

August 30, 2013

Hon Robert P. Young, Jr., Chief Justice
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No.

Dear Chief Justice Young,

The Michigan District Judges Association files these comments as the Michigan Supreme Court considers adoption of Rule 8.124 and amendments of Rules 3.210, 3.215, and 6.104 of the Michigan Court Rules. We believe that these proposed rules, developed from a committee of the Supreme Court, reflect the realistic use of appropriate courtroom technology in trial and pretrial proceedings. We recommend adoption with limited changes to Rule 8.124.

The Chair of our Information/Technology Committee participated in the development of Rule 8.124 and our comments include those insights. This new rule is now referenced by the other rules as an exception to their limitations. Hearings and Trials, pursuant to Rule 3.210(A)(4) will now mandate that testimony be taken in person, by telephone (at the court's discretion in, undefined, "extraordinary circumstances"), or under MCR 8.124. Referee Hearings, pursuant to Rule 3.215(1)(3) mandates that testimony be taken in person, by telephone for undefined "good cause" or by use of two-way interactive video technology, now under MCR 8.124. Arraignment on the Warrant or Complaint, pursuant to Rule 6.104 (A) and (B) already allows for video arraignment in place of in person appearance and will now be done under MCR 8.124.

We support the use of "video conferencing" for video arraignments and any other court-scheduled proceedings, as contemplated by MCR 8.124(B) which allows for its use upon request, or sua sponte by the court and subject to standards published by the SCAO along with this rule. We support the wording of MCR 8.124(B)(3) that preserves the defendant's right of confrontation for trial proceedings, to the extent that the phrasing of the rule..."In criminal trials and evidentiary hearings that occur as part of a criminal trial, ..." means all proceedings being held during an ongoing trial, and not proceedings held before trial. The Court should have discretion to use this technology without obtaining a party waiver, for all pre trial proceedings, as long as the Court uses its discretion in accordance with the guidelines presented.

MDJA opposes the adoption of any rule that would require a criminal defendant to be physically present in the courtroom during a non-trial proceeding, unless the court obtains a party waiver. Such a rule would clearly extend the trial right to confront witnesses to non trial proceedings and MDJA does not endorse such an expansion. If a waiver requirement were expanded to non-trial criminal proceedings, we would expect that defendants would rarely agree to waive their right to be physically present in the court room, thereby causing an increase in court appearances and effectively nullifying the security and cost benefits video technology provides to public safety and the courts. An expansion of the rule to non-trial criminal proceedings would in effect put an end the use of video technology in pre-trial criminal court proceedings.

The “Criteria for Video Conferencing” set forth in Rule 8.124(C) is actually the list of all the issues raised in committee concerning the use of technology. This list was intended to be used to form the basis of prioritizing the standards to be created and eventually published by the SCAO with approval of the Supreme Court. The areas of concern raised by the committee are as follows:

- Criteria (C) (12) is a scheduling concern;
- Criteria (C) (3), (10) simply present the cost savings and security analysis that support the use of this technology. At the time of this letter, the MDOC is reporting over 6 million dollars saved in transportation and security costs;
- Criteria (C) (1), (7) are technology/functionality based;
- Criteria (C) (2), (4), (5), (6), (8), (9), (11) are all issues that relate to the quality of the proceedings and the fundamental trial right to a face to face confrontation, and not necessarily to other pretrial court proceedings;
- Criteria (C) (13) is a catch all provision.

It was the committee’s recommendation that these criteria should be prioritized and separately considered or grouped in a manner that would allow the trial courts to continue use their discretion to use video conferencing in their trial proceedings. To the extent necessary these priorities should be incorporated into the new rule. For all the reasons stated herein, the MDJA recommends adoption of ADM File No. 2013-18 in regards to video conferencing, with the changes listed.

Respectfully submitted,

Ron Lowe
MDJA President

cc: Corbin R. Davis, Clerk Michigan Supreme Court
Anne Boomer