

Order

Michigan Supreme Court
Lansing, Michigan

May 1, 2013

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2013-18

Michael F. Cavanagh
Stephen J. Markman

Proposed Amendments of
Rules 3.210, 3.215, and 6.104
of the Michigan Court Rules
and Proposed New Rule 8.124
of the Michigan Court Rules

Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

On order of the Court, this is to advise that the Court is considering adoption of Rule 8.124 and amendments of Rules 3.210, 3.215, and 6.104 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas of public hearings are posted at <http://courts.mi.gov/courts/michigansupremecourt/rules/pages/public-administrative-hearings.aspx>.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 3.210 Hearings and Trials

(A) In General.

(1)-(3) [Unchanged.]

(4) Testimony must be taken in person, except that the court may allow testimony to be taken by telephone ~~or other electronically reliable means~~, in extraordinary circumstances, or under MCR 8.124.

(B)-(D) [Unchanged.]

Rule 3.215 Domestic Relations Referees

(A)-(C) [Unchanged.]

(D) Conduct of Referee Hearings

(1)-(2)[Unchanged.]

(3) Testimony must be taken in person, except that, ~~for good cause,~~ a referee may allow testimony to be taken by telephone for good cause, or under MCR 8.124. ~~or other electronically reliable means.~~

(4) [Unchanged.]

(E)-(G) [Unchanged.]

Rule 6.104 Arraignment on the Warrant or Complaint

(A) Arraignment Without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule, or must be arraigned without unnecessary delay by use of two-way interactive video technology under MCR 8.124 ~~in accordance with MCR 6.006(A).~~

(B) Place of Arraignment. An accused arrested pursuant to a warrant must be taken to a court specified in the warrant. An accused arrested without a warrant must be taken to a court in the judicial district in which the offense allegedly occurred. If the arrest occurs outside the county in which these courts are located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of this rule. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with subrule (C). In the alternative, the provisions of this subrule may be satisfied by use of two-way interactive video technology under MCR 8.124 ~~in accordance with MCR 6.006(A).~~

(C)-(G) [Unchanged.]

[MCR 8.124 is a proposed new rule.]

Rule 8.124 Videoconferencing

(A) Definitions. In this subchapter:

- (1) “Participants” include, but are not limited to, parties, counsel, and subpoenaed witnesses, but does not include the general public.
- (2) “Videoconferencing” means the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video codecs, monitors, cameras, audio microphones, and audio speakers.

(B) Application.

- (1) Subject to standards published by the State Court Administrative Office and the criteria set forth in subsection (C), a court may, at the request of any participant, or *sua sponte*, allow the use of videoconferencing technology by any participant in any court-scheduled proceeding.
- (2) Subject to State Court Administrative Office standards, courts may determine the manner and extent of the use of videoconferencing technology.
- (3) In criminal trials and evidentiary hearings that occur as part of a criminal trial, the defendant shall either be physically present in the courtroom or shall consent to the use of videoconferencing technology for participation. In all other court proceedings that relate to criminal matters, the court may determine whether to use videoconferencing technology for the defendant’s participation. In delinquency adjudications and evidentiary hearings that occur as part of a delinquency adjudication, the juvenile shall either be physically present in the courtroom or a parent, guardian, or the attorney for the juvenile shall consent to the use of videoconferencing technology for the juvenile’s participation.
- (4) This rule does not supersede a participant’s ability to participate by telephonic means under MCR 2.402.

(C) Criteria for Videoconferencing. In determining in a particular case whether to permit the use of videoconferencing technology and the manner of proceeding with videoconferencing, the court shall consider the following factors:

- (1) The capabilities of the court’s videoconferencing equipment.
- (2) Whether any undue prejudice would result.

- (3) The convenience of the parties and the proposed witness, and the cost of producing the witness in person in relation to the importance of the offered testimony.
 - (4) Whether the procedure would allow for full and effective cross-examination, especially when the cross-examination would involve documents or other exhibits.
 - (5) Whether the dignity, solemnity, and decorum of the courtroom would tend to impress upon the witness the duty to testify truthfully.
 - (6) Whether a physical liberty or other fundamental interest is at stake in the proceeding.
 - (7) Whether the court is satisfied that it can sufficiently control the proceedings at the remote location so as to effectively extend the courtroom to the remote location.
 - (8) Whether the use of videoconferencing technology presents the person at a remote location in a diminished or distorted sense that negatively reflects upon the individual at the remote location to persons present in the courtroom.
 - (9) Whether the use of videoconferencing technology diminishes or detracts from the dignity, solemnity, and formality of the proceeding and undermines the integrity, fairness, or effectiveness of the proceeding.
 - (10) Whether the person appearing by videoconferencing technology presents a significant security risk to transport and be present physically in the courtroom.
 - (11) Whether the parties or witness(es) have waived personal appearance or stipulated to videoconferencing.
 - (12) The proximity of the videoconferencing request date to the proposed appearance date.
 - (13) Any other factors that the court may determine to be relevant.
- (D) Request for videoconferencing.

- (1) A participant who requests the use of videoconferencing technology shall ensure that the equipment available at the remote location meets the technical and operational standards established by the State Court Administrative Office.
 - (2) A participant who requests the use of videoconferencing technology must provide the court with the videoconference dialing information and the participant's contact information in advance of the court date when videoconferencing technology will be used.
 - (3) There is no motion fee for requests submitted under this rule.
- (E) Objections. The court shall rule on an objection to the use of videoconferencing under the factors set forth under Subsection C.
- (F) Mechanics of Videoconferencing. The use of any videoconferencing technology must be conducted in accordance with standards published by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court with the exception of hearings that are not required to be recorded by law.

Staff Comment: The new court rule would allow courts to use videoconferencing in court proceedings upon request of a participant or *sua sponte* by the court, subject to specified criteria and standards published by the State Court Administrative Office (SCAO). Amendments of MCR 3.210, MCR 3.215, and MCR 6.104 would be necessary to include references to the new court rule. If the new rule is ultimately adopted, MCR 3.904, MCR 5.738a, and MCR 6.006, and Administrative Order No. 2007-01 would be rescinded. To provide context for consideration of the proposed rule, the proposed standards for the use of videoconferencing are attached below. In addition, the proposal includes a draft administrative order that would require SCAO to adopt videoconferencing standards, and require courts to comply with those standards.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2013 at P.O. Box 30052, Lansing, MI 48909 or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-18. Your comments and the comments of others will be posted at <http://courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/pages/default.aspx>, under the chapter affected by the proposed amendment or the proposed new rule.

STANDARDS FOR USE OF VIDEOCONFERENCING TECHNOLOGY IN COURTS

1. Interactive video technology equipment must be capable for 30fps. A preferred video quality is 4CIF or better, but resolution quality is at the discretion of the local court.
2. Either over the air or direct in-line court recording may be used.
3. Participants shall be able to see, hear, and communicate with each other.
4. Participants shall be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding.
5. Video and sound quality shall be sufficient to allow participants to observe the demeanor and nonverbal communications of other participants. Sound quality shall be sufficient to clearly hear what is taking place in the courtroom to the same extent as if the participant was present in the courtroom.
6. Courtroom camera(s) shall have the capability to scan the courtroom so that remote participants may observe other persons present and activities taking place in the courtroom during the proceedings.
7. In criminal matters, counsel for a defendant shall have the option to be physically present with the client at the remote location, and the facilities at the remote location shall be able to accommodate counsel's participation in the proceeding from the remote location. Parties and counsel at remote locations shall be able to mute the microphone system at that location so that they may have private, confidential communication.
8. In criminal matters, if the defendant and counsel are not in each other's physical presence, they shall be able to have private, confidential communication during the proceeding.
9. If applicable, there shall be a means by which documents can be transmitted between the courtroom and the remote location.



I, Corbin R. Davis, 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.

May 1, 2013

Corbin R. Davis

Clerk