

1 **Rule 43. Evidence.**

2 **(a) Form.** In all trials and evidentiary hearings, the testimony of witnesses shall be taken
3 in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or
4 a statute of this state. In civil proceedings, the court may, upon request or on its own
5 order, and ~~F~~for good cause and with appropriate safeguards, ~~the court may~~ permit
6 remote testimony in open court. Remote testimony will be presented via
7 videoconference if reasonably practical, or if not, via telephone or assistive device.

8 **(b) Remote testimony safeguards.** Remote testimony safeguards must include:

9 (1) a court-provided verbatim record of the testimony; notice of the date, time, and
10 method of transmission; instructions for participation; and contact information for
11 technical assistance;

12 (2) upon request to the court, access to the necessary technology and resources to
13 participate, including an interpreter, telephone, or assistive device;

14 (3) a court-provided or party-provided means for a party and the party's counsel to
15 communicate confidentially and share documents, photos, and other things among
16 the remote participants; and

17 (4) any other measures the court deems necessary to maintain the integrity of the
18 proceedings.

19 No hearing may proceed unless the court ensures that all necessary remote testimony
20 safeguards are provided, by the court or by the parties. An objection to a lack of
21 safeguards is waived unless timely made.

22 **(c) Remote hearing oath.** An oath in substantially the following form must be given
23 prior to any remote hearing testimony: "You do solemnly swear (or affirm) that the
24 evidence you shall give in this issue (or matter) pending between ____ and ____ shall be
25 the truth, the whole truth and nothing but the truth, and that you will neither
26 communicate with, nor receive any communications from, another person during your

27 testimony unless authorized by the court, so help you God (or, under the pains and
28 penalties of perjury)."

29 **(b)(d) Evidence on motions.** When a motion is based on facts not in the record, the court
30 may hear the matter on affidavits, declarations, oral testimony, or depositions.

31 **~~Advisory Committee Note~~**

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

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