

1 **Rule 43. Evidence.**

2 **(a) Form.** In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise
3 provided by these rules, the Utah Rules of Evidence, or a statute of this state. ~~All evidence shall be~~
4 ~~admitted which is admissible under the Utah Rules of Evidence or other rules adopted by the Supreme~~
5 ~~Court.~~ For good cause and with appropriate safeguards, the court may permit testimony in open court by
6 contemporaneous transmission from a different location.

7 **(b) Evidence on motions.** When a motion is based on facts not ~~appearing of in the record,~~ the court
8 may hear the matter on affidavits, ~~presented by the respective parties,~~ but the court may direct that the
9 ~~matter be heard wholly or partly on~~ declarations, oral testimony or depositions.

10 **Advisory Committee Note**

11 Federal Rule of Civil Procedure 43 has permitted testimony by contemporaneous transmission since
12 1996. State court judges have been conducting telephone conferences for many decades. These range
13 from simple scheduling conferences to resolution of discovery disputes to status conferences to pretrial
14 conferences. These conferences tend not to involve testimony, although judges sometimes permit
15 testimony by telephone or more recently by video conference with the consent of the parties. The 2016
16 amendments are part of a coordinated effort by the Supreme Court and the Judicial Council to authorize a
17 convenient practice that is more frequently needed in an increasingly connected society and to bring a
18 level of quality to that practice suitable for a court record. As technology evolves the methods of
19 contemporaneous transmission will change.

20 Effective November 1, 2016

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