

1 **Rule 43. Evidence.**

2 **(a) Form.** In all trials and evidentiary hearings, the testimony of a witnesses shall ~~must~~  
3 be taken in open court, unless otherwise provided by these rules, the Utah Rules of  
4 Evidence, or a statute of this state. In civil proceedings, the court may, upon request or  
5 on its own order, and ~~For~~ for good cause and with appropriate safeguards, the court may  
6 permit remote testimony in open court. Remote testimony will be presented via  
7 videoconference if reasonably feasible, or if not, via telephone or assistive device.

8 **(b) Remote testimony safeguards.** No hearing may proceed unless the court ensures  
9 that all necessary remote testimony safeguards are provided, by the court or by the  
10 parties. An objection to a lack of safeguards is waived unless timely made. Remote  
11 testimony safeguards must include:

12 (1) a notice of (i) the date, time, and method of transmission; (ii) instructions for  
13 participation, and (iii) contact information for technical assistance;

14 (2) a verbatim record of the testimony;

15 (3) upon request to the court, access to the technology and resources to participate,  
16 including an interpreter, telephone, or assistive device;

17 (4) a court-provided or party-provided means for a party and the party's counsel to  
18 communicate confidentially;

19 (5) a court-provided or party-provided means for the party and the party's counsel  
20 to share documents, photos, and other electronic materials among the remote  
21 participants; and

22 (6) any other measures the court deems necessary to maintain the integrity of the  
23 proceedings.

24 **(c) Remote hearing oath.** An oath in substantially the following form must be given  
25 prior to any remote hearing testimony: "You do solemnly swear (or affirm) that the  
26 evidence you shall give in this issue (or matter) pending between \_\_\_\_\_ and \_\_\_\_\_ shall be

27 the truth, the whole truth and nothing but the truth, and that you will neither  
28 communicate with, nor receive any communications from, another person during your  
29 testimony unless authorized by the court, so help you God (or, under the pains and  
30 penalties of perjury)."

31 **(b)** Evidence on motions. When a motion is based on facts not in the record, the court  
32 may hear the matter on affidavits, declarations, oral testimony, or depositions.

33 **Advisory Committee Note**

34 ~~Federal Rule of Civil Procedure 43 has permitted testimony by contemporaneous~~  
35 ~~transmission since 1996. State court judges have been conducting telephone conferences~~  
36 ~~for many decades. These range from simple scheduling conferences to resolution of~~  
37 ~~discovery disputes to status conferences to pretrial conferences. These conferences tend~~  
38 ~~not to involve testimony, although judges sometimes permit testimony by telephone or~~  
39 ~~more recently by video conference with the consent of the parties. The 2016~~  
40 ~~amendments are part of a coordinated effort by the Supreme Court and the Judicial~~  
41 ~~Council to authorize a convenient practice that is more frequently needed in an~~  
42 ~~increasingly connected society and to bring a level of quality to that practice suitable for~~  
43 ~~a court record. As technology evolves the methods of contemporaneous transmission~~  
44 ~~will change.~~

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