

M.R. 3140

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

Order entered November 30, 2022.

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

Effective January 1, 2023, Illinois Supreme Court Rule 45 is repealed and replaced.

New 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

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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

(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.

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.

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.