Remote Proceedings Task Force

Work Group Reports

Criminal

Civil

Family Law

Juvenile

Report of the Criminal Work Group of the Remote Proceedings Task Force

June 29, 2023

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I. Introduction

On March 7, 2023, Chief Justice Susan Christensen of the Iowa Supreme Court invited a cross-section of the Iowa legal community to participate in the Remote Proceedings Task Force. The task force was composed of judges, attorneys, and court employees from throughout the state of Iowa. On March 10, Chief Justice Christensen appointed the following individuals to the criminal proceedings work group:

Gogerty, Honorable Celene, District Judge, Des Moines, work group chair

Sarcone, Nicholas, Attorney, Des Moines, work group co-chair

Williams, Brian, County Attorney, Waterloo, work group co-chair

Alioth, Dennis, Woodbury County Jail, Sioux City

Brandt, Meenakshi, Attorney, Davenport

Burns, Honorable Jason, District Associate Judge, Iowa City

Currie, Honorable Bethany, District Judge, Nevada

Daniels, Jennifer, Judicial Specialist, Waterloo

Denison, David, Attorney, Des Moines

Dixon, Delaney, Domestic Violence Intervention Program, Iowa City

Evans, Randy, Iowa Freedom of Information Council, Des Moines

Gangestad, Grant, Attorney, Des Moines

Gish, John, Attorney General's Office, Des Moines

Gordan, Richard, Statewide Treatment Court Coordinator, Des Moines

Hamm, Liz, Judicial Specialist, Charles City

Heit, Lena, District Court Administrator, Waterloo

Hyatt, Sarah, Court Reporter, Cedar Rapids

Jackson, Hannah, Judicial Specialist, Centerville

Johnson, Peter, Fremont County Attorney, Sidney

Kuehl, Michele, Clerk of Court Office, Waterloo

Latham, Honorable Henry, District Judge, Davenport

Martin-Alioth, Judy, Judicial Specialist, Sioux City

McDonough, Heidi, Clerk of Court Office, Muscatine

McFall, Laura, Court Reporter, Albia

Meals, Timothy, Story County Attorney, Nevada

O'Mara, Nellie, Attorney, Mason City

Reynoldson, Honorable Elisabeth, District Judge, Osceola

Rolands, Diana, Attorney, Osceola

Scheinost, Patricia, Attorney, Council Bluffs

White, Oubonh Phomvisay, Johnson County Attorney's Office, Iowa City

Whitesell, Sharese, Plymouth County Attorney's Office, Sioux City

Wise, Alison, Court Reporter, Council Bluffs

Wright, Jeff, State Public Defender, Des Moines

The criminal work group initially divided itself into two groups: evidentiary proceedings and non-evidentiary proceedings. Each subgroup held two meetings. After the initial separate meetings, the two groups combined and had three additional meetings.

The subgroups discussed judicial factors for remote proceedings, and the whole group discussed draft rules and other recommendations relating to remote proceedings.

II. Policy Objectives

Before the first meeting of the criminal work group, the members were surveyed on two issues: (1) whether specific types of proceedings should be in person, remote, or hybrid; and (2) what factors were important in deciding whether a proceeding should be remote. The survey results showed minimal consensus with regard to the first set of questions, and there was a lot of constructive input given to the second set. However, throughout the seven meetings of the criminal work group, several common themes stood out throughout the work group's discussions. By the end, there was consensus regarding these key issues.

(1) There is broad support for remote proceedings.

The work group members all were strongly in favor of remote proceedings as a valuable tool for the courts, especially for non-evidentiary proceedings. Members believed remote proceedings could provide better access to justice for participants, serve the goal of public access to court proceedings, be a more efficient process for the courts and participants, and save attorneys time and resources.

(2) There is a need for uniformity throughout the state of Iowa.

The work group felt strongly that statewide rules are needed and should be uniformly applied throughout the judicial districts. There was some frustration individual districts or courts have vastly different policies concerning remote proceedings.

(3) All courthouses should have adequate audiovisual equipment installed to facilitate remote or hybrid proceedings and staff to run such equipment.

The work group believed it is vital all courthouses (and ideally, all courtrooms) have adequate equipment in order to facilitate the expansion of remote proceedings as recommended by this work group. In addition, there must be staff to assist in-person participants before and during hybrid proceedings as well as aid remote participants in joining a proceeding.

(4) Training for all participants is crucial for successful remote or hybrid proceedings.

The work group was united in their belief that training in operating video platforms, such as Zoom, is vital to successful remote and hybrid proceedings. Training and other educational material should be provided to judges, judicial staff, attorneys, and the general public.

(5) Criminal proceedings have unique factors that affect the decision to have a remote or hybrid proceeding.

First, the workforce members drew a sharp distinction between evidentiary and non-evidentiary proceedings when using remote technology in criminal cases, primarily due to the issue of a defendant's right to confront their accusers. In addition, trial courts must also consider victims' rights, the public's interest in criminal trials, the ability of defendants and their counsel to engage in privileged conversations, and the impact of some criminal defendants' indigency on their ability to navigate a digital platform.

Second, the lack of uniformity within the Iowa corrections system and county jails with regard to inmates appearing by telephone or video conferencing needs to be addressed to allow inmates to appear for remote or hybrid proceedings. The work group would encourage the Iowa Judicial Branch to engage with these facilities to adopt uniform policies.

Third, it was recognized that many non-evidentiary criminal proceedings are mass-scheduled—more colloquially known as "cattle call hearings"—where multiple cases are scheduled for the same time. This frequently happens at arraignments and pretrial conferences. Work group members were concerned a remote hearing for a mass-scheduled hearing is often unworkable for several reasons. These reasons include the fact it is highly distracting for large numbers of participants to be logging in and out; it is hard to identify who has logged in (a typical example is a Zoom user named "iPhone"), making it difficult to determine who is present; participants' lack of technical skill in using the videoconference platforms; and some criminal defendants' lack of a device to connect to the hearings. Further, some criminal defendants do not have the ability to stay in contact with their attorneys (often due to homelessness), and in-person mass-scheduled hearings are an opportunity for attorneys to speak meaningfully with their clients in a way they cannot remotely. Because of these issues, the work group believes mass-scheduled hearings should be in-person generally but can be held remotely as determined on a case-by-case basis.

(6) Requests for remote or hybrid proceedings must be made timely and with adequate supporting information.

Members voiced the concern that in order to allow all participants adequate notice of a request to change a proceeding from in-person to remote (or vice versa), there must be deadlines for filing, as well as a standard form motion and order. Participants and observers must be able to be forewarned of any change in proceeding status.

(7) The courts should have the discretion to decide whether a proceeding is remote.

There was strong concern that requiring the consent of all parties to hold a proceeding remotely would result in "weaponizing" requests to conduct proceedings remotely (i.e., resisting such a motion as a tactical decision). Consequently, there was consensus that judges should consider appropriate factors and have the ability to make final decisions on how a proceeding should be conducted. The group also believes the courts should be able to change a proceeding to remote (or in-person) sua sponte as long as the court is appropriately making this decision based on the factors listed in the proposed rules. Work group participants believe judges should be making such determinations on a thoughtful case-by-case basis.

(8) The courts should maintain Iowa's long tradition of proceedings being open to the public when proceedings are remote or hybrid.

The work group members believe the flexibility of having remote or hybrid proceedings cannot come at the cost of ready public access to the courts. All courthouses need the equipment necessary to conduct remote proceedings and adequate staff and other resources necessary to ensure the public can view these hearings.

III. Proposed Rules

The criminal work group created a set of proposed rules to govern what kinds of criminal proceedings should, by default, be in-person or remote and then created a procedure whereby that default can be modified. The work group envisioned a new chapter that would apply to all types of case proceedings. Divisions I–III are meant to apply to all case proceedings, and Division IV contains additional rules specifically related to criminal proceedings.

The work group took inspiration from the court proceeding remote participation rules recently adopted by the Supreme Court of Texas on January 27, 2023 (https://www.txcourts.gov/media/1455663/239004.pdf). The work group kept the general structure as well as the factors included in the Texas rules but expanded on both aspects while creating the below-proposed rules.

The proposed rules are included below, with commentary on the right.

CHAPTER X **REMOTE PROCEEDINGS** **DIVISION I** SCOPE AND APPLICABILITY	
Rule X.101 Scope and applicability. The rules in this chapter govern the physical presence of participants in all courts and all state court cases unless another rule specifies otherwise or unless a statute provides different procedures for certain courts or cases.	The criminal work group believes a scope and applicability section similar to that found in the Chapter 16 Iowa Rules of Electronic Procedure is necessary to clarify that these rules apply to all cases.
Rule X.102 Scheduling proceedings generally. When scheduling a proceeding, regardless of the court or type of case, the court must consider the rules in this chapter in determining whether to conduct a proceeding as in-person, remote, or hybrid.	This additional rule is included to clarify these proposed rules apply in all cases and should be considered when a motion to change the default method of appearance is filed.
DIVISION II DEFINITIONS	
Rule X.201 Definitions. In this chapter: **X.201(1)** *In-person appearance.* "In-person appearance" means participating in a court proceeding by being physically present in the courtroom. **X.201(2)** *Remote appearance.* "Remote appearance" means participating in a court proceeding using an Iowa Judicial Branch approved communications service.	The criminal work group believes it is necessary to define what constitutes an "in-person" or "remote" appearance as well as how people would appear at either type of proceeding. The work group also has determined a "proceeding participant" definition is necessary to distinguish between parties, attorneys, others who have an active role in a court proceeding, and the general public.

X.201(3) *In-person proceeding.* "In-person proceeding" means a court proceeding in which all participants are physically present in the courtroom. **X.201(4)** *Remote proceeding.* "Remote proceeding" means a court proceeding in which all participants appear using an Iowa Judicial Branch approved communications service. **X.201(5)** *Hybrid proceeding.* "Hybrid proceeding" means a court proceeding in which some participants are physically present in the courtroom and others appear using an Iowa Judicial Branch approved communications service. **X.201(6)** *Proceeding participant.* "Proceeding participant" means parties, attorneys appearing in the case, testifying witnesses, crime victims, guardians ad litem, and any other person who may have an active role in a court proceeding. **Comment:** A list of the communications services currently approved by the Iowa Judicial Branch can be found at [link to the court's website].	The work group adapted the definitions used by the Minnesota Judicial Branch in its oneCourtMN Hearings Initiative Policy (https://mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/500/525.pdf). To allow future flexibility in determining how proceedings may be conducted, the work group believes specific references to "Zoom" and "GoTo Meeting" should not be included in the proposed rules and a comment should be added with a link to an Iowa Judicial Branch website listing approved communication methods.
DIVISION III GENERAL PROVISIONS **Rule X.301 Judge's location for remote and hybrid proceedings.** A judge may participate in a proceeding by remote appearance but must conduct the remote proceeding or hybrid proceeding from a location permitted by Iowa Code section 602.6105.	This rule is included to give effect to Iowa Code section 602.6105, which provides certain requirements for where a court proceeding should be conducted.

Rule X.302 Remote appearance participant requirements. The inherent power of the court to regulate the conduct of persons present in the courtroom applies to remote proceedings. Participants appearing remotely are to conduct themselves as if they were appearing in person in the courtroom. **X.302(1)** *Equipment.* Remote proceeding participants must ensure that equipment available at their location meets the technical and operational standards required for the remote appearance and, if applicable, that their internet connection is sufficient to prevent interruption. **X.302(2)** *Location.* Remote proceeding participants must be located in a quiet location free from distractions and interruptions that may disrupt the court proceeding. **X.302(3)** *Attire.* Remote proceeding participants must ensure that their appearance is at the same standard that it would be if they were participating in the courtroom in person and does not reflect poorly upon the dignity of the court and its decorum.	The work group believes a set of rules should be included that provide proceeding participants with the court's expectations regarding how proceeding participants should behave, what equipment the court expects them to have, the location from where the participant should join the remote or hybrid proceeding, and how the participant should dress.
Rule X.303 Motion for in-person, remote, or hybrid appearance or proceeding. **X.303(1)** *Filing of motion.* *a. Contents.* A self-represented party or an attorney appearing in the case may file a motion requesting that one or more proceeding	The criminal work group determined certain types of criminal proceedings should be in-person or remote by default and the motion process should be structured to allow a case participant to request the default presumption be modified.

participants be permitted or directed to appear in person or remotely in a scheduled or anticipated court proceeding or that the entire proceeding be held in person, remotely, or as a hybrid proceeding. The motion must state with specificity the grounds for the party's request and whether testimony is expected. *b. Timing.* Unless for good cause shown, all motions under rule X.303 must be filed no later than 5 days before a scheduled proceeding. *c. Resistance.* Unless for good cause shown, any resistance to a timely filed motion under this rule must be filed within 3 days after service of the motion. **X.303(2)** *Court's consideration of motion.* In ruling on a motion made under rule X.303, in addition to any other relevant information, the court must consider the following factors: *a.* Timeliness of the motion and resistance, if any, including whether there is sufficient time to provide all parties with reasonable notice of the court's decision. *b.* Case type. *c.* Court proceeding type. *d.* Number of proceedings scheduled before the court for the same time. *e.* Anticipated length of the proceeding. *f.* Number of proceeding participants. *g.* Location of proceeding participants. *h.* Complexity of legal and factual issues.	The work group believes motions to change the default proceeding should be limited to self-represented parties and attorneys appearing in the case to ensure compliance with the rules in this chapter. Participants other than those identified in this rule would need to filter their requests through those listed. The work group believes there should be time limits—with good cause exceptions—for the filing of the motion and any resistances to allow the court sufficient time to prepare for a remote or hybrid proceeding as well as provide the public with adequate notice if anyone wishes to view the proceeding. The work group spent significant time discussing which factors the court should consider when changing the default appearance presumption. The proposed rule is intended to convey that all of these factors should be considered when a motion is filed under this rule. To streamline this procedure, the work group has also recommended that the supreme court create a template court form and template order that includes these factors and allows filers and judges to check which factors are applicable.

i. Whether any party has requested a record of the proceeding. *j.* Whether any nontestimonial evidence expected to be offered during the proceeding can be submitted to the court through the court's electronic filing system. *k.* Agreement among or objection by parties. *l.* Technological restrictions affecting proceeding participants, such as lack of access to or proficiency in the necessary technology. *m.* Travel restrictions, such as lack of transportation, distance, or inability to take off work. *n.* Whether a method of appearance is best suited to provide necessary language access services for a proceeding participant with limited English proficiency or accommodations for a proceeding participant with a disability. *o.* Whether the court has reason to believe that use of technology for the remote or hybrid proceeding will undermine the dignity, solemnity, decorum, integrity, fairness, or effectiveness of the proceeding. *p.* Previous proceeding participant abuse of a method of appearance. *q.* Public access to the proceeding.	

r. In criminal cases, the court must also consider: (1) Whether the proceeding is presumed to be in-person under rule X.401(2) or remote under rule X.401(3). (2) Whether a proceeding participant has a constitutional or statutory right to an in person proceeding or in-person appearance. (3) Whether the defendant has waived speedy trial. (4) Whether the court has excused the defendant from remote participation under rule X.401(1).	The work group believes criminal cases need its own subset of additional factors. The work group also expects additional subsets can be created, if necessary, for civil, juvenile, and family law cases. The additional factors are primarily meant to take into account constitutional, statutory, and other procedural rights or privileges that may affect the method by which a proceeding may be conducted.
X.303(3) *On the court's own motion.* The court on its own motion may order that some or all proceeding participants appear remotely or in person if rule X.303(2) grounds for doing so exist.	The work group believes the court should also have the authority to change the default method of appearance for the proceeding of its own accord.
X.303(4) *Court's order.* *a.* Absent good cause, the court must consider a motion made under rule X.303 based on the filings and without a hearing. *b.* Absent good cause, all court orders made under rule X.303 must be entered at least one day before the scheduled proceeding. *c.* If the court determines that a proceeding participant is permitted or directed to appear remotely or that the entire proceeding will be held remotely, the court must include in its order: (1) A list of all proceeding participants permitted or directed to appear re-	The work group believes the court should rule on motions under this rule based on the filings and without a hearing because conducting a hearing in order to determine how a proceeding should be conducted is inefficient. A deadline for the court's order under this rule is included to provide the court with time to ensure any preparations have been completed and provide sufficient notice to proceeding participants and the public regarding

motely if the proceeding will be a hybrid proceeding. (2) The information needed for proceeding participants to participate remotely in the proceeding. (3) Instructions for joining the remote proceeding. (4) Contact information for the court to be used if a participant has a connection issue or other emergency. (5) Instructions for submitting nontestimonial evidence expected to be offered during the proceeding. **X.303(5)** *Public observation.* If the judge will not be physically present in an Iowa District Court courtroom for the proceeding and all other proceeding participants are appearing remotely, the court must provide the public with the opportunity to observe, subject to the restrictions provided in rule 25.2(1), the court proceeding unless the court has determined that the proceeding must be closed in accord with current law. If the court determines that a proceeding will be closed to the public, it must make a record of the reasons for closure and enter a publicly available written order stating only the date and time of the proceeding and that the proceeding is closed to the public.	how and where the proceeding will occur. Similarly, paragraph *c* is included to ensure everyone participating in or viewing the proceeding has the necessary information to do so and contact information to reach the court in case of emergencies. The items included in this paragraph should allow remote and hybrid proceedings to be conducted with minimal disruptions. The work group spent a significant amount of time discussing ways to ensure the public is not deprived of the opportunity to view court proceedings and created this rule to ensure that opportunity.

DIVISION IV CRIMINAL PROCEEDINGS **Rule X.401 Criminal proceedings generally.** **X.401(1)** *Defendant request to be excused from remote appearance.* In a criminal case, a self-represented defendant or a represented defendant's attorney may file a request that the defendant be excused from appearing remotely for the entirety of the case if the defendant will not have the ability to participate remotely in remote or hybrid proceedings. A request made under this rule must state with specificity why the defendant is unable to participate remotely. If granted, the defendant will be required to appear in person subject to Iowa Rule of Criminal Procedure 2.27(1)–(3). **X.401(2)** *In-person proceeding presumption.* The following criminal proceedings, in which a proceeding participant's appearance is required, are presumed to be in person: *a.* Arraignments. *b.* Pretrial conferences. *c.* Status conferences. *d.* Case conferences. *e.* Trials. *f.* Guilty pleas. *g.* Sentencings. *h.* Proceedings during which testimony is expected. **X.401(3)** *Remote proceeding presumption.* Subject to rule X.401(2), all criminal	Division IV modifies the above default proceeding structure to accommodate concerns specifically related to criminal proceedings. Similar to Iowa Rule of Electronic Procedure 16.701(3), which permits self-represented defendants to be excused from electronic filing requirements, the work group believes that a procedure is necessary that permits a criminal defendant to request to be excused from participating remotely because of a lack of access to the necessary technology. Rather than requiring defendants, or their attorneys, to file a motion each time a remote or hybrid proceeding is requested, the work group believes that a mechanism allowing a one-time filing is more efficient. If the court grants an excusal, the work group anticipates that this will be able to be indicated in some prominent manner in judicial interface. The work group believes that the left-listed proceedings should, by default, be in-person because these types of proceedings represent important milestones in criminal cases and are likely to contain testimony or otherwise be affected by a constitutional, statutory, or court rule requirement requiring in-person appearance by one or more case participants. Additionally, some of these proceedings are likely to provide

proceedings where testimony is not expected to occur are presumed to be remote.	attorneys with an opportunity to visit with their clients. Other than proceedings listed in x.401(2), the work group believes all other criminal proceedings that are not anticipated to contain testimony should be remote by default.

IV. Additional Recommendations

As the work group discussed and ultimately formulated the rules of remote procedure, it naturally had to think through the implementation of those rules, including how the rules would work in practice. A host of issues arose in work group discussions, primarily from the technological challenges of implementation and the goal of ensuring open and equal access to justice. Throughout the work group's meetings, it became clear that not every issue could be, nor should be, addressed within the rules themselves. Thus, to help implement these rules and ensure their long-term success, the work group offers additional recommendations below.

(1) The Iowa Judicial Branch should appoint a remote proceeding coordinator in every judicial district.

Iowa has eight judicial districts, each with its own unique set of advantages and challenges. Some are primarily urban, and others are rural. Some contain many counties over a broad swath of the state, while others have fewer, more populous counties. Many have older courthouses lacking the necessary infrastructure for robust technology. A remote proceedings coordinator in every district will serve to guide each district, each county courthouse, and each judge in implementing these rules. From securing and installing requisite technology, to training and ensuring open access to remote proceedings, the remote proceedings coordinator should be in charge of ensuring the success of all remote proceedings district-wide.

(2) The Iowa Judicial Branch should work with the Iowa Department of Corrections and County Sheriffs to ensure incarcerated individuals can participate in remote proceedings uniformly.

There are thousands of incarcerated Iowans in county jails and state prisons. This population is often most inconvenienced by in-person appearances, having to undergo secure transport to and from a jail or prison facility to the courthouse. The judicial branch should work with each jail and prison to ensure that incarcerated individuals can

effectively participate in remote hearings and be able to have confidential conversations with their attorneys upon request.

(3) The Iowa Judicial Branch should propose an amendment to Iowa Code section 602.6105 to give judges greater flexibility in determining from where a proceeding may be held.

Currently, Iowa Code section 602.6105 restricts where district court can be held to a place where the district's chief judge designates or another place with the parties' consent. With remote technology, it will be possible for courts to accommodate more proceedings from wherever they may be located. Access to the courts is a primary motivating factor in the creation of these rules, and the work group believes location should not operate as a restriction.

(4) Courthouses should be equipped with technology so that members of the public can view a remote or hybrid proceeding.

The work group does not anticipate every remote proceeding will be held in a courtroom. As noted in the previous recommendation, the work group believes courts should be able to hold remote proceedings from wherever they are located; however, the work group is concerned about the public being able to view these court proceedings. 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.

(5) New Iowa Rule of Criminal Procedure 2.27[1] should be revised to conform with the work group's proposed rules regarding in-person or remote proceeding default presumptions.

While the new Iowa Rule of Criminal Procedure 2.27 permits defendants to appear remotely at certain types of proceedings, the work group believes the rule should be further revised to conform to the in-person proceeding and remote proceeding default presumptions under the work group's proposed rule X.401(2)–(3).

(6) The Iowa Supreme Court should create court forms and a template order to implement the process created in the work group's proposed rules.

The work group anticipates attorneys and litigants will take full advantage of these rules and that a set of forms will help everyone navigate these new rules, especially

[1]The new Iowa Rule of Criminal Procedure 2.27 goes into effect July 1, 2023.

self-represented parties. Thus, the work group recommends the creation of the following forms:

- A generic motion form that can be used in all types of cases to request the default proceeding method—remote or in-person—be changed or that a case participant be permitted to appear remotely or in person.

- A form for criminal defendants to request to be excused from appearing remotely for the entirety of the case because the defendant does not and will not have access to the requisite technology.

- A template court order that includes all of the factors set forth in the work group's proposed rules, in a checkbox fashion, for judges to utilize when ruling on a motion made under the work group's proposed rules.

- A form criminal defendants can use to waive statutory or constitutional confrontation rights. This form should be able to be completed for either the entire case or for an individual proceeding.

(7) A modification to EDMS that enables judges to alert the clerk of court's office so that remote proceedings orders can be processed immediately.

There will inevitably be times when orders to switch a proceeding method—in-person, remote, or hybrid—will come on the eve of the proceeding. To ensure all case participants—including those not on EDMS—and the public have adequate notice as to where or who the proceeding will occur, the clerk of court's office will need to process these orders very quickly. Consequently, the work group recommends that EDMS be modified in some manner to immediately alert the clerk of court's office when a judge submits an order under the work group's proposed rules so those orders can be processed and made available expeditiously.

(8) Modification to judicial interface

If the court adopts the work group's recommendation to allow criminal defendants the opportunity to request to be excused from participating in a proceeding remotely, the work group believes it would be beneficial to modify judicial interface in some manner to include a banner at the top of the case—similar to that used for juvenile cases—when a defendant is excused from participating remotely for the duration of the case so the judge and court staff can quickly and easily tell when a defendant will always be participating in person.

(9) CLE requirement.

Finally, while remote meetings, proceedings, and gatherings have become commonplace since the COVID-19 pandemic, the technology is relatively new to many people, including attorneys. Members of the work group have frequently participated in remote proceedings that have been delayed because a participant did not know how to use the technology. A one-hour yearly CLE remote proceedings requirement would assist attorneys in learning how to competently use the remote proceedings technology and minimize problems during remote proceedings.

Remote Proceedings Task Force

Report of the Civil Work Group

July, 2023

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I. Introduction and Members

On March 7, 2023, Chief Justice Susan Christensen of the Iowa Supreme Court invited a cross-section of the Iowa legal community to participate in the Remote Proceedings Task Force. The task force was composed of judges, attorneys, and court employees from throughout the state of Iowa.

On March 10, Chief Justice Christensen appointed the following individuals to the Civil Work Group:

Moore, Honorable Amy, District Judge, Ames, chair
Lederer, Greg, Attorney, Cedar Rapids, co-chair
Ruba-Dunning, Jessica, Attorney, Robins, co-chair
Butler, Anna, Clerk of Court Office, Adel
Carter, Shireen, Magistrate, Osceola
Chappell, Honorable Andrew, District Judge, Cedar Rapids
Corbin, Honorable Meghan, District Judge, Davenport
Culver, McKenzie, Judicial Specialist, Sioux City
Doig, Crystal, Aging Resources of Central Iowa, Des Moines
Eckley, Timothy, Attorney, Des Moines
Gregory, Teresa, Clerk of Court Office, Spirit Lake
Mark Headlee, Director of Judicial Branch IT, Des Moines
Henderson, Lyssa, Attorney, Ankeny
Hess, Susan, Attorney, Dubuque
Holland, Kara, Court Reporter, Sioux City
Valentina Houser, Project Manager, Judicial Branch IT, Marshalltown
Janssen, Laurie, Court Administration, Spencer
Kinnamon, Becky, Dir., Spec. Crimes Against Persons Prog., Des Moines
Kyndesen, Laura, District Court Administrator, Council Bluffs
Laird, Rox, Media, Des Moines
Moon, Julie, Court Reporter, Des Moines
Nelmark, Honorable David, District Judge, Des Moines
Opperman, Joshua, Attorney, Ames
O'Rourke, Jason, Attorney, Davenport
Patton, Leah, Magistrate, Des Moines
Petersen, Ericka, Attorney, Iowa City
Roberts, Cara, Attorney, Cedar Rapids
Showers, Honorable Shawn, District Judge, Washington
Thomas-Dusing, Courtney, Attorney, Iowa City
Watson, Bill, court administration, Fort Dodge
Wells, Doug, Magistrate, Davenport
Wiese, Jennifer, Judicial Specialist, Davenport

II. Objective

The policy objective of the Civil Work Group has been to encourage use of remote technology in civil court proceedings when appropriate, to provide the court with uniform factors to consider when determining if a proceeding can be held remotely, to provide the public with a model form that outlines those factors to better enable the court to make such a decision, and to draft a set of remote proceedings rules that are applicable to all court proceedings and not overly detailed, so as to allow for amendment over time as the courts gain additional experience with conducting remote proceedings.

III. Process

Preliminary to the Civil Work Group's first meeting, members of the work group completed a survey on their opinions regarding whether particular civil court proceedings should be held remotely by default, never held remotely, or held remotely upon request by parties and approval of the court. Specific proceedings included: pretrial motions, evidentiary or non-evidentiary hearings, preliminary injunctions, contempt actions, mediation or settlement conferences, scheduling conferences, final pretrial conferences, posttrial hearings, small claims matters, foreclosures, bench trials, jury trials, probate matters, guardian and conservatorship matters commitment proceedings, delinquencies, protective order proceedings, treatment courts, and postconviction relief proceedings. Work group members also provided feedback on their general support for holding remote proceedings in civil cases and concerns with holding civil court proceedings remotely.

Work group members reviewed a variety of materials regarding remote proceedings from other states and the National Center for State Courts.

The Civil Work Group met by Zoom four times: April 20, 2023, May 2, June 1, and June 8.

At the first full work group meeting, the Civil Work Group divided itself into three subgroups based on members' preferences: (1) Civil Litigation, Probate, and Postconviction Relief; (2) Small Claims, Debt Collection, and Civil Commitments; and (3) Civil Protective Orders and Treatment Courts. Each subgroup met regularly every Thursday through the month of May. Each subgroup developed recommendations for discussion among all members of the civil processing work group.

The subgroups solicited feedback from a variety of stakeholders, including specialty court judges and participants, county attorneys, elder rights advocates, and domestic violence advocates.

IV. Guiding Principles

The Civil Work Group early on established general concepts to guide its work, including: a presumption for in-person proceedings, judicial discretion as a backstop for decision making, and the desirability for uniform and simple rules governing remote proceedings.

The Civil Work Group sought to create rules that provided uniformity throughout all of Iowa's judicial districts while also taking into consideration the current reality that not all courthouses and courtrooms have the same capabilities for remote proceedings. The group created a list of factors that the court may consider, based on their applicability to a particular proceeding, to determine whether a proceeding should be held in-person, remotely, or hybrid. Such factors will provide a uniform framework for analysis while still for allowing judicial discretion.

Consent of the parties is included as a factor in the court's decision on whether a proceeding should be held remotely rather than as a requirement, as there are concerns that such consent could be unreasonably withheld, thus potentially "weaponizing" a request to or a resistance to holding a proceeding remotely.

The Civil Work Group further sought to create broad, simple rules that would be clear to all those involved in court proceedings and that would not need continuous revision as technology changes.

V. Drafting Rules

The Civil Work Group drafted its proposed rules guided by general assumptions about remote proceedings, including that court proceedings are presumed to be in person except as the remote proceeding rules or statutes provide and that the rules should be broad and not overly detailed.

The subgroups considered definitions of terms that should be included in the rules, general provisions that should apply to all proceedings, and whether any particular type or types of civil court proceedings should have separate rules. In drafting its proposed rules, the Civil Work Group considered proposed rules from the Criminal Work Group and the Family Law Work Group as well.

On June 1, during a full Civil Work Group meeting, the group worked on an

early draft of its proposed remote proceedings rules and continued to work on refining the rules. After the group's June 8 meeting, the Civil Work Group's remote proceeding rules were submitted for consideration and are attached to this report.

The Civil Work Group spent considerable time discussing and debating a number of rule concepts and provisions, including:

1. *Judge's location during remote proceedings*: The Civil Work Group is not in favor of such a rule does not find it necessary to include. One concern is that such a rule is problematic if there is again an event that limits access to courthouses. In addition, many magistrates, especially in rural counties, conduct initial appearances on the weekends via video conference from their private office or home office, and many may not even have access to the courthouse at these times. The work group generally believed such a provision ("a judge must participate in remote proceedings subject to Iowa Code section 602.6105") does not add anything necessary to the rules and could be confusing. There is some question whether section 602.6105(1) precludes remote participation outside of a county courthouse. Also, the point was raised that remote hearings do not have a "place" within the meaning of the code provision.

2. *Remote appearance participant requirements, or the etiquette rule*: The Civil Work Group generally considers such rules to not be necessary, largely due to the court's inherent authority to govern its proceedings, and also to not be typical in other formal court rules. The group settled on a preference for the rules to reference the Remote Proceedings Toolkits on the Iowa Judicial Branch website. Those materials are more flexible, easily revised, and improved upon with the passage of time and experience compared to formal court rules. The Small Claims subgroup recommended updating the Toolkits to include a directive that all participants join remote proceedings at least 15 minutes in advance.

3. *Specific time mandates for requesting a remote or hybrid proceeding*: The Civil Work Group strongly resists a rule creating time mandates for motions requesting remote, hybrid, or in-person proceedings. Often, such requests are at the last minute due to illness or unforeseen logistical issues, and often the court will not know whether testimony will or will not be required until the time of the hearing. Additionally, certain proceedings, such as forcible entry and detainer actions or civil commitments, have timing requirements that would be incompatible with standardized time mandates applicable to other proceedings. Another factor was the group's general preference for more general and broad rules that can be added to or amended over time. Additionally, the proposed rules already would include timeliness of the motion as a factor for the court's

consideration.

4. *Requirement for participants to provide contact information to the court*: The Civil Work Group is generally opposed to a requirement for participants to provide contact information to the court. There is no means to do this absent parties contacting the court directly, which then invites problems with ex parte communication and pro se parties emailing the judge directly.

5. *Whether a separate division of rules for civil proceeding is necessary*: The Civil Work Group initially considered that a separate division of rules for civil proceeding might be necessary. This stemmed from the preference for all civil proceedings, except scheduling conferences, to be presumed to be in person.

The Small Claims subgroup initially felt that small claims (excluding forcible entry and detainer proceedings), debt collection, and civil commitment proceedings should be held remotely by default; however, the overall preference was to make the civil rules as uniform as possible and not to have exceptions for these specific proceedings.

6. *Excusing self-represented litigants from remote proceedings*: The Civil Work Group discussed the challenges self-represented litigants may have in both appearing remotely (for example, access to technology) and appearing in-person (for example, transportation concerns). The group recommends that self-represented litigants may be excused from remote proceedings similar to electronic filing exceptions in chapter 16 of the court rules. Additionally, while not outlined in the proposed rules, the group recommends the creation of a model form for requests to appear remotely that can be utilized by self-represented litigants. The Small Claims subgroup created a model form based on the input of attorneys, magistrate judges, and court employees. This form could serve as a precursor to development of a standardized judicial branch form for use in all court proceedings. The draft form is attached to this report.

7. *Public access*: The Civil Work Group extensively discussed the proposed rules pertaining to public access. While all members recognized the need to facilitate public access to remote proceedings, there was disagreement as to whether the courts should be required to provide remote access to members of the public who appear in person to view a remote proceeding while at the courthouse. A small minority of members support inclusion of the following language to Rule X.302.5(a): "Remote viewing also will be accommodated for members of the public who appear at the courthouse in the county where the proceeding is scheduled." Ultimately, this language was not included in our final draft as a majority of Work

Group members voted against its inclusion.

VI. Conclusion

The Civil Work Group's Proposed Rules, which are included below, intend to provide the Court with a uniform framework for holding remote proceedings in a manner that provides all parties access to justice. The rules are intended to be broad to account for current technological limitations of courthouses, courtrooms, and parties, while allowing them to adapt to changing technology in the future.

VII. Civil Work Group Proposed Iowa Rules of Remote Proceedings

CHAPTER X
IOWA RULES OF REMOTE PROCEEDINGS

DIVISION I
SCOPE AND APPLICABILITY

Rule X.101 Scope and applicability. The rules in this chapter govern all remote and hybrid proceedings in all courts of the state.

DIVISION II
DEFINITIONS

Rule X.201 Definitions. In this chapter:

X.201(1) *Participant.* "Participant" means judges, attorneys, parties, witnesses, court reporters, and any other person who may have an active role in a court proceeding.

X.201(2) *In-person appearance.* "In-person appearance" means participating in a court proceeding by being physically present in the courtroom.

X.201(3) *In-person proceeding.* "In-person proceeding" means a court proceeding in which all participants are physically present in the courtroom.

X.201(4) *Remote appearance.* "Remote appearance" means participating in a court proceeding using an Iowa Judicial Branch approved communications service.

X.201(5) *Remote proceeding.* "Remote proceeding" means a court proceeding in which all participants appear using an Iowa Judicial Branch approved communications service.

X.201(6) *Hybrid proceeding.* "Hybrid proceeding" means a court proceeding in which one or more but less than all participants appear using an Iowa Judicial Branch approved communications service and others are physically present in the courtroom.

DIVISION III
GENERAL PROVISIONS

Rule X.301 Remote participant requirements. Participants must comply with any directives contained within the Iowa Judicial Branch online Remote Proceeding Toolkits.

Rule X.302 Motion for in-person, remote, or hybrid appearance or

proceeding.

X.302(1) *Motion for remote or hybrid appearance or proceeding.* A party may file a motion requesting that one or more participants be permitted or directed to appear remotely in a scheduled or anticipated court proceeding or that the entire proceeding be held remotely.

a. The motion must include specific grounds supporting the party's request.

b. The motion must certify that the filer of the motion has in good faith communicated or attempted to communicate with all other affected parties to determine whether the motion is unresisted, that such communication was not feasible under the circumstances, or that such communication is prohibited by prior court order.

X.302(2) *Motion for in-person appearance or proceeding.* For a proceeding the court previously ordered on its own motion to be heard as a remote or hybrid proceeding, a party may file a motion requesting that one or more participants be permitted or directed to appear in person for the proceeding.

a. The motion must include specific grounds supporting the party's request.

b. The motion must certify that the filer of the motion has in good faith communicated or attempted to communicate with all other affected parties to determine whether the motion is unresisted, that such communication was not feasible under the circumstances, or that such communication is prohibited by prior court order.

X.302(3) *On court's own motion.* The court on its own motion may order that one or more participants appear remotely or in person. A party may file a motion requesting that a proceeding previously ordered to be heard on the court's own motion remotely be held as an in-person or hybrid proceeding.

X.302(4) *Court's consideration of motion.* In ruling on a motion under rule X.302, the court may consider the following factors, as it deems relevant:

a. Ability of participants to appear remotely and fully participate in the proceeding.

b. Timeliness of the motion and resistance, if any, including whether there is sufficient time to provide all parties with reasonable notice of the court's decision.

c. Case type.

d. Court proceeding type.

e. The court's schedule.

f. Anticipated length of proceeding.

g. Number of participants.

h. Locations of participants.

i. Complexity of legal and factual issues.

j. Whether any party has requested the proceeding to be reported.

k. Whether any nontestimonial evidence expected to be offered during the proceeding can be submitted to the court through the court's electronic filing system.

l. Agreement among or objection by parties.

m. Parties' and nonparty participants' English proficiency or need for interpreter or translator assistance or both.

n. Any disability or disabilities of a participant that would impact the person's ability to participate.

o. Travel considerations, such as lack of transportation, distance, and weather.

p. Whether use of remote or hybrid technology will undermine the dignity, solemnity, decorum, integrity, fairness, or effectiveness of the proceeding.

q. A participant's previous abuse of a method of appearance.

r. Public access to the proceeding.

s. Any other factor or combination of factors that establishes good cause to grant or deny the motion.

X.302(5) *Court's order.*

a. The court must consider a X.302 motion based on the filings and without a hearing, unless the court finds good cause for holding a hearing on the motion.

b. If the court determines that a participant should be permitted or directed to appear remotely or that the entire proceeding will be held remotely, the court must include in its order:

(1) A list of all participants permitted or directed to appear remotely if the proceeding will be a hybrid proceeding.

(2) Instructions for joining the remote proceeding.

X.302(6) *Public access.*

a. If a proceeding open to the public is held as a remote proceeding, members of the public who wish to view the proceeding may do so remotely.[1]

b. If a proceeding open to the public is held as a hybrid proceeding, members of the public who wish to view the proceeding may do so in person, and the court, in its discretion, may permit members of the public to view the proceeding remotely.

c. Participants may not share with any member of the public the means to participate in a remote or hybrid proceeding that is closed to the public.

[1] The Civil Work Group extensively discussed the proposed rules pertaining to public access. While all members recognized the need to facilitate public access to remote proceedings, there was disagreement as to whether the courts should be required to provide remote access to members of the public who appear in person to view a remote proceeding while at the courthouse. A small minority of members support inclusion of the following language to Rule X.302.5(a): "Remote viewing also will be accommodated for members of the public who appear at the courthouse in the county where the proceeding is scheduled." Ultimately, this language was not included in our final draft as a majority of Work Group members voted against its inclusion.

VIII. Proposed Form: Motion to Appear Remotely

Model Form

Small Claims Form ____: Motion to Appear Remotely

In the Iowa District Court for _____ County

_____, Plaintiff; vs. _____, Defendant(s).	Small Claims Case No. _____ **Motion to Appear Remotely**

I/we _____ (name(s)) request that I/we be allowed to remotely participate in the court proceeding via video and/or phone for the following reason(s):

_____
_____
_____
_____
_____
_____.

For Defendant Only: I am (check one)

____ not disputing the other party's claim, but I cannot pay the amount asked.

____ not disputing the other party's claim and would like to set up a payment plan at the court proceeding.

____ disputing the other party's claim because:

_____
_____
_____.

I expect to use the following evidence at the court proceeding (check all that apply):

____ Witness ____ Photographs ____ Videos ____ Diagrams ____ Paper Documents

____ Electronic Documents ____ Physical Items ____ Other: _____

Signature(s):_____
Printed Name(s):_____
Address(es): _____
Phone Number(s): _____
Email address(s): _____

Note: Party(ies) must electronically file this Motion to Appear Remotely using the Iowa Judicial Branch Electronic Document Management System (EDMS) at https://www.iowacourts.state.ia.us/EFile, unless Party(ies) receive(s) an exemption from electronic filing requirements from the court. EDMS will serve a copy of this Motion on the other party(ies) or on the attorney(s) for the other parties. The Notice of Electronic Filing will indicate if Defendant(s) must mail a copy of this Motion to any party(ies) who is (are) exempt from electronic filing.

For more information on remote proceedings, please see the Remote Proceedings Toolkits available on the Judicial Branch's Website https://www.iowacourts.gov/iowa-courts/district-court/remote-proceeding-toolkits/

For more information on evidence, please see Small Claims Evidence: What to Bring to Court available on the Judicial Branch's Website (https://www.iowacourts.gov/for-the-public/court-forms/)

Remote Proceedings Taskforce
Family Law Workgroup Report and Recommendations

July 6, 2023

Family Law Workgroup Roster

Workgroup Chair
The Honorable Chad Kepros, District Judge, North Liberty

Workgroup Co-Chairs
Danielle Ellingson, Attorney, Charles City
Stacey Warren, Attorney, Des Moines

Workgroup Members
The Honorable Jennifer Bahr, District Judge, Council Bluffs
Janet Baldus, Clerk of Court Office, Ames
David Banta, Attorney, Des Moines
Sandra Benzschawel, Attorney, Decorah
Haley Dickel, Judicial Specialist, Des Moines
Amy Gardner, Judicial Specialist, Ottumwa
Valentina Houser, Judicial Branch IT, Des Moines
Alex Kornya, Attorney, Des Moines
Staci Maxfield, Assistant District Court Administrator, Sioux City
Lora McCollom, Attorney, West Des Moines
Julie Mertz, Court Reporter, West Des Moines
Donna Miller, Attorney, Des Moines
The Honorable Michael Motto, District Associate Judge, Davenport
The Honorable Tom Murphy, District Judge, West Des Moines
Victoria Noel, Attorney, Clinton
Anjie Shutts, Attorney, Des Moines
Mark Sturgeon, Court Reporter, Le Mars
Jennifer Webster, Court Administration, Des Moines
Kristal Yotter, Domestic Violence Intervention Program, Columbus Junction

Resources

Alaska Rules of Criminal Procedure 38.2 and 38.3
Arizona Supreme Court Administrative Order 2022-46
Illinois Supreme Court Rules 45, 90 101, 218, 241, and 286
Maryland Rules of Civil Procedure—Circuit Court, Rules 2-802 and 2-803
Michigan Court Rules 2.407, 2.408, and 6.006
Minnesota Judicial Branch Policy and Procedure #525
Nebraska District Court Local Rule Rule 12-18
Texas Rule of Civil Procedure 500.10

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Introduction

The Family Law Workgroup has drafted a rule for remote proceedings in Iowa. This rule is the product of extensive thought and discussion. Fundamentally, the rule vests the court with broad yet limited discretion to decide on a case-by-case basis whether to allow a remote or hybrid proceeding. This report summarizes the workgroup's process, explains the policy choices and themes influencing the final recommendations, and shares the group's proposed rule for remote proceedings.

The Family Law Workgroup's Process

1. The Workgroup's Composition. The Family Law Workgroup has 21 members. Its members include a clerk of court, court reporters, court administrators, IT personnel, judges, lawyers, and a domestic violence program representative. The members live in rural and urban places, and the years of professional experience range from less than one year to over 30 years. Members' motivations to serve on the Remote Taskforce include creating better access to justice, maintaining the integrity of court processes, improving the practice of family law, giving rural communities a say in rulemaking, and standardizing remote proceeding practices across the state.

2. The Workgroup's Survey. Judge Kepros kicked the workgroup off by emailing out a survey to all members. Many of the questions surveyed focused on topics in family law, while others had broad applicability across all areas of law. The survey revealed significant support for remote proceedings in family law cases, but not for every matter or situation. The responses supported the concept

that the court should have discretion in deciding whether a proceeding will be remote or not after consideration of a variety of factors. There was initially a divide between members who believe remote appearances should require the agreement of all parties and those who believe remote appearances should be permitted at the request of one party. However, a majority favored allowing them at the request of one party. Support for remote proceedings was at its greatest for non-contested non-evidentiary proceedings. The survey results showed less support for remote appearances for trial, particularly for the parties. The majority of survey respondents stated at least some concern that participants might not take proceedings as seriously when appearing remotely, that participants in remote proceedings may be inappropriately assisted or pressured by other people present, and that participants may record or share remote proceedings. The survey's results are summarized in detail in Appendix A.

3. The Workgroup's Meetings. The workgroup met via Zoom three times. Throughout the process, the workgroup operated with a high degree of cohesion and cooperation. Decisions and voting were almost always unanimous, and if anyone disagreed, the group listened to the countervailing views and reworked the final decision to address those views.

At the first meeting, held on April 21, 2023, the workgroup members shared their initial thoughts on remote proceedings in general, the benefits and detriments of remote proceedings, and how to approach a rule governing remote proceedings. The conversation tended toward developing a rule of general applicability giving the court discretion to decide whether and under what

circumstances a proceeding should be held remotely. Opinions were expressed that requests for remote or hybrid proceedings should be considered at the request of one party (rather than requiring the consent of all parties) or sua sponte. At the end of the first meeting, members were instructed to review the rules for remote proceedings in other states as examples of possible rules and to come to the second meeting ready to draft proposed rules. Since the workgroup expressed support for a rule allowing judicial discretion based on several factors, Judge Kepros asked members to review the Texas rules specifically since they also call for exercising judicial discretion.

At the second meeting, held May 5, 2023, the group met to put down the text of the rule. At the outset of the meeting, the group approved standard definitions for use in the proposed rules developed by the staff attorneys for the four workgroups. Judge Motto shared a rule draft based mainly on the rule in Texas with some additions. Next, the group discussed each section of the draft rule. Most of the conversation centered on creating factors for guiding the exercise of the court's discretion on whether and under what circumstances a proceeding should be ordered on a remote or hybrid basis. After the second meeting, Judge Kepros revised the draft to make it internally consistent with the approved definitions and reflect the changes discussed. He then circulated his revisions in advance of the third meeting.

At the last meeting on May 19, 2023, the group refined the proposed rule and discussed drafting this report.

Themes & Policy Choices

Our workgroup recognized that remote and hybrid proceedings are here to stay in some form and can be better and more effective than previously expected. The workgroup meetings focused on creating rules that maximize the potential of remote and hybrid proceedings while reducing associated difficulties and risks. Meetings highlighted multiple themes that informed the policy choices in the proposed rules. The workgroup quickly coalesced around the following three themes. Inherent in each is the core idea that remote and hybrid proceedings should be an available option on a case-by-case basis.

1. A Rule of General Applicability. Our workgroup members decided that the rules for remote proceedings should generally apply to all types of cases rather than being specific to family law cases. The group considered developing specific rules for different types of family law proceedings (e.g., custody hearings and trials, chapter 236 protective orders, paternity matters, etc.). Ultimately, the workgroup rejected different sets of rules for different proceedings. Instead of four sets of rules for remote proceedings in criminal, civil, family law, and juvenile cases, the workgroup concluded that one self-contained rule of general applicability is optimal. The workgroup believes the court should follow this approach, even if the other workgroups do not. If the criminal, juvenile, or civil workgroups have particular or unique needs, those needs could be considered by creating exceptions to the generally applicable rule that this workgroup proposes.

2. No Need for the Consent of All Parties. The workgroup determined that remote or hybrid proceedings should not be limited to situations where all parties consent. The court should be authorized to grant a party's request for a remote or hybrid proceeding, but the other party should generally have a chance to be heard in some fashion before the court decides. If the consent of both parties is required, the workgroup fears that consent may be withheld without good reason to obtain an advantage in the proceeding.

3. Vesting the District Court with Broad, Yet Limited Discretion. One persistent concern in the workgroup is consistency in applying the rules. No member wants the availability of remote proceedings to hinge on which judge happens to rule on the request on a given day. Members expressed concerns that some judges might decline requests for remote proceedings because of the additional work required to arrange them or simply because the judge does not prefer them. Members were likewise concerned about leaving the question to the parties because clients and their lawyers might weaponize their willingness to accommodate remote proceedings against their opponents.

The workgroup further recognized that no two cases are alike. Instead, there are many factors to consider that make some proceedings appropriate for a remote proceeding and others inappropriate. As a result, rules designating certain types of proceedings as presumptively remote or presumptively in-person are generally problematic and often unworkable.

The workgroup opted for a proposed rule vesting the court with broad yet limited discretion to address these concerns. Under the rule proposed, judges

would have to weigh various factors to decide whether to grant a request for a remote or hybrid proceeding on a case-by-case basis. In this way, the rule would prevent lawyers from weaponizing remote or hybrid proceedings, prevent judges from implementing a blanket rule against (or perhaps in favor of) holding proceedings remotely, and require decisions based on each case's unique facts and circumstances. While the workgroup strongly supports case-by-case decision-making, it offers two rebuttable presumptions to create firmer expectations for the parties and moderate the court's discretion. First, the proceedings will presumptively be in-person or remote for four select types of proceedings. Second, to rebut any of these presumptions, the court must conclude that, overall, the proposed rule's factors weigh in favor of overcoming the presumption.

The Family Law Workgroup's Rule Recommendation

1. The Proposed Rule. Overall, the workgroup followed the same approach as the rule from Texas, with two notable exceptions. First, the workgroup expanded on the factors the court may consider in granting or denying a request. Especially since the proposed rule authorizes the court to order a remote or hybrid proceeding at the request of one party or sua sponte, the factors to weigh in making the decisions are significant. The factors the workgroup includes in the proposed rule are as follows:

Factor		Description and Rationale
a	Case type	Some cases may be more suitable for in-person proceedings, such as custody cases, while simple divorces without children or other

		straightforward cases may be more appropriately handled through remote proceedings.
b	The number of parties and witnesses, anticipated length of the proceeding, and type and amount of evidence to be submitted	Remote proceedings may be less suitable if there are relatively more parties or witnesses or if the proceedings are likely to last longer. In addition, some types of evidence may be more easily provided through remote proceedings, such as testimony, while other evidence may be more difficult to handle remotely (e.g., voluminous exhibits).
c	The type of remote appearance requested	A court may view requests for a particular method of remote appearance differently, depending on the situation. For example, a court might find a request for a telephonic or video appearance more or less appropriate depending on the type of proceeding, whether testimony will be offered, and the technology available at both the remote and courthouse locations.
d	The proximity of the request for a remote appearance to the date of the proceeding	Remote proceedings require more preparation and are, therefore, more likely granted when made on a timely basis. In addition, an important consideration is the input of other parties, which can only be obtained when the request is made with enough time for a response.
e	Any agreement or objection by the parties	The preferences of the parties are an important consideration for courts to weigh.
f	Whether a specific articulable prejudice would result	The court should determine that prejudice to a party weighs against conducting a remote proceeding. A party claiming prejudice must do more than merely claim the remote proceeding would be prejudicial. For that reason, the rule requires parties to set out a specific and articulable prejudice.

g	Technological restrictions or limitations, including lack of access to or proficiency in the necessary technology	This factor pertains to access to the technological hardware and software and the participants' abilities to use the technology.
h	Whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or to accommodate a person with a disability	Remote proceedings might broaden the pool of available interpreters, but it also might compromise the ability of the parties to understand the proceeding.
i	Whether the proceeding will require a formal record	Court reporters in our workgroup explained that their reporting is more manageable in person. Therefore, proceedings that do not require a court reporter are likely more appropriate for a remote or hybrid proceeding.
j	The convenience of the parties and the witness, the cost of producing the witness in person in relation to the importance of the testimony, the nature and duration of the testimony, the location of the witness, and the potential to increase access to courts by allowing parties or their counsel to appear remotely	This factor allows the court to weigh practical considerations that affect the parties to a case and the public. The court can use this factor to consider barriers to access to our justice system.
k	Whether the remote or hybrid proceeding would allow for a full and effective examination of the witness, especially when the examination would involve documents or other exhibits	This factor addresses concerns about fundamental fairness and due process.
l	Whether the court has reason to believe that the participants will maintain the dignity, solemnity, and decorum of court in a remote or hybrid proceeding or that the use of technology for the remote or hybrid proceeding will undermine the integrity, fairness, or effectiveness of the proceeding	This factor allows the court to consider the behavior of a party or witness, which will impact the proceeding, along with other factors impacting the proceeding's integrity, fairness, and effectiveness. Remote proceedings are likely less appropriate for individuals who have previously taken improper advantage of the opportunity to appear remotely.

m	Any other factors that the court may determine to be relevant	This factor gives the court flexibility to consider other factors which might be relevant to the unique facts and circumstances of the case.

Second, the proposed rule contains two sets of presumptions that are not present in the Texas approach. The workgroup proposes that scheduling conferences and discovery hearings be presumptively remote while evidentiary hearings and trials be presumptively in-person. Of course, the presumption can be overcome upon consideration of the factors.

The recommended rule has eight sections. The first section is for definitions. Our workgroup approved the definitions offered by staff attorneys on the task force without alteration and incorporated them into the first section of the proposed rule. The terms defined are then utilized throughout the proposed rule.

The second section constitutes the rule's core and is broken into three subsections. The first subsection provides that a remote or hybrid proceeding may be allowed or required at the request of one party or sua sponte. The second subsection authorizes the judge to participate in the proceeding remotely but requires that the remote or hybrid proceeding be conducted from a place permitted by Iowa Code section 602.6105. The third subsection lists 13 factors the court may consider in determining whether to order a remote or hybrid proceeding. The list of factors is non-exhaustive because the last factor is a catch-all that allows the court to consider any other relevant factor. In generating the list of factors, the workgroup worked to eliminate redundancy while

aggregating like concepts into single factors. Therefore, not every factor is relevant to every case, and no one factor is dispositive.

Sections four and five contain a set of presumptions. In section four, the rule creates a presumption that trial scheduling conferences (and other scheduling conferences) and discovery hearings or conferences will be held remotely. Conversely, section five establishes a presumption that evidentiary hearings and trials will be conducted in person. If the Court adopts this rule, additional presumptions appropriate to the other areas of law as developed by the other workgroups could be added.

The sixth section relates to technological requirements and has two subsections. The first subsection of section six obligates the party who requested the remote proceeding to ensure the operability of the necessary equipment at the remote location. The second subsection requires all remote participants to provide contact information in advance of the remote proceeding. This contact information will allow the court to communicate with the participants in the event of technological malfunctions or other difficulties.

Sections seven and eight pertain to the court's responsibilities concerning notice and open courts. As to the notice provisions in section seven, the court is required to give reasonable advance notice of the remote or hybrid proceeding. This notice should include instructions for joining the proceeding remotely and instructions for submitting evidence and may provide notice of other requirements and expectations. Presumably, this notice would either be included within the order setting the hearing or in a separately entered court order.

Similarly, section eight requires the court to notify the public about how to observe the remote proceedings unless the proceeding is closed to the public under Iowa law. The complete proposed rule appears in Appendix B.

2. Other Recommendations. Beyond the proposed rule, the workgroup has six additional recommendations. First, the court should develop rules regarding decorum and expectations for inclusion in orders setting remote or hybrid proceedings. These rules should tell participants what the court expects of them. In the survey responses, members of the workgroup were concerned that participants may not take the remote proceedings as seriously, may get help from or be pressured by others appearing at the remote location, and may improperly record and share recordings of remote proceedings. Standardized decorum and expectations rules would address these concerns and empower the court to enforce them as necessary. Expectations may be ordered on a judge-by-judge basis and included within orders entered in the case, but some standardization of the expectations would be helpful.

Second, we recommend that judges and court staff develop uniform processes for considering and scheduling remote proceedings. For example, the judicial branch should create a standardized form for all remote participants to fill out in advance of a remote or hybrid proceeding. This form should include the contact information of all remote participants.

Third, the judicial branch should provide practical training to judges and court staff in setting up and conducting remote proceedings. We recognize there are significant differences between judges and court staff in their

technological comfort and capabilities. Training should bridge the gap and produce greater uniformity across the state.

Fourth, we recommend the Court make resources and user guides available for lawyers and parties participating in remote proceedings.

Fifth, the final rule should reflect a preference for video remote appearances over telephonic appearances, at least for any proceedings that involve witness testimony, because the fact finder may observe the witness more closely, and the judge may regulate the witness more effectively. In general, video is less essential for lawyers presenting arguments.

Last, the judicial branch should approve a videoconferencing service that will be consistently used across the state. That service should be secure and allow participants to move into breakout rooms when appropriate.

Appendix A—Survey Results Summary

Remote Proceedings Task Force – Family Law Workgroup

Summary of Survey Results

Key survey findings:

- There is significant support for remote proceedings in family law proceeding, but not for every case or situation.
- The court should have discretion to determine whether a proceeding should be conducted remotely based on a consideration of factors. Most of the factors identified in Chart 5 are seen as important, very important, or extremely important.
- There is a divide between those who believe a request for a remote appearance should require agreement of all parties and those who believe a remote appearance may be allowed at the request of only one party, although more survey respondents believe that a request of only one party may be sufficient.
- There is the greatest support for remote proceedings for non-contested non-evidentiary proceedings. There is less support for remote evidentiary proceedings, especially for trial and enforcement proceedings, such as contempt and habeas corpus hearings.
- There is more support for remote testimony of non-party witnesses than there is for remote testimony of parties.
- The majority of survey respondents are at least somewhat concerned that participants may not take proceedings as seriously when appearing remotely, that participants in remote proceedings may be inappropriately assisted or pressured by other people present, and that participants may record and/or share remote proceedings.

CHART 1 – Overall support for remote proceedings

Question	Not Supportive	Somewhat Supportive	Supportive	Very Supportive	Extremely Supportive
How supportive are you of remote proceedings in family law case?	0%	6%	44%	33%	17%

CHART 2 – Court's role in deciding how proceeding will be conducted

Question	Court decides	Court Should Have Discretion After Weighing Relevant Factors	Court Should Be Bound by Parties'
What is your opinion about the court's role in deciding whether a family law proceeding should be conducted remotely?	11%	83%	6%

CHART 3 – Possible concerns

Question	Not Concerned	Somewhat Concerned	Concerned	Very Concerned	Extremely Concerned
How concerned are you that conducting a proceeding remotely will result in participants treating the proceeding less seriously?	28%	44%	11%	17%	0%
How concerned are you that participants in a remote proceeding may be inappropriately assisted or pressured by other persons present?	0%	67%	6%	28%	0%
How concerned are you that participants may inappropriately record and/or share remote proceedings?	18%	24%	41%	18%	0%

CHART 4 – Views on remote proceedings by case type

Type of Proceeding	Never remote	Remote by Default	Remote by Agreement of Parties and Approval of Court	Remote by Request of a Party and Approval of Court	Remote by Agreement of All Parties (no court discretion)	Remote by Request of a Party (no court discretion)
Non-evidentiary temporary	0%	50%	22%	11%	11%	6%
Evidentiary temporary hearings	0%	11%	17%	61%	11%	0%
Discovery hearings	0%	28%	22%	39%	11%	0%
Injunction hearings	6%	0%	28%	56%	11%	0%
Chapter 236 Protective Order hearings	28%	0%	17%	50%	6%	0%
Child Support Recovery Unit Hearings	0%	56%	6%	33%	6%	0%
Establishment/Disestablishment of	6%	6%	28%	50%	11%	0%
Scheduling Conferences	0%	89%	0%	0%	6%	6%
Pretrial/Scheduling Conferences	6%	61%	6%	11%	6%	11%
Status/Compliance conferences	6%	67%	6%	17%	6%	0%
Trial – Child Custody	33%	0%	44%	22%	0%	0%
Trial – Not Child Custody	17%	0%	39%	39%	6%	0%
Hearing or Trial – Testimony of Non-Parties	6%	0%	11%	78%	6%	0%
Hearing or Trial – Testimony of Parties	17%	0%	39%	39%	6%	0%
Habeas Corpus hearings	44%	11%	11%	28%	6%	0%
Contempt hearings	28%	0%	28%	39%	6%	0%
Other hearings – Non-	0%	44%	11%	39%	6%	0%
Other hearings - evidentiary	6%	6%	41%	35%	12%	0%
Average for all case types	**11%**	**24%**	**21%**	**36%**	**7%**	**1%**

CHART 5 – Factors of importance in considering remote proceedings

Factor	Not Important	Somewhat Important	Important	Very Important	Critical
Participants having uniform access to computer equipment/web cams/internet	6%	11%	17%	39%	28%
Judges having uniform access to computer equipment/web cams/internet	6%	11%	22%	17%	44%
Participants' technical skills in videoconferencing (sharing screens to publish, etc)	6%	22%	28%	28%	17%
Judges' technical skills in operating videoconferencing software/ courtroom A/V	11%	17%	28%	22%	22%
Training in conducting/participating in remote proceedings	0%	22%	39%	28%	11%
Uniform systems for scheduling and setting up remote proceedings	0%	22%	22%	44%	11%
Managing participant behavior, including attire, location of participants, others present with the participants, etc	0%	6%	28%	50%	17%
Advance notice that a proceeding will be conducted remotely	0%	6%	28%	33%	33%
Ability to find good cause to extend deadlines due to technical difficulties with remote proceedings	0%	6%	56%	33%	6%
Ability of attorney to communicate with client during remote proceeding	0%	6%	17%	39%	39%
Having the remote proceeding available to the public	33%	22%	28%	11%	6%
Using a uniform videoconferencing platform (Zoom, GTM, etc)	0%	11%	39%	44%	6%
Judges having discretion in granting or denying a request for remote proceedings	0%	11%	22%	39%	28%
Importance of in-person proceeding if a participant is using an interpreter	11%	28%	33%	17%	11%
Importance of in-person proceeding if being reported by a court reporter	39%	22%	17%	17%	6%

Appendix B—The Proposed Rule

CHAPTER X
REMOTE PROCEEDINGS

Rule X.101 Definitions.

In this chapter:

X.101(1) *In-person appearance.* "In-person appearance" means participating in a court proceeding by being physically present in the courtroom.

X.101(2) *Remote appearance.* "Remote appearance" means participating in a court proceeding using an Iowa Judicial Branch-approved communications service.

X.101(3) *In-person proceeding.* "In-person proceeding" means a court proceeding in which all participants are physically present in the courtroom.

X.101(4) *Remote proceeding.* "Remote proceeding" means a court proceeding where all participants appear using an Iowa Judicial Branch-approved communications service.

X.101(5) *Hybrid proceeding.* "Hybrid proceeding" means a court proceeding where some participants are physically present in the courtroom, and others appear using an Iowa Judicial Branch-approved communications service.

Rule X.201 Appearances.

X.201(1) *Participant Method of Appearance*. The court may, at the request of any party, or sua sponte, allow or require a remote appearance.

X.201(2) *Judge Method of Appearance; Location*. A judge may participate in a proceeding by remote appearance but must conduct the remote proceeding or hybrid proceeding from a place permitted by Iowa Code Section 602.6105.

X.201(3) *Factors*. In determining whether to allow or require a remote proceeding or hybrid proceeding, the court should consider factors such as:

(a) Case type;

(b) The number of parties and witnesses, anticipated length of the proceeding, and type and amount of evidence to be submitted;

(c) The type of remote appearance requested;

(d) The proximity of the request for a remote appearance to the date of the proceeding;

(e) Any agreement or objection by the parties;

(f) Whether a specific articulable prejudice would result;

(g) Technological restrictions or limitations, including lack of access to or proficiency in necessary technology;

(h) Whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or to accommodate a person with a disability;

(i) Whether the proceeding will require a formal record;

(j) The convenience of the parties and the witness, the cost of producing the witness in person in relation to the importance of the testimony, the nature and duration of the testimony, the location of the witness, and the potential to increase access to courts by allowing parties or their counsel to appear remotely;

(k) Whether the remote or hybrid proceeding would allow for a full and effective examination of the witness, especially when the examination would involve documents or other exhibits;

(l) Whether the court has reason to believe that the participants will maintain the dignity, solemnity, and decorum of court in a remote or hybrid proceeding or that the use of technology for the remote or hybrid proceeding will undermine the integrity, fairness, or effectiveness of the proceeding;

(m) Any other factors that the court may determine to be relevant.

X.201(4) *Presumption of Remote Proceedings*. Except as otherwise provided by statute, the use of remote proceedings shall be presumed for:

(a) Trial Scheduling Conferences and other scheduling conferences;

(b) Discovery hearings or conferences.

X.201(5) *Presumption of In-Person Proceedings.* Except as otherwise provided by statute, the use of in-person proceedings shall be presumed for:

(a) Evidentiary hearings;

(b) Trials.

X.201(6) *Requirements.*

(a) A participant who requests a remote appearance shall ensure that the equipment available at the remote location meets the technical and operational standards required for the remote appearance.

(b) A participant who will be making a remote appearance must provide the court with the participant's contact information, including mobile phone number(s) and email address(es), in advance of the remote or hybrid proceeding.

X.201(7) *Notice*. If the court allows or requires a participant to appear remotely, the court must provide reasonable notice of the remote or hybrid proceeding. The notice must contain the information needed for participants to participate in the proceeding, including instructions for joining the proceeding electronically, the court's designated contact information, and instructions for submitting evidence to be considered in the proceeding.

X.201(8) *Open Courts*. If the court conducts a remote proceeding, then the court must:

(a) provide reasonable notice to the public of how to observe the court proceeding; and

(b) provide the public the opportunity to observe the court proceeding unless the proceeding is closed to the public under Iowa law.

IOWA DISTRICT COURT
FIRST JUDICIAL DISTRICT

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June 21, 2023

Dear Honorable Justices of the Iowa Supreme Court,

RE: Juvenile Work Group/ Remote Proceedings Task Force

Thank you for your interest in how remote proceedings effect juvenile court proceedings and the stakeholders involved in child welfare cases. The Juvenile Work Group met once weekly for nine weeks on Tuesdays at noon using zoom technology. We held one all-day in-person meeting in Ames, Iowa, at the public library.

Our process was to identify the participants in Juvenile Court and to work collaboratively to ensure all stakeholders had an opportunity to be heard on the issue of remote court proceedings. Health and Human Services, Parent Partners, Court Reporters, Interpreters, and Youth and Family supports were invited to join our meetings and provide input into the recommendations. Below, I provide quick links to the survey data with commentary, that we collected.

Health and Human Services .
https://drive.google.com/file/d/14S7E4oqOwKt27T-PSaNTC26lF5cF-Ehg/view?usp=share_link

Court Reporters :
https://drive.google.com/file/d/19xJJKog8M_Vf0Du9IJmGrwpSjI_bcymX/view?usp=share_link

Youth Data

Youth Surveys - All Documents

Interpreter Survey

https://drive.google.com/file/d/1x-qpzG9r55nWw2LjNGsb85mvvZy9mYiQ/view?usp=share_link

Parent Partner survey

https://drive.google.com/file/d/13HvzlhQc10KcO6qEOusl5Uuz9jgiw-ge/view?usp=share_link

Juvenile Court Services

https://drive.google.com/file/d/1--_thzIRjZwAZYUuyUh6bJ0ENeWyqxdu/view?usp=share_link

Data collection continued until our in-person meeting on May 23, 2023, when the group hammered out the first draft of the recommended rule. The rule as drafted by the Juvenile Work Group was a true compromise. At the end of the day, no participant got exactly what they wanted, but everyone got something they could live with. All agreed they could practice within the scope of the rule as proposed.

Judge Scott Strait agreed to chair a subcommittee to look at technology availability issues. His subcommittee attempted to identify the state of the technological availability for effective remote and hybrid hearings for juvenile courts throughout the state. The subcommittee sent surveys to the county attorneys as well as the juvenile court judges to identify what methods of remote hearings were being used, where technological resources were lacking and where training was still needed.

The subcommittee also worked with JBIT to identify where CTI systems had been installed throughout the state and where systems had yet to be made available. JBIT is actively working with District Court Administrators to implement statewide CTI availability and improve the quality and reliability of remote hearings.

Throughout the committee's analysis of the appropriate uses of remote technology in Juvenile Court, particular attention was paid to issues and concerns expressed by the relative stakeholders within the juvenile court system. Such concerns included: quality of representation, concerns that being together in person before and after hearings contributes to issue resolution, technology gaps, and training needs. These issues are fleshed out in the comments sections of the surveys referenced above.

I would be remiss if I did not mention the excellent work of Mathew Zinkula as both a member of and support to our Juvenile Work Group. I appreciate the help of the Honorable Scott Strait who took over the last two meetings when I

was indisposed. I look forward to meeting with you August 14, 2023 and answering any questions regarding our work that you may have. Please do not hesitate to reach out to me if you have questions or concerns.

Sincerely,

Linnea M. N. Nicol

Linnea M. N. Nicol

District Associate Judge, First District.