

**Public Comments Regarding Iowa Rules of Remote Proceedings  
(Due August 3, 2023)**

<b>Comments</b>	<b>Received</b>
Christopher Bruns, District Court Judge	7/10/2023
Sydney Lundberg	7/11/2023
Catherine VanMaanen, Domestic Abuse Victim Advocate	7/11/2023
Karla Lester, Court Reporter	7/11/2023
Edward Mansfield, Justice, Iowa Supreme Court	7/12/2023
Randy Evans, Iowa Freedom of Information Council	7/24/2023
Doug Sample	7/26/2023
Daria T. Shahriari, Court Reporter	8/1/2023
Rick Autry, Attorney, Iowa Employment Appeal Board	8/3/2023
Martha Lucy, State Appellate Defender's Office	8/3/2023

**FILED**  
JUL 10 2023  
CLERK SUPREME COURT



**Iowa Rules of Remote Proceedings**  
Christopher Bruns to: rules.comments

07/10/2023 01:28 PM



Comments to Proposed Rules for Remote Proceedings.docx

I would like to submit the following comments regarding the proposed rules for remote proceedings.

As it regards Rule 15.301(5), lines 21 through 24 on page 2, you need to add something along the following lines:

“If the proceeding is being conducted by video conference, each participant must be using high speed internet capable of handling the conference.”

I, and other district judges, have experienced repeated problems with connections being lost and with participants suddenly buffering during proceedings. This makes it difficult, if not impossible, for the reporters to generate an accurate transcript.

As it regards Rule 15.302(8)(c)(2), line 15 on page 4, the rule should allow the court to provide the instructions the day before the hearing if the court is providing the conference call information or the link for the video hearing. In any district where the schedule may be assigned the day prior, and in light of the limits of our clerical and court reporter support, it is generally not feasible to provide instructions when the motion is granted. This would not be an issue if a participant is providing the link or will simply call the courthouse to participate.



[EXTERNAL] Iowa Rules of Remote Proceedings

Sydney Lundberg

to:

rules.comments

07/11/2023 11:39 AM

Hide Details

From: "Sydney Lundberg" <sydney.lundberg@gmail.com>

To: rules.comments@iowacourts.gov

**FILED**  
JUL 11 2023  
CLERK SUPREME COURT

Hello.

My comment on this is that Iowa should allow voice reporters to work in an official capacity in the judicial system as machine reporters. They are equal to machine reporters and should be compensated as such.

Thank you.



[EXTERNAL] Iowa Rules of Remote Proceedings  
Catherine VanMaanen

to:  
'rules.comments@iowacourts.gov'  
07/11/2023 05:04 PM

Hide Details

From: "Catherine VanMaanen" <cathy@safeplacesiouxland.org>

To: "rules.comments@iowacourts.gov" <rules.comments@iowacourts.gov>

**FILED**  
JUL 11 2023  
CLERK SUPREME COURT

1 Attachment



Iowa Rules of Remote Proceedings.docx



*Cathy VanMaanen* she,her



Domestic Abuse Advocate

712-546-6764

PO Box 34

LeMars, Iowa 51031

[www.safeplacesiouxland.org](http://www.safeplacesiouxland.org)

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Iowa Rules of Remote Proceedings "Rule" 15

As an advocate for victims of domestic and sexual violence I totally support Rule 15 to allow for remote proceedings. This rule will increase the safety of victims, their family or support people who come with them to court, all court personnel, and the public in general. Getting to court has often been a barrier for survivors. Certainly, fear of facing their abuser as well the inability to travel or find child care are common obstacles victims struggle to overcome. I believe this rule could save lives. Thank you for taking your time to read my comments.

Sincerely,

Cathy VanMaanen

Domestic Abuse Victim Advocate, Plymouth County

Safe Place

712-546-6764

[cathy@safeplacesiouxland.org](mailto:cathy@safeplacesiouxland.org)

**FILED**

JUL 11 2023

CLERK SUPREME COURT



**Re: Remote Proceedings**

Karla Lester to: Rules Comment

07/11/2023 02:33 PM

Very impressive and thorough job by the Remote Proceedings Committee in addressing all the concerns regarding access, availability of technology and convenience of participants while also keeping in mind the challenges of making an accurate record, especially in evidentiary hearings.

The committee did a commendable job balancing all of the competing issues and the result will prove beneficial to the state of Iowa in the form of cost savings for travel reimbursement of court staff, alleviating shortages of court reporters, who will be able to cover hearings in multiple counties (if not the entire state) on a given day, as well as easing the challenges faced by court-appointed counsel. Excellent work!



**Karla Lester, CSR, RMR, CRR** | Court Reporter

Iowa Judicial Branch | Seventh Judicial District

Scott County Courthouse | 400 West Fourth Street | Davenport | Iowa 52801

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**Iowa Rules of Remote Proceedings**  
Kathy Higginbotham to: Rules Comment

07/12/2023 02:54 PM

Please see the attached comment from Justice Edward M. Mansfield. Thank you.

Best,



071223\_Edward\_Mansfield\_Comment.pdf

Kathy Higginbotham  
Administrative Assistant to  
Justices Mansfield, Oxley and McDermott  
Iowa Supreme Court  
1111 East Court Avenue  
Des Moines, IA 50319  
(515) 348-4960





## Supreme Court

EDWARD M. MANSFIELD  
JUSTICE

JUDICIAL BRANCH BUILDING  
1111 EAST COURT AVENUE  
DES MOINES, IA 50319

**FILED**  
JUL 12 2023  
CLERK SUPREME COURT  
Telephone: (515) 348-4980  
Email: [edward.mansfield@iowacourts.gov](mailto:edward.mansfield@iowacourts.gov)

July 12, 2023

Clerk of the Supreme Court  
1111 East Court Ave.  
Des Moines, IA 50319

Re: Comments on Proposed Iowa Rules of Remote Proceedings

Dear Ms. Humpal,

I submit the following comments on the Proposed Iowa Rules of Remote Proceedings.

I appreciate the time and effort that has gone into the development of these rules in a short period of time. As we have learned from COVID, remote proceedings are here to stay. These proceedings can save the judicial system significant time and money while still preserving parties' rights.

I chaired the task force on criminal rules, which recently completed several years of work on a comprehensive review and revision of the criminal rules. While I speak for myself only in these comments, my views draw in part from that experience.

One goal of the criminal rules revision was to make the rules clear and self-contained. That is, lawyers and judges could read the criminal rules and know what they needed to do. There would be no unwritten rules. I have concerns that the Proposed Rules of Remote Proceedings, in the area of criminal procedure, may erode progress toward this goal. They list "factors" or "weight" to be considered in situations where a decision tree is needed. They introduce ambiguity that could be cleared up through tighter drafting without in any way detracting from the purpose of the remote rules.

Specifically:

**15.402, page 4, lines 31-34, and page 5, lines 1-2.** This rule seems like a good idea. I note that rule 15.301(4) generally requires defense counsel to be present in person when the defendant is present in person unless the defendant consents or the court finds good cause. However, in a criminal case, I do not believe there should be consent or good cause exceptions when the defendant is personally present for *guilty plea, trial, or sentencing*. In those circumstances, the attorney needs to be in the courtroom—period—if their client is there.

**15.403(1), lines 8-11.** This rule does not specifically mention the defendant's right to confront witnesses at trial. The rule refers to the participant's potential right to an in-person appearance or an in-person proceeding but not specifically to the participant's right to insist that *someone else* appear in person. Except in limited circumstances involving certain minor witnesses, I believe the defendant has an absolute right to insist on the personal (not remote) presence of witnesses at trial. Why not say so?

**15.403(1)(a), lines 8-9.** Why not say that if a person has a constitutional or statutory right to appear in person, and if they have not validly waived that right, they must be allowed to appear in person? This really is more than a "factor." It's dispositive. Thus, a defendant has a constitutional right (and an obligation) to appear in person at trial, which can't be waived in normal circumstances. A victim has a statutory right to appear in person at sentencing and personally confront the defendant if they so desire (see Iowa Code section 915.21(1)(a)).

**15.403(2), lines 12-23.** This rule is less precise than it could be. What does it mean to "give added weight"? If there is a *presumption* that certain hearings should be held remotely (e.g., pretrial, case, and status conferences), say that. I recognize that rule 15.102 provides for a presumption in favor of in-person proceedings, but this is subject to other rules in the chapter. So, using the word "presumption" in rule 15.403(2) would not result in a conflict with rule 15.102.

Furthermore, there are several different situations covered within rule 15.403(2)(a)(1)–(7) that could be categorized differently. *Trial* has to be in person. This is not just a matter of "added weight." *Arraignment, plea, and various conferences* can be held by interactive video proceedings under the existing criminal rules. *Sentencing* is a third, somewhat in-between, category.

There is also a partial contradiction between subsection (a) and (b). In particular, subsection (b) says that added weight must be given to conducting a proceeding remotely when testimony is not expected. Subsection (a) says that added weight must be given to conducting pretrial conferences, status conferences, and case conferences in person—even though those are not the types of proceedings that usually involve testimony.

I think it might be logical to separate things out as follows:

1. Trial must be in person.
2. Sentencing—in my opinion—needs its own subrule. Personally, I would favor a rule that sentencing must be in-person unless *victims and the defendant* waive personal presence, and even then, I would have a presumption of in-person sentencing.
3. Proceedings where testimony is expected (e.g., guilty plea and motion to suppress) are presumed in person but may be ordered remote.
4. Proceedings where testimony is not expected (e.g., initial appearance, arraignment, pretrial conferences, case conferences, and status conferences) are presumed remote but may be ordered in person.

Additionally, there is no reference to criminal case restitution hearings in the proposed rule.

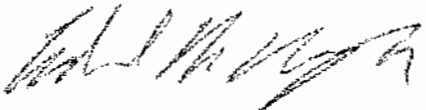
**Reconciling the criminal rules and the remote rules.** Additionally, the Criminal Work Group of the Remote Proceedings Task Force recommends that the new version of Iowa Rule of Criminal Procedure 2.27 be further revised to conform to the in-person proceeding and remote proceeding default presumptions under that work group's proposed rule X.401(2)–(3). (I assume criminal work group rule X.401(2)–(3) became rule 15.403(2) in the proposed rules.)

It would be helpful to see exactly what amendments to rule 2.27 the Criminal Work Group believes are necessary. Although I believe that rule 15.403(2) could benefit from more clarity and from eliminating the contradiction noted above, I do not see any inconsistency between the proposed rule and the chapter 2 criminal rules, except possibly in the area of sentencing. Generally speaking, the presumptions set forth in the proposed remote rules (and specifically rule 15.403(2)) can be accommodated within the current framework of the chapter 2 criminal rules.

Sentencing may be different. Regarding sentencing, the revised chapter 2 criminal rules allow sentencing by interactive video only with the consent of everyone. See Iowa R. Crim. P. 2.27(1)(e). The proposed remote rules would apparently allow sentencing by interactive video *without* unanimous consent and *over* the defendant's objection. (As noted above, I would not favor a rule allowing the defendant to be sentenced remotely over the defendant's objection. This seems to me an inappropriate limitation on the allocution right.) To the extent the remote rules on sentencing do not match up with rule 2.27, then in that respect it would be appropriate to amend rule 2.27. In any event, as noted above, a victim has a statutory right to insist on personally addressing the defendant in the courtroom.

Thank you for the opportunity to submit these comments.

Yours truly,

A handwritten signature in black ink, appearing to read "Ed M. Mansfield", written in a cursive style.

Edward M. Mansfield

EMM/kph



[EXTERNAL] Iowa Rules of Remote Proceedings

Randy Evans

to:

rules.comments

07/24/2023 08:43 PM

Hide Details

From: "Randy Evans" <iowafoicouncil@gmail.com>

To: rules.comments@iowacourts.gov

Security:

To ensure privacy, images from remote sites were prevented from downloading. Show

Images

History: This message has been forwarded.

**FILED**  
JUL 24 2023  
CLERK SUPREME COURT

1 Attachment



Supco.remote.rules.comments.pdf

Attached is a PDF containing the Iowa Freedom of Information Council's comments on the proposed Iowa Court Rules.

Respectfully,

**Randy Evans**

*Executive Director*

**Iowa Freedom of Information Council**

P.O. Box 8002 | Des Moines, IA 50301 | 515.745.0041



**FILED**

JUL 24 2023

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**SUSTAINING MEMBERS**

Armstrong Journal and its Bancroft Register, Buena Vista County Journal, Emmetsburg Reporter-Democrat, Estherville News, Graettinger Times, Humboldt Independent, Laurens Sun, Ruthven Zipcode, Pocahontas Record-Democrat, Ringsted Dispatch, Swea City Herald-Press, West Bend Journal

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 David Yepsen, Des Moines

July 24, 2023

Clerk of the Iowa Supreme Court  
 Judicial Branch Building  
 1111 Court Ave.  
 Des Moines, IA 50319

RE: Iowa Rules of Remote Proceedings

To Chief Justice Christensen and Justices of the Supreme Court:

Thank you for providing us the opportunity to offer our comments on the proposed Iowa Rules of Remote Proceedings.

We commend the Court for appointing an array of the Iowa legal community and court system to serve on the Remote Proceedings Task Force and for including two representatives of the news media. Lawyers, judges, court reporters and court administrators all have a stake in assuring remote court proceedings work efficiently for participants in cases before the courts.

But most importantly, the public has a direct and vital stake in all aspects of the judicial process — the right to witness the legal process in action and assess the effectiveness of the independent and co-equal judiciary. When this happens in a courtroom at a county courthouse, the public has the right — and the opportunity — to assemble in the courtroom to watch.

If court proceedings occur partially or completely by electronic means, such as a telephonic call or a video conference, there is a risk that the court system or a particularly noteworthy case may become an exclusive club admitting only the participant judges, lawyers and parties.

To assure continued public access, proposed rule 15.302(9), beginning at line 16, states that if a court schedules a remote hearing or trial, “the proceeding remains open to the public.” The Task Force further proposed that when a court conducts a proceeding open to the public as a hybrid proceeding, “members of the public who wish to view the proceeding may do so in person, and the court may permit members of the public to view the proceeding remotely.”

We should expect no less. Yet, these requirements do not go far enough.

Countless Iowans may find themselves unable to attend a remote proceeding because of technology or expense. For example, the recent federal and state financial broadband initiatives



July 24, 2023  
Page 2

demonstrate that while internet access is widely available, not all lowans have access to the bandwidth and speed needed to watch live-streaming video.

In its report to the Supreme Court, the Criminal Work Group made a clear statement on this point: "Courthouses should be equipped with technology so that members of the public can view a remote or hybrid proceeding." The work group report went on to say: "Currently, any person can come to the courthouse and view a proceeding. That should not change. Thus, the work group recommends that courthouses be equipped with technology so anyone may come to the courthouse and view a remote or hybrid proceeding."

While we appreciate concerns about whether the Iowa Judicial Branch can afford to provide remote access to the public at every Iowa courthouse, we suggest the Judicial Branch cannot afford not to do so. The Iowa Supreme Court rightly understood this when the EDMS system was introduced in the 1990s by installing public computer terminals in all courthouses to provide public access to court records. The Court now should do the same with access to remote court proceedings.

The Iowa Freedom of Information Council has long partnered with the Iowa courts to make the judicial process more open and accountable by allowing news reporters and photographers to use their cameras, audio recorders and computers inside courtrooms when covering court proceedings. To that end, the Iowa FOI Council designates and provides resources to regional media coordinators who represent journalists in seeking judges' approval for Expanded News Media access to court proceedings. As Iowa's courts transition increasingly to remote court proceedings, the Iowa FOI Council is ready to offer its assistance to the courts to assure the public continues to have access to Iowa's courtrooms, whether in person or online.

The new Iowa Court Rules on Remote Proceedings should guarantee the public in-person attendance at hybrid judicial proceedings and the ability to observe fully remote proceedings via the internet and electronically at the courthouse where the case is filed.

Thank you again for your work on this important project and for providing us the opportunity to share these comments as you consider the proposed court rules.

Respectfully,

A handwritten signature in black ink, appearing to read "Randy Evans". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Randy Evans  
Executive Director

(515) 745-0041  
iowaFOICouncil@gmail.com



**[EXTERNAL] Iowa Rules of Remote Proceedings**  
Doug Sample to: rules.comments

07/26/2023 05:32 PM

I see it stated that I am I'm supposed to reference a specific line in my comment. This is a comment about the entire concept of remote proceedings, but if I must include a specific line, I guess this would apply.

26 Rule 15.302 Motion for remote, hybrid, or in-person appearance or  
27 proceeding.

I am fully in favor of remote appearances being allowed. I have multiple sclerosis. I use a power wheelchair. Finding transportation to actually get to a court appearance is nearly impossible. Additionally, I suffer from fatigue as a symptom of MS. The length of time that I am able to maintain focus and concentration is very limited. Reducing the total time required of my appearance to only the remote proceeding and not what is typically a significant wait in the courthouse would be a substantial improvement in my ability to participate coherently in a hearing.

I have participated in State Fair Hearings remotely previously in my appeals to the state employed Managed Care Organizations denying my physician ordered medical needs. These have worked very well. I would appreciate the opportunity to participate in this manner in any other hearings that may require my presence in the future.

I am uncertain if this email address allows attachments. I would like to submit as supporting documentation a letter from my neurologist that states, "Patient has neurological progressive condition that may limit his ability and function including but not limited to focusing, concentration, dexterity with writing, and memory." Please let me know the appropriate means to do so.

Thank you, Doug Sample



**FILED**  
AUG 01 2023  
CLERK SUPREME COURT



Iowa Rules of Remote Proceedings  
Daria Shahriari to: rules.comments

08/01/2023 12:39 PM



Iowa Rules of Remote Proceedings.docx

**Daria T. Shahriari, RPR, CSR**  
District Court Reporter for Hon. Chris Foy  
Bremer County Courthouse  
415 East Bremer Avenue  
Waverly, IA 50677

**Tel: (319)352-5661**

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As regards Proposed Iowa Rules of Remote Proceedings, Chapter 15:

Criminal Proceedings

**FILED**

AUG 01 2023

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**Rule 15.102 – lines 11-13**

The requirement to appear in court is more official and requires more acknowledgement than a remote appearance. More defendants failing to appear for remote proceedings will add to the expense and time of the Court, attorneys, and everyone else involved in bringing a case to resolution, including the police or sheriff's departments, DHHS, and clerks of court, as well as victims or other parties involved.

**Rule 15.302(3), lines 4-5; Rule 15.302(4)(i) – line 20**

The attorneys should discuss proceedings that cannot be handled on paper and will require no testimony, and they should come to an agreement as to whether the proceedings can be handled remotely or not. If the parties do not agree to a remote hearing, the hearing should be held in person.

The Court should follow the parties' agreement unless the Court has a reason stated in the order for hearing as to why it orders contrary to the parties' agreement.

**Rule 15.302(4) a, c, e, g, h, k, m – lines 8-9, 13, 15, 17-18, 19, 23-24, 26-27**

**Rule 15.302(9) a, b – lines 17-18, 19-21**

If a witness will testify but has a valid reason and has received prior agreement of the parties and permission from the Court to appear by video conference, that should be allowed. Telephone appearances for witnesses should not be allowed as it impossible to judge a person's truthfulness without seeing them. Otherwise,

Criminal proceedings that require in-person testimony should be conducted in the courtroom with all parties, witnesses, and the jury (if called) present.,

**Rule 15.302(4) c, e, f, g, h, i, k – lines 13, 15, 16, 17-18, 19, 20, 23-24**

Proceedings that can be done on paper should be done on paper. This means an attorney has been able to communicate effectively with their client to advance their case.

**Rule 15.403(2)(b) – line 23**

However, an in-person appearance is often the first time an attorney meets with his or her client who has been otherwise unreachable. Allowing nonresponsive defendants to appear remotely encourages a disregard for legal proceedings. Presence in court and in front of a judge

may be the only thing that motivates a defendant to even acknowledge that they have been accused of a crime, much less to consider the consequences of their actions. Freedom to appear remotely minimizes the gravitas of their situation and invites disregard of court orders to appear.

If something that can be done on paper has not been done by the scheduled date for in-court proceedings, the parties should be required to appear in person.

**Rule 14.403(1)(a) – lines 8-9**

Criminal proceedings should be conducted in the courtroom where any victims who wish to can be present in court to face the perpetrator of the crime against them.

Civil Proceedings

**Rule 15.302(3) a, c, e, f, g, h, i, k, m – lines 8-9, 13, 15, 16, 17-18, 19, 20, 23-24, 26-27**

Attorneys should communicate with each other to resolve proceedings on paper as much as possible. If they are unable to resolve issues without court intervention, they should come to agreement as to remote proceedings that do not require testimony. Bench trials may be conducted remotely via video if the parties agree. Jury trials should be conducted entirely in person unless a witness has been authorized by the Court to appear via video. Testimony should not be allowed via phone.

Civil proceedings should be conducted as agreed to by the parties. Proceedings that require testimony should be conducted in the courtroom or via video only. Jury trials should be conducted in person except as described above.

Family Law Proceedings

**Rule 15.302(4) a, e, f, h, k, l, n – lines 8-9, 15, 16, 19, 23-24, 25, 28-29**

Hearings which are expected to be nothing more than the Court stating what documents and recommendations it has received, and the parties agreeing with the recommendations should be conducted via phone or videoconference.

Hearings which are contested but do not require testimony should be conducted via videoconference so there is never confusion about who is speaking. Frequently in juvenile proceedings there are parties unfamiliar with courtroom decorum and who may speak out of turn. If the person fails to identify themselves and the Court fails to determine who spoke, the speaker will be unidentified for purposes of the record if these hearings are conducted by phone.

Hearings which require testimony should be conducted via videoconference or in person, as per the agreement of counsel. Special consideration should be given to the guardian ad litem in these cases. Children who want their voices heard may want to be in the courtroom for proceedings concerning their welfare, and the guardian ad litem is in the best position to give the Court advice on what will best meet the needs of the Court and the wishes of the minor(s).

**Rule 15.302(4)(i) – line 20**

Hearings that involve more than agreement between the parties should be conducted via videoconference or in person, **with deference given to the guardian ad litem’s** ability to balance the needs of the Court and the parties with the wishes of the minor(s).

Juvenile Delinquent Proceedings

**Rule 15.302(4) k – lines 23-24**

Criminal cases involving minors should be conducted in court. It is their presence in a courtroom and before a judge that will best impress upon a minor the seriousness of what they have done.

Juvenile delinquent proceedings should be conducted in person.



[EXTERNAL] Iowa Rules of Remote Proceedings

Autry, Rick

to:

rules.comments

08/03/2023 03:22 PM

Hide Details

From: "Autry, Rick" <rick.autry@dia.iowa.gov>

To: rules.comments@iowacourts.gov

1 Attachment



Remote proceeding comment - Rick Autry of the EAB.docx

Please find attached my comments on the proposed rules governing remote proceedings.

Sincerely,

Rick Autry

Attorney

Iowa Employment Appeal Board

--

**Rick Autry** | General Counsel

Iowa Employment Appeal Board

Lucas State Office Building | 321 East 12th Street

Des Moines, IA 50319-0083 |

515.281.3070 (office) | 515.281.7191 (fax)

COMMENTS ON  
PROPOSED CHAPTER 15 OF THE IOWA RULES OF COURT  
GOVERNING REMOTE PROCEEDINGS

**Summary:** Contest Case Appeals Should Be In-Person As The Exception Rather Than The Rule

Although not a large part of most counties' dockets, judicial review of contested case proceedings is different in character from any other proceedings. Such review is, of course, appellate in nature.

In judicial review of contested cases the agency files a certified record and review is then heard on that record alone. If additional evidence is sought to be presented under Iowa Code §17A.19(7) the only remedy is to remand the matter for the agency to consider the additional evidence. In contested case appeals the court shall not itself hear additional evidence. *E.g. Heartland v. Dept. of Revenue & Finance*, 503 N.W.2d 587, 588 (Iowa 1993); *McMahon v. Iowa Dept. of Transp., Motor Vehicle Div.*, 522 N.W.2d 51, 54 (Iowa 1994); *James v. Sheller-Globe*, 510 N.W.2d 170, 172 (Iowa App. 1993); *Maschino v. Geo. A. Hormel & Co.*, 372 N.W.2d 256, 258 (Iowa 1985)

Generally, oral argument is not recorded. This is because when a briefing schedule is ordered the parties raise their issues on brief. If a petitioner does not raise an issue on briefing it is too late to raise new issues at oral argument. *E.g. Mensen v. Cedar Rapids Civ. Serv. Comm.*, 21-0410, slip op. at 12 (Iowa App 6/15/22) *furth. Rev. denied* 10/6/22. Thus recording the proceeding is more for convenience than legal necessity. In any event, remote proceedings can be reported.

The venue for judicial review can be where the appealing party lives or in Polk County. Since venue is jurisdictional in such cases it is common to have cases outside Polk filed in Polk County. Moreover, Iowa agencies, like the Employment Appeal Board, are located in Polk County. In my decades of experience about a third of judicial review cases are filed outside Polk County. In person oral argument in such cases places a burden on the agency that is out of proportion to the utility of in person proceedings. In contested-case-appeals oral argument there is no evidence presented, and no opportunity to assess credibility etc. Thus the disallowance of appearing remotely, phone or otherwise, should be the exception rather than the rule.

There are several ways to adjust this provision, but the simplest would be a change to rule 15.102. While a change to 1.1603(2) (scheduling orders) could also do this, the fact that the exception in rule 15.102 refers to "this chapter" means some change would have to be made to chapter 15 in any event. One simple change would be:

Rule 15.102 In-person proceeding presumption. Except as provided by statute or the rules of this chapter, all court proceedings, other than contested cases appeals governed by rule 1.1603(2), are presumed to be held in person.

This would permit the Courts to continue to default to telephonic or remote oral argument in a proceeding that is fundamentally different in kind from any other district court proceeding.

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[EXTERNAL] Iowa Rules of Remote Proceedings

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1 Attachment



Appellate Defender Comments to Proposed Rules of Remote Proceedings.docx

Good afternoon,  
Attached are the State Appellate Defender's Office comments regarding the proposed Rules of Remote Proceedings under consideration by the Supreme Court.  
Thank you.

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August 3, 2020

Iowa Supreme Court  
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Re: Comments on Proposed Iowa Rules of Remote Proceedings  
(Chapter 15)

Dear Chief Justice Christensen, Justices, and members of the Task  
Force:

The following comments are offered on behalf of the State  
Appellate Defender's Office. Thank you for the opportunity to  
comment on the proposed Iowa Rules of Remote Proceedings under  
consideration by the Supreme Court. We acknowledge the  
important work of the Task Force.

**Rule 15.403 Court's Consideration of rule 15.302 motion in  
criminal proceedings.** (p. 5, lines 4-11)

The additional factors listed in Rule 15.403 should be  
consistent with Iowa Rule of Criminal Procedure 2.27 which

requires the criminal defendant to waive the defendant's personal presence. We recognize the criminal workgroup recommended Rule 2.27 be revised to conform with the proposed Rule 15.403. (Report, PDF p. 18). However, the defendant's personal waiver of the right to be present in the courtroom may avoid problems or issues in the future.

**Rule 15.403(1)(b)** waiver of speedy trial (p. 5, line 10)

The defendant's waiver of speedy trial should not be a factor whether motion for a remote or hybrid proceeding is granted. The defendant's right to speedy trial has little or no bearing on whether a remote or hybrid pretrial non-evidentiary hearing is appropriate. The criminal workgroup's report does not discuss the reason(s) for the recommendation to include the waiver of speedy trial factor.

**Division III** General Provisions (p. 2, line 1-p. 3, line 29)

The proposed Rules of Appellate Procedure do not address remote or hybrid proceedings. The general provisions of the Rules of Remote Proceedings are applicable to proceedings in the appellate courts. We believe having specific guidance in the Rules of Remote Proceedings for appellate oral arguments would be beneficial.

Respectfully submitted,

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