

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

**PROTOCOL FOR THE USE OF INTERACTIVE VIDEO CONFERENCING
CIVIL**

The following provisions apply to civil matters:

1. General Provisions

The court may conduct hearings, conferences, and pretrial proceedings, hear arguments of counsel, and admit oral testimony, subject to cross-examination by live interactive video conferencing (IVC) when:

- (a) Ordered by the court *sua sponte*;
- (b) The parties so stipulate; or
- (c) The proponent shows good cause in compelling circumstances. The court shall consider the following factors to determine “good cause”:
 - (1) Whether any undue surprise or prejudice would result;
 - (2) The convenience of the parties, counsel, and the court;
 - (3) The cost and time savings;
 - (4) The importance and complexity of the proceeding;
 - (5) Whether the proponent has been unable, after due diligence, to procure the physical presence of a witness;
 - (6) The convenience to the parties and the proposed witness and the cost of producing the witness in relation to the importance of the offered testimony;
 - (7) Whether the procedure would allow effective cross-examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross-examination;
 - (8) Whether the solemnity of the surroundings will impress upon the witness the duty to testify truthfully;

- (9) Whether the witness is presently in prison or incarcerated; and
- (10) Such other factors as the court deems relevant.

2. Burden of Proof

The burden of establishing good cause shall rest with the proponent.

3. Procedures

- (a) If the court *sua sponte* orders the use of IVC to take testimony, it shall give notice in accordance with the Federal Rules of Civil Procedure. Such notice shall contain the Notice of Interactive Video Conferencing Rights as set forth in paragraph 4 of this Protocol.
- (b) Whenever the court orders the use of IVC *sua sponte* to take testimony, in the absence of a stipulation between the parties, a party wishing to make an objection to the use of IVC shall use the following procedures:
 - (1) A party objecting to the use of IVC shall serve and file no less than seven (7) calendar days prior to the scheduled hearing or proceeding a written objection to the use of IVC. The objecting party may, *ex parte*, contact the court for an expedited hearing date. If an objection is served and filed, the court shall, on an expedited basis, conduct a hearing by telephone conference to determine whether the use of IVC should be allowed. Failure to object in writing within the time limits set forth herein shall constitute a waiver of objection.
 - (2) If a party objects to the court's use of IVC and good cause for use of IVC is not established, the court shall reschedule the hearing or proceeding to such date, time, and location as is necessary to facilitate a traditional court hearing.
- (c) If the parties stipulate and request the use of IVC for a hearing or proceeding, the parties shall contact the deputy-in-charge of the clerk's office to obtain a date and time for the IVC hearing or proceeding. The deputy-in-charge will ordinarily require at least seven (7) calendar days' advance notice to schedule the IVC facilities. A written signed stipulation for use of IVC shall be served and filed no less than five (5) days prior to the date set for the IVC

hearing or proceeding. If the hearing or proceeding will be presided over by the court, the use of IVC shall be subject to court approval. (A suggested format for a Stipulation and Order for Use of Interactive Video Conferencing is attached as an appendix.)

- (d) In any hearing or proceeding conducted by IVC, whether by court order or by request of one or more of the parties:
 - (1) If the hearing or proceeding is required to be reported, a court reporter shall be in simultaneous voice communication with all parties to the IVC hearing, but may do so from any IVC terminal site, with the prior consent of the court.
 - (2) Parties entitled to be heard shall be given prior notice of the manner and time of the hearing or proceeding.
 - (3) Regardless of the physical location of any party to the IVC hearing or proceeding, any waiver, stipulation, motion, objection, decision, order, or any other actions taken by the court or a party has the same effect as if made in open court.
 - (4) Hearings and proceedings shall be conducted with the decorum and dignity required by the Federal Rules of Civil Procedure.
 - (5) All hearings or proceedings conducted by IVC shall be subject to the hearing procedures required by the Federal Rules of Civil Procedure and the Civil Local Rules of Practice.
 - (6) If a litigant/witness is appearing remotely from one of the court's videoconferencing facilities and the hearing or proceeding is being conducted from another location, courtroom security shall be present at the remote location.
- (e) When IVC is ordered or requested in accordance with this Protocol, the following procedures shall be used:
 - (1) If the court *sua sponte* orders IVC, the court shall, through the deputy-in-charge of the clerk's office where the case is venued, make arrangements to carry out the IVC procedures required in order for the court to hear the case as an IVC hearing or proceeding.

- (2) In all other cases it will be the responsibility of the party requesting the use of IVC to contact the deputy-in-charge of the clerk's office where the case is venued. The deputy-in-charge, working with the judge assigned, shall establish a date and time for the IVC hearing or proceeding. The court and counsel shall use reasonable efforts to confer with one another in scheduling IVC hearings or proceedings so as not to cause or create scheduling conflicts whenever possible. The moving party shall have the responsibility of preparing, serving, and filing the motion and notice of motion papers as required by this Protocol.

4. Notification and Rights of Parties

Whenever the court *sua sponte* orders the use of IVC to take testimony or a proponent moves for an order for use of IVC, the following notice shall be included in those materials served and filed:

NOTICE OF INTERACTIVE VIDEO CONFERENCING RIGHTS

The hearing or proceeding described above will be conducted by live interactive video conferencing (IVC). You have the right to object to the use of IVC, but your objection must be served and filed no fewer than seven (7) calendar days prior to the hearing date.

If you do not object within the time set forth in this notice, you will waive any objection you have for the court to hear the matter by IVC.

Any documents or other written material that you know to be relevant or necessary to the proceeding must be exchanged with all parties and submitted to the court, as appropriate, prior to the commencement of the hearing.

The order or notice of hearing shall set forth a date and location of the hearing and the site or sites between which the IVC hearing will be conducted.

Prior to an IVC hearing or proceeding, the court shall make available to all participants a brief statement describing IVC use and courtroom procedure. This information may be provided in writing or by allowing the participants to view a video tape or such other materials prepared by the court for this purpose.

5. Test Call

At least one test call between locations shall be conducted sufficiently in advance of the scheduled IVC hearing or proceeding to ensure compatibility. If the court *sua sponte* orders the use of IVC, the deputy-in-charge shall make arrangements for the call. In all other instances, the proponent shall coordinate with the deputy-in-charge to arrange for the call.

6. Standard Courtroom Procedures

Except as noted herein, the rules of court decorum specified in the Federal Rules of Civil Procedure, the Civil Local Rules of Practice and, where applicable, rules imposed by the presiding judge, shall apply.

The clerk's office where the case is venued shall be responsible for the following:

- (a) ensuring that the IVC equipment is functioning properly in advance of any IVC hearing;
- (b) providing information to participants describing IVC use, courtroom procedure, and courtroom decorum;
- (c) arranging for courtroom security and technical assistance at the remote location if a litigant/witness will be appearing remotely from one of the court's videoconferencing facilities; and
- (d) monitoring audio and video quality and providing technical assistance throughout the hearing as necessary.

Counsel for a party and the party shall participate at the same IVC site unless otherwise ordered by the court.

APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

_____ DIVISION

_____ ,)	CIV. _____
)	
Plaintiff,)	
)	STIPULATION
vs.)	FOR USE OF INTERACTIVE
)	VIDEO CONFERENCING
_____ ,)	
)	
Defendant.)	

The parties, through their undersigned counsel, stipulate and request that _____ scheduled for hearing on _____ at _____.m., be heard by interactive video conferencing (IVC) and affirmatively state that they have reviewed the Notice of Interactive Video Conferencing Rights found in the Civil Protocol for the Use of Interactive Video Conferencing and waive any objection to the use of IVC for this hearing.

Dated _____.

Attorney for plaintiff

Attorney for defendant