

In the Supreme Court of the State of Idaho

RE: REMOTE COURT PROCEEDINGS)
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Order
January 6, 2023

Over recent years Idaho’s courts have developed the infrastructure and expertise to expand the use of technology as a resource to allow parties to appear remotely for court proceedings. As the use of remote proceedings has expanded, courts have found remote proceedings enhance litigants’ access to justice by reducing travel time, reducing some litigation costs, increasing victim safety, increasing participation by certain individuals, and generally increasing efficiency in many proceedings. There are also challenges and costs to providing remote access including the technical capacity of some participants, the lack of sufficient internet connections for others, and the value of in-person appearances for certain types of proceedings.

In order to fully consider the benefits and limitations of remote court proceedings, as well as to develop court rules which facilitate the continued use of remote proceedings in appropriate circumstances, the Court has determined that a thorough review of court rules and procedures is necessary. This Court is undertaking an assessment of potential changes to the current Idaho court rules related to remote proceedings. A vital part of this assessment will be an opportunity for public comment regarding any such proposed rule changes. The assessment of rules and the public comment process is expected to take some time.

In order to allow Idaho’s courts and users of those courts the opportunity to continue experiencing the convenience and efficiencies associated with the use of remote proceedings during the assessment and comment period, this Court orders the following:

1. **Remote Court Proceedings:** Other than jury trials, court rules which prohibit hearing any case or part thereof remotely are suspended during the effective term of this order. Subject to the approval of each district’s Administrative District Judge, an assigned judge has the discretion to hold proceedings in person or remotely, i.e. with all participants utilizing remote technologies including teleconferencing and video conferencing, pursuant to the following conditions and requirements:
 - a. All trials on a petition to terminate parental rights shall be held in person.
 - b. All felony sentencing hearings in which the crime the defendant is being sentenced for carries a possible sentence of life and the assigned judge has not previously agreed to impose a sentence of less than life, shall be held in person with the defendant and counsel present in the courtroom.
 - c. All felony sentencing hearings in which the crime the defendant is being sentenced for carries a maximum sentence of less than life imprisonment or in which the assigned judge has previously agreed to impose a sentence of less than life, may be held remotely only if:

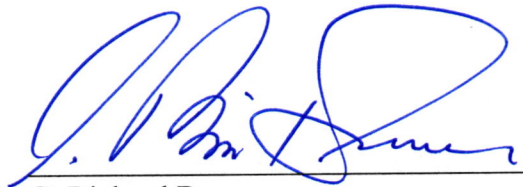
- i. the parties stipulate, and the judge agrees, to hold the sentencing remotely, and
 - ii. the defendant provides, on the record, a knowing, intelligent, and voluntary waiver of all the rights granted by Idaho Code section 19-2503.
 - d. Any party intending to offer documentary evidence during a hearing held remotely must provide the court and all parties a list of such exhibits and copies thereof at least seventy-two hours before such hearing unless the assigned judge modifies the time for good cause shown.
 - e. An audio recording of all court proceedings must be created in For The Record (FTR) software or in Zoom software. For court proceedings in district court, the official record may be kept by a court reporter in addition to the audio recording. With the permission of the assigned judge, a court reporter may report proceedings remotely.
 - f. To protect the integrity of the remote proceeding, an assigned judge has the discretion to enter other orders or impose additional requirements to promote the safety of participants or to promote efficiency.
- 2. **Live Streaming of Proceedings:** Idaho Court Administrative Rule 45 shall be applied when a camera in the courtroom supplements (is in addition to) the physical presence of the public in any proceeding. Any portion of a proceeding traditionally open to the public may be live streamed rather than allowing the physical presence of the public only when the assigned judge finds that:
 - a. Health or safety concerns override other interests in allowing the public to be physically present in the courtroom;
 - b. Denial of the public's physical presence in the courtroom is necessary to protect the health or safety of those participating in the proceeding, including, if applicable, a lack of sufficient physical space for adherence to any social distancing requirements;
 - c. The assigned judge has considered other reasonable alternatives to allow the physical presence of the public;
 - d. The assigned judge has made findings on the record that live streaming is an appropriate alternative because:
 - i. No reasonable in-person alternative is available that would sufficiently ensure the health or safety of those participating in the trial; and
 - ii. The available live streaming capability is a narrowly tailored and reasonable alternative.
 - e. If the public cannot be physically present in the courtroom, a publicly accessible live audio and video stream of the proceedings must be provided to the public. Such live stream may be publicly accessible either:
 - i. Via transmission to the internet, or
 - ii. By transmission to a separate room in the courthouse. Any live stream of a Court proceeding shall not be a part of the official court record.

- f. There shall be no live streaming of the following:
- i. Images of jurors, unless the live streaming is by transmission to a separate room in the courthouse;
 - ii. Audio of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge held at the bench;
 - iii. Images of notes upon the counsel table, nor of any exhibits before they have been admitted into evidence;
 - iv. Audio or images of off-the-record, in-chambers sessions or judicial deliberations;
 - v. Audio or images of proceedings in which jurors may have to disclose personal, embarrassing, or prejudicial information that traditionally would be addressed outside of the presence of the other jurors and the public.

3. **Effective Date:** This Order shall take effect on April 1, 2023.

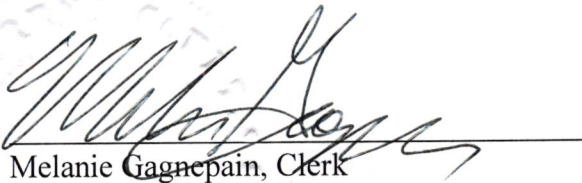
DATED this 6th day of January 2023.

By Order of the Supreme Court



G. Richard Bevan
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk