

## National Changes to Remote Public Access Policy

The Clerk of Court and Judges would like to notify the bar and public of recent national changes to federal court remote public access policies. The Judicial Conference of the United States has updated its policy regarding remote public access to courtroom proceedings. All such requests for remote access have been and will continue to be evaluated by the Judges pursuant to that policy.

On September 22, 2023, the Judicial Conference's change to its broadcast policy went into effect, giving the presiding judge the discretion to allow members of the public or media live audio access to **non-trial proceedings that do not involve witness testimony**. Notably, the policy change addresses only public access and not a judge's authority to use audio and/or videoconferencing technology for attorneys and parties in appropriate cases. To read more about the change, see [Judicial Conference Revises Policy to Expand Remote Audio Access Over Its Pre-COVID Policy | United States Courts \(uscourts.gov\)](#).

Before the COVID-19 pandemic, remote access to court proceedings was limited. The national policy was temporarily relaxed during the pandemic to address the unprecedented emergency. The history of remote access to federal courtrooms is set forth in greater detail [here](#). The recent policy change is more liberal than the pre-COVID-19 policy, but is complicated by practices and procedures in bankruptcy court. As a result, the new policy may prove more restrictive than the access allowed during the past several years for the public, attorneys, and parties to a proceeding.

Judges are governed by the *Guide to Judiciary Policy*. Revised Volume 10, Chapter 4 of the *Guide* provides (recent changes in italics):

### **§ 410.10 Authority**

*(a) Except as authorized in this chapter, Judicial Conference policy does not allow either civil or criminal courtroom proceedings in the district courts to be broadcast, televised, recorded, or photographed for the purpose of public dissemination. JCUS-SEP 1990, pp. 103-104; JCUS-SEP 1994, pp. 46-47; JCUS-SEP 1996, p. 54; JCUS-SEP 2023, p. . [ . . ]*

*(c) Subject to the Federal Rules of Practice and Procedure and any applicable statutes, Judicial Conference policy permits a judge to allow remote public audio access to some civil and bankruptcy proceedings (see: § 420(b)). JCUS-SEP 2023, p. \_\_. (d) [ . . ]*

### **§ 420 Judicial Conference Policy**

*(a) A judge may authorize broadcasting, televising, recording, or taking photographs in the courtroom and in adjacent areas during investitive, naturalization, or other ceremonial proceedings. [ . . ]*

*(b) In addition, a judge presiding over a civil or bankruptcy non-trial proceeding may, in the judge's discretion, authorize live remote public audio access to any portion of that proceeding in which a witness is not testifying. This policy does not create any right of any party or the public to live remote public audio access to any proceeding. JCUS-SEP 2023, p. \_\_.*

(c) When broadcasting, televising, recording, or photographing in the courtroom or adjacent areas is permitted, a judge should ensure that it is done in a manner that will:

- (1) be consistent with the rights of the parties;
- (2) not unduly distract participants in the proceeding;
- (3) *include measures, consistent with the parties' responsibilities, to safeguard confidential, sensitive, or otherwise protected information;* and
- (4) not otherwise interfere with the administration of justice.

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**To assist in understanding this policy, the Judges and Court offer the following observations:**

- 1. Remote Public Audio Access.** Although the policy addresses remote **audio** access, video access includes audio access to a hearing. While it only addresses **public** audio access, hearing calendars in bankruptcy courts can be lengthy with many matters scheduled for the same time slot; thus, determining whether the policy impacts a request to appear remotely is not always clear. If a remote appearance request is granted for a party or counsel as it pertains to a particular hearing, “public” access for that party or counsel results for other matters scheduled at the same time and heard while listening remotely.
- 2. Non-Trial Proceedings.** Public access is only allowed in **non-trial proceedings**. Trial v. non-trial proceedings in bankruptcy court can be more difficult to define than in other federal courts, further complicating the new policy’s application. *See* Fed. R. Bankr. P 9014. Judges must receive notice of the existence and nature of certain contested hearings to evaluate remote appearance requests. *See* SC LBR 9013-2(c).
- 3. When a Witness is Not Testifying.** For planning purposes, it is important for Judges to determine in advance whether witness testimony will be offered. *See* SC LBR 9013-2(c). When witness testimony is presented at a hearing scheduled for a timeslot during which other hearings are also scheduled, the matter involving testimony may need to be rescheduled in advance, or the testimony may need to be delayed until all remote non-parties have disconnected. If the testimony is unexpected, public remote access must be interrupted before testimony can proceed. As a result, remote access for anyone can be unduly distracting and interfere with efficient progress of the proceeding.
- 4. Presenting Witness Testimony from a Remote Location.** Separately, Judges must consider the limitations and practical difficulties of implementing Fed. R. Civ. P. 43(a), which states:

IN OPEN COURT. At trial, the witnesses’ testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause **in compelling circumstances and with appropriate safeguards**, the court may permit testimony in open court by contemporaneous transmission from a different location.

(emphasis added). The COVID-19 pandemic frequently provided “good cause in compelling circumstances” for remote testimony, which is not always the case now.

- 5. Summary.** As a result of the current policy and applicable rules, all requests for remote access from the public, a party, or an attorney must be carefully considered by the Judges to comply with applicable authorities and to allow the hearing calendars to progress effectively and efficiently for the benefit of all. The policy does not create any right of any party or the public to live, remote public audio access to any proceeding and when access is granted, the Judge must meet the requirements of the *Guide*, Revised Volume 10, § 420(c) quoted above.

Please make any remote requests promptly and be patient with the Judges and Court staff as the requests are evaluated. Further, it is important for the Judges to identify proceedings on a hearing calendar that need further scrutiny. Compliance with SC LBR 9013-2(c) will assist the Court in doing so:

***Parties shall file a notice on the docket no later than 10:00 a.m. three (3) business days in advance of the scheduled hearing if it is anticipated the hearing will take longer than thirty (30) minutes, live testimony is necessary, or documentary evidence is to be presented and whether any exhibits to be introduced are subject to objection.*** The Court may continue the matter to another date or time, request supplemental briefing or a Joint Statement of Dispute, or make other requests or accommodations. If a Joint Statement of Dispute is required, it must be in substantial conformance with the Court’s [local form](#).

(emphasis added). This notice should be filed using the “Notice of Contested Hearing” CM/ECF event.