

M.R. 3140

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

Order entered May 22, 2020.

(Deleted material is struck through, and new material is underscored.)

Effective immediately, Illinois Supreme Court Rule 185 is repealed and reserved, Rule 45 is adopted, and Rules 46 and 241 are amended, as follows.

**Repealed and Reserved Rule 185**

**Rule 185. ~~Telephone or Video Conferences~~ Reserved**

~~—Except as may be otherwise provided by rule of the circuit court, the court may, at a party's request, direct argument of any motion or discussion of any other matter remotely, including by telephone or video conference. The court may further direct which party shall pay any cost associated with the remote session.~~

~~Adopted April 1, 1992, effective August 1, 1992; amended Dec. 29, 2017, eff. Jan. 1, 2018.~~

**Committee Comments**

~~—This rule was adopted as part of a package of measures to increase the use of electronic and telephonic technology and to simplify and make more efficient motion and conference practices. The availability of this alternative procedure may be modified by local rule, inasmuch as telephone conferencing may not be the most efficient way to handle motions, etc., in some circuits or counties.~~

**New Rule 45**

**Rule 45. Participation in Civil or Criminal Proceedings by Telephone or Video Conferences**

The court may, upon request or on its own order, allow a case participant to participate in a civil or criminal matter remotely, including by telephone or video conference. Use of telephone or video conferences in criminal or juvenile delinquency matters shall be undertaken consistent with constitutional guarantees applicable to such proceedings.

The court may further direct which party shall pay the cost, if any, associated with the telephone or video conference and shall take whatever action is necessary to ensure that the cost of remote participation is not a barrier to accessing the courts.

**FILED**

MAY 22 2020

**SUPREME COURT  
CLERK**

Adopted May 22, 2020, eff. immediately.

Committee Comments  
(May 22, 2020)

The use of telephone or video conferences was formerly contained in Article II – Rules on Civil Proceedings in the Trial Court as Supreme Court Rule 185 (Telephone or Video Conferences). New Rule 45 recognizes that telephone and video conferences can be used effectively and appropriately in other types of proceedings beyond civil cases. As indicated in the rule, special attention must be given to the use of telephone or video conferencing in criminal or juvenile delinquency proceedings. Continued study as this technology evolves will be necessary to ensure the constitutional guarantees applicable to such proceedings are consistently provided.

**Application to Civil Proceedings**

Rule 45 covers all nontestimonial court appearances, while Rule 241 addresses civil testimony. New Rule 45 intentionally provides wider latitude for a court to conduct court proceedings remotely by allowing any case participant to request a remote appearance for any reason and by allowing a court to make that decision on its own even if no request has been made by a case participant. While the use of remote participation is ultimately subject to the discretion of the court, appearing remotely under Rule 45 does not require good cause or meeting a particular hardship threshold. The intent of this Rule is that remote appearances should be easy to request and liberally allowed. The Illinois Supreme Court Policy on Remote Appearances in Civil Cases provides additional guidance on the use of this Rule.

This rule adopts the definitions in the Illinois Supreme Court Policy on Remote Appearances in Civil Cases. In particular, a case participant includes any individual involved in a civil case including the judge presiding over the case, parties, lawyers, guardians *ad litem*, minors in the care of the Department of Children and Family Services (DCFS), witnesses, experts, interpreters, treatment providers, law enforcement officers, DCFS caseworkers, and court reporters.

Courts are encouraged to liberally grant requests to appear remotely and to be particularly accommodating of case participants who face an obstacle to appearing personally in court, including but not limited to distance from the court, difficulty with traveling, military service, incarceration, hospitalization or illness, disability, other health or mobility limitations, work or childcare obligations or responsibilities, or limited court operations. Whether telephone versus video technology is appropriate is a determination for the court to make based on each individual case and consideration of any hardship factors. Some case participants may appear by telephone, some by video, and some in person all on the same case.

Courts should first consider obtaining and using free telephone or video conference services before considering fee-based services. Free services are readily available. In this way, a remote

appearance will not impose a cost on a case participant who is not able to pay that cost or would not otherwise incur a comparable cost if appearing in person. Some jurisdictions currently use telephone or video conference services which charge fees. However, to promote access to justice and to remove financial barriers to remote court appearances, courts should consider obtaining and using both paid and free services. Local rules and practices should not prohibit the use of free services for remote court appearances.

Additionally, any fees associated with a remote court appearance should be subject to waiver for case participants who cannot afford them. If a court chooses to use a service that requires the payment of fees, the court should consider whether the costs can be waived by the service, paid by another party, or paid by the court, or if the court should use a free service instead. The focus should be on increasing accessibility to the courts and not on imposing an additional barrier to a remote court appearance in the form of a fee. The court or circuit clerk shall not impose their own fees for case participants to do remote court appearances.

### **Amended Rule 46**

#### **Rule 46. Official Record of Court Proceedings**

**(a) Taking of the Record.** The record of court proceedings may be taken by stenographic means or by an electronic recording system, including video conferencing services, approved by the Supreme Court. All transcripts prepared as the official record of court proceedings shall be prepared pursuant to applicable supreme court rules.

**(b) Security of the Record.** The confidentiality of court proceedings and the retention and safekeeping of notes and electronic recordings shall be maintained consistent with standards established by the Supreme Court through its Administrative Office.

**(c) Court Reporting Personnel.** For purposes of this rule and other supreme court rules regarding the official record, “court reporting personnel” shall include:

- (1) court reporters as defined by the Court Reporters Act (705 ILCS 70/1);
- (2) court personnel who have fulfilled the training and certification standards promulgated by the Supreme Court and consistent with paragraph (d) of this rule; and
- (3) certified shorthand reporters hired through an agency or as an independent contractor by a private party or parties to take a stenographic record in court proceedings.

**(d) Electronic Recording of Court Proceedings.**

(1) The Supreme Court shall provide for and prescribe the types of electronic recording equipment and video conferencing services that may be used in the circuit courts. Those jurisdictions with electronic recording systems installed are required to properly utilize and staff such equipment in order to produce a reliable verbatim record of the proceedings.

(2) Court reporting personnel, including court reporters as defined by the Court Reporters Act (705 ILCS 70/1), must successfully complete training and certification designed to qualify them to operate electronic recording equipment, prepare transcripts from such proceedings, and certify the record on appeal. Such training and certification shall be consistent with standards established by the Supreme Court, through its Administrative Office.

(3) Electronic recordings of proceedings shall remain under the control of the court having custody of them. The chief judges shall provide for the storage and safekeeping of such recordings consistent with the standards referenced in paragraph (b) of this rule.

(4) The Administrative Office shall monitor the operation of electronic recording equipment, the security of the electronic recordings, and the training of court reporting personnel to assure that each county is in compliance with this rule.

Adopted December 13, 2005, effective immediately; amended May 22, 2020, eff. immediately.

### **Amended Rule 241**

#### **Rule 241. Use of Video Conference Technology in Civil Trials and Evidentiary HearingsCases**

The court may, upon request or on its own order, for good cause shown ~~in compelling circumstances~~ and upon appropriate safeguards, allow a case participant to testify or otherwise participate in a civil trial or evidentiary hearing by video conferencing from a remote location. ~~permit presentation of testimony in open court by contemporaneous transmission from a different location.~~ Where the court or case participant does not have video conference services available, the court may consider the presentation of the testimony by telephone conference in compelling circumstances with good cause shown and upon appropriate safeguards. The court may further direct which party shall pay the cost, if any, associated with the remote conference and shall take whatever action is necessary to ensure that the cost of remote participation is not a barrier to access to the courts.

Adopted October 4, 2011, effective immediately; amended May 22, 2020, eff. immediately.

#### **Committee Comments (October 4, 2011)**

The presentation of live testimony in court remains of utmost importance. As such, showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but is able to testify from a remote location. Advance notice should be given to all parties of foreseeable circumstances that may lead the proponent to offer testimony by contemporaneous transmission.

Good cause and compelling circumstances may be established if all parties agree that testimony should be presented by contemporaneous transmission; however, the court is not bound by a stipulation and can insist on live testimony.

Adequate safeguards are necessary to ensure accurate identification of the witness and protect against influences by persons present with the witness. Accurate transmission must also be assured.

#### **Committee Comments (May 22, 2020)**

The principles that prompted Rule 45 apply to the changes to Rule 241. The use of video technology to conduct testimony under oath in civil trials increases accessibility to the courts, aids in the efficient administration of justice, avoids delays in trials, and more efficiently administers testimony for case participants who face an obstacle to appearing personally in court such as illness, disability, or distance from the courthouse.

This rule adopts the definitions found in the Illinois Supreme Court Policy on Remote Appearances in Civil Cases. In particular, a case participant includes any individual involved in a civil case including the judge presiding over the case, parties, lawyers, guardians *ad litem*, minors in the care of the Department of Children and Family Services (DCFS), witnesses, experts, interpreters, treatment providers, law enforcement officers, DCFS caseworkers, and court reporters.

Due to the relative importance of live testimony in court, a showing of good cause is required. Good cause is likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident, illness, or limited court operations, but also in foreseeable circumstances such as residing out of state. Good cause may be established where all parties agree that testimony should be presented by video conference. Adequate safeguards are necessary to ensure accurate identification of the case participant testifying remotely and to avoid improper influences by any individual who may be present with the case participant at the time of the testimony.

A court has broad discretion to determine if video testimony is appropriate for a particular case. A court should take into consideration and balance any due process concerns, the ability to question witnesses, hardships that would prevent the case participant from appearing in person, the type of case, any prejudice to the parties if testimony occurred by video conference, and any other issues of fairness. A court must balance these and other relevant factors in an individual case.

Where a case participant testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying case participant, care must be taken to ensure the integrity of the examination. The testifying case participant may be examined by the court or counsel for any party regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a case participant should instruct the case participant that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented case participants may be similarly instructed by the court.

Where the court or case participant does not have video conference services, the court may consider the presentation of the testimony by telephone or other audio means but only upon a showing of good cause, including a showing of exigent, safety, or security circumstances and with appropriate safeguards. The court must carefully balance the factors described in these comments with the need to provide protection for the case participant.

Courts should first consider obtaining and using free video conference services before considering fee-based services. Free services are readily available. In this way, a remote

appearance will not impose a cost on a case participant who is not able to pay that cost or would not otherwise incur a comparable cost if appearing in person. Some jurisdictions currently use video conference services which charge fees. However, to promote access to justice and to remove financial barriers to remote court appearances, courts should consider obtaining and using both paid and free services. Local rules and practices should not prohibit the use of free services for remote court appearances.

Additionally, any fees associated with a remote court appearance should be subject to waiver for case participants who cannot afford them. If a court chooses to use a service that requires the payment of fees, the court should consider whether the costs can be waived by the service, paid by another party, or paid by the court, or if the court should use a free service instead. The focus should be on increasing accessibility to the courts and not on imposing an additional barrier to a remote court appearance in the form of a fee. The court or circuit clerk shall not impose their own fees for case participants to do remote court appearances.