

What does Dash-3 Do and Why?

Dash-3 incorporates the changes in Dash-2 that restructure the original statute to direct the court to weigh the moving party's good cause against prejudice to the non-moving party. The Dash-2 outlines that the court may authorize telephone or nonvisual transmission only upon a finding that video transmission is not readily available.

While the Dash-3 keep these Dash-2 amendments, the Dash-3 adds a provision in Section 1 Paragraph (4) that establishes testimony may only be by visual transmission, not telephone or nonvisual transmission, in two scenarios: A) if the court finds that the ability to evaluate the credibility and demeanor of the a witness or party in person is critical to the outcome of the proceeding or B) the non-moving party demonstrates that face-to-face cross examination is necessary because the issue or issues the witness or party will testify about may be determinative of the outcome. In the Dash-2, these two scenarios are listed as factors for the court to consider when determining if the non-moving party is prejudiced. The Dash-3 recognizes that these two factors illustrate scenarios where face-to-face cross examination and the ability for the court and the parties to actually see the testifying witness are absolutely crucial.

The Dash-3 does not change the Dash-2's re-structuring of the original statute: "The court **may** allow **remote location** testimony under this section upon a showing of good cause **by the moving party, unless the court determines that the use of remote location testimony would result in prejudice to the non-moving party and that prejudice outweighs the good cause for allowing the remote location testimony.**" The Dash-3 does not remove or change any of the "good cause" or "prejudice" factors in the Dash-2.

Dash-3 would still allow the court the ability to determine the non-moving party is prejudiced by remote testimony and that prejudice outweighs the moving party's good cause, resulting in the motion for remote testimony to be denied and requiring in-person testimony. However, in the situation where the court does not believe the non-moving party's prejudice outweighs the moving party's good cause, the amendment in Dash-3 safeguards against witnesses testifying by phone or other non-visual transmission when the testifying witness's credibility and demeanor is critical to the outcome of the proceeding or the that face-to-face cross examination is necessary due to the issues to be testified to may be determinative of the outcome. The Dash-3 amendment does not prevent remote testimony in these two scenarios, rather it simply requires visual transmission instead of telephone testimony due to the crucial nature of the testimony.

	Original Statute ORS 45.400	Dash-2	Dash-3
Standard	<p>Court shall allow telephone testimony upon showing of good cause.</p> <p>The court may not allow the use of telephone testimony in any case if certain factors are shown.</p>	<p>The court may allow remote location testimony under this section upon a showing of good cause by the moving party, unless the court determines that the use of remote location testimony would result in prejudice to the non-moving party and that prejudice outweighs the good cause for allowing the remote location testimony.</p>	Same as Dash-2
Good Cause Factors	<p>Factors that a court may consider that would support a finding of good cause for the purpose of a motion under this section include:</p> <p>(a) The witness or party might be unavailable because of age, infirmity or mental or physical illness;</p> <p>(b) The party filing the motion seeks to take the telephone testimony of a witness whose attendance the party has been unable to secure by process or other reasonable means;</p> <p>(c) A personal appearance by the party or witness would be an undue hardship on the party or witness; or</p>	<p>Factors that a court may consider that would support a finding of good cause for the purpose of a motion under this section include:</p> <p>(A) Whether the witness or party might be unavailable because of age, infirmity or mental or physical illness.</p> <p>(B) Whether the party filing the motion seeks to take the remote location testimony of a witness whose attendance the party has been unable to secure by process or other reasonable means.</p>	Same as Dash-2

	(d) Any other circumstances that constitute good cause.	<p>(C) Whether a personal appearance by the witness or party would be an undue hardship on the witness or party.</p> <p>(D) Whether a perpetuation deposition under ORCP 39 I, or another alternative, provides a more practical means of presenting the testimony.</p> <p>(E) Any other circumstances that constitute good cause.</p>	
Standard for not allowing Testimony	The court may not allow the use of telephone testimony in any case if:	Factors that a court may consider that would support a finding of prejudice under this section include:	Same as Dash-2
“Prejudice Factors”	<p>(a) The ability to evaluate the credibility and demeanor of a witness or party in person is critical to the outcome of the proceeding;</p> <p>(b) The issue or issues the witness or party will testify about are so determinative of the outcome that face-to-face cross-examination is necessary;</p> <p>(c) A perpetuation deposition under ORCP 39 I is a more practical means of presenting the testimony;</p> <p>(d) The exhibits or documents the witness or party will testify about are too voluminous to make telephone testimony practical;</p> <p>(e) Facilities that would permit the taking of telephone testimony are not available;</p>	<p>(A) Whether the ability to evaluate the credibility and demeanor of a witness or party in person is critical to the outcome of the proceeding.</p> <p>(B) Whether the nonmoving party demonstrates that face-to-face cross-examination is necessary because the issue or issues the witness or party will testify about may be determinative of the outcome.</p> <p>(C) Whether the exhibits or documents the witness or party will testify about are too voluminous to make remote location testimony practical.</p> <p>(D) The nature of the proceeding.</p> <p>(E) Whether facilities that would permit the taking of remote location testimony are readily available.</p>	Same as Dash-2

	(f) The failure of the witness or party to appear personally will result in substantial prejudice to a party to the proceeding; or (g) Other circumstances exist that require the personal appearance of a witness or party.	(F) Whether the nonmoving party demonstrates that other circumstances exist that require the personal appearance of a witness or party.	
Telephone Testimony Versus Visual Transmission	NA	(4) In exercising its discretion to allow remote location testimony under this section, a court may authorize telephone or other nonvisual transmission only upon finding that video transmission is not readily available.	“(4)(a) In exercising its discretion to allow remote location testimony under this section, a court may authorize telephone or other nonvisual transmission only upon finding that video transmission is not readily available. (b) Notwithstanding paragraph (a) of this subsection, the court may not authorize remote location testimony by telephone or other nonvisual transmission if: (A) The court finds that the ability to evaluate the credibility and demeanor of a witness or party in person is critical to the outcome of the proceeding; or (B) The nonmoving party demonstrates that face-to-face cross examination is necessary because the issue or issues the witness or party will testify about may be determinative of the outcome.

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