

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

**ORDER FOR ESTABLISHING DEADLINE
FOR SUBMITTING COMMENTS
ON AMENDMENTS TO THE RULES
OF CRIMINAL PROCEDURE RELATING TO
IMPLEMENTATION OF ITV PROTOCOL**

In October 1999, the Court approved a pilot project for the limited statewide use of interactive television (ITV) in certain criminal matters. The Court implemented this project using an ITV protocol previously approved by the Court for an ITV pilot project in the Ninth Judicial District. In April 2006, the *Judicial Council recommended that the Court approve for statewide use a revised protocol*. Upon receipt of this recommendation, the Court noted that implementation of the revised protocol could potentially conflict with provisions of the Minnesota Rules of Criminal Procedure, and referred the matter to the Advisory Committee on Rules of Criminal Procedure for recommendations as to draft rules implementing the protocol and comments relating to use of ITV in criminal matters. The committee submitted a report on February 2, 2007, recommending that the protocol instead be enacted as a rule of procedure, and setting forth alternative content to that contained in the Ninth District pilot protocol and the Judicial Council proposed revision to that protocol. On May 15, 2007, the Supreme Court held a hearing to consider both proposals. Having considered the proposal of the Judicial Council, the report of the Advisory Committee on Rules of Criminal Procedure, and the original Ninth District pilot protocol, the Supreme Court has developed Rule 1.05 of the Rules of Criminal Procedure as well as conforming amendments to Rules 14.02, subd. 2 and 26.03, subd. 1(3)4.

This court will promulgate the amendments without a hearing after soliciting and reviewing comments.

IT IS HEREBY ORDERED that any individual wishing to provide a written statement in support of or opposition to the amendments shall submit fourteen copies of such statement addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, on or before September 21, 2007.

Dated: August 7, 2007

BY THE COURT:



Russell A. Anderson
Chief Justice

OFFICE OF
APPELLATE COURTS

AUG - 7 2007

FILED

Supreme Court Draft Minn. R. Crim. P. 1.05

Rule 1.05. Use of Interactive Video Teleconference in Criminal Proceedings

Subd. 1. Definitions.

(a) *ITV*. “ITV” refers to interactive video teleconference.

(b) *Terminal Site*. A “terminal site” is any location where ITV is used for any part of a court proceeding.

(c) *Venue County*. The “venue county” is the county where pleadings are filed and hearings are held under current court procedures.

(d) *District*. The “district” is the judicial district in which the venue county is located.

Subd. 2. Appearance; How Made. Appearances in proceedings governed by the Minnesota Rules of Criminal Procedure shall be made in person except as authorized to be made by ITV in this rule, by written petition in Rules 14.02, subd. 2 and 15.03, subd. 2, and by phone in Rule 26.03, subd. 1(3)4.

Subd. 3. Permissible Use of ITV.

(a) *Felony and Gross Misdemeanor Proceedings*. ITV may be used to conduct the following criminal hearings:

1. *Rule 5 and Rule 6 Hearings*. A defendant in custody may appear before any available judge of the district by ITV for a Rule 5 or Rule 6 hearing if no judge is available in the venue county.

2. *Rule 8 and Rule 13 Hearings*. A defendant may appear before any available judge of the district by ITV for a Rule 8 or Rule 13 hearing if no judge is available in the venue county. No plea of guilty may be taken by ITV unless the court and all parties agree and the defendant and defendant’s attorney are located at the same terminal site.

3. *Rule 11 Hearings*. A defendant may appear before any available judge of the district by ITV for the purpose of waiving an omnibus hearing.

5. *Other Hearings*. A defendant or the defendant’s counsel on behalf of the defendant may appear before any available judge of the district by ITV for any hearing for which the defendant’s personal presence is not required pursuant to Rule 26.03, subd. 1(3) if the court and parties agree to the ITV appearance.

ITV may not be used to conduct a trial, sentencing, contested omnibus hearing, or any other contested matter except as provided herein.

(b) *Misdemeanor Proceedings.* A defendant may appear before any available judge of the district by ITV for any of the following:

1. Arraignment;
2. Plea;
3. Sentencing.

A defendant or the defendant's counsel on behalf of the defendant may also appear before any available judge of the district by ITV for any hearing for which the defendant's personal presence is not required pursuant to Rules 14.02, subd. 2 and 26.03, subd. 1(3) if the court and parties agree to the ITV appearance.

ITV may not be used to conduct a trial, contested pretrial hearing, or any other contested matter except as provided herein.

(c) *Petty Misdemeanor and Regulatory or Administrative Criminal Offenses.* A defendant may appear before any available judge of the district by ITV for all hearings, including trials, related to petty misdemeanors and regulatory or administrative criminal offenses not punishable by imprisonment.

Subd. 4. Request for Rehearing; Consent Requirements.

(a) *Rule 5 or Rule 6 Hearing.* When a defendant appears before the Court by ITV for a Rule 5 or Rule 6 hearing, the defendant may request to appear in person before a judge. If the request is made, the hearing will be held within three business days of the ITV hearing and shall be deemed a continuance of the ITV hearing.

(b) *Other Hearings; Consent.* In all proceedings other than a Rule 5 or Rule 6 hearing, the defendant must consent to appearing by ITV. If the defendant does not consent to appear by ITV, an in-person court appearance for that hearing shall be scheduled to be held within the time limits as otherwise provided by these rules or other law.

Subd. 5. Location of Participants.

(a) *Defendant's Attorney.* The defendant's attorney shall be present at the same terminal site from which the defendant appears except in unusual or emergency circumstances, and then only if all parties agree on the record. This exception for unusual or emergency circumstances does not apply to felony or gross misdemeanor proceedings at which a guilty plea is taken.

(b) *Prosecuting Attorney.* Subject to paragraph (d), the prosecuting attorney may appear from any terminal site.

(c) *Judge.* Subject to paragraph (d), the judge may appear from any terminal site.

(d) *Defendant's Attorney or Prosecuting Attorney at Same Terminal Site as Judge.* When the right to counsel applies, ITV may not be used in a situation in which only the defense attorney or prosecuting attorney is physically present before the judge unless all parties agree on the record.

(e) *Witnesses, Victims, Other Persons.* Witnesses, victims, and other persons may be located at any terminal site.

Subd. 6. Multi-county Violations. When a defendant has pending charges in more than one county within a district, any or all ITV appearances authorized by this rule may be heard by ITV by any judge of that district. Cases from other districts may be heard upon authorization by the Chief Justice of the Supreme Court.

Subd. 7. Proceedings; Record; Decorum.

(a) *Where Conducted.* All ITV hearings will be conducted in a courtroom or other room at the courthouse reasonably accessible to the public.

(b) *Effect of ITV Hearing.* Regardless of the physical location of any party to the ITV hearing, any waiver, stipulation, motion, objection, order, or any other action taken by the court or a party at an ITV hearing shall have the same effect as if done in person.

(c) *Defendant Right to Counsel.* The court shall ensure that the defendant has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio transmission and recording or allowing counsel to leave the conference table to communicate with the defendant in private.

(d) *Record.* The court administrator of the venue county shall keep court minutes and maintain court records as if the proceeding were heard in person. If the hearing requires a written record, a court reporter shall be in simultaneous voice communication with all ITV terminal sites, and shall make the appropriate verbatim record of the proceeding as if heard in person. No recording shall be made of any ITV proceeding except the recording made as the official court record.

(e) *Decorum.* Courtroom decorum during ITV hearings must conform to the extent possible to that required during traditional court proceedings. This may include the presence of one or more bailiffs at any ITV site.

Subd. 8. Administrative Procedures. Administrative procedures for conducting ITV hearings are governed by the General Rules of Practice.

Amend Rule 14.02, subd. 2 as follows:

Subd. 2. By an Individual in Misdemeanor Cases. A plea to a complaint or tab charge by an individual defendant shall be made orally on the record in person, by ITV, or by the petition to plead guilty provided for in Rule 15.03, subdivision 2. If the court is satisfied that the defendant has knowingly and voluntarily waived the right to be present, the plea may be entered by counsel in person or by ITV.

Amend Rule 26.03, subd. 1(3)4 as follows:

4. The court in its discretion and upon agreement of the defendant may allow the participation by ITV or telephone of one or more parties, counsel, or the judge in any proceedings in which the defendant would otherwise be permitted to waive personal appearance under these rules.

Insert the following form:

FORM 51. Consent to ITV Appearance

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT _____

_____,
Plaintiff,)
vs.)
_____,
Defendant.)

CONSENT TO ITV
APPEARANCE

I, _____, Defendant in the above-entitled action do respectfully represent and state as follows:

1. I understand that I have the right to be personally present before the presiding Judge at all stages of these proceedings.

2. I have been requested to consent to appear by ITV for the _____ <hearing type> hearing scheduled for _____ <date>.

3. I understand that if I do not consent to appear by ITV, an in-person court appearance for that hearing will be scheduled within the time limits provided by the Minnesota Rules of Criminal Procedure or other law.

3. I hereby consent to appear by ITV for the hearing.

4. This consent may not be extended to a future hearing without my later consent.

Dated:

Signature of Defendant

RICHARD HODSDON
ATTORNEY AT LAW

BOX 825
STILLWATER, MN. 55082

TELEPHONE 651-341-8202
FAX 651-439-7663

EMAIL: rhodsdon@mnsheriffs.org

September 5, 2007

OFFICE OF
APPELLATE COURTS

SEP -7 2007

FILED

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: Minnesota Criminal Procedure Amendments Relative to ITV Protocol

Dear Mr. Grittner:

This letter is written on behalf of the Minnesota Sheriffs Association (MSA) and the Minnesota Police and Peace Officers Association (MPPOA). It is intended to provide comment on the proposed Amendments to the Rules of Criminal Procedure relative to use of interactive television (ITV) in certain criminal matters.

By way of background information you should know that the MSA has been in existence for well over 100 years. Its membership includes all 87 of Minnesota Sheriffs, several hundred criminal justice professionals and thousands of supporting and dues paying honorary members. The MPPOA is made up of thousands practicing Minnesota peace officers from throughout the state and who are strongly dedicated to protection of the public safety. Each organization has as major goals the protection of the public through professionalism of law enforcement and the promotion of sound public policy in the area of public safety. I have had the honor to serve as counsel for the MSA for over 20 years and during that time I have also worked extensively with the MPPOA. I submit this letter on behalf of the above named organizations as directed by each of their Board of Directors and legislative committees.

MSA and the MPPOA fully support any possibility for expanded use of this technology. The rules of criminal procedure amendments that are proposed are a start in that regard, but we believe emphasis should be on that it is a start. We ask for long term consideration from the court for even further expansion of the use of ITV.

It appears the proposed amendments to the rules are focused on the reality, which is not disputed by any of us, that there is often a significant shortage of judicial personnel available for criminal court appearances. However, as the

criminal case load continues to grow there is also a shortage of related supporting resources, particularly the ability of the Sheriffs of Minnesota to meet the requirements of courtroom security as well as the transportation of prisoners from one jurisdiction to another in a timely manner. Enhanced use of ITV could assist in each of these areas.

Relative to the issue of courtroom security it is universally recognized among security practitioners that a primary risk of escape, dangerous assaults and injury in dealing with prisoners is any time that they are transported outside the secure perimeters of a correctional facility. Many modern correctional facilities around the United States are built with a specific feature of having the technological capability of conducting preliminary court appearances, such things that we would normally denote as Rule 5 or Rule 8 hearings, without having the prisoner leave the secure perimeter of the facility. Particularly for initial court appearances in which the level of dangerousness of the prisoner has not yet been fully assessed due to their recent arrival to the facility, being able to use an interactive television protocol in which the prisoner remains within the secure perimeter of the jail meets all constitutional guarantees and court requirements while providing a significant enhancement of security and reduction in risk of injury to innocent civilians, including court personnel. In light of modern technology and its high level of interactivity such a procedure can be highly effective, particularly when facilities are specifically designed with this factor in mind. For example, for several years special review board hearings of individuals who have been civilly committed as mentally ill and dangerous or as sex offenders has routinely and effectively been engaged in through the Department of Human Services. The experience of the Department of Human Services and the other individuals that participate in that interactive process for those important hearings clearly and effectively establishes the fairness, practicality and utility of the use of interactive television in circumstances which a judge might still be available in the county of venue but security reasons dictate the use of this system. It is hoped in the future the court will give strong consideration to this benefit of the use of ITV.

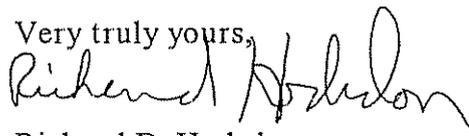
A related feature in terms of security is the significant burden that is currently placed upon many Sheriff's Offices because of the mobile nature of the criminal client that our legal system encounters. Specifically, on a daily basis a significant number of staff of Sheriff's Offices throughout Minnesota are engaged in the transport of prisoners from one correctional facility to another simply by virtue of the fact that an individual is arrested in County A by virtue of a warrant that was issued in County B. It is not at all uncommon for these jurisdictions to be many miles and many hours of travel time apart. However, provisions of the rules of criminal procedure, commonly known as the 36 hour rule, that require a court appearance for a judicial officer within 36 hours of arrest exclusive of holidays and Sundays, do not make a distinction between an arrest that occurs in the jurisdiction of the county that issued the warrant and an arrest that occurred in a county 100 or 200 miles away from that courthouse. Therefore, as the agency responsible for the transportation of prisoners in those circumstances, the Sheriff's Offices find they must undergo substantial expenditure of staff time, often on an overtime basis and sometimes for smaller agencies at the cost of literally taking a patrol officer off the

road and sending him or her on a transport assignment, in order to obtain that prisoner and comply with the requirements of the 36 hour rule.

It is this particular circumstance for which interactive television protocol would be ideally suited. Should interactive television be permitted on an expanded basis for at least Rule 5 and perhaps Rule 8 appearances, the timely transportation pressures, with their corresponding costs and security risks, could be significantly reduced. The use of ITV under such circumstances would permit the prisoner an appearance before a judge of the proper venue and jurisdiction with no prejudice to the defendant. In many of these circumstances at the Rule 5 appearance the defendant is not represented. It is at this point that counsel is appointed to represent the defendant so there is virtually no interference with that defendant's right to counsel. To the extent the defendant is represented by counsel, defense counsel could readily make arrangements for privileged consultation, perhaps by interactive television but certainly by privileged telephone call with the client, and thereby once again avoid any prejudice to the defendant. Particularly in a state such as Minnesota with long travel distances and not infrequent inclement weather making travel a hazard, expanded use of ITV in these circumstances would be not only in the best interest of the taxpayer, but also in the best interest and physical safety of the defendant and the officers who are obligated to conduct such transports.

In summary, while we fully support any and all expanded use of ITV as proposed, we believe that an even more significant and further expansion is warranted. Current technology justifies the expanded use of this system, substantial savings will result for the taxpayer and at the same time public safety will be enhanced while fully honoring the constitutional and legal rights of a criminal defendant.

Very truly yours,



Richard D. Hodsdon

RDH/bh



OFFICE OF
APPELLATE COURTS

SEP 18 2007

FILED

**STATE OF MINNESOTA
STATE PUBLIC DEFENDER**

John M. Stuart
State Public Defender

331 Second Avenue South
Suite 900
Minneapolis, MN 55401

(612) 349-2565
FAX (612) 349-2568
john.stuart@pubdef.state.mn.us

September 17, 2007

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Blvd.
St Paul, MN 55155

RE: Draft R. Crim. P. 1.05 (ITV)

Dear Mr. Grittner:

I appreciate the Court accepting an additional round of comments. I am concerned about two related items in the current Draft.

First, the Definitions should include a definition of available, as it governs subd. 3(a) 1., "if no judge is available."

Second, the Rule should state a general preference for live, in-person hearings, as all the previous proposals—going back to 1991—have done.

If these changes are not made I believe there is a substantial risk that ITV will be substituted for in-court hearings in some judicial districts on a widespread, routine basis. Court administration may plan, with the best of intentions related to perceived efficiency, not to have a judge "available" on certain days. The counties, hoping to achieve economies of scale and cost reduction in the transportation of prisoners, will continue to build regional jails. ITV technology will continue to improve and become cheaper. These pressures will all increase the desire in some counties to use ITV as a standard practice. I hope the Court does not intend to allow this to take place.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John M. Stuart".

John Stuart



(612) 349-2565

**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE**

331 Second Avenue South
Suite 900
Minneapolis, MN 55401



FAX (612) 349-2568

September 18, 2007

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Blvd.
St Paul, MN 55155

OFFICE OF
APPELLATE COURTS

SEP 20 2007

FILED

RE: Draft R. Crim. P. 1.05 (ITV)

Dear Mr. Grittner:

The purpose of this correspondence is to respond to the proposed rule changes on the use of interactive television for court proceedings.

Whereas previous ITV proposals have all stated the preference for in-person court rather than ITV court, we notice with some concern that the Supreme Court document does not. Coupled with the directive that the accused person's lawyer will be located with the client, (which is completely appropriate), the proposal's lack of control over general reliance on ITV raises logistical and budgetary concerns.

The changes proposed if implemented will result in increased travel time for attorneys, mileage costs, and the very real possibility of court delays as attorneys are forced to move back and forth (perhaps several times) between the court rooms and the jails during the business day.

If ITV is for situations like a big snowstorm, as a practical matter, we can accommodate it. However, if it is to be planned into the calendar system as a routine component, difficulties will arise. We will have trouble, considering the already-excessive public defender caseloads, covering both the ITV site and the live courtroom. The trend toward regional jails will only exacerbate this problem.

Page-2

We respectfully urge the Court to make it clear in the final Order that ITV is meant to be the exception, not the norm.

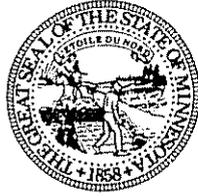
Thank you for your consideration of our concerns.

Sincerely,

A handwritten signature in cursive script that reads "Laura Budd". The signature is written in black ink and is positioned above the typed name.

Laura Budd
Chair, Board of Public Defense

ASSISTANT
PUBLIC DEFENDERS
PAUL G THOMPSON
DIANA M SWEENEY
KRISTINE W CANNON
JENNIFER L MOORE
ERICA L.H. AUSTAD



STATE of MINNESOTA
NINTH JUDICIAL DISTRICT

Public Defense

CHIEF PUBLIC DEFENDER
KRISTINE KOLAR

INVESTIGATOR
PAMELA GREGG

PARALEGAL
PENNY WILSON

DISPOSITIONAL ADVISOR
TIMOTHY MOUNTAIN

4 - West Office Building, 403 - 4th Street NW, Suite 160, P.O. Box 945, Bemidji, MN 56619-0945
Telephone (218) 755-4333 (800) 366-2623 FAX (218) 755-4335

September 20, 2007

Mr. Fred Grittner
Clerk of Appellate Courts
305 Judicial Center
25 Rev. Martin Luther King, Jr. Blvd.
Saint Paul, MN 55155

OFFICE OF
APPELLATE COURTS

SEP 20 2007

FILED

RE: Written Comment on Proposed Rules for ITV in Criminal Cases

Dear Mr. Grittner:

Please accept this letter as my comments to the Supreme Court's proposed amendments to the Rules of Criminal Procedure relating to the implementation of ITV protocol. I have three specific concerns to the changes the Court's proposed Rules make to the Original Ninth District Rules on ITV that have been in effect since 1998. First, the proposed new Rules omit the language of the old rules that state a preference for in person hearings. Any proposed rule pertaining to ITV in criminal cases should include a preference for live hearings with the judge, the attorneys, the defendant and the public all present, in person, in the same courtroom.

Second, I strongly urge the Court to make ITV an option only when there is no judge present in the venue county. ITV should only be used in rare situations when it is impossible to have a live judge in the venue county and it would prejudice a defendant to wait until a judge can be physically present. I would hate to think that ITV would be used in a situation where a judge is physically present in the venue county, but for what ever reason, she declares herself unavailable. If there is a judge physically present in the venue county, surely some accommodation could and should be made to avoid court by TV.

If the Supreme Court adopts the language of no judge "available" in the venue county, then the party proposing ITV should be held to the definition of "available" defined by both United States Supreme Court and Minnesota courts. Minnesota Rules of Evidence 804(a) (and its Federal counterpart) have been litigated and the case law interpretations have defined what it means to be unavailable. Foremost, the party asserting unavailability has the burden of proving unavailability. Ohio v. Roberts, 448 U.S. 56

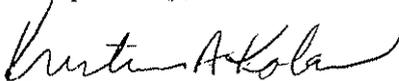
Fred Grittner
Page 2
September 20, 2007

(1980). There must be a good faith effort to get the unavailable party to the Court. Id. at 74. The proponent of the issue of unavailability must show diligent, good faith effort to secure availability. See e.g., State v. French, 400 N.W.2d 111 (Minn. App. 1987)(deciding unavailability requirement not met because the prosecutor made no good faith effort to secure witness's attendance at trial) *review denied* (Minn. Mar. 25, 1987). As such, before a defendant is required to appear before a TV judge, there should be a record made of the diligent and good faith effort made to secure a live judge to preside over the hearing. The reasons for a judge's declaration of unavailability should be placed on the record, and the efforts made by court administration to secure the presence of an alternative judge should also be recorded in the court minutes.

Finally, the proposed new Rule unwisely removes the consent of the District Chief Public Defender. I was a member of the original Ninth Judicial District Pilot Project and I participated in the drafting of the Rules that have been in effect on the use of ITV since 1998. I daresay I may be the only person who has offered written and oral testimony on this issue who can say that. I can tell the court that consent of the Chief Public Defender was very important to the original members of the ITV pilot project. There was a serious concern that judges, prosecutors and/or defenders would be seduced into using ITV to avoid the difficulties of travel in order to give our clients the live hearings they were entitled to under the law. It is so much easier for lawyers and judges to appear by ITV rather than take the time, effort and cost to drive to the venue counties. However, due process is not about convenience to the judges and to the lawyers, it is about fairness and justice to the parties. All court personnel should be required to appear with the parties in the venue county absent extraordinary circumstances. ITV should be the exception, not the rule. Prior consent by the Chief Public Defender was decided to be a crucial "check" on the potential for abuse of ITV hearings rather than live, in-person hearings.

Thank you for the opportunity to comment.

Respectfully,



Kristine A. Kolar
Chief Public Defender

THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

September 21, 2007

OFFICE OF
APPELLATE COURTS

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

SEP 21 2007

FILED

RE: Comments on Amendments to the Rules of Criminal Procedure Relating to the
Implementation of ITV Protocol

Dear Mr. Grittner,

The Minnesota County Attorneys Association applauds the language of the Court's draft of Minn. R. Crim. P. 1.05. As we noted in our testimony and written submission to the Court, the ability to utilize ITV in a variety of appropriate cases when all parties cannot be together in one place affords defendants speedier justice and promotes more efficient use of resources.

We offer only the following minor amendments to the draft, which appear on the enclosed redlined copy of the draft Rule:

1. Subdivision 3(a)(5) should be numbered 3(a)(4).
2. The final paragraph of Subdivision 3(a)(4) should contain additional text, regarding the ability in certain cases to have witnesses testify via ITV. Many practitioners have found the occasion, by agreement, for a minor witness to testify via telephone. The same ability should be preserved under ITV, though any party or the trial judge would have a veto. To avoid the unintended consequence of an outright prohibition on this sometimes-useful method of testifying, our proposed addition would read:

A witness may appear by ITV in any contested matter, if the court and the parties agree or if a party has, at least 20 days before the hearing, served written notice upon the opposing party and the opposing party has not, within at least 10 days before the hearing, served notice of objection.

3. The final paragraph of Subdivision 3(b) should contain the same added language as proposed in Subdivision 3(a)(4), for the same reasons.
4. The heading of Subdivision 4 should refer to a request for an "In-Person Hearing," not a "Rehearing." This is because it actually is not a rehearing, and the heading should not

suggest a defendant would ever actually get to re-do a hearing whose outcome he or she didn't like.

5. The text of Subdivision 4 should specify that if a defendant is to request an in-person hearing, that request must come either prior to or at the commencement of the ITV hearing. Defendants should not be required to wait to make this demand until the unwanted ITV hearing commences.

6. Subdivision 5(a), regarding a defendant being at a separate site from the defense attorney, should be expanded to allow this not only upon agreement of all but also if there is a secure channel for confidential communication between attorney and client.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "John P. Kingrey". The signature is written in a cursive style with a large, prominent "J" and "K".

John P. Kingrey
Executive Director

Supreme Court Draft Minn. R. Crim. P. 1.05
Minnesota County Attorneys Association suggested revisions, 9-21-07

Rule 1.05. Use of Interactive Video Teleconference in Criminal Proceedings

Subd. 1. Definitions.

- (a) *ITV*. “ITV” refers to interactive video teleconference.
- (b) *Terminal Site*. A “terminal site” is any location where ITV is used for any part of a court proceeding.
- (c) *Venue County*. The “venue county” is the county where pleadings are filed and hearings are held under current court procedures.
- (d) *District*. The “district” is the judicial district in which the venue county is located.

Subd. 2. Appearance; How Made. Appearances in proceedings governed by the Minnesota Rules of Criminal Procedure shall be made in person except as authorized to be made by ITV in this rule, by written petition in Rules 14.02, subd. 2 and 15.03, subd. 2, and by phone in Rule 26.03, subd. 1(3)4.

Subd. 3. Permissible Use of ITV.

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 - 2. *Rule 8 and Rule 13 Hearings*. A defendant may appear before any available judge of the district by ITV for a Rule 8 or Rule 13 hearing if no judge is available in the venue county. No plea of guilty may be taken by ITV unless the court and all parties agree and the defendant and defendant’s attorney are located at the same terminal site.
 - 3. *Rule 11 Hearings*. A defendant may appear before any available judge of the district by ITV for the purpose of waiving an omnibus hearing.
 - 4.5. *Other Hearings*. A defendant or the defendant’s counsel on behalf of the defendant may appear before any available judge of the district by ITV for any hearing for which the defendant’s personal presence is not required pursuant to Rule 26.03, subd. 1(3) if the court and parties agree to the ITV appearance.

ITV may not be used to conduct a trial, sentencing, contested omnibus hearing, or any other contested matter except as provided herein. A witness may appear by ITV in any contested matter if the court and the parties agree or if a party has, at least 20 days before the hearing, served written notice upon the opposing party and the opposing party has not, within at least 10 days before the hearing, served notice of objection.

(b) *Misdemeanor Proceedings.* A defendant may appear before any available judge of the district by ITV for any of the following:

1. Arraignment;
2. Plea;
3. Sentencing.

A defendant or the defendant's counsel on behalf of the defendant may also appear before any available judge of the district by ITV for any hearing for which the defendant's personal presence is not required pursuant to Rules 14.02, subd. 2 and 26.03, subd. 1(3) if the court and parties agree to the ITV appearance.

ITV may not be used to conduct a trial, contested pretrial hearing, or any other contested matter except as provided herein. A witness may appear by ITV in any contested matter if the court and the parties agree or if a party has, at least 20 days before the hearing, served written notice upon the opposing party and the opposing party has not, within at least 10 days before the hearing, served notice of objection.

(c) *Petty Misdemeanor and Regulatory or Administrative Criminal Offenses.* A defendant may appear before any available judge of the district by ITV for all hearings, including trials, related to petty misdemeanors and regulatory or administrative criminal offenses not punishable by imprisonment.

Subd. 4. Request for In-Person Hearing Rehearing; Consent Requirements.

(a) *Rule 5 or Rule 6 Hearing.* ~~When a defendant appears before the Court by ITV for~~ Prior to or at the commencement of a Rule 5 or Rule 6 hearing by ITV, the defendant may request to appear in person before a judge. If the request is made, the hearing will be held within three business days of the ITV hearing and shall be deemed a continuance of the ITV hearing.

(b) *Other Hearings; Consent.* In all proceedings other than a Rule 5 or Rule 6 hearing, the defendant must consent to appearing by ITV. If the defendant does not consent to appear by ITV, an in-person court appearance for that hearing shall be scheduled to be held within the time limits as otherwise provided by these rules or other law.

Subd. 5. Location of Participants.

(a) *Defendant's Attorney.* The defendant's attorney shall be present at the same terminal site from which the defendant appears except 1) in unusual or emergency circumstances, and then only if all parties agree on the record; or 2) if there is a secure channel between the defendant and his/her attorney which permits confidential communications. ~~The~~ This exception for unusual or emergency circumstances does not apply to felony or gross misdemeanor proceedings at which a guilty plea is taken.

(b) *Prosecuting Attorney.* Subject to paragraph (d), the prosecuting attorney may appear from any terminal site.

(c) *Judge.* Subject to paragraph (d), the judge may appear from any terminal site.

(d) *Defendant's Attorney or Prosecuting Attorney at Same Terminal Site as Judge.* When the right to counsel applies, ITV may not be used in a situation in which only the defense attorney or prosecuting attorney is physically present before the judge unless all parties agree on the record.

(e) *Witnesses, Victims, Other Persons.* Witnesses, victims, and other persons may be located at any terminal site.

Subd. 6. Multi-county Violations. When a defendant has pending charges in more than one county within a district, any or all ITV appearances authorized by this rule may be heard by ITV by any judge of that district. Cases from other districts may be heard upon authorization by the Chief Justice of the Supreme Court.

Subd. 7. Proceedings; Record; Decorum.

(a) *Where Conducted.* All ITV hearings will be conducted in a courtroom or other room at the courthouse reasonably accessible to the public.

(b) *Effect of ITV Hearing.* Regardless of the physical location of any party to the ITV hearing, any waiver, stipulation, motion, objection, order, or any other action taken by the court or a party at an ITV hearing shall have the same effect as if done in person.

(c) *Defendant Right to Counsel.* The court shall ensure that the defendant has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio transmission and recording or allowing counsel to leave the conference table to communicate with the defendant in private.

(d) *Record.* The court administrator of the venue county shall keep court minutes and maintain court records as if the proceeding were heard in person. If the hearing requires a written record, a court reporter shall be in simultaneous voice communication with all ITV terminal sites, and shall make the appropriate verbatim record of the proceeding as if heard in

person. No recording shall be made of any ITV proceeding except the recording made as the official court record.

(e) *Decorum.* Courtroom decorum during ITV hearings must conform to the extent possible to that required during traditional court proceedings. This may include the presence of one or more bailiffs at any ITV site.

Subd. 8. Administrative Procedures. Administrative procedures for conducting ITV hearings are governed by the General Rules of Practice.