

# Order

Michigan Supreme Court  
Lansing, Michigan

September 21, 2016

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2013-18

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

Amendments of Rules 2.004, 3.705,  
3.708, 3.904, 4.101, 4.201, 4.202,  
4.304, 4.401, 5.140, 5.404,  
5.738a (deleted), 6.006, and 6.901  
of the Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendments of Rules 2.004, 3.705, 3.708, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, 5.140, 5.404, 5.738a (deleted), 6.006, and 6.901 of the Michigan Court Rules are adopted, effective January 1, 2017.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 2.004 Incarcerated Parties

(A)-(B) [Unchanged.]

(C) When all the requirements of subrule (B) have been accomplished to the court's satisfaction, the court shall issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call or by ~~video conference~~videoconferencing technology in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing or conference, and the prisoner's name and prison identification number, and shall be served at least 7 days before the hearing or conference by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides. The initial telephone call or videoconference shall be conducted in accordance with subrule (E). If the prisoner indicates an interest in participating in subsequent proceedings following an initial telephone call or videoconference pursuant to subrule (E), the court shall issue an order in accordance with this subrule for each subsequent hearing or conference.

- (D) [Unchanged.]
- (E) The purpose of the initial telephone call or ~~video conference~~ videoconference with the incarcerated party, as described in this subrule (C), is to determine
- (1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,
  - (2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,
  - (3) whether the incarcerated party is capable of self-representation, if that is the party's choice,
  - (4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation ~~in~~ by way of additional telephone calls or ~~video conferences~~ videoconferencing technology as permitted by the Michigan Court Rules, and
  - (5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate.

(F)-(G)[Unchanged.]

#### Rule 3.705 Issuance of Personal Protection Orders

- (A) [Unchanged.]
- (B) Hearings.
- (1)-(2)[Unchanged.]
  - (3) The hearing shall be held on the record. In accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant as defined in MCR 2.407(A)(1).
  - (4)-(6)[Unchanged.]
- (C) [Unchanged.]

### Rule 3.708 Contempt Proceedings for Violation of Personal Protection Orders

(A)-(C) [Unchanged.]

(D) Appearance or Arraignment; Advice to Respondent. At the respondent's first appearance before the circuit court, whether for arraignment under MCL 764.15b, enforcement under MCL 600.2950, 600.2950a, or 600.1701, or otherwise, the court must:

(1)-(6) [Unchanged.]

As long as the respondent is either present in the courtroom or has waived the right to be present, on motion of either party, the court may use telephonic, voice, or videoconferencing technology to take testimony from an expert witness or, upon a showing of good cause, any person at another location.

(E)-(G) [Unchanged.]

(H) The Violation Hearing.

(1) Jury. There is no right to a jury trial.

(2) Conduct of the Hearing. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. As long as the respondent is either present in the courtroom or has waived the right to be present, on motion of either party, and with the consent of the parties, the court may use telephonic, voice, or videoconferencing technology to take testimony from an expert witness or, upon a showing of good cause, any person at another location.

(3)-(5)[Unchanged.]

In addition to such a sentence, the court may impose other conditions to the personal protection order.

(I) Mechanics of Use. The use of videoconferencing technology under this rule must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court.

Rule 3.904 Use of ~~Interactive Video~~Videoconferencing Technology

- (A) ~~Facilities. Courts may use two-way interactive video technology to conduct the proceedings outlined in subrule (B).~~
- (B) ~~Hearings.~~
- (1) ~~Delinquency Proceedings. Two-way interactive video technology may be used to conduct preliminary hearings under MCR 3.935(A)(1), postdispositional progress reviews, and dispositional hearings where the court does not order a more restrictive placement or more restrictive treatment.~~
- (2) ~~Child Protective Proceedings. Two-way interactive video technology may be used to conduct preliminary hearings or review hearings.~~
- (A) Delinquency, Designated, and Personal Protection Violation Proceedings. Courts may use videoconferencing technology in delinquency, designated, and personal protection violation proceedings as follows.
- (1) Juvenile in the Courtroom or at a Separate Location. Videoconferencing technology may be used between a courtroom and a facility when conducting preliminary hearings under MCR 3.935(A)(1), preliminary examinations under MCR 3.953 and MCR 3.985, postdispositional progress reviews, and dispositional hearings where the court does not order a more restrictive placement or more restrictive treatment.
- (2) Juvenile in the Courtroom-Other Proceedings. Except as otherwise provided in this rule, as long as the juvenile is either present in the courtroom or has waived the right to be present, on motion of either party showing good cause, the court may use videoconferencing technology to take testimony from an expert witness or a person at another location in any delinquency, designated, or personal protection violation proceeding under this subchapter. If the proceeding is a trial, the court may use videoconferencing technology with the consent of the parties. A party who does not consent to the use of videoconferencing technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

(B) Child Protective and Juvenile Guardianship Proceedings.

- (1) Except as provided in subrule (B)(2), courts may allow the use of videoconferencing technology by any participant, as defined in MCR 2.407(A)(1), in any proceeding.
- (2) As long as the respondent is either present in the courtroom or has waived the right to be present, on motion of either party showing good cause, the court may use videoconferencing technology to take testimony from an expert witness or any person at another location in the following proceedings:
- (a) removal hearings under MCR 3.967 and evidentiary hearings; and
  - (b) termination of parental rights proceedings under MCR 3.977 and trials, with the consent of the parties. A party who does not consent to the use of videoconferencing technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

(C) Mechanics of Use. The use of ~~two-way interactive video~~videoconferencing technology under this rule must be ~~conducted~~in accordance with any requirements and guidelines ~~the standards~~ established by the State Court Administrative Office. All proceedings at which ~~such~~ videoconferencing technology is used must be recorded verbatim by the court.

## Rule 4.101 Civil Infraction Actions

(A)-(E)[Unchanged.]

(F) Contested Actions; Notice; Defaults.

(1)-(4)[Unchanged.]

- (5) For any hearing held under this subchapter, in accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant as defined in MCR 2.407(A)(1).

(G)-(H)[Unchanged.]

#### Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A)-(E)[Unchanged.]

(F) Appearance and Answer; Default.

(1)-(4)[Unchanged.]

(5) Use of Videoconferencing Technology. For any hearing held under this subchapter, in accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant as defined in MCR 2.407(A)(1).

(G)-(O)[Unchanged.]

#### Rule 4.202 Summary Proceedings; Land Contract Forfeiture

(A)-(G)[Unchanged.]

(H) Answer; Default.

(1)-(2) [Unchanged.]

(3) Use of Videoconferencing Technology. For any hearing held under this subchapter, in accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant as defined in MCR 2.407(A)(1).

(I)-(L)[Unchanged.]

#### Rule 4.304 Conduct of Trial

(A) Appearance. If the parties appear, the court shall hear the claim as provided in MCL 600.8411. In accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant as defined in MCR 2.407(A)(1). The trial may be adjourned to a later date for good cause.

(B) [Unchanged.]

Rule 4.401 District Court Magistrates.

- (A) Procedure. Proceedings involving district court magistrates must be in accordance with relevant statutes and rules.
- (B) Duties. Notwithstanding statutory provisions to the contrary, district court magistrates exercise only those duties expressly authorized by the chief judge of the district or division.
- (C) Control of Magisterial Action. An action taken by a district court magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves.
- (D) Appeals. Appeals of right may be taken from a decision of the district court magistrate to the district court in the district in which the magistrate serves by filing a written claim of appeal in substantially the form provided by MCR 7.104 within 7 days of the entry of the decision of the magistrate. No fee is required on the filing of the appeal, except as otherwise provided by statute or court rule. The action is heard de novo by the district court.
- (E) A district court magistrate may use videoconferencing technology in accordance with MCR 2.407 and MCR 6.006.

Rule 5.140 Use of Videoconferencing Technology

- (A) Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the use of videoconferencing technology under this chapter in accordance with MCR 2.407.
- (B) 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 under MCL 330.2050.
- (C) 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.

- (D) The court may not use videoconferencing technology for a consent hearing required to be held pursuant to the Michigan Indian Family Preservation Act and MCR 5.404(B).
- (E) Mechanics of Use. The use of videoconferencing technology under this chapter must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court.

#### Rule 5.404 Guardianship of Minor

- (A) [Unchanged.]
- (B) Voluntary Consent to Guardianship of an Indian Child.

A voluntary consent to guardianship of an Indian child must be executed by both parents or the Indian custodian.

- (1) Form of Consent. To be valid, the consent must contain the information prescribed by MCL 712B.13(2) and be executed on a form approved by the State Court Administrative Office, in writing, recorded before a judge of a court of competent jurisdiction, and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, the birth of the Indian child is not valid. The court may not use videoconferencing technology for the consent hearing required to be held under the Michigan Indian Family Preservation Act and this subrule.

(2) – (3) [Unchanged.]

(C)-(H) [Unchanged.]

#### Rule 5.738a Use of Interactive Video Technology

- ~~(A) Probate courts may use two way interactive video technology to conduct the proceedings outlined in subrule (B).~~

- (B) ~~Hearings. Probate courts may use two way interactive video technology to conduct hearings concerning initial involuntary treatment, continuing mental health treatment, and petitions for guardianship involving persons receiving treatment in mental health facilities.~~
- (C) ~~Mechanics of Use. The use of two way interactive video technology must be conducted in accordance with any requirements and guidelines established by the State Court Administrative Office. All proceedings at which such technology is used must be recorded verbatim by the court.~~

#### Rule 6.006 Video and Audio Proceedings

(A)-(B)[Unchanged.]

- (C) Defendant in the Courtroom - Other Proceedings. As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts may use ~~two-way interactive video~~ videoconferencing technology to take testimony from a person at another location in the following proceedings:
- (1) evidentiary hearings, competency hearings, sentencing, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;
  - (2) with the consent of the parties, trials. A party who does not consent to the use of ~~two-way interactive video~~ videoconferencing technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

(D) [Unchanged.]

#### Rule 6.901 Applicability

(A)-(B)[Unchanged.]

- (C) Video and Audio Proceedings. The courts may use telephonic, voice, or videoconferencing technology under this subchapter as prescribed by MCR 6.006.

*Staff Comment:* These amendments permit courts to expand the use of videoconferencing technology in many court proceedings, and clarify the proceedings at which videoconferencing technology may be used.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 21, 2016

  
Clerk