

Remote Court Participation Chart

May 11, 2020

This document is one of a number of Toolkit items designed to help courts in their planning to return to full capacity while continuing to mitigate risk to protect the public and staff. While every effort has been made by SCAO staff to compile as much helpful and accurate guidance as possible, we understand that during the months ahead courts will be responding to their individual situations with creativity and innovation. Moreover, we know that advice from outside authorities continues to change to reflect analysis of additional data. Anticipating occasional updates to these documents as new information becomes available, the SCAO welcomes ongoing input on these documents, and in particular, sharing insights and experiences that can be added so that other courts can benefit from each other's work. Comments can be sent to CourtServices@courts.mi.gov.

Note: This chart is intended to assist courts with deciding when to hold remote hearings via telephone and videoconferencing. While it includes statutory and court rule authority for remote hearings, AO 2020-6 authorizes remote court hearings consistent with the provisions in the order, until further ordered by the Michigan Supreme Court.

Participant Type	Court Type	Case Type	Proceeding or Hearing Type	Telephone		Two-Way Interactive Video Technology (IVT)					
				Authority	Allowance and Restrictions	Authority	At Court's Own Initiative	At Request of Party	Requires Presence or Waiver of Right	Requires Good Cause Showing	Requires Consent of the Parties
Party ⁱ	All Courts	Civil	Motion hearings, pretrial, scheduling, or status conferences. ⁱⁱ	MCR 2.402(B)	Yes, but some restrictions on use of phones. ⁱ						
			Any court-scheduled civil proceeding, such as motions, pretrials, civil trials, etc.			MCR 2.407 – see criteria	X	X			
Defendant or Juvenile Charged As Adult	District or Circuit	Misdemeanor or Felony	Arraignments, Pretrials, Plea, Misdemeanor Sentence, Show Cause Hearing, Extradition Waivers/Adjourns, PCC, Referral to Competency Evaluation, PE Waivers/Adjourns, Motion to Amend Restitution			MCR 6.006(A) MCR 6.104(A) MCR 6.430(D) MCR 6.901(C)	X				
			Hearing on Evidence or Competency, [Felony] Sentencing, Probation Revocation or Revoke Sentence not involving adjudication of guilt, such as youthful trainee status.			MCR 6.006(C) (1); MCR 6.901 (C)		X	X	X	
			Trials [Criminal – Jury or Bench]			MCR 6.006(C) (2); MCR 6.901 (C)			X	X	X

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Defendant	District	Felony (Adult or Juvenile Charged as Adult)	Preliminary Exam for <i>Testimony of Expert Witness</i>	MCR 6.006 (B); MCR 6.901(C)	If defendant waives right to be present	MCR 6.006(B) MCR 6.901(C)		X	X		
			Preliminary Exam for <i>Testimony of any person at another location</i>	MCR 6.006 (B); MCR 6.901(C)	If defendant waives right to be present AND good cause shown	MCR 6.006(B)		X	X	X	
Incarcerated Party [MDOC]	Circuit, Family, or Probate	Dom. Rel. w/ Kids, Custody, Guardianship, Neglect or Foster-Care Placement of Minors, or Term. of Parental Rights	Any hearing or conference seeking an order regarding a minor child, including a FOC adjudicative hearing or meeting.	MCR 2.004 -see notice & order requirements.	Yes, either telephone or IVT is required.	MCR 2.004 – see notice and order requirements	X	X			
Party	Circuit or Family	Domestic Relations Actions	May take testimony during hearings and trials, including referee hearings	MCR 3.210 (A); MCR 3.215(D); MCL 552.2316 (UIFSA) MCL 722.1111 (UCCJEA)	Standard depends on applicable authority. Telephone testimony allowed for extraordinary circumstances or good cause, and out-state residents. ⁱⁱⁱ	MCR 3.210(A) MCR 3.215(D) MCL 552.2316 MCL 722.1111 MCR 2.407 – see criteria	X ⁱⁱⁱ	X ⁱⁱⁱ			
Participant ⁱⁱ	Circuit or Family	Juvenile Delinquency or Child Protective Proceedings	Any hearings where court decides necessary “to facilitate hearings or to protect the parties.”	MCR 3.923 (E)	Yes, to facilitate hearings or to protect the parties.	MCR 3.923(E)	X				

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Participant ⁱⁱ	Circuit	Personal Protection Proceedings (PPO) and Minor PPO Proceedings	Hearing for Issuance of PPO			MCR 3.705(B) MCR 3.981 MCR 2.407 – see criteria	X				
Party	Circuit	Personal Protection Proceedings (PPO)	Arraignment on PPO Violation for Testimony of Expert Witness	MCR 3.708(D)	Yes, same criteria as two-way IVT. ⁱⁱⁱ	MCR 3.708(D)		X	X		
			Arraignment on PPO Violation for Testimony of any person at another location	MCR 3.708(D)	Yes, same criteria as two-way IVT. ⁱⁱⁱ	MCR 3.708(D)		X	X	X	
			PPO Violation Hearing for Testimony of Expert Witness	MCR 3.708(H)	Yes, same criteria as two-way IVT. ⁱⁱⁱ	MCR 3.708(H)		X	X		X
			PPO Violation Hearing for Testimony of any person at another location	MCR 3.708(H)	Yes, same criteria as two-way IVT. ⁱⁱⁱ	MCR 3.708(H)		X	X	X	X
Juvenile or Witness	Circuit or Family	Juvenile Delinquency, Designated, and PPO Violation Proceedings	Preliminary Hearings, and Examinations, Post-dispositional Progress Reviews, Dispositional Hearings, if court does not order more restrictive placement or treatment (but see AO 2020-9, which suspends this restriction until further ordered by the Court).			MCR 3.904(A)(1) use between a courtroom and a facility	X				
			Any other hearing, except for Trial, to take testimony of expert witness or a person at another location.			MCR 3.904(A)(2)		X	X	X	
			Trials			MCR 3.904(A)(2)					X

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Respondent or Participant ⁱⁱ	Circuit or Family	Child Protective and Juvenile Guardianship Proceedings	Removal Hearings or Evidentiary Hearings, to take testimony of expert witness or a person at another location.			MCR 3.904(B)(2)(a)		X	X	X	
			Termination of Parental Rights Hearings and Trials			MCR 3.904(B)(2)(b)		X	X	X	X
			Any other hearing, except those above.			MCR 3.904(B)(1)	X				
Interested Party	Circuit or Family	Adoption Proceedings	Hearing on Consent to Adopt, except for consent hearing of Indian Child under MCL 712B.13			MCR 3.804(B) MCR 2.407 – see criteria	X	X			
Participant ⁱⁱ	District	Civil Infraction	Any court-scheduled civil proceeding	MCR 4.101(B)(2)	Court May Not Use Telephone for hearings. Only to obtain date to appear.	MCR 4.101(F) MCR 2.407 – see criteria	X				
		Landlord-Tenant, Land Contract Forfeiture or Small Claims Proceedings	All hearings			MCR 4.201(F) MCR 4.202(H) MCR 4.304(A) MCR 2.407 – see criteria	X				
Participant ⁱⁱ	Probate	Any Probate Proceeding – Chapter 5 of MCR	All hearings, except for hearings below.			MCR 5.140(A) MCR 2.407 – see criteria	X	X			
		Mental Health Proceedings	All hearings, except if subject of the petition was committed after verdict of not guilty by reason of insanity.			MCR 5.140(B)	X	X	X ^{iv}		
Subject of the Petition	Probate	Conservator, Guardian, or Protected Individual Proceedings	All hearings			MCR 5.140(C)	X	X	X ^v		

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Petitioner, Respondent or Interested Person	Probate	Guardianship – MI Indian Family Preservation Act	<i>Consent hearings under MI Indian Family Preservation Act or MCR 5.404(B)</i>			MCR 5.140(D) MCR 5.404(B)	Court May Not Use Two-Way IVT				
Party	Circuit	Civil Appeals from District Court	All Hearing on Bond and Stay Orders for Civil Appeals	MCR 7.108(B) MCR 2.402	Yes, allowed.						

ⁱ “Participants” include, but are not limited to, parties, counsel, and subpoenaed witnesses, but do not include the general public. MCR 2.407(A)(1)

ⁱⁱ “A court may, on its own initiative or on the written request of a party, direct that communication equipment be used for a motion hearing, pretrial conference, scheduling conference, or status conference. The court must give notice to the parties before directing on its own initiative that communication equipment be used. A party wanting to use communication equipment must submit a written request to the court at least 7 days before the day on which such equipment is sought to be used, and serve a copy on the other parties, unless good cause is shown to waive this requirement. The requesting party also must provide a copy of the request to the office of the judge to whom the request is directed. The court may, with the consent of all parties or for good cause, direct that the testimony of a witness be taken through communication equipment. A verbatim record of the proceeding must still be made.” MCR 2.402(B)

ⁱⁱⁱ For cases filed the Uniform Interstate Family Support Act [UIFSA] courts are **required** to allow out-of-state participants to appear by “telephone, audio visual means, or other electronic means at a designated tribunal or other location.” MCL 552.2316(6). In addition, for cases filed under the Uniform Child-Custody Jurisdiction and Enforcement Act [UCCJEA] a “court of this state **may** permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for a deposition or testimony.” MCL 722.1111(2).

^{iv} “In a mental health proceeding, if the subject of the petition wants to be physically present, the court must allow the individual to be present unless the court excludes or waives the physical presence of the subject pursuant to MCL 330.1455. This does not apply to proceedings concerning a person originally committed as a result of MCL 330.2050 [person acquitted of criminal charge by reason of insanity].” MCR 5.140(B).

^v “In a proceeding concerning a conservatorship, guardianship, or protected individual, if the subject of the petition wants to be physically present, the court must allow the individual to be present. The right to be present for the subject of a minor guardianship applies only to a minor 14 years of age or older.” MCR 5.140(C).