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TO:

Rule 28 Distribution
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ATTACHMENT *

Rule 1.6, Rules of Criminal Procedure

Rule 1.6. ~~Interactive audio and audiovisual devices systems.~~

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 system,~~ 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.~~ Any interactive audiovisual system must meet or exceed minimum operational guidelines adopted by the Administrative Office of the Courts.

b. Requirements. In utilizing an interactive audiovisual ~~device system,~~ all of the following are required:

~~(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. ; and~~

~~(1)(2) 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 defendant's counsel ~~prior to and during~~ before, during, and immediately after the proceeding. ; and~~

~~(4) Provisions shall be made to allow a victim a means to view and participate in the proceedings. ; and~~

~~(5) Provisions shall be made to ensure compliance with all victims' rights laws.~~

~~(6) Provisions shall be made to allow the public a means to view the proceedings as provided by law.~~

~~(7) Provisions shall be made for use of interpreter services when necessary. In cases requiring interpreters for non-English speaking or hearing-impaired defendants, absent compelling circumstances, the interpreter shall be present with the defendant, and provisions shall be made to enable simultaneous appearance of both the defendant and interpreter.~~

~~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.~~

c. Defendant's Appearance by Videoconference Precluded Absent Extraordinary Circumstances and Parties' Consent. This rule shall not apply to any trial, contested probation violation hearing, felony sentencing, or felony probation disposition hearing, except upon the court's finding extraordinary circumstances and with consent of the parties by written stipulation or upon the record.

d. Defendant's Appearance by Videoconference Required in Sole Discretion of the Court. Appearance by an interactive audiovisual system may be required in the sole discretion of the court and without the consent of the parties at (1) an initial appearance; (2) any not-guilty plea arraignment or a guilty-plea arraignment in a misdemeanor case, (3) a hearing on a motion to continue which is limited to setting trial dates that do not entail any waiver of time pursuant to Rule 8; (4) a hearing on an uncontested motion, (5) a pretrial or status conference, (6) a change of plea in a misdemeanor case, or (7) an informal conference held pursuant to Rule 32.7.

e. Defendant's Appearance by Videoconference Allowed upon Stipulation. Except for those proceedings described in subparagraphs (c) and (d) above, the parties, with the court's approval, may agree by written stipulation or upon the record to allow the defendant's appearance at any proceeding by an interactive audiovisual system. Before accepting the stipulation or agreement, the court shall find that the defendant knowingly, intelligently and voluntarily agrees to appear at the proceeding by an interactive audiovisual system. Stipulation by the parties to videoconferencing shall be provided in written form prior to the commencement of the proceeding.

f. Expansion of Scope of Proceeding: Notwithstanding the foregoing, the court shall reschedule a videoconference to require the defendant's personal appearance if the scope of the hearing expands beyond that specified in subparagraphs (d) and (e) above.

**Deletions are shown by ~~strikeouts~~. Additions are shown by underlining.*

