreme Court Rule 213.

Committee Comments

The conduct of the hearings, the outcome included, will substantially determine the regard and acceptance to be held by the legal community for this procedure as an effective method of dispute resolution for achieving a fair, early, economical and final result. For this reason, more perhaps than for any other of these rules, has the Committee devoted its attention to this rule. Meetings and interviews with out-of-State practitioners, judges and administrators were conducted with the greatest emphasis on the evidentiary aspect of the hearings.

Paragraph (a)

The authority and power of the arbitrators exist only in relation to the conduct of the hearing at the time it is held. Issues that may arise in the proceedings of the case prior, ancillary or subsequent to the hearing must be resolved by the court.

In some jurisdictions, including Pennsylvania, rulings on the evidence are to be made by a majority of the panel. Ohio has recently amended its rule to permit the chairperson to make such rulings. Practitioners, familiar with the practice in multiple-person panels, recommend that the ultimate authority reside with the chairperson. In practice one could reasonably expect the chairperson to consult with other members of the panel on difficult questions of admissibility.

Paragraph (b)

Several jurisdictions do not require hearings to be conducted according to the established rules of evidence.

New Jersey provides: "The arbitrator shall admit all relevant evidence and shall not be bound by the rules of evidence."

Ohio's statewide rules make no reference to the nature of the evidence admissible in mandatory arbitration hearings. Cuyahoga County (Cleveland), Hamilton County (Cincinnati) and Stark County (Canton) by local rules provide that the arbitrators shall be the judges of the relevancy and materiality of the evidence and "conformity to legal rules of evidence shall not be necessary."

The State of Washington rules leave to the discretion of the arbitrator the extent to which the rules of evidence will apply.

The States of Arizona, California, Minnesota, New York and Pennsylvania provide, as does this rule, for the application of the established rules of evidence with exceptions similar to those stated under paragraph (c).

It is the view of the Committee that the Illinois practitioner will enjoy a sense of security in that the established rules of evidence will apply to these hearings.

Paragraph (c)

All jurisdictions utilizing court-annexed arbitration have adopted rules substantially and conceptually similar to the provisions at paragraph (c) of this rule. The purpose for allowing presumptive admissibility of documents is to enable the parties to achieve the economy of time and expense available for the conduct of the hearing. The emphasis should be placed on substance

and not form; the integrity of the evidence should be more meaningful than its formal method of introduction. The documents described in (c) are generally considered reliable and trustworthy for the purpose of admission. The documents that could be admitted under the general classification in (c)(6) could be photos, maps, drawings and blueprints, weather reports, business records and communications, and the like, so as to relieve the requirements of a foundational predicate for their admission.

The practice of the presumptive admission of documents of the type and nature described in the rule has stood the test of time and of experience in many thousands of hearings; one encounters no reported criticism or suggestion for change.

Regardless of the presumptive admissibility of the documents, the arbitrators will be required to apply the tests under established rules of evidence otherwise relating to admissibility and credibility and to determine, fairly, the weight to be given such evidence. Otherwise, the purpose of this procedure to achieve a fair, economical and early disposition of the controversy must ultimately fail by virtue of the lack of an essential integrity to the hearing itself.

Practitioners may not assume that practice will tolerate the blanket submission of voluminous records, charts or entire depositions with the expectation that the panel must pore over these documents and attempt to sort out that part which may be relevant or material to the issues at hand. Nor should such burden be placed on opposing counsel when such documents have been provided by notice. It would not be inappropriate or unreasonable, on the part of the panel, if it were to reject such blanket submissions unless proffering counsel specifies the entries or statements therein having relevancy and materiality.

None of the documents eligible for admission without foundation may be so offered unless the intention to do so, and a copy thereof, has been provided to opposing counsel not less than 30 days prior to the hearing. That length of time should be sufficient to enable counsel to verify the authenticity of the document, if prior discovery has not already accomplished that purpose. The Committee is recommending a period of notice longer than any of the arbitration jurisdictions; many provide a 20-day notice and some as few as seven days. We recommend the longer period so that there is less reason for the parties to request a continuance.

If the period of notice given for the submission of documents for presumptive admission is the minimum provided by this rule, and opposing counsel, in the exercise of prudent practice finds need to submit a document in rebuttal, he should apply to the court for leave to do so, unless his adversary will stipulate to a submission in less time than is required by this rule. Under such circumstances the court, in its ruling, should be guided by the degree of diligence and preparation previously undertaken by both counsel.

Whenever possible, counsel should endeavor to avoid delay and needless expense by stipulating to the admission of documents where there is no reasonable basis for believing they will not and should not be admitted.

Paragraph (d)

It is intended under this paragraph to require disclosure of the identity of an opinion witness whose written opinion will be offered under the provisions of paragraph (c)(5) herein, or who will testify at the hearings; and to the extent required under Rule 222, his qualifications, the subject

matter of his testimony, and the basis of conclusions and opinions as well as any other information required by Rule 222(d)(6). This information must be provided not less than 30 days prior to the scheduled date of hearing. The longer the period of notice provided to one's adversary, the less justification there would be to delay the hearing by reason of a late and unexpected disclosure.

Paragraph (e)

Although existing practice in other jurisdictions indicates that the option provided under (e) is rarely exercised, opposing counsel is given the right to subpoena the maker of the document as an adverse witness, and examine that witness as if under cross-examination. This provision is not intended to act as a substitute for the right, under Rule 237, to require the production of a party at the hearing. In the event the maker sought to be served is not amenable to service of a subpoena, and provided further that counsel has been diligent in attempting to obtain such service, it would be incumbent on counsel to seek to bar its admissibility. Such motion should be made well in advance of the hearing date.

The Explanatory Note to Pennsylvania Rule 1305 states that if a member or author of the document is not subject to the jurisdiction of the court and cannot be subpoenaed, that document would not be presumptively admissible. The use of subpoena under this provision of the rule is rare and this problem does not appear to be one that has been bothersome to the practitioners. The Committee does not believe that there should be a hard and fast rule if such issue should arise but rather that it be decided on a case-by-case basis. This seems to be the prevalent view among practitioners of other jurisdictions. The materiality of the document to the issues should be a significant matter. The courts should also be alert to prevent the attempted use of this process by opposing counsel as an abusive tactic for delay and harassment.

Paragraphs (f) and (g)

Although these provisions of the Code of Civil Procedure and Supreme Court Rule 237 apply to trials, they should be equally applicable to hearings in arbitration. The Committee is advised that in actual practice it has been customary for counsel to arrange for the appearance of such witnesses by agreement.

A party who fails to comply with a Rule 237(b) notice to appear at a trial is subject to sanctions pursuant to Rule 219(c). Those sanctions may include an order debarring that party from maintaining a claim, counterclaim, etc. The 1993 amendment to Rule 90(g) is to make clear that a Rule 237(b) notice to appear at an arbitration hearing carries equivalent importance, such that a court may, in an appropriate case, debar a party who fails to comply from rejecting the award. The amendments also allow a party who received a notice to appear an opportunity to be excused in advance from appearing for good cause or by stipulation. For example, in a case where the party is willing to stipulate to the issue of liability and the only question which remains is damages, the party served with a Rule 237 notice may be excused by stipulation of the parties.

Amended Rule 101

Rule 101. Summons and Original Process—Form and Issuance

(a) General. The summons shall be issued under the seal of the court, identifying the name of the clerk. The summons shall clearly identify the date it is issued, shall be directed to each defendant, and shall bear the information required by Rule 45 for remote appearances and Rule 131(d) for the plaintiff's attorney or the plaintiff if not represented by an attorney. All summons issued in civil cases in Illinois must contain the following language:

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit http://efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit http://www.illinoiscourts.gov/FAQ/gethelp.asp, or talk with your local circuit clerk's office.

(b) Summons Requiring Appearance on Specified Day.

(1) In an action for money not in excess of $50,000, exclusive of interest and costs, or in any action subject to mandatory arbitration where local rule prescribes a specific date for appearance, the summons shall require each defendant to appear on a day specified in the summons not less than 21 or more than 40 days after the issuance of the summons (see Rule 181(b)), and shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(2) In any action for eviction or for recovery of possession of tangible personal property, the summons shall be in the same form, but shall require each defendant to appear on a day specified in the summons not less than 7 or more than 40 days after the issuance of summons.

(3) If service is to be made under section 2-208 of the Code of Civil Procedure the return day shall be not less than 40 days or more than 60 days after the issuance of summons, and no default shall be taken until the expiration of 30 days after service.

(c) Summons in Certain Other Cases in Which Specific Date for Appearance is Required. In all proceedings in which the form of process is not otherwise prescribed and in which a specific date for appearance is required by statute or by rules of court, the form of summons shall conform as nearly as may be to the form set forth in paragraph (b) hereof.

(d) Summons Requiring Appearance Within 30 Days After Service. In all other cases the summons shall require each defendant to file his answer or otherwise file his appearance within 30 days after service, exclusive of the day of service (see Rule 181(a)), and shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(e) Summons in Cases under the Illinois Marriage and Dissolution of Marriage Act. In all proceedings under the Illinois Marriage and Dissolution of Marriage Act, the summons shall include a notice on its reverse side referring to a dissolution action stay being in effect on service of summons, and shall state that any person who fails to obey a dissolution action stay may be subject to punishment for contempt, and shall include language:

(1) restraining both parties from physically abusing, harassing, intimidating, striking, or interfering with the personal liberty of the other party or the minor children of either party; and

(2) restraining both parties from concealing a minor child of either party from the child's other parent. The restraint provided in this subsection (e) does not operate to make unavailable

any of the remedies provided in the Illinois Domestic Violence Act of 1986.

(f) Waiver of Service of Summons. In all cases in which a plaintiff notifies a defendant of the commencement of an action and requests that the defendant waive service of summons under section 2-213 of the Code of Civil Procedure, the request shall be in writing prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(g) Use of Wrong Form of Summons. The use of the wrong form of summons shall not affect the jurisdiction of the court.

Amended effective August 3, 1970, July 1, 1971, and September 1, 1974; amended May 28, 1982, effective July 1, 1982; amended October 30, 1992, effective November 15, 1992; amended January 20, 1993, effective immediately; amended December 30, 1993, effective January 1, 1994; amended February 1, 1996, effective immediately; amended May 30, 2008, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Aug. 16, 2017, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended June 26, 2018, eff. July 1, 2018; amended July 19, 2018, eff. immediately; amended Aug. 22, 2018, eff. immediately; amended July 17, 2020, eff. immediately; amended Feb. 2, 2023, eff. immediately.

Committee Comments
(Revised September 1, 1974)

As adopted in 1967, Rule 101 was derived from former Rule 2, with changes in paragraph (b). Paragraph (b) was inserted in former Rule 2, effective January 1, 1964, to provide, for relatively small cases, the form of summons that had been in use in the Municipal Court of Chicago prior to that date. In cases up to $10,000, the time was changed to not less than 21 or more than 40 days. Effective August 3, 1970, the $10,000 limit was changed to $15,000. The appearance day in small claims is covered by Rule 283.

The appearance day in forcible entry and detainer cases was left at not less than seven or more than 40 days. To conform the practice to the requirements of notice in actions seeking restoration of property wrongfully detained, set forth by the Supreme Court of the United States in *Fuentes v. Shevin* (1972), 407 U.S. 67, subparagraph (b)(2) of the rule was amended in 1974 to provide for a summons in such cases returnable on a day specified in the summons, not less than seven or more than 40 days from issuance, as in forcible entry and detainer cases. Under the rule as amended, independent of the statutory remedy of replevin, a party seeking return of personal property may proceed in an action in the nature of an action in detinue at common law, and serve process in the manner provided.

Subparagraph (b)(3), added to former Rule 2 in 1964 and carried forward into Rule 101 in 1967, set 40 days as the return day on service made under section 16 of the Civil Practice Act. Effective July 1, 1971, this provision was amended to substitute for "40 days" the somewhat more flexible provision "not less than 40 days or more than 60 days."

The provision of paragraph (b) of this rule permitting specific instructions under the heading "Notice to Defendant" has probably not been adequately implemented by the judges of the trial

courts. It is the committee's view that the summons should give as much specific information to the defendant as possible. For instance, the particular court room number and place of holding court ought to be given. Instructions regarding the method of entering an appearance and a statement whether an answer must be filed with the appearance, or the date for filing an answer after an appearance, can be stated in the "Notice to Defendant." Rule 181, relating to appearance, expressly recognizes that the "Notice to Defendant" under Rule 101(b) is controlling.

In 1974, paragraph (d) was amended to insert in the specimen summons reference to the fact that a copy of the complaint is attached, thus conforming the language of the summons under paragraph (d) in this respect to the language in the summons under paragraph (b).

Amended Rule 218

Rule 218. Pretrial Procedure.

(a) Initial Case Management Conference. Except as provided by local circuit court rule, which on petition of the chief judge of the circuit has been approved by the Supreme Court, the court shall hold a case management conference within 35 days after the parties are at issue and in no event more than 182 days following the filing of the complaint. At the conference counsel familiar with the case and authorized to act shall appear in person or remotely, including by telephone or video conference~~, if allowed~~, and the following shall be considered:

(1) the nature, issues, and complexity of the case;

(2) the simplification of the issues;

(3) amendments to the pleadings;

(4) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(5) limitations on discovery including:

(i) the number, duration, and means by which depositions may be taken;

(ii) the area of expertise and the number of expert witnesses who may be called; and

(iii) deadlines for the disclosure of witnesses and the completion of written discovery and depositions;

(6) the possibility of settlement and scheduling of a settlement conference;

(7) the advisability of alternative dispute resolution;

(8) the date on which the case should be ready for trial;

(9) the advisability of holding subsequent case management conferences; and

(10) any other matters which may aid in the disposition of the action including but not limited to issues involving electronically stored information and preservation.

(b) Subsequent Case Management Conferences. At the initial and any subsequent case management conference, the court shall set a date for a subsequent management conference or a trial date and state whether parties shall appear in person or remotely, including by telephone or video conference.

(c) Order. At the case management conference, the court shall make an order which recites

any action taken by the court, the agreements made by the parties as to any of the matters considered, and which specifies as the issues for trial those not disposed of at the conference. The order controls the subsequent course of the action unless modified. All dates set for the disclosure of witnesses, including rebuttal witnesses, and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates that trial will commence, unless otherwise agreed by the parties. This rule is to be liberally construed to do substantial justice between and among the parties.

(d) Calendar. The court shall establish a pretrial calendar on which actions shall be placed for consideration, as above provided, either by the court on its own motion or on the motion of any party.

Amended June 1, 1995, effective January 1, 1996; amended May 31, 2002, effective July 1, 2002; amended October 4, 2002, effective immediately; amended May 29, 2014, eff. July 1, 2014; amended Sept. 29, 2021, eff. Oct. 1, 2021; amended Feb. 2, 2023, eff. immediately.

Committee Comment
(Revised May 29, 2014)

Paragraph (a)

Paragraph (a), subparagraph (10) is intended to encourage parties to use the case management conference to resolve issues concerning electronically stored information early in the case.

Committee Comment
(October 4, 2002)

The rule is amended to clarify that case management orders will set dates for disclosure of rebuttal witnesses, if any, and that parties may agree to waive or modify the 60-day rule without altering the trial date.

Committee Comment
(May 31, 2002)

This rule is amended to conform to the changes in terminology made in Supreme Court Rule 213.

Committee Comments
(Revised June 1, 1995)

This rule is former Rule 22.

Rule 218 has been substantially modified to implement the objective of early and ongoing differential case management. The former rule contemplated a single pretrial conference which could be held at the discretion of the court. The new rule mandates an initial case management

conference which must be held within 35 days after the parties are at issue or in any event not later than 182 days after the complaint is filed. The principal goal of the initial case management conference is to tailor the future course of the litigation to reflect the singular characteristics of the case.

The new rule recognizes that each case is a composite of variable factors including the nature, number and complexity of the substantive and procedural issues which are involved, the number of parties and potential witnesses as well as the type and economic value of the relief sought. Less complex cases with limited damages and fewer parties require less discovery and involve less time to prepare than do cases with multiple complex issues involving numerous parties and damages or other remedies of extraordinary economic consequence. By focusing upon each case within six months after it is filed, the court and the parties are able to formulate a case management plan which avoids both the potential abuses and injustices that are inherent in the previous "cookie cutter" approach.

At the initial case management conference the court and counsel will consider the specific matters which are enumerated in subparagraphs (a)(1) through (a)(10). Chief among these are those which require early recognition of the complexity of the claim in order to regulate the type of discovery which will follow and the amount of time which the court and counsel believe will be required before the case can be tried. In less complex cases, subparagraphs (a)(5)(i) and (a)(5)(ii) contemplate limitations on the number and duration of depositions and restriction upon the type and number of opinion witnesses which each side may employ. This type of management eliminates discovery abuse in smaller cases without inflexibly inhibiting the type of preparation which is required in more complex litigation.

The new rule also recognizes a number of the uncertainties and problems which existed under the prior scheduling provision of former Rule 220. It attempts to eliminate those difficulties by requiring the court, at the initial management conference, to set deadlines for the disclosure of opinion witnesses as well as for the completion of written discovery and depositions. Amendments to Supreme Court Rules 213 and 214 impose a continuing obligation to supplement discovery responses, including the identification of witnesses who will testify at trial and the subject matter of their testimony. Consequently, the trial of cases should not be delayed by the late identification of witnesses, including opinion witnesses, or by virtue of surprise because the nature of their testimony and opinions is unknown. In this regard, paragraph (c) provides that deadlines established by the court must take into account the completion of discovery not later than 60 days before it is anticipated that trial will commence. For example, opinion witnesses should be disclosed, and their opinions set forth pursuant to interrogatory answer, at such time or times as will permit their depositions to be taken more than 60 days before trial.

Paragraph (a) also enumerates the other matters which the court and counsel are to consider, including the elimination of nonmeritorious issues and defenses and the potential for settlement or alternative dispute resolution. Except in instances where the case is sufficiently simple to permit trial to proceed without further management, the rule contemplates that subsequent case management conferences will be held. The Committee believes that useless or unnecessary depositions should not take place during the discovery process and that no deposition should be longer than three hours unless good cause is shown. Circuits which adopt a local circuit court rule should accomplish the purpose and goals of this proposal. Any local circuit court rule first must

be approved by the Supreme Court.

Paragraph (b) reflects the belief that case management is an ongoing process in which the court and counsel will periodically review the matters specified in subparagraphs (a)(1) through (a)(10). As additional parties are added, or amendments are made to the complaint or defenses, it may be necessary to increase or further limit the type of discovery which is required. Consequently, paragraph (c) provides that at the conclusion of each case management conference, the court shall enter an order which reflects the action which was taken. That order will control the course of litigation unless and until it is modified by a subsequent case management order. A separate road map will chart the course of each case from a point within six months from the date on which the complaint is filed until it is tried. By regulating discovery on a case-specific basis, the trial court will keep control of the litigation and thereby prevent the potential for discovery abuse and delay which might otherwise result.

Paragraph (c) controls the subsequent course of action of the litigation unless modified and should ensure that the disclosure of opinion witnesses and discovery will be completed no later than 60 days before the date on which the matter is set for trial.

Amended Rule 241

Rule 241. Use of Remote Hearings in Civil Trials and Evidentiary Hearings~~Video Conference Technology in Civil Cases~~

(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 court may, upon request or on its own order, for good cause shown and upon appropriate safeguards, allow a case participant to testify or otherwise participate in a civil trial or evidentiary hearing by video conferencing from a remote location. Where the court or case participant does not have video conference services available, the court may consider the presentation of the testimony by telephone conference in compelling circumstances with good cause shown and upon appropriate safeguards. The court~~ The judge may further direct which party shall pay the cost, if any, associated with the remote conference and shall take any ~~whatever~~ action ~~is~~ 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~~live~~ testimony ~~in court~~ 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~~are likely to~~ 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~~live~~ 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~~principles~~ 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 ~~testimony under oath in~~ 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~~personally~~ 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 ~~relative~~ importance of trials and evidentiary hearings listed in Rule 45(c)(1)~~live testimony in court~~, 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~~witness~~ 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.~~out of state. Good cause may be established where all parties agree that testimony should be presented by video conference. 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.~~

A court has broad discretion to determine if video participation, including giving video testimony, and nontestimonial telephone participation are ~~testimony is~~ 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. ~~The court must carefully balance the factors described in these comments with the need to provide protection for the case participant.~~

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~~Courts~~ should first consider obtaining and using ~~free~~ video conference services that do not charge participants a fee for participating.~~before considering fee-based services. Free services are readily available. In this way,~~

~~a remote appearance will not impose a cost on a case participant who is not able to pay that cost or would not otherwise incur a comparable cost if appearing in person. Some jurisdictions currently use video conference services which charge fees. However, to promote access to justice and to remove financial barriers to remote court appearances, courts should consider obtaining and using both paid and free services. Local rules and practices should not prohibit the use of free services for remote court appearances.~~

~~Additionally,~~ 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. ~~If a court chooses to use a service that requires the payment of fees, the court should consider whether the costs can be waived by the service, paid by another party, or paid by the court, or if the court should use a free service instead. The focus should be on increasing accessibility to the courts and not on imposing an additional barrier to a remote court appearance in the form of a fee. The court or circuit clerk shall not impose their own fees for case participants to do remote court appearances.~~

Amended Rule 286

Rule 286. Appearance and Trial

(a) Unless the "Notice to Defendant" (see Rule 101(b)) provides otherwise, the defendant in a small claim must appear at the time and place specified in the summons and the case shall be tried on the day set for appearance unless otherwise ordered. If the defendant appears, he need not file an answer unless ordered to do so by the court; and when no answer is ordered the allegations of the complaint will be considered denied and any defense may be proved as if it were specifically pleaded.

(b) Informal Hearings in Small Claims Cases. In any small claims case, the court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing. At the informal hearing all relevant evidence shall be admissible and the court may relax the rules of procedure and the rules of evidence. The court may call any person appearing in person or remotely ~~present~~ at the hearing to testify and may conduct or participate in direct and cross-examination of any witness or party. At the conclusion of the hearing the court shall render judgment and explain the reasons therefor to all parties.

Amended June 12, 1987, effective August 1, 1987; amended April 1, 1992, effective August 1, 1992; amended Feb. 2, 2023, eff. immediately.

Committee Comments

This is paragraph F of former Rule 9-1, effective January 1, 1964, with a caveat that the trial court may by "Notice to Defendant" on the summons mentioned in Rule 101(b) adopt the procedure best suited to local conditions in the handling of small claims. By the notice of the summons, the defendant should be given explicit directions where to appear, whether he must appear ready for trial on the day for appearance, or whether by filing a written appearance or giving appropriate notice to the plaintiff he will be excused from going to trial at that time. If by entry of

a written appearance or by personal appearance of the defendant the case is automatically set over for trial on a specified later date, the notice to defendant should so state. These suggestions are only illustrative. See also the Committee Comments to Rule 101(b).

Paragraph (b) was added effective August 1, 1987. The rule authorizes the court on its own motion or on motion of any party to conduct an informal hearing to decide small claims cases where the amount claimed by any party does not exceed $1,000. Amended in 1992 to delete the condition setting an upper limit on the value of cases in which an informal hearing may be had.