

# **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 travelling 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.

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>

## **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.

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<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. 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 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