

STATE OF MINNESOTA

IN SUPREME COURT

ADM-09-8005

OFFICE OF
APPELLATE COURTS

JAN 21 2010

FILED

**ORDER FOR HEARING ON
ITV TASK FORCE REPORT**

On June 10, 2009, the Court established an ITV Task Force to review and recommend proposed changes to the Rules of Criminal Procedure concerning use of ITV in criminal cases and related issues. The ITV Task Force filed a report on January 15, 2010. The report contains proposed amendments to the Rules of Criminal Procedure as well as several other recommendations.

IT IS HEREBY ORDERED that a hearing be held before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on March 30, 2010, at 2:00 p.m., to consider the report of the ITV Task Force.

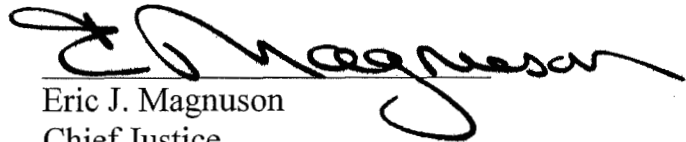
IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 14 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before March 24, 2010; and
2. All persons desiring to make an oral presentation at the hearing shall file 14 copies of the material to be so presented with the aforesaid Clerk together with

12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before March 24, 2010.

Dated: January 21, 2010

BY THE COURT:



Eric J. Magnuson
Chief Justice

ITV TASK FORCE

**REPORT AND PROPOSED AMENDMENTS TO THE
MINNESOTA RULES OF CRIMINAL PROCEDURE**

ADM-09-8005

January 15, 2009

Hon. Charles Porter, Chair
Fourth Judicial District Court Judge

Hon. Louise Bjorkman, Court of Appeals
Hon. Robert Carolan, First Judicial District Court Judge
Tim Fox, Wilkin County Attorney
James Franklin, Executive Director, Minnesota Sheriff's Association
Charles Glasrud, Stevens County Attorney
Krista Jass, Fifth Judicial District Chief Public Defender
Janelle Kendall, Stearns County Attorney
Kristine Kolar, Ninth Judicial District Chief Public Defender
Jim Kordiak, Anoka County Commissioner
Brent Lindgren, Mille Lacs County Sheriff
Hon. Paul Nelson, Eighth Judicial District Court Judge
Thomas Plunkett, Minnesota Association of Criminal Defense Lawyers
Lt. Pete Sichko, Hennepin County Sheriff's Office
Hon. John Smith, Ninth Judicial District Court Judge
Joe Vene, Beltrami County Commissioner

Hon. Paul H. Anderson
Supreme Court Liaison

Kelly Lyn Mitchell
Staff Attorney

INTRODUCTION

Facing an uncertain legislative session and appreciating the vital need for all elements of Minnesota's criminal justice system to work together, the Chief Justice of the Minnesota Supreme Court convened the Criminal Justice Forum in 2008. This group was composed of agency policy makers and their principal policy deputies including the Commissioners of Corrections and Public Safety, representatives from the Governor's Office, representatives from local and county law enforcement, the State Public Defender and his chief administrator, representatives from the Minnesota County Attorney's Association, trial and appellate court judges, and other interested stakeholders. The Criminal Justice Forum met through the fall and winter of 2008-09. Its purpose was to form a collaborative effort as criminal justice partners in order to consider and develop new ways to make the criminal justice system work better by working together. This effort resulted in many of the partners receiving relatively generous funding from the Legislature in light of the extreme budget shortfall.

As a continuation of the Criminal Justice Forum's work and to further its goals, the Forum's members requested that the Court establish an Interactive Video Teleconference (ITV) Task Force to consider expanding the use of ITV in criminal cases. While a number of possible benefits supported the creation of this group, the most persuasive reason posited by the Criminal Justice Forum for the expansion of the use of ITV was to decrease the costs of preliminary hearings and related matters by reducing transportation costs and shortening local confinement periods.

The Supreme Court established the ITV Task Force on June 10, 2009. Its charge was "to review and recommend proposed changes to the Rules of Criminal Procedure concerning use of ITV in criminal cases and related issues." *See* Order Establishing ITV Task Force, No. ADM-09-8005 (June 10, 2009). The ITV Task Force includes members from all segments of the criminal justice system, including judges, prosecutors, defense attorneys, law enforcement, and county commissioners. In contrast to the Criminal Justice Forum, the members of the ITV Task Force come from the "boots on the ground" level of their respective organizations.

This report begins with a brief discussion of the current uses and challenges of ITV in the criminal justice system. It then sets forth proposed amendments to the Minnesota Rules of Criminal Procedure that are designed to allow and encourage an expanded use of ITV in criminal cases, as well as the issues and concerns that led to these recommendations. Finally, in accordance with its mandate, the ITV Task Force forwards to the Supreme Court other recommendations that, if acted upon, could operate with the use of ITV to be a "force multiplier;" that is, to achieve greater respect for the judicial process and a new model of doing business in an era of increasing case volume and case complexity coupled with shrinking time and resources.

OVERVIEW OF CURRENT ITV USE AND JUSTIFICATIONS FOR EXPANSION

A survey of the ITV Task Force members revealed that in criminal matters, ITV is primarily used in Greater Minnesota, with the highest usage being reported in the Fifth, Eighth,

and Ninth Judicial Districts. *See* Attachment A, MN Chambered Judge Configuration (showing that although these districts cover a large geographic area, many of the counties in these districts have one or no chambered judge). These districts report that they generally use ITV for the hearings permitted by the Rules of Criminal Procedure (e.g., initial appearances, arraignments, omnibus waivers). But in some instances, ITV has been used for sentencing hearings and witness testimony by agreement of the parties. The Task Force also noted the expanding use of ITV for civil commitment hearings, orders for protection, and other civil matters.

The ITV Task Force fully aired in its deliberations a number of benefits and concerns about the use of ITV in criminal cases. Throughout this process, the most frequently endorsed reasons to support the expansion of ITV in criminal cases were geography (including judge availability, transportation issues, and timing and delay), security, costs, and efficiency.

1. Geography.

ITV Task Force Members from the Fifth, Eighth, and Ninth Judicial Districts indicated that ITV is their primary tool for allocating the shrinking resources of all criminal justice partners to the increased caseloads that are widely disbursed over large geographic areas. In the Fifth Judicial District, for example, ITV is generally used for initial appearances when all parties except the judge are available in a particular location. At the Court of Appeals level, ITV has allowed parties who would have been unable to travel to the Twin Cities to make their argument before the Court of Appeals. And in a unique partnership in the Ninth Judicial District, ITV is being utilized to expand the reach of the Cass County Wellness Court to include participants from the Leech Lake Tribe.

In addition to the uses already in place due to geographic or transportation concerns, ITV Task Force members agreed ITV should also be used to address initial appearances on warrants, arrest and detention orders, and other initial appearances where conditions of release have been preliminarily set but not met. Frequently, defendants are arrested in a county or district other than the one from which the arrest warrant was issued. Currently, the Sheriff of the issuing county must transport the individual from the county of detention to the county where the warrant was issued for initial appearance on the warrant. This cumbersome and costly process is fraught with problems for all justice partners. First, there is a possibility the county making the arrest will have to release the individual because the Sheriff of the issuing county is unable to transport the individual for a timely initial appearance as required by the Rules of Criminal Procedure due to lack of available personnel or transportation funding. Second, if the individual is transported from the county of detention (which is often the defendant's place of residence) to the county where the warrant was issued and then is ultimately released on bail or other conditions the defendant is then stranded with no practical or economically feasible way to get home. Third, a repeating cycle may develop. If the initial failure to appear was due to lack of transportation, the failure to appear and issuance of the warrant could have been prevented if ITV had been available for the defendant to attend the hearing. Instead, the defendant is unable to appear due to lack of transportation, is arrested on a warrant, and stranded without transportation upon release. Each subsequent appearance presents the same transportation issue, thus resulting in the cycle.

2. Security.

In addition to the concerns noted above about the costs associated with transporting defendants, law enforcement members on the ITV Task Force commented that every time a defendant is transported between a secure facility and a court, that individual presents a security risk. Moreover, members highlighted a potential growing disrespect for the criminal justice system, which is often manifested in behaviors that mandate more extensive and stricter security in the courtroom and during transport. These security issues result in the need for additional law enforcement personnel at a time when law enforcement personnel budgets are shrinking. ITV is one tool that can be used to address these security concerns. In Dakota County, for example, one law enforcement agency has requested that the court hear all in-custody arraignments by ITV utilizing a terminal site located in a courtroom that is collocated with the local confinement facility.

3. Costs

An ever-present underlying theme of ITV Task Force discussions was the need for all criminal justice partners to control costs. All members were acutely aware that the state is in a serious financial crisis made more dire and urgent by the November 2009 Budget Forecast, which predicts a significant budget shortfall for the remainder of the current biennium as well as the next biennium. This circumstance presents an opportunity, not to be missed, to reexamine practices in light of the available resources. And as one ITV Task Force member noted, the public is skeptical of government, so it is important to justify government's use of resources. It was also recognized that in Minnesota payment for costs in the criminal justice system is bifurcated between the state and counties. To solve future problems, there will have to be some determination as to who is going to take financial responsibility. ITV is one tool that can be used to both appropriately limit and share costs because a change to one partner's process due to the use of ITV typically translates into reduced time and money expenditures for the other partners.

4. Efficiency

An additional underlying theme of ITV Task Force discussions was ITV's ability to appropriately enhance efficiency. For example, one member commented that if a person is arrested in the evening in Wilkin County, that individual is always brought before a judge the next morning. If there is no judge readily available in the detention county, the appearance is frequently made before a judge sitting in another county using ITV. That is the type of efficiency that ITV engenders. As another example, the Judicial Branch has established the Access and Service Delivery Committee to oversee a sea change from a locally and largely autonomously operated system of county courts with 90 points of delivery, to one unified system that is less expensive to operate, faster, and more effective, but also much more specialized and centralized. If these changes result in drastically shorter court hours in some locations and/or in fewer court locations, technology such as ITV may be the only way to continue to deliver necessary court services to individuals located in some areas of the state.

5. A Balancing Act

Throughout these discussions, the ITV Task Force reiterated the need to balance the interests of the criminal justice system in cutting costs and utilizing resources more efficiently with the due process rights of defendants as well as the rights and needs of victims and witnesses. One member commented that the ITV Task Force should strive to determine how ITV could be utilized to protect due process while at the same time realizing financial savings. Another member declared that it is imperative to balance individual needs with the crushing need to be efficient. For example, the time spent by defense attorneys in sitting down in person with their clients, talking with them in private and face to face, and being physically present with them throughout the criminal process cannot be adequately or appropriately replaced with a “talking head” “beamed in” from some remote location. It is crucial that the impact of budget pressures not infringe on the nature of this relationship.

One member stated that as the system gets larger and less personal, an increased disrespect for authority could be an unwanted byproduct. ITV does not necessarily contribute to this trend. But on the other hand, it was also noted that while the larger geographic districts could not function without ITV, other districts do work without it.

ITV use has not been deliberately tracked since the original Ninth Judicial District pilot project in the 1990’s, so current actual usage rates are unknown. The ITV Task Force is justifiably concerned that ITV appearances could most frequently involve indigent defendants who typically qualify for public defender services. While all members recognized that the budget pressures on the criminal justice system demand increased efficiencies, it must also be recognized that procedures that give rise to the perception of different treatment for indigent persons or persons who do not speak English have the same insidious effect as a substantive inequitable delivery of justice.

Further, the criminal justice system should be mindful of the message inherent in the wholesale adoption of ITV. While the regular substitution of ITV appearances for in-person appearances may be more efficient in certain situations, using ITV as a permanent means to fill budgetary, process, or personnel gaps in the criminal justice system renders ITV as nothing more than a convenient excuse to perpetually underfund the criminal justice system.

PROPOSED AMENDMENTS

Taking all of the above considerations into account, the ITV Task Force did agree that the current Minnesota Rule of Criminal Procedure 1.05 could be expanded to permit the use of ITV in criminal cases under additional circumstances. Following is an explanation of the proposed amendments.

1. Triggers for ITV Use

Currently, the only circumstance that can trigger the use of ITV is that no judge of the applicable District is available in the venue county. *See e.g.*, current Minn. R. Crim. P. 1.05, subd. 3(a). This restriction has the effect of significantly limiting the use of ITV to only those

rare situations in which the Judicial Branch truly has an inadequate number of judges to cover all judge needs within a county, and more importantly, where there is a judge with the courage to make a finding – in order to meet the requirements of the rule – that the court system cannot continue to do everything asked of it. This restriction also fails to recognize that there may be other justice partners with resource issues that could be alleviated by the use of ITV. For example, reductions to the public defender budget have resulted in public defender layoffs so there are fewer defense attorneys, and the remaining attorneys are covering more cases. With increasing regularity, public defenders are choosing to not attend certain hearings (such as Rule 5 hearings) or to not represent certain clients (such as parents in children in need of protection or services cases) because public defenders lack the personnel and preparation time to adequately represent their clients in these situations. Another resource that has been greatly affected by budget restrictions is law enforcement, especially when there is a need to transport the defendant for an appearance.

Proposed new subdivision 3 is designed to increase the opportunities to ameliorate these other limitations. It lists three possible triggers for the use of ITV: (1) judge unavailability; (2) the defendant is being held in custody in a county other than the venue county; and (3) the interests of justice. *See* proposed Minn. R. Crim. P. 1.05, subd. 3. The increased flexibility contained within this subdivision, if amended, should permit ITV to be used to address the resource issues that, if not otherwise addressed, could negatively impact due process.

2. Hearing Types

The current ITV rule makes a distinction between felony and gross misdemeanor cases and misdemeanor and petty misdemeanor cases. In the former category, ITV may currently be used in only very limited circumstances, primarily for initial appearances. *See* current Minn. R. Crim. P. 1.05, subd. 3(1). In the latter category, ITV may be used for nearly all stages of the proceeding. *See* current Minn. R. Crim. P. 1.05, subd. 3(2) and (3). The breaking point for this distinction – between misdemeanors and gross misdemeanors – made sense when gross misdemeanors were more like felonies (that is, when they proscribed less impactful felony behaviors based on distinctions such as dollar amount, level of injury, or lack of other conditions of significance). However the distinction makes less sense now because the current reality is that gross misdemeanors are aggravated misdemeanor type behavior, most frequently because of repetitive behavior. Thus, at a minimum, ITV use in gross misdemeanor cases should be more like ITV use in misdemeanor cases.

As the ITV Task Force considered the expansion of ITV use in felony and gross misdemeanor cases to more hearing types, the members considered adding certain limitations such as requiring consent of all of the parties and ensuring the collocation of the defendant and defense attorney during certain hearing types such as plea and sentencing. Eventually, the members determined these limiters should be universally applied, and agreed that if they were ITV could be expanded to many uncontested matters.

Therefore, the ITV Task Force recommends that ITV use in many of the hearing types that are already permitted for misdemeanors be expanded to integrate all criminal case types as in proposed Minn. R. Crim. P. 1.05, subd. 4. The proposed expansion would permit ITV to be

used in the following hearing types: Rule 5 and 6 hearings (initial appearance), Rule 8 hearings (arraignment), Rule 11 hearings for the purpose of waiving an Omnibus Hearing, plea, sentencing, and probation revocation proceedings. However, use of ITV in these hearings is specifically contingent on compliance with the provisions of proposed subdivisions 6 and 7 of this rule, which relate to consent requirements and the location of the participants. In addition, the ITV Task Force recommends that the most expansive possible use of ITV continue to be permitted for petty misdemeanor proceedings.

3. Consent

Under current Minn. R. Crim. P. 1.05, subd. 4, an ITV hearing may be held for Rule 5 and 6 hearings without the defendant's consent, but for all other appearances, the defendant must consent to the ITV appearance. As explained above, ITV Task Force members agreed that the hearing types for which ITV is permitted should only be expanded upon by agreement of the parties. Therefore, the proposed amendment to this subdivision (now subdivision 6 taking into account the other proposed revisions) requires that for all appearances other than Rule 5 and 6 hearings, the defendant, defense attorney, prosecutor, and judge must consent to holding the hearing by ITV. It is contemplated that these consents can be made in writing or on the record. Form 51, Consent to ITV Appearance already exists in the rules, and can still be used, if desired, to document the defendant's consent in writing.

4. Location of Participants

Under current Minn. R. Crim. P. 1.05, subd. 5, the defendant and defense attorney *must* be located at the same terminal site if the defendant is entering a guilty plea by ITV. Given the expanded hearing types under the proposed amendments, the ITV Task Force thought it was equally important that the defendant and defense attorney be located at the same terminal site for sentencing. *See* proposed Minn. R. Crim. P. 1.05, subd. 7(1)(b).

5. Consolidated Proceedings

Current Minn. R. Crim. P. 1.05, subd. 6 allows all pending charges within a Judicial District to be heard in a single proceeding conducted by ITV. The current scheme, however, requires specific approval from the Chief Justice to hear cases from another district. The ITV Task Force believes that for the ITV rule to be fully effective, it must allow for the possibility that proceedings from any location within the state may be consolidated via ITV. However, it was recognized that even if such a proceeding were to be held, it must preserve the rights and interest of the various parties. Proposed Minn. R. Crim. P. 1.05, subd. 8 does this by permitting charges from any county in the state to be consolidated in one proceeding conducted by ITV. The proceeding will be heard by just one judge; the preference being for the judge in the county of the most serious offense, unless the parties agree to allow a different judge hear the combined cases. All prosecutors may participate in the proceeding personally or by ITV, delegate their authority to another prosecutor appearing in the proceeding, or waive their appearance. And all defense attorneys may participate in the proceeding, personally or by ITV, or assign representation to a single attorney. In addition, the ITV Task Force proposes that Minn. R.

Crim. P. 15.10, which already provides for consolidation of guilty pleas, be amended to permit prosecutorial participation by ITV if desired.¹

6. Witness Testimony

Early in its discussions, the ITV Task Force was requested to consider permitting the use of ITV for witness testimony. The greatest energy for a rule change of this sort came from the Bureau of Criminal Apprehension (BCA), whose scientists are frequently called upon to testify regarding blood alcohol content test results. This challenge to the BCA's resources was exacerbated during the tenure of the ITV Task Force by litigation regarding the Intoxilyzer source code and the urine pooling theory (*see e.g., Hayes v. Comm'r of Pub. Safety*, 773 N.W.2d 134 (Minn. Ct. App. 2009)), and by decisions from the U.S. Supreme Court and Minnesota Supreme Court holding that lab reports are testimonial, therefore implicating the defendant's confrontation rights and requiring that the scientist who completed the lab tests be available for cross-examination. *See State v. Caulfield*, 722 N.W.2d 304 (Minn. 2006); *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009).

Members of the ITV Task Force were justifiably concerned that opening the door too widely to allow testimony by ITV would compromise the right and quality of confrontation. Nevertheless, the Task Forces recognized that in some cases, use of ITV may be the only way to secure certain testimony. The ITV Task Force debated between several options. Defense attorneys argued that ITV should never be permitted for witness testimony. Prosecutors advocated for a provision to allow witness testimony by ITV in the judge's discretion. After an extensive discussion of these clearly opposing views, in the interests of the system as a whole, the two sides compromised with the provision in proposed Minn. R. Crim. P. 1.05, subd. 9, which permits witnesses to testify by ITV if the court and all parties agree. It should be noted, however, that proposed Minn. R. Crim. P. 1.05, subd. 4(2) still prohibits the use of ITV for trial, contested pretrial hearings, contested Omnibus Hearings, or any other evidentiary matter. Therefore, it is anticipated that the provision relating to witness testimony only applies when all other parties are appearing in person in the courtroom. Thus, there should never be a situation where both the defendant and a witness are appearing simultaneously by ITV.

7. Decorum

ITV Task Force members were adamant that so as not to diminish the formality, decorum, and solemnity of proceedings, hearings involving ITV must be conducted in a courtroom. However, in some locations, courtrooms have been built in locations other than courthouses, such as those collocated in law enforcement centers. Thus, to permit the use of these alternative sites, the ITV Task Force has recommended that current Minn. R. Crim. P. 1.05, subd. 7(1) be amended to remove the strict "courthouse" limitation but that the rule continue to require that any ITV site be a "courtroom." *See* proposed Minn. R. Crim. P. 1.05, subd. 10(1).

¹ It should be noted that the ITV Task Force recommends Minn. R. Crim. P. 15.10, subd. 2 be deleted. The language contained within the rule falls outside of the ITV Task Force's charge. However, the ITV Task Force is taking this opportunity to note to the Court that the language in the rule regarding fine splits when there are cases involving multiple counties is outdated, and therefore should be removed.

OTHER RECOMMENDATIONS

It was noted by ITV Task Force members that in some locations, ITV is being used to conduct juvenile delinquency hearings. There are currently no provisions the ITV Task Force is aware of that specifically allow or govern the use of ITV in these proceedings. Therefore, the ITV Task Force recommends that the Court refer the issue to the Juvenile Delinquency Rules Committee to determine whether ITV should be permitted in juvenile delinquency cases, and if so, to develop appropriate rules of procedure.

The ITV Task Force was quick to point out that ITV is not the only solution that can address many of the concerns noted in this report. Following are some additional solutions that merit further attention within the criminal justice system.

1. Expand the use of written plea petitions in lieu of personal appearances for gross misdemeanors.

The Rules of Criminal Procedure currently permit defendants to enter a guilty plea to a misdemeanor offense by filing with the court a written plea petition in lieu of a personal appearance. Minn. R. Crim. P. 15.03, subd. 3. This procedure allows some of the process for misdemeanor cases to occur outside of the courtroom (i.e., negotiation with the prosecutor, explanation of rights), and saves at least one court appearance. Because of the increased similarity of gross misdemeanors with misdemeanors, the ITV Task Force recommends that the Court request the Advisory Committee on Rules of Criminal Procedure to develop a procedure and form to permit the submission of a written plea petition in gross misdemeanor cases.

2. Promote multi-county arraignment calendars.

At the second ITV Task Force meeting, Judge Paul Nelson explained an alternative that is being utilized in the western corner of the Eighth Judicial District to address resource issues: a tri-county arraignment process. In that region of the district, there are four counties that do not have a chambered judge. *See* Attachment A, MN Chambered Judge Configuration. To conserve available resources, the Eighth District conducts combined criminal arraignments in Chippewa, Yellow Medicine, and Lac Qui Parle Counties on the first and third Mondays of each month. The goal on these combined calendar dates is to resolve cases. To the extent possible, cases are heard, resolved, and sentenced, and orders are issued on that day. Judges are not assigned to specific cases until there is a request for a contested Omnibus Hearing, so any judge sitting at the combined arraignment has authority to resolve the case. Prosecutors from all three counties attend the combined arraignment calendars, and the public defenders from the area also attend, thereby being able to represent clients from all three counties while travelling to just one location. Judge Nelson estimated this process resolves about 90% of the cases heard on these days. The ITV Task Force encourages criminal justice partners to develop similar multi-county calendars at other locations within the state.

3. Engage in a more systemic review of criminal process.

At different points during its discussions, the ITV Task Force noted criminal justice practices that could be done in other ways. For example, defendants frequently waive the Omnibus Hearing if there are no evidentiary issues. The Rules of Criminal Procedure currently require this waiver to be made in person. But because the hearing is noneventful and is very short, it was suggested that this procedure could be done in writing. Alternatively, even when there is a contested Omnibus Hearing, it may involve written memoranda without any testimony. A hearing of that type could also potentially be conducted in writing (as an appeal without oral argument is currently conducted). The ITV Task Force recommends that the Court direct the Advisory Committee on Rules of Criminal Procedure to conduct a systemic review to determine if the criminal process can be conducted more efficiently (e.g., examine whether hearings could be eliminated or combined, examine whether certain hearings could be done in writing rather than in person).

4. Further explore jurisdiction and venue.

The ITV Task Force noted that some of the resource issues that arise within the state partly result from the structure of the criminal justice system. Though jurisdiction over criminal cases is statewide, *see State v. Smith*, 421 N.W.2d 315, 318 (Minn. 1988), venue generally lies in the county where the offense was committed. Minn. Stat. § 627.01; Minn. R. Crim. P. 24.01. Because the State of Minnesota is divided into 87 counties, these provisions result in the need for at least 87 court locations. In addition, each county has an elected prosecutor, so there are multiple individuals with an interest in participating in each case.

The recommendations in this report regarding consolidated proceedings for charges pending in multiple counties will allow ITV to be used more efficiently in cases involving multiple parties from multiple locations. But an even more effective solution would be to permit cases venued in multiple locations to be wholly consolidated into one in-person proceeding. That step cannot be taken without amending existing jurisdiction and venue provisions, and thinking through multiple issues such as the rights of all parties involved, convenience to victims and witnesses, accessibility of the trial, and financial impacts. The ITV Task Force engaged in some very high-level preliminary discussions about these issues, but, due to time constraints, was not able to thoroughly discuss them. The ITV Task Force recommends that the Court extend the life of this group or of a subgroup of its membership, or appoint a new group with the charge to continue looking at these issues.

TECHNOLOGY AND MONITORING

Throughout its discussions, the ITV Task Force, was most concerned that any use of ITV as a substitute for an in-person appearance should involve the most technologically sophisticated equipment available and be arranged and monitored by well trained and dedicated court personnel. This sentiment was especially expressed by the members who were experienced with the actual use of ITV in the courtroom setting. The ITV Task Force was acutely aware that the fairness, effectiveness, and quality of an ITV session are almost completely dependent upon the quality of the equipment and the training of the persons operating it. While some locations in the

state now have high definition monitors and high-speed network connections, which significantly enhance the quality of the ITV experience, others do not. One member also relayed an incident in which an ITV connection was made to a treatment center for an electroshock therapy hearing. Unfortunately, the staff at the treatment center turned on the ITV unit and then left the individuals alone in the room. The individuals could not see or hear what was happening in the courtroom, but the participants in the courtroom could hear them talking and joking about the proceeding. The ITV Task Force itself attempted to use ITV for one of its meetings but was unable to establish an adequate connection for nearly an hour. The ITV Task Force therefore urges that the approval of increased and expanded use of ITV be coupled with appropriate investments in technology and training because these factors make all the difference in the quality and appropriateness of the ITV experience.

The ITV Task Force was greatly troubled by the fact that there is currently no data regarding the use of ITV. Therefore, the information about when and where ITV is currently being used is primarily anecdotal. ITV Task Force members learned of instances where cases are currently being heard in contravention of the existing rules without any established process to catalogue, measure, or regulate such use. This is especially a concern where it appears that the most prevalent use of ITV may largely involve defendants who are indigent or non-English speaking. The ITV Task Force strongly recommends that the Court request the Judicial Council to develop a mechanism for tracking and regularly reporting on the use of ITV. Though the ITV Task Force was formed to only address ITV use in criminal cases, because there are court rules authorizing the use of ITV in civil cases, the ITV Task Force recommends that this tracking and reporting be required for *all* ITV use. Any reports developed in accord with this recommendation should ideally track ITV use by case type and hearing type, and for criminal cases the reports should indicate the demographics of the defendants as well as whether they were represented by public or private counsel or were proceeding pro se.

Respectfully Submitted,

ITV TASK FORCE

PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

The ITV Task Force recommends that the following amendments be made in the Minnesota Rules of Criminal Procedure. In the proposed amendments, except as otherwise indicated, 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 ~~hearings~~Hearings. ~~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 hearings~~Hearings. 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 speak 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 bailiffs sheriff's personnel at any ITV site.~~

Subd. 8. 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.~~

ATTACHMENT A

MN Chambered Judge Configuration (June 2009)

