

MINNESOTA COURT OF APPEALS HEARS ORAL ARGUMENT VIA INTERACTIVE TELECONFERENCING TECHNOLOGY

Edward Toussaint*

INTRODUCTION

The Minnesota Court of Appeals is dedicated to providing affordable access to the appellate process. Access to the appellate process is central to our vision:

Vision Statement of the Minnesota Court of Appeals

The Minnesota Court of Appeals strives to be an accessible intermediate appellate court that renders justice under the law fairly expeditiously through clear, well-reasoned decisions and promotes cooperative effort, innovation, diversity, and the professional and personal growth of personnel.¹

In order to promote this vision, the Minnesota Court of Appeals has taken the initiative to implement Interactive Video Teleconferencing (“IVT”). This essay will discuss the history behind this decision, the mechanics of its implementation, and the benefits and challenges of its application to the appellate process.

* Chief Judge of the Minnesota Court of Appeals and President of the Council of Chief Judges.

1. Minnesota Court of Appeals, *Welcome to the Court of Appeals' Home Page* <<http://www.courts.state.mn.us/coa/coahome.html>> (last updated May 1, 1996). The court's vision statement was written and adopted by the judges and staff of the Minnesota Court of Appeals. *Id.*

I. HISTORY

Since 1983, the Minnesota Court of Appeals has heard cases in panels of three judges at both its St. Paul hearing site and its out-state hearing sites.² Travel to these out-state locations provides reasonable access to the parties, attorneys, and citizens to observe the oral argument process. Oral argument, when requested, is routinely scheduled. A party may also request that a case proceed by non-oral conference. However, the court may place a case on the non-oral calendar when a party has failed to process an appeal in a timely fashion, when the court has expedited handling of the case, or when neither party has requested oral argument in the statement of the case.³ On average, roughly seventy-five percent of the fully briefed appeals are orally argued.

In early 1994, concluding that reasonable access to our court could be further enhanced by the use of Interactive Video Teleconference ("IVT"), we established a pilot project. The court set out to determine whether IVT technology would enhance access to oral arguments, reduce travel time and expense to counsel and litigants, reduce the time spent by judges away from chambers, and minimize the risk of canceling panels due to weather conditions. An analysis of court records showed that from 1983 to 1993, our court had heard more than two-thousand cases at locations other than St. Paul, Minnesota, requiring more than 120 days of judicial travel time. It thus appeared that the use of IVT could indeed enhance access to our court.

However, in addition to considering the amount of judicial travel time involved in out-state oral argument proceedings, we also considered other factors when determining whether the use of IVT would truly enhance access to the court. For example, the out-state location of oral argument depends on the availability of hearing sites in the judicial district in which each

2. See Minn. Stat. Ann. § 480A.08(1) (West 1990); Minn. Stat. Ann. § 480A.09(1) (West 1990 & Supp. 2000); Minn. Stat. Ann. App. Spec. R. Prac. 3 (West 1993).

3. Minn. Stat. Ann. R. Civ. App. P. 134.01 (West 1993) (instances in which oral argument not allowed); Minn. Stat. Ann. App. Spec. R. Prac. 1 (West 1993) (cases to be given priority on court calendar).

case arose, the number of other cases from the same judicial district ready for oral argument at approximately the same time, the location of the parties to the appeal and their appellate counsel, and requests by counsel for arguments in a special location or for expedited scheduling.⁴ Also, because the court hears appeals in three-judge panels, not all trial courtrooms can accommodate appellate hearings. Furthermore, the trial courts' burgeoning calendars limit the availability of these courtrooms. Each judicial district to which the court travels provides the space together with staff that time the hearings. It is a sacrifice that we appreciate and need in providing reasonable access to the litigants in out-state locations.

Beginning in 1997, Minnesota's Ninth Judicial District, which comprises a major portion of northwestern Minnesota, studied the feasibility of conducting some of its hearings by IVT. Because the litigants and court facilities are separated by great distances, it was apparent that the utilization of IVT would reduce travel time for the litigants and judges. Ultimately, the Minnesota Court of Appeals partnered with the Ninth Judicial District, along with the support of the Minnesota Supreme Court's initiatives, and received permanent funding for IVT.

On November 19, 1998, the Minnesota Court of Appeals heard oral arguments via IVT. The three-judge panel was located in its St. Paul courtroom; the lawyers were in their local courthouses in Hallock and Thief River Falls, both cities in northern Minnesota. The parties were able to see and hear the judges and the attorney who was making argument. On that day, there was a snow storm in that region of the state. But for IVT, that hearing would have been cancelled; each attorney would have been fighting twelve inches of freshly fallen snow to get to St. Paul. Attorney Robert M. Albrecht was grateful for the opportunity to present oral arguments in Hallock rather than having to travel to St. Paul, a four-hundred mile one-way trip. Michael L. Jorgenson, the other attorney involved in the first IVT oral arguments, stated, "There was little difference presenting arguments using video conferencing than in person."

4. See generally Minn. Stat. Ann. R. Civ. App. P. 134.09 (West 1993 & Supp. 2000) (location of oral argument); Minn. Stat. Ann. § 480A.09 (West 1990 & Supp. 2000) (same).

II. IMPLEMENTATION

Currently, from November through March, attorneys from out-state judicial districts throughout Minnesota have the opportunity to present oral arguments to the Minnesota Court of Appeals using state-of-the-art IVT technology. We look forward to the opportunities presented by this technology and its use in the appellate process. The Court of Appeals will use IVT to reduce travel time and expenses for judges and attorneys, to minimize the risk of cancellation due to weather conditions, and to alleviate delays.

A. Procedure for Scheduling Out-State Oral Arguments Via IVT

IVT will allow the court to provide convenient locations for oral arguments when travel is more difficult and when a lack of other cases from the same judicial district would otherwise result in the scheduling of oral arguments in St. Paul. All IVT sites will be open to the public. Clients and colleagues are encouraged to attend. Our staff uses the following procedure in scheduling out-state oral arguments.

- If there are not four cases in a judicial district warranting travel, or if cases are argued during winter months, attorneys are called to determine if they prefer IVT or travel to St. Paul.
- If IVT is preferred, the staff will call the out-state location to reserve rooms.
- Once the out-state room is reserved, the local IVT provider is notified, and the conference is scheduled.

Potential conflicts that need to be considered when scheduling oral arguments at out-state locations via IVT include attorney dates, out-state room conflicts, IVT phone line usage, and courtroom usage.

B. Protocol for the Use of IVT Oral Arguments

To ensure compliance with uniform standards for IVT oral arguments, the Minnesota Court of Appeals has established a set of protocols. These protocols were communicated to the local court administrators and practicing lawyers. Initially, the court

may authorize the use of IVT for oral argument. The court may order the use of IVT when (1) the parties request IVT or (2) the court concludes that scheduling efficiency warrants IVT. A party aggrieved by the order may, within five days after the receipt of notification, request that the court reconsider the use of IVT.⁵

The rules of court decorum specified in the Minnesota Rules of Civil Procedure and the Minnesota General Rules of Practice apply equally to all IVT proceedings. Each IVT site used for appellate arguments is arranged and equipped to satisfy the rules of court decorum and to protect the confidentiality of the notes of the parties, the counsel, and the court.

C. Benefits and Challenges of the Implementation of IVT

From November 1998 through April 2000, over one hundred oral arguments have been conducted by IVT. Of the thirty sites used, twenty-eight have been in out-state locations.⁶ Again, none of this would be successful without our court staff and the cooperation of local court administrators.

To ensure uniform site appearance, we requested each out-state location follow guidelines for courtroom decorum. First, we requested that each out-state location have the United States and Minnesota flags, as well as a podium. Second, we considered the importance of the room's background colors. Gray, blue, and beige backgrounds are common, but we have found that light blue backgrounds give a better appearance on-camera. Third, we adjusted the cameras at both locations. We adjusted the out-state location's camera such that the attorney's image was a portrait view. Likewise, we adjusted the camera enlarging the three-judge panel. Prior attorney complaints had indicated that the attorneys could not read the judges' expressions; this change aided effective communication.

In order to ensure uniform sound quality, which is second in importance to having a good real-time image, we looked for a system that would provide clear sound. Each judge has a microphone, and the microphones are sensitive. Any paper

5. See generally Minn. Stat. Ann. R. Civ. App. P. 127 (West 1993).

6. For a map of Minnesota indicating the out-state locations for IVT, see Figure 1, *infra*.

shuffle near the microphone can be heard and is distracting to the presenting attorney. In purchasing our system, which is manufactured by PictureTel, we gave particular attention to selecting the correct microphone. When we are communicating with a system of a different manufacturer, some far-end feedback occurs. This can also be somewhat distracting.

The Ninth Judicial District also selected PictureTel through its own informal selection process that included numerous demonstrations and proposals. The vendor, Acoustic Communication System, Inc., won a series of bids and re-bids by the department of Administration. Administration had also been testing the PictureTel equipment and preliminarily certified the codex units (i.e., computerized brains) while the Ninth Judicial District was doing its review. Most of our buildings have T1 lines.⁷ Other products were tested but did not meet our needs. These technical decisions were ultimately made after group discussions with judges, administrators, and our MIS department. Overall, this attention to visual and audio detail has helped to ensure courtroom decorum.

We have had some challenges along the way, some big, some small. For example, we have had to cancel two IVT hearings because of malfunctions. Another IVT hearing was cancelled, ironically, because of weather conditions. The roads were closing at the out-state location, and attorneys wanted to return home. This is an indication that IVT will not solve all of the weather-related issues. Most of the problems that occur are minor, but annoying for the judges and attorneys. Some of the problems we have experienced include the following:

- *Microphones don't always work well.* At times, the far-end volume is difficult to regulate. Some of the microphones are so sensitive that if the out-state location has the volume up high, we can hear feedback through our speakers when the judges ask questions.
- *Microphones on the podium can be a problem.* They make it easy to hear the attorney, but if papers on the podium are shuffled, it sounds terrible.

⁷ A T1 line uses a high-speed (1.544 megabytes per second) digital communications network.

- *The Kodiak “takes a hit.”* The Kodiak is the power box that keeps us connected during an IVT. When this box has “taken a hit,” it means the power has been interrupted during a conference, and we have to reboot to correct the problem.
- *Phone lines get interrupted.* The IVT connection is made through a telephone line. If the telephone line has problems, the IVT will have a problem. Sometimes weather can affect this.
- *Blue box displayed on screen.* We periodically get a blue box on the screen that tells us that someone has joined the conference, left the conference, or that the conference is in progress. Usually, when this box appears, we simultaneously hear a noise, and we may not be able to hear the attorney for a second or two.

It’s interesting to note the number of IVT hearings we had last summer, even when the judges were travelling to out-state locations on a regular basis. This influx is due to not having enough cases from one area to justify a travel calendar and to attorneys preferring to present oral arguments by IVT instead of driving to St. Paul. ITV hearings have also occasionally been scheduled when an existing out-state travel calendar is full. If there is no available out-state calendar, attorneys are called and asked whether they’d prefer to argue the case by IVT or come to St. Paul. If one attorney prefers IVT, both attorneys have to present their argument by IVT.

One problem that may arise in the future will be requiring attorneys to travel to out-state locations instead of presenting their arguments by IVT. We recently scheduled a case for a travel calendar in northwestern Minnesota, and one of the attorneys expressed a preference to argue by IVT, but we needed his case on that calendar to have enough cases (at least four) to set the travel calendar. Attorney preference for IVT hearings is a growing trend, indicating that the reasons our court originally considered IVT hearings (i.e., reduction in travel time and expense reduction for the litigants and the court) are being echoed by the end users of the system.

Another problem in scheduling IVT hearings is that we share the IVT phone line with the rest of the judicial building, so we have to coordinate scheduling IVT hearings and other IVT users. As a result, availability problems can delay scheduling.

CONCLUSION

Our vision statement guides us in making decisions of whether to use technology or not. Meaningful access is one aspect of our vision. IVT is a tool that helps us to provide cost-effective access to our court. Our court's principles, not technology, drive our decisions.

Overall, oral arguments by IVT work pretty well. I am sure that, over time, the system will continue to improve as more out-state locations update or replace their equipment. Also, as more sites become equipped with IVT, we will have even more convenient locations available to litigants.

Figure 1. Minnesota's Out-State Sites for Interactive Video Teleconferencing



