



Public Information Office
United States Courts for the Ninth Circuit

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NEWS RELEASE

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Tech Savvy Ninth Circuit Leading the Way During the COVID-19 Pandemic

SAN FRANCISCO – We can’t control what’s going on in the world but the Ninth Circuit, long known to be the first court to live-stream oral arguments and archive video arguments for the public, continues to benefit from its tech savvy reputation as a leader in technological and case management innovation during the world’s greatest pandemic in over a century.

“We have far too many cases to have operations come to a grinding halt,” said Clerk of Court Molly Dwyer, of the Ninth Circuit Court of Appeals. “Moving to remote video and audio conferencing is the best way to protect judges, employees, litigants, and the public, while also upholding our constitutional responsibilities.” The Ninth Circuit already had decades of experience in providing the public with complete and simultaneous access to the public workings of the appellate court. In addition, the Court had extensive experience with judges appearing by video, and, upon special circumstances, advocates arguing by video.

Chief Circuit Judge Sidney R. Thomas explained that in 1990, the Judicial Conference of the United States authorized a study of the “no cameras” issue by the Federal Judicial Center (“FJC”). The FJC staff recommended allowing federal courts to provide camera access to civil proceedings. The Judicial Conference chose not to alter the federal rules, but adopted a resolution stating that “[e]ach court of appeals may decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject [to statutory and rule-based restrictions].” Video oral argument by attorneys with panel permission began in 1999.

In 2003, the Ninth Circuit Court of Appeals began streaming live audio for oral arguments for court users. The system used at that time was very simple and primarily utilized court computers that had been retired from use as normal office computers. In addition to a single older PC assigned to each courtroom, and placed on or near the courtroom equipment rack, one server was installed in the headquarters machine room in San Francisco, and used to stream audio at “speech only” resolutions of 20 Kbps (kilobytes per second) to fall well under the capacities of the telephone-line modem speeds of the time. Since then, the Court has continued to refine its use of

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this technology, primarily in combination with live video streaming, and also to offer live streaming to be available on the public Internet, rather than just to Court users. The Court established a YouTube channel in 2010 for the purposes of offering previously recorded oral arguments to the public. By 2012, occasional important cases were being live-streamed, and in January of 2015 the Court began to live-video stream all normal oral arguments from its 11 regular courtrooms on the West coast, as well as the bi-annual use of district and bankruptcy courtrooms in Honolulu and Anchorage, and occasional oral argument sessions held at law schools.

Chief Judge Thomas described having approximately 9,000 archived video arguments. The Ninth Circuit's video archive has been viewed over 4 million times, 4.3 million times at present. With the electronic methods already in place, the Ninth Circuit has been uniquely positioned to function during this crisis. Even though other circuit courts canceled calendars and hearings indefinitely, the Ninth Circuit began conducting "all-video oral arguments" as planned during the scheduled court weeks. The participants may attend from home, office, or a courthouse. Chief Circuit Judge Sidney R. Thomas stated that the Ninth Circuit provides attorneys the information necessary to participate by video. "It has worked extremely well. In addition, we are continuing our long-standing practice of live streaming oral arguments, including all video arguments. The arguments can be viewed live, or via archives, on the Court's website or YouTube channel." According to a number of active and senior circuit judges, the process is working very efficiently and is very "user friendly." In an all-video participant case heard in March, Duncan v. Becerra, was video streamed by 3,600 viewers. The total watch count for the case was over 21,000.

District and bankruptcy courts in the Circuit also are utilizing multiple audio and video conferencing technologies to host oral arguments, preliminary hearings, arraignments, misdemeanor sentencings, and other procedures remotely. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), passed on March 27, granted chief judges the right to authorize the use of video or phone conferencing in certain criminal proceedings, with the consent of the defendants, during the crisis. In the District of Nevada, Chief District Judge Miranda M. Du described a recent sentencing involving the use of a court interpreter whose translations of the defendant's remarks were heard by all the participants while the defendant spoke with the interpreter from the county jail in Reno (a courtesy agreement between the Nevada federal and state courts). The many technology options being used and tested by the Judiciary include AT&T Conferencing, Skype for Business, Cisco Jabber, and Zoom for Government.

The Ad Hoc Committee on Workplace Environment, chaired by Ninth Circuit Judge M. Margaret McKeown, initiated a series of town hall meetings for Ninth Circuit law clerks and staff to keep people connected and informed during this period. During the first town hall meeting, key circuit leaders—Circuit Executive Elizabeth A. Smith; Clerk of Court Molly

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Dwyer, Yohance Edwards, Director of Workplace Relations, and Laura Apperson, Director of Human Resources—described how different chambers are dealing with working remotely, how the Court is handling upcoming video calendars, what the Circuit is doing to facilitate working from home, tips and suggested tools for coping, and resources available for IT, case management, and mental health. A session held April 15 by video conference was a facilitated brown bag lunch, featuring several judges talking about the experience of managing chambers and cases virtually while juggling competing family obligations.

Henry Stegner, law clerk to Judge Danielle Hunsaker in Portland, Oregon, supports continuation of the town hall meetings which reminded him that “the Ninth Circuit family is here” to provide support and that “...we are not alone, and efforts can be made to improve the daily routine. The self-isolation is difficult and may bring about fatigue, listlessness, and loss of direction,” Stegner said. “The forum was a refreshing reminder that interaction is possible through video chats, phone calls, and even virtual happy hours; and finding time for self-care through relaxation, meditation, or other means is crucial,” he added.

Circuit Executive Elizabeth A. Smith, who leads the Office of the Circuit Executive (OCE), the administrative branch of the Ninth Circuit, credits the exceptional leadership of the chief judges and court unit executives within the Circuit during these challenging times. She added that the level of collaboration and creative problem solving, particularly as it relates to technology driven solutions has been very impressive. She also expressed her appreciation for all employees within the circuit for their dedication and commitment to the mission of the courts during these challenging times. Smith is especially proud of the outstanding organizational support the OCE team is providing to the Judicial Council, the Circuit’s governing body, and the creative responses to issues that the Ninth Circuit’s 15 district courts ranging from managing their courthouses to consulting on speedy trial issues. With regards to planning for continuity of operations, Smith has been very impressed by the support of the Administrative Office of the U.S. Courts in offering video conferencing tools that have made it possible for her to test the OCE’s readiness in a COOP situation. Microsoft TEAMS, Skype for Business, Zoom for Government, and the National Video Teleconferencing Service (NVTCS), have been utilized by her office. Although during weekly staff meetings, participants express their longing to return to the office, such remote meetings have become essential to maintain continuity of operations and bringing together all aspects of the Circuit during these difficult and isolating times.

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