

Rule 616. Alternative testimony of witnesses with an intellectual or developmental disability in civil cases and special proceedings.

- (a) Definitions. – The following definitions apply to this section:
- (1) The definitions set out in G.S. 122C-3.
 - (2) Remote testimony. – A method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.
- (b) Remote Testimony Authorized. – An individual with an intellectual or developmental disability who is competent to testify may testify by remote testimony in a civil proceeding or special proceeding if the court determines by clear and convincing evidence that the witness would suffer serious emotional distress from testifying in the presence of a named party or parties or from testifying in an open forum and that the ability of the witness to communicate with the trier of fact would be impaired by testifying in the presence of a named party or parties or from testifying in an open forum.
- (c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote testimony. The hearing shall be recorded unless recordation is waived by all parties. The presence of the witness is not required at the hearing unless so ordered by the presiding judge.
- (d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings and conclusions of law that support the court's determination. An order allowing the use of remote testimony also shall do all of the following:
- (1) State the method by which the witness is to testify.
 - (2) List any individual or category of individuals allowed to be in or required to be excluded from the presence of the witness during testimony.
 - (3) State any special conditions necessary to facilitate the cross-examination of the witness.
 - (4) State any condition or limitation upon the participation of individuals in the presence of the witness during the testimony.
 - (5) State any other conditions necessary for taking or presenting testimony.
- (e) Testimony. – The method of remote testimony shall allow the trier of fact and all parties to observe the demeanor of the witness as the witness testifies in a similar manner as if the witness were testifying in the open forum. Except as provided in this section, the court shall ensure that the counsel for all parties is physically present where the witness testifies and has a full and fair opportunity for examination and cross-examination of the witness. In a proceeding where a party is representing itself, the court may limit or deny the party from being physically present during testimony if the court finds that the witness would suffer serious emotional distress from testifying in the presence of the party. A party may waive the right to have counsel physically present where the witness testifies.
- (f) Nonexclusive Procedure and Standard. – Nothing in this section prohibits the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of an individual with an intellectual or developmental disability. (2009-514, s. 1; 2018-47, s. 3(a).)