

Proposed amendments to Rule of General Practice and Judicial Administration Procedure 2.530 regarding communication technology

The Rules of General Practice and Judicial Administration Committee, in compliance with Florida Rule of Judicial Administration 2.140, invites comments on a proposed amendment within Rule 2.530. A summary of the proposed amendments and the full of the proposal is below. Interested persons have until August 30, 2021, to submit any comments, electronically, to Stanford R. Solomon, Chair of the Rules of General Practice and Judicial Administration Committee, at ssolomon@solomonlaw.com, and to Bar attorney liaison, Krys Godwin, at kgodwin@floridabar.org.

| Rule Number | Explanation |
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| 2.530 (Communication EquipmentTechnology) | <p>Amends subdivision (a) by amending and adding definitions for “audio communication technology”, “audio-video communication technology”, and “communication technology”.</p> <p>Subdivision (b) is renamed “Use of Communication Technology” and is amended to clarify use of communication technology.</p> <p>Subdivision (c) is renamed “Non-Evidentiary Proceedings” and is amended to clarify the ability and time for audio-video non-evidentiary proceedings.</p> <p>Adds a new subdivision (d) entitled “Evidentiary Proceedings” and that clarifies the procedure for communication technology in evidentiary proceedings.</p> <p>Subdivision (e) is renamed “Oath.” Subdivision (e)(1) is amended to clarify the manner in which an oath may be administered. Subdivision (e)(2) is renamed “Remotely by Audio-Video Communication Technology” and is</p> |

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| | <p>amended to define the manner in which an audio-video communication technology oath may be given within and outside of Florida. Subdivisions (e)(3)-(e)(5) are deleted as unnecessary.</p> <p>Subdivision (f) was previous subdivision (e), Burden of Expense, and is amended to define the assessment of costs.</p> <p>Current subdivision (f) is deleted.</p> |
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RULE 2.530. COMMUNICATION EQUIPMENT TECHNOLOGY

(a) Definitions. The following definitions apply to this rule:

(1) “Audio ~~C~~ommunication equipment ~~technology~~” means a ~~conference telephone or other~~ technology that consists of electronic devices, system, applications and platforms that permit all participants to hear and speak to all other participants in real-time that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons present.

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

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

(b) Use by ~~All Parties of Communication Techonology~~. ~~A county or circuit court judge may, upon the court’s own motion or upon the written request of a party, direct that communication equipment be used for a motion hearing, pretrial conference, or a status conference. A judge must give notice to the parties and consider any objections they may have to the use of communication equipment before directing that communication equipment be used.~~

~~The decision to use communication equipment over the objection of parties will be in the sound discretion of the trial court, except as noted below.~~Unless governed by another rule of procedure or general law, communication technology may be used for all proceedings as provided by this rule. A judge, magistrate, or hearing officer may require a proceeding to be conducted in whole or in part through communication technology, unless there has been a showing of good cause to the contrary. Reasonable advance notice of the intention to use communication technology for any portion of a proceeding must be given to all persons entitled to notice of the proceeding, including directions for access to the communication technology and specification of the communication technology to be used.

(c) Use Only by Requesting Party~~Non-Evidentiary Proceedings.~~ A county or circuit court judge may, upon the written request of a party upon reasonable notice to all other parties, permit a requesting party to participate through communication equipment in a scheduled motion hearing; however, any such request (except in criminal, juvenile, and appellate proceedings) must be granted, absent a showing of good cause to deny the same, where the hearing is set for not longer than 15 minutes. Communication technology may be used for any non-evidentiary proceeding and, absent a showing of good cause to deny the request and except for proceedings governed by the rules of appellate procedure, criminal procedure, or juvenile procedure, must be permitted for any non-evidentiary proceeding scheduled for 30 minutes or less.

(d) Evidentiary Proceedings. Any party desiring to conduct all or a portion of an evidentiary proceeding through communication technology must, prior to the hearing or trial at which the testimony is to be presented, move for permission. The motion must set forth good cause for use of the communication technology. Factors to be considered in determining whether good cause exists to allow testimony to be presented through communication technology include 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, 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 witness, the cost and inconvenience in requiring the physical presence of the witness, the need for confrontation of the witness, the need to observe the demeanor of the witness, the potential for unfair surprise, and any other consideration relevant to the request.

(e) Testimony Oath.

(1) Generally. ~~A county or circuit court judge, general magistrate, special magistrate, or hearing officer may allow testimony to be taken through communication equipment if all parties consent or if permitted by another applicable rule of procedure~~Prior to testifying using communication technology, a witness may be sworn by a person authorized to administer oaths in the jurisdiction in which the witness is then-located who is physically present with the witness and administers the oath consistent with the laws of that jurisdiction.

(2) Procedure Remotely by Audio-Video Communication Technology. ~~Any party desiring to present testimony through communication equipment shall, prior to the hearing or trial at which the testimony is to be presented, contact all parties to determine whether each party consents to this form of testimony. The party seeking to present the testimony shall move for permission to present testimony through communication equipment, which motion shall set forth good cause as to why the testimony should be allowed in this form.~~Prior to testifying using audio-video communication technology, a witness in the State of Florida may be sworn using audio-video communication technology by a person authorized to administer oaths in the State of Florida. If the witness is not located in the State of Florida, the witness must also consent to the administration of the oath by a person qualified to administer oaths in the State of Florida under the law of the State of Florida.

(3) Oath. ~~Testimony may be taken through communication equipment only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is present with the witness and administers the oath consistent with the laws of the jurisdiction.~~

~~(4) **Confrontation Rights.** In juvenile and criminal proceedings the defendant must make an informed waiver of any confrontation rights that may be abridged by the use of communication equipment.~~

~~(5) **Video Testimony.** If the testimony to be presented utilizes video conferencing or comparable two-way visual capabilities, the court in its discretion may modify the procedures set forth in this rule to accommodate the technology utilized.~~

~~(ef) **Burden of Expense.** The cost for the use of the communication equipment is the responsibility of the requesting party Unless otherwise directed by the court, the cost for the use of audio video communication technology is the responsibility of the requesting party, subject to allocation or taxation as costs.~~

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