

**OBJECTION TO USE OF TELEPHONIC TESTIMONY FROM A REPRESENTATIVE
OF FORENSIC FLUIDS LABORATORIES**

Comes now _____, Mother, by counsel, , and files her Objection to use of Telephonic Testimony. In support thereof, Mother states as follows:

1. This case is set for a Fact Finding hearing on [date].
2. On May 31, 2017, The Department of Child Services (“DCS”) filed its Notice of Telephonic Testimony, indicating its intention to have testify via telephone at the Fact Finding hearing on June 9, 2017.
3. Juvenile cases, including CHINS fact-finding hearings, are civil cases in which the Indiana Rules of Evidence, including the hearsay rule, apply.
4. Pursuant to Indiana Trial Rule 43(A): “In all trials the testimony of witnesses shall be taken in open court, unless state law, these rules, the Indiana Rules of Evidence, or other rules adopted by the Indiana Supreme Court provide otherwise.”
5. Indiana Administrative Rule 14 governs the permissibility of witnesses testifying telephonically.
6. Pursuant to Ind. Admin. R. 14(B), the Court may permit a witness to testify telephonically at a fact finding hearing IF: 1) all of the parties consent in writing, or 2) upon the Court’s finding of good cause.
7. Ind. Admin. R. 14(B)(3)(a) further provides that “Any Motion for testimony to be presented by telephone or audiovisual telecommunication shall be served not less than thirty (30) days before the time specified for hearing of such testimony.”
8. DCS’s Notice was filed on May 31, 2017, nine (9) days before the fact finding hearing on June 9, 2017, and therefore is untimely under Ind. Admin. R. 14.

9. Ind. Admin. R. 14(B)(3)(b) provides that any objection shall be made in writing within seven (7) days of service. This Objection is being filed within that time frame.
10. Ind. Admin. R. 14(B)(3)(c) then provides that “A trial court may hold an expedited hearing no later than ten (10) days before the scheduled hearing of such testimony to determine if good cause has been shown to present testimony by telephone or audio visual telecommunication.”
11. Ind. Admin. R. 14(B)(3)(d) then requires the Court to make written findings of fact and conclusions of law within its order on the motion for testimony to be presented by telephone.
12. Due to the untimeliness of DCS’s Motion, the Court cannot schedule such a hearing in the time allowed by the Rule.
13. Ind. Admin. R. 14(B)(3)(e) provides that, for cause found, the Court may alter the time deadlines set forth upon motion made **prior to the expiration of the time for the required action.** (Emphasis added).
14. Here, DCS has made no motion, timely or otherwise, under paragraph 3(e) to request a timeline other than that provided by the Rule. The Department has also made no offer or showing about why its Motion is untimely.
15. According to Ind. Admin. R. 14(B)(2), the Court shall consider the following factors when determining the issue of “good cause.”
 - a. Whether, after due diligence, the party has been unable to procure the physical presence of the witness;
 - b. Whether effective cross-examination of the witness is possible, considering the availability of documents and exhibits to counsel and the witness;

- c. The complexity of the proceedings and the importance of the offered testimony in relation to the convenience to the party and the proposed witness;
 - d. The importance of presenting testimony of the witness in open court, where the fact finder may observe the demeanor of the witness and impress upon the witness the duty to testify truthfully;
 - e. Whether undue surprise or unfair prejudice would result; and
 - f. Any other factors a trial court may determine to be relevant in an individual case.
16. DCS has not demonstrated what efforts, if any, it has made to procure the physical presence of the witness at the hearing.
17. DCS chose to use a laboratory located in the State of Michigan and citing the fact that its expert is based in another state does not qualify as “good cause” under the Rule. Indiana Administrative Rule 14 is not designed for the mere convenience of one of the parties, but is instead to be utilized in cases where a necessary witness would otherwise be unavailable.
18. The main allegation in this case concerns alleged drug use of the parents, and as a result the evidence of drug test results is of key importance in this case.
19. Even if the parties are provided the exhibits the expert will be testifying about prior to the fact finding hearing, not all of the materials needed to effectively cross examine the expert witness are easily provided to the expert in advance of the hearing, including scholarly articles, treatises, and federal regulations.
20. Mother would be unfairly prejudiced if the Department’s witness is allowed to testify telephonically. The witness has an ownership interest in Forensic Fluids

Laboratories, the anticipated subject of her testimony. The Fact Finder cannot determine the witness' credibility through telephonic testimony alone, and allowing the witness to testify telephonically violates Mother's right to cross-examine witnesses.

WHEREFORE, Mother respectfully requests that this Court disallow the telephonic testimony of [name] as requested by the Department of Child Services, order that a representative of Forensic Fluids Laboratories personally appear in Court on the date of the hearing to testify in this matter, and for all other relief just and proper in the premises.

Attorney for Mother