

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE ADOPTION )  
OF A NEW CHAPTER TO BE DESIGNATED )  
AT SDCL Ch. 15-5A )

RULE 06-69

- - - - -  
A hearing was held on October 3, 2006, at Sioux Falls, South Dakota, relating to the adoption of a new chapter to be designated at SDCL Ch. 15-15A, and the Court having considered the proposed adoption, the correspondence and oral presentations relating there to and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a proposed new chapter to be designated at SDCL Ch. 15-5A, be and it is hereby adopted to read in its entirety as follows:

**SDCL Ch. 15-5A. "Interactive Audiovisual Device Use in Court Proceedings."**

**SDCL 15-5A-1. General Provisions.**

Whenever a proceeding in civil or criminal court is permitted under these rules to be conducted by interactive audiovisual device, the device shall enable a judge or magistrate to see and converse simultaneously with the parties, their counsel or other persons including witnesses. The interactive audiovisual signal shall be transmitted live and shall be secure from interception through lawful means by anyone other than the persons participating in the proceeding.

A judge or any other person authorized by law to administer oaths may administer an oath to a witness who is not personally present but who is appearing by means of the interactive audiovisual device. The provisions of SDCL § 22-29-1 shall apply even though the person taking the oath was not personally present before the person administering the oath, and prosecution for perjury shall take place in the jurisdiction of the tribunal receiving the interactive audiovisual testimony.

If a party and their counsel are at different locations, arrangements must be made so that they can communicate privately. Facilities must be available so that any documents

**Rule 06-69**

filed or referred to during the interactive audiovisual communication, or required to be provided to a defendant prior to or during the proceeding, may be transmitted electronically, including, but not limited to, facsimile, personal computers, other terminal devices, and local, state, and national data networks. Any documents furnished by means of such an electronic data transmission may be served or executed by the person to whom it is sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures on the electronic data transmissions shall be treated as original signatures.

Nothing contained herein shall be construed as affecting a defendant's right to waive counsel.

**SDCL 15-5A-2. Traffic Offense Proceedings.**

At the discretion of the court, all traffic offense proceedings may be conducted by interactive audiovisual device.

**SDCL 15-5A-3. Pre-trial Criminal Proceedings.**

At the discretion of the court, whenever the law requires a defendant in a misdemeanor or felony criminal case to appear before a judge or magistrate for an initial or subsequent appearance, bail, arraignment, or other pre-trial proceeding, the proceeding may be conducted by interactive audiovisual device, in which case the defendant shall not be required to be physically brought before the judge or magistrate.

**SDCL 15-5A-4. Misdemeanor Plea or Sentencing Hearings.**

At the discretion of the court, misdemeanor plea hearings and misdemeanor sentence hearings may be conducted by interactive audiovisual device.

**SDCL 15-5A-5. Post-Conviction Proceedings.**

At the discretion of the court, post-conviction proceedings, including habeas corpus proceedings, may be conducted by interactive audiovisual device.

**SDCL 15-5A-6. Juvenile Proceedings.**

At the discretion of the court, interactive audiovisual devices may be used to conduct detention, advisory, status, admissions, change of plea, dispositional and review hearings in juvenile court. Judges may, in their discretion, require legal counsel or, if proceeding pro se, a parent or legal guardian, to be physically present in the same location with a juvenile who is appearing by means of interactive audiovisual device.

**Rule 06-69**

**SDCL 15-5A-7. Civil Commitment Hearings.**

At the discretion of the court, civil commitment hearings may be conducted by interactive audiovisual device.

**SDCL 15-5A-8. Grand Jury Proceedings.**

At the discretion of the prosecuting attorney, grand jury proceedings, including taking testimony of witnesses, may be conducted by interactive audiovisual device.

**SDCL 15-5A-9. Where Not Permitted.**

Use of interactive audiovisual device will not be permitted to conduct any felony plea hearings, any stage of trial, felony sentencing, or probation revocation hearing unless all parties to the proceeding stipulate to the use of the interactive audiovisual device for one of the aforementioned purposes. The judge presiding over the matter always retains the discretion not to allow an appearance by interactive audiovisual device if the judge believes that to do so would prejudice any party to the proceeding.

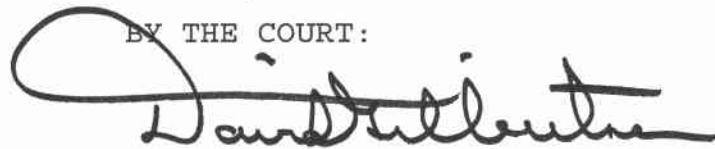
**SDCL 15-5A-10. Any Proceeding where the Court and Parties Agree.**

Unless prohibited by any other law, all other proceedings where the court and parties agree may be conducted by interactive audiovisual device.

IT IS FURTHER ORDERED that the rule shall become effective January 1, 2007.

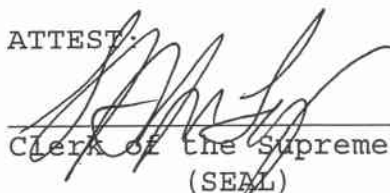
DATED at Pierre, South Dakota, this 18th day of October, 2006.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
**FILED**

OCT 18 2006



Shif A Johnson  
Clerk