State of Michigan

PROBATE JUDGES
LINDA S. HALLMARK
DANIEL A. O'BRIEN
ELIZABETH PEZZETTI
KATHLEEN A. RYAN

Probate Court
County of Oakland

PROBATE ADMINISTRATOR
REBECCA A. SCHNELZ

PROBATE REGISTER
JILL KONEY DALY

June 29, 2016

VIA Electronic and Regular Mail
Michigan Supreme Court
ATTN: Supreme Court Clerk
P.O. Box 30052
Lansing MI 48909

RE: ADM File No. 2013-18
Proposed Amendments to Videoconferencing Rules

To Whom It May Concern:

I am writing to express concern regarding portions of the proposed court rule modifications clarifying the use of videoconferencing technology. My concerns relate specifically to the sections that have an effect on probate proceedings.

MCR 5.119 and MCR 5.402

As written, the proposed new subsections 5.119 (E)(1) and (2) and 5.402(F) are unworkable and would prevent the use of videoconferencing in many situations.

The proposed language of the subsections is clear that videoconferencing can be used "unless the subject of the initial petition does not consent" to its use. In many instances, the subject of the initial petition is deceased, is a minor, or is physically or mentally incapacitated to the point they cannot participate in the proceedings. In addition, this language can be interpreted to require an affirmative action on the part of the subject to consent, which is impossible in the situations described above. With no consent, the technology cannot be used.

An additional question would arise in relation to minors who have reached the age of 14. They are entitled to nominate a guardian or conservator for themselves and are required to be served with certain documents. Given they have these other rights and they are the "subject" of the petition, would they be able to object to videoconferencing even though they are minors?

I would also question why the proposed modification to 5.402 applies only to guardianships and not to conservatorship or protective order proceedings.

1200 N. TELEGRAPH RD BUILDING 12 EAST + PONTIAC, MICHIGAN 48341-0457
PROBATE ADMINISTRATOR: (248) 858-5603 PROBATE REGISTER: (248) 858-0282 FAX: (248) 975-9607

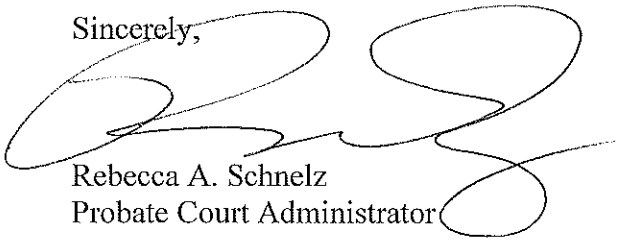
A suggestion to address these issues would be to not modify MCR 5.119 or MCR 5.402. With the addition of new MCR 5.140 (with necessary corrections), this would allow use of the technology for all hearings pursuant to MCR 2.407(C), which provides very specific standards for the court to determine whether the use of videoconferencing is appropriate in a particular instance. It would give all participants the opportunity to object and allow the court to review the issue.

MCR 5.738a

The proposed changes to 5.738a are unnecessary as well. Again, MCR 2.407 provides standards for the court to review the appropriateness of videoconferencing in a given situation. This rule, as currently written, has worked well to assist in managing mental health dockets across the state by allowing patients and doctors to remain at the treatment location, saving time and money. In addition, it allows safety concerns regarding the health and behavior of individual patients to be addressed in an appropriate manner. There is no reason to modify a rule that currently works.

Thank you for the opportunity to comment on the proposed changes. Please do not hesitate to contact me if clarification regarding a comment is needed.

Sincerely,



Rebecca A. Schnelz
Probate Court Administrator

cc: Judge Linda Hallmark
Jill Koney Daly