

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 21-03

(Extending temporary amendments to Super. Ct. Juv. R. 43)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), on July 6, 2020, the Superior Court temporarily amended Superior Court Rule Governing Juvenile Proceedings 43 until December 31, 2020;

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), on December 29, 2020, the Superior Court extended the effective date of the temporary amendments to Superior Court Rule Governing Juvenile Proceedings 43 until May 31, 2021; and

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved further extending the effective date of the temporary amendments to Superior Court Rule Governing Juvenile Proceedings 43; and

WHEREAS, the temporary amendments do not modify a federal criminal or civil rule; it is

ORDERED, that the temporary amendments to Superior Court Rule Governing Juvenile Proceedings 43 that are set forth below shall remain in effect until no later than December 31, 2021.

Juvenile Rule 43. Presence of the Respondent

(a) IN GENERAL. The respondent ~~shall~~must be present at the initial hearing, at the factfinding hearing, and at the entry of a dispositional order, except as otherwise provided by D.C. Code § 16-2316(f). (2012 Repl.).

(b) WAIVING PRESENCE.

(1) Voluntary Absence. A respondent who was initially present at the factfinding hearing waives the right to be present when ~~T~~the respondent's is voluntarily absent~~ee~~ after the factfinding hearing has begun, regardless of whether the court informed the respondent of an obligation to remain during the factfinding hearing~~been commenced in the respondent's presence shall not prevent.~~

(2) Waiver's Effect. If the respondent waives the right to be present, ~~continuing~~ the factfinding hearing may proceed to completion~~and,~~ including the adjudication~~by the Family Court,~~ during the respondent's absence.

(c) EMERGENCY AUTHORITY FOR VIDEO TELECONFERENCING OR TELEPHONE CONFERENCING.

(1) In General. Subject to Rule 43(c)(2)-(3), the court may permit an initial, emergency, status, plea, factfinding, or disposition hearing to occur by video teleconferencing or by telephone conferencing if:

(A) the Chief Judge, with the consent of the Joint Committee on Judicial Administration, has issued an order under D.C. Code § 11-947 (2019 Supp.) to delay, toll, or otherwise grant relief from deadlines imposed by law or rules, based on the Coronavirus Disease 2019 (COVID-19); and

(B) in a particular case, the court finds for specific reasons that the hearing in that case cannot be further delayed without serious harm to the interests of justice.

(2) Consent. Video teleconferencing or telephone conferencing authorized under Rule 43(c)(1) may take place only with the consent of the respondent after consultation with counsel.

(3) Termination of Emergency Authority. The authority under Rule 43(c)(1) terminates on the earlier of:

(A) 30 days after an order referenced in Rule 43(c)(1)(A) expires without issuance of a further order; or

(B) the date on which the Chief Judge issues an order terminating the authority granted by Rule 43(c)(1).

COMMENT TO 2020 TEMPORARY AMENDMENTS

New section (c) provides explicit authority for the court to conduct proceedings by video teleconference or telephone conference if the Chief Judge has issued an order under D.C. Code § 11-947 (2019 Supp.) based on COVID-19 and there is a case specific finding. The section is modeled after provisions in the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (CARES Act), § 15002 (2020), and resulting district court orders. The CARES Act permitted the Judicial Conference of the United States to find that emergency conditions materially affected the functioning of the federal courts or a particular district court of the United States. The Chief Judge of a covered district court could then authorize the use of video teleconferencing or telephone conferencing for additional proceedings with certain conditions.

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(b) WAIVING PRESENCE.

(1) *Voluntary Absence*. A respondent who was initially present at the factfinding hearing waives the right to be present when the respondent is voluntarily absent after the factfinding hearing has begun, regardless of whether the court informed the respondent of an obligation to remain during the factfinding hearing.

(2) *Waiver's Effect*. If the respondent waives the right to be present, the factfinding hearing may proceed to completion, including the adjudication, during the respondent's absence.

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(B) in a particular case, the court finds for specific reasons that the hearing in that case cannot be further delayed without serious harm to the interests of justice.

(2) *Consent*. Video conferencing or telephone conferencing authorized under Rule 43(c)(1) may take place only with the consent of the respondent after consultation with counsel.

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* * *

By the Court:

Date: April 22, 2021



Anita M. Josey-Herring
Chief Judge

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All Magistrate Judges
All Senior Judges
Avrom Sickel, Director, Family Court
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Daily Washington Law Reporter
Laura Wait, Associate General Counsel