

IN THE SUPREME COURT OF THE STATE OF UTAH

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FILED
UTAH APPELLATE COURTS

JUL 12 2016

In re: Amendments
to Rule 43. Evidence
of the UTAH RULES OF CIVIL PROCEDURE

ORDER

IT IS HEREBY ORDERED that the proposed amendments to Rule 43. Evidence, of the Utah Rules of Civil Procedure, are adopted and promulgated effective November 1, 2016.

FOR THE COURT:

7-12-16

Date



Matthew B. Durrant
Chief Justice

Rule 43. Evidence.

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

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

Advisory Committee Note

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

Effective November 1, 2016