

TECHNICAL STANDARDS FOR VIDEOCONFERENCING IN CRIMINAL PROCEEDINGS

Proposed ACJA 5-208

Commission on Technology

November 6, 2009

R-06-0016

2000: Supreme Court adopted Rule 1.6, Rules of Criminal Procedure

October 2006: Pima County Attorney filed R-06-0016 to amend Rule 1.6

Nov. 12, 2008: Supreme Court's AO 2008-92 established the Criminal Rules Video-Conference Advisory Committee ("CRVAC")

AO 2008-92

Purpose. Given the serious fiscal crisis that exists and the potential cost savings and judicial efficiencies that potentially could be achieved by the use of video appearances, the Committee, acting as an advisory committee to the Arizona Judicial Council, shall:

AO 2008-92

Make recommendations for the appropriate use of video appearances taking into account the legal concerns raised during the comment period.

Recommend what technical issues need to be addressed to effectively implement video appearances.

Recommend the types of proceedings for which videoconferencing could be utilized; and

Make any other recommendations concerning rules of procedure for videoconferencing.

CRVAC

- 14 members: LJ and GJ judges, court admins, prosecutors, public defenders, sheriffs' reps
- Presentations by representatives for interpreters, court reporters, victims, defense counsel, as well as a former presiding criminal judge and a judge and a prosecutor from Montana
- Reports from other states
- Law: Arizona, federal, other states

CRVAC

- **May 2009:** Draft amendments to Rule 1.6 presented by CRVAC to LJC & COSC were not approved
- **CRVAC made changes to the draft amendments to Rule 1.6 following these committee meetings**
- **June 2009:** CRVAC's report and revised draft amendments were presented to the Arizona Judicial Council, which recommended adoption
- **July 17, 2009:** The comment period for R-06-0016 was extended to this date

R-06-0016

- **August 31, 2009:** amendments to Rule 1.6, Rules of Criminal Procedure were adopted by the Supreme Court
- **January 1, 2010:** amendments become effective

Operational standards

Rule 1.6(a) as amended requires that:

Any interactive audiovisual system must meet or exceed minimum operational standards that will be adopted

These standards must be adopted **by the effective date of Rule 1.6 amendments: January 1, 2010**

TAC Workgroup

- August 2009
- Representatives from Maricopa, Gila, Coconino, and Mohave Counties
- Goal: to provide the minimum technical standards

What are “technical standards”?

- Arizona’s Rule 1.6(b)(1):

“An interactive audiovisual system shall at a minimum operate so as to enable the court and all parties to view and converse with each other simultaneously.”

- Compare to Georgia:

“(E) Technical Standards. Any video-conferencing system utilized under this rule must conform to the following minimum requirements:

“1. All participants must be able to see, hear, and communicate with each other simultaneously....”

Operational or technical?

They may **overlap**.

5-208(A): The purpose is to make the appearance by video-conference **as similar to an in-person courtroom appearance as reasonably possible**.

➤ **Dignified, solemn, and fair**

5-208(B)(8):

“Technical requirements”

The primary technical requirement:

“a. Participants at any remote location shall be able to **clearly see and hear** proceedings in the courtroom. Participants in the courtroom shall be able to **clearly see and hear** participants at any remote location.”

5-208(B)(8):

“Technical requirements”

- The other technical requirements further the primary goal: **to clearly see and hear.**
- (8)(b): picture clarity (see facial features)
- (8)(c): meet ITU requirements (inter-operability)
- (8)(d): bandwidth (to support 30 fps)
- (8)(e): audio quality
- (8)(f): compression and encryption commonality
- (8)(g): equipment suitable for facilities
- (8)(i): system checks

5-208(B)(8)(h):

Confidential Communications

- (8)(h): requires a device to turn off any recording or audio systems to preserve the confidentiality of communications

- Cross-reference Rule 1.6(b)(3):

“Provisions shall be made to allow for confidential communications between defendant and defendant’s counsel before, during, and immediately after the proceeding.”

5-208(B)

Operational standards

The **technical standards** – 5-208(B)(8) -- are a sub-set of the **operational standards**, i.e., 5-208(B)(1 through 7)

5-208(B)

Operational standards

- (B)(1): Training
- (B)(2): Remote site requirements
- (B)(3): Site review
- (B)(4): Court reporters (Cross-reference Rule 1.6(b)(7): regarding Interpreters)
- (B)(5): Documents
- (B)(6): Confidential communications

5-208(B)(7):

Judicial authority and discretion

The judicial officer retains control over all aspects of the proceeding.

5-208(B)(7)

Judicial authority and discretion

Judicial discretion to discontinue any proceeding where the defendant appears by video-conference

- if conditions arise which affect fairness.
- if anything arises that would warrant the defendant's personal appearance in the courtroom.

5-208(C): Certification

Every local court must certify that it meets the operational standards:

- Once a year
- To the **presiding judge** of the county
- On a **form** provided by the AOC

5-208(D): Locations other than a custodial facility within Arizona

If the **remote site** is not a jail or prison in Arizona but is either:

- a custodial facility outside Arizona, or
- a non-custodial location in-state or out-of-state

5-208(D): Locations other than a custodial facility within Arizona

- Section (B) operational standards do not apply
- Section (C) certification is not required
- Court must approve appearance by video
- Court must be satisfied that participants can clearly see and hear one another

Comment sheet

Questions or comments?

Recommended motion

Approve the technical standards contained in the proposed code section, as recommended by TAC.