

**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 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 the continuing role of virtual proceedings 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 cost to litigants of coming to court for parties, 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, especially in rural areas that do not have enough local attorneys. In addition, crime victims often experience far less stress when they can attend court hearings remotely rather than face the accused in person in court.

There is, however, also some detriment to the use of virtual proceedings. Parties routinely settle their cases after meeting in person outside the courtroom immediately prior to a trial or hearing. There is 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 and the loss of contextual and speech-reading cues that limit an interpreter's ability to view each speaking party. Finally, the operation of the virtual appearance platform when one or more participants appear in person requires ongoing attention from both the judge and staff throughout 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 and broad discretion that 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 adopting 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—have 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.

More than 100 people submitted comments in response to the initial draft of this Directive. Most responses embraced the idea that Colorado courts should continue to expand their use of virtual proceedings, describing in different ways the benefits of not having to appear in person. Some objected to the continued use of virtual proceedings for a number of reasons, to include the loss of solemnity of the proceedings and technological challenges the courts face.

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.

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.

Finally, 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.

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 participate by in-person appearance or virtual appearance, without seeking prior authorization from the presiding judge.
- C.** Virtual Appearance – An appearance made by a party using a device capable of real-time simultaneous audio and video capabilities. “Virtual appearance” may include

appearing with audio transmission only if authorized by the court ahead of the proceeding.

IV. PROCESS

A. Presumptively In-Person Appearances

1. The following proceedings require an In-Person appearance unless the court finds good cause pursuant to Section VI of this Directive and adheres to the restrictions of C.R.C.P. 43, C.R.C.P. 343, and Crim. P. 43:
 - a. Jury trial for any case type;
 - b. Court trial for any case type;
 - c. Criminal preliminary hearing;
 - d. Criminal arraignment;
 - e. Criminal suppression hearing;
 - f. Criminal pre-trial readiness conference;
 - g. Habitual criminal trial;
 - h. Criminal probation revocation evidentiary hearing;
 - i. Show cause hearing for any case type;
 - j. Sentencing;
 - k. Guilty plea to a Victim's Rights Act 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 Risk Protection Order hearing;
 - p. Termination of Parental Rights hearing;
 - q. Civil Rule of Procedure 69 hearing;
 - r. Civil show cause hearing; and
 - s. Contempt hearing.

B. Presumptively Flexible Appearances

1. Subject to the restrictions of C.R.C.P. 43, C.R.C.P. 343, and Crim. P. 43, the following proceedings shall allow for a Flexible Appearance unless the court finds good cause to require a party to appear in person:
 - a. Case management conference for any case type;
 - b. Status conference for any case type;
 - c. Domestic relations pre-trial conference;
 - d. Domestic relations status conference;
 - e. Domestic relations uncontested proceeding;
 - g. Garnishment hearing;
 - h. Criminal petitions to seal;

- i. Criminal entry of appearance proceeding;
 - j. Criminal pre-trial conference or disposition hearing where no VRA case plea will be taken;
 - k. Court settings (when no other hearing purpose is scheduled);
 - l. Temporary protection order hearing;
 - m. Non-evidentiary proceeding in a Dependency and Neglect, Juvenile Delinquency, or Truancy case;
 - n. Uncontested relinquishment of parental rights proceeding;
 - o. Emergency guardianship or conservator proceeding;
 - p. Uncontested permanent orders for a guardianship or conservatorship; and
 - q. Uncontested informal probate proceeding.
- C. Unless a court grants express permission or unless otherwise governed by Chief Justice Directive 23-02, no proceeding may be published, live-streamed, or recorded other than for the official court record. Any recording in violation of this Chief Justice Directive may result in contempt proceedings.
- D. Subject to the technological capability and staffing for each courtroom, the presiding judicial officer, including any magistrate, may deviate from any presumptive hearing type 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 Section VI of this Directive.
- E. 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 virtual, 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 Section VI of this Directive.

V. PROCEDURE FOR EXCEPTIONS

Any party seeking to appear by means other than those set forth in this Directive shall 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 VI of this Directive.

VI. NON-EXCLUSIVE LIST OF FACTORS FOR GOOD CAUSE

Judicial officers, either on their own motion or on the motion of any party, should consider, but need not make express findings on, the following non-exhaustive list of factors when determining whether good cause exists **to allow one or more parties, victims, witnesses, or other courtroom participants 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 Act case;
- F. Weather and safe travel;
- G. The impact a virtual appearance would have on the Office of Language Access 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 for the parties and the court (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;
- U. Whether there are contested issues that will be addressed at the proceeding;
- V. In a case with expert witness testimony, how far away the expert works and the resources of the parties;
- W. Whether simultaneous interpretation is an option;
- X. Resources of the parties, including access to child care; and
- Y. Such other factors, based upon the specific facts and circumstances of the case, as the court determines to be relevant.

VII. IMPLEMENTATION AUTHORITY

Implementation of this policy is the responsibility of each judicial officer, including

