

Appendix A

Double strike-through and double underlines below show the changes recommended in the Steering Committee's response to comments to the amendments proposed in the Steering Committee's petition. The changes are also highlighted in yellow to make them easier to find.

RULE 8.010. DETENTION HEARING

(a) When Required. No detention order provided for in rule 8.013 shall be entered without a hearing at which all parties shall have an opportunity to be heard on the necessity for the child's being held in detention, unless the court finds that the parent or custodian cannot be located or that the child's mental or physical condition is such that a court appearance is not in the child's best interest. Detention hearings must be conducted in person; however, the court may permit any party subject to ~~rule 8.010(a)~~ this subdivision to appear before the court via any approved audio-video communication technology unless the court determines that it is not in the best interest of the child to appear by audio-video communication technology. If detention proceedings are held remotely via audio-video communication technology, the physical presence of the child or other participants is not required but if the child is not physically present, the child must have access to contemporaneous and confidential communication with counsel.

(b)-(c) [NO CHANGE]

(d) Notice. The intake officer shall make a diligent effort to notify the parent or custodian of the child of the time and place of the hearing. The notice must indicate whether appearance via communication technology is permitted. The notice may be by the most expeditious method available. Failure of notice to parents or custodians or their nonattendance at the hearing shall not invalidate the proceeding or the order of detention.

(e)-(h) [NO CHANGE]

(i) Presence of Counsel. The state attorney or assistant state attorney and public defender or assistant public defender shall attend the detention hearing as permitted by these rules. Detention hearings shall be held with adequate notice to the public defender and state attorney. An official record of the proceedings shall be maintained. If the child has retained counsel or expresses a desire to retain counsel and is financially able, the attendance of the public defender or assistant public defender is not required at the detention hearing.

RULE 8.015. ARRAIGNMENT OF DETAINED CHILD

(a) [NO CHANGE]

(b) Notice.

(1) Personal appearance either by physical presence or via audio-video communication technology of any person in a hearing before the court shall obviate the necessity of serving process on that person. ~~If the child has appeared, the court must inquire as to whether the child has received the petition and summons.~~

(2)-(4) [NO CHANGE]

RULE 8.255. GENERAL PROVISIONS FOR HEARINGS

(a)-(d) [NO CHANGE]

(e) Conducting Hearings. Except as otherwise provided in these rules, proceedings must be conducted as follows.

(1) Evidentiary proceedings must be conducted in person unless the parties agree that a proceeding should be conducted remotely or conducted in a hybrid format, or the court orders it upon good cause shown.

(2) All other proceedings may be conducted remotely or in a hybrid format upon agreement of the parties or by court order unless good cause is otherwise shown.

(3) The court may consider the following factors in determining whether good cause exists: the consent of the parties, the time-sensitivity of the matter, the nature of the relief sought, the resources of the parties, the anticipated duration of the testimony, the need and ability to review and identify documents during testimony, the probative value of the testimony, the geographic location of the witnesses, the cost and inconvenience in requiring the physical presence of the witnesses, the need for confrontation of the witnesses, the need to observe the demeanor of the witnesses, the potential for unfair surprise, and any other matter relevant to the request.

(4) A party who participates in a hearing conducted remotely or conducted in a hybrid format must be given the opportunity to privately and confidentially communicate with counsel during the proceedings.

(f) Taking Testimony.

(1) Testimony at a Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless otherwise provided by law or these rules. This rule shall not apply to statutory requirements for parents to personally appear at arraignment hearings, advisory hearings, and adjudicatory hearings.

(2) Communication Technology. The court may permit a witness to testify at a hearing or trial by communication technology:

(A) when the proceeding is conducted remotely or conducted in a hybrid fashion as permitted by this rule;

(B) by agreement of the parties; or

(C) for good cause shown upon written or ~~ere~~ ~~tenus~~ oral request of a party. The request must contain an estimate of the length of the proposed testimony. In considering sufficient good cause, the court may weigh and address in its order or its ruling on the record the reasons stated for testimony by communication technology against the potential for prejudice to the objecting party.

(3) Oath. Testimony may be taken through audio communication technology only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction. If testimony is provided at the hearing via audio-video communication technology, the witness may also be sworn remotely using such audio-video communication technology by a person who is qualified and administers the oath consistent with the laws of the witness's jurisdiction or Florida. The oath procedures of this subdivision are not required for hearings where, by law, the court may consider any evidence to the extent of its probative value even though not competent in an adjudicatory hearing and where the parties and the court agree to waive these oath procedures.

- (eg) Invoking the Rule.** [NO CHANGE]
- (fh) Continuances.** [NO CHANGE]
- (gi) Record.** [NO CHANGE]
- (hj) Notice.** [NO CHANGE]
- (ik) Written Notice.** [NO CHANGE]

RULE 12.026 COMMUNICATION TECHNOLOGY

(a) Definitions.

(1) “Audio communication technology” means electronic devices, systems, applications, or platforms that permit all participants to hear and speak to all other participants in real time.

(2) “Audio-video communication technology” means electronic devices, systems, applications, or platforms that permit all participants to hear, see, and speak to all other participants in real time.

(3) “Record via audio-video communication technology” means to register permanently a video image and accompanying sound in mechanical or digital form by the use of audio-video communication technology.

(4) “Communication technology” means audio communication technology or audio-video communication technology.

(5) “Court official” means a county or circuit court judge, general magistrate, special magistrate, or hearing officer.

(b) Generally. Communication technology may be used for trial court proceedings as provided by this rule.

(c) Use by Participants Other Than Jurors. Subject to subdivision (c)(1) or (c)(2), if applicable, a court official may authorize the use of communication technology for the presentation of testimony or for other participation in a proceeding upon the written motion of a party; at the discretion of the court official; or in an emergency. Reasonable advance notice of the specific form of communication technology to be used and directions for access to the communication technology must be provided in the written motion or in a written notice from the court official exercising discretion. The motion or notice must be served on all who are entitled to notice of the proceeding. A party may object in writing to the use of communication technology within 5 days after service of

the motion or notice or within such other period as may be directed by the court official. **The motion or notice under this subdivision must specify that an objection to the use of communication technology must be filed with the court and served on all who are entitled to notice of the proceeding within 5 days after service of the motion or notice, or prior to the date set for the hearing, whichever is shorter.** A courtesy copy of the written motion or objection must be provided to the court official in an electronic or a paper format as directed by the court official. The motion, objection, or notice must be served on all who are entitled to notice of the proceeding. The court official must consider any objections by a party before authorizing the use of communication technology, but a motion or objection filed under this subdivision shall not require a hearing. The decision to authorize the use of communication technology over the objection of a party shall be in the discretion of the court official.

(1) Non-Evidentiary Proceedings. A court official must grant a motion to use communication technology for a non-evidentiary proceeding-unless the court official determines that good cause exists to deny the motion.

(2) Evidentiary Proceedings. If a court official has not exercised discretion and authorized the use of communication technology for a proceeding, a written motion by a party who wishes to have a proceeding held entirely via communication technology or present evidence through communication technology must be filed and specify whether each party consents to the request, including the specific form of communication technology requested, if known, and set forth good cause as to why the proceeding should be held via communication technology or why evidence should be allowed to be presented in the specific form requested.

(3) Procedure. In determining whether good cause exists to deny a motion to use communication technology for a non-evidentiary proceeding, the court official may consider, without

limitation, the technological capabilities of the courtroom and the parties, the consent of the parties, the time-sensitivity of the matter, the nature of the relief sought and the amount in controversy in the case, and the resources of the parties. In determining whether good cause exists to grant a motion to use communication technology for an evidentiary proceeding, the court official may consider, without limitation, those factors and the anticipated duration of the testimony, the need and ability to review and identify documents during testimony, the probative value of the testimony, the geographic location of the witness, the cost and inconvenience in requiring the physical presence of the witness, the need to observe the demeanor of the witness, the potential for unfair surprise, and any other matter relevant to the request. The court official must consider the applicability of any constitutional rights for the confrontation of the witness.

(4) Administration of the Oath. Before testimony may be presented through communication technology, the witness must be put under oath as follows:

(A) Person Administering the Oath is Physically Present with the Witness. A witness who is testifying through communication technology may be put under oath by a person who is physically present with the witness if the person is authorized to administer oaths in the witness's jurisdiction and the oath is administered consistent with the laws of that jurisdiction.

(B) Person Administering the Oath is not Physically Present with the Witness. A witness who is testifying through audio-video communication technology may be put under oath through the audio-video communication technology by a person who is not physically present with the witness only if the person is authorized to administer oaths in the State of Florida and the oath is administered consistent with the general laws of the State of Florida. Additionally, if the witness is not located in the

State of Florida, the witness must consent to being put under oath by the person under the general laws of the State of Florida.

(d) Use by Jurors. At the discretion of a chief judge, an administrative judge, or a presiding county or circuit court judge, prospective jurors may participate through communication technology in a court proceeding to determine whether the prospective jurors will be disqualified or excused or have their jury duty postponed. If authorized by another rule of procedure, prospective jurors may participate in voir dire and empaneled jurors may participate in a trial through audio-video communication technology.

(e) Burden of Expense. Unless otherwise directed by the court, the cost for the use of communication technology is the responsibility of the requesting party, subject to allocation or taxation as costs.

(f) Override of Family Violence Indicator. Communication technology may be used for a hearing on a petition to override a family violence indicator under Florida Family Law Rule of Procedure 12.650.

Commentary

202 Amendment. Although not identical, subsection (e) is based on the version of Rule 2.530(e) of the Florida Rules of General Practice and Judicial Administration as of December 30, 2021.

RULE 12.310. DEPOSITIONS UPON ORAL EXAMINATION

(a) [NO CHANGE]

(b) Notice; Method of Taking; Production at Deposition.

(1) A party desiring to take the deposition of any person upon oral examination must give reasonable notice in writing to every other party to the action. The notice must state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced under the subpoena must be attached to or included in the notice, and if the deposition is to be taken through the use of communication technology, the parties shall provide the subpoenaed documents no later than 5 days prior to the deposition.

(2)-(3) [NO CHANGE]

(4) Any deposition may be recorded via audio-video communication technology recorded, as that term is defined in Rule 12.026, ~~by videotape~~ without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. In addition to the requirements in subdivision (b)(1), a A party intending to videotape record a deposition via audio-video communication technology must state in the notice that the deposition is to be videotaped recorded via audio-video communication technology and must identify the method for recording the deposition via audio-video communication technology and provide give the name and address of the operator of the audio-video recording equipment in the body of the notice. Any subpoena served on the person to be examined must ~~state the method or methods for recording the~~

testimony include the information required for the notice in subdivision (b)(4)(A).

(B) Court Reporter. Videotaped Depositions recorded via audio-video communication technology must also be stenographically recorded by a certified court reporter, unless all parties agree otherwise. If all parties have agreed to waive the requirement of stenographic recording, then in addition to the requirements of subdivision (b)(4)(A), the notice or subpoena setting deposition shall set forth that agreement.

(C) Procedure. At the beginning of the deposition, the officer before whom it is taken must, on camera: (i) identify the style of the action, (ii) state the date, and (iii) swear in put the witness under oath as provided in subdivision (c)(1).

(D) Custody of Tape Responsibility for Recordings and Obtaining Copies. The attorney for the party, or the self-represented litigant, requesting the videotaping audio-video recording of the deposition must take custody of and be responsible for the safeguarding of the videotape recording. ~~, must permit the viewing of it by the opposing party, and,~~ if requested, an attorney or self-represented litigant safeguarding a recording must provide a copy of the videotape recording at the expense of the party requesting the copy unless the court orders otherwise. An attorney or self-represented litigant safeguarding a recording may condition providing a copy of the recording upon receipt of payment. An attorney or self-represented litigant who fails to safeguard a recording or provide a copy as set forth in this subdivision may be subject to sanctions.

(E) Cost of Videotaped Depositions Recorded Via Audio-Video Communication Technology. The party

requesting the ~~videotaping~~ audio-video recording
bears the initial cost of ~~videotaping~~ the recording.

(5)-(6) [NO CHANGE]

(7) A deposition may be taken by communication technology, as that term is defined in Rule 12.026, if stipulated by the parties or if ordered by the court on its own motion or ~~On~~ motion the court may order that the testimony at a deposition be taken by telephone of a party. A court official must determine whether good cause exists before authorizing the use of communication technology for the taking of a deposition, but a motion filed under this subdivision shall not require a hearing.

The order may prescribe the manner in which the deposition will be taken. ~~A party may also arrange for a stenographic transcription at that party's own initial expense.~~ In addition to the requirements of subdivision (b)(1), a party intending to take a deposition by communication technology must:

(A) state that the deposition is to be taken using communication technology in the title of the notice; and

(B) identify the specific form of communication technology to be used and provide instructions for access to the communication technology in the body of the notice.

Any subpoena served on the person to be examined must include the information required for the notice in subdivision (b)(7).

(8) [NO CHANGE]

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections; Transcription.

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken must put the witness ~~on~~ under oath and must personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness, except that when a deposition is being taken by ~~telephone~~ communication technology under subdivision (b)(7), the witness must be ~~sworn by a person present with the witness who is qualified to administer an oath in that location~~ put under oath as provided in Rule 12.026. The testimony must be taken stenographically or recorded via audio-video communication technology ~~by any other means ordered in accordance with~~ under subdivision (b)(4). ~~If requested by one of the parties, the testimony must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties.~~ All objections made at the time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, or the conduct of any party, and any other objection to the proceedings must be noted by the officer during the deposition. Any objection during a deposition must be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d). Otherwise, evidence objected to must be taken subject to the objections. Instead of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

(2) If requested by a party, the testimony must be transcribed at the initial cost of the requesting party and

prompt notice of the request must be given to all other parties. A party who intends to use an audio or audio-video recording of testimony at a hearing or trial must have the testimony transcribed and must file a copy of the transcript with the court.

(d)-(f) [NO CHANGE]

~~**(g) Obtaining Copies.** A party or witness who does not have a copy of the deposition may obtain it from the officer taking the deposition unless the court orders otherwise. If the deposition is obtained from a person other than the officer, the reasonable cost of reproducing the copies must be paid to the person by the requesting party or witness.~~

(gh) [NO CHANGE]

RULE 12.740. FAMILY MEDIATION

(a) [NO CHANGE]

(b) Referral. Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort must shall be made to expedite mediation of family issues. Such referral, or written stipulation of the parties, may provide for mediation or arbitration in person, remotely via audio or audio-video communication technology, or a combination thereof.

(c) [NO CHANGE]

~~**(d) Appearances.** Unless otherwise stipulated by the parties, a~~
A party is deemed to appear at a family mediation convened pursuant to this rule if the named party is physically present, or present via communication technology, at the mediation conference

or, if permitted by court order or written stipulation of the parties, present via communication technology. In the discretion of the mediator and with the agreement of the parties, family mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(e) [NO CHANGE]

(f) Report on Mediation.

(1) If agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be reduced to writing, signed by the parties and their counsel, if any and if present, and submitted to the court unless the parties agree otherwise. By stipulation of the parties, the agreement may be electronically or stenographically recorded and made under oath or affirmed. In such event, an appropriately signed transcript may be filed with the court. Signatures may be original, electronic, or facsimile, and may be in counterparts.

(2)-(3) [NO CHANGE]

Commentary

1995 Adoption. This rule is similar to former Florida Rule of Civil Procedure 1.740. All provisions concerning the compensation of the mediator have been incorporated into this rule so that all mediator compensation provisions are contained in one rule. Additionally, this rule clarifies language regarding the filing of transcripts, the mediator's responsibility for mailing a copy of the agreement to

counsel, and counsel's filing of written objections to mediation agreements.

202 Amendment. The phrase "audio or audio-video communication technology" is added to the rule to make the rule consistent with amendments to the Rules of General Practice and Judicial Administration.