



# LWR LAW OFFICES

CONSTITUTIONAL LAW & CIVIL RIGHTS

Virginia Bar #96671 • New York Bar #4932570

3060 Williams Dr. Ste 300 #510  
Fairfax, VA 22031

Tel: (202) 981-2059  
Email: [LWR@lwrlawoffices.com](mailto:LWR@lwrlawoffices.com)

[LWRLawOffices.com](http://LWRLawOffices.com)

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Carolyn a. Dubay, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE, Room 7-300  
Washington, D.C. 20544

Via email: [RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov)

## **RE: Proposal for Mandatory Remote Appearance Rights and Universal Pro Se E-Filing**

Dear Ms. Dubay:

### **I. INTRODUCTION AND SUMMARY**

This Suggestion for Rulemaking respectfully requests that the Advisory Committee on Civil Rules propose amendments to the Federal Rules of Civil Procedure, to establish: (1) a presumptive right to remote appearance for parties in non-evidentiary federal court proceedings; and (2) universal electronic filing access for all litigants, including pro se parties, in all federal courts.

The current system, which leaves remote appearance entirely to judicial discretion and may also exclude pro se litigants from electronic filing, creates unconstitutional barriers to court access. These barriers fall disproportionately on pro se litigants, solo practitioners, litigants of limited means, and those geographically distant from federal courthouses. The COVID-19 pandemic conclusively demonstrated that remote proceedings and electronic filing work effectively. The federal judiciary invested substantial resources in this infrastructure. Yet courts have largely reverted to pre-pandemic practices that treat remote appearance as an extraordinary accommodation rather than a standard right.

This must change. Access to the courts is a fundamental right. The current regime of unfettered judicial discretion permits arbitrary denial of that access based on a litigant's inability to travel or hire local counsel. The proposed amendments would reverse the presumption: remote appearance would be the default for non-evidentiary proceedings, with the burden on the court to articulate specific, compelling reasons for requiring physical presence.

## II. THE PROBLEM: SYSTEMIC BARRIERS TO COURT ACCESS

### A. The Physical Presence Requirement as a Barrier to Justice

The federal court system spans the entire United States. A litigant in rural Alaska may find themselves before a court in Texas. A pro se plaintiff in Maine may need to appear in the Central District of California. Under the current system, these litigants face an impossible choice: incur substantial travel expenses they cannot afford, hire local counsel they cannot afford, or forfeit their legal rights.

This is not a theoretical concern. Every day, litigants are forced to dismiss meritorious claims, consent to unfavorable settlements, or suffer default judgments because they cannot physically appear in court. The wealthy litigant represented by BigLaw counsel faces no such obstacles; their attorneys appear routinely, travel is a minor expense, and physical presence is easily arranged. The disparity is stark and unjust.

The current framework treats remote appearance as a privilege to be granted or withheld at the court's discretion. Litigants must file motions requesting remote appearance, often providing humiliating personal details to justify why they cannot travel -- their poverty, their disabilities, their inability to take time off work, their lack of childcare, their medical conditions. They must beg for the right to participate in their own case.

This is degrading. It forces ordinary people to expose their vulnerabilities to the court and opposing counsel simply to exercise a fundamental right. And it creates an asymmetry that advantages wealthy litigants and large law firms. Partners at BigLaw firms never file motions explaining why they cannot appear in person. They simply send attorneys wherever needed, whenever needed, because they have unlimited resources. The "motion for remote appearance" is a burden that falls exclusively on those least able to bear it -- pro se litigants, solo practitioners, small firms, and individuals of limited means.

No litigant should have to disclose personal financial or medical information to a court merely to participate in a non-evidentiary hearing. The requirement to justify remote appearance is not neutral; it is a mechanism that systematically advantages the wealthy and disadvantages everyone else.

## III. COVID-19 PROVED REMOTE PROCEEDINGS WORK

The COVID-19 pandemic provided an unprecedented natural experiment in remote court proceedings. From March 2020 through 2023, federal courts across the country conducted virtually all proceedings remotely. The results were conclusive: remote proceedings work.

### A. The CARES Act Framework

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), signed into law on March 27, 2020, authorized federal courts to conduct a wide range of proceedings by video or telephone conference. The Act allocated \$6 million specifically to expand the federal judiciary's technological capabilities for remote proceedings. Additional funds from the \$150 billion allocated to state and local governments supported similar expansion in state court systems.

Two days after the CARES Act's passage, the Judicial Conference found that emergency conditions would "materially affect the functioning of the federal courts generally." Chief judges across the country immediately implemented general orders authorizing video and telephone conferencing for virtually all proceedings. Courts that had never conducted a single remote hearing became fully operational within days.

## **B. The Infrastructure Exists and Is Paid For**

Every federal courthouse in the United States now has the infrastructure for remote proceedings. Video conferencing systems were installed. Training was provided. Technical support was established. That investment was made with public money. But who benefits from it now? Not the people who need it -- those who cannot afford to travel, who cannot take time off work, who cannot hire local counsel. The infrastructure sits idle while courts return to requiring physical presence. And the reason for building it in the first place was that the courts were concerned about COVID -- about the health of judges, clerks, and staff. When remote proceedings served their interests, no justification was needed, no showing of hardship required. The courts simply did it. But now, when a single mother or a disabled veteran or a solo practitioner needs that same accommodation, they must file a motion, disclose their personal circumstances, and beg for permission. The powerful protect themselves automatically; the powerless must grovel for the same protection.

Yet after the formal end of the COVID-19 emergency in April 2023, most courts reverted to pre-pandemic practices. The Judicial Conference adopted a revised policy permitting judges to provide live audio access to non-trial civil and bankruptcy proceedings--but this policy is permissive, not mandatory, and does not establish any right of parties to appear remotely.

The infrastructure built with taxpayer money sits largely unused while litigants are forced to travel hundreds or thousands of miles for fifteen-minute status conferences. This is not merely inefficient; it is unjust.

## **C. The Federal Courts Are an Anachronism**

Consider what is now electronic by default in American life:

- Tax filing -- the IRS not only permits but encourages electronic filing
- Banking -- virtually all transactions are electronic
- Government benefits -- Social Security, Medicare, unemployment all administered electronically
- Education -- college courses are routinely conducted remotely
- Medical consultations -- telemedicine is now standard practice
- Corporate governance -- shareholder meetings and board meetings conducted by video
- Real estate closings -- increasingly electronic, including notarization
- Congressional hearings -- witnesses regularly testify remotely

Yet the federal courts -- the institution charged with protecting constitutional rights -- cling to procedures from a previous era. This is indefensible.

## IV. THE CONSTITUTIONAL DIMENSION

### A. Access to Courts as a Fundamental Right

The right of access to the courts is deeply rooted in American constitutional law. The Supreme Court has recognized that "the right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government." *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907).

The Due Process Clauses of the Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life, liberty, or property without due process of law. Meaningful due process requires meaningful access to the forum where such deprivations are adjudicated. A right that exists only for those who can afford to exercise it is no right at all.

### B. Wealth-Based Disparities in Access

The current system creates a two-tiered justice system based on wealth. Represented parties with resources can appear anywhere, anytime. Pro se litigants and those of limited means face insurmountable obstacles.

The Supreme Court has repeatedly recognized that a State cannot, consistent with the Equal Protection Clause, impose a requirement that effectively denies access to court based solely on inability to pay. *See Griffin v. Illinois*, 351 U.S. 12 (1956); *Boddie v. Connecticut*, 401 U.S. 371 (1971); *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). While these cases arose in the context of court fees and transcript costs, the principle applies equally to de facto barriers that accomplish the same result through different means

Requiring physical presence when technology permits remote appearance is precisely such a de facto barrier. It accomplishes through logistics what the Constitution forbids through fees: the denial of court access based on financial status.

## V. PROPOSED RULE AMENDMENTS

### A. Proposed Amendment to FRCP: New Rule 43.1 (Remote Appearances)

#### *Rule 43.1. Remote Appearances*

**(a) Right to Remote Appearance -- No Justification Required.** In any civil proceeding that does not involve the taking of testimony from witnesses, any party or counsel may appear by contemporaneous video transmission as a matter of right, without seeking leave of court and without providing any justification. The party or counsel need only:

- (1) provide notice to the court and all parties at least 48 hours before the proceeding, or as soon as practicable if the proceeding is scheduled on shorter notice; and
- (2) have access to technology that permits the court and all parties to see and hear the remote participant, and that permits the remote participant to see and hear all other participants.

**(b) No Inquiry Into Reasons.** The court shall not require a party or counsel to disclose personal, financial, medical, or other private information as a condition of remote appearance. The right to appear remotely is unconditional for non-evidentiary proceedings and does not depend on demonstrating hardship, necessity, or good cause.

**(c) Limited Court Override.** The court may require physical presence only upon a finding, stated on the record, that:

- (1) the specific proceeding requires physical presence for a particularized reason that the court must articulate with specificity; and
- (2) no reasonable accommodation would permit effective remote participation; and
- (3) the court has considered the burden that physical appearance would impose on the party and determined that the need for physical presence outweighs that burden.

**(d) Evidentiary Proceedings.** For proceedings involving the taking of testimony from witnesses, remote appearance by a witness may be permitted upon agreement of the parties or upon motion and for good cause shown. The court retains discretion over the conduct of evidentiary proceedings but should accommodate remote testimony when doing so would not substantially prejudice any party.

**(e) Technical Assistance.** The clerk of each district court shall maintain resources to assist parties, including pro se litigants, in accessing the court's remote appearance technology.

### B. Proposed Amendment to FRCP Rule 5: Universal E-Filing

#### *Proposed Amendment to Rule 5(d)(3):*

##### **(3) Electronic Filing.**

**(A) By a Represented Person--Generally Required.** A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

**(B) By an Unrepresented Person--Right to File Electronically.** A person not represented by an attorney has the right to file electronically using the court's electronic-filing system. Each district court shall provide a pro se electronic filing portal accessible without payment of registration fees. Paper filing shall be permitted as an accommodation for persons who demonstrate lack of access to the internet or inability to use electronic filing systems.

**(C) Technical Assistance.** The clerk of each district court shall provide reasonable assistance to unrepresented persons seeking to file electronically, including instructions, help desk access, and public computer terminals in the courthouse.

## VI. THE DIGNITY DIMENSION: WHY JUSTIFICATION REQUIREMENTS ARE UNACCEPTABLE

Some may suggest that the solution is to make remote appearance available "for good cause shown" or upon a demonstration of hardship. This approach is fundamentally flawed because it perpetuates the very inequality it purports to address.

When a court requires a litigant to explain why they cannot appear in person, it forces that litigant to disclose private information: that they cannot afford a plane ticket, that they have a medical condition that makes travel difficult, that they cannot take time off from their hourly job, that they have no one to care for their children. This disclosure is humiliating. It converts the courthouse from a forum of equal justice into a space where some litigants must prove their poverty or disability while others simply show up.

Consider the asymmetry: A partner at a major law firm never explains why she is appearing remotely. She simply does so, or she sends an associate, or she flies across the country -- whatever is most convenient. Her resources make the question irrelevant. But a pro se litigant, or a solo practitioner, or a small-firm attorney must file a motion, attach declarations, perhaps even provide financial documentation, all to participate in a fifteen-minute scheduling conference.

This is not equal justice. It is a system that treats wealthy litigants as presumptively entitled to flexibility while treating everyone else as presumptively required to justify their existence. The proposed rule eliminates this disparity by making remote appearance a right that requires no justification -- only notice.

Federal judges are not kings. They are public servants. The courtroom belongs to the people, not to the judge. Rules that allow judges to demand explanations for why a citizen cannot travel to their courthouse invert this relationship. The proposed rule restores the proper balance: the default is access, and it is the court that must justify any restriction on that access.

## VII. RESPONSES TO ANTICIPATED OBJECTIONS

### **A. "Judicial Discretion Should Be Preserved"**

Judicial discretion is not an end in itself. Discretion exists to serve justice, not to obstruct it. When discretion is exercised arbitrarily or in ways that systematically disadvantage certain classes of litigants, it ceases to serve its proper function. The proposed rules do not eliminate judicial discretion; they channel it appropriately by requiring courts to articulate specific reasons for denying remote appearance rather than simply preferring in-person proceedings as a default.

### **B. "Remote Proceedings Are Inferior"**

Three years of pandemic-era proceedings disprove this assertion. Courts conducted complex hearings, oral arguments, and even some bench and jury trials remotely without significant degradation in quality. The Second Circuit has permitted remote appellate arguments for over two decades. The Supreme Court itself conducted oral arguments by telephone during the pandemic. If remote proceedings were adequate for the highest court in the land during a national emergency, they are adequate for a routine status conference or oral argument in district court.

### **C. "Pro Se Litigants Cannot Handle E-Filing"**

This paternalistic objection insults the intelligence of unrepresented litigants. Many pro se parties are highly educated professionals who represent themselves by choice. Others, while less sophisticated, are capable of navigating electronic systems with reasonable assistance. The solution to technological barriers is assistance, not exclusion. Courts already provide instructions and help desks for e-filing; extending these resources to pro se litigants is a modest expansion of existing infrastructure.

## **VIII. CONCLUSION**

The federal judiciary exists to serve the public, not to be served by it. Rules that systematically exclude litigants based on geography, wealth, or representational status betray the fundamental promise of equal justice under law. The technology to remedy these inequities exists. The infrastructure has been built and paid for. The only remaining obstacle is institutional inertia.

The undersigned respectfully urges the Advisory Committee on Civil Rules to recommend the proposed amendments to the Federal Rules of Civil Procedure. These changes would not revolutionize federal practice; they would merely extend to all litigants the access that wealthy, represented parties already enjoy.

Justice delayed is justice denied. Justice available only to those who can afford it is not justice at all.

Respectfully,

