

RULE 3.116. USE OF COMMUNICATION TECHNOLOGY

(a) Definitions. The definitions for the terms “audio communication technology,” “audio-video communication technology,” and “communication technology” in Florida Rule of General Practice and Judicial Administration 2.530(a) apply to this rule and to other rules in the Florida Rules of Criminal Procedure that use those terms.

(b) Generally. Use of communication technology in proceedings subject to the Florida Rules of Criminal Procedure is governed by this rule, except that rules 3.130(a), 3.160(a), 3.180(b), 3.220(h), and 3.851(f) govern the use of audio-video communication technology in the manner authorized by those rules.

(c) Pretrial Conferences and Non-Evidentiary Proceedings. ~~A judge may, upon the court’s own motion or upon the written request of a party, direct that communication technology be used by one or more parties for attendance at a pretrial conference, except that, before a judge may direct that the defendant participate in the pretrial conference using communication technology, the defendant or the defendant’s counsel must waive the defendant’s physical attendance at the pretrial conference pursuant to rules 3.180(a)(3) and 3.220(o)(1). A judge must give notice to the parties and consider any objections they may have to the use of communication technology before directing that communication technology be used. The decision to use communication technology over the objection of parties will be in the discretion of the trial court, except as noted below. A court official must grant a motion to use communication technology for a non-evidentiary proceeding scheduled for 30 minutes or less unless the court official determines that good cause exists to deny the motion. The defendant or the defendant’s counsel must waive the defendant’s physical attendance at the pretrial conference pursuant to rule 3.180(a)(3) and 3.220(o)(1).~~

(d) Testimony.

(1) *Generally.* A judge may allow testimony to be taken through communication technology if all parties consent.

(2) *Procedure.* Any party desiring to present testimony through communication technology must, prior to the hearing or trial at which the testimony is to be presented, contact all parties to determine whether each party consents to this form of testimony. The party seeking to present the testimony must move for permission to present testimony through communication technology, which motion must set forth good cause as to why the testimony should be allowed in this form.

(3) *Oath.* The oath must be administered for testimony taken through communication technology in the manner provided by Florida Rule of General Practice and Judicial Administration 2.530(b)(2)(B).

(4) *Confrontation Rights.* The defendant must make an informed waiver of any otherwise applicable confrontation rights.

(e) Burden of Expense. The cost for the use of the communication technology is the responsibility of the requesting party unless otherwise directed by the court.

Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 Note

2022 Adoption. This rule is created to authorize the use of communication technology for criminal proceedings while safeguarding the rights of the accused. It is based on Florida Rule of General Practice and Judicial Administration 2.530, as amended by *In re Amends. to Fla. Rules of Jud. Admin.*, 73 So. 3d 210, 211 (Fla. 2011), but updates and revises the text of that version of the rule to: (1) use the terms “audio communication technology,” “audio-video communication technology,” and “communication technology”; (2) identify other rules in the Florida Rules of Criminal Procedure that will continue to govern the use of audio-video communication technology under specified circumstances; (3) consolidate subdivisions (b) and (c) of rule 2.530, as amended in 2011, to recognize proposed amended rules 3.180(a)(3) and 3.220(o)(1) and provide that a court may, on its own motion or the written request of a party, direct the use of communication technology by one or more parties for attendance at a pretrial

conference, except that, before a judge may direct that the defendant participate in the pretrial conference using communication technology, a waiver of the defendant's physical attendance must be obtained pursuant to rules 3.180(a)(3) and 3.220(o)(1); (4) substitute the term "a pretrial conference" for the phrase "a motion hearing, pretrial conference, or a status conference" used in subdivision (b) of rule 2.530, as amended in 2011, because case law has construed the term in the context of rules 3.180(a)(3) and 3.220(o)(1) as including a motion hearing and a status conference; and (5) add authority for the oath to be administered to a witness who is testifying through audio-video communication technology by an authorized person who is not physically present with the witness subject to specified requirements.