

1 Rule 17.5. In-person, remote, and hybrid hearings; requests for accommodation.

2 (a) **Definitions.**

3 (1) “Participant” means a party, a participating victim, or an attorney for a party
4 or participating victim.

5 (2) “In-person” means a participant will be physically present in the courtroom.

6 (3) “In-person hearing” means a hearing where all participants appear in person.

7 (4) “Remote” or “remotely” means a participant will appear by video conference
8 or other electronic means approved by the court.

9 (5) “Remote hearing” means no participants will be physically present in the
10 courtroom and all participants will appear remotely.

11 (6) “Hybrid hearing” means a hearing at which some participants appear in person
12 and others appear remotely.

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

16 (1) the preference of the participants, if known;

17 (2) the anticipated hearing length;

18 (3) the number of participants;

19 (4) the burden on a participant of appearing in person compared to appearing
20 remotely, including time and economic impacts;

21 (5) the complexity of issues to be addressed;

22 (6) whether and to what extent documentary or testimonial evidence is likely to be
23 presented;

24 (7) the availability of adequate technology to accomplish the hearing’s purpose;

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

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

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

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

33 **(c) Request to appear by a different format.**

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

40 **(A) Email and letter requests.**

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

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

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

47 **(B) Request by written motion.** If making a request by written motion, the
48 motion must succinctly state the grounds for the request and be
49 accompanied by a request to submit for decision and a proposed order. The
50 motion need not be accompanied by a supporting memorandum.

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

55 **(d) Resolution of the request.**

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

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

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

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

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

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

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

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

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

81 (H) a participant's involvement in a problem-solving court;

82 (I) an agreement or any objection of the parties;

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

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

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

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

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

93 Effective May/November 1, 20__