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Served 1990-2011

June 30, 2016

VIA Electronic and Regular Mail

Michigan Supreme Court
Attn: Supreme Court Clerk
P.O. Box 30052
Lansing, Mich. 48909

Re: ADM File No. 2013-18 -
Proposed Amendments to Probate Court Rules
Regarding Videoconferencing

To Whom It May Concern:

I applaud the efforts of the Supreme Court and SCAO to increase the use of videoconferencing in court proceedings. However, I have concerns regarding the proposed videoconferencing rule amendments for mental health and probate proceedings. The contemplated changes concerning the lack of objection (for mental health cases) and obtaining the consent of (for probate cases) the subject of the petition proceeds from an inaccurate premise. The constitutional right to confront an accuser under the Sixth Amendment to the United States Constitution is not violated by a process which does not give veto power to the subject of the petition. Adopting these contemplated provisions would greatly reduce the effectiveness of current videoconferencing programs in the mental health area, and drastically restrict their contemplated use in probate proceedings.

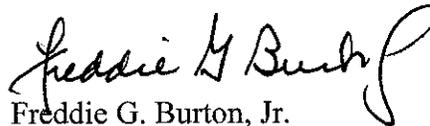
I am uncertain as to the genesis of the proposed change to MCR 5.738a, which would allow use of videoconferencing technology for mental health cases only in situations where the subject of the petition does not object to its use. The Wayne County Probate Court was part of SCAO's initial pilot project for the use of interactive video technology (IVT) in mental health proceedings, which became operational in 2001. One of the issues studied by the work group and resolved was that the subject of the petition did not have a right to demand an in-person hearing; specifically, a format where IVT was mandated passed constitutional muster. To my knowledge, there has been no appellate court decision which would alter this determination.

Since 2001, the use of videoconferencing technology to conduct mental health proceedings has grown dramatically in the Wayne County Probate Court and statewide. It allows facilities and courts to more effectively manage their scarce resources, and has served as an early example of using technology to leverage the ability to provide services to the public and patients. Much of these benefits would be lost by giving the subject of the mental health petition a veto power over whether the hearing will be conducted via videoconferencing. Facilities would be forced to bring patients down to court, thereby preventing their staff from providing assistance to patients. Security concerns would be increased, as more mental health patients would be present among the general public at Court. The risk of escape is also heightened since the patients have to be removed and returned to their facility. Any perceived nebulous benefit to the patient would be far outweighed by the significantly increased burden on the Courts, attorneys, and mental health facilities affected.

Regarding the proposed additions of MCR 5.119(E) and MCR 5.402(F), the Court welcomes these efforts to expand the use of videoconferencing technology. However, the concerns noted above also apply to these new provisions, since the consent of the subject of the initial petition is required to utilize videoconferencing. Also, use of this term poses additional problems in probate proceedings. The subject of the initial petition in a decedent estate is not alive to provide consent. For minor guardianships and conservatorships, an individual under 18 lacks the legal authority to consent. For minor guardianships and conservatorships, an individual under 18 lacks the legal authority to consent. Adult guardianships and conservatorships frequently involve individuals who suffer from dementia, Alzheimer's disease, or closed head injuries. Often they are completely unresponsive or at a minimum unable to understand the nature of the request for their consent. These issues can be eliminated by removing the phrase "...unless the subject of the initial petition does not consent to the use of videoconferencing technology" in MCR 5.119(E)(1)&(2) and MCR 5.402(F).

If you have any questions concerning this comment please do not hesitate to contact me at (313) 224-5686.

Sincerely,



Freddie G. Burton, Jr.
Chief Judge