

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
01/11/2024
Clerk of the
Appellate Courts

**IN RE: PROPOSED AMENDMENT TO TENNESSEE RULES OF CIVIL
PROCEDURE**

No. ADM2023-01208

ORDER

The Court adopts the attached amendment effective July 1, 2024, subject to approval by resolution of the General Assembly. The rule amended is as follows:

RULE 43.01 EVIDENCE AT TRIALS

The text of the amendment is set out in the attached Appendix.

IT IS SO ORDERED.

FOR THE COURT:



HOLLY KIRBY
CHIEF JUSTICE

APPENDIX

***AMENDMENT TO THE
RULES OF CIVIL PROCEDURE***

**[Deleted text is indicated by overstriking,
and new text is indicated by underlining.]**

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 43.01

EVIDENCE AT TRIALS

[Amend Rule 43.01 as indicated below:]

43.01 Evidence at Trials.

Rule 43.01(a). In all actions at law or equity, the testimony of witnesses shall be taken pursuant to the Tennessee Rules of Evidence. Also, for good cause shown in compelling circumstances, and with appropriate safeguards in accordance with subsection (b) of this rule, the court may permit presentation of testimony in open court by contemporaneous audiovisual transmission from a different location using simultaneous audiovisual transmission equipment.

(b) On motion of a party or upon agreement of the parties, the court may grant permission for the testimony of any witness to be presented using audiovisual transmission from a remote location.

(i) Considerations for the Court. In determining whether to grant permission, the court may consider the following factors:

(A) The witness' age and any disabilities or special needs that would affect the taking of testimony;

(B) Whether the use of an interpreter will be required for questions or answers;

(C) Whether the witness is a lay witness or an expert witness;

(D) Procedures for the handling of exhibits;

(E) Procedures for making and ruling upon objections, whether within the hearing of the remote witness or not;

(F) Procedures for sidebar conferences between counsel and the court;

(G) Procedures for the witness to view counsel, the parties, the jury, and the judge;

(H) The size, number, and location of video display screens at the remote location and in the courtroom or location of the hearing;

(I) Whether there should be any requirements for camera angle or point of view, any picture-in picture requirements, or camera movement;

(J) Whether encryption of the signals is required and, if so, how it will be attained;

(K) The creation of a record of the remote audiovisual testimony;

(L) Any limitations or conditions on the remote witness and any people who may be present in the remote location when the witness testifies, and whether those people must be identified before the witness testifies;

(M) Whether the ability to evaluate the credibility and demeanor of the witness is critical to the outcome of the proceeding and whether the non-moving party has demonstrated that face to face cross-examination is necessary because the issues may be determinative of the outcome;

(N) Whether any undue surprise or prejudice would result;

(O) The convenience of the parties, the proposed witness, counsel, and the court;

(P) The cost and time savings;

(Q) Whether the proponent has been unable, after due diligence, to procure the physical presence of a witness;

(R) The cost of producing the witness in relation to the importance of the offered testimony;

(S) Whether the procedure would allow effective cross-examination, especially where documents and exhibits available to the witness may not be available to counsel;

(T) The importance of presenting the testimony of witnesses in open court, whether the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully;

(U) Whether the quality of the communication is sufficient to understand the offered testimony; and

(V) Such other factors as the court may, in each individual case, determine to be relevant.

(ii) **Motion, Response, and Order.** A motion for permission to present testimony by audiovisual transmission must be filed at least 60 days before the hearing or trial during which the party seeks permission to present the testimony. Any party who opposes the motion, must file its objections in writing 10 days after service of the motion, unless the court sets a different schedule. The court must rule upon the motion at least 30 days before the trial or hearing. For good cause shown, or with the agreement of the parties, the court may modify the deadlines set out in subsection (ii).

(iii) **Order for Remote Testimony by Audiovisual Transmission.** The court may enter an order permitting the presentation of testimony by audiovisual transmission as follows:

(A) Non-Party Lay Witness: Upon a finding that good cause exists for accepting the testimony by audiovisual transmission.

(B) Party and Expert Witness: Upon a finding that, with due regard for the importance of presenting testimony through witnesses physically present in the courtroom, exceptional circumstances warrant receiving the testimony of a party or expert witness by audiovisual transmission in the interests of justice.

(iv) **Witness Oath.**

(A) Any witness testifying from a remote location within the state must be placed under oath in the same fashion as any live witness present at the hearing or trial.

(B) Before testifying, any witness who testifies from a remote location outside the state must sign a written consent:

(1) to provide testimony under an oath administered by court personnel located in the state court;

(2) expressly agreeing to be subject to penalties of perjury under Tennessee law and subject to court orders by the Tennessee trial judge regarding the testimony, including contempt of court powers, adjournment or rescheduling of testimony; and orders relating to the testimony entered as though the witness was physically present in the Tennessee courtroom; and

(3) consenting to personal jurisdiction of the Tennessee courts for enforcement of the perjury laws and orders relating to the testimony of the witness entered by the judge presiding over the trial.

The consent must be signed before a notary public or other person authorized to take oaths or sworn acknowledgments in the jurisdiction where the witness is located and must be filed of record in the case in which the testimony is to be introduced.

(v) Provisions of Necessary Equipment. Unless the courtroom or facility where the testimony will be presented has the necessary audiovisual equipment to present the remote testimony, the party offering testimony of a witness by audiovisual transmission is responsible for providing the necessary equipment and making all necessary logistical arrangements at no cost to the court. All costs and arrangements for the location where the witness will give testimony are also the responsibility of the party offering the testimony. Failure to ensure that the courtroom or facility where the trial or hearing is to be held—and the location where the witness would testify—are properly set up for such testimony will preclude the offering of testimony by audiovisual transmission, and will not constitute grounds for a continuance sought by the party attempting to offer such testimony. Remedies and procedures to address the failure of the arrangements to function properly for some other reason, such as a power outage affecting the Tennessee courtroom, are within the sound discretion of the trial judge.

(vi) Definitions.

(A) “Court” means a proceeding before a judicial officer, judge, master, or commissioner for all civil proceedings in the State of Tennessee.

(B) “Party” shall include the plaintiff, defendant, petitioner, respondent, applicant, adverse party, obligee, or obligor and also apply to each party’s attorney of record.

(C) “Simultaneous audiovisual transmission equipment” means transmission accomplished through the use of:

(1) One or more cameras at a location other than the courtroom that depict the witness in real time so that the parties, their counsel (or the government’s counsel), the court, and the jury, if any, can see the witness to the same or greater extent they would see if the witness was present in the courtroom; and

(2) One or more cameras in the courtroom that depict the parties, their counsel (or the government’s counsel), the court, and the jury, if any, in real time on a screen visible to the witness who is at another location.

The court must ensure that the statements of participants are audible and visible to all other participants and the court staff and that the statements made by a participant are identified as being made by that participant.

(vii) **Reporting.** All proceedings involving simultaneous audiovisual transmission equipment appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

(viii) **Public access.** The right of public access to court proceedings must be preserved in accordance with law.

(ix) **Technical Standards.** Any video-conferencing system utilized under this rule must conform to the following minimum requirements:

(A) All participants must be able to see, hear, and communicate with each other simultaneously;

(B) All participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method;

(C) Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications; and

(D) The location from which the trial judge is presiding shall be accessible to the public to the same extent as such proceeding would if not conducted by video conference. The court shall accommodate any request by interested parties to observe the entire proceeding.