

vongsakoun, magdalene

From: Sophia Alvarez [REDACTED]
Sent: Thursday, March 9, 2023 9:13 AM
To: supremecourtrules
Subject: [External] Chief Justice Directive - Virtual Proceedings

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for seeking input.

The Colorado Office of Public Guardianship is in favor of the proposed Chief Justice Directive - Virtual Proceedings because it allows our office to be efficient with time and expenses, especially as we expand to additional Judicial Districts.

Best Regards,



Sophia M. Alvarez J.D., M.S., NCG
Director
Colorado Office of Public Guardianship
3900 East Mexico Avenue, Suite 300
Denver, Colorado 80210
Office: 720.552.5215

[REDACTED]

Confidentiality Notice: This electronic mail and any files transmitted with it are confidential and are intended solely for the use of individual or entity to whom they are addressed. If you are not the intended recipient or the person responsible for delivering the electronic mail to the intended recipient, be advised that you have received this electronic mail in error and that any use, dissemination, forwarding, printing, or copying of this electronic mail is strictly prohibited. If you have received this electronic mail in error, please immediately notify the sender by return mail.

vongsakoun, magdalene

From: Melissa Anderson [REDACTED]
Sent: Tuesday, March 7, 2023 7:07 AM
To: supremecourtrules
Subject: [External] CO Supreme Court Public Comment

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Your Honor,

I also agree that virtual hearings are here to stay. What a convenient and time saving measure to allow virtual court appearances, especially for clients who do not have the financial resources (travel, hotel, gas, time off work).

The pandemic created a health emergency for use of virtual, and now that everyone is familiar with this technology we should continue to use this to our advantage. It is certainly convenient and efficient to keep the docket moving...

Thank you for considering my public comment.

Regards,
Melissa Anderson
Attorney in Golden, Colorado

vongsakoun, magdalene

From: arruzza-obrien, francesca
Sent: Wednesday, March 1, 2023 10:28 AM
To: supremecourtrules
Subject: Comments re: Virtual Proceedings Policy

Good Morning,

I'm writing to provide commentary regarding the Virtual Proceedings Policy.

I don't believe a victim of a crime should ever be required to appear in person unless subpoenaed. They should be permitted to utilize virtual proceedings at any time to include sentencing, unless as stated earlier, they are subpoenaed.

As a Probation Officer, since Webex, I've been able to attend Court hearings far more frequently than I had in the past. This allows me to be available if questions arise, and it also allows me to learn more about Court proceedings, and hear first hand what was said in Court. As a supervising officer, the ability to attend hearings I am not required to appear for in person, was extremely helpful in keeping informed of what happened in Court and being available to answer questions. I've moved into pre-sentence report writing, and I now attend as many sentencing hearings as I can virtually. I believe the ability to do this accelerates my learning in this position, and also makes me available to answer questions for the Court.

Prior to Webex, I only attended hearings if required to do so; or if I knew something significant would be happening during the hearing. The time it takes to drive to the Court house, find a parking space, walk to the Court house, and then sit in Court (sometimes for one to two hours) would take too much time away from other tasks. Being able to attend virtually when not required to be present allows me to have Webex on and carry on with other work tasks until the case I am present for is called.

Francesca Arruzza
Probation Officer
Pre-Sentence Investigations
8th Judicial District
Phone: [REDACTED]
Fax: (970) 494-3939

The information contained in this email and any attachments may contain confidential information that is for the intended recipient only. Should you receive this email in error please destroy and notify the sender.

"Not my place to judge. We all fall down. It's about how we get up." -KS

vongsakoun, magdalene

From: bagwell, mackenzie
Sent: Wednesday, March 1, 2023 2:37 PM
To: supremecourtrules
Subject: virtual proceeding policy feedback

Hey there,

I am emailing in a comment/ concern about something in this draft.

IV. PROCESS

A. Presumptively In-Person Appearances

1. The following proceedings require in-person appearances unless the court finds good cause to depart from this presumption:

- a. Jury trial;
- b. Criminal Court trial;
- c. Criminal preliminary hearing;
- d. Criminal suppression hearing;
- e. Criminal habitual trial;
- f. Criminal probation revocation hearing;**
- g. Criminal show cause hearing;
- h. Sentencing;
- i. Guilty plea to a Victim's Rights Amendment offense;
- j. Criminal Rule of Procedure 35(c) hearing;
- k. Criminal transfer and reverse transfer hearing;
- l. Extreme Risk Protection Order hearing;
- m. Temporary Extreme Protection Order hearing;
- n. Termination of Parental Rights hearing;
- o. Dependency and Neglect adjudicatory hearing or trial; and
- p. Civil Rule of Procedure 69 hearing.

A lot of times our courts will schedule reviews or court dates for probation revocations and label them as probation revocation hearings. It is rare that cases actually go to hearing for probation revocations and often times Probation Officers will get scheduled for multiple court dates in different divisions at the same date/ time. Additionally, our Probation Officers do not get to be seen quickly on dockets or prioritized, so we often end up waiting for multiple hours for one case to be called. Often times Probation Officers wait for extended periods only for a case to be continued to another date, even if that case was scheduled for a legitimate Probation Revocation Hearing. During docket days like this it is much more manageable for us to appear virtually so we can work in office and continually check in on multiple divisions/ cases. My concern is that with the wording in this draft Probation Officers will be required to appear in person each time a review is labelled as a probation revocation hearing, even if the case is not intending to go to hearing on the revocation that date. This could cause Probation Officers a lot of extra time in court and make juggling busy court schedules more difficult. If a case is truly intended to go to hearing I understand the benefit of us being there in person for the actual hearing. I just want to make sure the expectations are clear or labelling of reviews/ other proceedings is clarified so it doesn't cause added difficulty or time for Probation Officers.

Thank you for your time and consideration,

Mackenzie Bagwell
Probation Officer

Mental Health Unit
1st Judicial District



This e-mail and any attachments thereto, is intended only for use by the addressees named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution, or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please notify me immediately at the e-mail address listed above and permanently delete the original and any copy of this e-mail and any printout thereof. If you actually read this disclaimer then smile because you are awesome.

vongsakoun, magdalene

From: Richard Banta [REDACTED]
Sent: Wednesday, March 1, 2023 10:41 AM
To: supremecourtrules
Subject: [External] Virtual Proceedings

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I believe an additional Presumptively Flexible Appearance should be for the entry of appearance of counsel in criminal cases.

Richard J. Banta
Richard J. Banta, PC
Attorney at Law
501 South Cherry Street
Suite 1100-mb11
Denver, CO 80246
[REDACTED]
[REDACTED]
www.richardbantalaw.com

vongsakoun, magdalene

From: Sarah Barnes [REDACTED]
Sent: Tuesday, March 14, 2023 1:41 PM
To: supremecourtrules
Cc: Riley Kitts
Subject: [External] Public Comments on Proposed Chief Justice Directive - Virtual Proceedings Policy
Attachments: CO Children's Campaign Comments Proposed CJD Virtual Proceedings.pdf

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for the opportunity to provide comments on the Proposed Chief Justice Directive, "Virtual Proceedings Policy." Attached please find our comments. Feel free to reach out with any questions.

Regards,
Sarah

Sarah Barnes
She/her
Director of Family Economic Prosperity Initiatives
[Colorado Children's Campaign](#)
[REDACTED]

We've moved! Please note our new address.
1700 Broadway #840
Denver, CO 80290

March 14, 2023

To: Colorado State Supreme Court Chief Justice Brian D. Boatright

Re: Public Comment on Proposed Chief Justice Directive, "Virtual Proceedings Policy"

Via email: supremecourtrules@judicial.state.co.us

Dear Chief Justice Boatright:

Thank you for the opportunity to provide comments on the proposed Chief Justice Directive regarding a policy on virtual proceedings.

The Colorado Children's Campaign is a non-profit, non-partisan policy, research and advocacy organization, committed to securing every chance for every child in Colorado since our founding in 1985. That includes advocating for the economic prosperity of Colorado kids and their families.

We strongly recommend the Chief Justice Directive state that, in forcible entry and detainer proceedings, all parties be allowed to appear remotely for both the summons return date and the eviction trial.

Evictions cause a significant disruption in people's lives, not only displacing them from their homes, but also making it more difficult to find future housing opportunities. Evictions are destabilizing and traumatic events, which can have significant negative impacts on the health, well-being and economic security of children and families.

Families who are evicted are more likely to experience homelessness or be forced to move into poor-quality, crowded, or unsafe housing, which places children's safety, well-being, and healthy development in jeopardy. Children who experience high rates of housing instability or homelessness have lower academic achievement and delayed literacy skills. They are more likely to have to change schools, more likely to be truant and more likely to drop out of school.

Eviction causes poor maternal health outcomes. Mothers who were evicted in the previous year have higher rates of maternal depression, which affects their children's healthy development and affects their parent's ability to work and provide for their children. Pregnant people who experience homelessness are more likely to have pregnancy complications, and prenatal homelessness is associated with preterm delivery and low-birthweight infants.

Families who experience eviction are more likely to lose a job or lose access to credit and to have to make subsequent moves, all of which impact financial security and prosperity.

Evictions impact some Coloradans more than others. Families with children and families of color are more likely to be evicted, due to a history of discriminatory policies and practices.

Due to the significant negative effects of an eviction, it is critical that renters facing an eviction are afforded meaningful access to the justice system during the proceeding, in order to avoid being evicted due to a default judgment. However, when renters receive a notice of an eviction, they often face significant barriers to attending their eviction hearing in person, including child care, work schedules and transportation. This is especially true for families with children, renters living with a disability and renters residing in rural areas of the state.

Allowing parties to an eviction proceeding to participate virtually removes many of these barriers. Research from the Arizona Supreme Court found that, when parties to an eviction proceeding were able to participate virtually during the COVID pandemic, the “no show” rate dropped from 40% to 13%.¹ This is strong evidence that allowing parties to appear remotely for an eviction hearing results in significantly fewer renters being evicted through a default judgment because they were unable to appear in person.

In addition to increasing participation rates, virtual participation has other benefits. One survey of litigants, attorneys and other court participants found that 92% of respondents cited reduced travel time, 76% cited taking less time off work, 72% reported reduced costs, and 55% reported increased safety as benefits of remote participation.²

The draft Chief Justice Directive on virtual proceedings notes that “each of Colorado’s twenty-two judicial districts has adapted differently in its adoption of virtual proceedings.” The result is that access to justice and due process in eviction hearings lacks statewide uniformity. Given the gravity of an eviction in peoples’ lives, renters should experience the same meaningful level of access no matter where they live in the state.

The legislature is currently considering HB23-1186, which would allow all parties to a residential eviction proceeding to choose how they will participate – virtually or in-person. The current fiscal note for HB23-1186 notes that this policy would result in an estimated 7,826 individuals participating in eviction proceedings that otherwise would not have done so, due to the availability of virtual participation options. This is further evidence of the need to remove

¹ The COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup, June 2, 2021.

² Id.

barriers to allow renters to meaningfully participate in the court process in an eviction proceeding.

In a letter by Texas Judge Roy Ferguson to the Texas Supreme Court Advisory Committee, he described the benefits of remote proceedings. Judge Ferguson notes, “I have observed three major impacts of implementing remote proceedings [...]: (1) greatly increased litigant participation, (2) transformed court efficiency, and (3) expanded options for representation. Many people in rural areas are for the first time able to access the court system in a meaningful way.” He concludes, “Remote proceedings have revolutionized the legal system, and constitute the greatest improvement in access to justice since Gideon gave every criminal defendant the right to free legal representation.”³

Allowing remote participation in forcible entry and detainer proceedings will help ensure that fewer renters are evicted through a default judgment, will support participation in court processes and effective use of government resources, and will support positive health, social and financial outcomes for children and families. We strongly recommend the Chief Justice Directive state that, in forcible entry and detainer proceedings, all parties be allowed to appear remotely for both the summons return date and the eviction trial.

We would also like to state our support for the comments submitted by the Colorado Poverty Law Project in response to this proposed Chief Justice Directive.

Thank you for the opportunity to submit these comments. Please feel free to reach out to me at [REDACTED] with any questions.

Respectfully,

Sarah Barnes
Director of Family Economic Prosperity Initiatives
Colorado Children’s Campaign

³ Letter, In re Remote Court Proceedings, dated August 14, 2022 to the Supreme Court Advisory Committee (SCAC) from Hon Roy B. Ferguson, 394th District Court.

vongsakoun, magdalene

From: baumann, chris
Sent: Wednesday, March 1, 2023 9:09 AM
To: supremecourtrules
Subject: Comments on Live Streaming CJD

Good morning. Two comments on this proposed CJD. On page one, paragraph starting, "Courts are also responsible for protecting the rights of the accused," the issue concerning retaliation for providing testimony applies to witnesses as well, not just the accused, and the concern applies equally to witnesses for the defense and prosecution. Live streaming and the associated risk of retaliation has the potential of dissuading witnesses from testifying, which impacts the fair administration of justice. I think the policy statement should reflect the concern for witnesses as well. Second, on page 3, section C, you may want to consider modifying the language to say "Live streaming is not required for the following criminal proceedings . . ." as opposed to the blanket prohibition that "There shall be no live streaming of the following . . ." While I generally oppose live streaming of hearings, trials, etc., there has been occasion on high profile cases to stream the proceedings (one of the 2nd JD judges is doing that right now). I am thinking we may not want a CJD that says no streaming of hearing/trials/etc. ever, if there may be times where the proceedings will be streamed. Not a good look for the trial judge to knowingly violate the CJD. So, I am not sure the CJD should be as restrictive as the current version is written. Thank you for considering.



Christopher J. Baumann
District Court Chief Judge
Second Judicial District
Courtroom 259
1437 Bannock Street
Denver, Colorado 80202

vongsakoun, magdalene

From: billings vela, linda
Sent: Wednesday, March 1, 2023 10:18 AM
To: supremecourtrules
Subject: CJD comments

Dear Justice Boatright:

Thank you for getting ahead of the virtual curve and sending out proposed CJDs for review. I support increased access to the courts via technology. I also agree wholeheartedly with all the concerns raised and addressed in your CJD regarding livestream of all criminal proceedings. HB23-1182 doesn't address the Court's concerns, nor does it authorize trial court judges to address individualized case concerns.

My other comment involves the draft CJD Virtual Proceedings Policy. In paragraph IV (A)(1). Presumptively In-person Appearances: paragraphs b, c, d, f and g address "criminal" hearings. Paragraph K addresses transfer/reverse transfer hearings. Perhaps it doesn't need further clarification; however, since juvenile delinquency hearings are not exactly the same as criminal hearings, would it make sense to add "delinquency" along side "criminal?" For example: paragraph b would read: Criminal & Delinquency Court trials.

Best,

Lin Billings Vela
District Court Judge
270 South Tejon
Colorado Springs, CO 80903

Fax: 719-452-5008



vongsakoun, magdalene

From: Shelly Bradbury [REDACTED]
Sent: Thursday, March 9, 2023 2:24 PM
To: supremecourtrules
Subject: [External] Denver Post comment on livestreaming proceedings
Attachments: Denver Post comment on virtual courts.pdf

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Please see the attached comments on the proposed new rules for livestreaming court proceedings.

Thanks,

~Shelly

--
Shelly Bradbury
Courts Reporter / Denver Post
[REDACTED]

03/09/2023

To the justices of the Colorado Supreme Court:

The Denver Post appreciates the opportunity to offer comments on the proposed chief justice directive for livestreaming coverage of court proceedings. Public courts are a cornerstone of democracy, and journalists need reliable, full access to virtual proceedings.

The Post strongly objects to including jury trials and evidentiary hearings among the proceedings that should not be livestreamed unless a judicial officer decides otherwise. These proceedings are the backbone of the court system, and as such should be more accessible to public view, not less. Trials can last weeks and few people can recuse themselves from work or familial obligations for such long stretches of time to monitor proceedings in person. Livestreaming trials creates transparency and equity, especially for those who cannot afford to travel to watch a trial in person. The chief justice directive should presume that such hearings should be livestreamed unless exceptional circumstances warrant closing off that avenue of public access.

Colorado courts have been livestreaming trials and evidentiary hearings for three years without any widespread issues. We have not seen witnesses unwilling to testify because a public courtroom was also a virtual public courtroom, widespread issues around witness retaliation being made worse by livestreaming, or a defendant's right to a fair trial being impacted because the audience is both sitting in the courtroom and behind a computer screen across town. Frankly, it seems unlikely that someone who wanted to retaliate against a witness or defendant would learn of that person's identity *solely* through a livestream. One-way live streaming does not allow for virtual attendees to disrupt the proceedings in any way.

Should such issues arise in a particular case, a judicial officer could then restrict livestreaming under a chief justice directive that presumes proceedings should be livestreamed but also allows for exceptions.

When proceedings are livestreamed, The Post supports the development of statewide guidance on how such livestreams should be handled. Such guidance could outline basic standards for live coverage, including, for example, that livestreams should endeavor to show exhibits, attorneys,

THE DENVER POST

Denver Post editors
5990 Washington Street
Denver, Colorado 80216

witnesses and the judge. During jury trials, livestreams should not be turned off or muted for discussions in open court outside the presence of the jury. Additionally, The Post believes livestreams should remain available to all members of the public who follow decorum rules. During the pandemic, some judges allowed only certain parties – like victims – to watch proceedings on Webex, while requiring other members of the public to attend hearings in person. Media and observers should not be excluded from virtual access and required to attend hearings in person, nor should media be required to watch proceedings on Webex in lieu of attending in person.

The Post suggests livestreaming be required in any proceeding where the physical courtroom is full and some observers are denied access to the physical courtroom due to lack of space. The Post would like to see public court dockets indicate not only whether the appearance of parties will be in-person or virtual, but also whether the proceeding will be livestreamed.

Public courts are critical to a healthy democracy. Using technology to make courts more accessible and transparent will strengthen the justice system and build public confidence in what can otherwise be an opaque process. Hypothetical, what-if scenarios should not stand in the way.

Sincerely,

Shelly Bradbury, Denver Post courts reporter
Lee Ann Colacioppo, Denver Post editor
Matt Sebastian, Denver Post managing editor

vongsakoun, magdalene

From: brands, laura
Sent: Wednesday, March 1, 2023 2:43 PM
To: supremecourtrules
Subject: Comment Regarding Draft of Live Stream CJD

Good afternoon!

I am writing this in response to the email Chief Justice Boatright sent Tuesday February 28th. I would like to submit a comment regarding the draft of *Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts*:

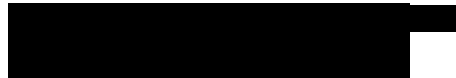
This directive lacks any mention or guidance of children or protected minor parties during criminal court proceedings. While children involved in criminal court proceedings constitute a lower percentage of parties involved, this directive should address, in some capacity, minors during livestreamed proceedings.

Thank you!



Laura Brands

Division Clerk for Honorable Chief Judge Christopher J. Baumann
Courtroom 259 | Denver District Court | City and County Building



vongsakoun, magdalene

From: Katherine C. Burke [REDACTED]
Sent: Tuesday, March 7, 2023 6:47 PM
To: supremecourtrules
Subject: [External] Comment on Virtual Proceedings

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I am writing to express my support for allowing virtual appearances to continue for the most broad category of cases and appearances. Not having to travel to court saves so much time and money for lawyers and litigants. For quick status conferences, litigants can step away from work for up to 15 minutes instead of missing the entire morning or afternoon and lawyers save so much time when they don't have to drive to a courthouse, find parking, get to the courtroom, etc. in addition to time spent in the actual status conference.

Virtual is so much more efficient! I am fully in support of keeping as many appearances virtual as possible.

Sincerely,

Katie Burke

Senior Associate Attorney
Pronouns: She/Her

Office: 303-678-0560
Website: www.jbplegal.com



[8001 Arista Place](#)
[Suite 415](#)
[Broomfield, CO 80021](#)

[3461 Ringsby Court](#)
[Suite 350](#)
[Denver, CO 80216](#)

[900 S. Main Street](#)
[Suite 100](#)
[Longmont, CO 80501](#)

[5285 McWhinney Blvd.](#)
[Suite 100](#)
[Loveland, CO 80538](#)

NOTICE OF CONFIDENTIALITY

The information contained in this electronic message from Jorgensen, Brownell & Pepin, P.C. and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information belonging to the sender. The information is intended only for the use of the intended recipient. If you are not the intended recipient or received this electronic message or attachments(s) by mistake, please notify the sender immediately by reply e-mail and then destroy all copies of the transmission.

vongsakoun, magdalene

From: Miles Cabral [REDACTED]
Sent: Monday, March 6, 2023 4:10 PM
To: supremecourtrules
Subject: [External] Virtual Court

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am attorney with 25 years of service. I practice criminal defense and family law which means that the majority of my cases require that I appear in court.

There are many instances where rural courts will allow a defendant or counsel to appear virtually by way of telephonic connection prior to Covid. Once Covid hit, everything was virtual and led to some great results such as the end of thousands of miles of travel to and from each court.

Now that we are back to in person court, I am finding all of the old issues with court appearances including long drives, parking tickets, weather related events and delays along with the stress and strain of traffic. I would like all courts to be virtual for convenience sake.

But at a minimum, with a recent court appearance in mind in Summit County where I was stuck on the ascent to the Eisenhower tunnel due to ill prepared semi truckers driving in 6 inches of snow without chains, I was able to call into the court and they allowed me to appear virtually while my client appeared in person. (It still took me an hour to turn around). This allowed the court process to move along, it allowed me to represent my client, and it allowed for communications between myself and the prosecutor. As such, this was a valuable and indispensable tool.

When we were in the strong throws of virtual courts, there was a time when I was appearing in three different courts at the same time. (I had two lap tops running and a cell phone). In those events, there should be a way to either mute the court, or put up a sign that says "Unavailable" or something to that effect so that multiple courts are not calling the same attorney at the same time.

I believe virtual court should be expanded to appearances that are going to be continued or where the client's presence is merely superfluous their in person appearance should be judiciously waived. This has been very valuable for my clients who suffer financially from missing work.

All in all, the virtual video court has be very convenient for myself and my clients and even the judges who from time to time would appear virtually from home. I hope that it is able to continue into the distant future.

I believe orders such as mute until called and dressing appropriately should be instilled however orders related to backgrounds should not. I was chastised for appearing virtually while my family was on vacation driving across the country. I do not think the background should matter unless it is explicit or inappropriate (such as in front of graffiti with curse words). Background should matter as much as clothing. Many of my clients are appearing virtually from construction sites. Even the jail has bars in the background.

I am not keenly aware of how this effects rural courts. But I would be more willing to represent a defendant in a court that is six hours drive if all but trial were virtual. With the limited number of criminal defense attorneys in the rural parts of the state, perhaps either a requirement of taking on rural cases and clients or at least giving CLE credit for doing so may help shore up the drought of available and affordable attorneys in rural courts especially if allowed to appear

virtually for all court appearances and breakout rooms with the DA. Some courts do not allow for virtual and that is definitely makes appearing difficult as well as expensive.

Miles A. Cabral, Esq.
Senior Attorney
Cabral Law Firm, PC
44 Cook Street, Suite 100
Denver, CO 80206
Phone: [REDACTED] Fax: (303)484-5662

CONFIDENTIALITY NOTICE - This communication is intended for the exclusive use of the addressee(s) named herein and may contain information that is privileged and confidential or otherwise legally exempt from disclosure and protected by the Electronic Communications Privacy Act, 18 U.S.C. Section 2510 et seq. If you are not a named addressee, you are not authorized to read, print, retain, copy or disseminate this communication or any part of it. If you have received this communication in error, please notify Cabral Law Firm, P.C. immediately by calling (303) 825-4700 and please destroy and discard any paper or electronic copies of this communication.

vongsakoun, magdalene

From: Rachel Kranz Caldwell [REDACTED]
Sent: Tuesday, March 7, 2023 10:40 AM
To: supremecourtrules
Cc: Rachel Kranz Caldwell
Subject: [External] Webex

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi,

I am in favor of continued Webex hearings. It is a huge cost savings for our clients and allows us to be more efficient in our practice.

Thank you!

RACHEL KRANZ CALDWELL | ATTORNEY AND MEDIATOR | [REDACTED] | 720.500.1881 (FAX)



CLINE | CALDWELL

[EMAIL](#)

[WEB](#)

[BIO](#)

8101 E. PRENTICE AVE., SUITE 200, GREENWOOD VILLAGE, COLORADO 80111

This e-mail message and any attachments may contain confidential, legally privileged information intended for the exclusive use of the addressee. They may also contain proprietary information or information that is otherwise protected from disclosure by applicable law including without limitation the attorney-client privilege and the attorney work product doctrine for anyone but the intended recipient. Please do not read, copy, or disseminate the information transmitted unless you are the addressee. If you have received this message in error, please call us at (303) 731 0056 and ask to speak with the message sender. Also, please delete the message from your system. Thank you.

vongsakoun, magdalene

From: Marian Camden, Psy.D. [REDACTED]
Sent: Tuesday, March 7, 2023 12:48 PM
To: supremecourtrules
Subject: [External] Regarding Webex testimony in domestic relations cases

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.


Respected ladies and gentlemen of the State Supreme Court,

I thank you for your interest in soliciting public comment regarding the ongoing use of Webex for hearings. I am certain you have heard people's comments about time-saving, money-saving, and convenience, all of which I endorse. As a mental health professional who has been in domestic hearings more times than I can count, something I notice and appreciate about Webex hearings is the reduced anxiety and even protection against retraumatization these hearings can provide. Most parents who find themselves in court are very stressed to begin with, given the very weighty matters at hand. For those who have mental health conditions, the stress is even worse. And for those who have suffered actual trauma in their relationship, eg., emotional abuse, coercive control, financial abuse, physical abuse, unjust separation from their children, suffering false allegations, and the like, being in person can feel very unsafe. It seems to me that the hearings I have been in on Webex are more orderly and less tense than those that happen in person. Thus, I would like to add my vote in favor of keeping Webex in perpetuity, as a mental health-protective method as well as a time, cost, and convenience-saving offering.

Finally, thank you again, very sincerely, for inviting input. For those of us who work in the courts quite a bit, it means a great deal to know our state leaders are interested in our thoughts and experiences.

Best wishes,




MARIAN CAMDEN, PSY.D., LLC
LICENSED PSYCHOLOGIST

6565 S. Dayton St, Suite 3600
Greenwood Village, CO 80111

[REDACTED]

[REDACTED]

camdencounseling.com camdenbookshop.com <http://earthchildbooks.net>

Dr. Camden is in the office Tuesday, Wednesday, and Thursday most weeks and does not provide emergency services outside of office hours. In case of a mental health emergency please call Colorado Crisis Services: (844)-493-8255 or 911.

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information or otherwise protected by law. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and delete the original message. While an encryption option is available upon request, the sender cannot guarantee the confidentiality of messages sent via electronic means. Please speak with Dr. Camden about any questions you have about email communication.

vongsakoun, magdalene

From: catanzarite, nicholas
Sent: Monday, March 6, 2023 11:41 AM
To: supremecourtrules
Subject: comment: virtual proceedings policy

I am a county court judge in a rural mountain county. I would like to see the virtual policy allow for traffic, petty offense and at least some if not all misdemeanor sentencings to be presumptively flexible appearances rather than presumptively in person. Currently, my sentencings are presumptively virtual unless a party requests in person. Many traffic (no insurance, careless driving, etc., but not DUIs), petty offense, and wildlife cases are able to resolve during the defendant's first appearance, which is typically virtual. I think it would be unnecessarily time consuming to require a showing of good cause before holding these types of sentencings virtually.

Overall, Webex and virtual court has been extremely helpful in my county, for all of the reasons stated in the policy statement.

Nicholas Catanzarite
Grand County Court Judge
14th Judicial District

vongsakoun, magdalene

From: chavez, andrea
Sent: Wednesday, March 1, 2023 2:06 PM
To: supremecourtrules
Subject: FW: Chief Justice Directives Regarding Virtual Proceedings

Some comments/edits:

B. Presumptively Flexible Appearances:

- 1. There are two g. subsections.
- 1. The initial g. is indented differently than the rest.

VII. Non-Exclusive List of Factors for Good Cause

- Subsection S. is indented differently than the rest.

VII. Implementation Authority

- The paragraph is indented different than the other section paragraphs.



Andréa N. Chávez, J.D.
[Pronouns](#) | She/Her/Hers
Court Programs Analyst
Research and Data Unit
Court Services Division
State Court Administrator's Office

██████████
██████████
1300 Broadway, Suite 1200
Denver, CO 80203
<https://www.courts.state.co.us/>

From: Chief Justice Brian Boatright ██████████
Sent: Tuesday, February 28, 2023 4:18 PM
To: Justices, Judges, and all Judicial Personnel ██████████
Subject: Chief Justice Directives Regarding Virtual Proceedings and Broadcasting

Judges and all Judicial Personnel,

Last December, I created a committee of judges and staff to evaluate our use of Webex in court proceedings and to make policy recommendations to help standardize the use of this technology in our courtrooms. It has become clear that the use of virtual proceedings over the past three years has changed not only how we do business but the expectations of the public and attorneys. My goal in developing policies around our use of Webex is to set baseline expectations for the public and attorneys of what will occur in our courts. Additionally, it is essential that any policy preserves judicial discretion so that our judges can maintain control over their courtrooms and their dockets.

The committee drafted two Chief Justice Directives. One concerns virtual participation by parties and attorneys in court proceedings. The second concerns the broadcasting of certain criminal proceedings. Both policies are posted for public

comment. I urge you to review the policies and submit comments if you have them. We normally do not solicit public comment for changes to Chief Justice Directives, but because of the impact of these on judges, staff, litigants, and the public, I wanted to seek broad feedback before adopting a policy.

After any policy or policies are adopted, I plan to task a committee with continuing to review the courts' use of virtual proceedings and broadcasting and to make recommendations for refining or expanding the policies.

Finally, I want to mention two legislative efforts that overlap with the draft policies. [HB23-1186](#) concerns FED proceedings and would allow parties and witnesses to choose whether to appear in person or virtually without providing judicial officers any discretion to order otherwise. And [HB23-1182](#) would require our courts to broadcast or livestream all criminal proceedings unless the courtroom is closed to the public. It is reasonable to anticipate additional legislative efforts on our use of virtual proceedings.

I believe it is far more preferable for the judicial branch to adopt its own policy that preserves judicial discretion and that we can continually review, improve, and expand if appropriate.

The draft virtual proceeding policy is available [here](#), and the draft live stream CJD is available [here](#). You can submit your comments to:

supremecourtrules@judicial.state.co.us

Comments are due by March 15. Please note that all comments received in the process will be posted publicly.

Thank you.

-BDB

vongsakoun, magdalene

From: chavez, andrea
Sent: Wednesday, March 1, 2023 2:12 PM
To: supremecourtrules
Subject: Chief Justice Directives Regarding Broadcasting

Some comments/edits:

III. Definitions:

- A. There appears to be an extra space between Live and Streaming.
- A. The dash between Streaming and all appears to have broader spaces than the other dashes in this same section.



Andréa N. Chávez, J.D.
[Pronouns](#) | She/Her/Hers
Court Programs Analyst
Research and Data Unit
Court Services Division
State Court Administrator's Office

[REDACTED]
[REDACTED]
1300 Broadway, Suite 1200
Denver, CO 80203
<https://www.courts.state.co.us/>

From: Chief Justice Brian Boatright [REDACTED]
Sent: Tuesday, February 28, 2023 4:18 PM
To: Justices, Judges, and all Judicial Personnel [REDACTED]
Subject: Chief Justice Directives Regarding Virtual Proceedings and Broadcasting

Judges and all Judicial Personnel,

Last December, I created a committee of judges and staff to evaluate our use of Webex in court proceedings and to make policy recommendations to help standardize the use of this technology in our courtrooms. It has become clear that the use of virtual proceedings over the past three years has changed not only how we do business but the expectations of the public and attorneys. My goal in developing policies around our use of Webex is to set baseline expectations for the public and attorneys of what will occur in our courts. Additionally, it is essential that any policy preserves judicial discretion so that our judges can maintain control over their courtrooms and their dockets.

The committee drafted two Chief Justice Directives. One concerns virtual participation by parties and attorneys in court proceedings. The second concerns the broadcasting of certain criminal proceedings. Both policies are posted for public comment. I urge you to review the policies and submit comments if you have them. We normally do not solicit public comment for changes to Chief Justice Directives, but because of the impact of these on judges, staff, litigants, and the public, I wanted to seek broad feedback before adopting a policy.

After any policy or policies are adopted, I plan to task a committee with continuing to review the courts' use of virtual proceedings and broadcasting and to make recommendations for refining or expanding the policies.

Finally, I want to mention two legislative efforts that overlap with the draft policies. [HB23-1186](#) concerns FED proceedings and would allow parties and witnesses to choose whether to appear in person or virtually without providing judicial officers any discretion to order otherwise. And [HB23-1182](#) would require our courts to broadcast or livestream all criminal proceedings unless the courtroom is closed to the public. It is reasonable to anticipate additional legislative efforts on our use of virtual proceedings.

I believe it is far more preferable for the judicial branch to adopt its own policy that preserves judicial discretion and that we can continually review, improve, and expand if appropriate.

The draft virtual proceeding policy is available [here](#), and the draft live stream CJD is available [here](#). You can submit your comments to:

supremecourtrules@judicial.state.co.us

Comments are due by March 15. Please note that all comments received in the process will be posted publicly.

Thank you.

-BDB

vongsakoun, magdalene

From: Tillman Clark [REDACTED]
Sent: Friday, March 3, 2023 10:20 PM
To: supremecourtrules
Subject: [External] Comment on "continuation of virtual proceedings"

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greetings,

As a private defense practitioner I cannot over-emphasize enough how important and life changing virtual proceedings have been both for me and for my clients.

Firstly, for clients: Prior to virtual appearances, defendant's that had to appear in person often had to travel extremely long distances and wait hours for their cases to be called in person. The vast majority of these appearances were related to continuances, status conferences, or other inconsequential hearings. The percentages of cases that I called which actually proceeded to anything of consequence, such as trials, bond revocations, probation hearings, etc. were approximately 10-15%.

Moreover, these appearances caused disruption in my client's lives: it caused them to have to call out from work, pay for day-care, pay for gas, arrange alternatives for elderly people they cared for, etc.

With reliable digital connections, defendants can now appear without these disruptions and learn about new court dates or be sufficiently advised by a judge in a matter of minutes as opposed to hours. This had led to less failures to appear, less warrants issued, less bonds revoked, and, frankly, more compliance with court orders and likely less crime committed (defendants who have their bond revoked, in my experience, for something like failing to appear tend to go down a horrible mental health spiral of depression and a "devil may care" attitude, forgoing their responsibilities and falling back into patterns of alcohol and drug abuse because they know they are "going to jail anyways.").

Secondly, for my practice: This has saved me, my clients, and ADC (who I primarily contract through) enormous amounts of money. Being able to appear virtually to give a quick update to the court saves hours in travel expenses and waiting time in court. The efficiency cannot be over stated. I find myself spending more time on research, writing, and preparation so that when I am in court my attention is more focused, I am more succinct in my arguments, and there is less time wasted organizing my client files or taking time to "go into the hallway" to "herd cats," as my clients sometimes leave to make phone calls, smoke cigarettes, use the restroom, etc., or I have to go to different court rooms myself for other cases.

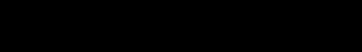
In short, virtual appearances are great for my firm and great for my clients. I strongly encourage digital appearances to be continued if not greatly expanded.

Furthermore, as an aside, I would strongly encourage the promulgation of rules requiring the Department of Corrections to offer virtual visits and appearances on a more long term and sustainable basis for the same reasons as above: The time spent driving to DOC alone would save the state and my clients thousands of dollars.

Thank you for your time and consideration.

Tillman Clark
Bar #46947

Attorney at Law
Tillman Clark Law



1312 17th Street
Unit 2250
Denver, CO 80202

CONFIDENTIALITY NOTICE: This email contains confidential information and is intended only for the individual named. If you are not the intended recipient, you should not read, disseminate, distribute or copy this email. Please notify the sender immediately if you receive this email by mistake and delete this email from your system.

vongsakoun, magdalene

From: Mark Cohen, J.D., LL.M. [REDACTED]
Sent: Monday, March 6, 2023 12:13 PM
To: supremecourtrules@judicial.state.co.us?subject=CO%20Supreme%20Court%20Public%20Comment; supremecourtrules
Subject: [External] Comments on Proposed Virtual Proceedings Policy

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom it May Concern:

I offer these comments on the Proposed Virtual Proceedings Policy.

1. Section III provides definitions, but the distinction between a “Remote Appearance” and a “Virtual Appearance” is not clear to me. Part of my confusion may stem from the fact that the “Remote Appearance” definition specifically includes “all parties and counsel,” but the “Virtual Appearance” definition does not refer to the parties or counsel. The definition of “Remote Appearance” includes “virtually,” but then there is a separate definition of “Virtual Appearance.”
2. The list of presumptively in-person appearances and the list of presumptively flexible appearances does not include civil trial management conferences. I recognize that this may be intentional, and that the intent may be to leave that up to the trial judge.
3. Section IV(B)((2) states that unless a court grants permission, “no proceeding conducted virtually may be recorded.” I assume the intent here is to say that no party or lawyer may record the proceeding without the court’s permission, but as it is written, it could be interpreted as stating the court will not be recording such proceedings.
4. Section VII sets forth a non-exclusive list of factors. Given the role that technology plays in the practice of law today, with attorneys and clients doing so much by email, Zoom, etc., it’s more common now that the lawyers in a case may be located several hours away from the relevant courthouse. Many lawyers have statewide practices in specific niches. I urge you to consider adding the distance from the offices of the lawyers in the case to the courthouse as a factor to be considered.

Thank you for your consideration.

Sincerely,

MARK COHEN, J.D., LL.M.

Lawyer

P.O. BOX 19192
BOULDER, CO 80308

WWW.COHENSLAW.COM

START EARLY. WORK HARD. FINISH.®

[READ MARK’S ARTICLE - HOW TO DRAFT A BAD CONTRACT](#)

“SIMPLY BRILLIANT.” — STEVEN PINKER, PROFESSOR OF PSYCHOLOGY, HARVARD UNIVERSITY

This information is confidential and may be privileged. I intend it solely for the addressee. I do not authorize access to anyone else. If you are not the intended recipient, any distribution may be unlawful.

vongsakoun, magdalene

From: Jennifer Cuesta (she/her) [REDACTED]
Sent: Wednesday, March 15, 2023 2:23 PM
To: supremecourtrules
Cc: Jon Asher; Patricia Craig
Subject: [External] Colorado Legal Services' Comments on the Proposed CJD re Virtual Proceedings (DNE)
Attachments: CLS Comments on CJD re Remote Hearings.pdf

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chief Justice Boatright,

Attached please find Colorado Legal Services' comments on the proposed Chief Justice Directive concerning virtual proceedings. Thank you for the opportunity to offer these comments.

Sincerely, Jen Cuesta

--

Jen Cuesta (she/her)
Rural Pro Bono Program Attorney
Colorado Legal Services
1905 Sherman Street, Denver, CO 80203
[REDACTED] / fax: 720-386-3071
[REDACTED]

Colorado Legal Services

1905 Sherman Street, Suite 400

Denver, CO 80203

Telephone: 303-837-1313

www.coloradolegalservices.org

COLORADO LEGAL SERVICES COMMENTS ON PROPOSED CHIEF JUSTICE DIRECTIVE 23-XX VIRTUAL PROCEEDINGS POLICY

Colorado Legal Services (CLS) appreciates the opportunity to submit comments as requested by Chief Justice Boatright on the proposed Chief Justice Directive (CJD) on virtual proceedings. As a statewide organization providing free civil legal assistance to low-income Coloradans, CLS welcomes the opportunity to share its feedback on the proposed CJD and on the transformative impact virtual proceedings have had and can continue to have on clients and marginalized communities attempting to access the legal system.

CLS serves as many low-income clients as possible with its limited resources helping clients facing a multitude of diverse challenges. For its low-income clients legal questions nearly always are joined with other challenges, including economic and financial, familial, housing and food insecurity, lack of access to mental and physical healthcare, geographic isolation, frequently limited access to adequate technology or transportation, racial and gender disparity, and domestic violence. CLS does its best to meet the vast and diverse civil legal needs of low-income Coloradans by maintaining 13 offices across the state; however with a staff of just over 150, the need far surpasses CLS's resources. It recognizes though all the other barriers to quality of life that most others simply expect and enjoy.

At the onset of the Covid-19 Pandemic, CLS was unsure how it might continue to serve its marginalized clients in the face of a severe public health disaster that disproportionately impacted low-income communities. As the large majority of CLS staff began working from home and the courts closed to the public, the legal community began to recognize the role that increased use of technology would have to play to keep the legal and judicial system functioning. Thus began a necessary process to quickly implement the integration of technology into the legal landscape. While CLS together with many other legal organizations and law firms experienced growing pains, we came out on the other side with an understanding that virtual proceedings offered one of the most transformative tools to increase access to justice in recent history. This understanding is supported by Colorado data that shows a dramatic decrease in failures-to-appear in both criminal and civil proceedings.¹ To ensure the broad and consistent availability of virtual proceedings, CLS would like to offer the following comments on the proposed CJD.

Broad and consistent availability of remote proceedings will help CLS increase both its staff and pro bono capacity, particularly in rural communities, and more generally decrease the gap in access to justice. Colorado has been experiencing a decrease in the number of attorneys practicing in rural areas resulting in legal deserts throughout rural and frontier areas of the state. For low-income clients in these portions of the state the financial, geographic, transportation-based and other systemic challenges exacerbate the difficulties that they face in accessing all services, not just legal. Unlike long-term recruitment campaigns including creative incentives, or other attempts to increase the rural attorney pipeline, broad and consistent access to virtual proceedings offers a more immediate solution to for low-income litigants in these areas by allowing attorneys from metropolitan communities to efficiently provide not just limited legal services, but full representation to those who would otherwise not have an attorney.

¹ COLORADO ACCESS TO THE COMMISSION, Remote Court Proceedings: Opportunities and Challenges in Colorado (December 2022), <https://www.coloradoaccesstojustice.org/remote-court-proceedings-report>. 12-15.

For CLS the consistent and broad availability of virtual proceedings increases its capacity to serve rural and frontier clients in two ways. First, for CLS staff that serve remote and frontier counties, the use of virtual proceedings allows them to fully represent more clients because they do not have to consider the extensive travel time to court, which may adversely affect their ability to take a case, a very real concern when many CLS offices represent clients in courts over three hours away from their office. Second, the broad and consistent availability of remote proceedings increases CLS's rural capacity by allowing it to recruit pro bono attorneys to fully represent clients in rural or frontier counties. CLS has developed various pro bono clinics and programs which have demonstrated that the use of metropolitan attorneys can increase services to low-income clients in rural areas of the state. However, because the availability of virtual proceedings across counties is not guaranteed and is very inconsistent, CLS has had great difficulty in recruiting metropolitan attorneys to provide full representation in cases in rural communities. This seriously limits the impact metropolitan attorneys may have on rural access to justice and realistically means less rural and frontier litigants have the representation in their legal matters that they need.

CLS recognizes and commends the judiciary's policy to "At a minimum...provide increased access to the courts through the use of virtual proceedings" and to use this directive "...to increase statewide consistency for parties and courts regarding the use of virtual proceedings." However, given that the broad and consistent availability of virtual proceedings directly correlates to parties having representation or not, as well as concerns about "the unpredictable nature of allowing each courtroom to operate independently," CLS urges that this CJD create greater uniformity and a more affirmative right to virtual proceedings that is not to be denied without a higher judicial standard for such denial and includes a swift and effective right to an appeal of any denial of a remote proceeding. Without this more affirmative right the directive, as written, does not provide the judicial structure or leadership needed to create consistency across the state, will not give all parties fair and real access to virtual proceedings and unnecessarily limits their ability to achieve fairness and justice.

The proposed CJD currently asserts "that each Colorado Judicial Court and County Court Judge is an independently constituted judicial officer" and that "this Court must also acknowledge the inherent authority judges have in administering each of their own courtrooms." However, on numerous occasions when the Chief Justice was faced with an opportunity to implement a new policy that would dramatically impact Access to Justice, the Court chose to assert its authority to ensure uniformity in support of greater access to Justice. For example, Chief Justice Directives have been issued regarding the uniform use of self-represented litigant coordinators (CJD 13-01), uniform hours of the courts (CJD 08-04), uniform standards for language interpretation (CJD 06-03), statewide requirements to issue fee waivers for indigent clients (98-01) and the establishment of uniform and simplified court forms for family matters (CJD 99-01). All of these Chief Justice Directives arguably constrained judges' individual authority to administer their court because the increased access to justice provided by these directives outweighed concerns for judicial autonomy. Virtual proceedings offer one of the most transformative tools to increase access to justice in recent history but only if it is uniformly available to litigants who either are pro se or have counsel. For this reason, the Court should once again assert its authority and promulgate a broader, stronger statewide policy to ensure consistency so that a party's access to virtual proceedings does not depend so completely upon the predilections and preferences of individual judges. The transformation will only help the multitudes if it is more uniform and more available, and denials of remote proceedings are subject to review and an appellate procedure.

CLS respectfully urges the Court to implement a CJD that begins with a strong presumption that all parties, except for specified good cause, have a right to virtual proceedings, that in order for the Court to restrict this right, the CJD should provide a clearly articulated good cause standard for judges to deny a virtual proceeding, and, when denied, provide a swift and effective right of appeal.

vongsakoun, magdalene

From: Sheri Danz [REDACTED]
Sent: Tuesday, March 14, 2023 2:08 PM
To: supremecourtrules
Subject: [External] Office of the Child's Representative's Comments on virtual proceedings and live streaming CJDs

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am the Deputy Director of the Office of the Child's Representative (OCR) and am submitting OCR's comments on the proposed CJDs. To provide some context for our comments, the OCR provides GAL services in delinquency, dependency, truancy, and many other case types and also provides client-directed Counsel for Youth Services in dependency and Foster Youth in Transition cases. The OCR appreciates the opportunity to comment on these directives and, overall, believes that the directives will promote transparency and consistency. With regard to each directive:

Live Streaming

The OCR would like to confirm that this directive will **not** apply to juvenile delinquency proceedings. Live streaming any part of a juvenile proceeding would be contrary to the purposes of the Children's Code and the confidentiality provisions of the Code.

Additionally, the OCR believes that criminal **direct file proceedings should be excluded from this live streaming directive**. Whether a child is charged as an adult often depends on charging practices of individual attorney offices. Additionally, the information shared at many hearings, including but not limited to reverse transfer and competency hearings, is often of a confidential and privileged nature. Allowing/requiring the streaming of images of youth charged in CR proceedings and highly sensitive information about them raises equity, developmental, and safety concerns.

Virtual Proceedings:

The OCR believes that a directive regarding virtual proceedings will promote meaningful participation in court by all parties. To further advance this goal, the OCR offers three suggestions. First, the OCR believes that where the CJD references "criminal" hearings in Section IV.A., it should also state "and juvenile delinquency." Second, the OCR believes that additional guidance defining "timely" for the motions contemplated in Section VI would be helpful for the expedited nature of many of the case types on which OCR attorneys are appointed. Third, the OCR does not see any directive that courts should inform parties in advance of the hearing whether the proceeding requires virtual, flexible, or in-person appearances. As many hearings that frequently occur in OCR case types are not specifically outlined in the presumptive sections, courts' provision of clear expectations for hearing attendance will promote participation, reduce delays and continuances, and minimize potential appellate issues.

As I am sure you are receiving many comments, I have kept OCR's brief. Please let me know if you would like any more information about any of OCR's suggestions. Thank you for the opportunity to comment on these draft directives.



Sheri Danz ([She/her/hers](#))

Deputy Director | Office of the Child's Representative (OCR)

Ralph L. Carr Colorado Judicial Center | 1300 Broadway, Suite 320, Denver, CO 80203

██████████ Main: 303-860-1517 | www.coloradochildrep.org

vongsakoun, magdalene

From: dovey, jori
Sent: Wednesday, March 1, 2023 12:00 PM
To: supremecourtrules
Subject: Virtual Hearings

Hi,
My name is Jori and I am the Operations Specialist with the Bridges Program. The Bridges Program serves justice involved individuals with severe and persistent mental illness. We are geared to working with individuals involved in competency, but also work with participants on a general mental health basis.

Prior to my current role, I served the 9th Judicial District as a Court Liaison. During my time as a liaison, we were in the height of using virtual court hearings. I noticed my participants were having far less failures to appear and were able to take care of their mental health needs and stay compliant with the court. Even when participants were at the state hospital or in some other care setting, they could attend court virtually and be a constant witness to what was going on in their case. I believe this is vital, especially in the competency process, that individuals are able to participate with the court and not have to discontinue any treatment they may be receiving.

I appreciate you allowing for comment around this topic as it has significantly helped those I serve. Additionally, thank you for taking the time to read my comments.

Kindly,

Jori Dovey, M.S. (She/her)
Operations Specialist | Bridges Program



Connecting Colorado's criminal justice and mental health systems

Sometimes the bravest and most important thing you can do is just show up. -Brene Brown



Confidentiality Statement: This email and any attachments are confidential and intended solely for the use of the individual or entity to which it is addressed. The information contained herein may include protected or otherwise privileged information. Unauthorized review, forwarding, printing, copying, distributing, or using such information is strictly prohibited, and may be unlawful. If you have received this message in error, please notify the sender by replying to this message and delete the email without further disclosure.

vongsakoun, magdalene

From: elliff, j. eric
Sent: Tuesday, March 7, 2023 2:23 PM
To: supremecourtrules
Subject: Comments on Proposed Virtual Proceedings Policy

I write with concerns regarding the proposed virtual proceedings policy. I am speaking only for myself, and the opinions here are solely my own. I strongly believe that virtual hearing policies should remain at the discretion of the individual trial court judge.

Let me begin by saying that I was assigned to a criminal docket when the pandemic hit. Our courthouse never shut down with the exception of one week for deep cleaning after the virus infected several attorneys who routinely appeared in front of us. I regularly conducted dockets of between 80 and 110 cases every week by Web Ex from March to December 2020. I have, before, during, and after the pandemic, regularly conducted hearings by phone and, later, Internet, which increases my efficiency and reduces costs for all concerned. With this experience, I make the following observations:

1. Many of our constituents do not have reliable Internet or even cell phone access. During the pandemic we set up special rooms in the courthouse where such individuals could come and then call into the courtroom on a hard line phone. I suspect many FED defendants will be in a similar situation.
2. The WebEx procedures often resulted in confusion and missed appearances. This still happens from time to time, even with dedicated courtroom WebEx addresses.
3. Our own court infrastructure, even in our major metropolitan district, is ill-equipped for extensive virtual appearances. Our bandwidth narrows noticeably in the afternoons when the clerk's office is processing filings. Not all courtrooms are equipped with large monitors. Indeed, the webcams I use were purchased by me; the state has never provided any. A formalized policy will necessitate at least some expenditures for equipment and, perhaps more importantly, expanded bandwidth.
4. Litigants and lawyers do not approach virtual hearings with the same seriousness as live appearances. They often will appear unprepared, and are distracted by other things in their home/office/car during virtual appearances. More than once I have had observers/family members appear on screen (unknowingly and unintentionally) in various states of undress. Litigants who are awaiting their own appearance often will interrupt the current proceeding to inquire about their own hearing. In short, live appearances encourage better, more polite behavior. Virtual hearings are more chaotic and in this way less efficient than live appearances.
5. There is no meaningful way to prevent the recording of proceedings.
6. Litigants and lawyers (and some judges) sometimes can be technologically incompetent, causing disruptions in hearings and sometimes even requiring postponements due to their inability to resolve inevitable technical problems. Interlopers can log in and disrupt proceedings; this happened often when I was in criminal court.

This is all by way of saying that the only way these problems can be controlled is through live appearances in court. Each litigant is different, and each lawyer can, or cannot be, trusted to competently appear virtually. By formalizing a policy, the trial judge loses the ability to manage these issues at their discretion. And while I do understand there is a certain agitation among the legislature and perhaps the media for more virtual appearances, I do not believe that this is a sufficient reason to deprive trial judges of their discretion in this area (which is the effect of this policy). In short, through this policy and other moves for virtual court, we are dumbing down the process, which is not good for the system or justice generally.

As to the policy itself, at the very least it will require further work each time a judge believes that a live appearance is best, since the judge will have to make written or oral findings utilizing the factors set forth in the proposed CJD. More

specifically, making certain proceedings “presumptively flexible” blinks reality in certain respects. For example, civil case management conferences are routinely vacated if the parties have agreement on all aspects of the case management order and the judge agrees. They are held only if there is disagreement or the parties cannot agree on a trial date. That counsels, in this judge’s opinion, for a live conference. The lawyers arrive, talk, and often work out the differences. I almost always hold trial settings live if the parties cannot agree on a date, because I want them to explain to me in person what the problem is. Will the CJD require me to make some sort of findings every time I want to exercise this prerogative? Similarly the “civil status conference” encompasses a huge range of hearings. I set a status conference when I need to take the parties’ temperature on some issue where there is disagreement. I may hold these virtually, but I may conclude that I need the parties to come in live so that they can hash something out in person (with my assistance). With the CJD, will I have to make findings if a lawyer or party insists on attending virtually on the strength of the CJD?

This policy forces the trial court judge into a box and, despite the broad language, limits discretion in a meaningful way. This will result in worse decisions, more distractions, and a further degradation of our system of justice. For these reasons, I am opposed to any formalized policy on virtual appearances.

Respectfully,

J. ERIC ELLIFF

JUDGE

DENVER DISTRICT COURT, SECOND JUDICIAL DISTRICT

CITY AND COUNTY BUILDING, COURTROOM 215

1437 BANNOCK STREET

DENVER, COLORADO 80202

vongsakoun, magdalene

From: Kate Radley Ellis [REDACTED]
Sent: Wednesday, March 1, 2023 8:41 PM
To: supremecourtrules
Subject: [External] Support of continued use of virtual appearance options

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good evening,

I practice in courtroom 2F of Denver Juvenile Court and we have been offered the flexible use of virtual hearings, even after the height of COVID. This practice of giving attorneys and litigants the option of appearing virtually has been the **one silver lining of COVID**. The option of appearing virtually has increased litigant participation and has allowed professionals to make better use of time. The use of webex has cut down on needless travel and waiting in the courtroom for short, uncontested matters. It has provided an option for attorneys to still appear even when they are home with a sick child or out of the office, but still available, for non contested hearings. I fully support judicial officers continuing to give parties and attorneys the option of using webex, when appropriate. I can't think of any reason to do away with this resource.

Thank you,
Kate Radley Ellis

stevens, cheryl

From: Michael Frandina [REDACTED]
Sent: Monday, March 13, 2023 10:53 AM
To: supremecourtrules
Subject: [External] CO Supreme Court Public Comment

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greetings,

I write to provide comment on virtual proceedings, and specifically to voice support for them. In a modern practice, virtual proceedings has been very useful, both to myself and to my client, both in terms of saving my clients time and money (by my time savings).

I am in full support of them continuing, and think they are appropriate for nearly every hearing except trial. For trial, I think a motion like is required for telephonic participation would be useful.

Thanks,

Michael

Michael M. Frandina, Esq. | Member

THE ASKMAN LAW FIRM LLC

The Odd Fellows Hall | 1543 Champa Street, Suite 400 | Denver, CO 80202

o: [720-407-4331](tel:720-407-4331) | f: [303-571-1001](tel:303-571-1001) | [REDACTED]

www.askmanlaw.com | [REDACTED]

vongsakoun, magdalene

From: Bob Frie [REDACTED]
Sent: Wednesday, March 8, 2023 10:53 AM
To: supremecourtrules
Subject: [External] Virtual Proceedings

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

My comments regarding virtual hearings are:

1. Virtual hearings save clients money. The Supreme Court has demonstrated it is concerned with the expense of litigation. My clients have appreciated the convenience of being able to attend as witnesses or parties without driving an hour or more (e.g. a hearing in Summit County, or other counties) and finding parking (Denver) .
2. Lawyers can appear without the extra cost of travel time paid by clients.

Thank you.

Bob Frie

vongsakoun, magdalene

From: Lindy Frolich [REDACTED]
Sent: Wednesday, March 15, 2023 4:56 PM
To: supremecourtrules
Subject: [External] FW: CJD Comment
Attachments: CJD 23-XX OADC Comment - Virtual proceedings.pdf

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.



Lindy Frolich | Director
she/her/hers

1300 Broadway, STE 330 | Denver, CO 80203
[REDACTED] | www.coloradoadc.org

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.



State of Colorado

Office of the Alternate Defense Counsel

Lindy Frolich, Director

www.coloradoadc.org

1300 Broadway, #330
Denver, Colorado 80203
Phone: (303) 515-6920

OADC COMMENTS ON PROPOSE CHIEF JUSTICE DIRECTIVE 23-XX VIRTUAL PROCEEDINGS POLICY

Virtual and remote appearances increase court accessibility and participation for the Office of Alternate Defense Counsel's ("OADC") clients. Virtual appearances increase the available OADC contractors to represent OADC clients in rural jurisdictions and saves the state money in travel costs. The OADC would request that the Chief Justice Directive reflect a more client-centered approach, whereby all non-essential hearings shall be presumed flexible or virtual, except for the proceedings enumerated in Section (IV)(A)(1), contingent upon the defendant's request.

The current Chief Judge Directive is silent on almost all non-essential criminal proceedings. OADC asks that all non-essential hearings be flexible or virtual for the criminal defendant and their attorney unless the criminal defendant expressly requests otherwise.

If the criminal defendant is required to appear in person, then all other parties shall appear in person, including the District Attorney and the Court ordered interpreter (if possible).

The OADC requests that Chief Judge Directive consider adding the following to its presumptively flexible appearance list:

- I. Presumptively Flexible Appearances
 - a. Pre-Trial Conference
 - b. Arraignment
 - c. Pre-Trial Readiness or Pre-Trial Conference
 - d. Disposition Hearings
 - e. Plea and setting Hearings
 - f. Reviews
 - g. Guilty Plea to non-Victim's Rights Amendment Offense
 - h. Guilty plea when sentencing will be continued.

Additionally, the OADC requests that the Chief Judge Directive direct each judicial district adopt a district-wide policy to ensure consistency. The OADC has serious concerns about the language in Section (IV)(2)(D) and the proposed discretionary approach that leaves it up to the judicial officer when the directive is silent. The directive should be expansive to ensure that criminal defendants and practitioners have a clear expectation of what is required of them.

Michigan Chief Justice Bridget Mary McCormack stated it this way: "consistency from court to court, where practical, is good government. Court users should not have to navigate different rules for appearances from courtroom to courtroom and pay the costs for mis-navigating

hodgepodge processes. A judge-by-judge approach to remote proceedings might serve individual judges, but it does not serve the public.”¹

The failure of some courts to offer the opportunity for remote appearances in criminal matters has also created unnecessary hardship for some defendants. Jonathan Rosen, Legal Resources and Technology Coordinator for Office of the Colorado Alternate Defense Counsel stated it this way:

“Many court appearances are short and require little interaction with a judge. But, because many people are scheduled for live appearances simultaneously, our clients can be forced to sit in court for hours awaiting a five-minute appearance. This is incredibly detrimental for those struggling to make ends meet with an hourly wage job or those who rely on others for childcare. This situation is worse in rural communities where people may need to drive 30 minutes or more, each way, to simply reach the courthouse. . . . This comes with the caveat that not all appearances are created equal. There are times when the judge and the client should be together in the same room – sentencing for example.”

Judge Roy B. Ferguson, a trial judge in West Texas and member of the Texas Access to Justice Commission, characterized the impact of this change with these words: “[r]emote proceedings gave revolutionized the legal system, and constitute the greatest improvement in access to justice since Gideon² gave every criminal defendant the right to free legal representation.”³

The Colorado Access to Justice Commission’s report goes onto explain how virtual proceedings impact appearance rates in criminal cases.

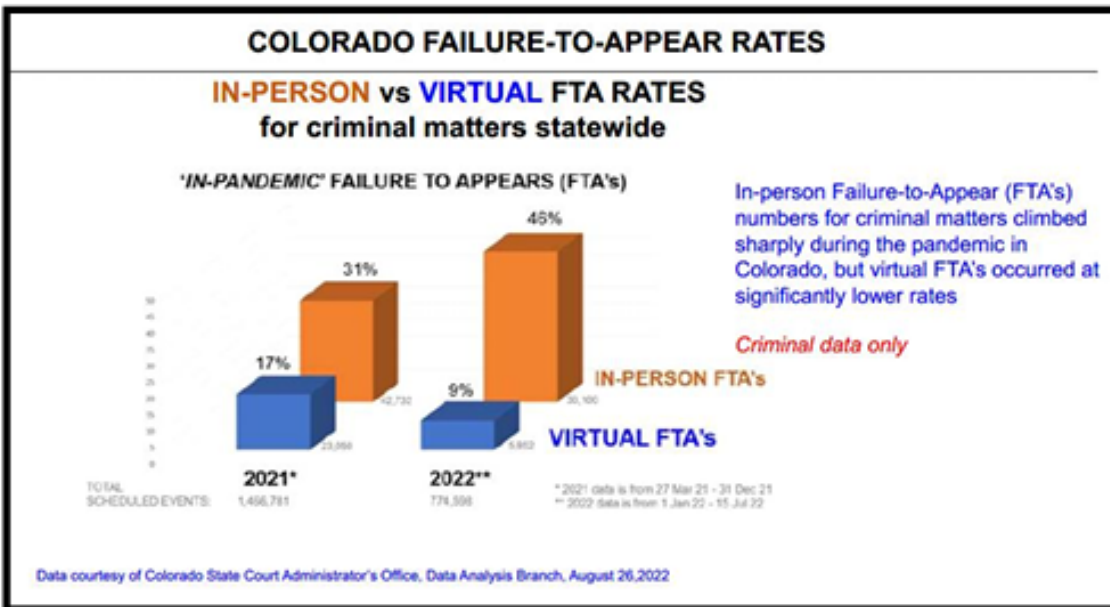
Colorado courts experienced a positive impact on appearance rates in criminal cases. Under Chief Justice Coats’ March 16, 2020, and subsequent orders, a limited number of criminal matters were held in-person, while most were held remotely. As the following chart shows, the 2022 Colorado no-show rate for in-person criminal matters was five times higher than the no-show rate for remote proceedings. Colorado’s experience with the impact on failures to appear was echoed across the nation. Michigan Supreme Court Chief Justice Bridget McCormack, for example, noted that failures to appear in eviction cases were historically “incredibly high.” She noted: “[i]t’s the opposite in these online courtrooms. It literally flipped. The number of people who now show up is as high as the number of people who didn’t show up in physical courtrooms. It’s the most important breakthrough in access to justice that we’ve had in my career as a lawyer.”⁴

¹ COLORADO ACCESS TO JUSTICE COMMISSION, Remote Court Proceedings: Opportunities and Challenges in Colorado (December 2022), [c659b2_a6f97bc9edc84f9294a6d415cf3aec3a.pdf](https://coloradoaccessjustice.org/c659b2_a6f97bc9edc84f9294a6d415cf3aec3a.pdf) (coloradoaccessjustice.org), Pg. 9, citing Michigan, MICH. SUP. CT. ORDER NO. 2020-08, 16-22 at 20 (Aug. 10, 2022) (McCormack, C.J., concurring) [hereinafter Mich. Sup. Ct. Order No. 2022-08 (Aug. 10, 2022), McCormack, C.J., concurring], https://www.courts.michigan.gov/4a42b2/siteassets/rules-instructions-administrative-orders/proposedand-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2022-0810_formor_pandemicamds.pdf

² Gideon v. Wainwright, 372 U.S. 335 (1963).

³ COLORADO ACCESS TO JUSTICE COMMISSION, Remote Court Proceedings: Opportunities and Challenges in Colorado (December 2022), [c659b2_a6f97bc9edc84f9294a6d415cf3aec3a.pdf](https://coloradoaccessjustice.org/c659b2_a6f97bc9edc84f9294a6d415cf3aec3a.pdf) (coloradoaccessjustice.org), at 12, citing: Hon. Roy B. Ferguson, in a Memorandum to Texas Supreme Court Advisory Committee, In re: Remote Court Proceedings, at 1 (Aug. 14, 2022).

⁴ Id. at 13, citing D. Todd Smith, Texas Appellate Law Podcast: Disrupting and Increasing Access to Justice, Interview with Chief Justice Bridget McCormack, BUTLER SNOW TEXAS APPELLATE LAW PODCAST (Jul. 15, 2021), <https://www.butlersnow.com/news-and-events/disruption-and-increasing-access-to-justicechief-justice-bridget-mccormack>.



5

Thank you for your consideration of this request.

Sincerely,

LJMi

Lindy Frolich

⁵ *Id.*, at 13.

vongsakoun, magdalene

From: Nancy Fryer [REDACTED]
Sent: Tuesday, March 14, 2023 5:16 PM
To: supremecourtrules
Subject: [External] Fwd: Comments regarding Proposed CJD's Concerning Virtual or Livestreamed Court Appearances

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

From: Nancy Fryer [REDACTED]

I am a community-based victim advocate working in Archuleta County in the 6th JD. I have read your draft CJD's concerning virtual and live streamed appearances. I generally support those drafts and am offering the following comments.

As you probably know, the Archuleta County Courthouse was essentially inoperable from Sept 2017 until March 2022. During that time, all proceedings were conducted in Durango at the LaPlata County Courthouse. This necessitated an average 120-mile round-trip drive for Archuleta County residents appearing in person.

Before COVID-19 closures, only a phone option was available. A live clerk had to transfer each caller. There were numerous technical issues and delays. Court proceedings were often difficult to hear.

After COVID-19 closures, our Judicial District initiated the use of Webex by Cisco to conduct court proceedings. Despite occasional technical issues, the sound quality improved drastically, the video option was added, and clerks no longer had to transfer callers. Often, the sound and visual quality were actually superior to being in person in a large, crowded courtroom. I personally found the Webex experience to be seamless and far more efficient for my professional purposes.

Since the new Archuleta County courthouse opened in March 2022, there has been talk of reverting entirely to in-person appearances. I strongly object to that for a number of reasons and am pleased to see these draft CJD's! I routinely appear via Webex unless I have a client who wishes to appear in person. Under the Weekend Advisement live-streaming appearances necessitated by the new 48-hour rule, I also observe via Livestream. I find those appearances to be seamless and effective as well.

While I understand that any type of appearance in court by the public is subject to abuses, I believe that is a rare exception, not the rule. I have not personally witnessed a case or appearance where the privilege to appear virtually has been abused (beyond somewhat common disruptions by agitated defendants). And those are actually easier to control virtually (via the "mute" function or ejecting the offenders) than in person, where security may be required. Furthermore, defendants who abuse remote privileges by not complying with court orders can simply be ordered to turn themselves in or appear in person for the next event and/or the duration of the case.

The vast majority of criminal appearances I observe consist of a mere 3-5 minute "hearing" followed by a continuance. Those can be handled virtually with much greater time efficiency. I generally agree with the categories proposed in the draft CJD.

I want to emphasize certain points made in those drafts. MOST Victims I work with do NOT want to be in the same room with their abuser. Most feel much safer being anonymous or at least being physically separated from their abuser. Many come to our office to listen virtually to court proceedings. Aside from safety, most victims and defendants in our county/JD work multiple jobs and/or odd hours. They are generally service workers who do not have access to paid leave. A virtual appearance is much less costly to their already-strained budgets. In addition, our county is large geographically and we have big winter storms. We have extremely limited public transportation and a high poverty rate, which precludes many from having reliable private transportation.

For these and many other reasons, I support virtual appearances being continued and even expanded. While I am aware that some districts or counties may not currently have such technology available, perhaps a more common concern is that clerks and/or judges do not feel comfortable with the available technology. I would encourage the Supreme Court to support local courts in finding

grants or other funds to support additional technology and/or training of court staff to effectively use the technology they already have.

Thank you for proposing these draft CJD's and for considering my comments.

Sincerely,

Nancy Fryer
Court Advocate

Rise Above Violence

EMAIL: [REDACTED]

[REDACTED]
[REDACTED]
24-hour hotline; first available advocate: 970-264-9075

vongsakoun, magdalene

From: D GOVAN [REDACTED]
Sent: Tuesday, March 7, 2023 1:09 PM
To: supremecourtrules
Subject: [External] hearings via Webex

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

As a custody evaluator that has testified over 100 times in the CO courts over the last 24 years, I found the hearings via Webex(since COVID) are just as effective and much more efficient.

My In-person testimony vs Webex testimony adds no additional credibility or evidence to the court.

Dr Debra Govan

vongsakoun, magdalene

From: green, brian
Sent: Wednesday, March 1, 2023 8:56 AM
To: supremecourtrules
Subject: Virtual Court Chief Justice Directive Feedback

Hello.

I would like to provide my feedback, as a part-time county court judge in a rural district.

My experience with virtual court has been extremely frustrating and annoying. Constant interruptions, background noise, bad connections, rude behavior, profanity, noises that sound suspiciously like masturbation, internet access issues, lack of respect for the proceeding, hard to assess a participant's state of mind or level of sobriety, hard to verify if the defendant is being coached or if a victim is being intimidated, tons of excuses after missing court – meaning warrants issuing and then getting quashed and more court dates, lack of progress on cases as parties don't communicate well outside of the courtroom, small courts lack the technology and resources of the big courts, difficulty reviewing documents, impersonal and dehumanizing experience for attendees, trivializes matters that should be taken seriously, harder to make a genuine connection with people with whom we are interacting, distractions at the attendee's location create a lack of focus on the proceedings, feels rushed and informal...

My preference would be to default to in-person appearances for all proceedings unless virtual appearance is expressly authorized by the judge. If we do continue with virtual appearances, the State must ensure that all courts have adequate resources to conduct the proceedings efficiently: for example - reliable internet, better electronic devices (I conduct my Webex sessions on my tiny laptop computer), training for staff, etc.

I used to enjoy my job – now, thanks to virtual court, that is no longer the case. Can you hear me? Please mute your line until your case is called. We don't have your exhibits, can you e-mail them to a clerk so she can upload them into the file, while I twiddle my thumbs? Who is that talking in the background, telling you what to say? Can you pull over so that the road noise isn't so loud? Are you going to the bathroom? Can you please get your dog to stop barking? EchoEchoEchoEcho – ok, who has two audio lines open? The phone number to call is 719...what? 719-836...719 what? The website for payment is www.courts.sta – wait, I need to get a pen, hold on, can you repeat that?

Sure, attorneys love it. Saves them time and money. However, I cannot believe how often I am told that the DA didn't return their call, or they didn't get an email, or they couldn't get in touch with their client, or they just need another set over to find time to talk to each other, or they forgot, or they had computer problems.

Running a virtual courtroom has become the worst part of my job, and I am currently shifting back to in-person appearances for all but a select few proceedings. If we must continue with virtual court for most of our caseloads, I fear that the decorum and respect previously expected in courtrooms will be permanently and irrevocably eroded.

Brian Green
Park County Judge
Fairplay, CO

vongsakoun, magdalene

From: michael f green pc [REDACTED]
Sent: Friday, March 3, 2023 10:15 AM
To: supremecourtrules
Subject: [External] Webex court appearances

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello

I am torn on this topic but feel Webex court room appearances by attorneys, parties, and witnesses should be allowed only for reasons of public safety and not merely for convenience

Things are becoming too impersonal with Webex no in person contact in matters that seriously impact clients

Webex appearances make attorney client contact during a hearing almost impossible

I have participated in a hearing where one of the attorneys was on two different Webex court appearances at the same time.

This is short changing our clients

Mike Green

vongsakoun, magdalene

From: tracey grimes [REDACTED]
Sent: Saturday, March 4, 2023 12:11 PM
To: supremecourtrules
Subject: [External] Public comment

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

All court proceedings need be public. We need as much transparency from our state government as possible. We need to show folks what's happening behind closed doors. If more citizens tuned in proper change would take place to bring this country back to are founding values

vongsakoun, magdalene

From: gurley, richard
Sent: Tuesday, February 28, 2023 4:28 PM
To: supremecourtrules
Subject: Draft CJD- Section D(c)

First off, it would appear that the subparagraphs should be numbered vs. lettered but beyond that, this section presents as a significant concern as there is really no way to enforce this or monitor the recording of proceedings. I view this is very problematic.

I recently had a high profile murder trial involving very graphic testimony (murder followed by decapitation, dismemberment and disembowelment) and highly emotional testimony. I allowed videotaping of the witnesses by local news media but because of concerns over the testimony and how it might come out, etc... I didn't allow audio recording. The station manager contacted my Division Clerk asking me to reconsider since there was nothing preventing any member of the public from recording the proceedings. That got me thinking about this problem.

Thank you.

vongsakoun, magdalene

From: gustafson, kyle
Sent: Tuesday, March 14, 2023 5:35 PM
To: supremecourtrules
Subject: RE: Chief Justice Directives Regarding Virtual Proceedings and Broadcasting

Good evening –

Please see some feedback and questions below regarding the two proposed CJDs. I apologize for the semi-disorganized nature of this, and I appreciate the opportunity to provide some feedback. I am certainly happy to discuss any point further if needed:

- Additional conditions needs to be added regarding technology or power failure for the live streaming of criminal proceedings CJD.
 - Many times we have issues with the sustained reliability of our systems, even with equipment, connectivity (or reliability) may be an issue especially in rural districts.
 - Need to address that this will not be a violation or provide a way to accommodate or note the variance/reason on the record (whether electronic or in case management system) as to why the inability to live stream occurred.
- There is a fiscal impact that needs to be explored to these changes.
 - WebEx hearings can create backlog and time delays vs. in-person.
 - Is there an impact to Judicial workflow model calculations for judges and staff?
 - WebEx hearings can require another person to pay attention to the technology and access issues who isn't actively involved with monitoring the court record and proceeding as a CJA.
 - As a few examples, to address connectivity requests, troubleshooting, monitoring proper etiquette.
 - May need to create a district-based position outside of the already overworked tech support to provide subject matter expertise, support, or otherwise for virtual proceedings. These are separate skillsets from CJAs.
- What is the definition of “sufficient staff”?
 - Additionally, how will the “technology capability of a courtroom and staffing levels” be defined?
- What is the expected process for monitoring access and decorum in the virtual setting or what their role is at the hearing?
 - Similar to how a courtroom clerk checks-in parties to a case, knowing whether someone is a victim, party, visitor virtually is important for attorneys to address potential issues too.
 - IV.iii. of the live stream contemplates this but I am not sure of the application of it in practice.
- Was there a process contemplated that would be similar to a request for expanded media coverage, that, rather than a default presumption of streaming, an improved coverage request or process for any party to request a matter be live streamed, the court and parties to review said request, and respond accordingly?
- How will the prohibition against recording, screenshots, or otherwise in IV.D.(c) be monitored? Is there technology for this?
- Mandating virtual proceedings does not solve or address the “confusion for those who must appear in court”.
 - This confusion also happened pre-COVID with cases as to what date, time, and where a party might be – not solely a cause of virtual proceedings.
- What is the point of the distinction between a remote or virtual appearance?
- Is “flexible” appearance where some parties appear in-person and others remote, often known as “hybrid”, or does this contemplate that the hearing type is flexible as to whether all parties appear in person or all parties appear virtually?
- IV(B) for presumptively flexible appearance – does “court settings” mean scheduling or status conferences? The parenthetical of “when no other hearing purpose is scheduled” is confusing.

- Procedure for exemptions – a deadline should be established of “48 hours when practicable” and outline consequences for not timely notifying.
 - My experience shows that people file or make this request at the time of the hearing and expect that it be granted, whether there is a true conflict or they just decided they do not want to appear.
- The non-exclusive list, while helpful, seems that it has a potential to cause more confusion and issues rather than a balance or weight of a decision-making standard or threshold to evaluate (under which those types of factors might arise).
- Interpreter policy – does conferring with MCI about burdensomeness mean to the district or statewide programming? It seems more of a local impact and scheduling concern than one that the MCI should have to evaluate through OLA for the entire state in this situation.
- Section X – other provisions: it seems abrupt to promote this policy prior to review by these committees. If they are not concurrently proceeding with a review, I would suggest they be directed to do so before any final rules or directives are adopted.

Kyle Gustafson
Court Executive – 12th JD
8955 Independence Way
Alamosa, CO 81101

From: Chief Justice Brian Boatright [REDACTED]
Sent: Tuesday, February 28, 2023 4:18 PM
To: Justices, Judges, and all Judicial Personnel [REDACTED]
Subject: Chief Justice Directives Regarding Virtual Proceedings and Broadcasting

Judges and all Judicial Personnel,

Last December, I created a committee of judges and staff to evaluate our use of Webex in court proceedings and to make policy recommendations to help standardize the use of this technology in our courtrooms. It has become clear that the use of virtual proceedings over the past three years has changed not only how we do business but the expectations of the public and attorneys. My goal in developing policies around our use of Webex is to set baseline expectations for the public and attorneys of what will occur in our courts. Additionally, it is essential that any policy preserves judicial discretion so that our judges can maintain control over their courtrooms and their dockets.

The committee drafted two Chief Justice Directives. One concerns virtual participation by parties and attorneys in court proceedings. The second concerns the broadcasting of certain criminal proceedings. Both policies are posted for public comment. I urge you to review the policies and submit comments if you have them. We normally do not solicit public comment for changes to Chief Justice Directives, but because of the impact of these on judges, staff, litigants, and the public, I wanted to seek broad feedback before adopting a policy.

After any policy or policies are adopted, I plan to task a committee with continuing to review the courts’ use of virtual proceedings and broadcasting and to make recommendations for refining or expanding the policies.

Finally, I want to mention two legislative efforts that overlap with the draft policies. [HB23-1186](#) concerns FED proceedings and would allow parties and witnesses to choose whether to appear in person or virtually without providing judicial officers any discretion to order otherwise. And [HB23-1182](#) would require our courts to broadcast or livestream all criminal proceedings unless the courtroom is closed to the public. It is reasonable to anticipate additional legislative efforts on our use of virtual proceedings.

I believe it is far more preferable for the judicial branch to adopt its own policy that preserves judicial discretion and that we can continually review, improve, and expand if appropriate.

The draft virtual proceeding policy is available [here](#), and the draft live stream CJD is available [here](#). You can submit your comments to:

supremecourtrules@judicial.state.co.us

Comments are due by March 15. Please note that all comments received in the process will be posted publicly.

Thank you.

-BDB

vongsakoun, magdalene

From: hansell, natalie
Sent: Wednesday, March 1, 2023 11:52 AM
To: supremecourtrules
Subject: Comments to proposed CJO: LIVE STREAMING COVERAGE OF CRIMINAL COURT

Good morning,

Thank you for considering my comments below.

- **Page 3, Section IV (D), Paragraph c.** The language prohibiting recordings of virtual proceedings does not account for FTR recordings. A note excepting FTR would be sufficient.

Natalie Hansell
Legal Research Attorney
First Judicial District Courts

vongsakoun, magdalene

From: hansell, natalie
Sent: Wednesday, March 1, 2023 11:35 AM
To: supremecourtrules
Subject: Comments to proposed CJO: VIRTUAL PROCEEDINGS POLICY

Good morning,

Thank you for considering my comments below.

- **Page 1, Section 1, paragraph 4.** I propose adding the cost of technical problems or issues. Technical issues can decrease the quality/clarity of recorded records. On occasion technical issues are so severe that hearings must be rescheduled which can increase costs for the courts and litigants. *(Side note: we could really use more local IT support agents should a more expansive virtual policy be adopted.)*
- **Page 3, Section IV (A), paragraph 1.** I propose the addition of Civil show cause hearings to the list of presumptive in person hearings as often these appearances occur because the court has had a hard time getting the party to appear or follow court orders.
- **Page 3, Section IV (B), paragraph 2.** The language prohibiting recordings of virtual proceedings does not account for FTR recordings. A note excepting FTR would be sufficient.

Natalie Hansell
Legal Research Attorney
First Judicial District Courts

vongsakoun, magdalene

From: Harmon, Tracy [REDACTED]
Sent: Friday, March 3, 2023 10:01 AM
To: supremecourtrules
Subject: [External] House Bill 23-1182 public comment

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Your Honors,

I wanted to provide public comment in favor of House Bill 23-1182.

[House Bill 23-1182](#), which would require all courts to livestream criminal proceedings held in open court unless they are not equipped to do so, would be of immense help to the media, of which I am a member.

In my 32 years of covering courts, I have spent countless hours waiting for court hearings that ultimately end up getting rescheduled. Sitting in court wouldn't be such a bad thing, but different courts have different rules and some don't allow computers. A reporter without a computer is unable to get any work done while waiting. Other courts don't allow silenced cellphones which also are helpful tools for production for members of the media.

If the Courts and Legislature ultimately decide that live streaming is not an option, the mandated use of WebEx for audio purposes would be extremely helpful to members of the media who can call in to listen to criminal proceedings.

The other aspect of this issue is that many media outlets have been subject to massive layoffs and downsizing. There are fewer of us left whose job is to report on criminal proceedings on behalf of the public and we are spread extremely thin. So in the interest of the public's right to know, I am sure that the use of live streaming or a call in option would be of huge benefit to the media, and ultimately to the public.

Thank you very much for considering my comments.

Sincerely,

Tracy Harmon

The Pueblo Chieftain

vongsakoun, magdalene

From: Susan Harris [REDACTED]
Sent: Monday, March 6, 2023 10:04 AM
To: supremecourtrules
Subject: [External] Comments on continuing use of video conferencing in Court

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This email is in response to the request for public comments on Chief Justice Directives Regarding Continuation of Virtual Proceedings:

My thoughts: it's wonderful to have virtual proceedings (1) when there are blizzards or hazardous weather or traffic conditions, and no one including the judges wants or reasonably can be expected to venture out, and (2) when everyone is scattered all over the State and the country and it would be expensive or difficult to travel for the hearing, trial, etc. I agree with CJ Boatright that the Courts should have discretion and should weigh pros and cons as applicable. And anyway, couldn't the Courts enable voice/close captioned transmittal to the public in non-routine matters in which openness and public access are important?

Thank you for the invitation to submit comments. Susan R. Harris

Please note my new contact information effective February 1, 2023:

Susan R. Harris
Susan R. Harris Fiduciary Consulting, LLC
5600 Greenwood Plaza Blvd., Suite 255
Greenwood Village, CO 80111
Phone [REDACTED]
Fax 303-741-4669

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain information that is confidential or legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are notified that you must not read this transmission and that any disclosure, copying, printing, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately contact the sender by telephone or return e-mail and delete the original transmission and any attachments without reading or saving in any manner. Thank you.

vongsakoun, magdalene

From: David Harrison [REDACTED]
Sent: Tuesday, March 14, 2023 4:48 PM
To: supremecourtrules
Subject: [External] re LIVE STREAMING COVERAGE OF CRIMINAL COURT

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Justices:

I fully endorse the Court's proposed LIVE STREAMING COVERAGE OF CRIMINAL COURT PROCEEDINGS IN THE TRIAL COURTS which I read to require judges to make live streaming available in many situations. Many criminal court appearances ultimately result in just a 're-setting'. It is extremely helpful that a client can attend by live stream and not have to take a full or half day off work just to attend court, when a new date will be set.

The one deficit I see in the directive is that a definition likely is important for 'problem solving courts' (since really ALL courts are problem solving courts on some level... I assume you mean 'drug courts', veterans courts and other specialized courts.

It might also be useful to have the live streaming being the 'presumption' (with the exceptions listed).

Thank you for the opportunity to comment on this important and useful directive.

David B. Harrison

Miller & Harrison, LLC
2305 Broadway
Boulder, CO 80304-4106

Phone – 303-449-2830 [REDACTED]
[REDACTED]

vongsakoun, magdalene

From: hartman, andrew
Sent: Wednesday, March 1, 2023 9:51 AM
To: supremecourtrules
Subject: Virtual Proceedings/Live Streaming CJDs

Hi. Suggestions based on 3 years of Webex hearings:

Sect IV.B.

2. Unless a court grants express permission, no proceeding conducted virtually may be recorded, published, and/ or streamed. Any [recording in] violation of this Chief Justice Directive may result in contempt proceedings.

E. Parties and counsel must test their technology prior to any virtual appearance. The presiding judicial officer may enforce decorum and witness sequestration during virtual hearings and permissible live streaming including expelling and/or muting participants.

Section E can be added to the Live Streaming CJD as well.

Thank for all the work on this.

Andrew Hartman, District Judge

vongsakoun, magdalene

From: Katie Hays [REDACTED]
Sent: Sunday, March 12, 2023 11:24 AM
To: supremecourtrules
Subject: [External] CJD Virtual Proceedings

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I support this CJD, especially with regard to the Presumptively Flexible proceedings.

I practice in a rural district, and virtual appearances can be very important, especially traveling over mountain roads in the winter. Getting to either district courthouse where I regularly practice (Glenwood Springs and Meeker) can be very challenging.

I wonder if there could be an additional statement that **expert witnesses, including court-appointed professionals, presumptively have the Flexible option to participate/testify**, regardless of objection of a party. I also wonder whether the judge in a particular case should have discretion to order in-person participation if there are ongoing issues with a particular attorney or party's virtual participation.

Thank you,

Katie Hays
Hays & Strode Law, P.C.
126 W. 4th Street
Rifle, CO 81650
Phone: [REDACTED]
Fax: 970-625-9446
Email: [REDACTED]

NOTICE: This communication is intended solely for the use of the person named above or others authorized to receive it. This communication may include privileged and confidential information and any use, dissemination or reproduction by unauthorized persons is absolutely prohibited. If you are a client of Hays & Strode Law, P.C. you should not forward this communication to anyone else. If you have received this communication in error, please notify the sender immediately.

From: David Hersh [REDACTED]
Sent: Thursday, March 2, 2023 11:23 AM
To: supremecourtrules
Subject: [External] Draft CJD Virtual Proceedings

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Your Honors:

Thank you for soliciting public feedback on this important topic. I am a 64-year-old lawyer with 39 years of practice in Colorado and throughout the United States. I practice civil trial work in State and Federal Courts. I am a big proponent of technology (despite my years) and I only try cases electronically – no paper. I am not a technophobe.

Nevertheless, while I am grateful for the ease and economy of virtual appearances (I had a seven (7) minute appearance in USDC a while ago, with no travel time, parking, etc), I strongly believe my clients’ best interests are served by in-person proceedings whenever possible. I believe this is true for several reasons:

1. Communication is more fulsome and complete when it is done in person. Interpersonal interactions, non-case-specific interactions, body language, tone, inflection, etc. are all enhanced when done in person. Effective and efficient communication with Judicial Officers, opposing counsel, court staff, etc. are all enhanced when done in person.
2. Respect, collegiality, decorum, professionalism, solemnity, reverence – I believe there is a degradation and/or loss in all of these (and related) areas when we engage in virtual appearances. Our civil system benefits from all of these, and I often find that lawyers I have difficulty dealing with seem much more professional and collaborative when we are at the Courthouse. Appearing before a Judicial Officer is not like facetimeing Grandma, and it deserves (demands?) a different “format”.
3. My clients benefit when I form (appropriate) personal connections with Judicial Officers (and their staff) surrounding my cases. We are all working together in this system to achieve a just result, and even having brief (hopefully productive) in-person connections between Judicial Officers and lawyers promotes efficiency, understanding, collegiality, professionalism, and economy. We learn to trust each other, consider each other, respect each other – like so many relationships, “quality time” arises when there is sufficient “quantity time”.

4. The “impersonal” nature of remote interactions is, in my view, inherently antagonistic to the very “personal” nature of civil disputes, the civil justice system, and the needs of the many participants in that system.

Thank you for working to make our system better for us all. I am grateful for your dedication and focus. Thank you for “listening” to me. Please feel free to reach out to me if there is anything further that I can do to assist.

Many thanks.

<dph

David P. Hersh
Trial Lawyer



BURGSIMPSON

BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC
ATTORNEYS & COUNSELORS AT LAW

Good Lawyers. Changing Lives.

40 Inverness Drive East

Englewood, CO 80112

www.burgsimpson.com

Telephone: (303)792-5595

Facsimile: (303)708-0527

NOTICE: This e-mail message is the property of Burg Simpson Eldredge Hersh & Jardine, P.C. The contents of this message and any attachments are confidential and protected by law under the attorney-client privilege, attorney-

work-product doctrine, and/or other applicable privileges. If you are not the intended recipient of this message, please forward a copy to dhersh@burgsimpson.com and delete the message and its attachments from your computer. Thank you.

vongsakoun, magdalene

From: Courtney Holm [REDACTED]
Sent: Wednesday, March 15, 2023 9:02 AM
To: supremecourtrules
Subject: [External] CJD draft re virtual proceedings comments

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The virtual appearance is truly a tool for access to justice and to making the court experience more valuable to parties and counsel. It is important that we learn from the Pandemic and wield these tools in a positive and efficient manner moving forward.

In Section B, regular court appearances for criminal or civil matters in which are not dispositive should be flexible as a baseline. In instances, judges do not always realize how to administer the court creatively and need the written authorization to lean on which helps improve accessibility, addresses transportation issues in more remote areas, and keeps costs lower for litigants and attorneys

The cost for clients who need to request appearance by virtual means can add up and it makes more sense to have that as the baseline in non-dispositive matters rather than an exception to request. It costs money to file and prepare motions. It is also an additional means to create more actual access to justice.

Witnesses who need to appear virtually should also be considered in this CJD as the cost and time that some parties will not participate in the proceeding without the virtual aspect especially geographic distances issues.

Just as many cases settle in at the last moments via phone and virtual appearance as to in person in reality, it is the timing of the potential uncertainty as a result of the hearing that affects that mindset rather than the physical proximity.

Thanks.

Courtney Holm, Esq.
Attorney and Mediator
Courtney Holm & Associates PC
Telephone (970) 748-8800
Mobile phone [REDACTED]
Fax (970) 748-8600
Mailing: PO Box 4460, Edwards, CO 81632
Physical address: 0105 Edwards Village Blvd,
Suite G-210, Edwards, Colorado 81632
www.lawyersvail.com

This is a transmission from Courtney Holm & Associates, Attorneys at Law P.C., and may contain information which is privileged, confidential and protected by the Electronic Communications Privacy Act, 18 U.S.C Section 2510 et. seq. and the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this communication in error, please immediately notify us by telephone or email and delete the original message. Thank you for your anticipated courtesies.

vongsakoun, magdalene

From: James Hopkins [REDACTED]
Sent: Monday, March 6, 2023 4:39 PM
To: supremecourtrules
Subject: [External] Comment on Virtual Court

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Honorable Justices:

I practice criminal defense. I see the benefits of virtual court constantly. It cannot be understated how much the option to appear virtually for most of my clients saves them time, keeps them from missing work, avoids child care issues, solves transportation challenges, and helps them move their cases forward. Even more importantly, it leads to closure for victims sooner. I truly believe virtual court is the best thing that came out of the pandemic.

While appearing in person is necessary at times, I think virtual court has lowered the stress associated with appearing in court for all involved.

What I see happening too often is district attorney's and judges using in-person appearance as the newest form of punishment. I often see in-person appearances requested and granted when someone previously FTA'd or when there are new bond conditions. The reality is that in-person appearance is harder, more stressful, and generally makes a successful appearance less likely for many people. In my opinion, in-person appearance should never be considered from a punitive perspective. What is best for all is to keep the case moving forward.

I hope the new directives will outline some clear grounds for when courts can or should consider in-person appearances. Otherwise, judicial discretion will play out unequally.

Sincerely,

James Hopkins
Hopkins Law LLC
2881 N. Monroe Ave.
Loveland, CO 80538

[REDACTED]
www.HopkinsLawLLC.com

[REDACTED]
[970.624.6061](tel:970.624.6061) (Fax)

This email is intended for use by the person or entity to which it is addressed and may contain information that is **PRIVILEGED, CONFIDENTIAL**, and exempt from disclosure under applicable law. If you are not the intended recipient please be advised that dissemination, distribution, or copying of this communication is strictly prohibited.

Note to Client: If you are a client of Hopkins Law LLC and this email is transmitted to you, please **DO NOT FORWARD** this message to anyone else. Strict confidence is necessary with respect to our communication in order to maintain privileges.

vongsakoun, magdalene

From: James Houtsma [REDACTED]
Sent: Wednesday, March 8, 2023 10:16 AM
To: supremecourtrules
Subject: [External] CO Supreme Court Public Comment

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greetings,

My name is James P. Houtsma. I am Senior Deputy DA. I have been a prosecutor for nearly 17 years. I wanted to share my thoughts about the continuation of virtual proceedings. In my experience, virtual proceedings have caused numerous significant problems in day to day court operations. Virtual proceedings lack formality and etiquette. I have seen numerous people appear for virtual proceedings from their beds, in their pajamas, smoking, vaping, and other inappropriate behavior. Allowing virtual proceedings undercuts the seriousness of court proceedings. The courthouse and the courtroom is an important place in our society/community. It is a place where people come to handle important matters every single day. Virtual appearances depreciate what we do at court. My experience with virtual appearances is that the participants often lack respect and professionalism, especially criminal defendants. I would implore that criminal defendants not be allowed to appear virtually for proceedings. It thwarts our ability to get things done. We are now dealing with expanding dockets because nothing gets done on webex -- I know that is a bit hyperbolic and an exaggeration -- but there is a lot of truth to it from what I have seen. Making limited exceptions for victims to appear virtually, or for prisons or jails to have people appear virtually just to get new dates, that makes some sense to me. We have opened a troubling can of worms with virtual appearances. I appreciate the need to adjust during covid. We need to get back to full in person court proceedings. Webex should be an exception only allowed for good reasons. I think virtual proceedings have contributed to the decline in respect for our institution. I think the police, judges, prosecutors, victims all suffer due to virtual appearances. Why make it harder on judges and victims for the benefit of criminals. Why allow criminals to delay and demean our pursuit of justice and resolution. I have no experience with civil matters whatsoever. Maybe there is a limited place for virtual proceedings in civil matters, but there is no place for it in criminal matters, in my opinion. Confrontation is fundamental to criminal justice. Confrontation is in direct opposition to virtual proceedings. Defendants should have to come to court to face their accusations, just like victims have to come to court to face their abusers. I have asked defense lawyers dozens of times to allow victims or witnesses to appear virtually at the victim or witnesses request. Defense lawyers object every single time. They weaponize webex -- they use it to their advantage and thwart the government when we try to use it on our end. I strongly disagree that virtual proceedings are a valuable public resource. In criminal proceedings, virtual proceedings have caused serious problems and diminished the criminal justice system in general. We should be buttressing our most important institutions, not diminishing their place in our society. I suggest that in criminal cases -- either all witnesses are allowed to testify virtually or none of them are -- otherwise it allows defense attorneys to weaponize the procedure and thwart justice. I think all criminal defendants ought to be required to appear in person, unless they are incarcerated and the jail/prison is asking for them to appear virtually. Defendants should have to confront their accusations in person in court -- just like we force or require victims of crime to do.

Thank You,

James P. Houtsma

vongsakoun, magdalene

From: M David Johnson [REDACTED]
Sent: Tuesday, March 14, 2023 2:56 PM
To: supremecourtrules
Subject: [External] Comments to DRAFT CJD - Virtual Proceedings
Attachments: MFL Comments to CJD.pdf

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Sir or Madam –

Attached, please find our firm’s comments and position statement with regard to the **Draft Chief Justice Directive – Virtual Proceedings**. If any further information would be useful in your decision making process please let us know how we may help.

Thank you,



M. David Johnson, Esq.
Chief Executive Officer

[REDACTED]
[REDACTED]



Modern Family Law
Corporate Office 303-394-3030
www.modernfamilylaw.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please notify the sender immediately. This message may contain confidential information and is intended only for the individual named above. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

Austin

Jasmine Bhatt
 Erica Larson
 Clare Mattione

Colorado Springs

Jacqueline A. Collins
 Kresten L. Hendrix
 Chelsea Hillman**
 Craig Valentine

Fort Collins

Jessica A. Breckenridge
 Karlee K. Stoppenhagen

San Jose

Jess Smith
 Elizabeth Voorhees



4500 Cherry Creek Drive South, Suite 700
 Denver, CO 80246
 (303) 394-3030

www.ModernFamilyLaw.com

**Also licensed in Nebraska*

***Also licensed in New York*

Denver

M. David Johnson
 *Cynthia F. Griffin
 Andrew Kemmer
 Sadie Janes
 Brian D. Litzinger
 Jeremy Monckton
 Nicholas Tootalian
 Sarah J.W. Wilkonson

Oakland

Lulu Tseng

Palo Alto

Traci Owens

San Antonio

Cherrell Holmes

March 14, 2023

Colorado Supreme Court
 2 E 14th Ave.
 Denver, Colorado 80203
supremecourtrules@judicial.state.co.us

Dear Justices of the Colorado Supreme Court -

This letter is in response to the Court’s request for comment on the draft Chief Justice Directive – Virtual Proceedings Policy. Our firm has circulated your draft to all our employees, regardless of position, for comment. We’ve consolidated those comments into this letter on behalf of our firm.

First, Modern Family Law is the largest Colorado-based family law firm, with eight offices across three states and nearly 30 attorneys on staff. For nearly 10 years, our Mission has been, “With integrity and compassion, we help people start over.” More relevant to today’s topic, however, is our Vision Statement is:

*“To lead in helping clients everywhere
 resolve legal conflicts
 through **innovation and technology.**”*

We, therefore, feel it is important that we offer our voice as part of this discussion.

Our firm unanimously offers our SUPPORT for this draft CJD. We agree that “[T]he use of virtual proceedings has afforded great benefits for parties, attorneys, and other court participants.” (Draft CJD). We also encourage the Court to venture further down this road of productivity and:

- Authorize or otherwise provide for the use of digital exhibits,
- Require cooperation of counsel in preparation of those digital exhibits,
- Permanently authorize the use of remote notary services, and

- Additional training for judicial officers to improve appreciation of cost savings created by use of virtual proceedings.

It is the position of our firm that the draft CJD and these other suggested measures will provide positive impacts described below on access to justice and the legal profession in general.

Parties: Represented parties to litigation save money with virtual proceedings. When appearing virtually, the time spent in court is focused on substantive legal work. There is no additional hourly expense to the client for an attorney's travel, parking, walking into court, going through security, wandering around to find the client or courtroom, and sitting/waiting for a case to be called. With virtual access, you are in the courtroom only when you need to be. The client is paying legal counsel for a legal service rather than driving, shuffling through security, or serving as a tour guide.

Additionally, represented clients and unrepresented parties do not need to take unnecessary time off from their work for their legal issue. This is invaluable, especially in domestic cases. An APR/DOM proceeding is one of the worst financial scenarios of life. Taking time off work prevents the Client, and all parties, from earning money. If the Client is a parent, time off work is even more detrimental.

The burden for providing child or dependent-adult care during in-person court appearances falls mostly on women, making the burden for in-person appearances fall disproportionately on women litigants. Most family caregivers remain women, and they provide more hours of care than their male counterparts. An estimated 59% of women provide 20 hours or less of unpaid care per week compared to 41% of men. (Caregiving.com). According to this study, during the COVID-19 pandemic, family caregiving responsibilities fell mostly on women. One in 10 women reported caring for a family member prior to the pandemic, and one in 10 women shared they gained new caregiving responsibilities because of the pandemic.

Witnesses: As with parties, the same advantages of remote proceeding apply to the testimony of witnesses. Most witnesses are sequestered and sent to sit out in the hallway to await their turn to testify. Rarely do court proceedings go according to plan and so even the best efforts of lawyers and the judges to schedule these witnesses often fail and the witness is forced to spend most of their day waiting. Finally, most parties and material witnesses do not reside near the courthouse. Virtual appearance allows the parties to access the court from ANYWHERE in the world, which greatly expands their access to justice.

Lawyers: Lawyers should embrace virtual hearings. The flexibility, the freedom, decreased overhead, and all the benefits of more prep time and less travel time should make this an easy sell. However, lawyers and law firm wrongly believe they lose money with virtual appearances because we no longer bill for the "fluff" of travel, waiting in the hallway, etc.

The myth in the legal industry is that profitability decreases with increased productivity, and that this inverse relationship means lawyers must constantly do battle against innovation and technology to protect their stream of income. It is a myth that has plagued our profession for decades. Either lawyers have it right and all industries should strive to be less productive, or the rest of the world has it right and productivity is a good thing.

“There are many factors that lead to a profitable business, including employee productivity. Naturally, when your employees are more productive your profit margins will increase. Productivity and profitability are two sides of the same coin. Without productivity, there can be no profitability.”
[Productivity v. Profitability](#), *Momentum CFO*.

Being a more productive lawyer means charging people for legal work, not driving, or waiting in the hallway for a court appearance. Charges like these are why most people dislike or distrust lawyers and the legal system. The Court could ban attorneys from charging for travel time but the expense/cost for the lost time must be made up some place else and eventually, as a fungible cost, it finds its way back to the client. Productive use of attorney time by conducting virtual proceedings works for everyone.

Mentoring and professional development are also impacted when Court’s allow virtual proceedings. Lawyers can watch proceedings without the need to travel to the courthouse. This allows lawyers to learn their judge, their subject matter, or simple court procedure without physically appearing. Many lawyers do not spend time "learning" because they do not have time in the day to do so. With virtual appearances, the pressure of time is ameliorated. The ability to virtually sit in on a proceeding is invaluable for new lawyers or lawyers looking to expand their practice into new districts -- especially rural districts where many lawyers historically refuse to take cases. We regularly have new lawyers shadow hearings regardless of their office location. This could not happen if virtual appearance is eliminated.

Courts: Court runs more efficiently in a virtual setting. In a virtual proceeding, the litigants are present when they need to be for the time allotted to the matter. Benefits include:

- No wait time for turnover at the counsel table during status conferences.
- Material witnesses who would otherwise be unavailable to testify due to cost or geography are readily available to testify.
- Witnesses can join the hearing when they need to testify rather than sitting outside waiting for hours.

This efficiency also makes court proceedings more friendly. Family law cases are extremely emotional. Many parties are victims of abuse (physical, emotional, financial) or suffer from mental illness (anxiety, depression, substance abuse, etc.). The act of physically appearing in a courtroom with their ex-partner and strangers (Judge, clerk, attorneys, whoever else happens to be sitting in the courtroom) is very triggering, and sometimes completely debilitating.

Allowing parties to eliminate these added stressors by appearing from the comfort of their home, or desired location, substantially eliminates stress on the parties. The eliminated stress allows the party to be an active participant in the proceeding.

Finally, virtual proceedings afford increased accessibility to the public which increases the court’s accountability and improves the public perception of our judicial system.

Efficient courtrooms are a pleasure in which to practice. Using technology to facilitate virtual proceedings opens many new ways of becoming even more efficient as hearings are timelier and preparation by the parties is done well in advance.

Environment: Many state legislatures require an environmental impact assessment of proposed legislation. The CJD should be no different.

Conservation of resources is always a good thing. Virtual court proceedings substantially reduce the resources needed to conduct family law cases. First and most obviously, there's no travel required to attend a virtual proceeding. While we could not find studies on attorney travel time, Google reports that it's a 25-minute, 4.5-mile one way drive from our Denver office to Denver District Court.

With an average of 10 court appearances per week in Denver for our Denver team, that's 8.3 hours/week our team would not need to spend in the car, billing clients while we drive. Additionally, conducting all virtual hearings would conserve 90 miles of travel each week, or 4,680 miles per year, just for Denver appearances. With a national average for all cars on the road of 24.2 mpg, that means 193 gallons of gas, or roughly 3,800 lbs. of CO₂, per year just for Denver appearances by our Denver team.

Virtual hearings often also include digital exhibits. According to one study, each lawyer in United States generates up to 100,000 sheets of paper per year, (Cleveland.com). That volume equates to 10 standard pines trees, per lawyer, per year (Ribble-pack.co.uk). With 22,802 registered lawyers in Colorado, and with forest density of 5,200 trees per acre, that would equate to about 50 acres of dense Colorado pine forest disappearing each year just for work performed by Colorado lawyers.

Conservation, efficiency, and productivity all argue for wide use of virtual proceedings. On the other side, critics claim virtual proceedings present a barrier to justice as some litigants might not have a computer on which to conduct their hearing. However, we feel it is the complete opposite.

Critics claim virtual proceedings are for rich people who can afford the necessary equipment and that wide use of virtual proceedings puts lower income participants at a disadvantage. Building a digital avenue for access to courts only expands the possibilities for litigants to participate and levels the playing field for lower income parties. Low-income litigants won't need to request so much time off, or pay for transportation, childcare, parking, or inflated attorney fees and will, instead, be able to fully participate without those added expenses. Wealthy litigants tend to have jobs allowing for more flexibility and paid time-off and experience less financial impact for stepping away from their work.

Contrary to the claim that virtual proceedings limit litigants, we believe it frees them up, especially the lower income parties.

In conclusion, Colorado has been a leader in creating a "modern" judicial system. Think of our e-filing system, or the robust JDF/Self Help Forms - many states do not go to these lengths to help people find answers. We set the bar for other states to follow. Virtual appearances are the no-brainer next step to ensuring equal access to justice. We encourage the Colorado Supreme Court to adopt the draft Chief Justices Directive and to take further steps to encourage the development and use of technology in our profession.

Sincerely,



M. David Johnson, Esq
CEO Modern Family Law

By signing below, we endorse the opinions contained in this letter concerning the draft Chief Justice Direction – Virtual Proceedings.

Karlee K. Stoppenhagen, Esq.
Managing Partner – Fort Collins

Jessica A. Breckenridge, Esq.
Associate Attorney – Fort Collins

Nicholas S. Tootalian, Esq.
Managing Partner- Denver

Brian D. Litzinger, Esq.
Senior Attorney – Denver

Robert Toler
Marketing Director

Craig R. Valentine, Esq.
Managing Partner-Colorado Springs

Andrew J. Kemmer, Esq.
Associate Attorney - Denver

Sarah J.W. Wilkonson, Esq.
Associate Attorney – Denver

Dani Zhang
Chief Financial Officer

Cynthia Griffin, Esq.
Senior Attorney - Denver

Sadie Janes, Esq.
Associate Attorney - Denver

/s/Kresten Hendrix

Kresten Hendrix, Esq.
Associate Attorney-Colorado Springs

Zoe Mafetti, PHR
HR Manager

Jess Smith, Esq.
Associate Attorney

Romario Pineda
Director of Business Operations

Chelsea Hillman, Esq.
Associate Attorney

Elizabeth Edwards
Staff Accountant

Jacqueline Collins
Associate Attorney – Colorado Springs

Christina Smith
Intake Specialist

Jordan Moore
Paralegal – Denver

Jeff Boh
Director of IT

Jesse Peterson
Recruiter | Employee engagement Lead

Jeff Stolzenberg
SEO Manager

Adrienna Becker
Lead Intake Specialist

vongsakoun, magdalene

From: Karbach, James [REDACTED]
Sent: Wednesday, March 15, 2023 9:04 PM
To: supremecourtrules
Subject: [External] Public comment regarding proposed CJD on virtual proceedings

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for the opportunity to provide feedback on the draft rules. Below is comment on each of the proposed directives.

Live Stream Comments

- The Colorado and United States' Constitutions require open and public courtrooms. Live-streaming provides an opportunity for greater access and transparency while also inviting risk of due process, equal protection, and privacy violations. Any rule must be carefully considered. The Office of the State Public Defender asks that the process for creation of this rule be approached with more deliberation, that public comment be extended, and that the Court engage in greater stakeholder engagement.
- Defense attorneys report experiencing problems with live-streaming. They include:
 - o Having private discussion between counsel and clients captured without knowing it was happening. In at least one jurisdiction there is no ability to mute the microphone. In many it is not possible for counsel and client to know what a microphone is picking up.
 - o Having media outlets, witnesses, friends and families of victims, and others take screen captures or video recordings of live streams in violation of court rules. Often it was impossible to know who took the recording and whether they had notice of the court rules.
 - o Having sequestration orders entered but violated because of the live stream. In one instance, a witness watched a pretrial evidentiary hearing and then went to the police to give new statements and adjust what they were saying to respond to courtroom testimony and argument. OSPD is especially concerned that many sequestration violations cannot be discovered when live streaming occurs, which is a significant fairness and due process concern.
 - o Experiencing disruptions from viewers who comment orally or privately in chat functions.
 - o Live streaming has been left on when the court is not in session and lawyers and clients in the courtroom had no way to know broadcasting was occurring.
- The ease of screen capture and video recordings present particular challenges regardless of court orders prohibiting this behavior. If a person is in another state or country, enforcement may prove difficult or impossible. Nonetheless, screen capture or recording should not be allowed and violations must be subject to contempt. This rule must be prominently displayed to the live-stream viewer.
- The risk for sequestration order violations is more pronounced without the Court and parties able to see the members of public in attendance. Likewise, without adequate and consistent application of a clear rule, disclosure of sensitive or private content or information may occur.
- Consequently, evidentiary hearings, trials, bench conferences, communications between counsel and client, in camera hearings, and problem-solving dockets should not be routinely live-streamed without a request from a party, the media or member of the public to do so. A process for timely notice and a hearing should be provided to the requestor and parties to resolve objections and must be included in the rule.

- For all other court appearances, there must be a process for notice of whether the hearing will be and what is live-streamed. This should include a consistent jurisdiction-wide approach about when and what types of hearings are live-streamed such that parties and the public can rely on that expectation. Ad hoc, inconsistent, and on-the-spot determinations do not allow for objections to be raised or for reasonable notice to parties and the public so that they may plan accordingly.
- The standard of maintaining the “solemnity, decorum, and dignity of the court” is especially broad and impossible to for parties and the public to know and rely on the courts’ practice. It would result in unreasonably inconsistent application of the rule and regular and significant deviations from the jurisdiction’s practices affecting notice to attend by parties and the public. It could allow an individual judge to find live streaming not dignified in all instances, subverting the purpose of this rule.
- While there may be limits to any requirement that viewers identify themselves, the parties should be able to obtain as much information as the court knows about who is viewing (like if viewers enter their email address or name). If requested, the court must make that information a part of the record.
- Viewers should only be able to watch without being heard or able to enter chat unless the court rules otherwise. The court could implement technology that would make it impossible for viewers to be disruptive.
- While individual circumstances of cases and technology infrastructure can vary case-to-case and district-to-district, generally like circumstances should be treated similarly across the state. Meaning where case circumstances and factors are the same, the same use of live streaming or absence of it should occur.

Virtual Proceeding Policy

- There are benefits to appearing virtually especially to our clients who often must travel lengthy distances without reliable transportation and are employed in positions that are inflexible to court appearances. Remote appearances save money, time, and reduce failures to appear. Access to this option can be an issue of equal protection as some people do not have the technology necessary to use this option. The Office of the State Public Defender asks that the process for creation of this rule be approached with more deliberation, that public comment be extended, and that the Court engage in greater stakeholder engagement across multiple districts.
- Concerns that have been raised by defense lawyers include:
 - o Remotely appearing persons’ cases are deprioritized resulting in lengthy waits to have their cases called.
 - o Some judges have relied heavily on remote appearances, discouraging, or punishing counsel for requesting in-person appearance. This has been a particular concern for in-custody defendants.
- There should be a greater number of presumptively flexible appearances for criminal defendants so that there is predictability and consistency for defendants having successive court appearances:
 - o Summons returns
 - o First appearances when a defendant is out of custody
 - o Appearance of counsel
 - o Subpoena duces tecum hearings
 - o Status hearings
 - o Review hearings
 - o Scheduling hearings
- For all other court appearances, there must be a process for notice of when the approach to prior appearances changes. This should include a consistent jurisdiction-wide approach about when and what types of hearings can be virtual such that parties and the public can rely on that expectation.
- Any policy must address how litigants and attorneys know whether they are to appear in person or virtually and how they can easily find out if they do not know.
- Ease in requesting a deviation from the presumption should be a priority by allowing for oral requests made in prior appearances. Where a motion is filed, the court should be required to make a timely ruling.
- The Court proposes that the victim’s position on how whether the defendant can appear virtually should be considered. Last year the legislature mandated that victims can appear by phone or video. The legislature proscribes what requires victim notice and what allows victim input. The Court cannot and should not expand

what VRA requirements. Victim's rights should be determined through the legislative process as they are specifically described and protected by statute. Specifically, any requirement of victim input on the issue of virtual appearance for the defendant is beyond both the scope of the VRA statute and the court's authority to proscribe by rule. Further, having to obtain a victim position regarding whether a defendant can appear virtually for hearings that are not VRA events are illogical.

- This rule does not address appearance by non-parties. One major benefit of remote proceedings is the ability for people to provide input on bond or sentencing in criminal cases. Remote appearance can enable friends, family, community members, employers, treatment providers and others to speak to the court in proceedings as a non-party in such where appropriate. This enables courts to have more complete information and justice to be pursued. The rule should encourage and allow for both parties to have similar ability to enable such input. It should be consistently applied and favored.

James Karbach (he/him/his)

Director of Legislative Policy and External Communications

Office of the Colorado State Public Defender

1300 Broadway, Suite 400

Denver, CO 80203

[REDACTED]

[REDACTED]

303-764-1478 (fax)

[REDACTED]

CONFIDENTIALITY NOTICE: This email contains confidential information and is intended for the individual named. If you are not the intended recipient, you should not read, disseminate, distribute, or copy this email. Please notify the sender immediately if you receive this email by mistake and delete this email from your system.

vongsakoun, magdalene

From: Jeffrey Koy [REDACTED]
Sent: Wednesday, March 15, 2023 7:49 AM
To: supremecourtrules
Subject: [External] Virtual Proceedings

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am very pleased to hear the Supreme Court values virtual proceedings. I couldn't agree more! I've worked in many jurisdictions from large metro to medium suburban to small rural. I've argued several appellate cases both in person and virtually. Some of these courts continue to allow virtual proceedings while others have mandated a return to "the way we used to do it" – in person.

By far, the jurisdictions that continue to incorporate virtual hearings in their practice and procedures more efficiently handle dockets, provide greater access to justice, and streamline hearings. On the other hand, the jurisdictions that have returned to the in-person approach are back long waits for hearings to be called. It is not uncommon to wait 1-3 hours for a 15-minute hearing to be called. This practice also inconveniences parties and witnesses, and drains valuable resources.

To be sure, in-person hearings still provide value and shouldn't be forgotten. But, in this day and age, it is wise to encourage courts to adopt innovative practices and approaches which incorporate new and effective technologies.

One final thought -- the law students that will soon graduate and enter the legal profession (and every law student thereafter) have largely grown up with technology. If the legal field doesn't embrace technology now, it will surely be left in the dust when the younger generations come into their own.

If you would like additional information or more specific examples, please feel free to contact me.

Jeff Koy
KOY|DINGBOOM|OATES LLC
Attorneys at Law

P.O. Box 4191
Englewood, CO 80155
[REDACTED]

This e-mail message is confidential, is intended only for the named recipients above, and may contain information that is privileged, attorney work product or otherwise protected by applicable law. If you have received this message in error, please notify the sender at (720) 937 - 0394 and delete this e-mail message.

vongsakoun, magdalene

From: kreiman, bob
Sent: Tuesday, February 28, 2023 5:00 PM
To: supremecourtrules
Subject: CJD comments

Here are my thoughts on the new CJD's...

I would like to see an additional condition added to section IVD of the live streaming of criminal proceedings CJD. There are times when technology or power fails in a building where the internet could go down but court proceedings could continue if the Judge has a court reporter and not relying on FTR to record proceedings. We have had numerous occasions where a contractor digging a trench has cut the one fiber optic line servicing our area. There could also be issues with computer hacking or other events that just disrupt our ability to live stream (Maybe the main server in Denver is down but our power is just fine and the website hosting live streaming is down).

IVD.a says if the courtroom is equipped with the technology, proceedings 'shall' be live streamed. However, sometimes tech glitches happen and even though we have the equipment, it doesn't mean we always have the connectivity.

I'd like to add another sentence to IVDa to say something similar to ***'Power outages, network outages, internet availability will occasionally be unreliable. It will not be a violation of this CJD if technology hurdles prevent timely live streaming of criminal court proceedings.'***

You could also add a requirement to note the record when it happens: ***'When this happens, judges should put the reason for the inability to live stream on the official court record.'***

On the draft virtual proceedings policy, the only comment I have is that I have always heard VRA referred to as Victims Rights Act. The CJD calls it 'Amendment'.

As a side note, I think there should be a fiscal impact to these policy changes. WebEx hearings take a lot longer to conduct for a variety of reasons. We will not be able to handle as many proceedings on dockets as we could in person and there should be a component added to weighted caseload models to accommodate this change.

Bob

Robert L. Kreiman
Court Executive - 3rd Judicial District

vongsakoun, magdalene

From: Leakey - CDHS, Tricia [REDACTED]
Sent: Wednesday, March 15, 2023 8:44 PM
To: supremecourtrules
Cc: Cliff Moers - CDHS
Subject: [External] Feedback on CJD drafts re: Virtual Proceedings and Live Stream
Attachments: CJD Virtual Proceedings Draft for Comment - Google Docs.pdf; CJD Live Stream Draft for Comment - Google Docs.pdf

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello. Please see the attached feedback from the Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind on the two draft Chief Justice Directives. Please contact me if you have any questions. Thank you.

--

Trish Leakey, J.D.

Pronouns: she, her, hers ([Why it matters](#) | [video](#))

Auxiliary Services Manager

Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind



[REDACTED] | F 303.866.4831

1575 Sherman Street, Garden Level, Denver, CO 80203

[REDACTED] | www.ccdhdb.com

www.facebook.com/CCDHHDB

~~~~~  
Under the Colorado Open Records Act (CORA), all messages sent by or to me on this state-owned email account may be subject to public disclosure. This email and any attachments, from the Colorado Department of Human Services, are confidential and intended solely for the use of the individual or entity to which it is addressed. The information contained herein may include protected or otherwise privileged information. Unauthorized review, forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you have received this message in error, please notify the sender by reply to this message and delete the email without disclosure.

**SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE**

**VIRTUAL PROCEEDINGS POLICY**

**I. POLICY STATEMENT**

For hundreds of years, it has been a bedrock of the American court system that parties, counsel, and participants attend all court proceedings in person. Even with the advent of telephones, computers, and the internet, exceptions to this foundational principle have been rare.

The Covid-19 pandemic has changed that. In the first two years of the pandemic, Colorado courts relied heavily on virtual proceedings. Now that Covid-19 has waned, this Court must address their continuing role in the trial courts.

The use of virtual proceedings has afforded great benefits for parties, attorneys, and other court participants. Virtual proceedings have decreased the substantial costs of coming to court, such as taking time off from work, traveling to the courthouse, waiting for a case to be called, and the extra attorney fees for counsel traveling to and waiting in court. The availability of attorneys to attend courts across the state without travel has also afforded significant opportunities for legal representation in parts of our state that do not have enough local attorneys.

There is, however, also a cost to the use of virtual proceedings. Parties routinely settle their cases after meeting in person outside the courtroom prior to a trial or hearing. There is also a loss of courtroom decorum and solemnity when parties or other participants appear virtually. **Deaf, hard of hearing, and deafblind parties may face additional communication barriers due to bandwidth issues limiting high-quality video for signed languages or a loss of contextual and speech-reading cues due to limitations in being able to view each speaking party.** Finally, the operation of the virtual appearance platform requires ongoing attention from both the judge and staff during each proceeding.

The policy set forth in this Chief Justice Directive further recognizes that each Colorado District Court and County Court Judge is an independently constituted judicial officer, appointed by the Governor and periodically subject to retention elections by the people. As such, this Court must also acknowledge the inherent authority judges have in administering each of their own courtrooms.

This policy also acknowledges that since the pandemic began, each of Colorado’s twenty-two judicial districts has adapted differently in its adoption of virtual proceedings. This Directive recognizes that a variety of factors—including the location of the judicial district, the volume of cases on the docket, and the technological capacity of the judicial district—has resulted in each judicial district’s adoption of virtual proceedings to fit its needs.

Nevertheless, although Colorado judges and magistrates are in the best position to determine the ideal way to adjudicate each individual case, the unpredictable nature of allowing each courtroom to operate independently can lead to confusion for those who must appear in court.

This Chief Justice Directive aims both to strike the proper balance between these competing interests and to create transparency for the courts’ continuing use of virtual proceedings. At a minimum, it is the policy of the Colorado Judicial Branch to provide increased access to the courts through the use of virtual proceedings. This Chief Justice Directive also aims to increase statewide consistency for parties and courts regarding the use of virtual proceedings.

Finally, this Directive creates a baseline from which each judicial officer may determine on a case-by-case basis when good cause exists to depart from this baseline. Moreover, as the benefits of virtual proceedings vary for each jurisdiction, Chief Judges may also adopt local policies to further delineate the continued use of virtual proceedings in their jurisdictions.<sup>1</sup> **Nothing in this Chief Justice Directive alters any obligation of the courts to adhere to the requirements of the Americans with Disabilities Act, including ensuring access to effective communication for deaf, hard of hearing, and deafblind individuals. [MOVE THIS OUT OF FOOTNOTE INTO BODY OF TEXT]**

~~FN1 Nothing in this Chief Justice Directive alters any obligation of the courts to adhere to the requirements of the Americans with Disabilities Act.~~

## **II. APPLICABILITY**

This policy is applicable to all state trial courts.

## **III. DEFINITIONS**

A. In-Person Appearance – An appearance at which all parties and counsel are physically present in the courtroom.

B. Flexible Appearance – An appearance where parties and counsel may elect to appear in person or virtually without seeking prior authorization from the presiding judge.

C. Remote Appearance – An appearance at which all parties and counsel agree to appear virtually.

D. Virtual Appearance – An appearance by computer or smart phone that includes both video and audio transmission. Virtual appearances may include appearing by telephone without video transmission if authorized by the court ahead of the proceeding.

#### **IV. PROCESS**

##### **A. Presumptively In-Person Appearances**

1. The following proceedings require in-person appearances unless the court finds good cause to depart from this presumption:

- a. Jury trial;
- b. Criminal Court trial;
- c. Criminal preliminary hearing;
- d. Criminal suppression hearing;
- e. Criminal habitual trial;
- f. Criminal probation revocation hearing;
- g. Criminal show cause hearing;
- h. Sentencing;
- i. Guilty plea to a Victim's Rights Amendment offense;
- j. Criminal Rule of Procedure 35(c) hearing;
- k. Criminal transfer and reverse transfer hearing;
- l. Extreme Risk Protection Order hearing;
- m. Temporary Extreme Protection Order hearing;
- n. Termination of Parental Rights hearing;
- o. Dependency and Neglect adjudicatory hearing or trial; and
- p. Civil Rule of Procedure 69 hearing.

##### **B. Presumptively Flexible Appearances**

1. Subject to the technological capability and staffing for each courtroom, the following proceedings shall allow for flexible appearances unless the court finds good cause to require a party to appear in person:

- a. Civil case management conference;
- b. Civil status conference;
- c. Domestic relations initial status conference;
- d. Domestic relations case management conference;
- e. Domestic relations pre-trial conference;
- f. Domestic relations status conference;

- g. Domestic relations uncontested hearing;
- g. Garnishment hearing;
- h. Criminal petitions to seal;
- i. Court settings (when no other hearing purpose is scheduled).

2. Unless a court grants express permission, no proceeding conducted virtually may be recorded. Any recording in violation of this Chief Justice Directive may result in contempt proceedings.

C. Subject to the technological capability and staffing for each courtroom, the presiding judicial officer, including any magistrate, may deviate from any presumptive hearing types set forth in this Section IV if notice is provided to the parties and the court has considered the factors for good cause listed in paragraph VII of this Directive.

D. For proceedings not delineated in Sections IV.A or IV.B, each judicial officer, including any magistrate, shall have the discretion to determine whether appearances will be in-person or flexible, subject to the restrictions of C.R.C.P. 43, C.R.C.P. 343, and Crim. P. 43. In exercising such discretion, the court shall consider the factors set forth in paragraph VII of this Directive.

## **V. FORCIBLE ENTRY AND DETAINER (F.E.D.) PROCEEDINGS**

Subject to the technological capability and staffing for each courtroom, the summons return date in F.E.D. proceedings shall be a flexible appearance in those jurisdictions that require a court appearance, unless the court finds good cause to require an in-person appearance.

For eviction trials, the appearance will be in-person unless a flexible option has been ordered by the presiding judge for good cause, subject to C.R.C.P. 343.

The presiding judge shall consider the factors set forth in Section VII when deciding whether to allow flexible appearances.

## **VI. PROCEDURE FOR EXCEPTIONS**

Any party seeking to appear by means other than those set forth in this Directive shall timely file a motion with the court in advance of the proceeding. In the motion, the party should outline the circumstances to be considered for good cause to deviate, pursuant to section VII of this Directive.

## **VII. NON-EXCLUSIVE LIST OF FACTORS FOR GOOD CAUSE**



Judicial officers, either on their own motion or on the motion of any party, should consider the following non-exhaustive list of factors when determining whether good cause exists to allow one or more parties to appear virtually for an in-person hearing:

- A. All parties agree the hearing should be held virtually;
- B. Requiring the party to appear in person would cause a party to reasonably fear for their safety;
- C. The cost and time savings to any party;
- D. Transportation limitations of any party;
- E. The position of the victim in a Victim Rights Amendment case;
- F. Weather and safe travel;
- G. The impact a virtual appearance would have on the Office of Language Access's and/or the Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind's ability to provide an interpreter or captioner (Communication Access Realtime Translation or "CART");
- H. Ability for parties to efficiently conduct the hearing virtually (e.g. introduce evidence, make objections, and examine witnesses virtually);
- I. Judicial economy;
- J. Availability of counsel in the jurisdiction;
- K. Impact on employment of a party;
- L. Technological barriers (e.g. speed and quality of internet, including bandwidth limitations that may impact signed languages such as American Sign Language, and access to technology to allow for effective communication);
- M. Unavoidable scheduling conflicts of the parties preventing the matter from moving forward in a timelier way;
- N. The importance and complexity of the proceeding and whether the proceeding is contested;
- O. The likelihood of settlement if the proceeding remains in-person;
- P. Whether the party has had good contact with their attorney;
- Q. Whether there is a warrant for the party;
- R. Anticipated length of proceeding;
- S. Whether appearing virtually would allow for effective examination of witnesses and maintain the solemnity and integrity of the proceedings and thereby impress upon the witness the duty to testify truthfully;
- T. Any undue surprise or prejudice that might result; and
- U. Such other factors, based upon the specific facts and circumstances of the case, as the court determines to be relevant.

## VIII. IMPLEMENTATION AUTHORITY

Implementation of this policy is the responsibility of the Chief Judges of the Judicial Districts, with support from the State Court Administrator's Office.

## IX. EXECUTIVE LIMITATIONS

A. This policy is not binding upon interpreters, captioners (Communication Access Realtime Translation or "CART"), and court reporters, who will follow their own guidelines for appearing in-person or virtually. Before modifying the presumptive type of appearance under Section IV of this C.J.D., the trial judge should confer with the managing court interpreter in the district about whether the change will be overly burdensome to the Office of Language Access; the Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind; and/or deaf, hard of hearing, or deafblind parties.

B. Chief Judges may issue administrative orders that further specify the judicial district's policies and procedures regarding virtual and in-person proceedings.

## X. OTHER PROVISIONS

The Supreme Court Advisory Committees on the Rules of Civil Procedure, the Rules of Criminal Procedure, the Rules of Juvenile Procedure, the Rules of Probate Procedure and the Rules of Water Procedure are directed to review the rules that govern the format for proceedings in the courts. Those committees are directed to consider whether amendments to the rules are necessary to implement the presumptive format for hearings reflected in this Chief Justice Directive.

CJD 23-XX is amended and adopted effective XXX.

/s/  
Brian D. Boatright, Chief Justice

**SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE**

**LIVE STREAMING COVERAGE OF CRIMINAL COURT  
PROCEEDINGS IN THE TRIAL COURTS**

**I. POLICY STATEMENT**

This Chief Justice Directive issues in conjunction with Chief Justice Directive 23-xx, the Virtual Proceedings Policy.

In response to the Covid-19 pandemic, Colorado courts have utilized virtual proceedings since the spring of 2020. Part and parcel with virtual proceedings has been the live streaming of some criminal proceedings to the public, allowing increased transparency between the public and the courts. This Directive is created to provide a more uniform process for the live streaming of criminal court proceedings in Colorado.

Colorado courts have not historically live streamed court proceedings for several reasons. First, a core requirement of criminal trials and contested evidentiary hearings is the sequestration of witnesses, whereby a witness cannot listen to the testimony of other witnesses in a proceeding. This sequestration preserves the integrity of the proceeding by reducing the risk that witnesses will tailor their testimony to mirror one another. The live streaming of trials and contested evidentiary hearings can potentially jeopardize the effectiveness of such sequestration, as courts cannot monitor who is observing the transmission.

In addition, crime victims are often reluctant to recount their victimization in a public courtroom, especially those who have been sexually assaulted or those subject to domestic violence. The live streaming of such testimony risks making crime victims even more reluctant to testify.

Courts are also responsible for protecting the rights of the accused. An individual accused of a crime can be at risk of retaliation because of the mere nature of the charges. An accused individual may also face retaliation for cooperating with the prosecution by testifying against a co-defendant. The live streaming of certain court proceedings could amplify the risk of harm to those individuals. Live streaming could also jeopardize a defendant's right to a fair trial, particularly when identification of the defendant is at issue.

Finally, Problem-Solving Courts throughout the state require participants to expose deeply personal struggles in open court and to discuss their medical diagnoses, treatment, and

medication management. The live streaming of these proceedings would inhibit rehabilitation in those courts.

This live streaming C.J.D. seeks to open most of the day-to-day business of Colorado's criminal courts to the public, while allowing each trial court the discretion not to live stream proceedings where the public's interest is outweighed by the interests of the parties and witnesses.

Subject to the technological capability of a courtroom and staffing levels, a judicial officer shall live stream certain court proceedings pursuant to the guidelines set forth in this Directive.

## **II. APPLICABILITY**

This policy is applicable to all state trial courts.

## **III. DEFINITIONS**

A. Proceeding - any matter held in open court that the public is entitled to attend in person.

B. Live Streaming - all live one-way transmission of video and audio coverage of a proceeding over the internet for the purpose of public viewing.

C. Judicial Officer - the judge or magistrate presiding over the proceeding.

D. Viewer - any person who is attending the proceedings virtually, either by audio-only or audio-video means

## **IV. ACCESS AND LIMITATIONS**

### **A. Access to Live streaming**

A judicial officer shall provide live streaming during initial bond setting proceedings and any other criminal proceedings, except those limited by this Directive pursuant to sections IV(B) and IV(C). Judicial officers shall have the discretion to expand or limit the live streaming of proceedings in accordance with the Americans with Disabilities Act and after consideration of the standards set forth in section IV(B). Deaf, hard of hearing, or deafblind individuals may request communication access services by submitting a request to [COLORADO JUDICIAL ADA request form?]; requests from individuals who are not parties to the proceedings will be filled when practicable and upon consideration of advance notice and availability of service providers.

### **B. Standards for Expanding and Limiting Live Streaming**

A judge may expand or limit live streaming at any time before or during a proceeding. In determining whether live streaming should be expanded or limited, a judicial officer shall consider the following factors:

- i. Whether there is a reasonable likelihood that live streaming would interfere with the rights of the parties to a fair trial;
- ii. Whether there is a reasonable likelihood that live streaming would create an adverse consequence to a party, attorney, victim, or witness;
- iii. Whether there is a reasonable likelihood that live streaming would unduly detract from the solemnity, decorum, and dignity of the court; and
- iv. Whether any prior violations of this directive or other rules of the court have occurred in the same matter.

### **C. Express Limitations on Live Streaming**

There shall be no live streaming of the following criminal proceedings, except as permitted under sections IV(A) and IV(B) of this Directive:

- i. Evidentiary hearings
- ii. Trials, including jury selection
- iii. Bench conferences
- iv. Communications between counsel and client
- v. In camera hearings
- vi. Problem-solving dockets

### **D. Conditions for coverage**

Live streaming coverage shall be conducted only under the following conditions:

- a. The courtroom is equipped with suitable technology to live stream a proceeding and there is sufficient staff to initiate and monitor the live stream. **The technology must permit access to effective communication for deaf, hard of hearing, and deafblind parties (i.e., sufficient bandwidth for smooth video transmission of signed languages and/or captions).**
- b. Conduct of Viewers. Viewers shall conduct themselves in a manner consistent with the solemnity, decorum, and dignity of the courtroom. If a viewer is disruptive during proceedings, the viewer may be expelled from the live stream by the court without warning and be subject to contempt proceedings.
- c. There shall be no audio- or video-recording, screenshots, or photos of any live streamed court proceeding without express authorization of the court. Those who violate this Directive may be subject to contempt proceedings.

## **V. IMPLEMENTATION AUTHORITY**

Implementation of this policy is the responsibility of the Chief Judges of the Judicial Districts, with support from the State Court Administrator's Office.

## **VI. VIRTUAL PROCEEDINGS COMMITTEE CHARGE**

The Virtual Proceedings Committee shall continue to meet regularly and, with input from stakeholders, recommend any modifications of this Directive.

CJD 23-XX is adopted effective XXXX.

*/s/*  
Brian D. Boatright, Chief Justice

## vongsakoun, magdalene

---

**From:** lee, sumi  
**Sent:** Wednesday, March 15, 2023 5:11 PM  
**To:** supremecourtrules  
**Subject:** Impact of virtual proceedings on evaluation and recruitment of judges

Good afternoon:

Last Friday, I attended the convening of stakeholders to discuss the future of judicial performance evaluation in Colorado, hosted by the Colorado Office of Judicial Performance Evaluation (OJPE) and the Institute for the Advancement of the American Legal System (IAALS). About 45 stakeholders attended the all-day meeting, including members of the Judicial Performance Evaluation Commission, judges, justices, and representatives from diversity bar associations.

I want to highlight a comment made by a Judicial Performance Evaluation Commissioner on the impact of virtual on the judicial performance evaluation process. As you are aware, in-court observations are a part of the judicial performance evaluation process, and traditionally, commissioners have had to make arrangements with court staff and judges and travel to court to observe hearings. Since the availability of virtual hearings during COVID-19, commissioners have been able to observe hearings remotely. This allows commissioners to not just watch hearings easily, but also watch a more variety of cases to evaluate the judge's demeanor and decisionmaking process from the bench. It was also noted that in rural jurisdictions, some commissioners have to travel more than 200 miles to observe hearings because Judicial Performance Evaluation Commissioners do not have the same residency requirements that Judicial Nominating Commissioners have. In our day-long convening, there was consensus that the amount of data and information currently used to evaluate a judge's performance is insufficient, and that more evaluative resources about the judges would improve the quality of the evaluation and both the judges' and the public's confidence in the evaluations.

As I engage in the work of creating a diverse pipeline to the bench, virtual proceedings also impact in the recruitment of future judges as well. Many of the attorneys, judges, and justices that coach diverse judicial candidates encourage attorneys to observe hearings in the courts they are applying for so that they get a full-picture understanding of what the job entails. This not only provides helpful information for what the day-to-day life looks like for a judge, but it also enhances the candidates' understanding of the skillset required and the sometimes difficult aspects of being a judge. For busy law students interested in judicial internships and for busy attorneys interested in applying to the bench, being able to log into virtual proceedings from one's own computer aids in their understanding of what a judge does. Increased accessibility also allows us to reach law students and attorneys from underrepresented communities because it makes being in a "courtroom" less intimidating and more accessible. I believe that the continuation of virtual proceedings and having them be uniformly available in Colorado will have a positive impact on the recruitment of future judges and the evaluation of current judges.

Thank you, and please reach out to me if you have any questions.

Best,  
Sumi

Sumi Lee (she/her/hers)  
Head of Judicial Diversity Outreach  
State Court Administrator's Office  
Colorado Judicial Department

<https://www.courts.state.co.us/judicialdiversity>

## **vongsakoun, magdalene**

---

**From:** lindsey, amanda  
**Sent:** Wednesday, March 1, 2023 11:04 AM  
**To:** supremecourtrules  
**Subject:** HB23-1186 and HB23-1182 Comments

Good morning,

Here are my concerns I have about HB23-1186 and HB23-1182. I have not had time to read through them as I'm trying to prepare for my dockets today and tomorrow, as well as work reports. I'm going to be brutally honest and want to be clear that what I'm about to say is **my opinion and only my opinion**. I have been with judicial coming up on 16 years and before that, I worked in Fort Morgan for a local law firm. I've been in the legal profession in some capacity since May 2000.

My opinion is that Colorado Judicial, through legislation, has gone from holding court participants accountable for appearing in court and filing correct pleadings to babysitting. Parties used to be required to attend court proceedings in person and, with some assistance from clerks, file pleadings with the correct caption information, signatures, completed certificates of service, etc.

Now, it seems, the court clerks are in the business of babysitting. A program was created to text reminders to court participants of their next court date and time. Unfinished pleadings are emailed to the clerks' office and not sent as an attachment, but as picture and is sent in sideways or skewed. The clerks must take extra time to reach out to the party for corrections and most of the time, the party cannot be reached. So, the pleading gets filed "as-is."

As a division clerk, I have had parties appear via Webex who are sitting outside their house while a train goes by, or their children, or pets, are loud in the background. You mute them, they unmute themselves and I have to constantly mute them instead of typing my MINC. Or parties either pretend not to know how to operate their camera while on Webex or truly don't know how to operate their camera for Webex and the court cannot verify the identity of the party on Webex.


So now there is legislature that wants to allow defendants to appear virtually, file electronically when most of the FED defendants in our district either don't have that capability or say they don't know how. How is the defendant supposed to pay the answer fee? Nine times out of ten the parties will file an MIFP but won't provide financial documentation. In training clerks I've told them that the state randomly audits files and if they audit a file that has an MIFP without the financial "proof", our court could be dinged for it. I feel this is putting the clerks into an even tighter spot with what we're already tasked to do.

I recently told someone that I feel it should be a requirement for a legislator to work as a court judicial assistant for no less than one year before they can qualify to become a legislator. That way they would, hopefully, understand what it means to be on the frontlines when these bills are pushed through. Colorado residents already distrust the judicial system and blatantly blame judges, and clerks, for what legislators have created. I feel the passing of these two bills will not improve that relationship.

Thank you for your time, for allowing us to have a voice. I apologize if I have offended you with my opinions. I guess maybe I'm just "old school" where I want parties to be held accountable and responsible. The weight of babysitting parties (public, attorneys, defendants, plaintiffs) is a burden that all clerks bear while also trying to maintain CJA duties.



Thanks,  
Mandi

Amanda L. Lindsey  
Division Clerk – Judge Robert C. James  
13<sup>th</sup> Judicial District  
400 Warner Street  
Fort Morgan, CO 80701  


**vongsakoun, magdalene**

---

**From:** Travis Lindsey [REDACTED]  
**Sent:** Wednesday, March 1, 2023 9:50 AM  
**To:** supremecourtrules  
**Subject:** [External] Comment RE: CJD Virtual Proceedings Draft for Comment

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

For what it is worth, I wholeheartedly support the Colorado Supreme Court's efforts to adopt and implement a permanent and comprehensive Virtual Proceedings Policy. This capability has provided for much greater access to our courts for clients/litigants/persons who would not otherwise have such open, transparent and convenient access.

Not to mention, for selfish reasons, the ability for attorneys to represent clients in certain matters from afar.

Kudos!

Travis



**Travis R. Lindsey**  
Attorney at Law  
[REDACTED]  
o: 855.472.6525 x700  
[REDACTED]  
f: 888.938.1717  
15501 N. Adeline Ln.  
Spokane, WA 99208  
Licensed in CO, MT, TX, WA, ID

Unless explicitly and conspicuously designated as "E-Contract Intended," this e-mail does not constitute a contract offer, a contract amendment, or an acceptance of a contract offer. Nothing in this message should be construed as a digital or electronic signature.

CONFIDENTIALITY NOTICE: This e-mail (including any attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521. The information contained in this e-mail communication and any attached documentation may be privileged, confidential or otherwise protected from disclosure and is intended only for the use of the designated recipient(s). It is not intended for transmission to, or receipt by, any unauthorized person. The use, distribution, transmittal or re-transmittal by an unintended recipient of this communication is strictly prohibited without the sender's express approval in writing or by e-mail. If you are not the intended recipient of this e-mail, please delete it from your system without copying it or any attachments and notify the above sender so the e-mail address may be corrected. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work-product privilege. If you have received this e-mail in error, please contact me at [travis@lindseypllc.com](mailto:travis@lindseypllc.com).

**vongsakoun, magdalene**

---

**From:** madden, kathleen  
**Sent:** Wednesday, March 1, 2023 8:29 AM  
**To:** supremecourtrules  
**Subject:** Virtual Proceedings Policy

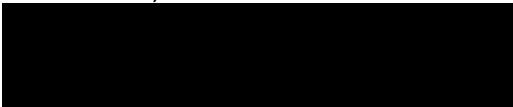
The only question I had as I read the draft CJD has to do with JD proceedings. I believe there is value in having the juvenile in person for certain hearings types much like you have outlined in the criminal case type. Maybe you consider them one of the same, but clarification might be helpful to avoid confusion if that is the intent.

Thank you for drafting such a thoughtful and important CJD to address the changing landscape of the judiciary, and for the opportunity to provide comments.

Respectfully,

*Kathleen A. Madden*

Kathleen A. Madden  
Larimer County Clerk of the Combined Court  
Larimer County Justice Center  
201 LaPorte Ave., Suite 100  
Fort Collins, CO 80521-2761



**vongsakoun, magdalene**

---

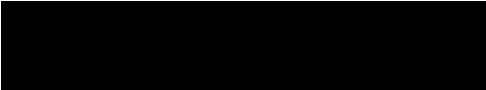
**From:** madden, kathleen  
**Sent:** Wednesday, March 1, 2023 2:36 PM  
**To:** supremecourtrules  
**Subject:** Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts

Good morning, From the moment I had heard about the proposed legislation on this topic, I questioned whether we would be violating people's right by televising court appearances potentially across this world without their consent. It is one thing to have a courtroom open to the public for these hearings, but it is very different to have your business broadcast live on the internet for the entire world to see. I feel as if consent should be considered somewhere in this process. This impacts not only defendants, but court employees, interpreters, court reporters, attorneys, witnesses, victims, law enforcement, and more.

I also wondered as I read this how this change to live streaming will impact the way we manage media in or out of the courtrooms. Currently the courts have some say in whether video or camera will be allowed at hearings and who can attend. Will this change the media request process? The CJD does not allow any screenshots, photos or video or audio recordings without express authorization and will hold folks in contempt if they violate the CJD. I wonder how this impacts the media world if at all and how we will really enforce contempt when there is a violation.

Just some thought. Thank you for asking for comments.

Kathleen A. Madden  
Larimer County Clerk of the Combined Court  
Larimer County Justice Center  
201 LaPorte Ave., Suite 100  
Fort Collins, CO 80521-2761



**vongsakoun, magdalene**

---

**From:** Lucy Martin [REDACTED]  
**Sent:** Friday, March 3, 2023 11:05 AM  
**To:** supremecourtrules  
**Subject:** [External] The Future of Webex

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

I am writing today as an ADC and ORPC contractor to support keeping and, in some cases, expanding Webex court appearances. I practice primarily in Arapahoe County but take criminal cases all over the state.

As an attorney, I am able to do so much more in a day with Webex. In addition, I am not charging the State mileage and travel time and am not adding to the terrible air quality of metro Denver and the Front Range.

But more importantly, Webex enable my clients to participate without having to get gas money, transportation, child care, or elder care. Many times, clients can call in from their jobs, thus avoiding jeopardizing their work.

Having Webex is critical for clients who are in custody or out of state, so they can appear by video not just by phone.

It has come to my attention that some judges think that in person proceedings give the process more solemnity or something. Frankly, no parent has ever been MORE successful in completing a treatment plan just because they had to go to court and participate in a more formal proceeding. I think there is some real ego involved on the part of such judges. The idea of making it easy for parents to participate should warm the hearts of judges, but there are some old school types who are actually opposed to making this easy. They seem to believe that having more personal contact with them enriches the proceedings. It doesn't. This is a system which causes a lot of anguish to people. We are all participating in it. The least we can do is try to alleviate the pain in the lives of struggling people by expanding access. Clients who struggle with mental health and substance use, and who have conflictual personal relationships with other parties, are much more likely to appear in Court by Webex. The participation rate is higher, which should lead to more thoughtful decision-making and negotiation processes.

I'm asking the Supreme Court to continue to think outside the box here. Let's continue a system which has made practicing law much easier, especially for court-appointed counsels who have multiple concurrent responsibilities, and has enabled wider participation.

We should, of course, retain the right to request an in person appearance when that makes sense, i.e. for a trial or termination proceeding. A six minute review hearing can be handled more efficiently and less painfully for everyone involved if we continue to use Webex.

Thank you for your consideration.

Lucy A. Martin

[REDACTED]  
1120 Lincoln St. Ste. 1109  
Denver, CO 80203

Sent from [Mail](#) for Windows

**vongsakoun, magdalene**

---

**From:** Kevin Massaro [REDACTED]  
**Sent:** Monday, March 13, 2023 1:53 PM  
**To:** supremecourtrules  
**Subject:** [External] Comments on virtual proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Justices,

In general, virtual proceedings are a good idea for the many short, simple court appearances such as status conferences, criminal cases where you are setting dates, and even pretrial readiness conferences. Since the only thing private counsel has to sell is their time, it's sure a lot easier to bill for a half hour in total rather than adding the 90 minutes of to/from drive time for the 2 hour total. And it allows us to handle more cases, even situations where we have a 9 am status conference in Douglas County and a 10 am appearance in Adams County. If they are both handled via the Web, it works well for both clients, improving access to justice.

Anyone practicing in the metro area or enjoying work in mountain towns, as I do, can give the client better value for the legal fees spent if we don't put the car in drive unless it's a substantive event in the case. New rules tend to add to the cost of litigation. For example, in dissolutions, the 12 page Sworn Financial Statement replaced the 7 page Financial Affidavit that nobody ever got right in the first place but it twice as long to complete, with no better accuracy. I don't want to have to drive to Park County, for example, for very simple events like status conferences. The mountain towns for years have let us appear by telephone rather than drive or fly out for a short hearing anyway, understanding the cost of drive time or flight time.

For events that may take more than an hour, or where criminal defendants must take a plea or need to appear for reasons of managing their lives, it's probably best done in person. Otherwise, avoiding windshield time is a plus for both the lawyers and the clients. But Webex hearings keep counsel from being in the same courtroom, which I suspect makes it less likely to settle cases. I don't have numbers to back up that claim, but it's almost always easier to settle in person.

I suppose that is a long-winded way of saying we should be using Webex a lot for the simple stuff, and in person for the longer-duration matters, anything involving a bond (unless the party is represented where counsel can confirm it's the defendant) and any criminal plea. Simplifying the effort necessary for a procedural, rather than substantive matter, also allows us to represent more clients, which is not a bad thing either.

Thank you for considering my suggestions.

*Kevin Massaro*  
*Attorney*  
*Pickard Law, P.C.*  
*12712 W. Ken Caryl Avenue*  
*Littleton, CO 80127*  
*(303)989-6655 Office*  
*(303)989-6773 Fax*

***Please copy the paralegal(s) assigned to this case on all email messages. Thank you.***

***Email:*** [REDACTED]

***Visit us at:*** [www.lawpickard.com](http://www.lawpickard.com)

***Visit us on Facebook:*** <https://www.facebook.com/lawpickard>

***This message may contain settlement discussions, inadmissible per CRE 408 in any proceeding.***

***Confidentiality Notice:***

***This e-mail and any attachments contain information from the law firm of Pickard Law, P.C., and are intended solely for the use of the named recipient or recipients. This e-mail may contain privileged attorney/client communication or work product. Any dissemination of the e-mail by anyone other than an intended recipient is strictly prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you believe you have received this e-mail in error, notify the sender immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments.***



**vongsakoun, magdalene**

---

**From:** Janene McCabe [REDACTED]  
**Sent:** Wednesday, March 15, 2023 4:05 PM  
**To:** supremecourtrules  
**Subject:** [External] Comment for Chief Justice Directives regarding the continuation of virtual proceedings  
**Attachments:** CCDB Response to Chief Justice Directives regarding the continuation of virtual proceedings.doc

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

As president-elect of the Colorado Criminal Defense Bar, we are submitting our comments for the CJD on Virtual Proceedings. We appreciate the work that has been done by the Court and the invitation to provide our input.

Sincerely,

 **McCabe Law**

Janene K. McCabe  
1919 14<sup>th</sup> St. Suite 700  
Boulder, CO 80302

[REDACTED]  
<https://mccabe-law.net>  
[REDACTED]

**CONFIDENTIALITY NOTICE:** This e-mail, including attachments, is for the sole use of the intended recipient(s) and contains confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

**2022-2023  
Board of Directors**

**Josh Landy**  
*President*

**Janene McCabe**  
*President-Elect*

**Mandarin Bowers**  
*Treasurer*

**David Maxted**  
*Secretary*

Fred Bibik  
Amelia Blyth  
Michael Carter  
James Castle  
Andrew Ho  
J.B. Katz  
Jamie Keairns  
Michelle Kellond  
Kevin LaBranche  
Sean Lacefield  
Ashley Morriss  
Lucienne Ohanian  
Sarah Schielke  
Kara Smith  
Josh Tolini  
Danielle Touart

**Executive Director**  
*Kathleen Murphy*

**Chapters  
Adams County**  
Jay Tiftickjian

**Arapahoe County**  
Lisa Moses  
Rob Werking

**Boulder County**  
Sydney Dolan  
Jennifer Zimmerman

**Colorado Springs**  
Josh Tolini

**Denver**  
Angela Campbell  
Melissa Roth

**Douglas County**  
Malcolm Seawell

**Grand Junction**  
Sarah Tenhoff

**Jefferson County**  
Melissa Garscin

**Pueblo**  
Adam Schultz

**Weld County &  
Fort Collins**  
Melanie Sedlak

**CCDB Response to Chief Justice Directives regarding the continuation of virtual proceedings**

Our membership, consisting of 800 plus criminal defense attorneys across the state of Colorado, agree that Covid-19 changed the way we practiced law. For many of us, we learned quickly that remote access to courtrooms, files, and cases allowed us to continue to effectively and efficiently serve our clients.

We agree with the Chief Justice Directive proposal, that some appearances in criminal cases should be deemed presumptively in-person while others may be held either in-person or by remote access.

**Presumptively-In person Appearances**

We agree that any hearing that involves testimony to be provided by sworn witnesses should be in person unless the court and /or the parties agree to depart from this presumption. This includes, jury trials, criminal court trials, preliminary hearings, suppression hearings, habitual criminal trials, probation revocation hearings, transfer and reverse transfer hearings and show cause hearings.

We agree that preserving our clients constitutional rights to confrontation, effective assistance of counsel, due process and jury trials are accomplished with in-person live testimony.

We disagree that any guilty plea hearing to a victim's rights amendment offense presumptively requires an in-person appearance. This is especially true for out-of-state defendants and those held in jails other than the jurisdiction where the hearing is held. We learned during the pandemic, that quality plea hearings and even sentencing hearings may take place in the virtual courtroom while providing justice to clients, victims and the public.

**Presumptively Flexible Appearances**

We agree that certain court appearances should be presumptively flexible appearances for clients in criminal cases, including petitions to seal and settings where no hearing is held. We encourage the Chief Justice Directive to require judicial officers to make specific findings when denying virtual appearances for these court settings. We have seen some judicial officers use their own preferences for in-person hearings and a return to status-quo rather than considering the hardship to clients or the factors for good cause.

## **Clients Held in Custody**

We knew prior to the pandemic that requiring in-custody clients to be transferred back and forth between jurisdictions for in-person appearances caused hardships with communicating with those clients and resolving their cases. The writs for various court dates also caused clients hardships when trying to meet with counselors, probations officers for PSI interviews or screening committees.

Many jails adapted during the pandemic and began offering professional phone calls and virtual visits for attorneys in other jurisdictions and continue to offer these alternative systems today. Today, clients are able to be held in one jurisdiction and communicate with their lawyers and appear virtually to resolve cases in other jurisdictions.

We believe that allowing in-custody clients to appear virtually for plea hearings and sentencing hearings preserves judicial economy and ensures access to justice.

However, while the use of technology is helpful for our in-custody clients, we agree that they should continue to have the right to appear in person at any hearing for which they choose. Some clients felt like an outsider when they were the only participant excluded from the courtroom during virtual hearings. These clients would choose to be in person and be present for all court settings and hearings in their case.

## **Public Access to Hearings**

While we support and encourage the public, our clients and their family members to take advantage of the ability to view courtroom proceedings, we believe the Chief Justice Directive must also take steps to ensure that orders of sequestration are promoted and obeyed. With the ability to observe any proceeding by the click of a button, judicial officers will need to take proactive steps to inform potential witnesses of sequestration orders and enforce the orders as necessary.

**vongsakoun, magdalene**

---

**From:** mccallum, robert  
**Sent:** Tuesday, March 14, 2023 4:08 PM  
**To:** supremecourtrules  
**Cc:** sarche, jon  
**Subject:** Comment: Proposed CJDs on Live Streaming and Virtual Proceedings  
**Attachments:** CJD Live Stream PIO Comments FINAL.pdf

Thank you for the opportunity to provide the attached comments regarding the Court's consideration of CJDs for live streaming and virtual proceedings.

As always, we are available should the Court have questions.

Respectfully,  
Rob and Jon

Rob McCallum  
Public Information Officer  
Colorado Judicial Department  
Twitter: @cocourts

March 14, 2023

Honorable Justices of the Colorado Supreme Court,

Thank you for the opportunity to provide comment on the Court's consideration of Chief Justice Directives (CJDs) addressing the continuation of virtual appearances and live streaming of proceedings.

As the Colorado Judicial Department's public information officer, I, along with Deputy Public Information Officer Jon Sarché, are arguably the department's most well-versed resources on the history and landscape of Chapter 38, Rule 3, (Rule), which covers Expanded Media Coverage (EMC), or cameras in the courtroom, pre-pandemic, as well as the use of live streaming through the pandemic, and still today.

We are pleased the Court is considering adoption of CJDs to provide guidance to the trial courts, counsel, media and public on these important community and legal topics regarding openness and transparency in Colorado's courtrooms. The Public Information Office has long supported the presence of cameras in courtrooms, under the parameters of the Rule, and at the discretion of the presiding judge. Just as the physical presence of cameras in the courtroom is codified by court rule, the application of live streaming and virtual appearances should be guided through the proposed CJDs.

We believe virtual appearances and live streaming should continue under certain circumstances. We do not believe a defendant should be allowed to appear virtually for an arraignment for example, unless physically unable to do so perhaps, but we do believe live streaming of the arraignment should be allowed. We also believe, just as with the Rule, the presiding judge's ruling regarding virtual appearances and live streaming, on a case-by-case basis, shall be final and unappealable. (Prior to the court's ruling, counsel would be permitted to file motions or take positions on any proceeding as is currently the case).

For example, we see good reason why a judge could rule to disallow a live stream in certain cases, such as sex assaults and those involving minors. For most cases, however, transparency and openness in our courts should rule. Those who have an interest in a case, or cases, but are unable to attend hearings in-person, should be able to watch the rule of law upheld via live stream as though they were in-person in the courtroom. Openness in our courts and access to justice for all are hallmarks of our institution. It is time we modernize our business practices with the latest available technologies and give guidance regarding best practices involving those technologies through these CJDs.

Our reason for submitting comment is not only to endorse adoption of the CJDs, but primarily to ask that the Court consider the connection between the Rule, and these potential CDJs before finalizing them. The Rule currently allows for the presence in the courtroom of one video camera, one still camera and one audio recorder to be considered by the court when media files a request for EMC for an advisement, arraignment, trial and any subsequent sentencing. Absent those hearings, the Rule does not allow for any other pretrial hearings in criminal cases to be recorded through a camera in the courtroom or live stream.

Currently, judges in Colorado are considering the intersection of the Rule and live streams in different ways. That consideration typically ends up one of five ways. First, the court allows the live stream without consideration to EMC or notice to those watching if the stream may be recorded. Second, the court grants an EMC request within the parameters of the Rule, but rather than allowing cameras in the courtroom, only allows the live stream to be used as the EMC. Third, the court grants EMC allowing cameras to be present in the courtroom under the parameters of the Rule and allows the live stream to be broadcast and recorded. Fourth, the court allows cameras to be present in the courtroom under the parameters of the EMC, but does not allow the live stream, or if one is allowed the court does not allow it to be recorded and rebroadcast. Finally, the court denies the request for EMC but allows the live stream,

or in some cases does not allow the live stream. Except for the first scenario, the court will typically issue a written ruling addressing the EMC request and noting if the live stream may or may not be recorded.

With the current virtual appearance and live stream environment, there is no guidance provided to the state's judicial officers regarding the importance of and considerations that should be made with virtual appearances and live streaming intersecting with the Rule. That translates to a lack of clarity for the courts, counsel, litigants, media, and anyone watching the stream regarding whether recorded is allowed. We hope the CJDs would clarify that live streaming may, but not must, replace actual cameras in the courtroom under the parameters of the Rule.

As an aside, if the live streaming is to be permitted and the use of it defined through CJDs, the CJDs provide statewide uniformity for the bench. The same uniformity should be considered with respect to the streaming platforms used statewide. There should be uniformity in the appearance of all virtual courtrooms statewide, which would enable the inclusion of a screen within the hearing screen indicating if the hearing may be restreamed, recorded and/or rebroadcast based on the court's ruling.

Another benefit of allowing live streaming, particularly in high-profile cases that have attracted significant media attention, is that it helps reduce crowding in courtrooms and courthouses. When journalists and other observers choose to watch a proceeding from their home or office rather than try to arrive at a courtroom early to secure a seat, it can help ease some security concerns and ensure enough seating for parties and families of defendants and victims.

As we see it, some courts are often using and endorsing virtual appearances and live streaming, while others are using it sparingly. Our hope is that given direction through these CJDs, more courts will choose to maximize use of this important public service, and that the CJDs will include direction to the state's judicial officers regarding the application of the Rule. We also think it should be emphasized that the use of live streaming does not replace the authority of a court to allow for cameras to be present in court under the Rule, although it may.

Respectfully,



Rob McCallum  
Public Information Officer



Jon Sarché  
Deputy Public Information Officer

\*It should be noted that the Rule was designed with criminal cases in mind. Judges on other dockets do not tend to use live streaming as often or regularly. Application of the CJD should consider individual dockets, although the vast majority of EMC requests are for criminal cases.

**vongsakoun, magdalene**

---

**From:** Beth McCann [REDACTED]  
**Sent:** Wednesday, March 15, 2023 5:58 PM  
**To:** supremecourtrules  
**Subject:** [External] comments on Virtual Proceedings Policy

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for the opportunity to comment on the proposed policy regarding virtual proceedings. In general my office supports allowing virtual appearances in some criminal proceedings and we agree with the suggested proceedings that presumptively require in-person appearances including several in criminal cases. We support allowing the judges some discretion by finding good cause to depart from the presumptions.

We do want to ensure that victims are not required to appear in person for certain proceedings such as a probation revocation hearing or sentencing hearing and that they can observe such proceedings virtually if the court is allowing for live streaming.

Thank you

Beth



**Beth McCann | Denver District Attorney**  
Denver District Attorney's Office  
201 W. Colfax Avenue, Dept. 801 | Denver Co, 80202  
[REDACTED] | 720-913-9035 (F)  
[REDACTED] | [www.DenverDa.org](http://www.DenverDa.org)  
Pronouns: she/her/hers

## vongsakoun, magdalene

---

**From:** Beth McCann [REDACTED]  
**Sent:** Wednesday, March 15, 2023 5:57 PM  
**To:** supremecourtrules  
**Subject:** [External] Draft of Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

We have discussed the proposed draft concerning live streaming of proceedings in criminal courts. In general, we are in agreement with the proposed draft. It is much more convenient for victims of crime and their families to be able to watch proceedings virtually than having to come to the courthouse and sit in the same courtroom as the defendant. Some victims and family members do not live in Colorado so would otherwise not be able to observe. As stated by the lead Victim Advocate in my office:

The majority of victims and VAs are very glad and relieved to have the option to join court virtually for dockets, guilty pleas, and sentencings. It is far scarier to be present in court with the defendant (and sometimes the defendant's intimidating family) for most victims than to simply unmute their microphone from a safe and private location and speak. It also creates less security risk for our Sheriffs. . . Traffic, parking and waiting all day for cases to be called on a large docket day can cause victims to have to miss entire days of work, not to mention the high cost of paying to park at the local lots by the courthouse.

The Victim Rights Act was amended in 2022 to state that a victim has the right to be present during all critical stages expanded to include by phone, virtually by audio or video or similar technology. C.R.S. Sec. 24-4.1-302.5(b)(2022).

In addition, livestreaming trials allows members of our office and members of the public to watch trials much more easily than having to come to the courthouse. A young woman attorney recently watched one of the interesting criminal trials in Denver District Court and, as a result, applied to be a deputy district attorney in our office because she was so impressed with the presentation. She has been with us for about a year now and has a great future in the office. Live streaming also allows members of both the District Attorney's office and the Public Defenders' office to observe and learn from their fellow lawyers in trial or hearings. The draft proposal allows for judicial discretion so that judges can consider the pros and cons of live streaming when making the decision

The biggest concerns of the office relate to the issues surrounding sequestration of witnesses and the ability of a witness to watch another witness's testimony. Some witnesses may be afraid of retaliation as a result of testifying. However, judges have some means to limit who is watching the trial or hearing at any particular time. I have heard judges ask the people watching to identify themselves. Members of my office have informed a judge when they see a potential witness online so the judge can ask that person not to watch or listen. I believe the judge or the clerk have the power to remove a person from listening or restrict those allowed to listen.

So, overall, we support the presumption of live streaming with continued judicial discretion.

Beth





**Beth McCann | Denver District Attorney**

Denver District Attorney's Office

201 W. Colfax Avenue, Dept. 801 | Denver Co, 80202

[REDACTED] | 720-913-9035 (F)

[REDACTED] | [www.DenverDa.org](http://www.DenverDa.org)

Pronouns: she/her/hers

**vongsakoun, magdalene**

---

**From:** Amber McClain [REDACTED] >  
**Sent:** Tuesday, March 7, 2023 12:20 PM  
**To:** supremecourtrules  
**Subject:** [External] Virtual Proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I would like to comment regarding the continuation of virtual proceedings. As a lawyer primarily practicing family law, I would note that most of my clients prefer virtual proceedings, when possible, especially for non-contested proceedings and for many contested proceedings as well. Attending hearings virtually has saved my clients copious amounts of money because I no longer have to charge for travel time. Virtual hearings make it easier for clients to attend hearings because it means taking less time off from work. I have many clients who struggle to pay bills as it is. So a short virtual appearance could mean less time taken off work for the client or no need to find child care for a short appearance, and more money available for their family needs.

Virtual appearances also benefit attorneys because we can accomplish more work, handle more cases, and while living more rural areas or even out of state and still practice in Colorado. We often discuss ways to support the mental health and wellbeing of legal professionals in Colorado, and virtual hearings reduce stress, travel costs, time and allows for more work/life balance.

Therefore, I strongly support the continuation of virtual appearances.

Amber D. McClain  
Senior Associate Attorney  
Supervising Attorney

[www.NewLeaf.Family](http://www.NewLeaf.Family)  
A division of AndersonDodson, P.C.  
14143 Denver West Parkway  
Suite 100-50  
Golden, Colorado 80401  
[REDACTED]  
720-680-1113  
[REDACTED]

Other Locations:  
Aurora: 6105 S Main Street, Suite #200, Aurora, Colorado 80016  
Centennial: 7853 East Arapahoe Court, Suite 2900, Centennial, Colorado 80112



**Disclaimers:**  
If you have received this communication in error, please notify the sender immediately by the telephone number above and destroy the message. Please do not send confidential, proprietary, or otherwise sensitive information via e-mail. Communication via e-mail does not establish an attorney-client relationship.

CONFIDENTIALITY NOTICE: This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. This communication may also contain material protected and governed by the Health insurance Portability and Accountability Act of 1996 (HIPAA). This e-mail is only for the personal and confidential use of the individuals to which it is addressed and contains confidential information. If you are not the intended recipient, you are notified that you have received this document in error, and that any reading, distributing, copying or disclosure is unauthorized.

**vongsakoun, magdalene**

---

**From:** Jasmina Memic [REDACTED]  
**Sent:** Tuesday, March 7, 2023 1:12 PM  
**To:** supremecourtrules  
**Subject:** [External] CO Supreme Court Public Comment  
**Attachments:** image006.png

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Being able to appear remotely has not only made the practice of law more efficient and less stressful, but it has significantly decreased the cost to our clients. For instance, when we are allowed to appear remotely, the client no longer has to incur the expense of travel, printing and assembling trial notebooks, and they do not have to lose hours of work to appear at relatively short hearings. I would love to see the virtual appearances continue. It has been a wonderful and progressive change to the practice of law.

Sincerely,

Jasmina Memic, Esq.

**PLEASE NOTE OUR ADDRESS HAS CHANGED**



*Everson & Memic Law, L.L.P.*

Telephone: [720.398.8863](tel:720.398.8863)

**We have gone virtual during COVID**

Please direct any mail to:

13611 E. 104th Avenue, Suite 800, #313

Commerce City, Colorado 80022

[www.eversonmemiclaw.com](http://www.eversonmemiclaw.com)

CONFIDENTIALITY NOTICE: This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. Section 2510-2521 and is legally privileged. This message and any attachments hereto may contain confidential information intended

only for the use of the individual or entity named above. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this email message is strictly prohibited. The sender does not waive any privilege in the event this message was inadvertently disseminated.

If you have received this communication in error, please notify sender immediately by telephone or return email. Thank you.

## vongsakoun, magdalene

---

**From:** Alex Monk [REDACTED]  
**Sent:** Tuesday, March 7, 2023 1:48 PM  
**To:** supremecourtrules  
**Subject:** [External] Comment: Virtual Proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning Colorado Supreme Court,

I practice Criminal Defense throughout Metro Denver and across the Front Range and I am also contacted as a GAL in the 2nd J.D. through the Office of the Child's Representative.

I'm writing to advocate for a hybrid virtual/in-person court model.

In the criminal arena, so much time is wasted sitting in in-person court, for hours, to address a two minute record. More efficient use of lawyer's time contributes to a better practice of law. From a public policy standpoint, defendants are more successful in their rehabilitation when they miss less work, battle with fewer transportation barriers, and lead a more productive life. A hybrid model contributes to this.

I would favor in-person hearings when any party moved the court for an in-person hearing and/or for any evidentiary hearing or trial.

In a Juvenile Law courtroom, I believe that my points above are even more evident. Parents working through D&N proceedings, as example, are working towards rehabilitation. This often includes parenting-time visitation, treatment programs, employment, etc., all while raising children. Alleviating the need to come to court, when not absolutely necessary, contributes to their rehabilitation and ultimately makes for a better parent to children.

As a GAL for children, I'll also add that my child clients are significantly more likely to participate in the legal process when a virtual appearance is offered. That's benefit alone justifies a hybrid model for me.

I appreciate the Court's consideration on this and I agree with the Court that we have a unique opportunity to modernize and improve the practice.

My best,

Alex

Attorney / Guardian ad Litem (GAL)

Alex Monk Law, LLC

AlexMonkLaw.com



**vongsakoun, magdalene**

---

**From:** montoya, curtis  
**Sent:** Tuesday, March 7, 2023 10:55 AM  
**To:** supremecourtrules  
**Subject:** HB23-1198 Comments

HB23-1186

4 (b) A PRO SE DEFENDANT MAY FILE AN ANSWER ELECTRONICALLY  
5 THROUGH AN E-FILING SYSTEM. **IF EITHER PARTY IS PRO SE, THE PARTY**  
**6 MAY FILE A MOTION OR OTHER DOCUMENTS, INCLUDING, BUT NOT LIMITED**  
**7 TO, EVIDENCE,** ADDITIONAL DOCUMENTATION, OR A MOTION TO WAIVE  
8 FILING FEES, ELECTRONICALLY THROUGH AN E-FILING SYSTEM

The 16<sup>th</sup> JD allows for email filing but we frequently run into pro se parties emailing evidence that is disorganized or incoherent. Our policy has been to ask parties to resend these documents. If they cannot make the corrections requested, they are then asked to file in-person. I believe it is important to include language allowing the courts to require in-person filing if e-filing cannot be done currently by parties.

C.J. Montoya  
Court Executive  
16<sup>th</sup> Judicial District



## **vongsakoun, magdalene**

---

**From:** moses, marie  
**Sent:** Wednesday, March 15, 2023 10:07 PM  
**To:** supremecourtrules  
**Subject:** Comments to Proposed CJD related to virtual proceedings

Dear Committee:

Thank you for preparing such a thoughtful proposal for addressing virtual proceedings. I am writing to address a few concerns that I have with the proposed CJD.

At the present time, I am the newly appointed Presiding Domestic Relations Judge in the 2<sup>nd</sup> Judicial District.

I am generally supportive of the provisions of the proposed CJD which encourage virtual proceedings in DR matters where the proceedings are ministerial or case management functions. When parties are represented by attorneys, allowing virtual appearances is a tremendous time (and therefore money) saving option. And, for parties that are not represented, allowing for virtual proceedings saves parties money by lessening the amount of time they have to take away from work and saves them the expense of traveling to court (and parking in downtown Denver).

However, I am very concerned about making DR Initial Status Conferences presumptively virtual. I agree that in cases involving two attorneys, virtual ISCs are ideal and there is almost never a reason that such an event should need to be held in person. However, when one or more of the parties is *pro se*, conducting an in-person ISC is vital to the ability of Family Court Facilitators to communicate critical information to *pro se* parties. In Denver, our Family Court Facilitators provide *pro se* parties with copies of the forms that they need to complete as part of their cases. Unrelated to the proposed CJD and prior to my awareness that it was in development, I asked our FCF if they wanted to move to a system where they held more ISCs virtually. They were all opposed to moving to virtual ISCs. The FCFs thought that they had much more success communicating information to *pro se* parties in person where they could look at the *pro se* party's documents, point out errors or deficiencies, and provide *pro se* parties with the resources and guidance that they need. Additionally, because Denver has a robust Pro Se Resource Center, the FCFs can send *pro se* litigants down to the Resource Center following their ISC to get help with filing motions for service by publication (for example).

Accordingly, I am asking that you remove Initial Status Conferences involving *pro se* litigants from the list of presumptively flexible events. I do believe that ISCs involving two attorneys could be presumptively flexible events.

Finally, I would like to suggest that cases where one or more of the parties requires the assistance of an interpreter should be excluded from Sections IV(A) and IV(B). As I am sure you are aware, there is an intense shortage of interpreters available for court proceedings and moving more cases to a virtual platform will exacerbate this shortage. Often when parties appear virtually, they are using their one and only "device." This means that the party does not have a separate telephone available to call into the interpreter "bridge line." When a party (that needs an interpreter) appears virtually, if they do not have a separate phone to call the bridge line, this results in the interpreter needing to interpret "consecutively" rather than "simultaneously." In other words, for every word that is spoken in the proceeding, the person speaking is able to say about two or three sentences and then the proceeding must pause to allow the interpreter to translate what has been said. This "consecutive" translation results in proceedings being slowed down to ½ speed. A one-hour hearing takes two hours. Therefore, it is crippling to have parties appear virtually if they require interpreters and they do not have two devices. If there are more virtual proceedings involving parties in need of interpreters, we are going to place an even greater strain on our already limited pool of interpreters because so many of these parties just do not have sufficient technology to appear virtually and connect to the bridge lines.

Thank you for your consideration of these comments.

Sincerely,

Marie Avery Moses  
District Court Judge  
2<sup>nd</sup> Judicial District  
Ctrm. 409; [REDACTED]



**vongsakoun, magdalene**

---

**From:** Elizabeth Newman [REDACTED]  
**Sent:** Tuesday, March 14, 2023 4:51 PM  
**To:** supremecourtrules  
**Cc:** Brie Franklin; Katie Wolf  
**Subject:** [External] CCASA Comments on Draft CJD  
**Attachments:** CCASA Response to CJD Letter 031423.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

The Colorado Coalition Against Sexual Assault appreciates the opportunity to respond to the draft Chief Justice Directive related to Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts. Please find CCASA's comments attached.

Thank you,  
Elizabeth

**Elizabeth Newman, MPP**

*she/her/hers*

**Public Policy Director**

Colorado Coalition Against Sexual Assault (CCASA)

1330 Fox Street, Suite 2  
PO Box 40350  
Denver, CO 80204

303.839.9999 (main)  
[REDACTED]

[www.ccasa.org](http://www.ccasa.org)

*Don't forget to renew (or start) your CCASA membership! [Click here](#) for all the info you need, including the benefits offered to members—from CCASA publications to a never-ending variety of trainings!*



FREEDOM FROM SEXUAL VIOLENCE

March 14, 2023

Via email: [supremecourtrules@judicial.state.co.us](mailto:supremecourtrules@judicial.state.co.us)

Dear Chief Justice Boatright:

The Colorado Coalition Against Sexual Assault appreciates the opportunity to respond to the draft Chief Justice Directive related to Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts. As a statewide membership organization representing sexual assault programs and survivors, our priority is to ensure victim's safety is maintained and ensure that there is transparency within Colorado's court system. As such, below are several identified concerns around live streaming and virtual court proceedings:

- **Use of Live Streaming Platforms:** Traditional live streaming through widely accessible platforms (i.e., YouTube) does not allow for courts to track who is observing or logged into a proceeding. Due to the anonymity offered by live streaming platforms, CCASA has concerns that the ease by which viewers can record, photograph, or rebroadcast proceedings increases the risk that victims will be intimidated or harassed. Without knowledge of who is observing the proceedings, not only is there a greater possibility of recording and sharing court proceedings but also lesser accountability for those who violate prohibitions on audio or video recording or taking screenshots or photos.
- **Allow Victims to Petition the Court for Closure of Virtual Access:** Victims of crime are often on the outskirts of criminal proceedings; however, they are most at risk for retaliation and traumatization from being involved in the court process. While the prosecutor for their case is typically aware of these risks and victim preferences, they do not represent the victim directly. The current directive allows any party to a case bring a motion to request a change in how the court is conducted (i.e., in person vs. virtual), victims must be able to petition the court for closure of virtual access so they can directly share their safety and privacy concerns.
- **Victims' Right to Attend by Phone or Similar Technology:** Currently victims under the Victims' Rights Act (VRA) have the right to attend by phone or similar technology. It should be made clear that victims still have access to attend virtually even when a court limits or closes virtual access for the public.
- **Establish Process to Request Public Access to Testimonial Hearings:** Testimonial hearings are often the ones where the most private information and exhibits are disclosed. CCASA prioritizes

victim safety and privacy in the court process wherever possible. As such, we believe virtual access should not be presumed during testimonial hearings; however, there should be a process for legitimate requests for expanded access.

- **Require Courts Make a Record Regarding Closure of Virtual Access:** To promote court transparency, judges must issue findings on the record as to their decision and the rationale for the closure.
- **Require Protections and Disclosures for Virtual Access:** Related to concerns for victim safety, privacy, and trust in the court system, measures must ensure the online platform used for virtual access to court proceedings has the ability and designated personnel to disable chat and remove users; utilize a login portal that ensures full name and a valid email address is provided for any user that enters the proceedings; and clarify that victims may use initials or a pseudonym for display names on screen.

Thank you for your time and attention to the needs of sexual assault victims/survivors in the judicial system. We are happy to address any questions or provide additional information.

Sincerely,



Brie Franklin  
Executive Director

**vongsakoun, magdalene**

---

**From:** Elisa Overall [REDACTED]  
**Sent:** Wednesday, March 15, 2023 1:09 PM  
**To:** supremecourtrules  
**Cc:** espinosa, adam; Alexi Freeman; AM Law; rottman, andrew; Beth Crane; Brandy Toelupe; Brittany Kauffman; Stark, David W.; Diana Poole; Dick Gast; Fred Baumann; Jack Regenbogen; marro, jacqueline; Jason Lynch; John Tull; John Zakhem; Jon Asher; schutz, timothy; taubman, daniel; Kim Gent; Matt Baca; hart, melissa; wagner, penny; Reenie Terjak; Richard Murray; Sam Walker; blanco, susan; Timothy Macdonald; Hassler Legal  
**Subject:** [External] Colorado Access to Justice Commission Comment  
**Attachments:** Colorado ATJC Comments on CJD on Virtual Proceedings Policy 3-15-23 FINAL.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

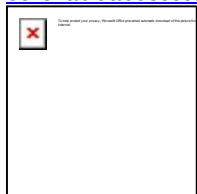
Good afternoon,  
Please find attached the Colorado Access to Justice Commission's comment on the proposed Judicial Department CJD on virtual hearings.

Respectfully,  
Elisa Overall

---

Elisa Overall (Emo), Esq. (she/her/hers)  
Executive Director, Colorado Access to Justice Commission  
1290 Broadway, Ste. 1700 | Denver, CO 80203

[REDACTED]  
[coloradoaccesstojustice.org](https://coloradoaccesstojustice.org)



**COLORADO ACCESS TO JUSTICE COMMISSION  
COMMENTS ON  
PROPOSED CHIEF JUSTICE DIRECTIVE 23-XX  
VIRTUAL PROCEEDINGS POLICY**

The Colorado Access to the Commission [Commission], which in December 2022 submitted its [Remote Court Proceedings report and recommendations](#) to the Supreme Court,<sup>1</sup> is pleased to submit comments on the February 28, 2023, draft Chief Justice Directive regarding virtual proceedings. We are grateful for the opportunity to offer these comments to identify what we believe are the CJD’s strengths and suggest ways we believe it can be improved. We also suggest follow-up steps to maximize the positive impact of the Directive.

***Affirmation of the value and importance of virtual proceedings.*** We were pleased to see the strong affirmation of the value of remote proceedings, including particularly the statement: “*At a minimum, it is the policy of the Colorado Judicial Branch to provide increased access to the courts through the use of virtual proceedings.*” This reflects the universal findings in Colorado and across the nation noted in our December 2022 Report and Recommendations of the dramatic impact of virtual proceedings on access to justice, as well as judicial efficiency.

The draft CJD identifies a number of factors, which were detailed in the Commission’s Report, as “*great benefits to parties, attorneys and other court participants.*” We note that these benefits are characterized principally as having “*decreased the substantial costs of coming to court.*” The factors cited are: “*taking time off from work, traveling to the courthouse, waiting for a case to be called, and the extra attorney fees for counsel travelling to and waiting in court.*” Those are certainly among the dynamics identified in our report and recommendations, which for many litigants also include the need to find childcare and the risk of losing employment.<sup>2</sup> We note, however, that these factors are often more than just the cause of increased costs; for many litigants they are an absolute barrier to their participating at all in scheduled in-person proceedings. The dramatic decrease in failures-to-appear in both criminal and civil proceedings in Colorado and other states attests to the profound impact of virtual proceedings increasing access to the courts for people who would otherwise be excluded.<sup>3</sup>

We applaud the Directive’s finding that “*The availability of attorneys to attend courts across the state without travel has also afforded significant opportunities for legal*

---

<sup>1</sup> COLORADO ACCESS TO JUSTICE COMMISSION, Remote Court Proceedings: Opportunities and Challenges in Colorado (December 2022), [Remote Court Proceedings report and recommendations](#)

<sup>2</sup> Id., at 15-16.

<sup>3</sup> Id., at 12-15.

*representation in parts of our state that do not have enough local attorneys.”* The lack of attorneys in numerous judicial districts is a crisis in Colorado and the opportunity for lawyers to appear in multiple jurisdictions through remote hearings offers a dramatic partial solution to the challenge.<sup>4</sup>

***The importance of consistency across the state.*** We welcome the observation in the Directive that *“the unpredictable nature of allowing each courtroom to operate independently can lead to confusion for those who must appear in court.”* More importantly, not knowing if a remote proceeding will be available in a rural county will be an absolute impediment to a distant lawyer undertaking representation in that county. With that in mind, we also welcome that the Directive *“aims to increase statewide consistency for parties and courts regarding the use of virtual proceedings.”*

We urge the Court to strengthen the expectations that trial courts will follow the guidelines in the CJD to maximize the potential for true statewide consistency. This is particularly important in rural areas where a lack of consistency is a significant barrier to increasing the availability of legal representation by lawyers from other counties.

We recognize that there is a strong culture in Colorado courts that the Supreme Court disfavors directing how trial courts operate. Indeed, the draft CJD refers to *“the inherent authority judges have in administering each of their own courtrooms,”* characterizing each judge as *“an independently constituted judicial officer.”* We understand that Colorado courts have operated on this principle, but we do not believe that it is constitutionally mandated. Indeed, the Colorado Constitution appears to give the Supreme Court broad authority to direct the operation of each trial court. Article VI, Section 21 on Rule-Making Power of the *Supreme Court*,<sup>5</sup> Article VI, Section 2 on Appellate Jurisdiction,<sup>6</sup> and Article VI, Section 5(4)<sup>7</sup> give the Supreme Court seeming plenary authority over the operation of courts in the state.

We understand that there are differences in resources, technological capacity, staffing and culture among the various courts in the state that warrant some operational differences. It

---

<sup>4</sup> Id., pp. 20-22.

<sup>5</sup> Article VI, Section 21 on Rule-Making Power reads: “The **supreme court shall make and promulgate rules governing the administration of all courts** and shall make and promulgate rules governing practice and procedure in civil and criminal cases, except that the general assembly shall have the power to provide simplified procedures in county courts for the trial of misdemeanors.”

<sup>6</sup> Article VI, Section 2 on Appellate Jurisdiction states in part that the Supreme Court: “... **shall have general superintending control over all inferior courts**, under such regulations and limitations as may be prescribed by law.”

<sup>7</sup> Article VI, Section 5(4) provides for the Chief Justice appointing “... from the district judges of each judicial district a chief judge to serve at the pleasure of the chief justice.” It goes on to say: “**Each chief judge shall have and exercise such administrative powers over all judges of all courts within his district as may be delegated to him by the chief justice.**”



is important, however, that while balancing these interests, the CJD operate to generate and support consistency across the state regarding remote proceedings. The language on page 2 at the end of the CJD’s Policy Statement appears to support this balance when it states that a departure from the CJD’s “baseline” must be determined on a case-by-case basis and on a showing of “good cause.”

We urge the same clarity regarding “local policies” that Chief judges “*may also adopt ... to further delineate the continued use of virtual proceedings in their jurisdictions.*” It should be clear that district-wide policies adopted by a Chief Judge should also depart from the “baseline” set forth in the Directive only on a showing of good cause, approved by the Supreme Court. Moreover, we think it should be made clear that all the judges in a Judicial District should follow the same guidelines as adopted by the Chief Judge. Inconsistency among judges in a judicial district may be lethal to a lawyer’s agreeing to representation of a client in a distant, rural county.

This is a generational opportunity to effect changes in the courts that will dramatically improve access to justice and promote efficiency in court operations. Because of the demonstrated improvement in access to justice, we believe that taking a firm stand offers an unprecedented opportunity to improve public confidence in the courts. As former Chief Justice Bridget McCormack of the Michigan Supreme Court put it:

*“Public trust is the judiciary’s only currency, and it is eroding...Improved access to justice, consistency, and transparency are critical components for creating and maintaining public trust and confidence.”<sup>8</sup>*

***Emphasis on “flexible appearances” as an option for remote proceedings.*** We note that many other jurisdictions have distinguished largely between fully in-person and fully remote proceedings. A few have identified “hybrid proceedings,” which are a mix of the two. As we read this Chief Justice Directive, it contemplates most remote proceedings being hybrid, permitting the participation in-person of one or more parties and counsel, if they so choose. There may be technological challenges in hybrid proceeding where only some are present in the courtroom, which may require sophisticated cameras and screens visible to in-person participants. For courtrooms that have the technological capability, however, the option offers a means to accommodate participants who have technological limitations or prefer to appear in person, as some do.

***Delineation of presumed in-person and flexible appearances.*** Central to consistency among trial courts across the state is a clear expectation regarding which proceedings will be in-person and which will be virtual. States that have been at the forefront of making remote proceedings a permanent part of their judicial landscape – Minnesota and Arizona

---

<sup>8</sup> MICH. SUP. CT. ORDER NO. 2020-08, 16-22 at 19 (Aug. 10, 2022) (McCormack, C.J., *concurring*), [https://www.courts.michigan.gov/4a42b2/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08\\_2022-08-10\\_formor\\_pandemicamdts.pdf](https://www.courts.michigan.gov/4a42b2/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2022-08-10_formor_pandemicamdts.pdf).

– have promulgated clear charts delineating which proceedings will presumptively be remote and which in-person. Both those states have made the designations mandatory, absent a showing of good cause for deviating from the expectation.<sup>9</sup>

The proposed CJD takes a large step toward establishing such clarity for many, though not all, potential types of proceedings. While we have several suggestions about changes in the proposed delineations, we believe the underlying approach of making such designations is the right one.

We observe that there are many proceedings regarding which the CJD makes no designation. The Courts Committee of the Access to Justice Commission prepared a detailed chart that recommended such designations based on the case category, case type and appearance type.<sup>10</sup> The recommendations of the Courts Committee were based on interviews and surveys of attorneys, court judicial staff and staff of the SCAO. Although the Committee was unable to survey pro se parties directly, it requested that those surveyed consider their work with pro se parties in their responses.

The draft CJD only delineates 16 proceedings as presumptively in-person and 10 that are presumptively flexible. It is silent on 37 other types of proceedings that the Courts Committee recommended, of which 15 were ones that the Committee recommended presumptively be handled remotely. The draft CJD is also generally silent on Juvenile Delinquency matters.

Particularly key among the proceedings that we believe the CJD should designate as flexible hearings are:

- Ex-parte temporary protection order hearings,
- County Court mediations, including FED's,
- County Court civil returns on summons dates,
- County Court pre-trial conferences,
- County Court non-evidentiary/uncontested hearings or trials,
- Non-evidentiary hearings in FED's and District Court civil cases,
- Defaults,
- District Court temporary restraining orders,
- Reviews and other non-evidentiary proceedings in Dependency and Neglect and Juvenile Delinquency matters, and

---

<sup>9</sup> Id, p. 28.

<sup>10</sup> The Courts Committee's recommendations are attached to these Comments as Appendix A.

- Uncontested proceedings regarding the relinquishment of parental rights.<sup>11</sup>

We also note that there are a number of proceedings that presumptively should be designated as in-person, including contested bench trials, jury trials and other evidentiary hearings.

***List of good cause factors for allowing virtual appearances in an in-person proceeding.***

The proposed Chief Justice Directive in Section VII sets forth 21 factors for judicial officers to consider when determining “*whether good cause exists to allow one or more parties to appear virtually for an in-person hearing.*” This salutary provision provides flexibility that will make it possible for individuals who might otherwise be excluded by circumstance to participate in an in-person proceeding in their case. The list is comprehensive and comprises many of the factors that have been shown in Colorado and nationally to be impediments to in-person participation for some litigants. We particularly welcome “*reasonable fear for [a participant’s] safety,*” “*transportation limitations,*” “*weather and safe travel,*” access to an interpreter, and “*impact on employment.*”

We recommend several other factors be included on the list of good cause factors for allowing a virtual appearance in an in-person proceeding.

- The lack of reasonably available childcare,
- The presence of significant power and control issues between the parties,
- The party is appearing *in forma pauperis* or has limited financial resources,
- The party is unrepresented,
- The amount in controversy,
- The public interest of the issues involved, and
- Whether there is a statutory right to appear remotely, such as such CRS 14-5-316(f) – Uniform Interstate Family Support Act, in a child support action.

We recognize the value of including factors that might impede the effectiveness of a virtual appearance, such as “*technological barriers,*” “*the importance and complexity of the proceeding and whether the proceeding is contested,*” the impact on the “*effective examination of witnesses*” and “*the solemnity and integrity of the proceedings.*” However, if it is shown that one or more factors might be an absolute barrier to participation of a party, particularly in rural areas, we believe those should supersede those that pertain to the efficiency of court operations.

---

<sup>11</sup> We note that the year-long study of remote proceedings in Texas conducted by the National Center for State Courts concluded that remote proceedings offer the opportunity for “*wider participation in many types of types of family -related cases, especially Divorce, Child Welfare, and Child Protective Services cases.*” (Emphasis added.) BRIAN OSTROM ET AL., NATIONAL CENTER FOR STATE COURTS, USE OF REMOTE HEARINGS IN TEXAS STATE COURT & IMPACT ON JUDICIAL WORKLOAD at 9 (2021), [https://www.ncsc.org/\\_media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf](https://www.ncsc.org/_media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf)

We welcome the inclusion of the criterion when “*all parties agree the hearing should be held virtually.*” We believe that as remote proceedings continue to be the norm and as courts, lawyers and litigants become increasingly accustomed to them, rural practice will be enhanced by all parties being able to take advantage of such agreements.

***Do not require prior judicial approval to participate by phone to appear remotely.*** The definition of a “*Virtual Appearance*” in Section III(D) limits the definition to a “*computer or smart phone that includes both video and audio transmission.*” It provides: “*Virtual appearances may include appearing by telephone without video transmission if authorized by the court ahead of the proceeding.*”

The experience of those working and living in rural areas is that because of the limited availability of broadband, often the only practical means for litigants to participate is by telephone, even if it is a video capable device. Similarly, the instability of the Internet in many rural areas often results in the short-term loss of video. We believe that the requirement of prior judicial approval for telephonic participation will unintentionally limit the ability of many rural litigants, particularly those who are unrepresented, to participate in flexible or remote proceedings. Accordingly, we recommend that the requirement of prior approval be eliminated. In the alternative, the second sentence in the definition in Section III(D) could be amended to read: “*Virtual appearances may include appearing by telephone without video transmission, if it is necessitated by limited video bandwidth, or if authorized by the court ahead of the proceeding.*”

## **Recommended actions to assure the effectiveness of the Chief Justice Directive**

We applaud the Chief Justice for the significant strides that will be taken when this draft Directive becomes operative, particularly with the changes that we respectfully suggest in these comments. We recommend several follow-up actions to assure its effectiveness. One is explicitly contemplated in the CJD and others would involve the efforts of the State Court Administrator’s Office or the Office of Judicial Performance Evaluation.

***Review of the Rules of Civil and Criminal Procedure.*** Section X of the draft CJD directs the appropriate Supreme Court Advisory Committee to review whether amendments to various rules “*are necessary to implement the presumptive format for hearings reflected in this Chief Justice Directive.*” We agree that a review of the existing rules is appropriate, particularly those on absentee testimony (*esp. CRCP Rule 43 and CRCCP Rule 343*). The criteria set forth in existing rules should be reviewed for consistency with the draft CJD’s Non-Exclusive List of factors for Good Cause at Section VII. We also note that CRCP 121(b)and (c) and Sections 1.1(5) may be implicated by the CJD.

***Development by SCAO of technology to facilitate requests by unrepresented parties to appear virtually.*** A strength of the draft CJD is the opportunity it affords in Section VII for parties to seek to appear virtually in an in-person hearing. The CJD contemplates

judicial officers, “*either on their own motion or on the motion of any party*” determining whether good cause exists, considering the list of factors set forth in the section. As has been frequently documented, a high percentage of litigants in Colorado courts are unrepresented.<sup>12</sup> Many such individuals, particularly in rural areas, are ones for whom a virtual appearance may be the only way for them to participate in a proceeding. They likely will not know, however, of the opportunity to appear virtually, nor have the knowledge or means easily to file a motion to request the opportunity.

We recommend that the Court direct the SCAO to develop a means to notify litigants electronically of hearings, whether an appearance is in-person or flexible, and provide a simple means for them to request to appear virtually.

***Support for staff and training.*** The permanent inclusion of remote proceedings, whether hybrid or fully remote will continue to put pressure on court staff, including judicial officers to meet the demands of managing the necessary technology. Although the experience of conducting remote proceedings during the pandemic, no doubt, increased the comfort level and ability of affected staff to meet the demands, it will be important to continue to support training and the availability of technical staff to assure the smooth operation of remote proceedings. SCAO staff should continue to work with WebEx to find and develop effective ways for the platform to meet the demands of judicial proceedings.

***Inclusion of the appropriate use of remote and flexible appearances in judicial performance evaluations.*** We recommend that the Court direct the Office of Judicial Performance Evaluations to include consideration of the appropriate use of remote proceedings by judicial officers in accordance with the baseline set forth in the CJD. The current criterion of fairness includes “*giving participants an opportunity to be heard*” and “*giving each side enough time to present their case.*”<sup>13</sup> If the consistent refusal by a judge to permit remote participation is shown to result in parties being denied the opportunity to be heard and present their case, it would appear to run afoul of the fairness criterion in the evaluation standards.

***Evaluation of the effectiveness of the policy and practice set forth in the Chief Justice Directive.*** While we do not think it needs to be addressed directly in the CJD, we believe it will be beneficial over time to evaluate the effectiveness of the Directive as it is applied. Assessments will identify additional staff needs, challenges and opportunities in its implementation, and the positive impact which we expect will occur on access to justice and judicial efficiency. The latter will be valuable in supporting the Judicial Branch’s

---

<sup>12</sup> COLORADO JUDICIAL BRANCH, CASES AND PARTIES WITHOUT ATTORNEY REPRESENTATION IN CIVIL CASES, FISCAL YEAR 2022 (July 25, 2022), [Case and Parties without Attorney Representation \(state.co.us\)](https://www.state.co.us/courts/caserep/caserep2022.html)

<sup>13</sup> COLORADO OFFICE OF JUDICIAL PERFORMANCE EVALUATION, NON-ATTORNEY QUESTIONNAIRE (2018), [https://judicialperformance.colorado.gov/sites/judicialperformance/files/documents/CO\\_OJPE\\_Non-Attorney\\_2018\\_Retention\\_Cycle\\_Clean.pdf](https://judicialperformance.colorado.gov/sites/judicialperformance/files/documents/CO_OJPE_Non-Attorney_2018_Retention_Cycle_Clean.pdf)

request for adequate funding from the legislature and increasing public support for the judiciary.

***Extension of the period for comments on the draft Chief Justice Directive.*** We are grateful for the opportunity to provide these comments on the draft Chief Justice Directive. We recognize that it is unusual to offer a comment period for a CJD and we applaud the decision. We note, however, that there are many other interested individuals and organizations with input useful to the Court as it moves to finalize the CJD. Two weeks for comments may be too short for many of those interested parties to prepare, get approval for, and submit comments. We, therefore, respectfully suggest that the Court extend comment period for an additional two weeks.

**Colorado ATJC Comments**  
**Appendix A**  
**Recommendations of the ATJC Courts Committee**  
**Regarding Presumed In-Person and Presumed Remote Appearances**

**Colorado Presumed Remote and In-Person Appearances Chart**

| Case Category and Case Type                          | Appearance Type                                       | Presumed Remote             | Presumed In-Person |
|------------------------------------------------------|-------------------------------------------------------|-----------------------------|--------------------|
| <b>Family:</b>                                       |                                                       |                             |                    |
| <i>Dissolution, Custody, Motions to Modify, etc.</i> | Initial Status Conference                             | X                           |                    |
|                                                      | Scheduling Conference                                 | X                           |                    |
|                                                      | Pre-Trial Conference                                  | X                           |                    |
|                                                      | Status Conference                                     | X                           |                    |
|                                                      | Court Trial                                           |                             | X                  |
|                                                      | Default/Uncontested Hearing                           | X                           |                    |
|                                                      | Contested Evidentiary Hearing                         |                             | X                  |
|                                                      | Advisement Hearing - Contempt                         | X                           |                    |
|                                                      | Show Cause Hearing - Contempt                         |                             | X                  |
|                                                      | <i>Paternity</i>                                      | Default/Uncontested Hearing | X                  |
| Contested/Evidentiary Hearing                        |                                                       |                             | X                  |
| <i>Adoption</i>                                      | Adoption Hearing (contested or uncontested)           |                             | X                  |
| <i>Relinquishment of Parental Rights</i>             | Contested relinquishment of Parental Rights Hearing   |                             | X                  |
|                                                      | Uncontested relinquishment of Parental Rights Hearing |                             | x                  |
| <b>Other Civil:</b>                                  |                                                       |                             |                    |
| <b>Protection Order</b>                              | Ex-Parte Temporary Protection Order Hearing           | X                           |                    |
|                                                      | Permanent Protection Order Hearing                    |                             | X                  |
| <b>Small Claims</b>                                  | Mediation                                             | X                           |                    |
|                                                      | Court Trial                                           |                             | X                  |

| <b>Case Category and Case Type</b>                                          | <b>Appearance Type</b>                       | <b>Presumed Remote</b> | <b>Presumed In-Person</b> |
|-----------------------------------------------------------------------------|----------------------------------------------|------------------------|---------------------------|
| <b>County Court Civil (small claims, name change, replevin)<sup>1</sup></b> | Return on Summons date                       | X                      |                           |
|                                                                             | Pre-trial conference                         | X                      |                           |
|                                                                             | Mediation                                    | X                      |                           |
|                                                                             | Non-evidentiary/Uncontested Hearing or Trial | X                      |                           |
|                                                                             | Evidentiary/Contested Hearing or Trial       |                        | X                         |
|                                                                             | Jury Trial                                   |                        | X                         |
|                                                                             | Expedited                                    |                        | X                         |
|                                                                             |                                              |                        |                           |
| <b>Case Category and Case Type</b>                                          | <b>Appearance Type</b>                       | <b>Presumed Remote</b> | <b>Presumed In-Person</b> |
| <b>Eviction (Forcible Entry and Detainer)</b>                               | Return on Summons Date                       | X                      |                           |
|                                                                             | Mediation                                    | X                      |                           |
|                                                                             | Hearing on Possession                        |                        | X                         |
|                                                                             | Money Damages Hearing                        |                        | X                         |
|                                                                             | Non-evidentiary Hearing                      | X                      |                           |
|                                                                             | Evidentiary Hearing                          |                        | X                         |
|                                                                             | Court Trial                                  |                        | X                         |
|                                                                             | Jury Trial                                   |                        | X                         |
| Expedited                                                                   |                                              | X                      |                           |
| <b>District Court Civil<sup>2</sup></b>                                     | Contempt                                     |                        | X                         |
|                                                                             | Court Trial                                  |                        | X                         |
|                                                                             | Default                                      | X                      |                           |
|                                                                             | Non-evidentiary Hearing                      | X                      |                           |
|                                                                             | Evidentiary Hearing                          |                        | X                         |
|                                                                             | Jury Trial                                   |                        | X                         |
|                                                                             | Pre-Trial Conference                         | X                      |                           |
|                                                                             | Scheduling Conference                        | X                      |                           |
|                                                                             | Settlement Conference                        | X                      |                           |
|                                                                             | Temporary Restraining Order                  | X                      |                           |
| Expedited                                                                   |                                              | X                      |                           |
| <b>Sealing Records</b>                                                      | Hearing                                      | X                      |                           |
| <b>Juvenile:</b>                                                            |                                              |                        |                           |



| Case Category and Case Type             | Appearance Type                                                          | Presumed Remote | Presumed In-Person |
|-----------------------------------------|--------------------------------------------------------------------------|-----------------|--------------------|
| <b>Dependency &amp; Neglect</b>         | Emergency Hearings (Shelter, Temp. Custody, Emergency Protection Orders) |                 | X                  |
|                                         | Advisement                                                               |                 | X                  |
|                                         | Case Management Conferences (CMC)                                        |                 | X                  |
|                                         | Motions Hearing- Evidentiary                                             |                 | X                  |
|                                         | Motions Hearing- Non-Evidentiary                                         | X               |                    |
|                                         | Pretrial/ Status Conference                                              | X               |                    |
|                                         | Adjudicatory Hearing                                                     |                 | X                  |
|                                         | Dispositional Hearing                                                    |                 | X                  |
|                                         | Permanency/ Permanent Home Hearing                                       |                 | X                  |
|                                         | Termination of Parental Rights                                           |                 | X                  |
|                                         | Review/ Placement Hearings                                               | X               |                    |
|                                         | Post-Permanency Review                                                   | X               |                    |
|                                         | Emancipation Hearing                                                     |                 | X                  |
|                                         | Contested Matters not Specified Above                                    |                 | X                  |
| Uncontested Matters not Specified Above | X                                                                        |                 |                    |

1 County court civil case types include evictions, recovering property (replevin) small claims judgments, & name change cases.

2 District Court civil case types include all other case types that are not classified in county court civil types.

3 Juvenile Delinquency includes all juvenile criminal case types such as petty offenses and traffic.

Notes:

- For the completion of this chart, the Courts Committee spoke with and surveyed attorneys including those who work with indigent and modest means clients, court judicial staff and the SCAO staff to determine the types of appearances to list and their presumed format. Although unable to survey pro se parties directly, the Committee members asked those surveyed to consider their work with pro se parties in their answers.
- The Committee was only able to receive input from one individual with expertise in adoption that could speak to the specific types of appearances in those matters and if they should be presumed remote or in-person.

## vongsakoun, magdalene

---

**From:** Beth Padilla [REDACTED]  
**Sent:** Friday, March 3, 2023 11:30 AM  
**To:** supremecourtrules  
**Subject:** [External] WebEx Appearances

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

My name is Beth Padilla. I am an attorney in southwest Colorado and I am reaching out to you about the proposed CJD regarding WebEx appearances.

I was the most recent bar president of the Four Corners Bar Association (Cortez) and am a municipal court judge in Cortez and Dolores. I dedicate most of my time and career to dependency and neglect cases, as a guardian ad litem and parents' attorney. As you likely know, those cases are the lowest paid in the state and I only earn \$80/hour, despite having over a decade of experience in those cases.

We are experiencing an extreme shortage of attorneys, especially those willing to work for such low hourly rates. Eliminating WebEx appearances negatively impacts attorneys' abilities to meet the legal needs, prevents courts from having attorneys available for court-appointed cases, and negatively impacts attorneys' mental health. Prior to COVID, it was not uncommon for me to appear in person in three counties, spread out over 100 miles and two mountain passes in a single day. The days were long, grueling, and largely spent in a vehicle driving in dangerous conditions. The likelihood of hitting an elk or being stuck in a blizzard returning from court in Pagosa Springs after dark, in the winter, is substantial.

Requiring in-person appearances jeopardizes parties' access to justice as many people will simply not have attorneys. There are just not enough of us.

Further, requiring attorneys to file written motions in every case in order to appear by WebEx is a waste of tax payer dollars and is overly burdensome on overworked, underpaid contract attorneys. We are public servants without benefits. We have no paid time off, no health insurance, and no malpractice insurance assistance from the state.

In dependency and neglect cases, we have a docket every other week in many jurisdictions. Because I practice in more than one jurisdiction, I have set dockets nearly every week. This ensures that I never take a vacation. In ten years, I have taken one full week off from work and judges routinely indicate that I am to appear by phone or WebEx even on vacation.

If you remove the ability to appear by WebEx, you are causing substantial hardship to rural attorneys and jurisdictions.

I appreciate your time and consideration.

Beth A. Padilla, Esq.  
Licensed in Colorado & New Mexico (inactive)  
Padilla Law, P.C.

Mailing address:  
P.O. Box 2835  
Durango, Colorado 81302

Physical address:  
114 North Main  
Mancos, Colorado 81328

Phone: (970) 764-4547

Fax: (970) 764-4549

CONFIDENTIALITY NOTICE: THIS MESSAGE (INCLUDING ATTACHMENTS, IF ANY) IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.

If you are not the intended recipient, any review, use, disclosure, distribution, or copying is strictly prohibited. If you believe this e-mail has been sent to you in error, please (i) do not open any attachments, (ii) contact the sender immediately by replying to this e-mail to inform the sender that you have received this e-mail in error, and (iii) delete this e-mail and all attachments.

**vongsakoun, magdalene**

---

**From:** Kelli P [REDACTED]  
**Sent:** Tuesday, March 7, 2023 2:04 PM  
**To:** supremecourtrules  
**Subject:** [External] Virtual proceedings.

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I think it's a wonderful idea to continue the virtual proceedings. Some people don't have access to computers or even phone's. Especially the older generations but overall the option for many I'm sure would be welcomed rather than shunned. I hope they stay. Thank you.  
Kelli Pedersen  
18 W Brookside St  
Colorado Springs, CO 80905  
[REDACTED]

**vongsakoun, magdalene**

---

**From:** [REDACTED]  
**Sent:** Friday, March 3, 2023 3:41 PM  
**To:** supremecourtrules  
**Subject:** [External] Comment on CJD Virtual Proceedings Draft

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

In reviewing the CJD Virtual Proceedings Draft, I feel compelled to comment on one particular conclusion stated in the Draft.

The Draft states that “The availability of attorneys to attend courts across the state without travel has also afforded significant opportunities for legal representation in parts of our state that do not have enough local attorneys.” As a rural practitioner in an area which likely falls into this category, I would caution the court that this should not be seen as an unequivocal benefit devoid of unintended consequences.

Since the pandemic and the wide adoption of virtual court, many local attorneys in rural jurisdictions have seen an influx of cases being taken by larger firms on the front range. In the past, these city attorneys would likely have not accepted the case, or referred to local counsel due to the distance and travel required, but with Webex that is not an issue. While I have personally been fortunate to always have enough work, I am aware of other attorneys who have seen significant downturn or closure of business due (at least in part) to these virtual appearances becoming common place.

The unintended risk here is that if local rural practitioners cannot maintain their businesses, there will actually be fewer attorneys servicing rural areas than there are now. And while there may be plenty of attorneys in the cities who could assist virtually—a consolidation of legal services where people must look to larger metro areas because there is no local representation to be found is not actually a good thing.

It means that people will be unable to find good legal advice and assistance in the place where they work and live. It means that face-to-face, in-person consultations and interactions between clients and attorneys will become even more rare. Older residents are especially vulnerable in this regard, as they are less likely to have familiarity with e-mail and other methods for sharing information and documentation online.

It means that there is less incentive for attorneys to set up practices in rural areas where they are needed. It means that these rural areas may not have people serving in legal positions—such as county attorney, town attorney, etc.—who actually live in the area and understand the needs and particulars of the constituents and the locale. It will take money which would have remained in our rural counties and siphon it to the cities, further draining local economies which in some cases are already struggling.

I would caution the committee to consider that this directive—which is clearly well intentioned and has benefits—may well have the effect of significantly reducing the availability of legal services to rural residents in the long run.

I believe that the committee could address this issue by recognizing that attorneys should be held to a different standard than their clients. Attorneys choose whether to take cases, while many constituents who are appearing in court—criminal and civil defendants, etc.—have not made the choice to be there. They may be out of state,

or have other obligations. The clients should be allowed flexibility in their appearances—and the CJD does a good job of delimitating those appearances which should require in person appearances—but attorneys who have chosen to take cases should not be allowed to simply discharge their appearance obligations to the court without notice and finding of good cause. Good cause may in fact be because there are no local attorneys who specialize in a certain area of law or have experience with certain types of litigation—but for the CJD to simply say in general that there are “not enough local attorneys” in some rural areas is vague and speculative. I fear that if the CJD passes in this form, that it will be causing more of the harm it seeks to avoid, and damage our rural communities in the long run.

This is just one idea. I am sure there are others.

Thank you for reading my comment.

-E.

Ehren Penix

Hartshorn Law Office, LLC

Colorado Supreme Court #51602

Kansas Supreme Court #26024

CONFIDENTIAL DOCUMENTS FOR DELIVERY TO RECIPIENT ONLY.

The information contained in this message and attachments, if any, may be attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication, its attachments, or contents therein, is strictly prohibited. If you have received the communication in error, please immediately notify us by telephone, (at [719-836-0100](tel:719-836-0100)), or by email (at [ehren@fairplaylaw.com](mailto:ehren@fairplaylaw.com)), and delete the message, with attachments, from any computer system or media where the message is stored. Thank you.

IRS CIRCULAR 230 DISCLOSURE: A U.S. Treasury regulation requires us to inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to any party who is not the original and intended recipient of this communication, any transaction or matter addressed herein.

## vongsakoun, magdalene

---

**From:** Rebecca Pepin [REDACTED]  
**Sent:** Monday, March 6, 2023 6:10 PM  
**To:** supremecourtrules  
**Subject:** [External] Virtual Hearing Policy

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for opening this issue for comment.

I understand that the issue currently being reviewed is for criminal cases. I believe that you will then roll that over to other cases, and I would like to add my thoughts when you review family law cases.

I've been practicing for 30 years, with 6 years off to teach preschool, provide mediation and special advocate services. I am expensive. Even clients who can afford me, don't want to have to pay for me. The practice of having status conferences in family law cases made costs skyrocket pre-covid. Weld County moved pre-covid to allow counsel and parties to appear via phone for the short (15 minute) conferences, and I immediately saw the benefit to my clients. Instead of paying me 30 minutes for travel each way, 15 minutes for the status, plus the 15 minutes I always arrive early for a total of one hour, clients were paying me only for the 15 minutes I was actually speaking. And in the case where the court got backlogged, and we had to wait minutes to hours for our turn, the clients now didn't have to pay me to sit in the hallway and do nothing. I could mute my phone and sit at my desk and work on other cases, and again, only bill them for the short time I was actually working on their cases.

Additionally, in family law I often have clients who work jobs where they don't get paid time off. So taking time off for a 15 minute hearing, really meant they took 4 hours of unpaid time because of travel time, and how many businesses make people take their time. Now, we have them take lunch at 10 a.m., or their "smoke break" becomes a hearing instead. They are able to stay at work, not lose any time, and not lose any money. Of course, this also helps when cases run up to carpool time. Instead of my client having to leave court and try to make it across town, I've had people show up in a parking lot near the school and when we finish the hearing they're ready to go pick up children.

In our cases we often are not depending on multiple witnesses whose character and veracity need to be judged by the Court. We are looking at financial affidavits, bank statements, nada car facts, and listening to the parties. The need for in person appearance even at hearings up to two hours long is limited.

It is also very helpful for my clients breaking free from domestic violence or controlling relationships. They aren't stuck in a courtroom with the other person. They can put a sticky note over the other person's face on the webex call and never feel the discomfort of being stared at. They don't have to walk to or from the courtroom, and can't get cornered in the parking garage by an opposing party.

Although I think inevitably leaving it in the hands of the judge for each instance, it would be great if judges were encouraged to consider the financial, emotional, and time benefit to the parties of having hearings virtually. I appreciate your consideration on this issue.

Rebecca M. Pepin  
Shareholder / Attorney  
Pronouns she/her/they/them  
Office: 303-678-0560  
Website: [www.jbplegal.com](http://www.jbplegal.com)



[8001 Arista Place](#)  
[Suite 415](#)  
[Broomfield, CO 80021](#)

[3461 Ringsby Court](#)  
[Suite 350](#)  
[Denver, CO 80216](#)

[900 S. Main Street](#)  
[Suite 100](#)  
[Longmont, CO 80501](#)

[5285 McWhinney Blvd.](#)  
[Suite 100](#)  
[Loveland, CO 80538](#)

## **NOTICE OF CONFIDENTIALITY**

The information contained in this electronic message from Jorgensen, Brownell & Pepin, P.C. and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information belonging to the sender. The information is intended only for the use of the intended recipient. If you are not the intended recipient or received this electronic message or attachments(s) by mistake, please notify the sender immediately by reply e-mail and then destroy all copies of the transmission.



**vongsakoun, magdalene**

---

**From:** Rebecca [REDACTED]  
**Sent:** Thursday, March 2, 2023 6:22 AM  
**To:** supremecourtrules  
**Subject:** [External] CO Supreme Court Public Comment

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning.

I have reviewed the draft CJDs for Live Stream and Virtual Proceedings. I think both are well written. I think the committee has done a great job balancing the necessary individual authority of the judicial officers with the need to have some kind of guiding policy to be clear for the public. I also think the committee has done a great job identifying potential problem areas and working to resolve those in a sensible way.

I have been practicing in more areas of the state in the last couple of years and keeping track of which courthouse is doing what has been quite the chore. A unified guiding policy is needed and will smooth things out again in that regard.

I think the committee has chosen well as to what proceedings are best kept in person and what proceedings are best kept virtual. It has been my observation, practicing primarily in family law and probate matters, that 90% of my court appearances serve the clients and the judiciary better by being virtual. In addition to benefits noted by the committee, we are relieving tremendous pressure on things like parking, courthouse space and security by having a lot of these types of proceedings held virtually. We also convey a great benefit to domestic case clients, as a very high percentage of them are now able to arrange their breaks at work to attend status conferences and initial status conferences and even uncontested divorces. A much higher percentage are even able to arrange to take a partial day off to attend a contested hearing.

As a practitioner in a variety of our state courts, as a citizen and as a taxpayer, I fully support these CJDs. Thank you to the committee for such thoughtful and well written drafts.

*Rebecca A. Pescador*



Please let us know how we're doing.

**NOTICE:** This message is intended only for the use of the addressee and may contain information that is privileged and confidential and/or may include attorney work product. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please erase/delete/destroy all copies of the message and its attachments and notify me immediately. This message is not intended to create an attorney-client relationship. No such relationship should be presumed solely on the basis of this message or its contents.

**vongsakoun, magdalene**

---

**From:** Christina Pettus [REDACTED]  
**Sent:** Tuesday, March 7, 2023 10:17 AM  
**To:** supremecourtrules  
**Subject:** [External] CO Supreme Court Public Comment

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

## Continuation of Virtual Proceedings

Virtual proceedings have been a true asset for the past 3 years. It has provided efficient access to justice for those who otherwise have difficulties appearing in person. We have seen an increase in participation of our hearings and court proceedings. It has offered a immense benefit to the community. I also agree with added benefit of openness and transparency that virtual court proceedings provide.

Thank you,



**Christina Pettus**

Assistant County Attorney, *Adams County Attorney's Office*  
4430 S Adams County Parkway  
Brighton, CO 80601  
[REDACTED]

## vongsakoun, magdalene

---

**From:** Amy Pohl [REDACTED]  
**Sent:** Tuesday, March 14, 2023 9:32 AM  
**To:** supremecourtrules  
**Subject:** [External] CO Supreme Court Public Comment

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

In regards to the proposed Chief Justice Directive re. VIRTUAL PROCEEDINGS POLICY, I would like to submit the following comments:

First, I do believe that virtual proceedings have their place in our court system, and when used well, can ensure better access to justice for many parties (particularly those who may have trouble accessing reliable transportation, must commute long distances to the Court, have disabilities, and have other safety considerations).

I believe that the directive, as written, leaves too much ambiguity. Do parties need to give notice of intent to appear virtually or in person in flexible proceedings? What is process for one party objecting or requesting virtual v. in person proceedings? I think the use of both 'remote proceeding' and 'virtual proceeding' is confusing. Also, on neither list is DR permanent orders or temporary orders proceedings, or civil protection orders. That means that it would be up to the judicial officer's discretion, but when do they decide? Can there be some continuity in that? Are there processes for objecting to that?

Thank you,

Amy Pohl, JD (she/her/hers)  
Legal Director and Staff Attorney  
Project Safeguard

[REDACTED]  
[REDACTED]

**\*\*Please note that Project Safeguard closes at noon on Fridays. If I receive your email after noon on a Friday, I may not respond until the following Monday.\*\***

This communication and any attachments to this communication are intended for the exclusive use of the person or entity to whom it is addressed. This communication may contain information that is privileged and/or confidential. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please permanently delete the original message and contact Amy Pohl (apohl@psghelps.org). Thank you.

## vongsakoun, magdalene

---

**From:** Richard Poormon [REDACTED]  
**Sent:** Wednesday, March 1, 2023 12:06 PM  
**To:** supremecourtrules  
**Subject:** [External] Re Virtual Proceedings comment

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To the Honorable Justices:

I fully support the idea that all courts of this state under the jurisdiction of the Supreme Court be required to establish virtual court procedures and be required to offer the procedures for all pretrial proceedings, particularly in traffic infractions and in misdemeanor nonviolent criminal and traffic offense matters. The cost of defense often determines whether defendant parties are able to secure counsel. Reducing the ancillary expenses defendants incur when forced to be physically present in a courtroom, including travel time, mileage expense, parking costs, time-off from employment, cost of meals, daycare costs, etc., could assist defendants in the cost of representation, as well as the ability to pay fines and surcharges imposed by courts.

Thank you.

**Richard P. Poormon, Esq.**

PetersPoormon, LLC  
1245 E. Colfax Avenue  
Suite 202  
Denver, CO 80218  
(303) 504-4737 office  
[REDACTED]  
(303) 388-3219 fax  
[REDACTED]  
[www.poormonlaw.com](http://www.poormonlaw.com)



**CONFIDENTIALITY NOTICE:** The contents of this email and any attachments are confidential and privileged. They are intended to the named recipient(s) only. If you are not the intended recipient, be aware that any disclosure, copying, distribution or other use of the contents of this transmission is prohibited. If you received this transmission in error, please notify us by telephone at the number identified above and permanently delete this message without making a copy.

**vongsakoun, magdalene**

---

**From:** Joel Pratt [REDACTED]  
**Sent:** Friday, March 3, 2023 8:40 AM  
**To:** supremecourtrules  
**Subject:** [External] Comment on VIRTUAL PROCEEDINGS POLICY

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Colorado Supreme Court:

I write to provide comment on the proposed CJD regarding VIRTUAL PROCEEDINGS POLICY.

As a domestic relations lawyer, I notice that IV.A and IV.B do not provide a “default” policy for domestic relations evidentiary hearings. My experience in the 4<sup>th</sup> JD is that certain divisions of the district court default to virtual hearings, and certain divisions default to in-person hearings. I recognize that IV.D would leave this system in place.

I believe that virtual evidentiary hearings, unless necessary, are cumbersome for the parties and their counsel. For example, I had a virtual hearing yesterday where more than 40 exhibits were submitted by both sides, and one party did not have access to paper or electronic copies, so the only way to show exhibits was through the “share screen” function on WebEx, meaning the Court could see the exhibit before it was authenticated and entered as an exhibit. It also meant that, while an exhibit was being shown, the individuals on the screen were reduced to thumbnails, making reading their body language all but impossible.

Virtual evidentiary hearings tend to be less efficient, the records tend to be worse (as an appellate lawyer, even if the Court does not mention a hearing is via WebEx, I can tell because the quality of the transcript is almost always lower), and it is harder to judge credibility because (a) the technology for video does not always work and (b) seeing someone from the chest up does not provide the full amount of body language that a Court can use to determine credibility. Other pieces of evidentiary hearings – sequestration orders, avoiding disruptions by third parties, etc. are also much more difficult on a screen than in a courtroom.

In short, contested evidentiary hearings in domestic relations cases are more effective and efficient if they are in-person, so I would advocate for their inclusion on the list in IV.A.1 rather than the residual “discretionary” clause in IV.D

Thank you for your time, and have a great weekend!

Very truly yours,  
Joel M Pratt



**Joel M. Pratt, Esq.**  
Law Office of Dailey & Pratt, LLC

**Phone** 719-473-0884 [REDACTED]

**Fax** 719-633-8828

**Web** [daileyprattlaw.com](http://daileyprattlaw.com) **Email** [REDACTED]

526 S. Nevada Ave., Colorado Springs, CO 80903



*Notice: This email originated from a law office and may contain attorney-client privileged information or confidential communications. If you are not the intended recipient, please reply to this email and notify the sender and delete the email. Thank you!*

**vongsakoun, magdalene**

---

**From:** Chris Radeff [REDACTED]  
**Sent:** Tuesday, March 7, 2023 12:03 PM  
**To:** supremecourtrules  
**Subject:** [External] Public Comment re Virtual Hearings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I support the CJD. I would suggest adding the following:

- Each person must have their own electronic device – no sharing of screens.
- To address decorum concerns, perhaps attorneys should be required to stand at their desks like they would at the court podium. I have often caught myself taking a sip of coffee while appearing remotely when I would never do that in the courtroom. Standing lends towards increased professionalism.
- A Court should not unreasonably deny the appearance of a witness if both parties agree that witness can appear virtually. This is important for experts who not only have to travel to in person, but often sit in the hall waiting to be called. That translates to money for the client. With virtual you text them to log on and they're on.
- While I agree that some cases can settle on the courthouse steps, that is not a reason to not have virtual appearances.
- However, if it could be an option, the parties could appear 30 minutes early, be moved to the waiting room, and use that time to try and settle things. That, however, may be too much to place upon the clerk getting everyone set up.

Chris Radeff  
Radeff & Hart P.C.  
350 Indiana Street, Suite 200  
Golden, CO 80401  
Telephone: [REDACTED]

\*\*\*\*\*  
\*\*\* CONFIDENTIALITY NOTICE: This electronic email transmission may contain privileged and/or confidential information intended only for the individual or entity named above. It is intended solely for the addressee(s) named herein. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. If you have received this e-mail in error, please notify us immediately by replying to this message and then permanently deleting the original. Your receipt of this message is not intended to waive any applicable privileges.  
\*\*\*\*\*

## vongsakoun, magdalene

---

**From:** Tom Ramunda [REDACTED]  
**Sent:** Wednesday, March 8, 2023 2:39 PM  
**To:** supremecourtrules  
**Subject:** [External] Comments on Proposed CJD re Virtual Proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

Thank you for considering these comments regarding proposed Chief Justice Directive concerning virtual proceedings. As a practicing attorney for over thirty years, I believe the following types of appearances should be added to the “presumptively flexible appearances” list:

- Pre-Trial Conferences
- Pre-Trial Readiness Conferences
- Mandatory Disposition Hearings (“MDC”)
- Preliminary Demands
- Arraignments
- First Appearances
- Status Conferences
- Hearings on Bond
- Hearings to Modify Mandatory Protection Orders and/or Conditions of Bond

Virtual appearances benefit marginalized groups who lack financial resources, cannot afford to take days off work, and/or have a lack transportation. Simultaneously, virtual appearances give attorneys the flexibility to handle matters in multiple counties. Additionally, attorneys can be more productive at their office as opposed to having travel time, and waiting in the courtroom for appearances that are typically called and resolved quickly on the record. Overall, this allows attorneys to handle all cases more efficiently. Virtual appearances have been a great benefit to the private practitioner. It has saved on business costs and allowed attorneys to be more productive.

Again, thank you for your consideration,  
Tom Ramunda

*Thomas A. Ramunda Jr.*



19590 East Mainstreet, Suite 103  
Parker, CO 80138  
Ph: (303) 840-2700 Fax: (303) 805-0535



**vongsakoun, magdalene**

---

**From:** Jack Regenbogen [REDACTED]  
**Sent:** Monday, March 13, 2023 5:51 PM  
**To:** supremecourtrules  
**Cc:** scanlon, terry  
**Subject:** [External] Comment on Proposed CJD: Virtual Proceedings  
**Attachments:** comments on CJD.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chief Justice Boatright,

Thank you for this opportunity to provide a public comment on the proposed CJD concerning virtual proceedings. I have attached a comment submitted on behalf of Colorado Poverty Law Project.

Please reach out with any questions, and thank you for your consideration.

Gratefully,

Jack Regenbogen, Esq.  
*he/him*  
Deputy Executive Director  
Colorado Poverty Law Project  
[REDACTED]



March 13, 2023

***Via email***

**To:** Colorado State Supreme Court Chief Justice Brian D. Boatright,  
**CC:** The Legislative Members of the Colorado Senate and House Judiciary Committees  
**RE:** Public Comment on Proposed Chief Justice Directive, “Virtual Proceedings Policy”

Dear Chief Justice Brian D. Boatright,

I am submitting this comment on behalf of Colorado Poverty Law Project. We are nonprofit organization that prevents homelessness through free legal assistance, housing navigation, education, and advocacy.

We are grateful for this opportunity to provide comments on the proposed Chief Justice Directive concerning virtual proceedings, and we appreciate the Colorado Supreme Court’s interest in reexamining the crucial role that virtual participation has in expanding access to the courts, particularly for low-income court users.

We offer the following three comments for your consideration:

**1) In civil matters of fundamental importance, and in those which often involve litigants who may lack legal representation or experience barriers to in-person participation, options for virtual participation should be at the discretion of court users.**

Our court system exists to protect, maintain, and defend the interests of people, and fundamentally, must be accessible to all people who rely on the court system for enforcement of legal rights. This is particularly true in civil matters that implicate essential interests, such as housing, parental rights, safety, and other matters. Although this proposed Chief Justice Directive recognizes the importance of ensuring virtual options for participation, it principally proposes codifying the status quo system in which judges, and not court users, determine if and when remote participation should be allowed. This proposed order would enshrine the current method of allowing judicial discretion to supersede all other interests.

Absent significant extenuating circumstances, court users should be empowered to decide when virtual participation is most appropriate. For many low-income court users, virtual participation is the only possible means of participation. Barriers including childcare, employment, transportation, and disability prevent many Coloradans from being able to attend court appearances in person.

Research shows that when parties can participate virtually, the “no show” rate, or the rate of people who automatically lose their case by default, lowers dramatically. In addition to increasing participation rates, virtual participation has other benefits. One survey of litigants,

attorneys and other court participants found that 92% of respondents cited reduced travel time, 76% cited taking less time off work, 72% reported reduced costs, and 55% reported increased safety as benefits of remote participation.<sup>1</sup>

Recently proposed legislation has brought to light the benefits of granting court users the discretion to participate in a hearing virtually. For example, the state's fiscal analysis for House Bill 23-1186, which would provide opportunities for remote participation in residential evictions held in county court, estimates that nearly 8,000 households are currently unable to participate in person, and therefore, automatically lose their eviction hearing by default. If this legislation were to pass, this same population (constituting roughly 20% of all evictions filed annually) would be enfranchised to participate in their eviction and have an opportunity to defend their housing. Unfortunately, the proposed CJD would not guarantee this expanded access to justice, nor would it even guarantee uniformity within each county court, as each individual judge could determine their own unique policy for virtual participation.

Of course, judges do and must have a leading role in dictating the structure of their courtrooms, as well as any substantive decisions around how to conduct a hearing, which witnesses to allow, which testimony to admit or deny, the admissibility of exhibits, the cadence and timeline for discovery, etc. These are all processes that are understandably reserved to each individual judge. In contrast, ensuring that court users have a reasonably accessible means for participating in their hearing, including whether that entails virtual participation, is a matter that should be decided by each party, and not by a judge. While judges have a responsibility to command the terms of judicial participation in the interest of ensuring the fair and equitable administration of law, any policy that leaves virtual participation at the discretion of the court will only serve to deny access to justice to thousands of, predominantly low income, court users.

## **2) Ensuring equitable and accessible participation in legal processes is a matter of significant public concern that warrants input from elected legislators and their constituents.**

While we appreciate the Supreme Court's diligence in pursuing a policy around remote participation, we would ask that the Court consider working in collaboration with elected legislators to codify a policy that is inclusive and reflects broader public input.

Understandably, Chief Justice Directives have an important role in prescribing general parameters for a just and equitable administration of court procedure. However, ensuring equitable access to the courts is a matter of public concern. When a significant portion of civil litigants are unable to actively participate in an essential court matter, the legislature has a vested interest in providing parameters for allowing reasonably accessible participation to the courts. By their very nature, Chief Justice Directives cannot offer the same degree of

---

<sup>1</sup> The COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup, June 2, 2021.

enforceability and stability as a policy codified in statute, nor does the general public have the same degree of input in providing feedback on proposed CJDs.

In short, any policy that codifies opportunities for virtual participation should have the benefit of full public participation and input, including the opportunity to be shaped by elected policymakers and their constituents. Access to the court system is a fundamental responsibility of government and should include the input of all branches of government and the general public.

**3) To allow for appropriate input from court users, this public comment period should be extended and publicized through more diverse channels that are likely to reach court users.**

As expressed above, the general public should be afforded meaningful opportunities to give input on statewide court policies that impact access to the courts. Most immediately, we ask the Court to consider extending the timeline for the public to provide comments on this proposed CJD, and for the courts to consider circulating solicitations for feedback more widely through diverse channels that are likely to reach a variety of court users.

While we are grateful for the opportunity to provide this comment, we realize that this is a privilege that many others may not likely enjoy, as this opportunity came with only fourteen day's notice and no advanced opportunity to review the proposed CJD. Most governmental comment periods invite feedback for at least thirty to sixty days, depending on nature of the proposed rule, and in Colorado, state rules are generally governed by the timelines provided for in the Administrative Procedures Act. We appreciate that many CJDs have been ordered in the past with no advanced notice or opportunity for public input, however, given the far-reaching scale and impact of this proposed order, we believe an extended and more widely publicized public feedback period would be appropriate. We would encourage this effort to include publication through any reasonable channels for reaching court users.

In conclusion, we commend the State Supreme Court for its attention to this issue, and ask the Court to consider (1) reframing its proposed Order to provide court users with the discretion on when to participate in a court proceeding virtually, (2) working with elected policymakers and their constituents to codify permanent opportunities for remote participation in state law, and (3) extending the timeline and channels for distribution to ensure appropriate public feedback on this proposed order.

We also express our support for the comments we anticipate will be submitted by the Colorado Children's Campaign, a nonprofit organization that has endeavored to expand access to justice for children and families in Colorado.

Thank you for your consideration and please reach out with any questions.

Sincerely.  
Jack Regenbogen, Esq.  
Deputy Executive Director, Colorado Poverty Law Project  
[REDACTED]

**vongsakoun, magdalene**

---

**From:** roberts, jason (ITS)  
**Sent:** Wednesday, March 1, 2023 8:35 AM  
**To:** supremecourtrules  
**Subject:** VIRTUAL PROCEEDINGS POLICY

Thank you for the well thought out draft policy. I agree with the balanced approach and appreciate the recognition of the challenges and burdens to the Judicial Department.

Jason Roberts  
Senior AV Engineer  
Colorado State Judicial Department  
1300 Broadway, Suite 1200  
Denver, CO 80203

[REDACTED]  
[REDACTED]

**vongsakoun, magdalene**

---

**From:** Peter L. Runner [REDACTED]  
**Sent:** Wednesday, March 15, 2023 11:09 PM  
**To:** supremecourtrules  
**Subject:** [External] Virtual Proceedings Policy

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[Sent from Yahoo Mail on Android](#)

Coverage of proceedings are Ineffective unless and until the public has access to ICCES, only upon which time the public may begin to establish confidence that the Judicial system recognizes and fulfills the eight ethics principles Bill Daniels identified:

Integrity

Trust

Accountability

Transparency

Fairness

Respect

Rule of Law

Viability to live streaming coverage

How will the court apply the above ethics to assorted amendments of Procedural Rules governing the format for proceedings in the court?

For what reasons have the Advisory Committees omitted Probate, Trusts and Estates Courts of Equity from IV. ACCESS and LIMITATIONS: A., B., and C Live Streaming?

For what reasons have the Advisory Committees elected to Express Limitations on Live Streaming of criminal proceedings?

Thank you for your kind attention.

**vongsakoun, magdalene**

---

**From:** russell, tamara  
**Sent:** Wednesday, March 15, 2023 3:00 PM  
**To:** supremecourtrules  
**Subject:** 1st JD District Court Judges' Response to Proposed Directives on Virtual Proceedings and Live Broadcasting

Thank you for the invitation to submit comments regarding the Proposed Directives on virtual and proceedings and live broadcasting. After reviewing the two directives with my fellow district court judges in the 1<sup>st</sup> J.D., I am happy to say that most of our concerns have been covered by the proposals. The main concern that we have in Jefferson County is that judicial officers continue to have discretion, and the ultimate determination, of whether appearances are in person or on webex, and whether we are required to live stream proceedings.

Having said that, there were a few suggestions to add to the list of Presumptively In-Person Appearances, although you may feel that they are already covered by the proposed language:

- Civil Jury and Court trials
- Domestic Permanent Orders Hearings
- Appearance on Warrant; and
- Contempt of Court Proceedings

There were also some overall concerns about livestreaming coverage (in addition to the obvious hassles and time-consuming pitfalls of using the video equipment constantly). Judges are concerned that there will come a time when live streaming is mandatory in order to satisfy the Constitutional requirement that a courtroom be “open to the public”. The other concern is that sureties will balk when they receive a notice of forfeiture when the court allows a defendant to appear by video and they FTA. Sureties might consider this a violation of the bond contract since they almost always require the Defendant to appear at each court hearing. Just a thought.

Thanks for all of your hard work on these issues and please continue the fight to give the judges discretion that they need.

Judge Tamara  
Russell  
1<sup>st</sup> Judicial  
District  
District Court Judge



**vongsakoun, magdalene**

---

**From:** Jenny Santos [REDACTED]  
**Sent:** Wednesday, March 15, 2023 4:36 PM  
**To:** supremecourtrules  
**Subject:** [External] Public comment: Chief Justice Directives re continuation--virtual proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern-

I strongly recommend Chief Justice to continue virtual proceedings.

I work with victims/survivors of domestic violence, sexual assault, and general victims of crime. Victims/survivors experience trauma and often have barriers obtaining access to justice. Barriers victim/survivors experience are access to transportation or being triggered when they are in close proximity to their perpetrator. Personally, I've witness victims/survivors' participation increase with virtual proceedings. There are times a person is in hiding from their perpetrator and participating in virtual proceedings allows them to stay safe.

The caveat to virtual proceedings is that not all counties provide adequate support to Spanish monolingual speakers. From experience some counties have a great process for interpretation services during virtual proceedings. Yet, in other counties victims have requested interpretation with sufficient advance time and have been told they must drive to the court house, because they need an interpreter and must be in the court house.

Thank you for your attention to this matter and hope continuation in virtual proceedings that assure monolingual Spanish [or any other language] speakers also have the opportunity to obtain access to justice.

Sincerely,

**Jenny Santos**

Lead Domestic Violence High Risk Task Force Advocate

**Servicios de La Raza, VISTAS**

[REDACTED]  
[REDACTED]  
303-458-5851, office general line

303-455-1332 fax  
[REDACTED]

[www.serviciosdelaraza.org](http://www.serviciosdelaraza.org)

<https://serviciosdelaraza.org/services/victim-services/>

Like us on Facebook: [www.facebook.com/ServiciosdeLaRaza](https://www.facebook.com/ServiciosdeLaRaza)

[www.facebook.com/larazayouthleadershipinstitute](https://www.facebook.com/larazayouthleadershipinstitute)



CONFIDENTIALITY NOTICE - This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain information that is confidential or legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that you must not read this transmission and that any disclosure, copying, printing, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender by telephone or return e-mail and delete the original transmission and its attachments without reading or saving in any manner. Thank you.

Sent from [Mail](#) for Windows

**vongsakoun, magdalene**

---

**From:** Edward G. SchaumbergIII [REDACTED]  
**Sent:** Thursday, March 9, 2023 2:14 PM  
**To:** supremecourtrules  
**Subject:** [External] draft CJD on virtual proceedings.

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I wholeheartedly agree with the comments below.

I have also found that should we need an in person hearing it is easier to get than in the Pre-COVID days because these short case dockets move faster

From: Patrick Gentzler [REDACTED]  
Date: 3/3/23 10:44 AM (GMT-07:00)  
To: Beth Padilla [REDACTED]  
Cc: Lucy Martin [REDACTED] michael f green pc [REDACTED] Tammy Stewart [REDACTED] RPC Listserve [REDACTED] Shawna Geiger [REDACTED]  
Subject: Re: draft CJDs on virtual proceedings and livestreaming

For my clients: The ones that have custody of their children and cannot appear in Court - Webex is critical. For my clients that work: - Webex is critical. For my clients that have warrants out for their arrest - Webex is critical. For the clients that are incarcerated and allowed to attend - Webex is critical. For myself - If I have Court in different jurisdictions - Webex is critical. I am absolutely in favor of keeping Webex.

Patrick K. Gentzler  
Law Office of Patrick Gentzler

[REDACTED]  
From: Patrick Gentzler [REDACTED]  
Date: 3/3/23 10:44 AM (GMT-07:00)  
To: Beth Padilla [REDACTED]  
Cc: Lucy Martin [REDACTED] michael f green pc [REDACTED] Tammy Stewart [REDACTED] RPC Listserve [REDACTED] S

From: Patrick Gentzler [REDACTED]  
Date: 3/3/23 10:44 AM (GMT-07:00)  
To: Beth Padilla [REDACTED]  
Cc: Lucy Martin [REDACTED] michael f green pc [REDACTED] Tammy Stewart [REDACTED] RPC Listserve [REDACTED] Shawna Geiger [REDACTED]  
Subject: Re: draft CJDs on virtual proceedings and livestreaming

For my clients: The ones that have custody of their children and cannot appear in Court - Webex is critical. For my clients that work: - Webex is critical. For my clients that have warrants out for their arrest - Webex is critical. For the clients that are incarcerated and allowed to attend - Webex is critical. For myself - If I have Court in different jurisdictions - Webex is critical. I am absolutely in favor of keeping Webex.

Patrick K. Gentzler  
Law Office of Patrick Gentzler

██████████  
hawna Geiger ██████████

Subject: Re: draft CJDs on virtual proceedings and livestreaming

For my clients: The ones that have custody of their children and cannot appear in Court - Webex is critical. For my clients that work: - Webex is critical. For my clients that have warrants out for their arrest - Webex is critical. For the clients that are incarcerated and allowed to attend - Webex is critical. For myself - If I have Court in different jurisdictions - Webex is critical. I am absolutely in favor of keeping Webex.

Patrick K. Gentzler  
Law Office of Patrick Gentzler

██████████  
**AS OF JULY 1 2019 MY NEW ADDRESS IS**

Edward, G Schaumberg, III  
6000 E. Evans #2-225  
Denver CO 80222  
Ph: ██████████  
Fax 303.756.4308

**vongsakoun, magdalene**

---

**From:** Stephanie Schrab [REDACTED]  
**Sent:** Wednesday, March 15, 2023 11:45 AM  
**To:** supremecourtrules  
**Subject:** [External] CO Supreme Court Public Comment

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I would like to comment that I am very strongly in favor of the continuation of virtual proceedings. As others have noted, they provide a level of effectiveness and efficiency, as well as transparency to the public, that goes beyond that of in-person proceedings. Furthermore, as an attorney with a chronic health condition, I appreciate that I am able to appear from the comfort of my office, with easy access to my own health accommodations, without having to worry about the undue stress of traveling, parking, passing through security, etc. at the Courthouse, and I believe that my clients with similar circumstances feel the same way.

Thank you,

Stephanie Schrab

**Stephanie Schrab** | *Attorney*

---



📍 750 W. Hampden Ave., Ste. 505  
Englewood, CO 80110

☎ [REDACTED]  
☎ [REDACTED]

🌐 <https://www.solemlaw.com/>

✉ [REDACTED]

**IMPORTANT:** This electronic mail transmission and any attached documents contain information that is only for the use of the addressee and is confidential and legally privileged. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained herein is strictly prohibited. If you received this transmission in error, please call 303-761-4900 and delete the message. Thank you. The sender, the law firm named herein, or any person or entity that this firm may represent, has not and does not agree to enter into any legal relationship or any other legally binding agreement, or incur any obligation or liability by means of this email transmission unless specifically provided for outside of this transmission. The contents of this email generally do not constitute advice and should not be relied upon as the sole source of information due to constantly changing laws and related areas of the law.

**vongsakoun, magdalene**

---

**From:** scoville, stephanie  
**Sent:** Wednesday, March 15, 2023 4:23 PM  
**To:** supremecourtrules  
**Subject:** Common on draft virtual proceeding CJD

Chief Justice Boatright and Committee – Thank you so much for your work to develop standard policies governing virtual appearances and live streaming proceedings. The guidance will be welcome for trial courts.

A couple of comments on the virtual proceedings draft. First, CRCP 43(i) governs requests for absentee testimony in civil proceedings. That rule sets deadlines to request absentee testimony and contains a list of factors that a trial court must consider in determining whether to permit absentee testimony. These factors overlap with, but are not the same as, the factors identified in the draft CJD. I urge the committee to consider how to harmonize Rule 43 and the CJD. At a minimum, I would request that the CJD contain some reference to CRCP 43 and give trial courts and parties guidance as to how to proceed in situations in which both the CJD and Rule 43 may apply.

Second, the draft does not specify whether civil discovery dispute conferences are “civil status conferences” that are presumptively flexible. I strongly favor a policy that affords trial courts maximum discretion in deciding whether to hold discovery dispute conferences in-person and does not require extensive findings before an in-person appearance may be required. My own practice is to hold the first 1-2 discovery disputes via WebEx, but then to require additional disputes to be handled in-person. The ease of WebEx, in some instances, makes it too easy for parties to request ongoing court intervention. The requirement of an in-person appearance encourages conferral and resolves many discovery disputes. This has been a useful tool for me in moving cases through discovery and to trial. I also urge you to permit trial courts to order in-person appearances for discovery conferences without requiring trial courts to enter separate orders with detailed factual findings as to the good cause for requiring an in-person appearance. Most civil judges use informal, flexible procedures to resolve discovery disputes, and requiring detailed findings of fact undercuts the purpose of having fast, flexible discovery proceedings.

Many thanks for your consideration of these issues –  
-Judge Stephanie Scoville



Stephanie Scoville (she/her/hers)  
District Court Judge, Second Judicial District  
City and County Building, Courtroom 269  
1437 Bannock Street  
Denver, Colorado 80202

**vongsakoun, magdalene**

---

**From:** David Seserman [REDACTED]  
**Sent:** Wednesday, March 15, 2023 9:17 PM  
**To:** supremecourtrules  
**Subject:** [External] CJD Virtual Proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I write with just a few comments. My experience has been that virtual proceedings are excellent when the finder of fact does not need to judge the credibility of witnesses. I find those proceedings more challenging. I would suggest considering illness as a presumptive good cause. This would be in line with Colorado laws and policies (for instance, the Healthy Families Workplaces Act).



David B. Seserman  
3900 E. Mexico Ave., Suite 300  
Denver, CO 80210

[REDACTED]  
[REDACTED]

## vongsakoun, magdalene

---

**From:** Bernadette Shetrone [REDACTED]  
**Sent:** Tuesday, February 28, 2023 9:13 PM  
**To:** supremecourtrules  
**Subject:** [External] Virtual Proceedings Policy

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I agree with the draft and would allow even more discretion for virtual appearances in some cases where the parties agree. The ability to appear virtually has made it easier for attorneys and parties to the case to appear. This includes parties who have difficulty with transportation as well as making it easier for them to attend hearings due to work and other responsibilities.

Virtual hearings have made it easier for attorneys to provide representation for clients in rural areas, where there is a shortage of attorneys. It saves on costs all around. Since virtually hearings have started, it is hard to imagine not having this option, particularly for very short hearings.

Sincerely,

Bernadette Shetrone, JD, MA, MSLA  
Attorney at Law  
Child and Family Investigator, Mediator  
LLM in Taxation Candidate  
University of Denver, Sturm College of Law

The Law Office of Bernadette I. Shetrone, LLC  
[www.shetronelaw.com](http://www.shetronelaw.com)

[REDACTED]  
[REDACTED]  
635 Southpointe Ct., Suite 235  
Colorado Springs, CO 80906



CONFIDENTIAL  
ATTORNEY/CLIENT PRIVILEGED COMMUNICATION  
ATTORNEY WORK PRODUCT

This communication is for the intended recipient, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. 2510, and its disclosure is strictly limited to the recipient intended by the sender of the message. This communication may contain confidential information and privileged material that is for the sole use of the intended recipient and receipt by anyone other than the intended recipient does not constitute a loss of the confidential or privileged nature of the communication. If you are not the intended recipient or the employee or agent responsible for delivering this communication to the intended recipient, you are hereby



notified that any unauthorized use, dissemination, distribution or copying of this communication is strictly prohibited and may subject you to criminal or civil penalty. If you have received this communication in error, please notify us immediately by telephone [\(719\) 644-6137](tel:7196446137) or e-mail reply, and delete the message from your system, and destroy any hard copy you may have printed. Thank you.

"Justice will not be served until those who are unaffected are as outraged as those who are" - Benjamin Franklin

"I swore never to be silent whenever and wherever human beings endure suffering and humiliation. We must always take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented" - Elie Wiesel

## vongsakoun, magdalene

---

**From:** Susannah Smith [REDACTED]  
**Sent:** Monday, March 6, 2023 9:28 PM  
**To:** supremecourtrules  
**Subject:** [External] hearings via webex

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

i am a clinical and forensic psychologist. I work in a rural area, and my work spans the entire state of Colorado. Please continue to allow hearings via webex. if people have to travel all over, the cost to the clients rises astronomically; efficiency will be lost; fewer people will be receiving justice. When I testify in court, it may take me a day to drive to the venue; I have to cancel all my clients; often the case gets continued at the last minute. If I am in my own office, I can contact clients and see most of them; I can do other work; and the client does NOT get charged for days of my time. I strongly support webex hearings. Susannah Smith PhD

Susannah Smith, Ph.D.  
18474 Highway 550  
Ridgway, CO 81432-9654  
[www.creativeteamconsulting.com](http://www.creativeteamconsulting.com)

Clinical and Forensic Psychology  
Organizational Development Consulting  
Certified Clinical Trauma Professional (CCCTP)

[REDACTED]  
[www.creativeteamconsulting.com](http://www.creativeteamconsulting.com)  
970-728-5234; [REDACTED] 877-861-5436 fax  
Organizational Development/Systems Consultant; Licensed Psychologist in California, Colorado, Louisiana, Mississippi and Texas  
Certified by the National Register of Health Service Psychologists

Patient Portal: [www.therapyportal.com](http://www.therapyportal.com)

VSee users: [REDACTED]

Doxy.me users: [REDACTED]

Venmo: [REDACTED]

***“When the Last Tree Is Cut Down, the Last Fish Eaten, and the Last Stream Poisoned, You Will Realize That You Cannot Eat Money.”***

### PRIVILEGED/CONFIDENTIAL COMMUNICATION;

Please be aware that this email server is not a secure form of communication. No confidentiality can be expected. Do not share information that may compromise confidentiality. Please make use of the encrypted email that I offer if you are my client. Contact me to set this up for you.

This message and its enclosures are intended only for the person to whom it is addressed. If you are not the intended recipient please do not copy, disseminate or distribute this message. If you received this message in error please immediately notify the sender and delete this message. Your participation in this electronic exchange signifies your consent allowing confidential and/or privileged information to be transmitted in this medium. This e-mail and any associated communications, attachment(s) and links are protected under the Electronic Communications Privacy Act 18 U.S.C 2510 et seq and is confidential.

Please consider the environmental impact of printing this email

**vongsakoun, magdalene**

---

**From:** Tammy Stewart [REDACTED]  
**Sent:** Saturday, March 11, 2023 11:46 AM  
**To:** supremecourtrules  
**Subject:** [External] WebEx Appearances and Live Streaming opportunities in rural jurisdictions.

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Honorable Supreme Court Justices,

I have been made aware of the current comments being taken for the rules relating to WebEx appearances and Live -streaming.

I can not voice enough or strong enough support for the continued use of WebEx for appearances and to continue live-streaming.

I am an attorney of 33 years, and have been in rural rural jurisdictions the majority of my practice time.

I am currently a rural attorney in Routt County, and have an ORPC contract for the 14th Judicial District , Routt, Grand, and Moffat counties, and am also handling cases, due to the availability of WebEx alone, in Costilla County, Rio Blanco County, Montrose County, and make appearances in jurisdictions for ORPC D and N hearings across the state where no other attorney can be found or is available.

Living in a rural jurisdiction , where travel time to courts can be 2 to 6 hours round trip, and are often in hazardous snow conditions over mountain passes makes a drive for a short appearance not only costly in drive time billed to the state, but dangerous to me as an attorney making the drive.

My clients are impoverished and have numerous issues with substance abuse disorder, ADA issues, mental health disorders. and finding transportation in our rural jurisdictions to try to get to court where there is no public or or private transportation in existence is not possible. They have jobs that are jeopardized with absences caused by numerous D and N court proceedings , and have child care issues where there is no one else to care for their children for a court appearance. We have very few to no public day cares available or any availability in the already full and waiting listed home daycares.

WebEx appearance allow me to take the court appointed D and N caseloads that we now have, possible. I can appear in court in three to four different counties in the same day. My clients can appear and not have a FTA due to transportation, job or child care issues which happened so frequently pre WebEx.

Webex allows me to accept appointments/ contracts from NorthWest Colorado Legal Aid where clients with severe domestic abuse that have no way financially to even start a legal case get the representation and safety for themselves and their children they need going forward.

I can take low pay domestic cases and slow pay domestic cases for the overwhelming number of people who have no other means to legal resources or representation in Allocation of parental Rights Cases or Dissolution cases. I am able to take pro bono cases. I am only able to support this highly needed assistance with the use of WebEx.

All of the my case areas, D and N, Juvenile, Family, are all taken at state court reduced rates , and I am only able to do the most important work I know of, helping impoverished, diverse, ADA, addicted, abused, etc... clients by the ability to appear by WebEx.

WebEx appearances allow the voices of these invisible populations to be heard in courts of justice because attorneys like me can represent the underrepresented people in a sustainable way by the use of WebEx appearances.

It costs the state less money because I am not then paid for these long travel times, and inability to take the number of indigent cases the court now appoints and needs representation for. It helps people (attorneys and the public )who are disabled in so many ways, or recovering from surgeries or illnesses to still make court appearances and not have to continue legal cases at the cost of time and money to the judicial system and state.

I plead for the continued use of WebEx attorney and client appearances in rural jurisdictions in D and N cases, and Family Law cases , so that these people can continue to have justice, and I can continue to represent them and take on new cases from court appointed D and N cases, and contract Legal Aid cases.

Our system of fair justice to all is completely dependent on our ability to use Webex .

Respectfully

Tammy Stewart, Esq.

**Tammy L. Stewart**

Law Office of Tammy L. Stewart, LLC

P.O. Box 775347

Steamboat Springs, CO 80477

970-819-9176

Fax: 970-870-7879

<http://www.steamboatcolaw.com>

And Now These Three Remain:

**FAITH , HOPE AND LOVE,**

But The Greatest of These Is **LOVE**

1 Corinthians 13:13

**CONFIDENTIALITY NOTICE:** The information contained in this ELECTRONIC MAIL transmission is confidential. It may also be subject to the attorney-client privilege or be privileged work product or proprietary information. This information is intended for the exclusive use of the addressee(s). If you are not the intended recipient, you are hereby notified that any use, disclosure, dissemination, distribution (other than to the addressee(s)), copying, or taking of any action because of this information is strictly prohibited. If you are not the intended recipient, please call Law Office of Tammy L. Stewart at 970-819-9176 immediately and delete the message.

## vongsakoun, magdalene

---

**From:** Kevin Strobel [REDACTED]  
**Sent:** Saturday, March 4, 2023 5:05 PM  
**To:** supremecourtrules  
**Subject:** [External] Virtual appearances by webex

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I highly encourage the court to continue and to encourage and/or require judges to use webex or equivalent internet connectivity for court proceedings that are not evidentiary hearings. The use of webex has greatly improved the ability of litigants to appear in court without major disruption to their work or personal schedules and avoids needless expense both individually for litigants and for attorney fees for represented litigants.

I work for the public defenders office so my experience is solely with the criminal courts. Our lawyers are routinely in court in person but when feeling ill, the option of appearing virtually avoids coverage by lawyers unfamiliar with the case and avoids spreading of illness through personal contact. For private lawyers, many appear in multiple counties throughout the state. It is frankly silly to require a lawyer who has an appearance in Larimer County in the morning and perhaps another appearance in El Paso County in the afternoon to drive back and forth those distances for most criminal appearances which are often continuances. For litigants who have hired those lawyers it is financially burdensome for them to have to pay those lawyers for their travel time and related expenses. For pro se litigants, a personal appearance in court for a continuance which takes less than five minutes of court time often means an entire day of lost wages and the addition of travel expenses on top of their financial burden.

Judges who require in person appearances for even routine continuances are frankly abusing their judicial power and needlessly punishing everyone who has to drive any distance to the court involved. Virtual appearances should be mandatorily allowable for routine continuances and resetting appearances.

Kevin Strobel  
Attorney Registration Number 9982

**vongsakoun, magdalene**

---

**From:** Michael Stuzynski [REDACTED]  
**Sent:** Wednesday, March 15, 2023 2:31 PM  
**To:** supremecourtrules  
**Subject:** [External] comment on proposed CJD 23-XXXX virtual proceedings  
**Attachments:** comment on cjd regarding continuing virtual appearances.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Please find attached my comment on the proposed CJD governing the continuation of virtual proceedings.

Best regards,



**RECTOR  
STUZYSKI**  
LLC.

*A Personal Injury & Criminal Defense Law Firm*

**Michael Stuzynski**

*Trial Lawyer*

p: [REDACTED]

f: 719.635.3071

131 S. Weber St., Colorado Springs, CO 80903



**RECTOR  
STUZYNSKI**  
— LLC. —

rectorlawfirm.com • 131 S. Weber St., Colorado Springs, CO 80903 • Office: 719.578.1106 • Fax: 719.635.3071

**COMMENTS ON PROPOSED CHIEF JUSTICE DIRECTIVE 23-XX VIRTUAL  
PROCEEDINGS POLICY**

In the Policy Statement section of the proposed CJD entitled “Virtual Proceedings Policy,” the Chief Justice recognizes both positive and negative aspects of the transition to virtual proceedings necessitated by the COVID-19 pandemic. Some of the costs, or negative aspects of virtual proceedings, are addressed in the Policy Statement as follows:

“Parties routinely settle their cases after meeting in person outside the courtroom prior to a trial or hearing. There is also a loss of courtroom decorum and solemnity when parties or other participants appear virtually. Finally, the operation of the virtual appearance platform requires ongoing attention from both the judge and staff during each proceeding.”

Despite considering both positive and negative aspects of virtual proceedings, the list of costs is incomplete. In discussing the continuing challenge of navigating both virtual and in-person proceedings with attorneys throughout the state, I have personally observed that litigants with Limited English Proficiency (LEP) have suffered disproportionately from the implementation of virtual proceedings in which language interpreters, as governed by CJD 06-03, have appeared remotely in court proceedings.

I wish to bring to your attention several of the issues that have arisen due to language interpreters appearing remotely, as the present draft Virtual Proceedings Policy CJD expressly states in Section IX. A. that it is not binding on interpreters. In light of the recent amendment to CJD 06-03 authorizing evidentiary proceedings to proceed via the use of remote interpretation services for LEP litigants, I feel that further consideration on this issue is warranted.

It is my position, both as a criminal defense attorney and as a citizen concerned with equal access to justice for all, that language interpreters should also be subject to the Virtual Proceedings Policy CJD, and that there should be a presumption that language interpreters will appear in person when the LEP litigant is also required to so appear. This is chiefly due to my concern that, despite this Court’s best efforts, neither the Constitutional rights nor the statutory rights under Title VI of the Civil Rights Act of 1964 of LEP litigants are properly protected by the virtual appearance of language interpreters. Significantly, remote interpreters often provide consecutive rather than contemporaneous interpretation, are not visible to the parties, and decline to provide interpretation off the record to facilitate communication ancillary to the judicial proceeding.



Most importantly, language interpreters appearing remotely routinely fail to offer interpretation services ancillary to the court proceeding, as required by CJD 06-03 Part II. A. This impacts the ability of LEP litigants to meaningfully participate in and understand the proceedings in which they are a fundamental part. In a criminal case, it is not unusual for any defendant to have questions of counsel either before, after, or during a court proceeding. When an English-speaking defendant has questions of counsel, he or she can readily communicate and resolve them. LEP litigants are not afforded this basic dignity, to their detriment, and by extension to the detriment of our justice system, which aspires to provide a fair and impartial system of justice that protects constitutional and statutory rights and liberties and assures equal access.

I have information from both personal observation and communication with other members of the bar that remote interpreters have declined to assist court-appointed attorneys explaining plea paperwork to LEP litigants, which necessitates the court appearance being set over. In addition, I have information that remote interpreters have been either unable or unwilling to facilitate conversations between court-appointed attorneys and LEP defendants who are appearing in custody in court for the first time to discuss information necessary to make a bail argument. In both of these examples, the court proceedings are unable to go forward on the date scheduled and need to be re-scheduled, causing unnecessary delay, and in the case of a litigant in custody, unnecessary and potentially unconstitutional pre-trial incarceration. This has also caused unnecessary financial expenses on the part of either the litigant him or herself, the Office of Alternate Defense Counsel if the litigant is so represented, or the Office of the Public Defender, who would have to schedule and pay for a language interpreter to assist the court-appointed attorney in a private conference that should otherwise have been taken care of by the State Judicial as articulated in CJD 06-03 Part II. A. This was never an issue before the advent of virtual proceedings when interpreters were appearing in-person as a matter of course.

Another consideration is that many proceedings that occur with remote interpreters involve consecutive rather than contemporaneous interpretation. Consecutive interpretation causes a delay in proceedings by itself. Consecutive interpretation necessitates disjointed recitation of the parties' respective positions, as the person speaking must break up his or her statements to allow the interpreter time to render interpretation. This occurs both in English and the LEP litigant's native tongue and causes communication issues that are not conducive to a full and complete understanding of the proceedings by the LEP litigant. The parties, as well as the Court, often fail to keep their statements short enough to allow for the effective rendering of a complete interpretation, despite all participants' best efforts. Even when this process is fully respected and complied with, the disjointed nature of the proceedings creates an awkward atmosphere that chills the LEP litigant's understanding of the proceedings, and his or her willingness to ask questions, which clearly contribute to further, embarrassing delays. These delays will be compounded if, as has occurred in the past, the interpreter and the parties are not able to clearly hear one another due to failures of the technology, or less-than-clear audio in the courtroom.

The use of in-person interpreters alleviates all the problems articulated above, as interpreters appearing in-person can render interpretation contemporaneously to the proceedings, obviating the need for awkward pauses. The interpreters appearing in person also either stand next to the LEP

litigant or are equipped with a communication device that allows them to more seamlessly render interpretation and apprise the Court of any problems with the LEP litigant's ability to hear or understand the proceedings. Most importantly, in-person interpreters give breath to the Constitutional and statutory rights of LEP litigants to equal access to justice, due process of law, and the right to assistance of counsel by allowing them to ask questions of counsel and other judicial personnel outside the presence of the judicial officers.

Should an LEP litigant have a question for counsel and in-person interpreters are provided, that question can be answered by the litigant communicating quietly with counsel through the services of the interpreter at counsel's table or the podium should the question arise in open. A short break can also be accommodated to allow for a longer question and answer period to occur outside the presence of the judicial officer in the courthouse hallway. I have noticed that when LEP criminal defendants are furnished with remote interpreters, they are hesitant to ask questions of counsel if they do not understand a proceeding, as they are cognizant of the disruption that the procedure causes to all parties. This is when interpreters appearing remotely are even willing to facilitate communication ancillary to the court proceeding.

There are other problems attendant with the continued authorization of remote interpretation, chief among them the fact that courts have struggled to secure in-person interpreters for jury trials and contested hearings in which they have been required. The reasons for this appear to be economic, as interpreters are paid the same hourly rate regardless of whether they appear in person or remotely and are accordingly not financially incentivized to accept in-person shifts if remote shifts are otherwise available. It is easier to interpret from home in small hearings than it is to drive to court and interpret for a day-long hearing or trial for the same pay. This basic reality has led to significant shortages of interpreters for jury trials, which to the best of my knowledge has caused several criminal cases to be continued for lack of available interpreters and has caused problems for civil cases as well.

In Denver County District Court case 2021 CV 32789, *Maria Galvin Rubio v. Liana Beckford*, it was brought to my attention that the Plaintiff required a Spanish language interpreter to understand the proceedings, but the Court was unable to provide an interpreter for trial. Plaintiff was forced to choose between expending the cost herself to retain an interpreter for trial or continue the trial date, which in civil cases also necessitates a cost expenditure with losses on deposits for retained experts. Though an interpreter was ultimately provided on the eve of trial, the Plaintiff and her counsel had to burden themselves with the possibility of privately retaining an interpreter or else continue the trial. That trial proceeded on September 19-21, 2022 in Denver District Court.


In Adams County District Court Case 2021 CV 30278, *Leticia Trujillo v. Jose Torres Gandarilla*, it was brought to my attention that the defendant required a Spanish language interpreter to understand the proceedings. The Court also could not find an interpreter to appear in person at trial, and the defendant was required to expend costs to retain an interpreter for trial or else face a continuance. This trial proceeded in Adams County District Court on October 5-6, 2022 with the defendant expending costs to retain an interpreter for trial.

There presents a unique opportunity in the dissemination of this present Chief Justice Directive to cure some of these problems that have arisen since the advent of virtual court appearances. This office will fall short of this goal if it fails to include language interpreters in the Virtual Proceedings Policy, as their return to courthouses throughout the state are of vital importance to ensure that the mission statement of State Judicial, in providing a fair and impartial system of justice that protects constitutional and statutory rights and liberties and assures equal access for all litigants, including those without English proficiency.

In making this statement, I am mindful of the potential objections that may be lodged against it. Chief among those I surmise would be financial. Remote interpretation may save certain judicial districts money who would have to pay language interpreters travel time and mileage. I ask that this office consider the fact that these costs are ultimately not saved, but merely shifted to other agencies and ultimately to private parties. When a language interpreter appearing remotely is unable to assist court-appointed counsel in speaking with an LEP litigant, the court date is not only rescheduled unnecessarily, but either the Office of Alternate Defense Counsel, the Public Defender, or a private party is required to schedule and pay for interpretation services during a private meeting that may otherwise be unnecessary. This not only potentially shifts costs from one government agency to another, effectively saving nothing, but also runs afoul of the spirit of CJD 06-03 Part II. A. which requires that the courts schedule and pay for language interpreters, to include rendering services ancillary to the judicial proceeding.

I further recognize that remote interpretation may still be a viable option in some instances, most notably for rural counties or courthouses in which only minimal hearings are scheduled. Certainly, there is a way to ensure that the needs of all courts, and most importantly all litigants and participants who rely upon those courts, are adequately met. Though it is by no means the only viable solution, one such compromise that presents itself is to require interpreters to appear in-person along with all litigants when otherwise required in Class A, B, and C counties, as set forth in CRS 13-6-201. This will ensure that LEP litigants are afforded equal access to the courts and counsel in the busiest courthouses across the state, while allowing for courthouses and judicial districts in Class D counties the flexibility to marshal their resources in the most cost-effective manner possible.

Ultimately, without due consideration to the harm caused to LEP litigants by the continued normalization of remote interpretation services, I fear that our justice system will not be meeting the needs of some of the most vulnerable of those who rely upon it. To quote from the 2<sup>nd</sup> Circuit Court of Appeals case of *Negron v. New York*, "Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy." 434 F.2d 386, 390 (2<sup>nd</sup> Cir. 1970). I know and trust that you will give due consideration to the needs of this population in finalizing the Virtual Proceedings Policy.



Michael A. Stuzynski  
Rector Stuzynski LLC

**vongsakoun, magdalene**

---

**From:** Dave Thomas [REDACTED]  
**Sent:** Wednesday, March 1, 2023 8:47 AM  
**To:** supremecourtrules  
**Subject:** [External] Virtual appearances

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am a former prosecutor and now a defense attorney. I am a strong support of virtual appearances in most instances. Judges have tailored them to meet their needs so that certain hearings are in-person (trials, Motions hearings with witnesses, sentencings with incarceration as a possible sentence). One quick example seems to illustrate the benefits: I had a routine appearance schedule in Douglas County. I reside in Arvada. This appearance would have consumed half a day with drive times etc. I did it from home virtually in less than 45 minutes which included some wait time for other cases. This was a huge benefit for both myself and my client. This is just one of many. I have a upcoming case in Routt County but both I and my client live in metro Denver. If we can appear virtually for the first appearances, it will save both of us what could be a whole day to drive to Steamboat Springs and return. Thank you for your time.

David J. Thomas

--

David J. Thomas, Attorney  
Thomas and Kollar, LLC  
2801 Youngfield St. Suite 300  
Golden, CO 80401  
[REDACTED]

**vongsakoun, magdalene**

---

**From:** [REDACTED]  
**Sent:** Tuesday, March 7, 2023 1:34 PM  
**To:** supremecourtrules  
**Subject:** [External] Comment - VIRTUAL PROCEEDINGS POLICY

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The policy should address expert witnesses. Legitimate expert witnesses, and certainly forensic expert witnesses, are generally subject to impeachment on issues related to their science and prior testimony, not their emotional responses and body language on the witness stand. Accordingly, **a presumption favoring** (even in jury trials) video testimony by forensic experts will provide significant cost savings to the parties while not interfering with the finder of fact's ability to weigh the evidence. There should be advanced notice with an opportunity to place an objection before the Court with sufficient advance notice not to disrupt scheduling of hearings or trials, but significant cost savings should be achieved and geographic equity across the state would be facilitated if Western Slope or out of Metro litigants did not face higher litigation costs to obtain expert testimony. There should be some safeguards with respect to a witness receiving input from other sources while testifying, but in most cases that can be handled by having the camera panning the room if the issue is raised.

Additionally, Status Conferences should be Presumptively Flexible. (It certainly provides a much greener alternative than requiring in person appearances.)

Vincent C. Todd (he, him, his)  
PO BOX 150188  
Lakewood CO 80215-0188

[REDACTED]  
[REDACTED]

**vongsakoun, magdalene**

---

**From:** Andy Toft [REDACTED]  
**Sent:** Tuesday, March 7, 2023 11:13 AM  
**To:** supremecourtrules  
**Subject:** [External] CJD23-XXX  
**Attachments:** 20230228CJD23-XX\_VirtualProceedingsPolicy\_DraftRdInd.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The attached comments/redline can be viewed in Acrobat Pro. These are solely my comments, not the firm's.

Andy Toft



HIGH INTEGRITY.  
EXPERIENCED COUNSEL.

ANDREW M. TOFT *Of Counsel*

5350 SOUTH ROSLYN STREET, SUITE100  
GREENWOOD VILLAGE, CO 80111

OFFICE: 303-860-7140 [REDACTED] | FAX: 303-860-7344

[REDACTED] [WWW.HN-COLAW.COM](http://WWW.HN-COLAW.COM)

This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521. And any accounting, business, or tax advice contained in this communication, including attachments and enclosures, is not intended as a thorough, in-depth analysis of specific issues, nor a substitute for a formal opinion, nor is it sufficient to avoid tax-related penalties. If desired, Hoffman Nies Dave & Meyer LLP would be pleased to perform the requisite research and provide you with a detailed written analysis. Such an engagement may be the subject of a separate engagement letter that would define the scope and limits of the desired legal, tax, or general consultation services.

# Compare Results

Old File:

**20230228CJD23-  
XX\_VirtualProceedingsPolicy\_Draft.pdf**

6 pages (149 KB)

versus

New File:

**20230228CJD23-  
XX\_VirtualProceedingsPolicy\_DraftRvsd.pdf**

6 pages (991 KB)  
3/7/2023 10:09:23 AM

## Total Changes

27

## Content

13 Replacements

9 Insertions

5 Deletions

## Styling and Annotations

0 Styling

0 Annotations

[Go to First Change \(page 1\)](#)

# SUPREME COURT OF COLORADO OFFICE OF THE CHIEF JUSTICE

## VIRTUAL PROCEEDINGS POLICY

### I. POLICY STATEMENT

It is a bedrock of the American court system that parties, counsel, and participants attend all court proceedings in person. The Covid-19 pandemic changed that. In the first two years of the pandemic, Colorado courts relied heavily on virtual proceedings. Now that Covid-19 has waned, this Court must address future reliance on virtual proceedings in Colorado's state trial courts.

The use of virtual proceedings has afforded great benefits for parties, attorneys, and other court participants. Virtual proceedings have decreased the substantial costs of coming to court, such as taking time off from work, traveling to the courthouse, waiting for a case to be called, and the extra attorney fees for counsel traveling to and waiting in court. The availability of attorneys to attend courts across the state without travel has also afforded significant opportunities for legal representation in parts of our state that do not have enough local attorneys.

There is, however, also a cost to the use of virtual proceedings. Parties routinely settle their cases after meeting in person outside the courtroom prior to a trial or hearing. There is also a loss of courtroom decorum and solemnity when parties or other participants appear virtually. Finally, the operation of the virtual appearance platform requires ongoing attention from both the judge and staff during each proceeding. - **this makes no sense. Don't in person proceedings require ongoing attention from both the judge and staff?**

Each Colorado District Court and County Court Judge is an independently constituted judicial officer, appointed by the Governor (**what about Denver**) and periodically subject to retention elections by the people. This Court acknowledges the inherent authority judges have in administering the courtrooms in which they work.

This policy also acknowledges that since the pandemic began, each of Colorado's twenty-two judicial districts has adapted differently to the use of virtual proceedings. A variety of factors—including the location of the judicial district, the volume of cases on the docket, and the technological capacity of the judicial district—has resulted in each judicial district's adoption of virtual proceedings to fit its needs.

Nevertheless, although Colorado judges and magistrates are in the best position to determine the ideal way to adjudicate each individual case, the unpredictable nature of allowing each judge or magistrate to determine policy for the use of virtual proceedings will lead to confusion for those who must appear in court.



This Chief Justice Directive aims both to strike the proper balance between these competing interests<sup>1</sup> for the courts' continuing use of virtual proceedings. At a minimum, it is the policy of the Colorado Judicial Branch to provide increased access to the courts through the use of virtual proceedings. This Chief Justice Directive also aims to increase statewide consistency for parties and courts regarding the use of virtual proceedings.

Finally, this Directive creates a baseline from which each judicial officer may determine on a case-by-case basis when good cause exists to depart from this baseline. Moreover, as the benefits of virtual proceedings vary for each judicial district, Chief Judges may also adopt local policies to further delineate the use of virtual proceedings in their jurisdictions.<sup>1</sup>

## II. APPLICABILITY

This policy is applicable to all state trial courts - **Are the Denver County Courts separate? Denver County has its own e-filing system and the judges are appointed by the mayor so I raise the issue. What about ALJs and municipal judges? I don't know whether ALJs and municipal judges are considered state trial courts so I raise the issue.**

## III. DEFINITIONS

- A. In-Person Appearance – An appearance at which all parties and counsel are physically present in the courtroom. **- what about witnesses?**
- B. Flexible Appearance – An appearance where parties and counsel may elect to appear in person or virtually without seeking prior authorization from the presiding judge. **- what about witnesses?**
- C. Remote Appearance – An appearance at which all parties and counsel agree to appear virtually. **- what about witnesses? And, what is the distinction between remote appearance and virtual appearance below? Why two categories**
- D. Virtual Appearance – An appearance by computer or smart phone that includes both video and audio transmission. Virtual appearances may include appearing by telephone without video transmission if authorized by the court ahead of the proceeding.

---

<sup>1</sup> Nothing in this Chief Justice Directive alters any obligation of the courts to adhere to the requirements of the Americans with Disabilities Act.

## IV. PROCESS

### A. Presumptively In-Person Appearances

1. The following proceedings require in-person appearances unless the court finds good cause to depart from this presumption:
  - a. Criminal or Civil Jury trial;
  - b. Civil Court trial
  - c. Domestic relations trial
  - d. Criminal Court trial;
  - e. Criminal preliminary hearing;
  - f. Criminal suppression hearing;
  - g. Criminal habitual trial;
  - h. Criminal probation revocation hearing;
  - i. Criminal show cause hearing;
  - j. Sentencing;
  - k. Guilty plea to a Victim's Rights Amendment offense;
  - l. Criminal Rule of Procedure 35(c) hearing;
  - m. Criminal transfer and reverse transfer hearing;
  - n. Extreme Risk Protection Order hearing;
  - o. Temporary Extreme Protection Order hearing;
  - p. Termination of Parental Rights hearing;
  - q. Dependency and Neglect adjudicatory hearing or trial; and
  - r. Civil Rule of Procedure 69 hearing
  - s. Civil or criminal contempt hearings

### B. Presumptively Flexible Appearances

1. Subject to the technological capability and staffing for each courtroom, the following proceedings shall allow for flexible appearances unless the court finds good cause to require a party to appear in person:
  - a. Civil case management conference;
  - b. Civil status conference;
  - c. Domestic relations initial status conference;
  - d. Domestic relations case management conference;
  - e. Domestic relations pre-trial conference;
  - f. Criminal petitions status conference;
  - g. Court sitting (or when no other hearing purpose is scheduled).
2. Unless a court grants express permission, no proceeding conducted virtually or remotely may be recorded. - **shouldn't some provision for recording by the court to permit transcripts to be prepared by mentioned?** Any recording in violation of this Chief Justice Directive may result in contempt proceedings.

- C. Subject to the technological capability and staffing for each courtroom, the presiding judicial officer, including any magistrate, may deviate from any presumptive hearing types set forth in this Section IV if notice is provided to the parties and the court has considered the factors for good cause listed in paragraph VII of this Directive.
- D. For proceedings not delineated in Sections IV.A or IV.B, each judicial officer, including any magistrate, shall have the discretion to determine whether appearances will be in-person or flexible, subject to the restrictions of C.R.C.P. 43, C.R.C.P. 343, and Crim. P. 43. In exercising such discretion, the court shall consider the factors set forth in paragraph VII of this Directive.

## V. FORCIBLE ENTRY AND DETAINER (F.E.D.) PROCEEDINGS

Subject to the technological capability and staffing for each courtroom, the summons return date in F.E.D. proceedings shall be a flexible appearance in those jurisdictions that require a court appearance, unless the court finds good cause to require an in-person appearance.

For F.E.D. trials, the appearance will be in-person unless a flexible option has been ordered by the presiding judge for good cause, subject to C.R.C.P. 343.

The presiding judge shall consider the factors set forth in Section VII when deciding whether to allow flexible appearances.

## VI. PROCEDURE FOR EXCEPTIONS

Any party seeking to appear by means other than those set forth in this Directive shall timely file a motion with the court in advance of the proceeding. In the motion, the party should outline the circumstances to be considered for good cause to deviate, pursuant to section VII of this Directive.

## VII. NON-EXCLUSIVE LIST OF FACTORS FOR GOOD CAUSE

Judicial officers, either on their own motion or on the motion of any party, should consider the following non-exhaustive list of factors when determining whether good cause exists **to allow one or more parties to appear virtually for an in-person hearing:**

- A. All parties agree the hearing should be held virtually;

- B. Requiring the party to appear in person would cause a party to reasonably fear for their safety;
- C. The cost and time savings to any party;
- D. Transportation limitations of any party;
- E. The position of the victim in a Victim Rights Amendment case;
- F. Weather and safe travel;
- G. The impact a virtual appearance would have on the Office of Language Access's ability to provide an interpreter;
- H. Ability for parties to efficiently conduct the hearing virtually (e.g. introduce evidence, make objections, and examine witnesses virtually);
- I. Judicial economy;
- J. Availability of counsel in the jurisdiction;
- K. Impact on employment of a party;
- L. Technological barriers (e.g. speed and quality of internet);
- M. Unavoidable scheduling conflicts of the parties preventing the matter from moving forward in a timelier way;
- N. The importance and complexity of the proceeding and whether the proceeding is contested;
- O. The likelihood of settlement if the proceeding remains in-person;
- P. Whether the party has had good contact with their attorney;
- Q. Whether there is a warrant for the party;
- R. Anticipated length of proceeding;
- S. Whether appearing virtually would allow for effective examination of witnesses and maintain the solemnity and integrity of the proceedings and thereby impress upon the witness the duty to testify truthfully;
- T. Any undue surprise or prejudice that might result; and
- U. Such other factors, based upon the specific facts and circumstances of the case, as the court determines to be relevant.

## VIII. IMPLEMENTATION AUTHORITY

Implementation of this policy is the responsibility of the Chief Judges of the **judicial districts**, with support from the State Court Administrators Office.

## IX. EXECUTIVE LIMITATIONS

- A. This policy is not binding upon interpreters and court reporters, who will follow their own guidelines for appearing in-person or virtually. Before modifying the presumptive type of appearance under Section IV of this C.J.D., the trial judge should confer with the managing court interpreter in the district about whether the change will be overly burdensome to the Office of Language Access.

- B. Chief Judges may issue administrative orders that further specify the judicial district's policies and procedures regarding virtual and in-person proceedings.

## **X. OTHER PROVISIONS**

The Supreme Court Advisory Committees on the Rules of Civil Procedure, the Rules of Criminal Procedure, the Rules of Juvenile Procedure, the Rules of Probate Procedure and the Rules of Water Procedure are directed to review the rules that govern the format for proceedings in the courts. Those committees are directed to consider whether amendments to the rules are necessary to implement the presumptive format for hearings reflected in this Chief Justice Directive.

CJD 23-XX is amended and adopted effective XXX.

/s/

Brian D. Boatright, Chief Justice

**vongsakoun, magdalene**

---

**From:** Emily Tofte Nestaval [REDACTED]  
**Sent:** Tuesday, March 14, 2023 1:12 PM  
**To:** supremecourtrules  
**Cc:** Kazi Houston; Emily Tofte Nestaval  
**Subject:** [External] Public Comment re: Live Streaming Coverage of Criminal Court Proceedings  
**Attachments:** RMvlc CJD Public Comment FINAL.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chief Justice Boatright,

I am writing to respectfully submit public comment on behalf of Rocky Mountain Victim Law Center (“RMvlc”) regarding the draft of the Chief Justice Directive related to Live Streaming Coverage of Criminal Court proceedings in Trial Courts. RMvlc appreciates the opportunity to share our perspective and insights we have from our experience working with crime victims in the context of criminal courts.

Thank you for your time and consideration of our feedback. I am happy to discuss any of our concerns in more detail at your request.

Sincerely,

Emily Tofte Nestaval, MSW

Executive Director

Rocky Mountain Victim Law Center (RMvlc)

P. 303-295-2001 [REDACTED]

RMvlc Website: [www.rmvictimlaw.org](http://www.rmvictimlaw.org)

Legal Information Network of Colorado Website: [www.ColoradoLINC.org](http://www.ColoradoLINC.org)

CONFIDENTIALITY NOTICE: This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2515, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, including any attachments, may contain confidential and/or attorney-client privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return email or by calling 303.295.2001 and destroy the original transmission and its attachments, as well as your reply email, without reading or saving in any manner. Thank you.

RMVlc will be awarding a  
victim advocate, prosecutor, and civil attorney  
for their outstanding contributions to advance or  
support victims' rights at our upcoming event

*Evening Honoring Victims' Rights*

THURSDAY, APRIL 27TH, 2023

Click here to learn more  
and to submit your nomination!



March 14, 2023

Sent via email only to [supremecourtrules@judicial.state.co.us](mailto:supremecourtrules@judicial.state.co.us)

Dear Chief Justice Boatright,

I am writing to respectfully submit public comment on behalf of Rocky Mountain Victim Law Center ("RMVLC") regarding the draft of the Chief Justice Directive related to Live Streaming Coverage of Criminal Court proceedings in Trial Courts. RMVLC is a nonprofit organization that provides free legal services to victims of violent crime throughout Colorado. We appreciate the opportunity to share our perspective and insights we have from our experience working with crime victims in the context of criminal courts.

One of our primary practice areas is enforcing victims' rights under the Colorado Victims' Rights Act as they navigate the criminal legal system. Our organization has worked extensively with victims to ensure their privacy and safety needs are met; especially when many of the Colorado court systems shifted to virtual proceedings in 2020 in response to the Covid-19 pandemic. We have seen the great benefits that have increased victim access and participation through the use of virtual access. We have also seen the pitfalls of virtual access. RMVLC appreciates the efforts that have been put forth to create consistency in practice throughout Colorado.

RMVLC has spent time considering the draft of the proposed directive and the possible implications for crime victims. Below are some concerns related to live streaming:

- **Clarification regarding term "live streaming":** Traditional live streaming (e.g. use of platforms such as YouTube) do not allow for courts to track who is observing or logged into a proceeding. RMVLC is concerned that members of the public may record or rebroadcast proceedings. These may be used to intimidate victims and could ultimately put crime victims in increasingly dangerous situations. The anonymity of streaming platforms allows for the public to easily rebroadcast, take photos, and otherwise publish proceedings in ways that are not traceable by law enforcement. Therefore, Colorado courts should create a means for tracking who is viewing publicly. If Colorado does not attend to this, it is likely to decrease victim participation as they will be unable to attend to their personal safety needs and may also have a chilling affect on victims reporting to law enforcement after victimization.



- **Victims' Right to Attend by Phone or Similar Technology:** Currently victims under the Victims' Rights Act (VRA) have the right to attend by phone or similar technology. It should be made clear that victims still have access to attend virtually even when a court limits or closes virtual access for the public.
- **Allow for Victims to Petition the Court for Closure of Virtual Access:** Crime victims are not a party to a criminal case, but often experience the most trauma and are at high risk for ongoing victimization. While prosecutors in Colorado are often aware of these risks for victims, they do not represent the victim themselves. Victims should be allowed to directly petition the court for
- **Require a specific request to provide public access to testimonial hearings:** Testimonial hearings are often the ones where the most private information, and exhibits, are disclosed. RMvlc is aware that there is some discussion about presuming virtual access for testimonial hearings with the option of limiting access. RMvlc has a strong focus on ensuring privacy for victims wherever possible. As such, we believe virtual access should *not* be presumed during testimonial hearings in order to attend to privacy protections; however, a process for legitimate requests for expanded access to occur should also exist.
- **Require courts to make a record regarding determinations of closure of, or expanded access to, virtual access:** Transparency in Colorado's judicial system is of the utmost importance. When courts make the decision to close virtual public access, courts should issue findings on the record as to their decision and the rationale for the closure.
- **Require public viewers to provide legal names and valid email address:** Related to the aforementioned concerns, adding a requirement for public viewers to provide their legal name and valid email address will create some means for accountability should a public viewer be in violation of the directive. It should be additionally clarified that victims named in the case may attend using a pseudonym or initials to protect their identity and to enhance their safety.
- closure of virtual access so they can directly share their privacy and safety needs.

I sincerely appreciate your time and consideration of crime victims as the draft directive is finalized. I am happy to discuss any of our concerns in more detail and will make myself available at your request.

Sincerely,



Emily Tofte Nestaval  
Executive Director

## **vongsakoun, magdalene**

---

**From:** Jeanette Troncoso [REDACTED]  
**Sent:** Tuesday, March 7, 2023 11:08 PM  
**To:** supremecourtrules  
**Cc:** Jeanette Troncoso  
**Subject:** [External] Continuing hearings via Webex

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Supreme Court Justices,


Thank you for the opportunity to provide feedback on the above-referenced subject. After reviewing the attachment provided by the Supreme Court, I noticed that nowhere in the document, it was mentioned the particularities of the Domestic Courts. Specifically, there are over 300 Child & Family Investigators (CFI) and Parental Responsibilities Evaluators (PRE) who are appointed by domestic court judicial officers throughout the state of Colorado.

Relevant to the question at hand, following are the reasons why it is, not only an advantage but a necessity, for the court hearings to remain accessible via Webex:

1. Due to the shortage of CFIs and PREs in the rural areas, many of us have started taking cases in those areas to help with the overflow of cases. This only occurred after COVID, when the Webex hearings began to occur remotely. If the hearings were no longer accessible via Webex, none of us would be able to take such cases, since in many instances, travel time is longer than the testimony time. I personally take cases in Grand county, to where it would take me 3-4 hours to travel; testimony for a CFI or a PRE usually does not last more than 1-2 hours.
2. A high percentage of domestic court cases involve domestic violence. Most of those cases involve protection orders that restrict in-person contact. Through Webex appearances, such restricted contact can be more easily enforced.
3. In many court houses, in particular Denver county district court, the parking is not only limited and very far to the courthouse, but not handicapped accessible. This is not an issue when the hearing occurs via Webex.
4. Non-attorney CFIs and PREs do not have access to the electronic filing system; therefore, when attending a hearing in person, they are not able to review Exhibits, or any evidence presented by attorneys. Since the hearings have occurred via Webex, the attorneys easily present these via camera in Webex.
5. Accessibility to appear at a hearing for the handicapped parties/CFIs/PREs is a major issue. Webex hearings allow such people to appear without physical limitations.
6. CFIs and PREs often have to attend Status Conferences and Hearings for different cases the same day. This is very doable when such appearances occur via Webex; however, if one has to travel from one county to another at the opposite side of town, this creates a limitation as to when a CFI can accept to testify.
7. Many of our cases involve a parent who has relocated outside of Colorado. I currently have two cases where one parent resides in Germany; and the other case, a parent resides in England. Being able to attend Status Conferences or hearings for such parents would be nearly impossible if Webex was discontinued.

Thank you Your Honors for approaching such a challenging topic. Respectfully,

***Jeanette Troncoso, M.A., LMFT***  
***Child & Family Investigator/PRE***  
***www.TroncosoBIOC.com***

The information in this e-mail is confidential and is legally privileged. It is intended solely for the addressee. Access to this e-mail by anyone else is unauthorized and may lead to civil and/or criminal penalties. If you have received this message in error, please delete all electronic copies of this message (and the documents attached to it, if any); destroy any hard copies you may have created; and notify Equipoise, LLC 720-982-3708 or fax 720-548-9009

**vongsakoun, magdalene**

---

**From:** Kristine Turner [REDACTED]  
**Sent:** Thursday, March 9, 2023 12:51 PM  
**To:** supremecourtrules  
**Subject:** [External] Public comment for Judicial Directives on Virtual Proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am in support of the "Second directive: *providing uniform guidance for virtual proceedings, recognizes that remote participation has decreased the "substantial costs of coming to court," both for litigants who need not take hours away from their jobs to appear in person and for lawyers who can avoid traveling to faraway jurisdictions to represent clients.*"

Not only does this cut costs for litigants, but it allows professionals to utilize time wisely. For example, as an expert witness, I can testify in more than one hearing if 2 hearings fall on the same day. Virtual testimony allows me to be present without drive time complications, it reduces time wasted while driving or waiting for testimony, and thus reduces the cost for litigants to engage expert witness testimony.

*Kristine Turner, Ph.D.*  
*Psychologist*

[REDACTED]

**vongsakoun, magdalene**

---

**From:** Rebecca Wallace [REDACTED]  
**Sent:** Wednesday, March 15, 2023 4:58 PM  
**To:** supremecourtrules  
**Cc:** Dana Steiner; Elisabeth Epps  
**Subject:** [External] CFF Feedback on Draft CJD re Live Streaming  
**Attachments:** 2023 03\_15- Colorado Freedom Fund\_CJD Live Stream Feedback.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Justice Boatright,

Attached please find feedback from Colorado Freedom Fund on the Draft Chief Justice Directive regarding live streaming criminal court.

Thank you,



**Rebecca Wallace (she/her)**  
Senior Policy Counsel  
[ColoradoFreedomFund.org](https://coloradofreedomfund.org)



March 15, 2023

**SENT VIA ELECTRONIC MAIL:** [SupremeCourtRules@judicial.state.co.us](mailto:SupremeCourtRules@judicial.state.co.us)

***Re: Public Comment on Draft CJD- Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts***

Dear Chief Justice Boatwright,

I write on behalf of Colorado Freedom Fund (CFF) to provide feedback on the draft Chief Justice Directive (CJD) for live streaming criminal court. CFF staff regularly observe criminal court remotely throughout the State. We have observed many hundreds of bond hearings, evidentiary hearings, and problem-solving courts without incident. We welcome a statewide policy that creates consistency in access to remote court observation without diminishing the wide public access currently available.

The draft CJD is thoughtful. However, if adopted, it would substantially reduce the level of remote observation currently available to the public, thereby *decreasing* transparency of criminal proceedings. We presume that is not the intent of the CJD. We propose several changes to the CJD, described below, to ensure the new CJD does not unduly limit public access to remotely view criminal proceedings in open court. We urge your Honor to adopt these changes before finalizing this directive.

- 1. A single standard for limiting live streaming of criminal court proceedings (docket, evidentiary hearings, trial, problem-solving courts).** The draft CJD gives judges wide discretion based on broad factors to disable live streaming of non-testimonial hearings. However, for evidentiary hearings and trials, rather than allowing judges that same discretion, the draft CDJ creates a near-prohibition on live streaming. This reflects an about-face from current practice and unnecessarily presumes all testimonial hearings are unfit for wide public observation. Over the last few years and to the current day, many evidentiary hearings and trials have been available for remote observation, most often without incident. While the likelihood of a fair trial or safety risk may be greater for evidentiary hearings and trials than for general docket, and may therefore warrant more frequent closure of remote observation, not all or even most testimonial hearings raise such a risk. Colorado Freedom Fund's team has watched many hundreds of cases, including many involving VRA offenses, that raised no safety or fair trial concerns.

Similarly, many problem-solving courts are currently available for public viewing through WebEx, yet the draft CJD outright prohibits live streaming these court proceedings. Closing public access to courts that have been available for public viewing for years without incident goes directly against the stated transparency goals of the draft CJD. While we

recognize problem-solving courts sometimes involve accused people sharing personal information about their mental health or substance use history, that is true of many criminal proceedings in regular docket, often including bond hearings and sentencing. Moreover, problem solving courts are still public, criminal courts considering cases that often have a named victim. The interest in watching these proceedings for both victims and the public is no less compelling than other criminal court proceedings.

The CJD should apply the standard it sets out for expanding or limiting live streaming of non-testimonial proceedings to ALL proceedings and retract its near prohibition on live streaming of evidentiary hearings, trials and problem-solving courts. The draft CJD gives extremely broad discretion for judges to disable a docket's live stream, even broader than under the current expanded media coverage CJD. The docket discretion in the draft CJD is more than sufficient to allow judges the flexibility to prohibit live streaming of any criminal proceeding when appropriate, including for evidentiary hearings, trials and problem-solving courts.

2. **Judicial balancing test.** The draft CJD establishes wide discretion for judges to disable live streaming. That breadth of discretion should be tempered with a requirement that, before disabling live streaming, judges weigh any concerns related to live streaming against the strong public interest in accessible observation of criminal proceedings. Such a balancing test fits neatly within First Amendment jurisprudence and reflects the stated values of the draft CJD.
3. **Judicial consideration of less restrictive alternatives.** Given the strong public interest in observing court, the CJD should require judicial consideration of less restrictive alternatives to fully disabling live streaming. If requiring observers to identify themselves, or turning off live stream for a particular witness's testimony or a discrete portion of the proceeding mitigates the concerns related to public viewing, this is preferable to fully disabling live streaming for the entire proceeding.
4. **Findings on the record.** From a transparency perspective, it is essential that judges make findings on the record based on the particular facts or circumstances of the case explaining why they are limiting public access to watch the proceedings. Without these findings, the public has no way of assessing whether the court is following the CJD or whether there is a basis to complain about or appeal the matter. The draft CJD should require findings on the record justifying disabling of live streaming, as is common when judges are applying a legal standard.
5. **Avenue for non-parties to request an expansion or limitation of live streaming.** The CJD does not identify who may request limitation or expansion of live streaming, and who may raise a complaint about violations of the CJD. The draft CJD should clarify that parties, victims, and witnesses may request to disable live stream; media and any member of the public may request permission to rebroadcast a live stream; and any person may complain about violations of the CJD.

6. **Specify safety as the concern** for parties, attorneys, victims and witnesses. The draft CJD currently identifies an “adverse consequence” to parties, attorneys, victims and witnesses as a basis for disabling live streaming. Safety, including from disclosure of highly private information, is clearly the risk that drives our concern for these individuals and that justifies overriding the public interest in viewing court. The amorphous category of “adverse consequence” should be clarified and simplified to “safety risk.”
  
7. **Clarify the mechanism by which media may request permission to rebroadcast a live stream.** This draft CJD contemplates that a court may give express permission to rebroadcast a live stream. (“There shall be no audio- or video-recording, screenshots, or photos of any live streamed court proceeding without express authorization of the court.” *emphasis added*). However, it is unclear what process media would use to seek this express authorization.

We appreciate you considering our feedback. I am happy to provide additional information or answer any questions you may have.

Sincerely,



**Rebecca Wallace**  
Senior Policy Counsel  
COLORADO FREEDOM FUND



**vongsakoun, magdalene**

---

**From:** wallace, sarah  
**Sent:** Tuesday, February 28, 2023 4:34 PM  
**To:** supremecourtrules  
**Subject:** Draft Virtual Proceeding Policy

Section IV(B) provides that on the presumptively flexible appearances, the Court must find good cause to require a party to appear in person. Section VII, has the list of factors for good cause “to allow one or more parties to appear virtually for an in-person hearing”. Nowhere does the directive provide for good cause factors when a judge determines it wants to require pursuant to IV(B) the parties to appear in person. In my short tenure on the bench, I have already found that there are times the parties should appear in person because they are not cooperating with the Court or each other, because a pro se litigant needs the time and focus of an in person hearing to explain what is going on.



Sarah B. Wallace  
District Court Judge, Second Judicial District  
City and County Building, Courtroom 209  
1437 Bannock Street  
Denver, Colorado 80202

**vongsakoun, magdalene**

---

**From:** Steven [REDACTED]  
**Sent:** Tuesday, March 7, 2023 10:24 AM  
**To:** supremecourtrules  
**Subject:** [External] Continuing hearings via WebEx

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I work in the courts on domestic and other matters as an expert witness, a PRE, a mediator, an arbitrator, and a PCDM. I am located in Boulder.

I strongly support continuing access to court hearings and status conferences via WebEx. This saves litigants thousands of dollars in my travel time to and from the courts, and in my time at a courthouse waiting in the hall to be called. It also makes my services to the courts and litigants available in counties that otherwise would be too far away from my physical location in Boulder.

In addition, I am 66 years old with immune system health issues, and I have been advised to avoid public indoor locations such as courthouses. Masks are no substitute for the safety of WebEx, and I believe the courts get better information from seeing my full face via WebEx than they would from seeing me from the side wearing a mask.

Please let me know your questions. I'm happy to provide any other information via email or WebEx 😊.

--

Steven Wolhandler, JD, MA, LPC

Author of [Protecting Yourself from Emotional Predators](#)

Read a Sample for Free

[https://read.amazon.com/kp/embed?asin=B07WGQQC3G&preview=newtab&linkCode=kpe&ref\\_=cm\\_sw\\_r\\_kb\\_dp\\_WN2PJHV9ZY0D5BHME2VG](https://read.amazon.com/kp/embed?asin=B07WGQQC3G&preview=newtab&linkCode=kpe&ref_=cm_sw_r_kb_dp_WN2PJHV9ZY0D5BHME2VG)

"A problem properly understood is a problem that can be solved."

Mediation, Arbitration, Custody Evaluations, PC/DM, Advice about Abusive People

[REDACTED]  
<http://www.creativeresolutions.org/> and <https://emotionalpredators.com/>

*Lou Reed's Rules to Live By: 1) Don't be afraid of anyone, 2) Get a really good bull shit detector and learn how to use it, 3) Be really, really tender*

## vongsakoun, magdalene

---

**From:** Caitlin Young [REDACTED]  
**Sent:** Sunday, March 12, 2023 5:04 PM  
**To:** supremecourtrules  
**Subject:** [External] Virtual Proceedings Policy

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello -- I am reaching out in support of the continuation of virtual proceedings.

As a practicing attorney, I have found virtual proceedings to be extremely beneficial for my clients, as well as myself. I primarily represent indigent parents in dependency and neglect proceedings and many of my clients do not live locally. Virtual proceedings allow my clients to still participate in their cases despite their geographical location.

Additionally, rural Colorado faces many challenges which larger metropolitan areas don't experience. Rural Colorado has been referred to as a legal desert. Often, there aren't many attorneys who practice in the furthest reaches of the state. To ensure clients have legal representation, courts often appoint counsel who live over one hour--sometimes more--away from the courthouse. Having the flexibility to attend uncontested hearings saves travel time for attorneys who live outside of the judicial district where the hearings are held, and allows for attorneys to practice in multiple counties where the dockets are scheduled the same day.

I'm glad the Court recognizes the importance of allowing virtual proceedings to continue.

Thank you for your time.

Cait

--  
Beginning on January 3, 2022, please copy my office manager and paralegal, Kristy Hughes in all correspondence at  
[REDACTED]

--  
Caitlin A. Young, Esq.  
**Law Office of Caitlin A. Young, LLC**  
116 S Walnut Street  
Trinidad, CO 81082  
E: [REDACTED]  
T: 719-680-0756

**vongsakoun, magdalene**

---

**From:** [REDACTED]  
**Sent:** Tuesday, March 14, 2023 2:14 PM  
**To:** supremecourtrules  
**Subject:** [External] Comments on Continuation of Virtual Proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear members of the committee,

I have practiced law for almost 43 years and have regularly appeared in court during that time. The benefit of virtual proceedings are significant in that they are more efficient for the court and there is no compromise to the parties or witnesses. Virtual proceedings are also far safer and more environmentally friendly as travel is minimized for all parties. In addition, involved parties that reside in facilities will not have to leave their facilities and witnesses will not have to travel in order to attend hearings, creating an overall safer and less stressful experience for all involved. Virtual proceedings also negate the need for security in courtrooms, which unfortunately was required in an all-day trial I was in just last week in the Jefferson County District Court, Probate Division. I thank the Court for allowing a forum for me to express my thoughts on the matter and I look forward to this possible CJD.

Sincerely,  
Paula Young

Paula Constantakis Young, P.C.  
1776 South Jackson Street, Suite 402  
Denver, CO 80210  
Phone: 303-756-9419 Fax: 303-692-9049

**vongsakoun, magdalene**

---

**From:** Steve Zansberg [REDACTED]  
**Sent:** Tuesday, March 14, 2023 5:27 PM  
**To:** supremecourtrules  
**Subject:** [External] Public Comments on Proposed Chief Justice Directive 23-XX (Live Streaming of Criminal Proceedings in Trial Courts)  
**Attachments:** 230314 -- Public Comments on Proposed CJD on Live Streaming of Criminal Court Proceedings.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Sir or Madam:

Please respond to this email and acknowledge that you have received it, and please confirm that you can successfully access the attached document. Thank you.

Best,  
Steve



LAW OFFICE OF  
STEVEN D. ZANSBERG, LLC  
100 Fillmore Street, Suite 500  
Denver, CO 80206  
(303) 564-3669  
[www.zansberglaw.com](http://www.zansberglaw.com)



LAW OFFICE OF  
STEVEN D. ZANSBERG, L.L.C.

March 14, 2023

via email [[supremecourtrules@judicial.state.co.us](mailto:supremecourtrules@judicial.state.co.us)]

Chief Justice Brian Boatright  
Colorado Supreme Court  
Ralph Carr Judicial Center  
2 East 14th Avenue  
Denver, CO 80203

Re: **Public Comments on Proposed/Draft C.J.D. 23-XX (Live Streaming Coverage of Criminal Court Proceedings in The Trial Courts)**

Dear Chief Justice Boatright:

I am submitting these public comments on behalf of the following three organizations: (1) The Colorado Broadcasters Association, (2) The Colorado Freedom of Information Coalition, and (3) The Colorado Press Association. All three organizations are committed to providing the general public with the accurate and truthful information about the conduct of the state's judicial branch of government, including news reports, commentary, and analyses of proceedings conducted in open court in both criminal and civil cases.

We write to urge your Honor to please revise the proposed Chief Justice Directive (CJD) on Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts, in four ways:

1. Do not prohibit the live streaming of all evidentiary hearings and trials;
2. Do not preclude the live streaming of video-only portrayals of bench conferences and conferrals between counsel and client; and
3. There should be a strong presumption in favor of live streaming of judicial proceedings that are open to the public; trial judges can exercise discretion to allow live streaming of portions of such proceedings.
4. The CJD should apply equally to civil court proceedings.

Each of these requests is discussed below.

1. Do Not Prohibit the Live Streaming of all Evidentiary Hearings and Trials

As proposed, section IV(C) subsections (i) and (ii) categorically — in all cases — prohibit the live streaming of any evidentiary hearing and any trial in any criminal case.

(The authority of trial judges to “expand” live streaming of proceedings, set forth in the second sentence of section IV(A), does not extend to those proceedings that are listed in section IV(C)). Suffice it to say this would be a radical departure from the status quo, in which numerous criminal trials have been live streamed, and, to our knowledge, no court has heretofore encountered any difficulty or problem as a result thereof.

As the Court is aware, live streaming of court proceedings predated the COVID-19 pandemic. Perhaps the most notable criminal trial that was live streamed, and closely watched by viewers not only across the state but across the planet, was [\*People v. James Egan Holmes\*](#), 12-CR-1522 (Arapahoe Cty. Dist. Ct.), a capital murder case over which Justice Carlos A. Samour presided. That trial, which spanned almost seven months, included 256 witnesses. No one has ever raised any concerns about the fairness of that trial, a lack of decorum, or the contamination of any sequestered witness as a result of exposure to the court’s live WebEx streaming.

During the COVID-19 pandemic, because of health precautions barring public attendance in courtrooms, several high-profile criminal trials were also live streamed over WebEx, and again, not one of them gave rise to any of the concerns cited in Policy Statement (Section I) as justification for limiting live streaming. Among those cases are:

- [\*People v. Abcug\*](#), No. 19-CR-1074 (Douglas Cty. Dist. Ct.) (mother tried and convicted for attempted kidnapping of her son after succumbing to QAnon conspiracy theories)
- [\*People v. Redwine\*](#), No. 17-CR-343 (La Plata Cty. Dist. Ct.) (father tried and convicted for murder of his son, whose body has never been recovered)
- [\*People v. Erickson\*](#), No. 19-CR-451 (Douglas Ct. Dist. Ct.) (trial and conviction of gunman in fatal attack on STEM School Highlands Ranch)
- [\*People v. Feldman\*](#), No. 18-CR-1121 (Denver Cty. Dist. Ct.) (husband tried and convicted of murdering his first wife)

Moreover, the concern articulated in the Policy Statement, that live streaming “*can potentially jeopardize the effectiveness of . . . sequestration,*” is equally applicable to Expanded Media Coverage, under which the news media is permitted to live stream or contemporaneously broadcast the trial. Yet for decades now, Colorado’s trial judges have had the discretion to authorize Expanded Media Coverage of criminal trials (and the Court of Appeals has held that it is not an abuse of discretion to apply a presumption in favor of such authorization, *People v. Wieghard*, 727 P.2d 383, 386 (Colo. App. 1986), rather than prohibiting such authorization, categorically, as section IV(C)(i) does with respect to live streaming. Once again, the three organizations tendering these public comments are not aware of a single instance in which Expanded Media Coverage of any criminal trial has given rise to a single tainted witness subject to sequestration.

Taken to its logical extreme, that same concern could justify for closing all criminal trials to the public, to prevent anyone attending from “tipping off” or poisoning the testimony of a future sequestered witness. Obviously, such an extreme measure would be unconstitutional. But the point of this somewhat absurd hypothetical is to demonstrate that our criminal justice system generally presumes that all trial participants will abide by judicial orders and admonitions (e.g., jurors and sequestered witnesses are to avoid all press coverage of the case), and any suspected violations of such orders are to be addressed by the court.

Accordingly, we respectfully urge Your Honor to strike subsections (i) and (ii) of section IV(C), and thereby make both evidentiary hearings and trials subject to same discretionary standard set forth sections IV(A) and IV(B).

2. Do Not Preclude Live Streaming of Video-Only Portrayals of Bench Conferences and Conferrals Between Counsel and Client

Subsections (iii) and (iv) of Section IV(C) categorically prohibit live streaming of any image of a criminal court proceeding (including wide shots of the courtroom, such as the one below)



that might include a bench conference or any conferral between counsel and the defendant. Of course, the public is not entitled to “listen in” on the attorney-client privileged communications between a defendant and his/her counsel; nor is there necessarily a right of the public to monitor, contemporaneously, the discussions between counsel and the Court at a bench conference. But the proposed CJD goes further, precluding even the transmission of images of such meetings, even when they are visible to anyone in the courtroom. Were those section of section IV(C) to remain in place, the following examples of routine courtroom coverage would be precluded:





ASSOCIATED PRESS



James Holmes listens to his defense attorney  
Tamara Brady in court in 2013.

Clearly, no party’s rights are violated by such photographic, or videotaped but silent, display in which none of the actual communications between the participants is audible. And judges can turn off their microphone and/or use a white noise generator to prohibit anyone in the courtroom from hearing what is said at a bench conference; so too, with live streamed video.

Accordingly, these organizations respectfully ask that the revised CJD make clear that only *the audio portion* of consultations between defendants and their counsel or bench conferences are not to be live streamed.

3. There Should be a Strong Presumption in Favor of Live Streaming Judicial Proceedings That are Open to the Public; Trial Judges Can Exercise Discretion to Allow Live Streaming of Portions of Such Proceedings

As proposed, section IV(A) of the CJD authorizes trial judges to permit live streaming of judicial proceedings in criminal cases, subject to the balancing of interests set forth in section IV(B). This regime suggests that the state judicial branch is “neutral” as to whether such transmission should occur, relegating to each trial judge, on a case-by-case basis to weigh the various factors with no presumption, either way, favoring or disfavoring web access. These organizations respectfully urge your Honor to put your “thumb on the scales” by recognizing a presumption in favor of access.

As mentioned above, Colorado’s Court of Appeals long ago endorsed a presumption in favor of granting press requests for Expanded Media Coverage, which can be overcome by a *showing* (by a preponderance of evidence) that EMC poses a “reasonably likelihood” of interfering with any party’s fair trial rights, would unduly detract from the solemnity, decorum and dignity of the court or would create other adverse effects which would be greater than those caused by traditional media coverage. *People v. Wieghard*, 727 P.2d 383, 386 (Colo. App. 1986) (“the trial court held that the presumption was in favor of open coverage and that a party opposing such coverage would have the burden of proving adverse effects therefrom. . . . We find no abuse of discretion by the trial court here.”).

This presumption recognizes that in general (outside of specific countervailing interests in individual circumstances), the public is served by being able to observe, themselves, the actual conduct of in-court proceedings, and to do so from the comfort of their own homes or offices, without being required to travel (sometimes hundreds of) miles to the courthouse. As former Justice Oliver Wendell Holmes famously declared:

[This] privilege and the *access of the public to the courts* stand in reason upon common ground. . . . It is desirable that the trial of causes should take place *under the public eye*, not because the controversies of one citizen with another are of public concern, but because *it is of the highest moment that those who administer justice should always act under the sense of public responsibility*, and that *every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed*.

*Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884), (as quoted in *Gannett Co. v. DePasquale*, 443 U.S. 368, 429 n.10 (1979)) (emphases added).

This same rationale applies, with even greater force, to live streaming of judicial proceedings, where members of the public need not rely on the decisions of traditional news media in selecting which cases will be subject to such coverage — indeed, an extremely small percentage (far less than 1%) of all criminal court proceedings are subject to EMC.

One useful lesson that the COVID-19 epidemic taught us is that judicial proceedings can be made available for public viewing (“attendance” in the words of the proposed CJD) over the internet without causing *any* of the negative impacts itemized in section IV(B). Given the tremendous public benefit of providing convenient access to the official public proceedings of government — including the live streaming all oral arguments before this states’ appellate courts and the live-streamed proceedings of the General Assembly and multiple other public bodies across the state — a *presumption* in favor of live streaming of criminal proceedings should be expressly recognized in the CJD.

Accordingly, these organizations respectfully recommend that section IV(A) be reworded as follows:

A. Access to Live Streaming

Absent a finding that live streaming will create negative effects, as identified below in section IV(B), a judicial officer shall provide live streaming during initial bond setting proceedings and any other criminal proceedings, except those limited by this Directive pursuant to section IV(C).

Lastly, as is true of the Administrative Rule that authorizes trial judges to grant Expanded Media Coverage, the CJD should expressly state that judges are empowered to transmit, via live streaming, certain portions of a judicial proceeding while disallowing audio or audio and video transmission of other portions of that same proceeding. One clear example is a lengthy criminal trial in which one or a few witnesses will be minors who are alleged to be victims of sexual assault. The CJD should state, clearly and unmistakably, that authorizing the live streaming of the trial (from opening statements, through both sides' presentation of witness testimony, closing arguments, and the return of jury's verdict) does not prohibit the trial judge from limiting, restricting, or prohibiting the live streaming of discreet portions of that proceeding. (The wording of the EMC rule is "A judge may restrict or limit expanded media coverage as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors.").

4. The CJD Should Apply Equally to Civil Court Proceedings

As presently proposed, the CJD applies only to judicial proceedings conducted in criminal cases. While the public's interest in the functioning of the criminal justice system is unquestionably a compelling one, many civil cases involve questions of profound public interest and concern, including class actions for violation of consumer protection laws, cases seeking damages for injuries caused by dangerous or unsafe consumer products, or claims asserted against those acting "under color of state law" in violation of constitutionally-guaranteed rights (by way of example only). One currently pending case should suffice to prove the point: in [\*Coomer v. Donald J. Trump for President, Inc, et al.\*](#), No 2020-cv-34319 (Denver Cty. Dist Ct.), the former head of security for Dominion Voting Systems has sued, among others, One America News ("OAN"), Rudolph Giuliani, and Sidney Powell for allegedly defaming him by stating, repeatedly, that on an alleged Antifa conference call he stated that he intended to subvert the 2020 presidential election that he actually did subvert the results of the 2020 presidential election.

Because the public's interest in observing how this state's judicial branch handles such claims, and myriad others, is of as much significance (and often of greater significance) than that associated with "garden variety" misdemeanor or felony cases, the Court should not limit the reach of the CJD to apply only to criminal court proceedings, just as the Administrative Rule governing authorization of Expanded Media Coverage is not so limited.

# # #

On behalf of the three organizations identified above, I thank your Honor for taking the above thoughts and suggestions into consideration. Please do not hesitate to contact me if you have any questions.

Chief Justice Brian Boatright

March 14, 2023

Page 7

Warm regards,

A handwritten signature in blue ink that reads "Steve Zansberg". The signature is written in a cursive, flowing style.

Steven D. Zansberg

cc: Justin Sasso, Executive Director, Colorado Broadcasters Association  
Jeff Roberts, Executive Director, Colorado Freedom of Information Coalition  
Tim Regan-Porter, Executive Director, Colorado Press Association

**vongsakoun, magdalene**

---

**From:** Rose Zapor [REDACTED]  
**Sent:** Tuesday, March 7, 2023 12:38 PM  
**To:** supremecourtrules  
**Subject:** [External] Computer hearings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To the Honorable Chief Justice Boatright;

I am in favor of retaining the hearings by computer for the following situations:

Probate and Protective Proceedings;

1. Emergency Guardianship/Conservatorship
2. Non Contested Informal Probate
3. Non Contested Permanent Orders for Guardianship/Conservatorship

Family Law

1. Stipulated Temporary Orders
2. Stipulated Final Decree

On a more general note, for the proceedings that do not require exhibits that have not been filed with the court should proceed with the computer. In probate and protective proceedings, very often the necessary documents have to be filed with the court in advance; therefore additional exhibits are not needed. There are often parties in other states who are needed for the hearings to testify, but not for exhibit presentation. A computer hearing rather than telephone for these persons allows a more complete participation in the process. In protective proceedings, it is often an issue for a weak or demented person to attend a hearing whereas they can attend and participate as much as possible on the computer with assistance.

If a proceeding is contested or needs extensive exhibits, it needs to be in person. I have participated in hearings using exhibits, but it is difficult and the electronics do not give a clear picture of the exhibit. These types of hearings, and most criminal hearings, should be in person with the jury. I would allow the judges/magistrates in each case to make the decision based upon the case before them. As the arbiter of the evidence, they should have the discretion to make the decisions as to whether a case needs to be in person.

TThank you

**Rose Mary Zapor, Esq.**

Lakewood Legal Center  
7475 W. 5<sup>th</sup> Ave., #202  
Lakewood, CO 80226

[www.zaporelderlaw.com](http://www.zaporelderlaw.com)

***Referrals Always Appreciated***

**vongsakoun, magdalene**

---

**From:** zehe, matthew  
**Sent:** Thursday, March 2, 2023 9:50 AM  
**To:** supremecourtrules  
**Subject:** Virtual proceedings and live stream policies

Good morning,

I am a county court judge in the 8th Judicial District. I have these thoughts as to these policies:

Virtual proceedings:


Garnishment hearings are indicated as presumptively remote. Garnishment hearings pursuant to C.R.S. 13-54-104(2)(a)(I)(D) require proof of sixty days' worth of expenses and are thus evidentiary in nature. The defendants at these hearings are also often self-represented. I would advocate for all evidentiary hearings to be presumptively in-person, especially where one or both litigants are self-represented, due to the difficulty of managing exhibits remotely. These hearings must also be held within 14 days of the defendant's objection. The shorter the turnaround time for setting a hearing, the more likely there will be issues with exhibits offered remotely.

There appears to be no distinction in the criminal hearings whether the defendant is in or out of custody for whether a hearing type is presumptively in-person or remote or in the good-cause list. I'm not sure if this is deliberate, but if it is not deliberate, I offer the distinction for additional consideration.

Live stream policies:

The entirety of IV(D) needs to be made into a splash screen that anyone - spectators, litigants, attorneys, etc. - needs to click to accept before accessing court proceedings remotely, much like the splash screens we need to click past accepting terms and conditions before using commercial software. I would advocate for this step regardless of the purpose of accessing the proceedings remotely. I would hope this would be a fairly simple software adjustment.

Thank you!

Matthew R. Zehe  
*(he / him / his)*  
County Court Judge, Division L2  
810 East 10<sup>th</sup> Street, Suite 110  
Loveland, CO 80537  


**vongsakoun, magdalene**

---

**From:** zenisek, christopher  
**Sent:** Tuesday, February 28, 2023 4:52 PM  
**To:** supremecourtrules  
**Subject:** Comment on proposed CJD Directives Regarding Virtual Proceedings

I appreciate the invitation to comment.

In my view these directives strike a very good balance between allowing access and still maintaining judicial discretion and control over the courtroom.

My main concern is with any idea that limits or – far worse, precludes – judicial discretion over what to allow and not allow. Were there a requirement to broadcast certain proceedings, one can imagine a multitude of nightmare scenarios. To name but only a few:

- jurors viewed publicly in a case with security/ gang issues;
- overhearing of attorney-client communications;
- public broadcast of bench conferences.

A few scenarios that have actually happened of which I am aware:

- public contemporaneous comments in the “chat” feature, available to view in the courtroom;
- an inability to conduct the hearing virtually due to poor technology of a party or, on occasion, in the courtroom;
- parties utilizing remote technology as a cover when they desire not to come to court for reasons such as not being sober;
- distracting behavior by on-line participants such as leaving their camera on while driving;
- the on-line conference continuing after a hearing has closed, allowing public to listen in on staff and judicial comments about an active case.

In short the proposed CJD’s appropriately allow the judge to maintain a proper proceeding. Requirements of what is broadcast when and how, without judicial discretion, risks allowing some very, very concerning developments in the courtroom.

**Christopher C. Zenisek**

District Court Judge

First Judicial District



**vongsakoun, magdalene**

---

**From:** Deann Zenisek [REDACTED]  
**Sent:** Tuesday, March 7, 2023 1:41 PM  
**To:** supremecourtrules  
**Subject:** [External] Comment on Life Streaming Coverage of Criminal Court Proceedings

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern,

Thank you for asking for public comment on the draft live streaming directive. Live streaming should be used with caution for several reasons. Live streaming presents a problem for sequestration of witnesses. Although witnesses may be subject to Court's orders, it would be very easy to violate these orders without the judge's knowledge. Further, it is nearly impossible to regulate the recording of live stream videos. Once recorded, these videos could potentially be used as evidence for other proceedings including impeachment evidence without any assurances the recordings are authentic. The recordings may not be authentic due to splicing or otherwise digitally altering the images. A lot of room for abuse.

I also have concern for the privacy of parties, jurors, witnesses, and court staff. There is a difference between revealing information in an open court room and revealing the same information by broadcasting.

Deann Zenisek

*Deann Zenisek, Esq.*

[REDACTED]  
[REDACTED]

**CONKLIN CARDONE & RUTBERG, PC**

3773 Cherry Creek North Drive, Suite 680W Denver Colorado 80209  
Phone 303.321.1980 Fax 303.321-8828

\*\*\*This e-mail transmission and any attachments contain information from the law firm of Conklin Cardone & Rutberg, PC which may be confidential or protected by the attorney-client and/or attorney work-product privilege. If you are not the intended recipient, you are hereby notified that you must not read this transmission and that any disclosure, copying, printing, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please notify us immediately by e-mail and delete the original transmission.\*\*\*



**vongsakoun, magdalene**

---

**From:** Deann Zenisek [REDACTED]  
**Sent:** Tuesday, March 7, 2023 1:30 PM  
**To:** supremecourtrules  
**Subject:** [External] Comment on Virtual Proceedings Policy

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern,

I appreciate the thoughtful and well drafted virtual proceedings policy. In general, my experience as a civil attorney with Webex proceedings is very positive.

I generally feel that Civil case management conferences with significant disputed issues are better as in person proceedings. Without in person proceedings, the issues require more complete briefing and thus are not as streamlined. Additionally, in my experience in Webex proceedings participants pay less attention and I have seen an increase in Motions to Clarify Case Management Orders that do not exactly reflect the issues discussed in the conferences.

I would also like to see a uniform way in which Courts communicate the type of proceedings. As hearing notices are often drafted by counsel (as opposed to the Courts), I have experienced some confusion around which format appearances will take and the need for multiple telephone calls to clerks to clarify whether a particular proceeding is in person or remote. This is inefficient for the parties and the Court.

Finally, I believe to avoid unfairness, hearings should be in person or remote for attorneys. Hearings in which some attorneys are remote and some are in person seem inherently more complicated and potentially unfair.

Thank you for considering these comments.

Deann Zenisek

*Deann Zenisek, Esq.*

**CONKLIN CARDONE & RUTBERG, PC**

---

3773 Cherry Creek North Drive, Suite 680W Denver Colorado 80209  
Phone 303.321.1980 Fax 303.321-8828

\*\*\*This e-mail transmission and any attachments contain information from the law firm of Conklin Cardone & Rutberg, PC which may be confidential or protected by the attorney-client and/or attorney work-product privilege. If you are not the intended recipient, you are hereby notified that you must not read this transmission and that any disclosure, copying, printing, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please notify us immediately by e-mail and delete the original transmission.\*\*\*