

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

**ORDER PROMULGATING AMENDMENTS
TO THE RULES OF CRIMINAL PROCEDURE
RELATING TO USE OF ITV IN CRIMINAL MATTERS**

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 a revised protocol for statewide use. Upon receipt of the Judicial Council's 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 be enacted as a rule of procedure rather than a free-standing protocol, and setting forth procedures that differed from the procedures contained in the Judicial Council's recommended protocol.

On May 15, 2007, the Court held a hearing to consider the proposals from both the Judicial Council and the Advisory Committee on Rules of Criminal Procedure. After considering the Judicial Council protocol, the report of the Advisory Committee on Rules

of Criminal Procedure, and the original Ninth District pilot protocol, the Court 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. The Court published the rule in draft form on August 7, 2007, and requested comment.

Having reviewed the submitted comments and being fully advised in the premises,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Minnesota Rules of Criminal Procedure are prescribed and promulgated for the regulation and procedure of criminal matters in the courts of the State of Minnesota.
2. The attached amendments shall govern all criminal actions commenced or arrests made after 12 o'clock midnight January 1, 2008.
3. The Advisory Committee on General Rules of Practice for the District Courts shall develop rules governing the administrative procedures for conducting ITV hearings in criminal matters. In the interim, the State Court Administrator shall develop temporary administrative procedures, which shall be issued by January 1, 2008.

DATED: November _____, 2007

BY THE COURT:

Russell A. Anderson
Chief Justice

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined. New text that should be underlined in the final publication is indicated by a double underline.

1. **Insert New Rule 1.05 as follows:**

Rule 1.05. Use of Interactive Video Teleconference in Criminal Proceedings

Subd. 1. Definitions.

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

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

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

(4) *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.

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

(a) *Rule 5 or 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.

(b) *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.

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

(d) 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 all 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.

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

(a) Arraignment;

(b) Plea;

(c) 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.

(3) 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; Consent Requirements.

(1) Rule 5 or Rule 6 Hearings. 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.

(2) *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.

(1) *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.

(2) *Prosecuting Attorney.* Subject to paragraph (4), the prosecuting attorney may appear from any terminal site.

(3) *Judge.* Subject to paragraph (4), the judge may appear from any terminal site.

(4) *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.

(5) *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 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.

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

(2) 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.

(3) 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.

(4) 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.

(5) 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.

2. 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.

3. 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.

CONSENT TO ITV
APPEARANCE

_____,
Defendant.

District Court File No. _____

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