



Michigan Supreme Court

State Court Administrative Office
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Thomas P. Boyd
State Court Administrator

MEMORANDUM

DATE: September 1, 2020

TO: All Judges, Court Administrators, and Probate Registers
CC: Janet Welch, State Bar of Michigan

FROM: Thomas P. Boyd

SUBJECT: Return to Full Capacity – Continued Use of Remote Hearings

The Supreme Court issued [Administrative Order No. 2020-14](#) on May 6, 2020. This AO authorizes the State Court Administrative Office (SCAO) to establish guidelines for the trial court's return to full capacity. The SCAO guidelines is where you find the phased criteria for returning to full capacity with which you have all become so familiar. Courts across the state have done an excellent job working with local public health officials and their funding units to carefully increase activity and access to court facilities.

What is truly remarkable is how trial court judges have transitioned to remote proceedings to keep our justice system running. At the same time, livestreaming those remote hearings to YouTube has maintained public access. In fact, over the past five months, nearly 1,000 judges and quasi-judicial officers have presided over more than 800,000 hours of remote hearings. As a result, Michigan has become a national model in how to provide access to justice during the pandemic.

That leadership must continue. That's why I am writing to highlight and remind courts of a key aspect of AO No. 2020-14 and the [Return to Full Capacity: COVID-19 Guidelines](#). A court's return to full capacity is premised on continuing to use Zoom and other remote access tools. In particular, the guidelines stress this point:

“Full capacity” in 2020 means something different than in prior years and will require a culture shift in the judiciary based on advancements in court technology and remote work capacity achieved during the early stages of the COVID-19 pandemic. In that time, the number of Zoom licenses doubled to more than 1,000 as additional Zoom licenses were distributed to courts across the state, ensuring virtual capacity in every jurisdiction. Consequently, conducting virtual proceedings should be a continued fixture in court planning.

Administrative Order No. 2020-14 expressly contemplates that courts are to continue remote hearings. Consider the following excerpt from that order:

“. . . courts must adhere to the phased return to operations as determined by policy guidelines established by the State Court Administrative Office. Such policies will include but may not be limited to:

- Continued use and expansion of remote hearings as practicable and increase of the court’s capacity to conduct business online . . .

In addition, the Court stressed its expectation that trial courts continue to operate remotely. In AO No. 2020-19, the Court stated:

Courts shall continue to expand the use of remote participation technology (video or telephone) as much as possible to reduce any backlog and to dispose of new cases efficiently and safely. As articulated in Administrative Order No. 2020-1 and Administrative Order No. 2020-6, as courts expand their use of remote technology tools, courts must continue to verify that participants are able to proceed remotely, and should permit some participants to appear remotely even if all participants are not able to participate electronically. To enable the greatest participation possible for judicial officers, Administrative Order No. 2012-7 (which limits the circumstances under which judges may preside over remote proceedings) is suspended until further order of the Court.

This means that a judge may not refuse a reasonable request to appear by Zoom for most proceedings. Requiring parties or counsel to appear in person for a scheduling hearing, status conference, or other routine hearing when remote technology is available is contradictory to the express intent articulated in the Court’s administrative orders. A party’s or counsel’s request to appear by Zoom or teleconferencing should be granted unless not practicable. Courts should have a clear rationale and a record sufficient for appellate review if denying a party’s or counsel’s request to appear remotely.

Some contested hearings are difficult to conduct remotely. In these limited circumstances, judges and courts must be sensitive to parties or counsel whose age or health may put them at enhanced risk during the pandemic. Judges are encouraged to work with parties and counsel to identify such hearings and establish clear procedures for proceeding.

Finally, you should know that we are receiving overwhelmingly positive feedback from the public and the bar regarding remote proceedings. Litigants can appear from their homes or offices, avoiding the need to miss work or arrange for child care. Attorneys can appear in proceedings in different parts of the state on the same day, even the same morning, saving time and other expenses. While there have been complaints regarding decorum, by and large, this transformation of our judicial processes has been a resounding success and must continue.

If you have questions or concerns on implementation of AO No. 2020-14, please contact your Regional Administrator.