



Evidence and Practice Tips / E-Discovery

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Remote Testimony: The Necessary Factors to Support Remote Testimony

In a post-2020 world, litigants—as everyone else—have become increasingly comfortable with Zoom interactions and are willing to seek remote accommodations for all reasons ranging from convenience to mobility limitations. It is now unusual for a witness (especially one out of town) to not expect or at least ask about the possibility of appearing remotely for a deposition. When it comes to evidentiary hearings, however, courts still rely on advantages of in-person testimony, including demeanor and body language. What can a lawyer do when a witness, quite possibly the client, simply cannot appear in person due to illness or other hardships?

Illinois Supreme Court Rule 241 is titled “Use of Video Conference Technology in Civil Cases” and provides as follows:

(a) Applicability. This Rule applies to civil trials, and evidentiary hearings that require case participants to obtain approval to appear remotely, including by telephone or video conference, under Rule 45(c)(1)(i), (iii), and (iv).

(b) Testimonial Participation. The judge presiding over a matter may, upon request or the judge’s own order, allow a case participant to testify by video conference for good cause shown and upon appropriate safeguards. Where the judge presiding over a matter or the testifying case participant does not have video conference services available, the judge may consider presentation of testimony by telephone or other audio means in compelling circumstances for good cause shown and upon appropriate safeguards.

Ill. S. Ct. R. 241.

The comments to Rule 241 identify that “in-person testimony remains of utmost importance in trials and evidentiary hearings described in Rule 45(c)(1),” but acknowledges good cause and compelling circumstances “may arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but is able to testify from a remote location.” Ill. S. Ct. R. 241, Committee Comments.

Recently, the Illinois Appellate Court, Fourth District, considered whether the denial of remote testimony was an abuse of discretion by the trial court. *Spencer v. Ray*, 2025 IL App (4th) 240919-U. The appellate court reversed the trial court’s denial of remote testimony. *Spencer*, 2025 IL App (4th) 240919-U, ¶¶ 3, 49-53.

The issue before the court involved a partition of real property. *Id.* ¶ 5. After years of litigation, the trial court set an evidentiary hearing to determine the distribution of proceeds from the sale of the property. *Id.* ¶ 7. The plaintiff inquired

about the possibility of appearing remotely at the evidentiary hearing, identifying residence in Florida and medical and physical conditions which made travel extremely difficult. *Id.* ¶ 7. The plaintiff submitted two affidavits, identifying that he was permanently disabled due to a severe injury, wheelchair bound, and unable to walk. *Id.* ¶ 9. Further, the plaintiff had cancer and was type-2 diabetic, who required the assistance of his wife to take care of basic needs, and he was unable to travel distances longer than about an hour. *Id.* The trial court stated that “its preference was any testimony at the evidentiary hearing be in person.” *Spencer*, 2025 IL App (4th) 240919-U, ¶ 7.

The appellate court found that the trial court needed to balance all relevant considerations, including: “(1) any due process concerns, (2) the ability to question witnesses, (3) hardships that may prevent the witness from appearing in person, (4) the type of case, (5) any prejudice to the parties if testimony is to occur by video conference, and (6) any other issues of fairness.” *Id.* ¶ 38.

After noting the proper standard of review as abuse of discretion, the court held that the record was clear that the plaintiff was physically incapable of providing in-person testimony due to his disability and residency of Florida. *Id.* ¶¶ 40, 46. There was no indication that the ability to question the plaintiff would have been affected by remote testimony. *Id.* ¶ 46. The “effect of the denial was plaintiff could not present his case at all,” and the court noted that through an affidavit, resulted in a possible erroneous decision. *Id.*

The appellate court noted that when “allowing remote testimony, the trial court must impose adequate safeguards to ensure accurate identification of the participant and to avoid improper influences by any individual who may be present with the participant during their testimony.” *Id.* ¶ 37. Rule 241, however, does not require a formal motion or even address the timing of the motion. *Spencer*, 2025 IL App (4th) 240919-U, ¶ 47. Instead, the court noted that the Committee Comments state that “any procedure or process for requesting approval to participate remotely shall be easy.” *Id.* Ultimately, the trial court’s preference for in-person testimony for the convenience of observing the witness and its concern about another person’s presence near the plaintiff were not among the factors a court must consider when determining whether remote testimony is warranted. Instead, the due process concern of denying this request to a plaintiff who was incapable of providing testimony and the hardship that prevented him from doing so weighed heavily in favor of allowing remote testimony.

Spencer is important to understand how the changing use of technology continues to play a role in how we must defend our clients’ interests. That is, as technology has made remote testimony possible and even efficient, a prepared litigator must know when to request remote hearings or whether to contest a request for a remote hearing.

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