

Rule 87. In-person, remote, and hybrid hearings; request for different format.

(a) Definitions.

- (1) "Participant" means a party, an intervenor, a person who has objected to a subpoena, or an attorney for any such persons.
- (2) "In-person" means a participant will be physically present in the courtroom.
- (3) "In-person hearing" means a hearing where all participants appear in person.
- (4) "Remote" or "remotely" means a participant will appear by video conference or other electronic means approved by the court.
- (5) "Remote hearing" means no participants will be physically present in the courtroom and all participants will appear remotely.
- (6) "Hybrid hearing" means a hearing at which some participants appear in person and others appear remotely.

(b) Setting hearing format; factors to consider. The court has discretion to set a hearing as an in-person hearing, a remote hearing, or a hybrid hearing. In determining which format to use for a hearing, the court will consider:

- (1) the preference of the participants, if known;
- (2) the anticipated hearing length;
- (3) the number of participants;
- (4) the burden on a participant of appearing in person compared to appearing remotely, including time and economic impacts;
- (5) the complexity of issues to be addressed;
- (6) whether and to what extent documentary or testimonial evidence is likely to be presented;
- (7) the availability of adequate technology to accomplish the hearing's purpose;

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(8) the availability of language interpretation or accommodations for communication with individuals with disabilities;

(9) the possibility that the court may order a party, who is not already in custody, into custody;

(10) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights; and

(11) any other factor, based on the specific facts and circumstances of the case or the court's calendar, that the court deems relevant.

(c) Request to appear by a different format.

(1) **Manner of request.** A participant may request that the court allow the participant or a witness to appear at a hearing by a different format than that set by the court. Any request must be made verbally during a hearing, by email, by letter, or by written motion, and the participant must state the reason for the request. If a participant is represented by an attorney, all requests must be made by the attorney.

(A) Email and letter requests.

(i) An email or letter request must be copied on all parties on the request;

(ii) An email or letter request must include in the subject line, "REQUEST TO APPEAR IN PERSON, Case _____" or "REQUEST TO APPEAR REMOTELY, Case _____;" and

(iii) An email request must be sent to the court's email address, which may be obtained from the court clerk.

(B) Request by written motion. If making a request by written motion, the motion must succinctly state the grounds for the request and be

accompanied by a request to submit for decision and a proposed order. The motion need not be accompanied by a supporting memorandum.

(2) **Timing.** All requests, except those made verbally during a hearing, must be sent to the court at least seven days before the hearing unless there are exigent circumstances or the hearing was set less than seven days before the hearing date, in which case the request must be made as soon as reasonably possible.

(d) Resolution of the request.

(1) **Timing and manner of resolution.** The court may rule on a request under paragraph (c) without awaiting a response. The court may rule on the request in open court, by email, by minute entry, or by written order. If the request is made by email, the court will make a record if the request is denied.

(2) **Court's accommodation of participant's preference; factors to consider.** The court will accommodate a timely request unless the court makes, on the record, a finding of good cause to order the participant to appear in the format originally noticed. The court may find good cause to deny a request based on:

(A) a constitutional or statutory right that requires a particular manner of appearance or a significant possibility that such a right would be impermissibly diminished or infringed by appearing remotely;

(B) a concern for a participant's or witness's safety, well-being, or specific situational needs;

(C) a prior technological challenge in the case that unreasonably contributed to delay or a compromised record;

(D) a prior failure to demonstrate appropriate court decorum, including attempting to participate from a location that is not conducive to accomplishing the purpose of the hearing;

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(E) a prior failure to appear for a hearing of which the participant had notice;

(F) the possibility that the court may order a party, who is not already in custody, into custody;

(G) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights;

(H) an agreement or any objection of the parties;

(I) the court's determination that the consequential nature of a specific hearing requires all participants to appear in person; or

(J) the capacity of the court, including but not limited to the required technology equipment, staff, or security, to accommodate the request.

(3) Effect on other participants. The preference of one participant, and the court's accommodation of that preference, does not:

(A) change the format of the hearing for any other participant unless otherwise ordered by the court; or

(B) affect any other participant's opportunity to make a timely request to appear by a different format or the court's consideration of that request.