

STATE OF MINNESOTA

IN SUPREME COURT

C6-90-649

Interactive Audio-Video Communications
in the Fourth Judicial
District - Mental Health Division
Price and Jarvis Proceedings

ORDER

WHEREAS, the Supreme Court in an Order dated March 22, 1990, authorized on an experimental basis, the use of interactive audio-video communications in the Mental Health Division of the Fourth Judicial District for receiving the testimony of petitioner's physicians from the Anoka-Metro Regional Treatment Center (AMRTC) in proceedings pursuant to *Jarvis v. Levine*, 418 N.W.2d 139 (Min. 1988); and *Price v. Sheppard*, 307 Minn. 250, 239 N.W.2d 905 (Minn. 1976); and,

WHEREAS, the Evaluation Committee for the experimental project, in its final report to the Court filed on December 31, 1990, recommended the continuation of the interactive audio-video communication technology for *Jarvis* and *Price* hearings for Hennepin County patients at the AMRTC and the authorization of two-way television for similar hearings for Hennepin County patients residing at the regional treatment centers in Brainerd, Fergus Falls, Moose Lake, St. Peter and Willmar,

NOW, THEREFORE, IT IS ORDERED:

1. The Mental Health Division of the Fourth Judicial District is authorized to conduct *Jarvis* and *Price* hearings using interactive audio-video communications to receive the testimony of physicians who will be physically located at a regional treatment center.
2. The use of interactive audio-video communications in this program is excepted from the provisions of Canon 3A(7) of the Minnesota Code of Judicial Conduct.

IT IS FURTHER ORDERED that the following guidelines will apply:

1. Transmission: The hearings will use interactive audio-video communication between a courtroom in the Hennepin County Government Center and one secured witness room at a regional treatment center. The transmission will be either point to point microwave or digital compressed video via land line. The transmission path will be secured against electronic eaves-dropping.

2. Equipment in the Courtroom: The courtroom and witness rooms shall be equipped with high-quality audio and video equipment that will: (a) allow the physician at the regional treatment center to clearly see, hear and communicate with the courtroom participants; (b) allow the judge or referee, the court reporter, the respondent's attorney, the petitioner's attorney, and a person in the witness stand to clearly see, hear and communicate with the physician; and, (c) allow spectators to observe the testimony of the physician.

A separate telephone will be provided in the courtroom to assure a back-up communication path between the courtroom and the witness room at the regional treatment center. A separate telephone will also be provided in the witness room at the regional treatment center for the same purpose.

One facsimile machine will be provided in the courtroom and one at the regional treatment center witness room for document transmittal during the hearing.

There will be no audio or video recording equipment attached to any part of this communication system.

3. Record: The court proceedings will be recorded by the court reporter in the customary manner.

4. Medical Records: The original medical records shall be brought to the hearing and copies shall be provided to the physicians.

5. Operation of the Equipment: All equipment will be tested to assure proper functioning prior to each court hearing by suitably trained Department of Human Services personnel or Fourth Judicial District Mental Health Division Staff. The test will also consist of establishing audio-visual communication between the courtroom and the regional treatment center witness room prior to the scheduled time of a hearing. The tests should be done at least fifteen minutes prior to the hearing time.

6. Court Hearing:

(a) The court or the court administrator shall, upon the scheduling of a hearing, provide each attorney and guardian ad litem who may appear in the court a copy of this order, so as to protect the right of respondent to object under paragraph (f) below.

(b) At the commencement of proceedings, the judge or referee will ensure that contact is made with the physician at the regional treatment center and that the physician is promptly and properly administered an oath. There shall be no person other than the physician in the witness room during the physician's testimony.

(c) The audio-video communication link with the regional treatment center witness room will be maintained from the swearing in of the treatment center physician until the conclusion of the hearing, or termination of the communication link by the judge or referee.

(d) The equipment will allow the physician at the regional treatment center to hear objections made to testimony. However, in the event the physician at the regional treatment center speaks or continues to speak after an objection is made, the judge or referee will be able to interrupt the testimony of that physician without terminating the communication link.

(e) To protect the attorney-client privilege and the effective right to counsel there will be no audio transmission of the conferences which occur in court between attorneys and their clients, between opposing counsel, or between counsel and the trial judge at the bench.

(f) A respondent may object to the use of audio-video communication for receiving the testimony of the petitioner's physician. The objection must be made at least five days, excluding weekends or holidays, prior to the scheduled hearing. Argument on respondent's motion may be held by telephone conference call. The court may grant respondent's motion upon showing that the use of audio-video communication for receiving the testimony of the petitioner's physician will hinder ascertainment of the truth or result in unfair prejudice to respondent. The court must notify all parties of its ruling 72 hours prior to the time of the scheduled hearing.

(g) This order does not prohibit conducting *Jarvis* and *Price* hearings in the traditional manner when all parties stipulate that it is in the best interests of justice to do so.

7. Training: DHS will train judges, referees, physicians, court personnel, respondents' attorneys, guardians ad litem, and petitioner's attorneys in the proper use of the audio-video equipment.

8. Security: The audio-video communication system will be designed so that the establishment of communications with the regional treatment center witness room can only be initiated from the Hennepin County Government Center courtroom.

9. Evaluation: The Evaluation Committee, appointed by Order of this Court, dated May 10, 1990, shall continue to monitor the use of interactive audio-visual communications described in this order. The Evaluation Committee shall address the quality of

transmission, ease of use of the equipment, reliability of the equipment and transmission path, any disruptions to the proceedings, the ability to assess physician demeanor, and whether there is prejudice to any party.

The Evaluation Committee shall file with the Supreme Court a report evaluating the expanded use of this audio-video technology on or before July 1, 1993.

DATED: April 8, 1991

BY THE COURT



A.M. Keith
Chief Justice

OFFICE OF
APPELLATE COURTS

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FILED