

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 22-13

(Amending Super. Ct. Dom. Rel. R. 43)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved amendments to Rule 43 of the Rules Governing Domestic Relations Proceedings; it is

ORDERED, that Rule 43 of the Rules Governing Domestic Relations Proceedings is hereby amended as set forth below; and it is further

ORDERED, that the amendments shall take effect immediately and shall govern all proceedings hereafter commenced and insofar is just and practicable all pending proceedings.

Rule 43. Evidence

(b) IN OPEN COURT. At trial, the witnesses' testimony must be taken in open court unless otherwise provided by these rules. For good cause ~~in-compelling circumstances~~ and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

COMMENT TO 2022 AMENDMENTS

Subsection (b) was amended consistent with the 2022 amendments to Civil Rule 43(b) to facilitate remote testimony by eliminating the requirement that a party seeking to present live testimony from a remote location establish "compelling circumstances." Factors that may be relevant to whether good cause exists to allow contemporaneous remote testimony include, but are not limited to: (1) any agreement of the parties; (2) the age, infirmity, or illness of the witness; (3) the convenience of the proposed witness and the parties, (4) the willingness of the witness to testify in person; (5) the cost of producing the witness in person in relation to the importance of the testimony; and (6) any unfair prejudice or surprise to another party.

Videoconferencing is strongly preferred over audio-only transmission, although the latter may be sufficient in some cases, and the court may require videoconferencing as an appropriate safeguard. Other examples of appropriate safeguards include, but are not limited to: (1) prohibiting anyone from being physically present with the witness, or requiring the identification of any such person; (2) prohibiting the witness from consulting notes or other documents, or requiring disclosure of any such documents; (3) prohibiting electronic or other communications with the witness during the testimony; (4) establishing procedures for showing documents or exhibits to the witness during direct and cross examination; (5) establishing procedures to ensure that the witness's testimony can be seen and/or heard; (6) establishing requirements to ensure that the witness's surroundings or backdrop does not cause unfair prejudice; and (7) requiring the witness and the parties to test arrangements before the witness testifies.

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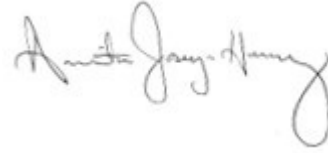
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* * *

By the Court:



Date: 11/18/2022

Anita M. Josey-Herring
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Lynn Magee, Director, Civil Division
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Daily Washington Law Reporter
Pedro E. Briones, Associate General Counsel