

STATE OF MINNESOTA

IN SUPREME COURT

ADM-09-8005

OFFICE OF  
APPELLATE COURTS

JUN 9 2010

FILED

**PROMULGATION OF AMENDMENTS  
TO THE RULES OF CRIMINAL PROCEDURE**

On June 10, 2009, our Court established an Interactive Video Teleconference (ITV) Task Force to review and recommend proposed changes to the Rules of Criminal Procedure concerning the use of ITV in criminal cases, and related issues. The ITV Task Force filed a report with the Court on January 15, 2010, which report addressed the current uses and challenges of ITV in the criminal justice system, and set forth recommendations for its expansion. The Court published the report and set a March 24, 2010 deadline for public comment. The Court then held a public hearing on the matter on March 30, 2010.

Now, therefore, the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

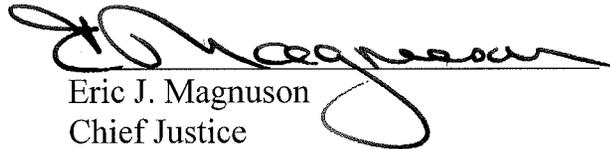
1. The attached amendments to the Minnesota Rules of Criminal Procedure are prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota to be effective July 1, 2010.
2. The Court refers to the Advisory Committee on Rules of Criminal Procedure the question of whether our rules should be amended to include a procedure

and form to permit the submission of a written plea petition in gross misdemeanor cases.

3. The Court refers to the Juvenile Delinquency Rules Committee the question of whether the use of ITV should be permitted in juvenile delinquency cases.
4. The Court requests that the Judicial Council consider tracking and reviewing the use of ITV in criminal cases.

Dated: June 9, 2010

BY THE COURT:



Eric J. Magnuson  
Chief Justice

## AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

*In the following amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.*

### **1. Amend 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 must 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.** ITV may be used to conduct the proceedings specified in subdivisions 4 and 5:

- (1) When no judge is available in the venue county;
- (2) When the defendant is in custody and is being held in a location other than the venue county; or
- (3) In the interests of justice.

##### **Subd. 4. Felony, Gross Misdemeanor, or Misdemeanor Proceedings.**

(1) ~~Felony and Gross Misdemeanor Proceedings.~~ Subject to the requirements in subdivisions 6 and 7, ITV may be used ~~in felony and gross misdemeanor proceedings~~ to conduct the following ~~criminal hearings~~ felony, gross misdemeanor, or misdemeanor proceedings:

- (a) Rule 5 or Rule 6 ~~hearings~~ Hearings. ~~A defendant in custody may appear by~~

~~ITV before any available judge of the district for a Rule 5 or Rule 6 hearing if no judge is available in the venue county.;~~

~~(b) Rule 8 hearingsHearings.— A defendant may appear by ITV before any available judge of the district for a Rule 8 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 hearingsHearings.— A defendant may appear by ITV before any available judge of the district for the purpose of waiving an omnibus hearing.;~~

~~(d) Plea;~~

~~(e) Sentencing;~~

~~(f) Probation revocation hearings;~~

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

~~(2) ITV cannot be used to conduct a trial, sentencing, contested omnibus hearing, contested pretrial hearing, or any other contested evidentiary matter except as provided in this rule.~~

~~(2) Misdemeanor Proceedings.— A defendant may appear by ITV in misdemeanor proceedings before any available judge of the district 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 by ITV before any available judge of the district for any hearing for which the defendant's personal presence is not required under Rules 14.02, subd. 2 and 26.03, subd. 1(3) if the court and all parties agree to the ITV appearance.~~

~~—ITV cannot be used to conduct a trial, contested pretrial hearing, or any other contested matter except as provided in this rule.~~

~~(3)**Subd. 5. Petty Misdemeanor and Regulatory or Administrative Criminal Offenses.** A defendant may appear by ITV before any available judge of the district for all hearings, including trials, related to petty misdemeanors and regulatory or administrative criminal offenses not punishable by imprisonment.~~

#### **Subd. 46. 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 3 business days of the ITV hearing and is deemed a continuance of the ITV hearing.

(2) Other Hearings; Consent. In all proceedings other than a Rule 5 or Rule 6 hearing, prior to the commencement of the hearing, the defendant, defense attorney, prosecutor, and judge must consent to appearing holding the hearing by ITV. ~~If the defendant does not consent to appear by ITV~~ Otherwise, an in-person court appearance for that hearing must be scheduled to be held within the time limits as otherwise provided by these rules or other law.

**Subd. 57. Location of Participants.**

(1) Defendant's Attorney. The defendant and the defendant's attorney must be present at the same terminal site except in unusual or emergency circumstances specifically related to the defendant's case, and then only if all parties agree on the record. This exception for unusual or emergency circumstances does not apply to:

(a) felony or gross misdemeanor plea proceedings at which when the defendant is entering a guilty plea is taken; or

(b) felony or gross misdemeanor sentencing proceedings.

(2) Prosecutor. Subject to paragraph (4), the prosecutor 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 Prosecutor at Same Terminal Site as Judge. When the right to counsel applies, ITV cannot be used in a situation in which only the defense attorney or prosecutor 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. 68. Multi-county Violations Consolidated Proceeding for Charges Pending in Multiple Counties.**

(1) Consolidated Proceeding. 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 if authorized by the Chief Justice of the Supreme Court.~~ the charges may be heard in a consolidated proceeding conducted by ITV.

(2) Judge. The proceedings shall be heard by a judge in the county in which the most serious offense is pending, unless the parties agree otherwise.

(3) Prosecutor. Each prosecutor having authority to charge the offenses included in the proceeding may attend the hearing in person or by ITV or waive appearance. Any prosecutor authorized to appear on behalf of another prosecutor in the ITV proceeding must make an oral record of the authorization.

(4) Defense Attorney. If the defendant is represented by multiple defense attorneys, each attorney may choose to attend the hearing in person or by ITV or assign responsibility as the attorney of record to one attorney. Any defense attorney appearing in the ITV proceeding must make an oral record of representation.

Subd. 9. Witness Testimony. Witnesses may testify by ITV if the court and all parties agree.

**Subd. 710. Proceedings; Record; Decorum.**

(1) Where Conducted. All ITV hearings must be conducted in a courtroom or other room at the courthouse reasonably accessible to the public. When an ITV proceeding is conducted, the terminal site(s) for the defendant, defense attorney, prosecutor, and judge must be located in a courtroom. The terminal site(s) for witnesses, victims, or other persons may be located in a courtroom or another suitable room reasonably accessible to the public as approved by the judge conducting the proceeding.

(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 has the same effect as if done in person.

(3) Defendant Right to Counsel. The court must ensure that the defendant has adequate opportunity to ~~spea~~privately confidentially communicate 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 must ~~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 must be in simultaneous voice communication with all ITV terminal sites, and must make the appropriate verbatim record of the proceeding as if heard in person. No recording of the ITV proceeding other than the recording made as the official court record is permitted.

(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 bailiffssheriff's personnel at any ITV site.

**Subd. 811. Administrative Procedures.** Administrative procedures for conducting ITV hearings are governed by the General Rules of Practice.

**2. Amend the comments to Rule 1 by inserting the following paragraph after the existing fourth paragraph of the comments:**

Rule 1.05, subd. 8(3) and (4) clarify that when charges from multiple counties are consolidated into a single ITV proceeding, each prosecutor having authority to charge the offenses and each defense attorney representing the defendant for any of those offenses may choose to attend the hearing in person or by ITV or to waive appearance. But the provision in paragraph (4) permitting one defense attorney to represent the defendant on all pending charges is not intended to be invoked by the court when a defense attorney is simply delayed by a proceeding occurring in another courtroom. Rather, the decision to attend the hearing is individual to the attorney.

**3. Amend Rule 15.10 as follows:**

### **Rule 15.10 Guilty Plea to Offenses From Other Jurisdictions**

~~Subd. 1. Request to Enter Plea. Following a guilty plea or a verdict or finding of guilty, the defendant may request permission to plead guilty to any other offense committed by the defendant within the jurisdiction of other courts in the state. The offense must be charged, and the plea must be approved, by the prosecutor having authority to charge the offenses. The prosecutor having authority to charge the offenses may participate in the plea and sentencing hearings by ITV under Rule 1.05.~~

~~Subd. 2. Fine Disbursement. Any fines imposed and collected upon a guilty plea entered under this rule to an offense arising in another jurisdiction must be remitted by the court administrator imposing the fine to the court administrator that originally had jurisdiction over the offense. The court administrator of original jurisdiction must disburse the fine as required by law for similar fines.~~