



Remote Proceedings During State of Emergency

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[Administrative Order No. 2020-6](#) expands the authority of judicial officers to conduct proceedings remotely, but requires all remote proceedings to be consistent with all parties' constitutional rights and the standards set by the State Court Administrative Office (SCAO). AO 2020-6 is effective "until further order of the Court." [Administrative Order No. 2020-12](#). While AO 2020-6 is in effect, "all judges in Michigan are required to make a good faith effort to conduct proceedings remotely whenever possible," and "adjournments are permitted when necessary" so long as the court "implement[s] measures to ensure all matters may proceed as expeditiously as possible under the circumstances, given the public health conditions of each locality and the technology resources and staffing situations in place at each court."

AO 2020-6 permits the use of two-way interactive video-conferencing technology or other remote participation tools only under the following conditions:

- The procedure is consistent with all parties' constitutional rights.
- The procedure allows for confidential communication between a party and the party's counsel.
- Where appropriate, the public is given access to the proceeding.
- The procedure allows for recording sufficient to enable the subsequent production of a transcript.

Constitutional Rights Likely to be Implicated¹

- Criminal defendants have the right to a speedy and public trial, to confront witnesses,² and the assistance of counsel. [US Const, Am VI](#); [Const 1963, art 1, § 20](#).
- Crime victims have a right to be present at all court proceedings. [Const 1963, art 1, § 24](#).

Security of Proceeding

- Use Zoom's waiting room function to control who is admitted to the hearing to prevent participation by individuals who are not parties.
- While daily dockets should be posted online, the Zoom Meeting ID(s) and passwords should not be shared publicly.
- The court must act as the Zoom host; hosts control screen sharing, who enters the hearing, who speaks, who records, the chat function, and hosts can remove participants or put them on hold by returning them to the waiting room.

¹Ensure all waivers are on the record.

²The right to confrontation includes the right to be present at all critical stages of a criminal proceeding. See *People v Mallory*, 421 Mich 229, 247 (1984). Note that defendants may waive the right to be physically present and appear by video. See *People v Buie*, 298 Mich App 50, 56-57 (2012).

Public Access

- Unless access is otherwise limited by statute or court rule, access to virtual proceedings must be provided to the public either during or immediately after the proceeding. Each court may determine how to provide this access.
- Consider announcing at the start of the proceeding that anyone who makes an unauthorized recording may be subject to contempt proceedings.

Confidential Communication

- Courts must enable confidential communication between a party and the party's counsel.
- In Zoom, a "breakout room" can be used for this communication; there is no audio or video recording in a breakout room when using cloud recording.
- The court can set up the breakout room so that there is no time constraint and participants can rejoin the hearing when they are done meeting. The host can also limit the time and return participants.

Making a Record

- Courts must make a verbatim record that can be used to create a transcript. [MCR 8.109\(A\)](#) allows the use of audio and video recording to make a record.
- To comply with logging standards, adopt the practice of stating the case number, case title, the start and end time of the hearing, and require participants to state and spell their names. Consider using Zoom’s chat feature or audio transcript feature to create the log; public chats and chats sent to the host can be saved.
- To keep the record clear advise participants to speak slowly and wait until prompted; use Zoom’s gallery view, use host control features to maintain decorum, and allow or limit chat functionality being mindful to avoid ex parte communication, and play a sound when participants enter or exist the Zoom meeting.

Additional Considerations

- If a court limits in-person filing due to the state of emergency, [AO 2020-2](#)³ authorizes pleadings to be filed using U.S. mail, e-Filing, e-mail, or facsimile.
- [MCR 1.109\(E\)](#) permits electronic signatures, but only the judge can affix his or her signature.
- Provide notice and ensure all parties can remotely participate. Collect e-mail addresses to which the Zoom meeting ID, invitation, and password can be sent or arrange for participation by telephone.
- Remind participants that the virtual proceeding is live, is being recorded, and that normal courtroom decorum rules still apply.
- Allow submission of exhibits via e-mail or other means prior to the hearing for marking and logging.

³ [AO 2020-2](#) is effective “until further ordered by the Court.” [AO 2020-12](#).

Resources and Benchcard Authority

This benchcard summarizes material presented in the [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#), which should be consulted for a complete guide to conducting remote proceedings.

Additionally, the following resources are available to courts conducting remote proceedings:

- [Michigan Trial Court Standards for Courtroom Technology](#)
- [Using Zoom and Virtual Courtroom Resource Center](#)
- Administrative Order No. [2020-2](#), Administrative Order No. [2020-6](#), and the [memorandum](#) from the State Court Administrator.
- [Courts and COVID-19—Building Capacity](#)