

### **Rule 43. Presence of the Respondent**

(a) In general. The respondent must be physically present at the initial hearing, at the factfinding hearing, and at the entry of a dispositional order, except as otherwise provided by Rule 43(b) or D.C. Code § 16-2316(f) (2012 Repl.).

(b) Authority for video conferencing or telephone conferencing. The court may permit any proceeding to occur by video conferencing or by telephone conferencing if:

(A) the respondent consents after consultation with counsel;

(B) the government consents; and

(C) the court makes an inquiry on the record to ensure that:

(i) the respondent's consent is knowing, voluntary, and intelligent; and

(ii) the respondent has an adequate opportunity to consult confidentially with counsel immediately before, during, and at the conclusion of the proceeding.

(c) Waiving presence.

(1) Voluntary Absence. A respondent who was initially present at the factfinding hearing waives the right to be present where 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. The factfinding hearing may proceed to completion, including the adjudication, during the respondent's absence.

(2) Upon motion by the respondent, the court may grant a respondent's waiver of the right to be present at any proceeding.

### **COMMENT TO 2022 AMENDMENTS**

Rule 43 has been amended to expand the Superior Court's authority to permit a respondent to appear by video conferencing or telephone conferencing, i.e., remotely. The amended rule is modeled on 2022 amendments to Criminal Rule 43. It largely tracks, and makes permanent, temporary emergency authority the court exercised during the COVID-19 pandemic to hold remote hearings. The court's experience during COVID-19 has shown that remote juvenile proceedings function well.

### **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 conferencing or telephone conferencing for additional proceedings with certain conditions.