



# **Transparency and Public Access Live Streaming Policies/Rules Workgroup**

**Report and Recommendations**

**Adopted July 2023**

**Notice of Disclaimer:**

The Michigan Supreme Court established the Michigan Judicial Council by MCR 8.128 to make recommendations on matters pertinent to the administration of justice and the strategic plan of the Michigan judicial branch. The opinions and recommendations contained in this document are those of the Michigan Judicial Council and do not necessarily represent the official position or policies of the Michigan Supreme Court or State Court Administrative Office.

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## Letter From the Chair

Dear Colleagues,

When the COVID-19 pandemic interrupted in-person hearings, courts throughout Michigan quickly became accustomed to providing public access online through livestreaming. The public likewise became accustomed to this new form of access to court hearings, as evidenced by the millions of views of Michigan court hearings online. Although online access is no longer required post-pandemic, it presents a great opportunity for the public to see what their courts do and how they do it. This can be done in a way that is sensitive to the dignity and privacy interests of court participants.

One of the Michigan Judicial Council's Strategic Initiatives is to increase transparency of our courts through the thoughtful use of livestreaming. It has been my pleasure to work with the members of this workgroup to discuss how to balance the competing considerations involved in livestreaming various types of court hearings. The members of this workgroup brought diverse perspectives and experiences to the endeavor, examined several sources of information and data, and engaged in lively dialogue. The workgroup's recommendations reflect an approach that relies on judicial discretion but provides guidance regarding best practices for the exercise of that discretion. There remains much work to be done in this new frontier of court transparency, but it is my hope that this report and its recommendations can be an important step in normalizing livestreaming for Michigan courts. And I believe that by doing so, we will increase public trust and confidence in our justice system.

"Public trust and confidence in governmental institutions, including the judicial branch, have been on the decline for decades. It is time to reverse this trend. Educating about and maintaining trust and confidence in the judicial branch are essential to protecting the rule of law, maintaining a civil society, and preserving our democracy."<sup>1</sup>

- Michigan Judicial Council

Hon. Aaron Gauthier  
MJC – Transparency and Public Access Workgroup Chair  
53<sup>rd</sup> Circuit Court

## Letter from the Project Director

Dear Colleagues,

It is my pleasure to join Judge Gauthier in support of the workgroup's report. Each of the 2022-2023 initiatives of the Michigan Judicial Council and the work of their respective workgroups, are interconnected and support the work of one another. Procedural fairness and transparency work hand in hand to build public trust and understanding. Procedural fairness refers to the perception of court users of their treatment throughout their interactions with the judicial process, where transparency refers to the process being visible, intelligible, and accountable. Additionally, the Michigan Judicial Council identified court funding and technology infrastructure as strategic goals to addresses sustainability. A sustainable court system ensures that there is adequate funding and is in tune with the technological needs of the communities it services. Technology comes at a cost and the work of the Alternative Funding for Trial Courts and Statewide Case Management System workgroups supports the work of this workgroup by ensuring adequate funding for the needs of the courts so that courts can continue to provide access through livestreaming as the public demand for it wider access to courts continues to increase.

In this report you will find there are only a few exceptions to an open court system. Constitutionally, access is met by an open courtroom. Richard Suskind, a pioneer in the field of technology and the law, and a leading legal futurist, discusses future trends of the courts focusing on court as a service, not just a place. Court as a service will have more tools such as online courts, livestreaming, and other forms of technology such as artificial intelligence. Technologies such as these are tools for courts intended to assist court leadership in providing open justice, procedural fairness, and justice for all. As Steve Jobs noted:

*“Technology is nothing. What’s important is that you have a faith in people, that they’re basically good and smart, and if you give them tools, they will do wonderful things with them.”*

The future scope and uses of technology is unlimited. The likely future of the courts will be judges and the court staff and machines working together to provide procedural fairness, open justice, and justice for all.

Hon. Susan Dobrich, Retired  
MJC Project Director

## Executive Summary

With challenges brought on by the COVID-19 pandemic, The Task Force on Open Courts, Media and Privacy was established in the fall of 2020 to answer questions around the use of livestreaming by trial courts and its effects on privacy of court users. The Task Force believed specific guidance on the use of livestreaming was necessary and offered two proposed court rules alternatives, both relying heavily on judicial discretion.<sup>1</sup>

In its initial Strategic Agenda,<sup>2</sup> the Michigan Judicial Council prioritized the goal of promoting transparency and public access. The Council established the Transparency and Public Access workgroup to address the lack of guidance and standards for livestreaming across the judiciary. The workgroup was charged with developing recommendations regarding livestreaming consistent with the Michigan Supreme Court's administrative orders while balancing transparency of the courts and privacy interests of parties.

### What is Livestreaming?

For purposes of this report, it is important to make the distinction between videoconferencing or the use of remote hearings and livestreaming. As defined by the workgroup, livestreaming is the sending, in real-time, of video, voice, and/or data signals from a courtroom or virtual proceeding to a media player that is accessible to the public online. This is different and distinct from the use of videoconferencing to conduct a court proceeding.

### Promoting Transparency and Public Access

While not required if courts are physically accessible, livestreaming offers transparency and an additional avenue for public access to the courtroom. Appropriate use of livestreaming also provides additional opportunities for improving public trust and confidence in the courts which has been on the decline for years.

Michigan is one of few states currently seeking to implement livestreaming policies. Other states such as Minnesota and Illinois have begun looking into developing standards but are still early in the process. Alaska courts have been utilizing livestreaming for years due to their geographical challenges and shared recently proposed policy changes with the workgroup.

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<sup>1</sup> Task Force on Open Courts, Media, and Privacy, [Final Report](https://www.courts.michigan.gov/48e027/siteassets/covid/open-courts/open-courts,-media,-and-privacy-task-force-final-report.pdf), <https://www.courts.michigan.gov/48e027/siteassets/covid/open-courts/open-courts,-media,-and-privacy-task-force-final-report.pdf>

<sup>2</sup> Michigan Judicial Council, *2022-2025 Strategic Agenda*, [https://www.courts.michigan.gov/4a37ab/siteassets/reports/special-initiatives/mjc-strategic-agenda-flipbook/michiganjc\\_strategicagendaproof\\_final-8-1-22.pdf](https://www.courts.michigan.gov/4a37ab/siteassets/reports/special-initiatives/mjc-strategic-agenda-flipbook/michiganjc_strategicagendaproof_final-8-1-22.pdf)

## Concerns and Considerations Regarding Livestreaming Court Proceedings

When exploring the use of livestreaming, the workgroup identified five categories of concern that consistently came up in discussion. These concerns largely center on the protection of children and vulnerable adults, the protection of crime victims and witnesses, privacy interests of parties, the disclosure of sensitive financial information, and privacy interests of jurors. Thoughtful consideration and balancing of these concerns with the need for transparency is reflected in the workgroup's recommendations.

The workgroup also identified four areas that require further consideration and additional study. These include examining the impact on record retention and access rules, inappropriate use of recordings, challenges with the current livestream platform (i.e. YouTube), and judicial accountability.

## Recommendations

In response to the charge from the Council to address the absence of guidance and standards for livestreaming, this workgroup has developed several recommendations. These recommendations seek to provide the needed guidance while balancing the promotion of transparency and public access with the relevant concerns.

- ❖ **Recommendation One – Implement a Custom Livestreaming Platform Maintained by the State Court Administrative Office (SCAO)**  
The Workgroup recommends that the State Court Administrative Office develops and maintains its own platform for the use of livestreaming trial court hearings.
- ❖ **Recommendation Two – Recommended Guidelines for Trial Courts for the use of Livestreaming**  
The workgroup developed proposed amendments to the Michigan Court Rules including the addition of MCR 2.409 which outlines guidelines for judicial officers to follow when determining whether a proceeding is appropriate for livestreaming.
- ❖ **Recommendation Three – SCAO Established Standards for Livestreaming Settings**  
The workgroup recommends that the State Court Administrative Office develop and implement standards governing user account settings for trial courts who are utilizing YouTube for live streaming as well as guidelines on how long recordings of court proceedings remain accessible on YouTube.

## Background

Livestreaming is a fairly new concept for Michigan courts. While videoconferencing and remote proceedings were utilized before the onset of the COVID-19 pandemic, livestreaming in courts was not a necessity until the pandemic. Lock downs, social distancing, and other pandemic related challenges forced courts to think outside the box and to provide new ways to ensure public access. By May of 2021, the SCAO had launched a [Virtual Courtroom Directory](#), and courts across the state had logged over 3,000,000 hours of Zoom hearings since moving online just over a year prior.<sup>3</sup> Courts had to adapt at an unprecedented pace in order to continue to conduct business while preserving access and transparency by leveraging the capabilities of technology products like Zoom and YouTube.

With the transition to remote hearings came the rise of YouTube Court, a phenomenon in which the volume of court hearings viewed online increased substantially. The public accessed the courts online for both court related business and for entertainment purposes far more frequently than pre-pandemic. The dramatic shift in access, as well as unintended consequences of remote access, lead to the need for guidance and outlined best practices on a court's use of livestreaming.

## The Task Force on Open Courts, Media, and Privacy

The Task Force on Open Courts, Media, and Privacy was established in the fall of 2020, to determine whether online streaming of court proceedings should continue and if so, the steps courts should take to address privacy concerns and other issues. The Task Force explored the relationship between livestreaming and the rights of criminal defendants, victims, and other participants. The Task Force reviewed numerous documents including lengthy legal memoranda and communications received by the Michigan Supreme Court from interested parties. The Task Force took public comment on a draft of their report and recommendations. More than 60 comments were received, many of which expressed the need for continued judicial discretion on a case-by-case basis as it relates to whether a proceeding should be made available to the public online.

In fall of 2021 the Task Force released its [final report](#) and recommendations which included two alternatives of a proposed court rule. The first alternative was driven by the language in the [Michigan Supreme Court's Administrative Order 1989-1](#), which provides guidelines for the use of film or electronic media coverage of proceedings in Michigan courts and leaves the decision to livestream in the hands of the individual courts. The second alternative placed greater restrictions on the streaming of proceedings, on access to recordings of proceedings, and on the posting of proceedings to ensure protection of privacy. Members of the task force were unable to reach a consensus so both recommendations were presented to the court.

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<sup>3</sup> State Court Administrative Office; <https://www.courts.michigan.gov/news-releases/2021/may/michigan-courts-log-more-than-3-million-hours-of-zoom-hearings/>



## The Michigan Judicial Council

When the Michigan Judicial Council (MJC) released its 2022-2025 [Strategic Agenda in April 2022](#), there were no livestreaming guidelines in place for courts to follow. Within the Strategic Agenda, the MJC identified public trust and confidence in the judicial branch as an area in need of improvement. The MJC noted the current decline in public trust and confidence in governmental branches, including the judicial branch. The Strategic Agenda highlighted the critical importance of addressing this issue, stating:

“[e]ducating about and maintaining public trust and confidence in the judicial branch are essential to protecting the rule of law, maintaining a civil society, and preserving our democracy.”<sup>4</sup>

In the [2022-2023 Operational Plan](#), the MJC identified transparency and public access, and the need for guidelines on the use of livestreaming court hearings as a priority initiative. The MJC formed the Transparency and Public Access workgroup to develop recommendations on how and when to livestream that are consistent with the Michigan Supreme Court’s administrative orders while balancing transparency with privacy interests of parties. The workgroup first met in September of 2022 and began reviewing the work and recommendations of the Task Force on Open Courts, Media, and Privacy. The workgroup was able to use that report as a framework for robust discussions on livestreaming and to identify further areas of study that needed to be explored. The workgroup also examined administrative orders regarding the use of remote hearings criteria for closing a hearing, and reviewed policies and practices being considered by other jurisdictions.

## What is Livestreaming?

For purposes of this report and recommendations, it is important to distinguish between “videoconferencing” and “livestreaming”. [MCR 2.407\(A\)\(2\)](#) offers a technical definition of “videoconferencing” which states:

“Videoconferencing” means the use of an interactive technology, including a remote digital platform, that sends video, voice, and/or 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. It includes use of a remote video platform through an audio-only option.

Practically speaking, as used in the court, videoconferencing is used to facilitate the virtual engagement of the court, litigants, witnesses, and other necessary parties in a court proceeding. Currently, videoconferencing in most courts in Michigan is conducted via ZOOM. Even though a court proceeding may be conducted using videoconferencing (i.e. ZOOM), that does not mean the proceeding is being livestreamed.

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<sup>4</sup> Planning for the Future of Michigan Judicial System: 2022-2025 Strategic Agenda, Michigan Judicial Council, pg.32.

As outlined below, this workgroup has recommended court rule revisions to govern the use of livestreaming. Included in the proposed amendments is a technical definition of “livestream” or “livestreaming”, which states

“livestream” or “livestreaming” means to send, in real-time, video, voice, and/or data signals from a courtroom or virtual proceeding to a media player that is accessible to the public online.

Currently, Michigan’s courts are using the publicly accessible online media platform YouTube to livestream proceedings. While the use of video conferencing is intended to facilitate engagement of the parties in the proceeding, livestreaming is used to accommodate public observation of court proceedings only. To drive home the distinction by way of example, a court proceeding in which all parties are present in the courtroom and video conferencing is not utilized, could still potentially be livestreamed to the internet for public observation.

The discussions and recommendations of this workgroup are directly aimed at the use of livestreaming for court proceedings. The speed at which courts were forced to adapt to working and providing public access in a pandemic world resulted in variation as to when and how courts decided to livestream proceedings. These recommendations are intended to help provide guidance, and to standardize the use of livestreaming across the judiciary.

## **Promoting Transparency and Public Access**

There is a well-recognized constitutional right to access the courts and the judicial system, not just as a litigant, but as a public observer. The United States Supreme Court has issued a series of decisions that recognize the rights of the public and the press to be present and view court proceedings, including *Richmond News Papers, Inc. v. Virginia*. In that case, the court held that the right of the public and the press to attend hearings is guaranteed under the First and Fourteenth Amendments.<sup>5</sup> The workgroup spent time discussing the constitutional guarantees around access and the various statutes that outline criteria for closing a court proceeding, to determine the legal implications of providing access using livestreaming. Now that courts have integrated remote and hybrid hearings as a permanent practice, there is a question of what level of access courts should be providing through the use of livestreaming and what level of access is constitutionally and statutorily required.

There are various factors at play when a court must decide whether livestreaming a hearing is appropriate. Perhaps the most influential factor is the need for transparency and public access. One of the positions offered by workgroup members was that if the courthouse is physically accessible to the public, the court is meeting the constitutional requirements regarding access and livestreaming would not be required. However, it also was discussed that while the courthouse being physically accessible meets the

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<sup>5</sup> *Richmond News Papers, Inc. v. Virginia*, 448 US 555; 100 S. Ct. 2814 (1980)

public access requirement, courts should nevertheless seek to enhance access and provide transparency by offering livestream even when it is not required.

Recent trends show that there has been a steady decline in public trust of government entities, including the judiciary. The 2022 State of the State Courts Poll conducted by the National Center for State Courts reveals that confidence in state courts dropped from 64% in 2021 to 60% in 2022.<sup>6</sup> Workgroup members believe the use of livestream will promote transparency and has the potential to increase confidence in the courts by giving the public a front row seat to what is happening in court rooms across the state.



From NCSC State of State Courts 2022 Poll Presentation

The public often has a vested interest in certain cases, especially high-profile cases, and cases that have the potential to create social, political, and statutory change. The workgroup discussed the increase in public interest in viewing court hearings online with the rise of YouTube court channels, as well as outlets like Court TV that broadcast court hearings for entertainment purposes. With news media outlets providing coverage of high-profile cases, there seems to be more demand from the public for unlimited access to courts. The workgroup views rising public interest and the opportunity to provide broader access to the courtroom as a positive opportunity that has the potential to increase transparency.

Typically, when we think of court users, we think of those who are required to participate in hearings such as defendants, victims and witness in a criminal case, or plaintiffs and defendants in a civil case. There are often other interested parties who may have a vested interest in a case such as family members of victims or defendants in a criminal case, or local residents on a code enforcement case. By offering livestreaming of proceedings, courts are providing additional avenues of access for all court users, no matter their role or interest in a case.

Another population to consider in the discussion around access is the press. Historically courtrooms have been open to the press. However, that access is not unlimited. Currently, news outlets are required to request permission from a court to record or broadcast a proceeding, which is either granted or denied by the judge. If their request is granted, media outlets are then able to appear in courtrooms across the state with video equipment to film portions of hearings for coverage during a broadcast or take photographs. During the pandemic the press encountered the same access issues as other court users due to building closures and social distancing restrictions.

<sup>6</sup> National Center for State Courts, State of the State Courts 2022 Poll; [https://www.ncsc.org/\\_data/assets/pdf\\_file/0019/85204/SSC\\_2022\\_Presentation.pdf](https://www.ncsc.org/_data/assets/pdf_file/0019/85204/SSC_2022_Presentation.pdf)

By livestreaming hearings, courts were able to continue providing transparency and access to the press as they were able to utilize online video feeds and still shots from those feeds for providing news coverage of cases that would otherwise have required personal attendance, at the courthouse. In post pandemic courts, the press continues to access livestreamed hearings.

The decision on whether to livestream court hearings in a post-pandemic world is not unique to Michigan. State courts across the country are weighing the pros and cons of livestreaming hearings as an additional avenue for access and have been working to develop guidelines and policies on when livestreaming is appropriate and when it is not. In October 2022, the National Center for State Courts hosted a [webinar](#) on Remote Proceedings Policies that engaged states in different stages of developing post pandemic remote proceedings policies. The webinar featured speakers from Alaska, Minnesota, and Illinois who shared details on the experiences with remote proceedings and livestreaming in their respective states.

The Alaska State Court discussed its use of remote hearings that has been place for decades due to Alaska's geographic challenges and that most of its courts are difficult to access. The Alaska State Court discussed a policy that was being considered that would distinguish when it is appropriate to livestream a hearing even when the courthouse is open to the public. The policy discussed the importance of providing convenient access but also the need to exclude some hearing types including those involving sexual assault and cases involving minors to protect the rights a privacy of those individuals. The workgroup was able to use Alaska's draft policy as a starting point to assist with identifying areas of concern regarding livestreaming court proceedings while providing enhanced access.

## **Common Concerns Regarding Livestreaming Court Proceedings**

Throughout the pandemic and beyond, courts have been grappling with the various interests and concerns that are often raised when determining whether a court proceeding should be livestreamed. While ensuring and enhancing access continues to be a priority there are several common concerns that also need to be considered. Most of the concerns are not unique to individual courts and generally fall in the categories of protection of children and vulnerable adults, the protection of crime victims and witnesses, privacy interests of parties, the disclosure sensitive financial information, and privacy interests of jurors. These concerns are each briefly discussed below and have been thoughtfully incorporated into the Workgroup's recommendations.

### **a. Protection of Children and Vulnerable Adults**

Cases involving minor children and vulnerable adults need additional consideration as the workgroup identified multiple concerns such as the inability to understand the nature of the proceedings being livestreamed, disclosure of confidential information, disclosure of sensitive personal details and the potential misuse of information being livestreamed. In child welfare

and family law cases, portions of the file are confidential. The confidentiality of those files is no longer present if that information is discussed during the proceedings and then livestreamed to the public. Another example is the potential for bullying. Peers now have access to court proceedings they otherwise would not have and can use the information gained from viewing the livestream to target vulnerable individuals. Another possible impact arises in guardianship, conservator, and mental health cases. Often the individuals involved in those proceedings are in the throes of mental health issues. These are very sensitive hearings that detail personal struggles and sensitive personal information. Livestreaming those proceedings could be detrimental to the mental state and recovery of the participants.

**b. Protection of Crime Victims and Witnesses**

When determining whether to livestream a proceeding the rights and protection of crime victims need to be considered. Livestreaming proceedings where the victim's experiences are made public, for instance in a sexual assault or domestic violence case, could deter victims from being willing to testify. Victims often are forced to relive the trauma they experienced when they come to court. While those proceedings are often not closed to the public, they are generally not available for repeated viewing. The additional component of livestreaming could escalate the traumatic experience and be a source of revictimization.

The Michigan Constitution establishes specific rights for crime victims, including "...[t]he right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process."<sup>7</sup>

Some may argue that livestreaming proceedings might not only deter victims from participating but could also impact victims' rights that are protected under the Michigan Constitution and Crime Victims' Rights Act. Having to relive things on camera and then having it on the internet can be very painful and potentially expose them to additional victimization.

Given that most court hearings are open to the public, it may be argued that court users give up their right to privacy when they come to court. Historically, this exposure is limited to the duration of the proceedings themselves. When those proceedings are livestreamed to a platform such as YouTube they live on the internet, in some capacity, permanently. By depicting the images and testimony of witnesses and victims, there may be additional risks to their safety. One circumstance discussed are cases involving gang violence and the potential for escalation of further violence, specifically against those who testify after a proceeding has been livestreamed. In one instance, a witness was murdered after providing testimony for a murder trial involving gang members that was livestreamed.

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<sup>7</sup> Const 1963, Art 1, §24.

**c. Preventing Disclosure of Sensitive Financial Details**

Many cases have the potential to delve into sensitive financial information. These include matters such as family court, landlord tenant, guardianship and conservatorship, and general civil cases. The disclosure of assets and other financial details presents a real risk of exploitation.

**d. Protecting Privacy Interests of Parties**

Like sensitive financial details, the privacy interests of parties to a case raises concerns across multiple case types. While there is a constitutional right to public access to the courtroom, there can be unintended consequences that arise when dealing with highly sensitive areas such as domestic violence and stalking. [Michigan Court Rule 3.705](#) along with federal statute, prohibit publication on the internet of any information that identifies the petitioner or their possible location. The federal statute states:

“A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court- generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.”<sup>8</sup>

As transparency and improved access continues to be major areas of focus it is important that courts refrain from releasing victims’ personally identifiable information through the use of livestreaming, and that we recognize that this information is easily accessible once the proceedings are made available on the internet and that access to such information could be dangerous to victims/petitioners.

**e. Protecting Privacy Interests of Jurors**

Jurors are unique participants in court hearings whose interests often go overlooked. Livestreaming depicting jurors would make them identifiable, and thus preserving the juror privacy is cause for consideration. Jury duty is sometimes seen as an inconvenience by citizens when they are asked to serve. An increased potential for risk of harm, harassment, intimidation, etc. because jurors are easily identifiable on a livestream of court proceedings could potentially lead to further lack of cooperation from citizens who are called to serve.

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<sup>8</sup> 18 USC 2265(d)(3)



## Other Considerations and Areas for Further Study

While the workgroup was able to develop recommendations and a proposed rule that provides guidelines around the use of livestreaming for court proceedings, there is still much work to be done. Below are some areas that require further consideration and study.

### a. Record Retention and Access to Livestream and Court Recordings

The current lack of livestreaming guidance and inconsistent standards create potential conflicts with rules on access to court recordings. [MCR 8.119\(F\)](#) states:

“Court recordings, log notes, jury seating charts, and all other records such as tapes, backup tapes, discs, and any other medium used or created in the making of a record of proceedings and kept pursuant to MCR 8.108 are court records and are subject to access in accordance with subrule (H)(8)(b).”<sup>9</sup>

Under current [MCR 8.119\(H\)\(8\)\(b\)](#), each trial court determines the level of access to court recordings and other records under [MCR 8.119\(F\)](#) through local administrative orders. As a result, access to official court recordings varies across courts. Some courts do not permit access to the official audio or video recording of the court proceeding. In courts that do not permit access these recordings, the ability to access the livestream or the recorded livestream of a court proceeding presents confusion for the public. With no standards<sup>10</sup> on posting and retention of livestreamed proceedings on platforms like YouTube, there may be instances in which someone may be denied access to view the official recording at the court, but able to access the stored livestream online. While they are distinctive court records, for a member of the public there is little distinction between a livestream, recording of that livestream stored online, and the official recording. Clear standards are needed to eliminate public confusion and frustration, and to ensure consistent record retention practices across the trial courts.

### b. Inappropriate Capture and Usage of Court Recordings

Any time a video is posted to the internet, there is potential for that video, or screen captures from within that video, to be utilized for purposes other than as originally intended. Court proceedings are no exception. Once a video has been posted to YouTube, it can be downloaded, shared, and even posted to other sites directly from YouTube with little to no effort. This poses the question of how to prevent such actions from taking place. One solution discussed by the workgroup was limiting the time period in which videos remain on the platform. Currently there are no regulations as to how long a livestream recording stays

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<sup>9</sup> MCR 8.119(F)

<sup>10</sup> Current Michigan Virtual Courtroom Technology Standards encourage courts to “decide whether recordings should be maintained [on YouTube]”, see Section C.1, [https://www.courts.michigan.gov/4a1e83/siteassets/court-administration/standardsguidelines/operations/vcr\\_stds.pdf](https://www.courts.michigan.gov/4a1e83/siteassets/court-administration/standardsguidelines/operations/vcr_stds.pdf)

accessible, and the longer recordings are left up the greater the potential for inappropriate use of the videos. While the inappropriate use of court videos is concerning, courts must adapt and keep up with the technology. Courts simply can not choose to opt out because of fear of people behaving badly. However, these challenges should be addressed.

**c. Livestream Platform Challenges**

Several unintended consequences and challenges have arisen as a consequence of utilizing YouTube as a streaming platform. Public commentary and the use of comment sections on court channels is one example. There is currently no standardization of user settings for courts regarding their YouTube channels. There are some courts that keep comments turned off and some that have not done so. The workgroup identified multiple instances where comments were not turned off and some of the written commentary provided by viewers was inappropriate, offensive and degrading.

An additional challenge that comes with using a private platform is the question of ownership of the videos. YouTube can determine that videos contained within their platform are misinformation, or not in compliance with their regulations and can remove a video or shut down a channel at any time, which potentially creates a barrier to access.

**d. Promoting Judicial Accountability**

There is a strong connection between the use of livestreaming and promoting judicial accountability. One of the questions raised by the workgroup was whether the same level of procedural fairness<sup>11</sup> is practiced when a proceeding is more accessible to the public using livestream. Notably, some judges may not want to be open to additional public scrutiny and will opt out of livestreaming if it is not required. This presents the question of whether leaving the decision whether a case is appropriate for livestreaming up to the judge will result in inconsistent use of livestreaming. While the workgroup has developed criteria for judicial officers to utilize in determining whether to livestream a proceeding, there is room for further study on the implications of the judicial officer being the screener and determining whether hearings are appropriate for livestreaming.

## Recommendations

This workgroup was charged with addressing the lack of guidance and standards for livestreaming across the judiciary. The thoughtful consideration and balancing of the concerns discussed above with the need for standardization and transparency is reflected in the workgroup's following recommendations.

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<sup>11</sup> The National Center for State Courts defines procedural fairness as court users having a sense decision are made through court processes that are fair. Procedural fairness includes perceptions about (1) how cases are handled and (2) the quality of treatment people receive throughout the court process. The four dimensions of procedural fairness are: Respect, Voice, Neutrality, and Trust.



## **Recommendation One – Implement a Custom Livestreaming Platform Maintained by the State Court Administrative Office**

When the pandemic began, courts were forced to make quick adjustments to ensure access to courts continued for court users across the state. The utilization of existing technology and platforms like YouTube were a quick and efficient solution at the time, but there have been many challenges and some unintended consequences. To combat some of these issues the Indiana Judicial Branch implemented a custom [livestreaming platform](#) that is maintained by the courts. This allows for greater restraints on how the videos are accessed, stored, and utilized. The Workgroup recommends that the State Court Administrative Office implement a statewide streaming platform designed exclusively for the use of livestreaming court proceedings. Such a platform would allow for standardization of user settings, eliminating features such as comments, and would include the ability to save and download videos. Having a SCAO owned and maintained platform would also prevent the possible removal of and inactivation of channels, which can in turn prevent or delay access.

## **Recommendation Two – Guidelines for Trial Courts for the Use of Livestreaming**

The [MJC's 2022-2023 Strategic Agenda](#) states that

“[t]ransparency of our courts are critical to maintaining public trust in the judiciary. Transparency is achieved not just by having the doors to courtrooms open, but by having those proceedings reported out to the world. The recent increase in the use of remote proceedings has presented challenges in balancing the interests of transparency and privacy that must be addressed.”

The Workgroup recommends the establishment of new MCR 2.409 “Livestreaming”, to provide guidance to trial courts on how to balance providing transparency and access while protecting rights and privacy while livestreaming court proceedings. The text of the proposed rule amendment is as follows:

### **2.409 Livestreaming**

**(A) As used in this rule, “livestream” or “livestreaming” means to send, in real-time, video, voice, and/or data signals from a courtroom or virtual proceeding to a media player that is accessible to the public online.**

**(B) Application.**

**(1) Livestreaming a court proceeding, including the manner and extent of the use of livestreaming, is subject to the requirements, standards, and guidelines published by the State Court Administrative Office and the criteria set forth in subrule (D).**

(2) Consistent with these rules and subject to subrule (B)(3), courts may determine whether, how, and when to livestream court proceedings.

(3) If the physical courtroom is closed to the public, the court must allow public access to the proceeding by using livestreaming unless the proceeding is closed, or access is otherwise limited by statute or court rule. Courts are not required to livestream proceedings if some members of the public are excluded for reasons such as physical capacity limits or disruptive behavior.

**(C) Livestreaming Prohibitions and Limitations.**

(1) The following proceedings and information shall not be livestreamed:

(a) Conversations held off the record, including sidebar or bench conference conversations.

(b) Proceedings that are closed to the public by statute or rule.

(c) Personal protection proceedings governed by chapters MCR 3.700 or MCR 3.900.

(d) Consistent with MCR 8.115, the visual image of any juror or anyone called for jury service.

(2) A prohibition against livestreaming shall be presumed for the following proceedings and information:

(a) Voir dire of prospective jurors.

(b) Evidentiary items that depict graphic images, such as death, serious injury, or sexual imagery.

(c) Name change proceedings.

(d) Any conversation or hearing held to determine whether or not a proceeding should be livestreamed.

(e) Any matters or proceedings involving minor children.

This presumption is subject to a determination that livestreaming a proceeding is appropriate for a particular case after considering the factors in subrule (D).

**(D) Criteria for Livestreaming.**

**When determining whether to livestream a proceeding, the court shall consider the factors listed in this subrule. Where a factor weighs against the livestreaming a proceeding, the court should consider implementing the least restrictive protections that would allow for the livestreaming of other portions of the proceeding.**

**(1) Ability to protect the privacy and safety, and to prevent the disclosure of the identity of a crime victim, vulnerable adult, or minor child.**

**(2) Ability to protect the personal financial information or protected personal identifying information as defined in MCR 1.109, of a party, victim, witness, or other participant that could subject them to personal or financial harm.**

**(3) Impact on any witness sequestration order.**

**(4) Risk of harm, harassment, or retaliation to any party, victim, witness, or other participant.**

**(5) Whether livestreaming will impact the meaningful access to court by a party, witness, or crime victim.**

**(6) Whether the proceeding is regarding a matter of significant public interest.**

**(7) Whether a party has made a specific request to the court on the matter of livestreaming.**

**(8) Any additional factors found to be relevant by the court.**

**(E) Notice of Livestreaming.**

**If a proceeding is livestreamed, the court must provide notice, either orally or in writing, to the parties, any witness, and members of the public who are in attendance that the proceeding will be livestreamed. The notice requirement to the public may be satisfied by posting a written notice in the courthouse.**

Furthermore, along with the establishment of MCR 2.409 the Workgroup recommends the following amendments to MCR 3.904 Use of Videoconferencing Technology and MCR 4.304 Conduct of Trial.

RULE 3.904 USE OF VIDEOCONFERENCING TECHNOLOGY.

(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, post dispositional 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.

(3) Notwithstanding any other provision of this rule, until further order of the Court, courts may use two-way videoconferencing technology or other remote participation tools where the court orders a more restrictive placement or more restrictive treatment.

(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 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.

**(D) Livestreaming. The livestreaming of court proceedings under this subchapter is governed by MCR 2.409.**

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) Nonappearance.

(1) If a defendant fails to appear, judgment may be entered by default if the claim is liquidated, or on the ex parte proofs the court requires if the claim is unliquidated.

(2) If the plaintiff fails to appear, the claim may be dismissed for want of prosecution, the defendant may proceed to trial on the merits, or the action may be adjourned, as the court directs.

(3) If all parties fail to appear, the claim may be dismissed for want of prosecution or the court may order another disposition, as justice requires.

**(C) Livestreaming. The livestreaming of court proceedings under this subchapter is governed by MCR 2.409.**

### **Recommendation Three – SCAO Standards for Livestreaming Settings**

Given the current lack of standards and challenges to utilizing private platforms such as YouTube for the livestreaming of court proceedings, the Workgroup recommends the State Court Administrative Office establish standards for the use of YouTube Channel for livestreaming. Standards established by the State Court Administrators Office should include things like user specific use settings such as disabling comments and disabling download features; and specific restrictions on how long livestreams remain accessible on YouTube Channels or any other streaming platforms. These standards could be incorporated into a revision of the [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#) and should be coordinated with any adoption of an amended court rule.

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session on livestreaming and his contributions to the work being done around livestreaming.

## Workgroup Membership

### Workgroup Members

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## **Appendix A: Court Rules and Administrative Orders**

The following rules, statues and administrative orders were examined and taken into consideration as part of the Workgroup's process.

AO 1989-1: Media recording

MCR 3.705c: Personal protection order rule.

MCR 2.407 – Videoconferencing

MCR 2.408 – Use of Videoconferencing Technology in Civil Cases

MCR 3.705c: Personal protection order rule.

MCR 3.811 – Use of Videoconferencing Technology

MCR 3.904 – Use of Videoconferencing Technology (Child Protective/Juvenile)

MCR 4.101(F)(4) – Civil Infraction Actions

MCR 4.201(F)(6) – Summary Proceedings to Recover Possession of Premises

MCR 4.202(H)(3) - Summary Proceedings; Land Contract Forfeiture

MCR 4.304(A) – Small Claims / Conduct of Trial

MCR 4.401(E) – District Court Magistrates

MCR 5.140 – Use of Videoconferencing Technology (Probate)

MCR 6.006 – Video and Audio Proceedings (criminal)

MCR 8.108 - Court Reporters and Recorders

MCR 8.115 – Courtroom Decorum

MCR 8.116(D) - Sessions of Court; Access to Court Proceedings

MCR 8.119(F) – Court Records and Reports; Duties of Clerks