

VIDEOCONFERENCING TECHNOLOGY APPLICATIONS IN COURTS

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SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY

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STANDARDS

A.B.A. Standards for Criminal Justice, Special Functions of the Trial Judge, § 6-1.8,

"Proceedings in the Courtroom." Approved by the American Bar Association's House of Delegates in February 1999.

(d) When electronic procedures for transmission or recording are used, the proceedings transmitted or recorded should reflect the decorum of the courtroom. When the right to counsel applies, such procedures should not result in a situation where only the prosecution or defense counsel is physically present before the judge.

A.B.A. Standards for Criminal Justice, Release By Judicial Officer at First Appearance or Arraignment, § 10-4.3, "Nature of First Appearance." Approved by the American Bar Association's House of Delegates in February 2002.

(a) The first appearance before a judicial officer should take place in such physical surroundings as are appropriate to the administration of justice. Each case should receive individual treatment, and decisions should be based on the particular facts of the case and information relevant to the purposes of the pretrial release decision as established by law and court procedure. The proceedings should be conducted in clear and easily understandable language calculated to advise defendants effectively of their rights and the actions to be taken against them. The first appearance should be conducted in such a way that other interested persons may attend or observe the proceedings.

(b) At the defendant's first appearance, the judicial officer should provide the defendant with a copy of the charging document and inform the defendant of the charge and the maximum possible penalty on conviction, including any mandatory minimum or enhanced sentence provision that may apply...

(d) The defendant should be provided an opportunity to communicate with family or friends for the purposes of facilitating pretrial release or representation by counsel.

ARIZONA STATUTES

Arizona Constitution, Article 2, § 24.

Section 24. In criminal prosecutions, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and in no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

Ariz. Rev. Stat. § 8-323. Juvenile hearing officer; appointment; term; compensation; hearings; required attendance; contempt.

D. The juvenile hearing officer, commissioner or judge of the superior court shall not dispose of a petition or citation for any offense under this section unless the parent, guardian or custodian of the juvenile appears in court with the juvenile at the time of disposition of the charge. On a showing of good cause that the parent, guardian or custodian cannot appear on the date and time set by the court, the court may waive the requirement that the parent, guardian or custodian appear. The court shall state on the record the reasons for waiving the requirement that the parent, guardian or custodian appear. At the time the court issues an order to appear or other order pursuant to this section, the court shall inform the juvenile that failure to appear or failure to comply with an order will result in suspension of the juvenile's driver license or privilege to drive. If the juvenile fails to appear pursuant to a citation or an order to appear properly issued under this section or if on disposition fails to comply with any court order, the juvenile hearing officer shall order the department of transportation to suspend the juvenile's driver license or

privilege to drive or shall direct the department of transportation to refuse to issue, renew or restore the juvenile's driver license or privilege to drive until the juvenile reaches eighteen years of age or appears in court as directed or complies with the court's order.

Ariz. Rev. Stat. § 13-4253. Out of court testimony; televised; recorded.

A. The court, on motion of the prosecution, may order that the testimony of the minor be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the minor may be present in the room with the minor during his testimony. Only the attorneys may question the minor. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the minor during his testimony but does not permit the minor to see or hear them. The court shall permit the defendant to observe and hear the testimony of the minor in person but shall ensure that the minor cannot hear or see the defendant.

B. The court, on motion of the prosecution, may order that the testimony of the minor be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection A may be present during the taking of the minor's testimony, and the persons operating the equipment shall be confined from the minor's sight and hearing as provided by subsection A. The court shall permit the defendant to observe and hear the testimony of the minor in person but shall ensure that the minor cannot hear or see the defendant. The court shall also ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means.
2. The recording equipment was capable of making an accurate recording, the operator was competent and the recording is accurate and is not altered.
3. Each voice on the recording is identified.
4. Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

Ariz. Rev. Stat. § 13-4428. Victim's discretion; form of statement.

B. Except as provided in subsection C, a victim's right to be heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement or submission of a statement through audiotape or videotape.

Ariz. Rev. Stat. § 25-1011. Taking testimony in another state.

B. A court of this state may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that State. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

Ariz. Rev. Stat. § 25-1256. Special evidence and procedure.

F. In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

Ariz. Rev. Stat. § 36-727. Hearings; procedure; confidentiality.

C. The court may impose conditions or procedures that it deems necessary to protect the health and safety of all participants in the hearing and to ensure humane treatment with due regard to the comfort and safety of the afflicted person and others. These measures may include video or telephonic conference appearances. If necessary the court shall provide language interpreters and persons skilled in communicating with vision impaired and hearing impaired persons pursuant to applicable law.

Ariz. Rev. Stat. § 36-3717. Place of proceedings; transportation; immunity.

C. Subsection A of this section does not preclude any proceeding from being held on the grounds of the arizona state hospital or from using a telephonic conference or an interactive audiovisual device. The court shall adopt rules concerning the conduct of proceedings pursuant to this article. The rules shall ensure the safety of all persons. The rules may include provisions that allow for proceedings to be held on the grounds of the arizona state hospital or for the use of a telephonic conference or an interactive audiovisual device.

ARIZONA COURT RULES

Rules of Criminal Procedure, Rule 1.6. Interactive Audio and Audiovisual Devices.

- a. General Provisions. When the appearance of a defendant or counsel is required in any court, subject to the provisions of this rule, the appearance may be made by the use of an interactive audiovisual device, including video conferencing equipment. An interactive audiovisual device shall at a minimum operate so as to enable the court and all parties to view and converse with each other simultaneously.
- b. Requirements. In utilizing an interactive audiovisual device the following are required:
- (1) A full record of the proceedings shall be made as provided in applicable statutes and rules; and
 - (2) The court shall determine that the defendant knowingly, intelligently and voluntarily agrees to appear at the proceeding by an interactive audiovisual device; and
 - (3) Provisions shall be made to allow for confidential communications between the defendant and counsel prior to and during the proceeding; and
 - (4) Provisions shall be made to allow a victim a means to view the proceedings; and
 - (5) Provisions shall be made to ensure compliance with all victims' rights laws.
- c. Proceedings. Appearance by interactive audiovisual device, including video conferencing, shall be permitted in the discretion of the court at any proceeding except that:
- (1) Written stipulation of the parties is required in all proceedings prior to the commencement of the proceeding, except in initial appearance and not guilty arraignment; and
 - (2) This Rule 1.6 shall not apply to any trial, evidentiary hearing or probation violation hearing; and
 - (3) This Rule 1.6 shall not apply to any felony sentencing.

Rules of Criminal Procedure, Rule 9.1. Defendant's Waiver of Right to be Present.

Except as otherwise provided in these rules, a defendant may waive the right to be present at any proceeding by voluntarily absenting himself or herself from it. The court may infer that an absence is voluntary if the defendant had personal notice of the time of the proceeding, the right to be present at it, and a warning that the proceeding would go forward in his or her absence should he or she fail to appear.

Rules of Criminal Procedure, Rule 14.2. Presence of the Defendant.

The defendant shall be arraigned personally before the trial court or by video telephone, provided

that, in the event the defendant has personally appeared at an initial appearance, the defendant may waive appearance at the arraignment by filing a written waiver of personal appearance at arraignment at least two (2) days prior to the date of the arraignment with the clerk of the court and the arraignment court. The written waiver shall be signed by the defendant and the defendant's lawyer, and shall be notarized. An affidavit signed by the defendant and notarized must be filed with the superior court within twenty (20) days after arraignment, stating that defendant has knowledge of all scheduled court appearances in this matter.

Rules of Criminal Procedure, Rule 15.3. Depositions.

d. Manner of Taking. Except as otherwise provided herein or by order of the court, depositions shall be taken in the manner provided in civil actions. With the consent of the parties, the court may order that a deposition be taken on written interrogatories in the manner provided in civil actions. Any statement of the witness being deposed which is in the possession of any party shall be made available for examination and use at the taking of the deposition to any party who would be entitled thereto at trial. A deposition may be recorded by other than stenographic means, such as, by an audio recording device. If a deposition is recorded by other than stenographic means, the party taking the deposition shall provide the opposing party with a copy of the recording within 14 days after the taking of the deposition or not less than 10 days before trial, whichever is earlier. The parties may stipulate, or the court may order, that a deposition be taken by telephone, consistent with the provisions of Rule 15.3(d).

e. Presence of Defendant. A defendant shall have the right to be present at any examination under Rule 15.3 (a) (1) and (a) (3). If a defendant is in custody, the officer having custody shall be notified by the moving party of the time and place set for the examination and shall, unless the defendant waives, in writing, the right to be present, produce the defendant at the examination and remain with him or her during it.

Local Rules of Practice, Superior Court, Pima County, Rule 9.1. Probate Division Matters. General Administration.

(o) Motion for telephone or video appearance.

Any party or counsel desiring to appear other than in person shall file a written motion consistent with Rule 9.1(i) stating good cause with notice to all interested persons. No case or hearing shall be given preference for hearing by reason of an order permitting an appearance other than in person. The party requesting a telephonic or video appearance shall make necessary arrangements and pay for any associated costs.

Rules of Procedure for the Juvenile Court, Rule 12. Attendance of Juvenile at Proceedings.

B. Telephonic or Video Appearance. For purposes of these rules, the appearance by telephone or video conferencing of the juvenile shall be considered a personal appearance. The juvenile may appear telephonically or by video conferencing only as stipulated to by the parties and authorized by the court.

Rules of Procedure for the Juvenile Court, Rule 13. Attendance of Witnesses and Counsel By Telephone or Video Conference.

A. Adjudication Proceedings. Subject to the juvenile's constitutional right of confrontation, all parties and witnesses shall personally appear for adjudication proceedings unless otherwise authorized by the court.

B. Non-Adjudication Proceedings. Upon motion of either party, the court may permit testimony or argument or the appearance of counsel by telephone or video conferencing in any non-adjudicatory delinquency or incorrigibility proceeding. The motion shall be in writing, unless otherwise authorized by the court.

Rules of Procedure for the Juvenile Court, Rule 42. Telephonic Testimony, Video Conferencing.

Upon the court's own motion or motion by a party, the court may permit telephonic testimony or argument or video conferencing in any dependency, guardianship or termination of parental rights hearings. The motion shall be in writing pursuant to Rule 46, unless otherwise authorized by the court.

Rules of Procedure for the Juvenile Court, Rule 71. Telephonic Testimony, Video Conferencing.

Upon the courts own motion or motion by a party, the court may permit telephonic testimony or argument or video conferencing in any proceeding pursuant to these rules. The motion shall be in writing pursuant to Rule 74, unless otherwise authorized by the court.

Rules of Procedure for Judicial Performance Review, Rule 2. Commission on Judicial Performance Review.

(d) Meetings; Quorum; Majority. The Commission shall meet at the call of the Chairperson not less than two times each year and shall conduct no business except upon the attendance of a quorum of the commission members. A quorum is constituted by 1/2 + 1 of the total commission membership in office at the time of the meeting. Members shall be permitted to attend and participate in meetings by telephone or video-conference. All meetings shall be open to the public except as provided in paragraph (e) below.

Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments, Rule 5. Commission Meetings.

b. A commissioner may be present at an administrative meeting or a screening meeting through electronic means such as telephone or video conferencing upon approval of the chair. A commissioner shall not participate in applicant interviews or voting on nominations through electronic means. To assure that a commission will meet the 60-day constitutional deadline for submitting nominations to the governor, the chair of the commission shall approve requests by members to attend electronically only after confirming that a quorum plus one of the commissioners in office at the time of the meeting will be physically present at the meeting location. A Member who attends electronically accepts the risk that technical problems could occur which would prevent their actual participation and recognizes that the 60-day constitutional deadline for submitting nominations to the governor requires that meetings be held as scheduled.

ARIZONA ADMINISTRATIVE ORDERS

Superior Court in Maricopa County, Administrative Order 97-054, *In re: The Initial Appearance Court Video Teleconferencing Pilot With the City Of Glendale*.

Supreme Court Administrative Order 2003- 55, *In re: Use of an Experimental Procedure for Interactive Video Testimony*.

ARIZONA CASES

In re Appeal in Pinal County Juvenile Action Nos. J-1123 and J-1124, 147 Ariz. 302 (App. 1985).

Juveniles, who viewed testimony of victim's six-year-old brother via closed-circuit television in room adjoining courtroom, were not "excluded" from their delinquency proceeding within meaning

of Juvenile Court Rule governing exclusion of child from juvenile court proceedings, as juveniles were able to confer with their counsel during breaks in testimony which were taken for such purpose; juveniles were placed in separate room because witness feared to testify in their presence because of prior threats they had made against him.

State ex rel. Romley v. Superior Court In and For County of Maricopa, 184 Ariz. 351 (App. 1995).

Statute conditionally allowing minors to testify by video or closed circuit television, with 'minor' defined as person 'under 15 years of age,' is limited to those children who are chronologically under age of 15, and does not extend to those who, by reason of mental impairment, are developmentally under 15; if legislature wishes to include both child's chronological and developmental age, it must explicitly do so.

State v. Grannis, 183 Ariz. 52 (1995).

Defendant was not required to show that his presence at telephone deposition of state's witness in capital murder trial was reasonably necessary in order to bar admission of audiotape of deposition of state's witness taken outside of defendant's presence and without waiver by defendant of his right to be present.

State v. Vess, 157 Ariz. 236 (App. 1988).

If State made showing that courtroom atmosphere or presence of defendant would traumatize child victim or make her unable to communicate, closed circuit television could be used for her testimony; however, permitting use of televised testimony in special circumstances does not lead to conclusion that child witnesses need never testify in person before jury.

State v. Vincent, 159 Ariz. 418 (1989).

Exception to right to confrontation exists under both Arizona Const. Art. 2, § 24 and U.S. Const. Amend. 6 where State sustains its burden of proving by individualized showing to trial court that face-to-face testimony would so traumatize child witness as to prevent child from reasonably communicating; such a finding is tantamount to a finding of unavailability and would justify use of videotape procedure established by this section.

State v. Wilhite, 160 Ariz. 228 (App. 1989).

Lack of individualized findings demonstrating that it was necessary that particular child witness in custodial interference and kidnapping prosecution needed special protection of testifying before videotape, rather than doing so live, demonstrated videotape's admission violated defendant's confrontation clause rights.

State v. Melendez, 135 Ariz. 390 (App. 1982).

Where defendant and his counsel were present at videotaping of testimony of victim, defendant's daughter, and clinical psychologist testified to likelihood that victim would become uncommunicative if called to testify before jury, trial court did not err in allowing videotaped testimony to be admitted in lieu of actual testimony at defendant's trial for child molesting, and such use of videotaped testimony did not deny defendant's constitutional right of confrontation.

STATE STATUTES

Alabama Code §§ 15-26-1 - 15-26-6. Audio-video Communication for Criminal Pre-trial

Proceeding.

California Penal Code § 977.2. Incarcerated defendant; initial appearance and arraignment; two-way electronic communications; presence of counsel.

California Penal Code § 3043.25. Videoconferencing in lieu of personal appearance.

Kansas Statutes § 22-2082. Release prior to trial; conditions of release.

Kansas Statutes § 22-3205. *Arraignment*.

Kansas Statutes § 22-3208. Pleadings and Motions.

Kansas Statutes § 38-1632. Detention hearing; waiver; notice; procedure; removal from custody of parent; audiovisual communications.

Kansas Statutes § 38-1633. Pretrial hearings.

Montana Code § 41-5-332. Custody – hearing for probable cause.

Montana Code § 46-7-101. Appearance of arrested person – use of two-way electronic audio-visual communication.

Montana Code §46-9-201. Who may admit bail.

Montana Code §46-9-206. Setting bail – appearance or use of two-way electronic audio-video communication.

Montana Code § 46-10-202. Presentation of evidence.

Montana Code § 46-12-201. Manner of conducting arraignment – use of two-way electronic audio-video communication – exception.

Montana Code § 46-12-211. Plea agreement procedure – use of two-way electronic audio-video communication.

Montana Code § 46-16-105. Plea of guilty – use of two-way electronic audio-video communication.

Montana Code § 46-16-123. Absence of defendant on receiving verdict or at sentencing.

Montana Code § 46-17-203. (Temporary) Plea of guilty – use of two-way electronic audio-video communication.

Montana Code §46-17-203. (Effective July 1, 2006) Plea of guilty – use of two-way electronic audio-video communication.

Montana Code § 46-18-102. Rendering judgment and pronouncing sentence – use of two-way electronic audio-video communication. –

Montana Code § 48-18-115. Sentencing hearing – use of two-way electronic audio-video communication.

Montana Code § 46-23-109. Parole hearings and administrative reviews – telephone – videoconference.

Montana Code § 46-23-218. Authority of board to adopt rule – purpose for training.

Nevada Revised Statutes § 171.1975. Use of audiovisual technology to present live testimony at preliminary examination: when permitted; notice by requesting party; opportunity to object; requirements for taking testimony; limitations on subsequent use.

Nevada Revised Statutes § 172.138. Use of audiovisual technology to present live testimony before grand jury: when permitted; requirements for taking and preserving testimony; limitations on subsequent use.

Pennsylvania Consolidated Statutes § 8703. *Arraignment.*

Pennsylvania Consolidated Statutes § 9904. Referral to State intermediate punishment program.

Tennessee Code § 41-21-809. Hearings conducted at jails; use of video communications technology.

Texas Code of Criminal Procedure, Art. 15.17. Duties of arresting officer and magistrate.

Texas Code of Criminal Procedure, Art. 46B.001. Definitions.

Vermont Statutes § 502. Parole interviews and reviews.

Virginia Code § 26.1-276.3. Use of telephonic communication systems ore electronic video and audio communication to conduct hearing.

STATE COURT RULES

18th Judicial Circuit Court [DuPage County, Illinois], Rule 30.05. Defendant's Appearance by a Two-Way Audio/Video Communication System.

Fayette Circuit [Kentucky] Criminal and Civil Courts, Rule 12. Court Appearance Via Two-Way Audio-Video Communications in Criminal Cases.

Georgia Uniform Magistrate Court Rules, Rule 15. Telephone and Video Conferencing.

Georgia Uniform Superior Court Rules, Rule 9. Telephone and Video-Conferencing.

Georgia Uniform Superior Court Rules, Rule 9.2. Video-Conferencing.

West Virginia Trial Court Rules, Rule 14. Videoconferencing.

STATE COURT ADMINISTRATIVE ORDERS

Michigan State Court Administrative Office. *Model Local Administrative Order 13B - Two-Way Interactive Video Proceedings*, rev. August 2004, available at <http://www.courts.michigan.gov/scao/resources/other/lao/LAO13b-model.doc>.

Michigan Supreme Court. *Standards For Use of Interactive Video Technology In Conducting Involuntary Commitment, Child Protective, and Juvenile Delinquency Hearings In Pilot Courts*, 2001, available at http://www.courts.michigan.gov/scao/resources/standards/ivt_stds.pdf.

Vermont Rules of Court. Administrative Orders of the Supreme Court, 2003. Administrative Order No. 38, Experimental Rules of Utilization of Video Conferencing and Telephone Conferencing Technology in the Bennington County District and Family Courts.

STATE CASES

Commonwealth v. Ingram, 46 S.W.3d 569 (Ky. 2001).

The Kentucky Supreme Court held that a properly functioning video arraignment system is the equivalent of in-court arraignment and does not violate either procedural rules or federal law.

East v. State, 48 S.W.3d 412 (Tex. App. 2001).

The defendant had been convicted of burglary and wished to waive his right to appointed counsel on appeal. A visiting judge conducted the waiver of counsel hearing by videoconference, over defendant's objection. The Texas Court of Appeals held that the absence of a written consent to a waiver of counsel hearing conducted by videoconferencing required that the hearing be conducted in open court.

Guinan v. State, 769 S.W.2d 427 (Mo. 1989).

Following the Missouri Supreme Court's decision in *State ex rel. Turner v. Kinder*, below, the Missouri legislature subsequently enacted legislation permitting personal appearances via closed-circuit television under specified conditions. In *Guinan*, the Court held that use of two-way closed-circuit television in a post-conviction hearing did not violate the statute or deny the right to a fair trial. Considering a postconviction proceeding as a quasi-criminal civil proceeding, the Court examined the record for constitutional violation. The Court found that at the hearing, defendant, counsel, and inmate witnesses were at the prison, and the judge, state attorney, and other witnesses were in the courthouse; a full record was made of the proceedings; the defendant was able to confer privately with counsel; and the cameras provided clear pictures of everyone present and effectively conveyed the demeanor of the witnesses and the testimony.

Kroupa v. Industrial Claim Appeals Office of State of Colo., 53 P.3d 1192 (Colo.App. 2002).

Colorado Court of Appeals held that (1) neither the Workers' Compensation Act nor adjudication rules of Division of Workers' Compensation prohibited ALJ from conducting hearing through use of video teleconferencing; (2) video teleconference did not violate claimant's due process rights; (3) video teleconference did not violate equal protection.

Larose v. Superintendent, Hillsborough County Corr. Admin., 702 A.2d 326 (N.H. 1997).

Petitioners brought writ of habeas corpus challenging legality of their arraignments and bail

hearings conducted by videoconference. The Supreme Court held that (1) arraignment statute was intended to ensure timely arraignment, not to guarantee face-to-face contact with the court, and (2) conducting arraignments and bail hearings by videoconferences did not violate due process; although petitioners had substantial interest in having bail set at a reasonable rate and remaining free pending trial, videoconferencing procedure did not pose risk of erroneous deprivation of liberty greater than "live" arraignment and bail hearing, and the state had substantial interest in conducting arraignments and bail hearings through videoconferences, including reduced transportation costs, security fees and risk of violence during proceedings.

State ex rel. Turner v. Kinder, 740 S.W.2d 654 (Mo. 1987).

The Missouri Supreme Court held that conducting preliminary examinations via video between the courtroom and a conference room was not authorized by statutes providing that no felony information could be filed without first according the accused a preliminary examination before a judge, with examination of the complainant and witnesses in the presence of the accused. The Court rejected the argument that the audiovisual technology satisfied the statutory requirements, and ordered that lower court judges be prohibited from conducting video preliminary examinations.

State v. Peters, 615 N.W.2d 655 (Wis. Ct. App. 2000), *rev'd on other grounds*, 628 N.W.2d 797 (Wis. 2001).

A defendant pled no contest and was sentenced via closed circuit TV. The Wisconsin Court of Appeals held that conducting a no-contest plea hearing by closed-circuit television violated a Wisconsin statute that required the defendant to be present at his criminal proceeding; since the right to be present and not been waived, the court found the closed-circuit procedure violated the statute, but found that there was no constitutional violation affecting the reliability of the collateral conviction.

FEDERAL COURT RULES

Federal Rules of Criminal Procedure, Rule 5. Initial Appearance.

(f) Video Teleconferencing.

Video teleconferencing may be used to conduct an appearance under this rule if the defendant consents.

Federal Rules of Criminal Procedure, Rule 10. Arraignment.

(c) Video Teleconferencing.

Video teleconferencing may be used to arraign a defendant if the defendant consents.

Federal Rules of Criminal Procedure, Rule 43. Defendant's Presence.

(a) When Required.

Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at:

- (1) the initial appearance, the initial arraignment, and the plea;
- (2) every trial stage, including jury impanelment and the return of the verdict; and
- (3) sentencing.

FEDERAL CASES

Coy v. Iowa, 487 U.S. 1012 (1988).

The Supreme Court held that: (1) confrontation clause provides criminal defendant right to "confront" face-to-face witnesses giving evidence against him at trial, and (2) placement of screen between defendant and child sexual assault victims during testimony against defendant violated defendant's confrontation clause rights.

Edwards v. Logan, et al., 38 F. Supp. 2d 463 (W.D. Va. 1999).

State prisoner brought § 1983 action against Virginia state prison officers for excessive force. Following transfer of prisoner from Virginia state prison to New Mexico state prison to serve remainder of his sentence, state requested to have trial conducted through interactive video conferencing. The District Court held that use of interactive video conferencing to conduct trial of prisoner's claim would be permitted.

Maryland v. Craig, 497 U.S. 836 (1990).

The Supreme Court held that: (1) confrontation clause did not categorically prohibit child witness in child abuse case from testifying against defendant at trial, outside defendant's physical presence, by one-way closed circuit television; (2) finding of necessity for use of one-way closed circuit television procedure had to be made on case specific basis; but (3) observation of child's behavior in defendant's presence and exploration of less restrictive alternatives to use of one-way closed circuit television procedure were not categorical prerequisites to use of one-way television procedure as a matter of federal constitutional law.

Valenzuela-Gonzalez v. United States, 915 F.2d 1276 (9th Cir. 1990).

Defendant petitioned for writ of mandamus vacating order of the United States District Court, District of Arizona, that his arraignment be conducted by closed-circuit television. The Court of Appeals held that arraignment by closed-circuit television would violate rules of criminal procedure.

U.S. v. Baker, 45 F.3d 837 (4th Cir. 1995).

Inmate sought review of civil commitment hearing. The 4th Circuit held that the video conference procedure for civil commitment hearings did not violate constitutional due process protections, either in general or as applied, in light of slight risk of erroneous committal and substantial government interests including administrative and safety burdens involved in transporting potentially mentally unstable persons to the courthouse.

U.S. v. Lawrence, 248 F.3d 300 (4th Cir. 2001).

Sentencing via videoconferencing violated the defendant's statutory right under Federal Rule of Criminal Procedure 43(a) to be present at sentencing. Because the court decided the case on statutory grounds, it expressly reserved judgment on the constitutional issues.

U.S. v. Navarro, 169 F.3d 228 (5th Cir. 1999).

Defendant must be sentenced in person because he objected to sentencing by video conferencing; "presence" means physical presence.

U.S. v. Torres-Palma, 290 F. 3d 1244 (10th Cir. 2002).

The Court of Appeals held that (1) use of video conferencing for sentencing violated rule requiring that defendant be present at his sentencing, and (2) district court did not violate any prior order requiring a presentence psychological examination.

ADDITIONAL RESOURCES

Brevard County Clerk of Courts

http://www.brevardclerk.us/ctadmin/court_technology/videoconferencingl.htm

National Center for State Courts, Court Consulting Services – Courtroom Technology/Video Arraignment

http://www.ncsconline.org/D_Conult/Projects/Technology.htm#Courtroom

National Center for State Courts – Video Conferencing Overview

<http://www.ncsconline.org/WC/Events/VidConView.htm>

National Center for State Courts – Video Conferencing

<http://www.ncsconline.org/WC/Education/VidConGuide.htm>

OakVideo: Oakland County, Mich., Video Communication System

http://www.co.oakland.mi.us/oakvideo/assets/docs/oakvideo_solution_brief.pdf