



## **How to Request an In-Person or Remote Hearing**

*by Eliza Messinger*

After about two years of pandemic-related changes to how court hearings were held, the Minnesota Supreme Court implemented a plan for which hearings are held in-person and which are remote on June 6<sup>th</sup> of 2022. If you have a case where the scheduled hearing type does not work for you or your client, there is a way to request a change in how the hearing is held. This tip is particularly relevant to VLN's criminal expungement volunteers as every county created their own criminal expungement hearing plan and many are now scheduled in-person.

### **Which Orders Dictate the Hearing Type?**

The [Minnesota Supreme Court's current order](#) governing hearing type was implemented on June 6<sup>th</sup> of this year ("June 6<sup>th</sup> Order"). This order solidified the presumptive format for different types of court hearings going forward. It does that by referring to [Judicial County Policy 525](#). This second document lists almost all the case types and their default hearing type. Criminal expungement is not included on this list, which is why each county created their own plan for these hearings over the Summer.

#### Information Specific to Criminal Expungement Hearings:

During the pandemic, all criminal expungement hearings were conducted remotely. After the June 6<sup>th</sup> order was implemented, clients reported that in-person hearings were being scheduled again starting this Fall. I surveyed about half the counties in Minnesota and found that there is not a consensus or pattern to how district courts are scheduling these cases. Volunteers should ask the court clerk what the county policy is when they schedule the hearing date.

Counties that hear a lot of criminal expungement cases have set policies on how to schedule hearings. Judges in smaller counties often determine the hearing type on a case-by-case basis. Some counties schedule hearings for dismissed cases and less severe convictions remotely and more severe convictions in-person. In other counties, only cases where someone objects or there is a witness will be scheduled in-person.

### **What Factors Are Considered When Granting a Remote or In-Person Hearing Request?**

The June 6<sup>th</sup> Order also addresses when judges should grant requests to depart from the presumptive or hearing type. These requests should only be granted when “exceptional circumstances exist in light of the case or the parties, or concerns of economy or efficiency” and it lists factors judges “may” consider. (*June 6<sup>th</sup> Order at 2.*) The fact that all parties agree on holding a certain type of hearing doesn’t alone count as a reason to depart from the presumptive hearing format. (*Id.*) You can find the factors listed on [pages 2-3 of the June 6<sup>th</sup> Order](#) or in the [instructions for the court form](#).

#### Factors Supporting an In-Person Hearing:

Some VLN clients may not be able to attend a Zoom hearing. This could be due to a lack of technology, ability to connect, or discomfort with appearing on Zoom. This is an access to justice issue for clients and a good reason to request an in-person hearing if there is no other work-around. The list of factors also includes some legal and practical reasons why a judge may grant an In-Person Hearing Request.

#### Factors Supporting a Remote Hearing:

I have not yet had a Remote Hearing Request denied by a judge. That is because there are many practical factors that a judge may consider when granting these Requests. Common reasons for requesting a remote hearing include the cost of gas, unreasonable travel time and distance, the burden of finding transportation, weather, and unavoidable scheduling conflicts. All these factors are relevant to our clients who can’t afford to miss hours of work and pay, have unreliable transportation, and would need to find and pay for childcare. Many of these concerns are also relevant to our pro bono volunteers as well.

#### **How do I Request Remote or In-Person Hearing?**

The Minnesota Court created a template to use titled “[Request for Remote or In-Person Appearance](#).” To find it in the future, go to the Minnesota Court Website. Click on “Get Forms.” It is under “Other.” It is a simple form that asks you what exceptional circumstances support your request. The form also asks if you have notified the other parties of this request or if you have already discussed it. If you are fully representing a client in a case, you will need to e-file the request. If you are not representing them, you may mail it to the court for the client.

#### Criminal Expungement Specific Information:

If there is any chance the hearing will be scheduled in-person, you should request a remote hearing when you file the petition. I would recommend serving the remote hearing request with the other documents you have to serve as well. The form asks if you have discussed this issue with the other parties. You can write that you have not discussed it with them, but you are sending them the form so they will have notice of your Remote Hearing Request.