

1 **Rule 87. In-person, remote, and hybrid hearings; requests for accommodation.**

2 (a) **Definitions.**

3 (1) "Participant" means a party, an intervenor, a person who has objected to a  
4 subpoena, or an attorney for any such persons.

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 on the  
42 request;
- 43 (ii) An email or letter request must include in the subject line,  
44 "REQUEST TO APPEAR IN PERSON, Case \_\_\_\_\_" or  
45 "REQUEST TO APPEAR REMOTELY, Case \_\_\_\_\_;" and
- 46 (iii) An email request must be sent to the court's email address,  
47 which may be obtained from the court clerk.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85 (J) 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\_\_