

* The proposed amendment to Administrative Rule 14 would give trial court judges broader discretion to conduct remote hearings. This proposal updates the January 2020 proposed amendment to provide a more efficient and effective means of accessing the court system for litigants and lawyers while balancing due process considerations.*

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) 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.
- (3) A "testimonial proceeding" is a proceeding in which the judge receives sworn oral testimony.

(B) Authority in Non-Testimonial Proceedings. In all non-testimonial hearings or conferences, a court may, upon request or on its own order, conduct the hearing or conference as a remote proceeding.

(C) Authority in Testimonial Proceedings. A court shall conduct all testimonial proceedings in person except that a court may conduct the proceedings remotely for all or some of the case participants for good cause shown or by agreement of the parties. Remote proceedings must comply with constitutional and statutory guarantees.

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

(E) Record. A court must create a record of the proceeding sufficient to enable a transcript to be produced for the Record on Appeal.

(F) 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

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

Testimonial Court Proceedings. Presenting live testimony in court remains of utmost importance. For this reason, Rule 14(C) requires showings of good cause or agreement of the parties prior to allowing a remote appearance. A court must also have safeguards in place to ensure adequate identification of the witness and to protect against influences by persons present with the witness. To participate in a remote proceeding, case participants must have adequate internet service allowing for uninterrupted audio and visual transmission.

Objections. Case participants may object to a request for a remote proceeding or to a court's order setting a remote proceeding. The Rule does not place any specific deadlines or set out any procedures for objections. Courts are expected to handle objections in accordance with usual practice and procedure; however, case participants should object or indicate their ability to participate remotely as soon as reasonably possible.

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

Rule 14. Use of Telephone and Audiovisual Telecommunication

~~(A) Authority.~~ A trial court may, in its discretion, use telephone or audiovisual telecommunication pursuant to the provisions of this rule as follows:

~~(1) A trial court may use telephone or audiovisual telecommunication to conduct:~~

- ~~(a) Pre-trial conferences;~~
- ~~(b) Proceedings where only the attorneys are present;~~
- ~~(c) Proceedings during a declared emergency under Ind. Administrative Rule 17; and,~~
- ~~(d) Proceedings where a party or witness is unavailable due to quarantine.~~

~~(2) A trial court may use audiovisual telecommunication to conduct:~~

- ~~(a) Initial hearings pursuant to IC 35-33-7-1, 3, 3.5, 4 and 5, including any probable cause hearing pursuant to IC 35-33-7-2; determination of indigence and assignment of counsel pursuant to IC 35-33-7-6; amount and conditions of bail pursuant to IC 35-33-7-5(4), 35-33-8-3.1 and 4; and the setting of omnibus date pursuant to IC 35-36-8-1;~~
- ~~(b) The taking of a plea of guilty to a misdemeanor charge, pursuant to IC 35-35-1-2;~~
- ~~(c) Sentencing hearings pursuant to IC 35-38-1-2 when the defendant has given a written waiver of his or her right to be present in person and the prosecution has consented;~~
- ~~(d) Post-conviction hearings pursuant to Ind. Post-Conviction Rule 1(5), with the written consent of the parties;~~

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- ~~(e) Preliminary hearings in mental health emergency detention proceedings pursuant to IC 12-26-5-10;~~
- ~~(f) Review hearings in mental health commitment proceedings pursuant to IC 12-26-15-2;~~
- ~~(g) When a child is alleged to be a delinquent child, for a detention hearing pursuant to IC 31-37-6 or a periodic review hearing pursuant to IC 31-37-20-2;~~
- ~~(h) When a child is alleged to be a child in need of service, for a detention hearing pursuant to IC 31-34-5 or a periodic review hearing pursuant to IC 31-34-21-2.~~

~~(B) Other Proceedings.~~ ~~In addition, in any conference, hearing or proceeding not specifically enumerated in Section (A) of this rule, with the exception of criminal proceedings involving the right of confrontation or the right to be present, a trial court may use telephone or audiovisual communications subject to:~~

- ~~(1) the written consent of all the parties, entered on the Chronological Case Summary; or~~
- ~~(2) upon a trial court's finding of good cause, upon its own motion or upon the motion of a party. The following factors shall be considered in determining "good cause":~~
 - ~~(a) Whether, after due diligence, the party has been unable to procure the physical presence of the witness;~~
 - ~~(b) Whether effective cross-examination of the witness is possible, considering the availability of documents and exhibits to counsel and the witness;~~
 - ~~(c) The complexity of the proceedings and the importance of the offered testimony in relation to the convenience to the party and the proposed witness;~~
 - ~~(d) The importance of presenting the testimony of the witness in open court, where the fact finder may observe the demeanor of the witness and impress upon the witness the duty to testify truthfully;~~
 - ~~(e) Whether undue surprise or unfair prejudice would result; and~~
 - ~~(f) Any other factors a trial court may determine to be relevant in an individual case.~~
- ~~(3) A party or a trial court if it is acting on its own motion must give notice of the motion to use telephone or audiovisual telecommunication as follows:~~
 - ~~(a) Any motion for testimony to be presented by telephone or audiovisual telecommunication shall be served not less than thirty (30) days before the time specified for hearing of such testimony;~~
 - ~~(b) Opposition to a motion for testimony to be presented by telephone or audiovisual telecommunication shall be made by written objection within seven (7) days after service;~~
 - ~~(c) A trial court may hold an expedited hearing no later than ten (10) days before the scheduled hearing of such testimony to determine if good cause has been shown to present testimony by telephone or audiovisual telecommunication;~~

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~~(d) A trial court shall make written findings of fact and conclusions of law within its order on the motion for testimony to be presented by telephone or audiovisual telecommunication; and~~

~~(e) For cause found, a trial court may alter the time deadlines set forth in paragraphs (a) through (c) upon motion made prior to the expiration of the time for the required action.~~

~~(C) Facilities and Equipment.~~ In relation to any hearing or proceeding conducted under this rule, the court shall assure that:

~~(1) The facility and equipment provide counsel with the ability to confer privately with an out of court party, or with other counsel, off the record, before, during, and immediately following the hearing or proceeding. Mental health care providers, employees of the Indiana Family and Social Services Administration and its county offices of Family and Children, and county probation officers who appear as witnesses are not parties for the purposes of this section.~~

~~(2) When using telephonic and audiovisual telecommunication:~~

~~(a) All participants are able to fully view and/or converse with each other simultaneously.~~

~~(b) The facilities have the capacity for contemporaneous transmission of documents and exhibits.~~

~~(c) Audiovisual images are in color and monitor screens are of sufficient quality, design, and architecture as to allow all parties to observe the demeanor and non-verbal communication of the other parties.~~

~~(d) The telephonic or audiovisual transmission is of sufficient quality, design, and architecture to allow easy listening and/or viewing of all public proceedings.~~

~~(e) The use of telephonic or audiovisual technology in conducting hearings and proceedings shall in no way abridge any right of the public.~~

~~(3) Application may be made to the Indiana Supreme Court, through the Indiana Office of Judicial Administration (IOJA), for approval of a plan that uses alternative procedures and technology that meet the intent and objective of this rule.~~

~~(4) The confidentiality accorded to attorney-client communications, and all other privileges applicable under Indiana law, apply.~~