

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
4200 United States Court House
300 Fannin Street
SHREVEPORT, LOUISIANA 71101-3059

CHAMBERS OF
DONALD E. WALTER
DISTRICT JUDGE

PHONE: (318) 676-3175
FAX: (318) 676-3179

May 26, 2017

Honorable Judge Donald W. Molloy
Senior United States District Judge
Advisory Committee on Criminal Rules, Chair
Russell E. Smith Federal Building
201 East Broadway Street, Room 360
Missoula, MT 59802

Judge Molloy:

I write to you in your capacity as the Chair of the Advisory Committee on Criminal Rules, to respectfully suggest a revision to Federal Rule of Criminal Procedure 43, which would allow for sentencing by video conference. As you know, the text of Rule 43, "Defendant's Presence," currently reads, in part:

(a) When Required. Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at:

...

(3) sentencing.

...

(c) Waiving Continued Presence.

...

(2) Waiver's Effect. If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

Fed. R. Crim. P. 43.

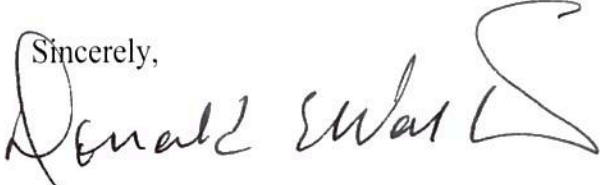
As you also know, at least five circuits have concluded that a defendant's electronic "presence" by video conference does not satisfy Rule 43(a)'s requirement that a defendant be present at sentencing. *See e.g. United States v. Williams*, 641 F.3d 758, 764 (6th Cir. 2011); *United States v. Salim*, 690 F.3d 115, 122 (2d Cir. 2012); *United States v. Torres-Palma*, 290 F.3d 1244, 1245 (10th Cir. 2002); *United States v. Lawrence*, 248 F.3d 300, 304 (4th Cir. 2001); and *United States v. Navarro*, 169 F.3d 228, 239 (5th Cir. 1999). While I respect the factors and analysis underlying the relevant jurisprudence, I believe there to be good cause for a revision that allows the option of sentencing by video conference, absent a *timely* objection, with good cause shown, by the defendant. Although the current rule arguably makes room for same, through the waiver provision at Rule 43(c)(2), I would suggest a revision that allows space for electronic presence of a defendant, via video conferencing technology, to fit within the very definition of "presence."

Indeed, in a recent concurring opinion written solely to admonish a lower court's decision to conduct a telephonic sentencing, Fifth Circuit Judge Edith Jones implied that there is room for such a revision, when she made a distinction between sentencing by telephonic conferencing and sentencing by videoconferencing: "Perhaps this measure was viewed as a simple extension of the practice of conducting sentencing by videoconferences. . . . Sentencing by telephonic conferencing goes far beyond videoconferencing in its lack of dignity and detachment from the moral drama of the criminal justice system." *United States v. Ramos-Gonzales*, No. 16-41353 (5th Cir. May 24, 2017).

It is my position that such a revision would allow for maximizing judicial efficiency and economy, while maintaining the fairness, integrity, and solemnity of the criminal proceeding. As our government continues to face budgetary and staffing concerns at every level, such an allowance would considerably lessen the burden on the United States Marshal's Service, as well as the Bureau of Prisons, transport officers, judges and court staff.

In closing, I confess a personal "dog in this fight." I am an 81-year-old Senior Status Judge. I escape Louisiana heat by being in Maine all summer. This June and July, I have made arrangements, through Judge Torresen in Portland, to sentence approximately fifteen defendants by video conference. I have secured waivers from most of the defendants in order to proceed. As to the others, either I will have to fly back to Louisiana or put off sentencing until October. In my past life, as an advocate, I would argue that the defendant is present; only the judge is absent. *See Ramos-Gonzales*, (Jones, J., concurring) ("In [videoconference] proceedings, the judge presides from another location, while the defendant, together with his or her family, and the AUSA are present in the court of conviction.").

I thank you for your time and consideration.

Sincerely,


Donald E. Walter