

CHAMBERS OF CIRCUIT JUDGE

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Re: Rule Petition 20-09

Honorable Chief Justice and Justices of the Wisconsin Supreme Court:

I would like to comment on the Rule Petition 20-09 regarding the location of courts and the use of video conferencing technology. I would preface my comments by indicating that I served as your chair of the PPAC Video Conference Subcommittee that created "*Bridging the Distance: Implementing Video Conferencing in Wisconsin*," revised in 2017. Since creating this report, the court system in Wisconsin has taken an enormous step, out of necessity, into the world of video conferencing and remote appearances. While our great leap forward was not without difficulties and some problems, I think we discovered that, as a whole, the court can adapt to new technologies in the courtroom and the litigants, victims, attorney's and the public generally approve of the methods we have adopted to allow new ways to access the courts and access justice.

I am authorized to state that the Bayfield County Clerk of Court, Kay Cederberg, who was also on the subcommittee which created "*Bridging the Distance*," shares the views expressed in this letter of support.

With regard to the issue of court venues, I can tell you that when Bayfield County developed and revised its CCOP Plan to address holding court in the event of a facilities disaster, such as fire, our first thought was to communicate with our neighboring county, Ashland, to determine if we should craft an agreement to use each others' facilities in the event of disaster. This made sense here because the two county seats were only 11 miles apart, separated by Chequamegon Bay. It seemed a perfect solution, until we discovered that the statutes probably would not authorize holding court in another county, even under emergency purposes. This was frustrating, as with most small, rural counties, there are few if any venues available to hold court and court related functions in the event of some catastrophic local or larger event. Having an option of using some of the space

from an adjoining county solved multiple problems. While there are no perfect solutions for a continuation of operations, having at least the option of using a neighboring county's facilities would be helpful.

The COVID-19 pandemic brought this issue into clearer focus, as the need to find a facility large enough to conduct jury trials and jury selection became problematic. We discovered that the differences in facilities across the state were not limited to technology. Size, air ventilation, public accessibility and other issues quickly became front and center. Some counties could accommodate the situation. Some could not.

Giving local courts the option, in difficult situations, to utilize another county's facility is prudent and appropriate.

On the issue involving rule changes to video conferencing, I would like to point out that my experience with Zoom and its interface with our existing Polycom platform has proved to be an effective tool in maintaining our case processing. In Bayfield County we were able to quickly and seamlessly move into remote and virtual appearances for attorneys, victims, litigants and the public. Bayfield County has effectively used this technology to continue scheduling and holding hearings of all types, including many evidentiary hearings. While the filings are down slightly, we are moving the cases with nearly the same efficiency as before the pandemic. With a little ingenuity and willingness to adapt, I have come to the conclusion that continued use of Zoom and video conferencing post-pandemic, when necessary, is the right thing to do.

On the issue of modifying Wis. Stat. 885.60(2)(b) involving giving judges some discretion to allow witnesses to appear by video conference, even if a defendant or respondent objects, I would like to share a story and example of a situation I had a few years ago in Ashland County.

I had a felony drunk driving jury trial in Ashland County scheduled for one day. It was late fall or early winter. The morning of the trial I arrived at the Ashland County Courthouse before 8:00 am. The jurors were starting to arrive around 8:15 am.

The state had a witness under subpoena from the state lab of hygiene /crime lab and the witness was traveling the morning of trial. The witness apparently left for Ashland County about 5:00 am to be available to testify late morning or early afternoon. The weather in the far north was a snow advisory with 2-4 inches of snow predicted. However, the weather in southern and central Wisconsin was freezing rain turning to snow. At about 8:05 am, the District Attorney (DA) and defense counsel came to see me about messages the DA office had received from the witness on the trip up to Ashland. Apparently, the roads turned icy and the witness felt it was not safe to continue and stopped to try and communicate with the DA around 7:00 am. The witness was unable to safely proceed. The state had already filed its notice of intent to use video conferencing for this witness,

but the defense timely objected which ends the inquiry at that point under the present state of the law. The witness did indicate she could return to her office and appear by video conference. The defendant continued its objection and considering this was set as a one-day jury trial, the only recourse the state had was to seek an adjournment. I granted an adjournment in the interests of justice.

All the parties, all the prospective jurors, myself as an out-of-county judge, and the court staff were prepared to proceed. Under the circumstances, it would have been helpful to at least consider the merits of allowing testimony by video conferencing in that case. I realize this is an extreme situation, but it did turn into an unfortunate waste of time and resources.

I would also like to point out that I have had a number of cases over the years in which an objection is made to video conferencing, only to have the defense attorney ask 2-3 questions of the witness. I realize that it is their right and there may be very legitimate reasons for the objection, but from a practical matter, it often appears to be an objection of form over substance. If courts would be allowed to at least consider the circumstances of the request and listen to the substance of the objection and weigh them accordingly, I think this would be better use of resources. The present state of the law is nearly an exclusive veto power given to one party, effectively foreclosing any rational discussion of the facts and equities of the request.

I believe the Director's Petition in this matter is well thought out and provides a current representation of what the 21st century courtroom is becoming. The digital and virtual world is changing rapidly and society is adapting in many other arenas to virtual presence and appearances. The court may not need to move with all the haste and hustle of society, but we should not remain staid and inflexible either. I think these requests are more than reasonable under the circumstance.

Sincerely,

s/John P. Anderson

Hon. John P. Anderson