

* On September 30, 2022, the Court adopted Interim Administrative Rule 14. In response to a recommendation made by the Commission on Indiana’s Legal Future, the Court requested a proposed final Administrative Rule 14 from the Office of Judicial Administration. The Court now seeks comment on that proposal.

Administrative Rule 14. Remote Proceedings

(A) Definitions

(1) A “remote proceeding” is any proceeding, including without limitation entire proceedings or parts of it, using telephone or videoconferencing capabilities to allow case participants to appear virtually.

(2) An “in-person proceeding” is any proceeding in which all case participants are physically present in the courtroom for entirety duration of the proceeding.

(3) A “case participant” includes the judge presiding over the case, court staff, parties, lawyers, guardians ad litem, witnesses, experts, interpreters, and any other persons the judge determines are directly related to the case.

(B) Presumptively Remote Proceedings. Administrative, ministerial, and non-evidentiary proceedings where only attorneys are present or proceedings where the credibility of the witnesses are not in serious dispute are presumed to occur remotely. These include:

(1) Criminal Matters

(a) Proceedings to determine preliminary matters related to the status of the defendant such as arraignments, initial hearings, bail hearings, hearings on pretrial release conditions, and hearings on the appointment of counsel.

(b) Ministerial proceedings such as case management hearings, omnibus hearings, and other administrative and scheduling matters.

(c) Pretrial hearings on motions in limine, motions to suppress, or discovery issues.

(2) Civil, Probate, Family Law, and Administrative Matters

(a) Ministerial and scheduling proceedings such as case management conferences, pretrial conferences, discovery conferences, status conferences, and scheduling conferences.

(b) Hearings on motions, including dispositive motions, hearings on change of judge or venue, discovery disputes, and defaults.

(c) Hearings to open or close estates or trusts or related to the accounting of estates, trusts, or guardianships.

(d) Hearings related to the collection of damages, such as proceedings supplemental or garnishment hearings.

(e) Hearings related to protection orders under the Indiana Civil Protection Order Act.

(3) Juvenile and Child Welfare Matters

(a) Proceedings to determine preliminary matters related to initial status of a child charged with a delinquent act or alleged to be a child in need of services such as detention hearings, and hearings on the appointment of counsel.

(b) Ministerial and scheduling proceedings such as case management conferences, pretrial conferences, discovery conferences, status conferences, and scheduling conferences.

(c) Informal adjustment hearings, status conferences related to progress in an informal adjustment program, periodic case reviews, and permanency hearings.

(C) Rebutting the Presumption of a Remote Proceeding. A party may object to conducting a proceeding remotely or the parties may jointly move to conduct a presumptively remote proceeding in person. If the court finds the objection or motion supported by good cause, it may conduct the proceeding in person for all or some case participants. A court may, sua sponte, find good cause exists to conduct the proceeding in person.

(D) Presumptive In-Person Proceedings. A proceeding not listed as presumptively remote in (B) is presumed to be conducted in person. The court may conduct a presumptively in-person proceeding remotely if the parties consent and the court finds no good cause exists to conduct the proceeding in person or the court, sua sponte, finds good cause exists to conduct the proceeding remotely.

(E) Opportunity for Confidential Communication. During any remote proceeding, the court must provide the opportunity for confidential communication between a party and the party's counsel.

(F) Creation of Record. The court must create a record of every proceeding sufficient to enable a transcript to be produced for the Record on Appeal.

(G) Oaths. Court reporters and other persons qualified to administer an oath in the State of Indiana may swear a person remotely provided the person is positively identified.

Commentary

Factors Supporting Good Cause to Conduct a Presumptively Remote Proceeding in Person. The following factors are examples of circumstances that would support conducting a presumptively remote hearing in person:

1. All parties, and the court, agree that the hearing should be conducted in person.
2. A case participant lacks access to technology to participate remotely and cannot reasonably be expected to gain access to such technology before the hearing.
3. Technological issues with the court make a remote proceeding impossible or unreliable.
4. Whether proceeding remotely will deprive a party of necessary, effective, and confidential attorney-client communications before, during, and after the proceeding.
5. The relative importance and complexity of the proceeding.
6. Whether the presentation of any non-witness evidence can be done effectively.
7. There are too many case participants in the hearing to reasonably keep track of them using a computer screen.
8. If appearing remotely would not allow for effective examination of a witness, observation of demeanor, or inquiry to counsel.
9. If the solemnity and integrity of an in-person proceeding would more significantly impress upon witnesses the duty to testify truthfully.
10. Any undue surprise or prejudice that would result from a remote proceeding.
11. Such other factors, based upon the specific facts and circumstances of the case, as the court determines to be relevant.

A party's right to be present and participate in a proceeding, including that of a criminal defendant, does not in and of itself constitute good cause to hold a presumptively remote proceeding in person.

Factors Supporting Good Cause to Conduct a Presumptively In-Person Proceeding Remotely. The following factors are examples of circumstances that would support conducting a presumptively in-person proceeding remotely:

1. All parties, and the court, agree that the hearing should be conducted remotely.
2. Holding the hearing in person would cause a case participant to reasonably fear for their safety.
3. The cost and time savings to any party.

4. A case participant would need to travel unreasonably far to the hearing location or it would be unduly burdensome for a hearing participant to secure transportation to the hearing.
5. A case participant is in custody or residential treatment and cannot physically travel to the hearing but can participate remotely.
6. Inclement weather conditions or some other emergency or disaster situation make travel to an in-person hearing impossible or a risk to the personal safety of case participants.
7. Unavoidable scheduling conflicts of case participants prevent the matter from moving forward in a more timely way.
8. The relative importance and complexity of the proceeding.
9. If appearing remotely would still allow for the effective examination of a witness or inquiry to counsel and maintain the solemnity and integrity of the proceeding to sufficiently impress upon witnesses the duty to testify truthfully.
10. Any undue surprise or prejudice that would result from an in-person proceeding.
11. Such other factors, based upon the specific facts and circumstances of the case, as the court determines to be relevant.

Deadlines and Procedures. This Rule does not place any specific deadlines or set out any procedures for matters like objections or the submission of evidence in remote proceedings. Courts are expected to handle these case management matters in accordance with usual and appropriate practice and procedure.

Telephone versus Video Technology. Courts should determine on a case-by-case basis whether telephone or video technology is appropriate for a remote proceeding. Hybrid proceedings are permissible. Some case participants may appear by telephone, some by video, and some in person all in the same proceeding.

Judicial Officer Participation. Absent emergency circumstances, judicial officers conducting remote proceedings must do so from their courtroom or chambers. In the event of emergency circumstances requiring a judicial officer to appear remotely from another location, the judicial officer must still project the appropriate decorum and dignity of the court and make every reasonable effort to participate from a professional, neutral environment. When using video technology, judicial officers must keep their cameras turned on and be visible.

Public Access. The public's ability to observe court proceedings is significant to maintaining trust and confidence in the judicial system. This public interest, however, must be balanced against the judiciary's obligation to maintain order and dignity of court

proceedings and protect litigants' due process and fair trial rights. Notwithstanding the general prohibition on broadcasting court proceedings found in Judicial Conduct Rule 2.17, courts are authorized and encouraged to live stream remote proceedings (except where confidential or prohibited by law) on a public platform. Such live streams may be viewable only during the proceeding and must not be made available for later playback. Courts must admonish case participants not to record those proceedings. The Office of Judicial Administration maintains a public website where remote court proceedings may be live streamed in accordance with this commentary.

Guidance. The Office of Judicial Administration shall develop guidance and best practices on remote proceedings and make those available on a public website.