MICHIGAN SUPREME COURT

PUBLIC HEARING

March 16, 2022

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CHIEF JUSTICE BRIDGET MCCORMACK: Good morning, everyone. Welcome to our rescheduled public hearing. We have a number of items on the agenda besides the question about remote proceedings, which is the one that most speakers are signed up to talk about. We are really grateful that we have received all of the comments we've received so far. I've never seen so much interest in any particular administrative item and we're grateful so many of you have made time to be here today. As a reminder, each comment is limited to three minutes, which we're going to have to be pretty good about enforcing today if we're going to get through everybody who wants to be heard. But as I said, we are grateful for all the written comments we've received and we're eager to hear from all of you today. On top of that, we're especially proud of the way Michigan's judiciary and the Bar have done such a tremendous job throughout this pandemic. We are going to start with item number 1, which is an amendment to rule 6.502 to make the rule consistent with this Court's decision in *People versus Washington*. We have one speaker on this item, Garrett Burton. Garrett, you may unmute yourself and address us.

GARRETT BURTON: Good morning, Your Honors, and thank you for the opportunity to address you. My name is Garrett Burton. I'm an assistant defender with the State Appellate Defender Office. Our office supports expanding MCR 6.502 to include instances in which an individual claims a jurisdictional defect in the trial court when the judgment was entered. This Court, however, should not limit successive motions to instances where the trial court lacked only subject-matter jurisdiction. As Your Honors know, our state's jurisprudence recognizes a more expansive definition of jurisdiction. For example, in *People v Carpentier*, this Court held that a Gideon violation constitutes a jurisdictional defect. Similarly, in *People v New*, this Court highlighted double jeopardy violations as akin to being a jurisdictional defect. So Your Honors, those jurisdictional defects render the judgments void at their inception in a way that's no different than a subject-matter jurisdiction. And for that reason, we think that the word jurisdiction is sufficient. It properly encompasses this Court's reasoning as espoused in *People v Washington* and it should be unchanged. And I'm happy to take anyone's questions.

CHIEF JUSTICE MCCORMACK: Thank you, Mr. Burton. You are also signed up to speak on item number 2, which is a proposed amendment to rule 6.005 that would clarify the duties of attorneys in pre-conviction appeals, and so you may—you may proceed to that comment.

MR. BURTON: Yes. Thank you, Justice McCormack. Again, thank you for being here. My name is Garrett Burton, an assistant defender with the State Appellate Defender Office. Our office also supports the amendment to MCR 6.005. So presently, Your Honors, when a pre-conviction appeal is filed by the prosecution, the rule as it stands currently allows trial counsel

just to send a letter to the Court of Appeals, saying that they're not interested in filing any briefing. What that has done is created situations where the Court of Appeals has, in fact, decided pre-conviction appeals without any briefing from defense counsel. MAACS has had to intervene in at least two situations to have those judgments vacated. And we think that that problem is sufficiently solved in part by this amendment. So to the credit of the Court of Appeals, one thing that they have done is they've started to remand for determinations of indigency in the appointment of counsel in instances where trial counsel has elected not to file a response. But what this rule will do is build on that practice and ensure that all criminal defendants are in the know in understanding whether or not a response is being filed on their behalf. What it also does is, it signals to trial counsel that they have to take some steps if they decide not to file a response to an appeal. It does that with the language that's being amended to 6.005(H)(1)(c) that reads "unless an appellate lawyer has been appointed or retained." And what that does is, it says to counsel that if they're not going to file a response that they should file a motion or take other efforts to inform the Court of Appeals that the case should be remanded for the appointment of appellate counsel consistent with current practice. We think that this change is going to do a couple of things. The first is that it's going to clarify the relationship between retained counsel and clients such that at the onset of the relationship counsel and clients can prepare for the contingency that's going to happen if the prosecution does, in fact, file a pre-conviction appeal. And second it's going to ensure that indigent defendants do, in fact, receive representation at the appellate stage. We're confident that now with the advent of the independent assigned counsel systems in localities all across the state that they're going to afford for the appointment of a pre-conviction appeal. And we think that—for that reason, the proposal should be adopted. I'm happy to take any questions.

JUSTICE DAVID VIVIANO: Doesn't the rule—the rule change require the trial counsel to file a brief if the defendant—if the defendant wants a response to be filed?

MR. BURTON: Not necessarily, Justice Viviano. So there's a couple of things that can happen. If there's retained counsel and the individual client wants retained counsel to file briefing that's not a part of the retainer agreement, that doesn't have to happen. And that's something that the client and the counsel will have to hash out. In an instance where—

JUSTICE VIVIANO: How does that—then what happens? If, so you retain an attorney to handle your trial—your trial, an appeals follows—it's filed, it's not included, then according—as I'm reading the rule, it says that the—you have to file a response or notify the Court of Appeals in writing that your client doesn't want to respond. Is there a third option, you can file a motion saying you don't you didn't get paid to file a response?

MR. BURTON: Yes, Your Honor, we think that's about right. What we think will happen is that trial counsel can file a motion for a determination of indigency such that a pre-conviction appointed attorney for the appeal can be appointed to the individual client so that they can have representation. If there's no determination of indigency then such—that that will, excuse me, allow—or the trial counsel—or the client won't have the opportunity to file an appeal. They'll have to knowingly waive.

JUSTICE VIVIANO: We've got a lot on our agenda for today so I just want to make sure I'm tracking with what you're saying. Are you saying that's accounted for in this rule change or that's something outside of the rules that will just sort of happen on the sidelines?

MR. BURTON: I don't think it's explicitly spelled out in the rule. I think—I sort of talked about this earlier. It's signaled by the change to 6.005(H)(1)(c) that says "unless an appellate lawyer has been appointed or retained."

JUSTICE ELIZABETH WELCH: Mr. Burton, I'm going to just jump in as well. I appreciate this and thank you. I know this is a really important issue and I know it's a challenge that the courts have had to grapple with, so I certainly appreciate the work. I'm sort of piggybacking on what Justice Viviano asked. I'm wondering if it's—is it clearer if we added a third prong, which is a sort of—this it clarifies exactly what your understanding of the rule is? It seems to me it could be read that counsel has to, you know, handle the appeal even if they haven't been paid. And obviously I expressed some concerns when this was published I just want to make sure—we have a lot of—I am mindful of the fact that our frontline criminal defense attorneys and trial courts have very robust practices and a lot of them prefer not to do appellate work, and do in fact refer that out. So I just I'm trying to figure out how they navigate that option.

MR. BURTON: Well, Your Honor, I would sort of repeat my answer before. I think that this Court definitely could carve out a third option. I think it's sufficient as written. I think, especially for indigent defendants, that there's a mechanism in place to make sure that they have a pre-conviction appellate attorney, especially because of the developments that have happened in our industry, defense assigned counsel systems. For retained attorneys, we think that the retainer agreements will change in the future to reflect the scope of this rule. And we think the rule, as written, provides guidance so that individuals who don't anticipate a pre-conviction appeal happening in the middle of their criminal proceeding are prepared at the outset. And so we think that's what this rule does.

CHIEF JUSTICE MCCORMACK: Thank you very much, Mr. Burton. I think—I think we are—the questions are satisfied so thank you for being here. Thanks for your comments on both of those items.

MR. BURTON: Thank you.

CHIEF JUSTICE MCCORMACK: The next item is item number 6, which is a proposed amen—oh I'm sorry, I've skipped item number 5. It's item number 5, which would clarify an administrative offer—administrative order that identifies which information about judiciary employees is publicly available. We have one speaker on this item, Samantha Hallman.

SAMANTHA HALLMAN: Good morning, Justices. Thank you so much for this opportunity to comment early after having already commented online. It was not until after I submitted that comment that I learned that this proposal may have something to do with

wanting to mirror House Bill 4022. And I also saw that the State Bar had commented about concerns about privacy and so I just wanted to go back and expand a little bit on my original comment. Before I do that I just want to say we're in the middle of Sunshine Week, which is a celebration of transparency in government and open access to records. So with that in mind I want to emphasize why it's really important that you continue connecting a name to a salary for people working in the judiciary. It's because of the types of questions that can be answered by the public with this information or with this data. For example, if people are interested in learning about whether there are gender or racial pay disparities, you know. You have this new DEI initiative that you've launched and people may say, you know, they're talking the talk but are they walking the walk; let's see. The public is also interested in exploring whether there is nepotism, whether there's cronyism, and you can't answer any of these questions without being able to connect a name to a salary. And so with respect to the Bar's comment that this is an invasion of privacy, I wanted to push back really hard on that assertion. Again, in my original comment, as I mentioned, University of Michigan, largest public university in the state, they have been posting this information for I think at least two decades. You know, names connected with salaries. We're talking about tens of thousands of Michigan residents employed, you know, with that public institution and, you know, people aren't running around saying, "gosh, this feels like such a violation." It's actually very empowering. And I know that there was some talk about, well, connecting salary or—I'm sorry—connecting the costs of benefits to names could be an invasion of privacy. And I don't see why that would be necessary to connect that data with names. I think it would make sense to just report that in aggregate form once a year the way that JTC does. And I want to end with this California Supreme Court ruling from 2007 just because I think it beautifully articulates the rationale. And they wrote, "[I]n light of the strong policy—public policies supporting transparency in government, an individual's expectation of privacy and a salary earned in public employment is significantly less than the privacy expectation regarding income earned in the private sector. There's a strong public interest in knowing how a government spends its money so that corruption can be exposed." I'm not suggesting that there is any but, in this day and age where people are looking for things to, you know, all kinds of conspiracy theories, I really would like to push you all to be very boldly transparent in as many of your policies as possible. Thank you so much and if anybody has any questions, I'm happy to answer those.

CHIEF JUSTICE MCCORMACK: Thank you, Ms. Hallman. I don't see any questions. Thank you very much for your comments and for being here. We appreciate it.

MS. HALLMAN: Thank you.

CHIEF JUSTICE MCCORMACK: The next item is a proposed amendment of 5.125 that would add Community Mental Health as an interested person to be served a copy with a court order when outpatient treatment is ordered. We have one speaker, our own Judge Milt Mack. Milt.

JUDGE MILT MACK: Thank you, Justices. It's really pretty straightforward. When the Legislature amended the Mental Health Code to provide for assisted outpatient treatment, it

provided that the court would order the Community Mental Health agency to provide that treatment. However, the court rule has not changed so mental health agencies were never made a party—an interesting person, that is. The result is that hundreds of AOT orders have been entered but not implemented. And it's a big problem. So some courts have been made aware of the problem and are serving on their own but it's just important for the court rule to reflect that so that clerks across the state know that they need to serve that document. There are other gaps in the system but this is a pretty big one. I'll be happy to answer any questions. I read Anne's memo, which is great as usual

CHIEF JUSTICE MCCORMACK: Any questions for Milt? All right. Thanks, Milt. Thanks for being here.

JUDGE MACK: Thank you.

CHIEF JUSTICE MCCORMACK: Okay and here we are, ready for all of the comments on our pandemic related administrative orders and what to do moving forward. Our first speaker is Matthew Paletz. Matthew, you may unmute and address us.

MATTHEW PALETZ: Good morning, Your Honors, and thank you very much for this opportunity. My name is Matthew Paletz of Paletz Law. We are one of the largest filers of landlord-tenant cases. Over the past two years, my associates and I have appeared in over 70 district courts in Michigan. I'm here to address the permanency of video conferencing under MCR 2.407(G) and 6.006(E). Zoom conferencing has been widely embraced by both landlords and tenant advocates. It has greatly expanded access to justice and has been to the betterment of all parties. For example, I believe it's in the mutual interest of a landlord and their tenant not for their tenant to have to take off work for hours at a time to attend an in-person hearing, but rather be able to pay for their rental obligations. Or another example to this effect would be that they don't have to incur the additional expense of items such as additional child care. Almost everyone has access to this technology, whether it be a smartphone or otherwise. It's very cost effective for landlords and for tenants, especially now with gas prices spiking and inflation. Incurring these additional expenses for in-person civil hearings are detrimental to our citizenry at large. Tenants have been able to appear for a significant amount of more cases and have been able to enter into negotiations with my clients. And this may surprise you as an advocate for landlords but, having their tenants be part of these processes, in the long run is more beneficial to rehabilitating the relationship between the landlords and tenants, and they're able to discuss possible resolutions and work out issues that may have been presented. Also, as someone who is a strong advocate for pro bono advocacy, video conferencing is truly a game changer. Many courts want to maintain video conferencing and have embraced it. The issue with local judges that I see is AO 2020-17 and the bifurcation of the landlord-tenant docket, which is contrary to Michigan summary proceedings. I realize that's beyond the scope of today but it is relevant to at least the perceived consternation of some of those in the local judiciary who oppose the permanence of video conferencing. Finally, I believe we should not have to petition the court for this option but rather it should be presumed and the mandatory requirement kept in place. This concludes my remarks. I'm happy to answer any questions.

CHIEF JUSTICE MCCORMACK: Thank you very much, Mr. Paletz. It's extremely helpful. We appreciate your being here.

MR. PALETZ: Thank you.

CHIEF JUSTICE MCCORMACK: Next is Angela Tripp.

ANGELA TRIPP: Thank you, Chief. Good morning, Justices. Thank you for the opportunity to speak about these important proposed court rules, which represent a sea change for access to justice. I'm the director of the Michigan Legal Help Program, which provides self-help resources and tools for people representing themselves in legal matters. Often this self-representation leads them to court, which is a journey that regularly contains barriers preventing them from truly accessing justice. Before you today are modifications to several court rules that have the chance to eliminate some of these barriers. But the biggest and most important one is the foundational issue of being heard by a judge in a court hearing. We're asking that litigants have the ability to choose whether they appear in person or remotely. And my colleague, Kim Cramer, will talk about that more when she's up next. The SCAO "Lessons Learned" report recommends uniform presumptions of in-person or remote proceedings based on the type of hearing, which is a great place to start. But the rules must also allow a litigant to select the other option in all but some extreme cases. Remote and hybrid hearings shift the burden of accessing the courts from solely being on the litigant to being shared by the litigant and the court. Before remote hearings, access rested solely on the shoulders of the litigant and the courts only saw the results of the—the results of those who succeeded. Those litigants who were able to get child care for a day or leave work for a day without losing their job, who succeeded in getting transportation to court, parking and who got through the security line in time for their hearing, who overcame their fear and lack of knowledge of the system to show up. Those who struggled but could not overcome every one of those challenges typically only show up to the judge as a default. Next case! With remote and hybrid hearings, courts have to share the burden of access. They have to figure out how to overcome bad internet connections, handle new learning curves and problems related to attire and behavior, put in time and effort to notify litigants of the logistics of these hearings, and answer people's questions, and overcome the challenges of holding a hybrid hearing and managing exhibits remotely. I appreciate that it is not easy and that there are many hurdles to overcome. But it is appropriate that the courts bear some of this burden because courts are public services, judges are public servants, and most importantly, courts have many more resources—time, money, expertise, and power—to overcome these barriers. Remote court isn't perfect but neither is in-person court. The person—the people feeling that pain most are the litigants, especially those without lawyers. When the most basic aspect of procedural fairness is such a battle for people, they do not leave court feeling like they got a fair shake. So the question should not be why or whether to allow litigants to choose to appear remotely or in-person but how. And there are many answers to that question from across our state and across the country. There's no need for a years' long study to decide what to do. One need not look far at all to find research, training, best practices, and novel ideas on how to best accommodate remote and hybrid hearings, and

meet litigants halfway. Litigants can't pick when or where or for how long or why they are in court. They should at least be allowed to make sure they can get there and be heard. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you very much, Angela. Any questions for Angela? Thank you very much. Kim Cramer is next.

KIM CRAMER: Good morning, Justices. Thank you so much for the opportunity to comment on this court rule. My name is Kim Cramer and I'm a lawyer with the Michigan Legal Help Program. As Angela described in her comments, we have—we provide a website with self-help resources to help the many Michiganders who have to face legal problems without lawyers. My comment centers [on] feedback solicited from our website visitors. That written—our written comment on this issue began with the discussion of the obstacles that self-represented people might face in participating in the process of providing input on court rules. While most court cases involve at least one self-represented party, these voices are often absent from policy discussions such as this one. For example, of the 66 registered speakers on this topic today, it appears from the titles that all of them are judges and lawyers. We understand it's hard to get feedback when there are not listservs or associations of self-represented people who can be easily reached for comment. And yesterday's self-represented litigants might be happy to leave their experience behind them. Tomorrow's self-represented litigants may not know yet that they will someday need to engage with the courts. I can't take the place of the people who will actually participate in court cases without lawyers because, as a lawyer, I will always be part of the system. But I hope that, by appearing today, I'm helping to remind everyone with decision-making power that all the voices of judges and lawyers you'll hear today are not fully representative of the people who will be impacted by this court rule. As one way to include self-represented people in the process, we posted a survey on the Michigan Legal Help webpage that asked questions about people's preferences related to remote and in-person court dates. As you can read in our written comment, these responses reflected a diverse set of preferences on remote and in-person participation, as well as recognition for many people that the best format for a court appearance depends on the type of appearance with each option having a unique set of costs and benefits. We also provided a link to a dashboard that compiles FCC and other data related to broadband access. This data illustrates that broadband access is not always an urban versus rural issue. While some rural areas do have limited access so, for example, does most of the City of Detroit. This data, in combination with our survey results, is also a good reminder that litigants are not the only ones who may face connectivity challenges and not all courts will always have strong internet connections. We believe that this information supports the idea that the person best suited to make the decision about a remote or in-person hearing option is the litigant and also that the court rule should have clear off-ramps and rights for litigants when technology fails. We appreciate that the rule as written does recognize that some litigants might not be able to participate remotely, but the lack of a specific process or form will be an obstacle for many self-represented people. Thank you again for allowing this comment and for considering this perspective, and thank you in particular for allowing these administrative matters to be conducted remotely. I'm speaking to you from my house where

one room over I have a first grader who's been throwing up since Monday and I would absolutely not have been able to make it to Lansing today. So thanks for accommodating me.

CHIEF JUSTICE MCCORMACK: Thank you very much for being here and thank you for your comments. Next is Jessica Zimbelman.

JESSICA ZIMBELMAN: Good morning, Your Honors. My name is Jessica Zimbelman. I'm a managing attorney at the State Appellate Defender Office. SADO and MAACS appreciate the efforts of this Court, the Court of Appeals, and trial courts and their staff to adapt quickly to use remote technology in courtrooms across this state. SADO and MAACS attorneys and staff have similarly adopted—adapted and remain committed and dedicated to representing our clients effectively in whatever medium we can. Given that we practice across the state and in various forums we have logged many, many, many hours of Zoom court over the last two years, including in front of this Court. Of course, we recognize how remote participation has increased access to many who otherwise may have had to take time off work, obtain childcare, and or transportation to wait in a trial court through a busy docket. I was waiting myself one time in Zoom court and one of the participants appeared to be in a store so his background appeared to be racks of maybe food items or something as opposed to the books we often see or artwork that we've perfected over the last two years. And while I don't know this person's story I imagined they were at work and could step into the back to attend court, maybe on a break instead of having to miss a whole day's pay or arrange for child care or any of the other myriad responsibilities that we have on a day-to-day basis. We also recognize that remote court has benefited the efficiency of the system and the efficiency of our practice. Instead of spending entire days traveling across the state for a short status conference, we can log on to our computers up here and, if we have to wait, we can do other work on our computers and then get back to substantive work for our clients. But with these benefits, of course, comes the need for caution especially in the context of the criminal legal system and people's constitutional rights. Using remote technology to the greatest extent possible essentially creates a presumption for remote technology. And once that presumption exists, it creates an inherent pressure for people who have been accused of crimes or convicted of crimes to agree to remote technology even if they have a constitutional right to be present. Specifically trials, including voir dire, plea hearings, probation violation hearings, and sentencings, are proceedings where the presumption should be for in-person court given the importance of what is at stake: people's loss of liberty and other serious collateral consequences. At SADO, we've seen pictures of people being sentenced while in a cage in prison with only one small slot in the door and no participants in that hearing can even see that person's face. It's really important that judges be able to look people in the eye before depriving of them of their freedoms, and this Court has acknowledged as much in *Jemison* and the Court of Appeals has in *Heller*. Specific suggestions can be found in our comment but if the Court has any questions for me this morning I'm happy to answer them.

CHIEF JUSTICE MCCORMACK: Thank you very much for your comments. We appreciate it.

MS. ZIMBELMAN: Thank you.

CHIEF JUSTICE MCCORMACK: Next is Judge Ray Voet. Judge Voet.

JUDGE RAY VOET: Morning, Justices of the Supreme Court. Thank you for the opportunity to address you. I've been a judge for 23 years and I was a trial lawyer for 12 years before that so I've been 35 years in the courtroom and wish that this hearing weren't proceeding. This would have been a once in a lifetime opportunity for me to stand at the podium and actually feel the wood underneath my fingers and address you in the Hall of Justice. And I feel that, if we go in this direction too far, much of that—that solemnity of proceedings would be lost. I know that this is a vis—visceral—I'm also currently the president of the District Judges Association and I know this is a visceral topic. We've heard and seen all the horror stories that involve decorum and some of the strange behaviors and technological problems that we've had as far as trying to conduct court through a camera. But of more concern are the types of concerns that we've heard from Ms. Zimbelman, who talked about defendants appearing in a cage and witnesses having their mother next to him, trying to interfere with how they're being cross-examined. But in that regard I know that the District Judges Association want to be engaging on this and, in an effort to be engaging, we commissioned a survey—a professional survey of our membership and found that, beyond—penetrating beyond the anger and the visceral reactions to the challenges that are presented by remote technology, there's a lot of willingness and openness to advancing access to justice and quality of justice and efficiency of justice through the use of remote proceedings. And that survey should be available. If you don't have it, we'll make it available to you. In that regard, in an effort to try to help this process as it evolves, and I'm sure it will evolve, whatever the court decides as it relates to this courtroom a year from now, two years from now, five years from now, will probably be changed or tweaked in some shape or fashion based upon the experiences that we have. I can assure you that the district judges are willing to help and in fact we've gone so far as to help to have our rules committee propose a rule that tries to balance all these factors. So with that, I guess the concept I would like to leave you with is that one size does not fit all. Trial courts are employed to exercise discretion and weigh each case individually and make decisions in each case. So we urge you to keep that in mind as you go forward. Thank you again for the opportunity to speak. Otherwise, I'll yield to the next speaker. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you, Judge Voet. Next is Judge Carrie Fuka.

JUDGE CARRIE FUKA: Since Ray had three 13 extra seconds, I'm going to use his 13 extra seconds.

CHIEF JUSTICE MCCORMACK: Doesn't work that way. Sorry, Judge.

JUDGE FUKA: I didn't think so and mine changed a little bit. [Aside to staff member in her court: You have to turn it off because it's reverberating.] I wholeheartedly disagree that the litigant is in the best-suited position to determine if they should appear remotely, primarily because the litigant doesn't know what the litigant doesn't know. They're relying on other

people to advise them accordingly, other people being namely their attorney. I've personally seen litigants agree to waive in—to waive in-person preliminary examinations where testimony is key to their case being bound over. I've personally seen litigants say things incriminating themselves on Zoom because they keep talking despite the attorney's effort in the corner to try to get them to stop talking. When they're physically in a courtroom, an attorney can put their hand on their shoulder, advising them quietly not to incriminate themselves or to stop talking because they're just making things worse. Do the litigants personally know that they may receive a more favorable sentence if they're in fact sitting in front of a judge versus the judge just seeing a black screen with a name in it—in the corner? Those are the things that the litigants aren't aware of; they don't know, they may not know what's best for them. They think that coming to court remotely is easier and that's true, but is it better? I would—I would argue that it isn't, and they don't know the difference. My court has had great success with the implementation of Zoom and it works very well for traffic and civil matters. The unpredictability of participants, the very nature of a criminal matter, on the other hand, warrants a presumption of in-person proceedings. My assumption is that you will hear many people talk about how menial criminal proceedings should be done via Zoom. [Aside: I'm out time.] I submit that it is impossible to predict which matters will be menial until they are occurring in real time. The other day, a simple pre-trial turned into a plea and sentence. A sentence of—I sentenced a black box to 30 days in jail. No surprise, that individual never showed up. He'll probably ultimately be serving much more time in jail; hopefully doesn't hurt anyone while he's not incarcerated. Justice McCormack, I could not agree with you more that judges have the ethical obligation to get off the sidelines and advocate for reform. Those of us in the front lines are the best position to identify and expose inherent injustices and broken procedures in our court system. We are also in the best positions to make necessary changes. But we need to ensure we are not making changes just for the sake of making changes. The implementation of the MIDC and the recently passed legislation are notable examples of strides in the right direction. But conducting criminal court proceedings on Zoom is a step backwards. The decisions that trial court judges make daily can be a matter of life or death. It sounds melodramatic when I say it aloud but understanding the enorm—enormous responsibility we have is—is—not understanding it is dangerous. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you, Judge Fuca. Thanks for being here. Thanks for your comments. Next is Judge Travis Reeds. [Pause.] Maybe just we'll have to circle back to Judge Reeds. Let's go to Judge—

JUDGE TRAVIS REEDS: Sorry. I'm here, Justice McCormack.

CHIEF JUSTICE MCCORMACK: Oh, sorry. Go ahead.

JUDGE REEDS: Sorry. I apologize. I had myself on mute. I apologize.

CHIEF JUSTICE MCCORMACK: No, we've all done it; no problem.

JUDGE REEDS: Thank you, Justice McCormack and members of the Court. I am here today to represent the District Judges Association's court rule committee and the court rule committee only by making a suggestion that the court rule committee has come up with. My comments along with that suggestion, however, I want to make clear are solely on my own behalf and are not on behalf of any of my colleagues in the judiciary or any organization. I was very privileged to be a part of the updated Lessons Learned Committee and while I do not speak on behalf of that committee in any way, I do feel that the experience helped me understand our current situation and the challenges which face this Court in making its determination as to modifications of the court rules in question and ultimately the direction of the Michigan courts going forward. I further understand from reading the opinion and support by you, Justice McCormack, along with the dissents that there's obviously a philosophical divide amongst the Court as to what that direction exactly should look like. From the MDJA's court rule committee, what we ask of the Court is compromise. Compromise by adopting as a new interim rule, the rule that is proposed by the District Judges Association and which is basically a very, very small modification of the updated Lessons Learned Report as to proposed court rules. Compromise on a new interim rule would potentially solve many of the competing issues that are currently making your decision so complex. The proposed rule would address the ability for exceptional expansion of the use of remote proceedings based on a blend that would work for various different jurisdictional needs. It would account for incorporation of the varied and extensive feedback that was submitted by various stakeholders. It would provide more guidance and consistency for litigants, attorneys, judges than the current rule. The current rule, respectfully, which basically just says "do the most you can" doesn't really provide that consistency or that direction for litigants, attorneys, and judges. An interim rule—new interim rule would preempt potential constitutional issues by avoiding presumptions in criminal cases. It would preserve judicial discretion and would provide an opportunity for the court during a new interim for actual data compilation to allow for evidence-based modifications of what we hope would be a new interim rule by the Court at a future date. It is important to note that the proposed rule provides for the presumptive use of remote proceedings in many civil proceedings, particularly those that are fairly summary. It provides consistency for litigants and attorneys and makes it more convenient and cost effective to appear for those types of proceedings. One thing that I did learn and the only thing I think that is an absolute truism in this issue is that it is very difficult to craft one rule that works for everyone. Each community being different, each jurisdiction and their constituency having different needs, it's just almost impossible. However, I think that the proposed rule is workable statewide and will work for every court across the state. It is very difficult to be in your position. I understand that; I've never been there, probably never will be. But when you look at the big picture, I think that compromise is the answer. Compromise on a new interim would not commit the Court one way or the other, other than giving an opportunity to the Court to actually try some more specific direction to litigants, attorneys, and judges, and then collect data to see if it's working. We, each of us, think we know what's best. You have to decide what's best for all of us. But I do encourage and strongly suggest that you consider a compromise in this way in this matter. One way or the other, going back to pre-pandemic or going to 100% Zoom, I just don't think that that fits the needs of any community in the state. It doesn't help the legal profession as a whole and while it may be something that is good in many

circumstances, it's just not right for every—every type of proceeding or even most proceedings in some courts—

CHIEF JUSTICE MCCORMACK: Judge Reeds, I'm going to have to ask you to conclude. We just have so many speakers and we're —

JUDGE REEDS: I'm done. I'm done.

CHIEF JUSTICE MCCORMACK: Okay.

JUDGE REEDS: Thank you.

CHIEF JUSTICE MCCORMACK: Thank you very much for your comments and thank you for making the time to be here. We appreciate it. Next is Judge Kirsten Hartig. Judge Hartig.

JUDGE KIRSTEN HARTIG: Thank you, Madam Chief Justice and Justices of the Michigan Supreme Court. My name is Kirsten Nielsen Hartig and I'm a district judge. I speak on behalf of many of my colleagues who asked me to summarize some of the disruptive and disrespectful behavior district judges see over Zoom that do not occur with in-person proceedings. On my own behalf, I do not have any objection to doing most civil proceedings via Zoom but believe that Zoom proceedings in criminal cases is bad policy. These lists are not exhaustive and have been shortened to accommodate the time allowed. As district judges, we have seen the following behavior by attorneys while using Zoom: An attorney on the record representing defendants while driving a car, while smoking a cigarette, while in the attorney's garage with a hoodie sweatshirt on, wearing only a t-shirt, wearing a swimsuit, on the record in front of the judge asking their clients, defendants, confidential questions, holding a dog, holding a child, while walking and running down the street, and completely unprepared to represent their client, necessitating multiple adjournments—things we just do not see in in-person court. As district judges, we have seen the following behavior by defendants, litigants, and witnesses via Zoom: Defendant on the record while getting her hair dyed, while walking around in a store, while driving a car, while smoking cigarettes, marijuana, and hookah and while vaping, while urinating completely naked, while working at an assembly line wearing a plastic bag on his head, intentionally farting and burping to disrupt the proceedings, physically overdosing from drugs necessitating the judge to call the police for help, while high and intoxicated, the defendant's camera pointed towards dog feces on the floor, defendant on the record using the toilet (the district judge believed that this was intentional), while laying down in bed, sometimes with others asleep in bed with them, while using the toilet with the camera pointed at her midsection, the camera showed the defendant using toilet paper to wipe her bottom (this appeared not to be intentional), defendants appearing while physically asleep both upright and in a chair and in bed, multiple cases have had to be adjourned because the defendant never woke up, litigants yelling at children, dogs, or other persons, continually interrupting the judge in proceedings to attempt to maintain quiet in their environment, while wearing a bathrobe or pajamas, wearing only a bra, naked from the waist up. The courtroom is a physical space that communicates the

important jurisprudence that occurs there. It encourages court users to know and understand their responsibilities for proper conduct—

CHIEF JUSTICE MCCORMACK: Thank you, Judge Hartig, but I have to ask you to conclude. We just have so many speakers to get through. So—

JUDGE HARTIG: Thank you.

CHIEF JUSTICE MCCORMACK: Thank you so much. Thank you for being here. Thank you for your comments. Next is Judge Julie Nicholson.

JUDGE JULIE NICHOLSON: Good morning and thank you again for allowing me to speak today I'm not going to reiterate or repeat some of the circumstances that Judge Hartig just outlined for you but my experiences have been the same and or similar. I can tell you that none of the behavior that she did outline occurs in person, mainly because it can be controlled when the litigants and the attorneys are here in person. You will note that everybody that is appearing here today is properly attired. They know how to use their technology. They are respectful. Unfortunately, that is not our experience in the district court. The district courts operate differently than the appellate courts and the circuit courts. We deal with volume and we operate at a much faster pace due to the nature of our dockets. Some of our jurisdictions include multiple prosecutors and police departments. For instance, my court's jurisdiction encompasses 11 cities and municipalities and we process approximately thirty to forty thousand cases per year. What we learned from the remote experience is that we cannot process our criminal, and to some extent our civil, case volume as efficiently and fairly as we do in person. It doesn't just take double the time to get through a Zoom docket. There are days that it takes triple and quadruple the time due to parties and attorneys not being prepared or appearing timely, inability to use their technology, abusive behavior, etc. In 25 years of presiding over a trial court, I never had to adjourn so many cases during the docket that I did while all dockets were remote. Clearly, this is not efficient court management. To mandate remote proceedings as outlined in the current version of the court rule under the guise that it increases access to justice is untrue and misleading to the public. Most if not all trial judges, including me, have continued remote proceedings in one way or another while taking into consideration our individual caseload, our available technology, staff resources, local prosecutor and defense fair practices, and, most importantly, the communities that elect us. A trial court's discretion—a trial judge's discretion must be preserved. There are simply too many factors to roll into a presumption given that this is not a one-size-fits-all solution. Moreover, the unnecessary amendment of the court rule sends the message to judges, attorneys, and the public that the Supreme Court does not trust its trial court colleagues to exercise their discretion in determining which cases should and could be held remotely. I implore you to reconsider the amendments that have—that have been suggested and implemented. The amended version does not enhance or improve access to justice and or transparency. I suggest it does just the opposite. And thank you again for listening to us today.

CHIEF JUSTICE MCCORMACK: Thank you, Judge Nicholson. Next is Lillian Diallo.

LILLIAN DIALLO: Thank you so much, Justices. My name is Lillian Diallo. I'm an attorney. I've been practicing for over 20 years. I do criminal, I have a firm. and I have done civil. Let me just say, in Wayne Co—I practice in Wayne County, Macomb, Oakland, federal court, in Ohio—I believe we need more as opposed to less access to the courts. We need to start blowing away some of the opaqueness. Now, can all proceedings be by Zoom? No, but it's not because people are lazy or not wanting to abide by the system. So I can only tell you from my practice and I am the president of the Wayne County Criminal Bar Association and I talk to my members a lot. We've gotten more done as opposed to less done. And, yes, were there hiccups at the beginning? Absolutely. There have been people using bathrooms, all of those things. But, myself, I've found that I've gotten better, right? I think sometimes we have to look in the mirror and go "hey, where can we be better?" Technology is here. Technology is here to stay in some way, shape, or form. And I have been in at least 15 trials in a year—capital trials—where I am in these courtrooms. The lawyer has to step up if the client is behaving in a certain manner. That is why the MIDC was implemented. So if I have a client—I will talk to my client, can we go on a breakout room? Call them? I've been more accessible, as well as the clients. And just let me say, I don't have a one-size-fits-all answer. I don't know. But I do know this—this is the People's house. This is the People's business and it should not be where you can operate in super secret silence, right? And I'm just going to tell you—I've had an experience that I never thought, you know, I would have, right, because I do my job and I leave, right? I—I'm not one of those that likes to just be around and stay around and be seen. I want to represent my client and go home. There's a certain level of representation that is inherent in what we do and I take this seriously when we're talking about somebody's rights. I had the unenviable experience of being told I could not Zoom in to a courthouse that was however many hours away. I'm a big girl. I understand that. But there was disparicy [sic]—despair—discrepancy, I'm sorry, and disparate treatment when I look up and there's another lawyer that's allowed to Zoom in for the exact same proceedings that I had asked for. So we need help. We need just fairness. We want parity. Do I have all the answers? I do not. But I do know this, Zoom is not the devil. Zoom is not heaven. Zoom is what Zoom is, and it is here to stay for certain things and that's all I have to say. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you, Ms. Diallo. Thank you for being here. Next is Judge Bill Baillargeon. Judge Baillargeon

JUDGE WILLIAM BAILLARGEON: Hi. Well, thank you, Madam Chief Justice and Associate Justices for hearing me. I have to tell you I'm going to be speaking in direct opposition to what I perceived to be the great majority of district court judges, at least I've heard thus far. I believe that these proceedings are far enhancing the access for justice. We're in a dynamic—a dynamic time here. Where we're at the very threshold of being able to really make the courts fully accessible to people in a way that is really just unprecedented. We, you know, we hear a great deal—I've, you know—I've already heard a little bit about this rule being some sort of an imposition on the discretion of the judges. The discretion of the judges is enormous. We have great discretion in so many things and this is not a matter of questioning the integrity of the judges or whether the Supreme Court is trusting the judges. This is a matter

of trying to make this rule applicable in a broad sense so that we have broad guidance as to how to conduct these matters and to allow people a little bit of predictability as to what's going to be happening, rather than dealing with the arbitrary whims of this judge. And that judge, you know, there's been discussion and there's been a litany of transgressions that have been related to us. You know, there's the waiting room. We can put people in a waiting room and we can instruct them, you're not coming back in until you're properly attired, you're not coming back in until you're behaving yourself, and you're going to conduct yourself in the decorum required of a court proceeding. These are things that we can do right now and court hearings do not take twice or even three times as long. I don't know what is creating that sort of impediment but when you live in a county, like a poor county—in a largely rural county like Allegan, transportation issues are enormous issues. And work issues are enormous. I mean, how many people have taken pleas and had to say, well wait a minute, you're saying you're not guilty but they want to plea because they can't come to court again. You know that's—we shouldn't be forcing people to make a choice as to whether or not they're going to make a plea just because they don't have transportation or they will—they fear they're going to lose their job if they lose another day from work. We have an ability here to allow people access. You know, why should they take a day off work when they—when they have a 10 minute hearing? I just think that it's really—it's an outrage to think that we should back up. We should be, as the previous caller stated, we should be moving forward. We should be enhancing the ability of Zoom to provide better sound if that's our main concern in regard [inaudible]. I have a lot more to say but I guess [inaudible]—

CHIEF JUSTICE MCCORMACK: We appreciate you being here, Judge Baillargeon, and thank you for your comments. And I hope your colleagues aren't too bad—too mad at you when you're done.

JUDGE BAILLARGEON: They will be.

CHIEF JUSTICE MCCORMACK: Next is Judge Lisa Asadoorian.

JUDGE LISA ASADOORIAN: Good morning, Justices. I do conduct many cases via video and I will continue to do so. However, I object to the proposed changes in MCR 2.407 where trial courts are required to use remote participation technology to the greatest extent possible. First, the phrase "greatest extent possible" is undefined and subject to interpretation. That phrase alone signals the need for each judge to keep and use their own individual discretion and the need for you to delete that proposed language from this court rule. Next, unlike higher courts, I often see non-lawyer litigants. Video participation is still very difficult for them. Much time is wasted on the record to help represented and unrepresented people connect to both criminal and civil hearings. I'm forced then to adjourn the matter for in-person court dates and this creates more case backlog. These are some of the signs that I use recently in court. I don't know if you could see this.

JUSTICE RICHARD BERNSTEIN: Judge, do you mind reading it? This is actually another issue with Zoom. Blind people really—

JUDGE ASADOORIAN: Exactly, exactly—

JUSTICE BERNSTEIN: So if you could maybe read it out loud because you—you've highlighted a huge issue that I have, which is I really don't get to participate—

JUDGE ASADOORIAN: Yes. My signs say, "we can't hear you," "read your screen," "unmute yourself," "man in the zippered sweater wearing glasses, please state your name." Conversely, some non-lawyers have become very savvy at avoiding unfavorable orders and rulings. They feign sudden internet problems and then they quickly disconnect. And this creates more delay in the need for another court date and unnecessary attorney fees incurred if the opposing party is represented. Next, the proposed court rule states that a sufficient recording and transcript must be produced. This is a problem. I can't control technology quality or aptitude of any participant and that has directly affected transcript quality. Next, this rule does not take into consideration the rights and desires of victims of crime. In my court, victims often want to be physically present at every hearing and that includes non-testimonial hearings. Next, video hearings have decimated courtroom decorum and respect. Parties have appeared in the ways Judge Hartig detailed and, once in my court, even engaged in a male threesome sex act. Even attorneys have logged on while driving or golfing or poolside. These proposed changes will welcome this behavior as the new norm and we can't control it. Please leave it in my discretion as to when to appear on screen to do my job. To blanketly require me to conduct certain hearings via video won't work and won't serve justice, and reduces us all to entertainment, sport, and folly for the masses. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thanks for being here. Thanks for your comments. Next is Judge Laura Schaedler. [Pause.] Okay, Judge Schaedler is not here. We can come back if she shows up later. I know judges are managing a lot to be able to show up today. Judge Kelley Kostin.

JUDGE KELLEY KOSTIN: Good morning, Justices of the Michigan Supreme Court. Thank you for this opportunity. I am Judge Kelley Kostin of the 52nd District Court in Clarkston, Michigan and I'm here today representing the Oakland County District Judges Association as their president. We are opposed to the recent Michigan Supreme Court's amendment of MCR 2.407, primarily because it will result in diminished access of justice to the sizable percentage of the population that we serve. When this pandemic struck, we were all forced to revisit our court operations. The trial court judges, specifically the district court judges, led the way with their ability to utilize current technology to keep their dockets running in a necessary and efficient manner even while other businesses closed their doors to the public. Within a very short period of time, we managed to preside remotely even though virtual hearings required us to drastically reduce our dockets. I believe that puts us trial court judges in a unique position to accurately account for what does and what does not work in remote hearings. We fully support the use of remote technology and court proceedings. However, we oppose the presumption in favor of remote technology. We believe that the presumption should continue to favor in-person hearings but provide the judge with a discretion to allow remote hearings where justice so

requires. District court judges are extremely busy and the judges handle an exceptionally high number of cases in a typical day. Communication is important and critical. In fact, the ability to provide a fair hearing is a constitutionally mandated function of the court and our ability to communicate is one of the most vital functions as a judge. I will not recite the many horror stories that I and other judges have experienced since the implementation of remote hearings. But suffice to say that the issues are the norm and not the exception. Our clerks have had to become efficient in troubleshooting connection issues. Often we will pass sentence or decisions to discover that the defendant or attorney was unable to hear us. We attempt to take pleas or listen to motions only to be met with the reality that the participants' screens are frozen. I can't even count how many times per day that I've had to request a participant to unmute or to quit speaking over another participant. This proposal was initiated to protect the public and personnel from the pandemic until appropriate controls could be implemented in the courtroom. However, we've lost the dignity and respect that was previously afforded a court. We agree that judges should be given authority to conduct remote proceedings. However, limiting or removing judicial discretion would be a critical error. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thanks for being here. Thanks for your comments. Next is Judge Jennifer Andary. Judge Andary. . Okay, maybe we will come back to Judge And—

JUDGE JENNIFER ANDARY: No, no, no. I'm sorry. I literally—I was so excited and geared up and I couldn't find myself to unmute myself.

CHIEF JUSTICE MCCORMACK: You're good, you're good. Go ahead. Thanks for being here.

JUDGE ANDARY: Thank you so much. Justices, I do appreciate this moment to speak. I think that personifies how we all feel about—and I love that it happened to me as a judge—because every day I have to sit and listen to people that it happens to and they freak out and you have to calm down. So, that wouldn't happen if they were in person in court. But I'm going to start with, and I am going to be brief because we all have the same thing to say. Access to justice does not mean that we make our judicial system part of the TV—reality TV revolution. Making the courts fully accessible to everyone is amazing and wonderful and should happen. Making the courts fully accessible from a restroom, a salon, a vehicle, a bulldozer, the workplace, a golf course is unacceptable. The gravitas of a court proceeding has become non-existent. There's no compliance with bond conditions because they didn't know—my—"I didn't know because I was on Zoom," "I didn't get that that notice because there's no mail and I'm on Zoom," "I didn't hear everything, my computer glitched out." Compliance with probation orders—there is none. It happened but there's always the fallback of, "I was on Zoom; I didn't hear that." Compliance with court orders. Period. People—people not complying and recognizing that same gravitas for which this judicial system and every judicial system was brought forth in our society. Video conferencing, of course, should be used to the greatest extent possible. However, one size does not fit all. Allowing justices to—excuse me, judges—discretion to allow remote hearings the same way they're allowed to make a decision on

motions, make a decision on granting adjournments. It would have to be the exact same way. It's not just the defendants and we all know this. It's the attorneys. They're conducting multiple hearings at once. The disrespect to the court system, and what truly matters is representing everybody's interest. While muting a litigant or even an attorney would seem like a dream come true for some judges, it's disruptive and not conducive to conducting our court proceedings to ensure that justice is served to all. Lack of decorum, lack of civility lack of respect, and lack of accountability, but most importantly the loss of dignity to the judiciary, these are not tantamount to being a public servant. So I implore everyone to take a step back and recognize the fact that, yes, there is not one size fits all and access to our judicial system does not mean that we become a laughingstock and part of the next reality—reality TV show. I appreciate your time and I thank you for holding this forum. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thanks for being here and for your comments. Next is Judge Raymond Kostrzewa and I apologize for botching your name. I hope you'll correct me. Okay, we'll come back to Judge Raymond [Kostrzewa]. Next is Judge Maureen McGinnis.

JUDGE MAUREEN MCGINNIS: Good morning. May it please the court, Maureen McGinnis, presiding judge 52nd District Court, 4th Division. Thank you for the opportunity to address you today for public comment on item 7 of your agenda. I would like to focus my comments on the amendments relative to MCR 2 2.407 and MCR 6.006. My intent today is not to focus on the past. I do not appear before you today to share war stories, although there are many. I do not appear today to impress upon you the level of fatigue or stress that myself and many colleagues endured trying to uphold our commitment to our constituents during the strange and unprecedented times of the pandemic. Our stories may be unique in some ways but they are no different than the experiences of anyone living through the pandemic. Life, as we know it, has been changed in many ways and forever. My intent today is to encourage you to look ahead to the future, not just tomorrow or next year but for many years beyond as you work to develop statewide systems that consider every aspect of the time-honored legal system and every consumer that it interacts with. It's no easy task that you are faced with, trying to balance the need for respect and decorum of the judicial system, access to justice, the desire to become a national leader in court technology, and deciding how we move forward from the emergent nature of the pandemic when it is no longer an emergency. The decisions that you make on these issues will impact so many people, not just the judges and attorneys that you may hear from today. For this reason, I commend you for not taking the decision lightly, for recognizing the potential impact of these changes way back in 2020 when you thoughtfully assembled the Lessons Learned Committee and asked intelligent and dedicated attorneys, like Jennifer Grieco and Brandy Robinson, and respected members of the bench to commit to an in-depth review of these issues and recommend courses of action. I commend you for seeking out feedback and for directing the committee to return to the table after preliminary findings, with the important addition of District Court Judge Travis Reeds, and redefine those recommendations. This lengthy process has ensured that the findings of the committee truly reflect the real issues that the virtual courtroom has raised and provided thoughtful ways to address these issues so that we come out of this stronger and more capable of meeting the

needs of court users. The administrative order was a way of life for us throughout the pandemic but the Court should not be afraid that walking away from these directives will return us to the place that we were in on March 1st of 2020. Many judges have expressed a desire to continue with procedures that were developed during the pandemic. But we've all had months, if not years, to reach the conclusion that there's no one-size-fits-all solution. A court rule that assumes there is with little or no discretion afforded to the judge to manage their own courtroom will hamper the ability for the courts to determine the best way to serve their communities. That being said, I fully understand the need for uniformity. I believe that the Lessons Learned Committee did as well. These final recommendations issued on November 19th of 2021 should not be cast aside. Many of the recommendations, including what is proposed under Appendix B, set out reasonable expectations to move us forward. I humbly ask you to consider implementing the recommendations and proposed rule changes put forward by the Lessons Learned Committee and move the judicial system in the state of Michigan beyond the pandemic.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thank you for being here and thank you for your thoughtful comments.

JUDGE MCGINNIS: Thank you.

CHIEF JUSTICE MCCORMACK: Next is Judge Mark Fratar—I'm going to botch another name—Fratarcangeli.

JUDGE MARK FRATARCANGELI: Well, that was pretty close, Justice McCormack. Pretty close. Well, good morning to all of you and I'd like to thank Judge Andary for waking everybody up. That was quite a quite an entry. I appreciate that. Last time I was testifying in Lansing, I had to cancel my docket and drive to Lansing and testify and it's nice to have—be able to use technology to shortcut that particular eventuality. So it's nice to be able to talk to you via Zoom and I do appreciate the use of technology as a district court judge. I've been a district court judge for about 22 years. So even before the pandemic, I tr[ied] to institute different technological changes that were met with some resistance from the Court Administrator's Office and the Supreme Court at that time. So I'm happy to see that we're going forward and looking in different directions. And, you know, necessity is the mother of invention and I think the pandemic really helped us in that regard. But I have to express to you from a practitioner, you know, we're all doctors here essentially. We're doctors of the law. We may be the emergency room physicians on the front line here in the district court but you're the plastic surgeons and the hospital administrators. You know, we're doctors of the law. We want to make sure that we protect our practice and the people that we serve. But you have to remember, the number one rule of being a doctor is, first, do no harm. And it would—I would be remiss if I didn't come to you and explain the difficulties associated with mandates concerning the use of virtual technology. I could spend probably three hours talking about the drawbacks of the use of virtual technology but I only have three minutes so I'll give you the reader's digest version of what I've ascertained during the course of my use of video technology. You're already going to hear and you've heard of the decorum and respect issues, the practical difficulties with

connectivity, financial restraints, the differences within the jurisdictions, and the delays associated with Zoom. But what you haven't heard, what I wouldn't have thought of as a layperson is, as a frontline worker I depend on in-person physical assessments of each defendant that comes in front of me. Twenty-two years ago, we had no systems in place to address problems that popped up when a person walked into my court and they were impaired by drugs or alcohol. I was so frustrated that we had nothing that we could do right at the earliest levels and I had people dying—awaiting trial dying, awaiting sentencing. So we developed processes that we put in place to ensure that these people didn't slip through the cracks. If a court officer, if a clerk, if anyone, an attorney, saw that there was an impairment, they would report it to me and I could immediately get them into programs. We have in Macomb County "Hope not Handcuffs." I've developed a drug court. We've—have a referral to community corrections where these people can be addressed immediately. Without that personal contact, I don't have any ability to help these people that will slip through the cracks. So I know this is an unintended consequence. I'd love to discuss all these unintended consequences that I've seen but I know we only have three minutes and I appreciate your time in addressing these issues. But trust me when I tell you; I'm not being overly dramatic. Lives are at stake by these changes.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thank you for your comments. Next is Judge Ronald Lowe.

JUDGE RONALD LOWE: I thank you for this opportunity to speak. I concur in the plan being promoted by the MDJA. My staff is amazed that I can ignore the inappropriate behaviors we see while we use Zoom. I regularly ignore the lack of decorum and respect that should be the norm for all judicial proceedings. I simply do not have time to address them. They are too numerous to count and I need to keep the court docket moving. But I sometimes worry that I'm establishing a practice that will not serve whoever takes my seat when I retire. My predecessor taught me that what I personally felt was not important. As one who served the bench, it was important that I preserved the majesty of the bench for those who came behind me. I come to this question of Zoom with a unique perspective. The covet pandemic was not the first time for me to be a homeless judge without a courtroom. Three years into my first term, the courthouse burned to the ground. I would open court two days later with an apology for being late. We'd be holding court in the commission chambers of the city of Plymouth and, thus, began the era of the moving courtroom for the 35th. We would conduct our business in city commission chambers, township board meeting rooms, and several courthouses whose districts were adjacent to ours, in basements of government buildings, and even in an old Friendly's restaurant while it was undergoing renovation. We would be at each location for one week then move on. The staff of the 35th would become experts at setting up, breaking down, and moving the trappings of a court. In all these locations, when you entered the space we were using you would see a courtroom. It might be folding tables and chairs but the feel of a courtroom would be present and, as such, it would demand the respect and decorum one would expect in a courtroom. Eventually, we would get the opportunity to move into 20 mobile homes configured as an office building and we'd make that work for us. The mobile home court would come with all the grandeur you might expect from a 30-year-old mobile home that had been serving the

United States Air Force. I remember a meeting we were having with the stakeholders of our teen court. Serving on that advisory board was a high school student. We were talking about whether we should move to—the whole business—the trailer park or the high school. His words come back to me: "Hold teen court here. Agreed this place is a dump but when you walk through the doors you know you're in a courthouse and that communicates volumes to the people who are here for business." If you think back, you know what I'm speaking about. When the first time you entered a courtroom to argue a case, a courtroom is a powerful deal or a tool for a court and for a judge. The majesty, the dignity, the respect of the decorum provided by mere presence in the courtroom cannot be duplicated by a talking head on a phone. Zoom's a useful tool. I'll continue to use it. Courtroom's a useful tool. All I ask is that you trust me to know when to use which tool and you put the courtroom back into my toolbox.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thank you for your comments. Thank you for being here. Next we're going to hear from Ashley Lowe from Lakeshore Legal Aid.

ASHLEY LOWE: Thank you, Madam Chief Justice and the Justices of the Court. Thanks for the opportunity to comment today. I am Ashley Lowe and I'm the chief executive officer at Lakeshore Legal Aid. We're the largest civil legal aid program in Michigan. We serve the Detroit metro region in litigation and we have a statewide hotline. Last year, we served nearly 17,000 clients across the state. The ability to appear—

JUSTICE BERNSTEIN: Ms. Lowe, I'm having trouble. This is a perfect example of the problems with Zoom that everyone's been highlighting. I'm having trouble hearing you. You sound like you're underwater.

MS. LOWE: I'm sorry about that. Is this any better if I scooch up closer?

JUSTICE BERNSTEIN: Yes, but just so you know, I didn't hear any of the things that you just said so I think the judges are making their point pretty well.

MS. LOWE: All right. Well, I'll say this

JUSTICE BERNSTEIN: You might want to start over.

MS. LOWE: Okay, I will. Thank you. My name is Ashley Lowe and I'm the chief executive officer of Lakeshore Legal Aid. We are the largest civil legal services provider in the state of Michigan. We serve the Detroit metro region and we have a statewide hotline. Last year, we served nearly 17,000 clients across the state. Despite my missteps, our ability to appear in courts remotely has dramatically impacted our ability to serve clients. Before COVID an attorney might handle three cases on a motion day in family court or represent four tenants on an eviction docket, again in just one court. Now our attorneys can appear across our service area in multiple courts, serving far more clients. In Detroit, our attorneys are assisting more than 10 tenants on every single docket. That's 10 in the morning and 10 in the afternoon for a single

attorney. In 2018, our litigation attorneys served an average of 100 clients per year. In 2021 they helped more than 140 clients per year. The elimination of drive time and the unproductive waiting time in courts and virtual appearances have enabled legal aid attorneys to do so much more with our limited resources. The impact on tenant representation has probably been the most dramatic. Last year, Lakeshore was able to assist over 7,000 tenants facing eviction on over 44 dockets. That helped 17,000 individuals remain in their homes. And it works like this: courts that are virtual, legal age attorneys are waiting in the virtual waiting room to meet with the tenants facing eviction, and we're able to advise most of the tenants who qualify and want advice. In the courts that are no longer virtual, we see only a handful of those tenants and we've talked about the impact on clients for low-income people. What are inconveniences for many of us—finding childcare or traveling to court or taking off a day of work—are absolute barriers to access to justice. Default rates have plummeted in eviction court because tenants—clients don't have to find a family member to watch their kids or beg a friend to drive them to court or risk losing their job for a 15-minute hearing. More and more low-income people are coming to virtual court and they're much more often represented so their voices are heard, their issues are clearly presented, and their cases are resolved fairly. They're experiencing what most of the middle class has been able to access previously. I can also tell you what happens when courts don't allow virtual hearings. Just last week we received a call on Tuesday from a survivor of domestic violence whose PPO was being challenged in court on Friday and the judge required everyone to appear in person. Our staff had hearings right before and after the time set for the hearing so couldn't get to court to appear. So we looked for a pro bono attorney. Again, we found several who worked outside the area who were willing to appear but didn't have time in their schedule to drive to court and sit in the wait room though—to the courtroom, waiting for the hearing. This woman, whose husband had physically and sexually abused her, was afraid to go to court by herself. I received a text message from her the night before court and she said, "never mind, I just can't go; my mental health can't take it. It's likely what would have happened in the past but it doesn't have to be that way anymore. Thank you very much for your time.

CHIEF JUSTICE MCCORMACK: Thank you, Ms. Lowe. Thank you for being here, for those for those comments. We appreciate it. Next is Judge Steve Parks. [Pause] We can come back to Judge Parks. Judge Stacey Rentfrow.

JUDGE STACEY RENTFROW: Good morning, Justices. My name is Stacey Rentfrow. I'm the district court judge in Cass County and the purpose of my comments is to emphasize the need for judicial discretion in determining whether hearings are to be held remote or in person. I believe the Justices have heard plenty of examples of the lack of decorum in conducting Zoom court hearings because the district court handles a significant amount of hearings with pro per participants. As a district court judge, of course, I've experienced what other judges have already addressed, which is the participants laying in bed while Zooming in for court, eating, drinking, smoking, vaping, at the job site while Zooming in, just to name a few of those examples so I won't belabor the lack of decorum. Instead, I want to focus on what that says about a person's interaction with the court system if they're laying in bed while in a Zoom court hearing or in their pajamas, eating, vaping, smoking, the dogs are barking, children are crying, televisions on, they're at the job site. So what does that say about the participants' interaction

with the court system? I would say that it's not meaningful contact, specifically, in the criminal area. Just as the other judges have talked about, I significantly used Zoom for civil and traffic. But specifically in the criminal area, I would argue that the court is not influencing change under these circumstances. As a district court judge, it's my goal to sentence an individual and have an impact so if a person is convicted of drinking and driving, drug driving, assault and battery, domestic violence, fleeing an officer, in fashioning a sentence that will be an alcohol assessment or a substance assessment or victim impact or anger management. And it's the court's goal to impact change in hopes that the participant does not have further contact with the legal system. But if a participant Zooming in while working or the dogs are barking, the children are crying, that's not meaningful contact—that's distracted contact. And I would argue that the court's missing that opportunity to influence change. And as a district court judge, I do want to influence change. So in conducting those criminal hearings, I want to discuss the dangers of drinking or drug driving, how a defendant can injure themselves or innocent others, why children need a safe home and there can't be assaultive behavior in the home. So I would argue that it—to influence change, the full attention of the participants are needed and to make that impact on the participants with meaningful court contact, which is the goal that the participants do not recidivate. So for those reasons, I would ask that the Supreme Court give the courts the discretion to determine if hearings are to be held in person or remotely. So thank you.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thanks for being here. Judge Cynthia Arvant. [Pause] We can come back to Judge Arvant. Judge Sean Kavanagh. [Pause] Judge Brian Hartwell.

JUDGE BRIAN HARTWELL: Good morning. Thank you, Chief Justice and our Supreme Court for leading us through the pandemic. I appreciate the lengthy and the detailed opinions of the Justices, supporting and dissenting to past emergency orders. I am the most junior of three judges in the 43rd District Court in southeast Oakland County and my comments reflect only my observations and opinion. I oppose the amendments to MCR 2.407. I believe trial judges should retain the discretion to approve remote participation. I represent a community, Hazel Park, Michigan, where 22 percent of the residents live in poverty, where the per capita income is $21,000, where 15 percent of the adults have not graduated high school and, of great significance, where 23 percent of residents do not have access to the Internet. The majority of criminal defendants in my court live in extreme poverty and are granted court-appointed counsel. Without question, the impoverished litigants before me received diminished access to justice and effective representation directly caused by this lack of high-speed Internet. People behaving badly is an hourly experience on Zoom. Technology has brought to my clerks and me the following: an exposed penis; a woman on the toilet; I've been told to "F" myself; I've been called a "dickhead"; offenders sentenced to jail have failed to voluntarily report; during an in-person felony matter with a possible life sentence, the attorney tried Zooming in while handling a traffic matter in another court; while on the record, an attorney interrupted our hearing to speak to another judge in a different court who was also on the record; during another exam with attorneys in person but witnesses on Zoom, I was the only person in the courtroom with the webcam and I was asked by an attorney to hold up the proposed exhibit as the attorney asked authenticating questions. All of these examples happened within the past two weeks and

I could give you thousands of more examples over the last two years. Thank you for listening to my comments.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thank you for being here. Next is Jennifer Kane.

JENNIFER KANE: Good morning, Justices. My name is Jennifer Kane and I'm the court recorder/administrative assistant for Judge Carrie Lynn Fuka, who spoke earlier today. As a court recorder, my main job is to record all the proceedings and accurately transcribe them. To elaborate on what Judge Asadoorian touched on: Zoom has made that very difficult for me. It is very hard to hear the proceedings after the fact. The audio is not clear and it's hard to decipher who is talking at what time. It takes much longer to just to transcribe any of the proceedings as I have to go back and re-listen multiple times and a lot of times end up typing "inaudible," which isn't accurate, because I can't hear or make out what is being said. Unfortunately, due to staffing issues, Zoom has also become part of my job, running it for the different courts, and it takes away from me doing my regular job. For civil cases, I find Zoom very effective. For criminal proceedings, not so much. This morning, I had to start Zoom for Judge Lucido and Judge Femminineo. Both judges had four-page criminal dockets. We have people logging in, 35 on my screen at one time. They log in under phone numbers. They log in under different names, some very profane. They scream and they yell at each other. When I have a domestic violence victim, the defendant is screaming, telling them that they just shouldn't be there so I have to mute them. I'm labeling attorneys. I'm dealing with people who are smoking, vaping, all the things that people have already touched on for the most part. I think it is—there is no respect for our court system doing it through Zoom; I think that for both defendants and attorneys. A simple criminal matter can escalate very quickly when there's a bond violation. Just last week we had a domestic violent victim—violence victim who was on Zoom, alleging that her—the defendant kept threatening her and was threatening to kill her. And she was terrified. And there was nothing that we could do other than set it for a hearing as it was held by Zoom. So, what else do I want to say? I just I don't feel it's effective for criminal cases. I think that there needs to be in-person contact. I know that it's much more effective. We've sentenced many people to jail. They just don't go; they don't have any threat of going. When they're in court, there's a court officer standing behind them and if they violated their bond or they're violating their probation, we have the ability to send them to jail. And I think the judges need to be able to do that. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you. Thank you for being here. Thanks for your comments. Judge Dan Bain. [Pause] We can come back to Judge Bain. Paul Zalewski.

PAUL ZALEWSKI: Good morning. May please the court, my name is Paul Zalewski. Thank you greatly for the opportunity to briefly speak today. I'm an attorney in the state of Michigan. I've been practicing for approximately 22 years. My practice area focuses on commercial civil litigation and criminal defense, primarily state and federal courts in Michigan as well as other states. And I share the same opinion as so many of my other colleagues that the evolution and implementation of remote participation technology is the single greatest

advancement in access to the legal system that has been afforded to the citizens of the state of Michigan, as well as the efficiency of the practice of law. Now, the benefits that are afforded to clients are multi-fold and many of them have been stated already: the ability not to have to take off substantial time from work or school or education. But also transportation has always historically been a major issue, especially with indigent criminal defendants because they don't have vehicles or even driver's license to come to court. Prior to the pandemic and prior to remote proceedings, I can't even count over the course of my career in the criminal arena how many bench warrants have been issued for a client not appearing to court on time. Frequently, they'd show up later that day because they had work complications or transportation issues. The case would be reset and it would delay the proceedings. Since remote technology has been implemented by courts in Michigan, I have not had a single criminal court-appointed client or retained client fail to appear in court. The efficiency in practice has increased exponentially, especially among sole practitioners like myself because in the past I've had no less than five adjournments per month by stipulated order on criminal cases due to multiple conflicts in my schedule on a given morning or afternoon. With remote participation, I've not had a single stip an order to adjourn any criminal proceeding entered until recently as some courts have started to move back to in-person or proceedings that were previously handled remotely. Last week alone in a single morning, I was in three jurisdictions for probable cause conferences and pre-trials and criminal matters. I secured pleas. Some cases were adjourned and I was completed in three different courts by 10:00 a.m. In the past, I would have had to adjourn at least one or two of those cases because I couldn't even travel from one court, complete that case, and appear in the other by 10:00 a.m. The complaints from the bench are well warranted as far as the behavior of certain defendants are concerned. And I place responsibility on the defense attorneys to adequately prepare their client prior to a hearing rather than treating it as a "show up to court and we'll deal with it on the spot" situation and that's where a lot of the problems lie. Like any technology, like when e-filing was first implemented in federal and state courts, there's a learning curve to fine-tune it, of course, and it rests on the bar association to prepare their clients and the bench to fine-tune this technology for the benefit of the public. Thank you so much.

CHIEF JUSTICE MCCORMACK: Thank you very much for your comments, Mr. Zalewski. Next is Matt Wiese, the prosecuting—on behalf of the Prosecuting Attorneys Association of Michigan.

MATT WIESE: Thank you, Chief Justice, and good morning, Justices. And I want to thank you for the opportunity to provide comment today on behalf of the Prosecuting Attorneys Association of Michigan. I am the current Marquette County Prosecuting Attorney and I'm the immediate past president of the Prosecuting Attorneys Association. At the beginning of the pandemic, we all agree that it was essential that we needed to use remote technology to keep things moving as best as possible. But at this point, we believe we should take a slower, more thoughtful approach to how we adopt and implement remote technology as we go forward, especially in light of the fact that there are many, many things going on here, including proposed legislation to address remote access and some of these same issues. I also was privileged to serve on the Lessons Learned Committee and I do not speak on behalf of that

committee. But I see that Judge Ackert is here, and he chaired that committee and I'm sure he will have some comments. However, as was discovered with the work of the Lessons Learned Committee and in my own personal experience and many experiences of many of us from what we've heard here today, there's a major divide between the civil and criminal dockets. And I agree with many of the comments that, for civil cases, it makes perfect sense that we take this approach. However, what we—however, that said, many of us have adopted many of the—many new processes in the criminal arena and, as was just spoken to by attorney Zalewski—and I apologize if I got your name wrong—pre-trial conferences, probable cause conferences. Today alone I am monitoring 21 probable cause conferences where the attorneys and the prosecutor can just remote into that hearing and take care of business. That's an exceptional way to use this technology. Before we would waste a whole day, sitting in a room on a cattle call docket and now we can be much more efficient. Do our jobs. And I agree that works for prob—this type of thing, for pre-trial conferences, but not for court hearings. My association is opposed to proceedings becoming the default in criminal cases. As one of the previous district judges said, what does "to the greatest extent possible" really mean? We agree that one size does not fit all and, at least for criminal proceedings, remote access needs to be the exception rather than the rule unless by stipulation of the parties and approval by the presiding judge. I, too, have many—I, too, have witnessed many, many examples that have been described here today by the other speakers. More importantly, we have concerns with victims and witnesses being harassed, intimidated, and even threatened. And if the remote proceeding is live-streamed, this further exacerbates the problem and if—and if it is live-streamed, this can lead to violations of sequestration orders, which we all, I think, can agree we don't want to see happen. In summary, the Prosecutors Association is opposed to remote proceedings and to live-streaming of court proceedings as the default in criminal cases. Thank you for your time today.

CHIEF JUSTICE MCCORMACK: Thank you very much. We're going to take a short break. We'll be back in just five minutes to continue with the rest of the speakers. Thanks, everyone.

[Break in the public hearing]

CHIEF JUSTICE MCCORMACK: Okay, I think it's time to get started again. I just want to make sure Justice Bernstein is back in his courtroom. All right. Well, we can get started. These proceedings are recorded so we'll be able to replay any comments that anybody missed. Next, we will hear from Judge Milt Mack. Milt.

JUDGE MILT MACK: Thank you. Thank you once again. Good morning. Over the last two years I have served as a visiting judge in Macomb, Kent, and Wayne County Probate Courts. I've heard hundreds of cases during that period of time, all via Zoom. And, in fact, in Wayne County, we've been using mental health trials remotely since 2001. Now I can't think of a single case I would have handled differently or better if it had been in person. What struck me was that respondents in guardianship cases were far more likely to appear in cases using Zoom. Those persons didn't have to deal with child care issues, take time off work, travel, park, get through security, or wait in a packed courtroom. Witnesses were not intimidated by the virtual

court and spoke more freely. Court wards were more relaxed and comfortable. It is true that Zoom hearings do take longer, in no small part because more people can attend. I've heard a number of 30 percent, by the way. So I would frequently ask the parties before me if they would rather appear in person. They looked at me wondering if I was serious. I currently serve on a national task force to examine the state court's response to mental illness and I chair the Civil Probate Family Workgroup. One of our recommendations will be to conduct mental health hearings remotely because recent research suggests that remote proceedings may be less stressful for persons with mental illness. In fact, recently the Attorney General opined that for persons with disabilities, Zoom hearings represent reasonable accommodations under the Americans with Disabilities Act. For the vast majority of hearings, the gravitas of a courtroom or the decorum of a participant is simply not a factor. Most hearings are short. In probate court most matters are uncontested. Why make people take a day off work, drive to a courthouse, pay for parking, go through security, and wait in a crowded courtroom for a 15-minute hearing that's unopposed? For too many of our citizens, in-person court hearings waste a huge amount of the public's time and resources. The fact that we see better attendance at remote hearings is evidence of the public's desire to participate. Short hearings that are limited in scope, are non-evidentiary, and non-witness should never be in pub—in person. There's really no reason motion day should be in in person. Now I do note that the district judges have made a suggestion. Probate court was left out of that and it appears I'm the only probate judge here today. But probate court is still around, still alive and active. So the—in fact the 2020 scale caseload report shows 2,464,000-some cases filed in trial courts: 2,269,000 in district; 130,000 in circuit, 63,000 in probate. A very small number of cases actually go to trial these days. When we consider the number of low-value and uncontested cases and the length of time of typical hearings then our presumption of remote hearings is in the public interest and improves the public's access to justice. I'll just point out that England has gone in a big way with Zoom hearings. They started just selling courthouses and we can look at Texas, we can look at Georgia, we can look at Washington state, they're all moving ahead. Frankly, this is a modest proposal compared to what's happening in Texas, Georgia, and Washington state. Washington state is actually conducting jury trials using Zoom now and the jurors love it. It doesn't waste their time anymore; they don't have to travel so much. Georgia and Texas are using remote proceedings to pick juries. That way, you don't have to haul in 140 people for clearance. So I support the proposal. I think it's a modest effort frankly and, although there are problems, there were problems in the beginning in probate court in Wayne County would Zoom hear—with remote hearings but over time they—we fixed it. So—

JUSTICE BERNSTEIN: Judge, can I ask you a question? I—first off, it's always good to see you. Judge Mack. it's nice to hear your voice and it's nice to see you. But I just have a question. I mean, aren't you ultimately speaking to what a lot of judges are really concerned about when you said that they're selling courthouses? I mean, for all intents and purposes, district courts are statutorily created and isn't that really the essence of what their concern is—that you are going to start selling their courthouses? Why have all these empty courthouses all across the state? You might as well just sell them. And doesn't it kind of go to the essence of the fact that, especially for district courts, the People's courts, they represent the values and the norms of their community, which is kind of to be guarded and to be respected?

JUDGE MACK: Well, I don't see us closing courthouses anytime soon.

JUSTICE BERNSTEIN: You said in England that they're selling. I mean, you—I think, you eluded that in England they're selling the courthouses. So I mean, isn't that really what a lot of the judges are concerned about, which is that they might as well just work in a clearinghouse. Why have them be in a courthouse? They can just, you know, make it like a—like a reservation center. They can just sit in cubicles in Lansing and do their work on Zoom and not have courthouses.

JUDGE MACK: I'm not sure that's a worry I'm hearing. I'm hearing a worry about decorum and Zoom on criminal cases. But for the practical matters, if you take a look at probate, there are very few hearings that I would say have to be done in person. At this time, if we're going to have a trial over undue influence, we're going to have a jury trial on something, then that probably should be in person. But yeah I've had hundreds of hearings and all I can say is everyone liked it. The parties liked that; the lawyers liked it; I liked it. It works well so—

JUSTICE VIVIANO: Of course, they don't—they don't usually express their criticism to the judge, Milt. You probably must know that from your time on the bench. Are your comments restricted to the probate court?

JUDGE MACK: Well, I am speaking to probate court. I don't pretend to speak for the district court otherwise my wife would have an issue with that—

JUSTICE VIVIANO: For example, how many criminal cases have you heard over your long career?

JUDGE MACK: No, I've never—well, I've tried a couple, regretfully. But I have done a fair amount of circuit work in that regard and civil work. I should say in circuit and district.

JUSTICE VIVIANO: The probate court, for a long time, has done some MI hearings and other hearings remotely, and that's made sense, well before the pandemic. I mean, that's what I'm talking about. A lot of those things are not innovations that came about because of this rule.

JUDGE MACK: Well, that's true but you know we're seeing some probate courts who are kind of creating a presumption that everyone has to come in for the hearings. And that's—even through adjourning an accounting that's unopposed. You have to go to— some judges are saying you have to come in now. And I said this court rule, I think, will help to make the—

JUSTICE VIVIANO: Isn't the judge in the best position to know which hearings should be in person and which ones can be handled remotely?

JUDGE MACK: I would say that based on—

JUSTICE VIVIANO: Or they're not equipped to make those decisions?

JUDGE MACK: I think most are, but I think that there are judges who, regretfully, don't respect the public, frankly. And from my—from my experience, I have no idea why you'd want to adjourn an accounting, why you would demand an in-person appearance on adjourning an accounting or substituting an attorney in a probate matter. Makes no sense.

JUSTICE BERNSTEIN: Why would the judge disrespect the public? I'm confused. Like why would a judge deliberately disrespect the public? The whole essence of being a judge is to serve the public.

JUDGE MACK: I agree. I agree. I think the rule—

JUSTICE BERNSTEIN: But you just said that judges disrespect the public.

JUDGE MACK: There are some.

JUSTICE VIVIANO: I mean so—

JUDGE MACK: But that's not the majority. It's like the majority of the public behaves well in Zoom and the minority—majority of the judges behave well, as well. But there are those who don't.

JUSTICE VIVIANO: So the answer to the few judges who aren't operating the way you think they should is to make a blanket, uniform statewide rule?

JUDGE MACK: I think if you say there's a presumption, then presumptions can be overcome. So that there may be a reason you want a particular hearing to be in in person. But if you start with a presumption of not in person, which is actually the experience of probate in terms of the need for attendance, then I think that works. I mean, for example—and I was surprised by the number of Zoom hearings on appointed guardians where we had the purported ward present. Because we just don't see it that often in the courthouse because of the difficulty of persons who are in that situation being able to get to the courthouse. There's no problem from their living room. So we saw a lot of participation, which I think is important.

JUSTICE BERNSTEIN: I mean, I know we have a lot of speakers, I'm just going to ask one question of Milt— Judge Mack. I guess the question that I have back to you is, doesn't this really all come down to what is going to be the default, right? And couldn't we, I mean look, before I became a judge, my entire work was representing, you know, paralyzed veterans. That's what I did. I represented people with disabilities. And usually what you would do is, the ADA made a lot of sense. You would accommodate the individual. So in this situation, what I'm confused by in all of this is, why should the default not just simply be that we do everything in person. Everything is in person. The accommodation should be that we will use Zoom when

necessary and when appropriate for the individual that requests an accommodation. I mean, ultimately it seems like we're just turning everything upside down. I mean—I mean the whole essence of when you represent people that are disabled or disenfranchised is that you make an accommodation. But the question here is, what is the default and what I have trouble with is, shouldn't the default be that we do everything in person, which is the way the world should operate and function. Everything in person and if there's a person that requires an accommodation, an accommodation will be granted to them through Zoom or whatever accommodation the court deems necessary. Why can't we just do that?

JUDGE MACK: Well, I would suggest that most matters do not require in-person attendance and, therefore, that should be the presumption.

JUSTICE BERNSTEIN: Okay, I see your position. Thank you and thanks for answering my questions, Judge. It's great to see you.

JUSTICE VIVIANO: I have a follow-up, too. You made a comment that all of these hearings that you've done remotely, you can't imagine them being handled any better in person and everybody was very, very happy, which is sort of self-serving. Obviously. We all sort of do that. We all think that we've made everybody very happy. But obviously—or you know, I'm looking at comments—Michigan Legal Help. They solicited comments from their clients and a lot of the comments, maybe a majority of the comments, are people that feel that—they didn't feel that they got heard remotely like they would have gotten heard in person and had the judge's full attention. I know you're a big advocate for judging—for judges not being in the courthouse at all and being in their cottage, hearing cases. Aren't you concerned at all that people who receive an adverse ruling from the court aren't going to feel like they got the full attention of the judge and all of the participants in the court process when they receive an adverse ruling from the court?

JUDGE MACK: Well, actually, let me just say, I'm not suggesting people were happy because they saw me or that they're happy with what I did. I'm simply saying they were happy not to come and see me in person. But to your larger point, there's always the risk that people will be unhappy with your decision. But my experience with the Zoom hearings was that the hearings on appointing a guardian took longer than they normally used to and I thought that was good. People got to have their say and they felt comfortable and they expressed themselves. So they might not like the outcome but that's inevitable in any kind of a case.

JUSTICE VIVIANO: All right. Thank you.

JUDGE MACK: You're welcome. Nice to see everyone.

CHIEF JUSTICE MCCORMACK: Thanks, Milt. Thanks for thanks for being here and for your comments and for responding to the questions of our colleagues. We appreciate all of your work. Thank you Next is Mike Buckles from the Michigan Creditors Bar Association. Mike?

MICHAEL BUCKLES: Thank you, Justices, for this opportunity to comment regarding the proposed rules for remote hearings, particularly 2.407. My comments are from my personal experience as a member of the bar for 47 years and as the government affairs director for the Michigan Creditors Bar Association. I'm primarily discussing civil matters and in those civil matters remote hearings offer a quantum leap for access to justice for Michigan residents, particularly for the average consumer who often responds to a debt collection lawsuit without the benefit of counsel. Remote hearings—before remote hearings, pro se defendants often failed to appear, which resulted in default judgments and eventually garnishment or post-judgment remedies. However, since remote hearings have been implemented, more and more pro se defendants appear for pre-trials, motions, and post-judgment hearings. Remote hearings are not only more convenient for pro se defendants, more importantly, they help level a playing field for these consumers. Remote hearings eliminate the distress as we talked about of driving to the courthouse, missing work, etc., but virtual appearance is also much less intimidating to the average person versus standing before a judge in a courtroom. They seem to be more cooperative, express their feelings, and come forward with their situation. Virtual breakout rooms provide the consumer with a private forum to discuss with opposing counsel his or her financial issues or personal hardships. Thus, remote hearings put the pro se defendant on a more equal footing with plaintiff's counsel. Remote technology also benefits courts by resolving cases and avoiding additional hearings. The private breakout rooms substantially increase communication with plaintiff's counsel. This leads to more consent judgments with voluntary payment arrangements. It also results in dismissals when discussions reveal the consumer is totally disabled, mentally impaired, or filing bankruptcy. And this direct interaction with pro se defendants also reduces the needs for creditor exams, objections to garnishments, and or installment payment orders. The creditors bar appreciates the challenges for trial courts to adapt to this change. But since remote hearings offer so many benefits to Michigan citizens, we respectfully implore members of the bench to support implementation of this technology for civil matters. I thank you for moving forward with these court rules that favor remote hearings and special thanks to the court clerks and the members of the bench who have implemented this technology over the last two years. Thank you again for this time.

CHIEF JUSTICE MCCORMACK: Thank you, Mr. Buckles. Thank you for your comments and for being here.

JUSTICE VIVIANO: Mr. Buckles, I have a question—

CHIEF JUSTICE MCCORMACK: Sorry—

JUSTICE VIVIANO: Yeah, that's okay, Chief Justice. I'm just confused a little bit about your association's outlook. Are you telling us you support the rule changes because it makes it harder for your clients to collect on their debts? Or because the process is more efficient so it makes it easier for them to collect on their debts? Or are your clients really this concerned about how well consumers are doing on the other side of the cases that they bring? I'm just trying to figure out what their interests are and so we know how to interpret your comments.

MR. BUCKLES: Well, I can tell you that our clients—our bank clients are always concerned about their customers, whether they're being litigated against or not. And I will tell you that, from our experience with remote hearings, Your Honor, the participation of the consumer, which is what we want. More than anything, we want to communicate with the consumer. We want to know what their situation is. And quite honestly, Justice, trying to discuss a matter with a consumer—a defendant in a courtroom, in a hallway. We don't even want to go to a private room for security reasons. It's much easier in these private break rooms to talk with them. We want to know what their situation is. And it's resulted in many more resolution of cases. Whereas before, we would get a default judgment, garnish, and then they would contact us. We would rather work out arrangements, actually, even before litigation but once the litigation starts and it's a remote hearing there's more and more of these individual pro se defendants showing up and communicating with us. Communicating is really the key, Your Honor.

JUSTICE VIVIANO: All right. Thank you, counsel. Or thank you, Mr. Buckles, I should say.

CHIEF JUSTICE MCCORMACK: Thank you, Mr. Buckles. Very helpful. We appreciate you taking the time to be here today. Next is Judge Tina Brooks Green.

JUDGE TINA BROOKS GREEN: Good morning, Chief Justice and Justices of the Court. Thank you for allowing me to speak this morning. I'm a district court judge. I've been on the bench for 27 years and I've had a different experience than most of my colleagues that you've listened to this morning. My opinion is and my experience has been that probably 90 percent of what I do can be done remotely, with the exception of, and I haven't done, a jury trial since this has started. So I can't speak to that. But the majority of my colleagues have talked about civil cases being able to be done this way but not criminal cases. The criminal docket that I do, most of the pre-trials that I see—and we were a busy court—and there was some comment about new courthouses and I will tell you that during the pandemic we built an 18 million dollar courthouse. So we were—we have a lot of live, in-person people in our old courthouse and by the time we opened our doors, which was a year ago, that had dramatically dropped and that—that's just the way that that life goes. I don't see that our best serving the public is served by making everybody come live. My experience, specifically with—I'm a treatment court also and that experience has been enormously—changed my relationship with my treatment court people. They all Zoom. I've Zoomed with treatment court—with participants in my treatment court at seven in the morning, at seven at night. I've had that experience where I've come to know them and had a better relationship with those people because of this technology. And when I look at my docket, my criminal docket, having all these people come live just doesn't make sense to me. Most of my pre-trials are five or ten minutes. And the fact of the matter is I don't think that people should have to come live to be able to see me. If I have something—preliminary exams have to be done live, predominantly. and jury trials but with the ex—with some other exceptions. If I'm going to—if I think that I'm going toput somebody in jail, then I'll have my probation department, if it's a violation hearing or something like that, then I'll have them schedule it live so I can see that person live. Br bond hearing. But predominantly, almost

everything I do is remote. I haven't had a lot of these experiences that other people have talked about. I've had some people that have difficulties. Obviously, we all have people with difficulty in connectivity but, as far as disrespectful, I haven't had hardly—maybe a handful of people. And once I've communicated to them, "can you remember that you're in a courtroom"? If I speak to them and I've had only positive experiences back—on saying they're apologetic or whatever and don't—I haven't had anybody challenge me or swear at me or do any of the things that my other colleagues have talked about. And maybe I'm just lucky. Maybe I get those defendants that appreciate being able to speak remotely. Thank you for listening to me this morning.

CHIEF JUSTICE MCCORMACK: Thank you for taking the time to be here and thank you for those comments. We really appreciate it. Next is Judge T.J. Ackert. Judge Ackert, Milt Mack said he was the only probate judge here and that's not true, is it?

JUDGE T.J. ACKERT: That is correct. Thank you, Chief Justice McCormack and the Justices of the Court. I'm a county probate court. I'm assigned to a circuit court for the family division and all the docket matters under the family division and the specialized business docket. I served as co-chair of the Lessons Learned Committee and last week submitted to the Court the November 19, 2021 updated report for entry into the public record. However, today I am speaking on my own behalf and not on behalf of the Lessons Learned Committee or any other organizations. Justice Viviano, you indicated earlier and, it is true, that prior to the pandemic our courts collaborated with key stakeholders, including the sheriffs, mental health facilities, juvenile detention centers, and DHHS, to promote certain hearings in district, probate, and circuit courts to be conducted on Polycom. The success of these virtual hearings led SCAO to secure licenses to use Zoom prior to the pandemic and some courts had already started using Zoom prior to March of 2020. The pandemic has made it clear that the courts have become very adept at using virtual remote hearings and the courts should continue to use remote proceedings. It serves all stakeholders, including those that I just mentioned, and also the litigants, both represented and self-represented. It is clear that judges will continue to use remote proceedings. It is presumed by all comments that we have heard across the state that judges will continue to use remote proceedings. The District Court Judges Association had a survey conducted in which over 80 percent of the district court judges some of you—of which you heard today are going to continue to use remote proceedings. Courts that have vehemently objected to the general rule—the—to the "greatest extent possible" rule, which I understood was a bootstrap, have indicated they've already established a list of proceedings they're going to use remotely. The Lessons Learned Committee took that and applied amendments to what we had said to 2.407 and the related, that creates the presumption in certain hearings and then the judge has the discretion on the back side, not the front side but on the back side, to indicate when those hearings can't be used. And there's a whole host of things that you've heard today that would be appropriate for a judge to say, "in these types of proceedings, I'm not going to proceed with remote hearings." It can be done; it has been done. And I recognize that change is challenging in any institution, not the least of which is judiciary. But I—as I noted earlier, the judiciary has accommodated change in using remote proceedings through Polycom and that

innovative philosophy should continue. Thank you to the Justices for letting me comment and I'll answer any questions if you have any.

JUSTICE VIVIANO: My question is, Judge Ackert—thanks for being here. You just said that on the back end judges can decide that whole classes of cases don't need to be handled virtually. So I just want to make sure I understand. In your interpretation of the current rule, judges don't have to address the parties and hear arguments on each individual case? Instead, they can still set the practice in their court and decide that it's more efficient and effective for them to handle a certain category of hearings remotely?

JUDGE ACKERT: On the current rule, that is the greatest extent possible. The level of discretion has always been discussed. We proposed and I—I and Judge Travis Reeds, who's on this, Matt Wiese, who was on earlier, spoke—we are trying to find a way to address these issues in the district court, which there are—there are more. And they've worked closely in addressing those issues—and the criminal side. But what we did propose, these rule changes that allow—there's a presumption of these certain hearings, most of them are in matters that don't have as much testimonial presentation, that if there is a particular—they can fall back on 2.407 and the related court rules. Throughout the court rule

JUSTICE VIVIANO: Let me just—let me just jump in. You're giving a long answer to my—

JUDGE ACKERT: Yeah, sorry.

JUSTICE VIVIANO: —specific question, which is, I just want to make sure that you, as someone who's co-chaired the Lessons Learned Committee, has been someone involved in this process, you don't understand the rules as requiring judges to entertain argument and debate before every hearing about how that hearing's going to be handled? Because that—that would be extremely inefficient, right?

JUDGE ACKERT: Correct. I think—I think that—and we did this in Kent County. Juvenile pre-trial—judicial pre-trials. We determine [inaudible] in talking with the stakeholders, that the way the process works, remote hearing doesn't work well. And so we're doing those in person. I've talked to out-of-county judges who've all said, "wow, those work fine"—

JUSTICE VIVIANO: And that would suggest—

JUDGE ACKERT: —the hearings that don't work—

JUSTICE VIVIANO: —that would suggest that we would never really have a uniform approach across the state because the stakeholders and the resources are different from jurisdiction to jurisdiction, right?

JUDGE ACKERT: That is correct. But it—what these—well, I think what we're trying to achieve is the tool to use in remote hearings and give the judges the ability on the back side to say—it could be in a particular county where remote proceedings are very difficult because of the lack of connectivity. There could be other reasons why that—certain counties have a huge volume of certain cases that get slowed down and aren't as efficient with—on Zoom. And, if they can bring them in in-person, the way they work them—work them through—the idea is that we're now looking at how do we work with our stakeholders within the court rules to utilize this very effective tool. That's

JUSTICE VIVIANO: Seems to me—seems to me, the judge is in the best position to take account of all of the concerns of the local stakeholders and just to make that decision. In other words, that's not really a good decision for us to make out of Lansing, right?

JUDGE ACKERT: I disagree with that in terms of proceeding with Zoom. I—

JUSTICE VIVIANO: Wait. So, you think we should decide? We should decide—

JUDGE ACKERT: Zoom should be the presum—

JUSTICE VIVIANO: —we should decide—

JUDGE ACKERT: Sorry. Sorry, Your Honor—

JUSTICE VIVIANO: I just want to make sure I'm clear. We should decide whether you're—how your court handles juvenile proceedings?

JUDGE ACKERT: I didn't—I didn't say that. I believe the court rules we've proposed gives the discretion on the back side so that the judges can use that discretion in a very effective way. But it moves us forward to the point that we're recognizing this is a very effective tool. We're all going to use it. Now, let's start figuring how that that gets done in every court. Every county is going to be using Zoom. Every county.

JUSTICE VIVIANO: I know, I mean, that's like a total red herring, right? Nobody's here arguing that we should go back to etching things in stone tablets, I don't think. I mean, I've been the technology advocate for the court so I'm certainly not here saying, turn off your computers and let's go back to, you know, talking only in-person, not even using a telephone. The point is discretion. Who should—who should be making these decisions about how court hearings—individual court hearings—are to be held? Who's in the best position to do that? And that's the rule—there's a lot of confusion over the rule that was in place. I don't think it's very clear. I oppose the rule. I still do. I think—but if I'm listening to you, I don't think our viewpoint is that different. You have this construct of a front end or back end but ultimately you think that judges—individual judges should have discretion in deciding how their court—their court—their courts are conducted. You know, I think the person who said it most eloquently so far was

Judge Lowe when he said, he wants discretion on when to use which tool, either the Zoom tool or the courtroom tool.

JUDGE ACKERT: When you create the presumption for those hearings on Zoom with the ability that's already in the court rule, the 2.407 and the related court rules and as we've amended them, you have that ability to use both tools and you decide how that goes but—

JUSTICE VIVIANO: Why do you need a presumption to have the ability to use both tools? Why can't we just give judges a discretion in the hearings that we think legally and administratively makes sense or might make sense to be handled remotely? We would give the judges the discretion to do that. Why do we need a presumption?

JUDGE ACKERT: That's a fair question and I think the—we discussed that a lot but the bottom line is this, we're using Zoom and there should be uniformity in the fact that these matters can be used in every court. And so that should be placed into the court rule and there's—

JUSTICE VIVIANO: When you say—when you say—

JUDGE ACKERT: —and then you can back out of it if you, if in your discretion, you want. And—and we may be arguing semantics on the front end and back end, but I think in order to gain the most value of this tool, we should create the presumption and then people can work with—within their own courts to say, "okay, we can use all these hearings in-person but then then back down. And I would also encourage you to take a study in a year from now or two years from now, and see how that's all working.

JUSTICE VIVIANO: Uniformity is a scary word. I mean you—you bandy it about but when we bandy it about, people think that what we're saying is what works in Allegan is now going to have to work in Kent County. Is that what you mean?

JUDGE ACKERT: I think—again, I'll go back to this: that the Allegan and Kent are different. And I've been—I've been saying that, since working with a lot of judges on Lessons Learned, that we've got to recognize there's differences in counties. But we have a tool here that everyone should be using and there is a great pushback that is saying, "wait, I don't want anyone telling me what to do; I'll make that decision." But if we look at the court rules and how the court rules operate within the courts, there's a lot of things in those court rules are telling judges what they have to do. And then how they play that out is in every proceeding. And so in order to really effectively have this tool to use, I—and we all know that everyone's going to continue to use the tool—is, let's create a level of hearing which we put in our proposed rule that says this is when the tool will be used. Then you can back out of it. Allegan can say, "this doesn't fit for us in this particular area." I can say—

JUSTICE VIVIANO: I think the backing out point is important to focus on just for a moment because this is what I started our discussion on. You think they can back out of that

entire class of cases? In other words, they don't have to hear argument before every such court hearing about how that court hearing is going to be conducted? Because that would seem to me to be pretty inefficient if we have to have a whole new round of court hearings about how we're going to hold court hearings, for every hearing.

JUDGE ACKERT: I think we consider that to be the possibility, yes.

JUSTICE VIVIANO: Which one? What does that mean?

JUDGE ACKERT: That I could sit and say, as a whole, as our court, in talking to our stakeholders, these particular proceedings don't work within this county.

JUSTICE VIVIANO: Okay. That's fair enough. I think that gives people some, I mean, comfort and maybe us some clarity in how we should craft a rule that makes it clear that the local courts are going to have discretion.

JUDGE ACKERT: Yeah. And I—and again, we're not trying to quibble about discretion. It's really how do you implement that.

JUSTICE VIVIANO: I mean to the extent you're suggesting that we should put some—apply some pressure on people who are hesitant to use new technologies when they make a lot of sense and they don't sacrifice quality of the services we provide, of course I agree with you. If that's what—if that's all you're saying.

JUDGE ACKERT: Yeah. When you—when you talk with judges around this state, and I know you have too, Justice Viviano, but there's—there's a—there's a level that you can recognize, you know, "I'm not going to deal with this at all and I'm just going to step back; I'm not going to use it." But if you have to deal with it on the presumption, that brings all the stakeholders into how the court operates. And the attorneys will come in; the parties will come in. The other stakeholders that we've talked about will be involved. It's why—

JUSTICE VIVIANO: Well that's—what I would say, throughout my career there's always been sort of generational challenges with the use of technology introduction—of technology in the courts, just like there is everywhere else. This issue seems to go far beyond that. We're not—we're not hearing from people, you know, only our more seasoned colleagues, that they're opposed to this at this point. There are a lot of concerns being expressed by people all across the board. I mean, we've probably gotten more comment on this rule than anything we've ever done maybe in the history of the Court. And so it seems to me we should be a little bit attentive to what our frontline workers are telling us about how this is causing them— I mean, I could go over the whole list—I've been writing my notes here, but the biggest one is causing them to lose control of their courtroom. Is that one—that's the biggest one. There's lots of others that come into play. But anyways. I appreciate the time you spent here today and the time you spent on this issue. I know you've spent a lot of time studying and thinking about these issues and I appreciate that.

JUDGE ACKERT: And I appreciate the questions and the—and the dialogue. And I do think this is a fundamental change in how we're looking at the courts and that's why we have so much involvement. But I can also tell you, Justice Viviano, that everyone that I've talked with, even those who didn't want to have a presumption, were sending proposed court rules to try and work it through because they—they're—they know this should happen. So I don't envy your position and I hope the comments you're getting today and others help clarify where we can go. So I'll leave it all to you folks at this point.

CHIEF JUSTICE MCCORMACK: Thanks, Judge. Thank you for all of your work on this topic. I don't think we paid you for it but we appreciate it.

JUDGE ACKERT: It's been fun. Kind of.

CHIEF JUSTICE MCCORMACK: You're a good sport. Judge Julie Gatti is next.

JUDGE JULIE GATTI: Good morning. My thanks to Chief Justice McCormack and the Justices of the Michigan Supreme Court for this opportunity to speak. And I certainly don't want to repeat what so many of my esteemed colleagues have conveyed to the Justices and other stakeholders. And I really could not agree more that civil, probate, domestic, and criminal matters require an entirely different analysis when it comes to remote proceedings. But I do feel strongly that that analysis must be done by the judges who know the case, know the parties and lawyers, know the community that they've been elected to serve. I do echo Judge Hartwell's comments. I think I popped on just as he was talking about the lack of respect. My staff and I have endured just absolute shocking instances of disrespect that only other criminal division judges who have seen it firsthand could even imagine. And I won't go through any of those now. I'm kind of looking at a bigger picture. I did hear Mr. Zalewski, who I respect a great deal as an attorney, known him for a very long time. He spoke a lot about efficiency. But never should efficient justice outweigh effective justice, certainly when it comes to criminal justice. And just as a quick example. I had a man last week Zoom into a probation violation hearing proceeding from a vehicle. He relapsed. He was clearly high. I wanted to get him a residential treatment bed, which would require him to turn himself into the county jail. But in telling him to do so, I potentially placed society at risk in the event that he actually does what I've asked and operates his vehicle in accordance with that instruction to turn himself in. But, of course, as the other judges know, he's more likely to run, which means that rather than driving to jail, he'll drive to a drug house. So I've been efficient in handling his case but I've been entirely ineffective in protecting society, protecting and rehabilitating the defendant, or in dispensing really any kind of justice. And now the sheriff's department is tasked with finding him before he overdoses or commits more crimes. I'm aware of the admirable intentions of those who advocate for the presumption for video court. But the law of unintended consequences requires us to acknowledge not only unexpected benefits such as those highlighted by Ms. Lowe with Lakeshore Legal Aid but those unexpected drawbacks which have, in two years, made it clear to this court in particular, and I certainly can't speak for all, that some of the less admirable traits we find in human nature, whether that's a lack of civility between lawyers who never have met

face-to-face, the lack of mentoring of young lawyers, attorneys not—certainly not most and or even—it's just a few who literally phone in their representation of, in particular, incarcerated defendants. And there's litigants who treat a day in court as a good day to stroll through Walmart with their shopping cart as they appear for felony sentencing. I think stakeholders should be concerned that soon some who treat the court as just another appointment will devalue the valued professional services that attorneys provide. And if judges are entrusted with the decisions that can deprive people of their liberty and change the trajectory of an entire human being's life, I think we certainly should be permitted to decide whether or not to utilize video conferencing for certain proceedings. And for those reasons, I respectfully oppose any presumption to the contrary.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. I'm—you've used up your three minutes. So thank you very much for your comments—

JUDGE GATTI: Thank you.

CHIEF JUSTICE MCCORMACK: —and for making time to be here today. Next is Judge Kathryn Viviano.

JUDGE KATHRYN VIVIANO: Morning, everybody—to the Justices, Chief Justice McCormack, everybody. Thank you so much for the opportunity to speak on what I think is one of the most important issues that we face right now. Real quick, I know I only have three minutes. I'm one of the advocates of technology. I use all technology in my courtroom and prior to COVID, I was using remote technology in my courtroom as well. I think one of the things that held us up was the fear of everybody else doing it and that fear has sort of been conquered. I served on the chair—as the chairperson of the board to try and help everybody get on board during the pandemic. And I think most of us have. There's just a couple points that I wanted to make that I think are important. One is, it feels like a lot of what the move is to convert our courts into online courts versus in-person courts. And I think when we do that, we lose what is the most important part of due process and that is a person's ability to be face-to-face with decision-makers on a whole host of matters. So, as a general rule, I would oppose any of that kind of move. Also, I want to make it clear I'm in favor of the use of remote technology. I was trying to use it here, as I'm trying to advance it, and I think it's good and most of the judges who I have talked to I—I kind of differ with some opinions of others—I think they agree. But we have lots of problems with the use of remote technology. I won't repeat them because I only have three minutes and I feel like—I see my time ticking. But the most important part of that is, the judges are the only people in the position to make the decision about whether it should be remote or in person. And that way we deal with individuals. We deal with case by case. And we've been doing that forever. We have different resources. We have different parties, personalities, cases that are highly dysfunctioned, those are not dysfunction and all of them require individual treatment and it's really hard. But I think it's really important and it's the judge's job to do that and we've been entrusted to do it. And I think that the presumption, which moves us to online courts, I don't think is helpful to us. And I think removing our discretion is really harmful to the individual because they got caught up in a uniform role rather

than letting us, on the spot, deal with problems that are right in front of us. So the other thing I wanted to mention real quick is the YouTube livestream. I don't know if people have talked about that too. But I'm really concerned about that because people come to us with really intimate, embarrassing, humiliating, difficult, really hard matters. And to tell them that their issues are going to be broadcasted versus open to the public, I think, is a totally different construct and really harmful and would really drive people away, people that need this court more than drive them into the court. So I see my time is running up. I'm available for any questions and would like to help anytime because I have volunteered for any committee and certainly would in the future on these issues. Thank you again for the few moments I could speak today.

CHIEF JUSTICE MCCORMACK: Thank you, Judge, and thank you for your work throughout this whole pandemic. We're very grateful.

JUDGE VIVIANO: Absolutely. Thank you. Certainly.

CHIEF JUSTICE MCCORMACK: Next is Judge Kathleen Brickley.

JUDGE KATHLEEN BRICKLEY: Hi. Thank you for considering my input today. I handle the felony criminal docket and specialty courts and the ever increasing motions to set aside so that's kind of my perspective. And I'll be the first to acknowledge that change is hard even when we've already changed. I live in the same house I lived in when I was 28 and I'm obviously no longer 28. But the tragedy of this pandemic and the wear and tear it's taken on all of us, including causing all of us to be a little less patient with each other shouldn't be for nothing. There's that saying that there's a little good in every evil. And in the courts that little good has been the chance to learn Zoom and to use Zoom. And it's certainly not perfect and there are days we all want to shove it out the window. And it should never be required for those who lack access to it or training on it. It's not suitable for trials or significant evidentiary hearings. I understand all of that. But, in conjunction with the live appearance option, it has allowed us to do what we should have been doing all along, which is open our doors to everyone everywhere. And it's helping many of our court users have a successful and positive interaction with the courts. In criminal, for example, in my docket a victim may not need to leave the comfort of her home and family to face her perpetrator for a victim impact statement if she prefers. A defendant we're trying to rehabilitate doesn't need to leave the job he just got in order to sit in court for half a day, awaiting his court hearing which gets adjourned. And the Zoom option has been a boon for our local attorneys who are now able to literally be in two places at once. I would note as an aside that the Zoom option enhances our court security as well, I'm finding. It's one thing to call deputies into the courtroom to fight a disruptive and agitated attendee; it's another to warn him or her she'll be muted and then push the ultimate mute button. I do not pretend to have the answers on how to incorporate Zoom into our new and improved normal but speaking on behalf of those we serve, I have two suggestions. And one is that we continue to use it somehow, some way as a robust and thriving options for appropriate matters and situations. And two, that we provide as much predictability as reasonably possible so that litigants aren't confused trying to figure out what judge is allowing what type of appearance on

which day of the week. And I say that make that comment as the chief judge in a small county where judges are all doing things pretty differently so that it can become confusing for the attorneys. So thank you for considering my input.

CHIEF JUSTICE MCCORMACK: Thank you, Judge. Thank you for being here. Thank you for your time. Next is Richard Muller.

RICHARD MULLER: Good morning, Justices. Good morning to all the honorable judges that are present today. Thank you for allowing me to speak. I am not going to take a lot of time because everything has been covered for the most part of what I would like to say anyways. The—I'm going to echo Mr. Buckles' comments and Mr. Paletz's comments in support of the—keeping the court rules by remote hearings as the presumption of the court hearings instead of in person. And some of my personal experiences have been—I do a civil landlord-tenant. And without a question, the participation from litigants and defendants on the opposite side have has increased in my practice and in my experiences, which results in more consent judgments or settlements and dismissals with a payment plan, instead of a default judgment where a litigant could not appear in court for whatever reason, the numerous reasons that have been stated previously, such as unable to get a ride to court, unable to take a day off of work, which ultimately those default judgments, three, four days later I receive a motion to set aside the default judgment and we're right back at the beginning anyways. The remote participation has greatly increased efficiency for our practice and for the litigants on the other side and continues to, how can I say, just make the individuals more—give them more access to the court. As Mr. Buckles stated earlier, we do want to hear from the other side. I don't want to show up in court and just take a default judgment. Hearing from the other side in a landlord-tenant case or a collection case has helped the efficiency of practice, not only for our office but I believe for the courtrooms as well. With that, I would again ask the Court and the Justices to adopt remote hearing as the default.

CHIEF JUSTICE MCCORMACK: Thank you very much, Mr. Muller. Thanks for your time and your comments.

MR. MULLER: Thank you.

CHIEF JUSTICE MCCORMACK: Next is Mimi Kalish.

MIMI KALISH: Good morning. May please the Court, my name is Mimi Kalish and I'm a collections attorney practicing in Oakland County. I want to thank you, Madam Chief Justice and all the Justices, to allow me the opportunity to be here today and to Allison Hayes for organizing all of the speakers today. I'm gratified to have the opportunity to express my utmost admiration to the courts of the state of Michigan for rising up in the face of a pandemic and quickly implementing a remote system for court attendance that is safe, surprisingly effective, and in many ways advantageous to all litigants in civil matters in ways I don't think many of us expected. Specifically, I'd like to take this unique opportunity to thank all the judges on the bench and most especially their court staff for their patience, versatility, and willingness to be

open-minded to implement the unprecedented changes and technology technological changes, which have improved exponentially since the advent of Zoom hearings a few short years ago. I think it's safe to say that it was a steep learning curve for many of us. But in a relatively short period of time, for civil matters in my case, it's become a streamlined and cost-effective way to conduct hearings that benefits all concerned. My personal experience attending virtual hearings has been altogether positive and I would like to see that trend continue. Not only are more defendants showing up to court, but I find there's a certain level of forthcomingness and immediacy in the virtual courtroom that I was not finding during in-person hearings. Over the past two years, I've settled or resolved more matters in virtual private breakout rooms with the defendant than I was ever able to accomplish in a courtroom hallway, shoulder-to-shoulder with other litigants. For matters like pre-trials, objections, garnishments, motions for installment payments, status conferences, I think that the courts can easily allow the parties to appear remotely while not precluding the opportunity for participants to appear in court if they wish to do so. I hope that the Zoom hearings continue to be available and I know the system will continue to improve and streamline processes to make it easy to access for all litigants in this state. Thank you for the opportunity.

CHIEF JUSTICE MCCORMACK: Thank you for your time and for your comments. We appreciate it. Next is Timothy Smith.

TIMOTHY SMITH: Good morning, Chief Justice McCormack and the rest of the Justices. Thanks for letting me come in today. I am Zooming in from Traverse City, Michigan. My name is Tim Smith. My firm is Smith and Johnson Attorneys. I've been a trial attorney for coming up on 30 years this summer. I've litigated pro hac as far west as Ventura County, California, as far east as Middlesex County, New Jersey, and I'm a huge fan of what we've been doing for the last couple years as it relates to Zoom. And I—and I echo all the comments of the folks who have been speaking in favor of it. The efficiencies, the effectiveness. It—I don't need to—I echo those comments. I don't need to go into any greater detail. I would offer one thought that I haven't heard expressed yet and one benefit that I have found personally from the ability to Zoom in and it has to do with pro bono services to folks in my communities up here in northern Michigan. [I] went to Notre Dame law school. They hammered into us for three years there, the duty to give back as part of your duty as a attorney, a licensed attorney. If you look at the Michigan Bar Association, you look at the ABA, I think it's Rule 601. They urge a minimum of 50 hours a year to license practitioners to donate pro bono time to your community and to the area. I have taken that urging, both by the state and the ABA, to heart and have tried as best I could every year of my practice to do as much pro bono as possible. And the ability to Zoom in and out of hearings when you're doing pro bono work is a huge factor for me in deciding whether to take a case pro bono. In fact I just took a case last week—I probably take 10 to 15 cold calls a day, a lot of them are from folks with maybe—they've got some family law issues, landlord-tenant, stuff like that. And if it's two, three counties away from me, as much as I want to help those folks and get involved, I just can't. Just the road time to get to and from a pre-trial or a landlord-tenant hearing cuts against my decision and desire to offer pro bono services to those people. I got a nice call from a couple two counties to the east. They had a terrible landlord situation—squatters in the house. Police won't help, can't help. Pipes are now blown;

the place is destroyed. And the fact that I know that I can Zoom in and out of that landlord-tenant hearing, I can get them to the eviction order quickly and efficiently without impacting the rest of my practice area. But the time it would take me to handle that was a huge factor in me deciding to take that case on pro bono. And so I would urge the Court that—how—whatever happens, however the court rules are shaped, whatever changes are made, that the presumption in civil matters for in-person [sic] hearings will—should be continued. It will allow me to continue to help in a pro bono fashion many citizens up here in northwest Michigan. Again, thank you for your time this morning. Appreciate the opportunity.

CHIEF JUSTICE MCCORMACK: Thank you for your comments, Mr. Smith, and for your time. We appreciate it. Next is Ronald Anstandig.

RONALD ANSTANDIG: Good morning, Madam Chief Justice and Justices. Thank you for allowing me the opportunity to speak. I speak in regards to civil matters. I am a civil collection attorney, specializing in subrogation cases. I believe the benefits of the utilization of remote hearings have been amply stated and demonstrated remote hearings result in greater convenience and efficiency for attorneys, pro se litigants, as well as the courts themselves. Remote hearings promote increased access and participation by the public in the judicial system. They promote more effective conversation and communication between the parties, leading to swifter and increased resolutions and settlements of contested matters, while also serving to decrease defaults and those issues that are created by that. I do believe the most effective result of maintaining rule 2.407(g) of requiring the use of remote participation "to the greatest extent possible" promotes consistency and uniformity of procedure throughout the trial courts of the state, a consistency in uniformity that will work to avoid confusion and disorder that would be inherent by permitting individual judges to set their own standards and procedures first and foremost in lieu of the court rule. That confusion and disorder is more evident, I submit, in jurisdictions where multiple judges sit within that one jurisdiction and as Judge Brickley alluded to in her comments just a few moments ago. I believe that consistency and uniformity in the court rule as written is preferable to inconsistency and confusion that would be caused by allowing each individual jurist to set his or own standards and procedures as to deciding whether to permit remote participation in particular hearings in the cases before him or her. And I thank you for the opportunity to speak in this topic and will answer any questions there may be.

CHIEF JUSTICE MCCORMACK: Thank you very much for your time and your comments. We appreciate it.

MR. ANSTANDIG: Thank you.

CHIEF JUSTICE MCCORMACK: Next is Scott Mancinelli.

SCOTT MANCINELLI: Good morning, Justices, and thank you for having this opportunity to speak. And I appreciate all the judges who have called in and spoken as well. I've been practicing since 1994 in California and since 2000 in Michigan. I have a civil litigation

practice on the west side of the state in the Holland-Zealand area. On November 30, I had a triple fusion discectomy and I was not even able to leave my house for—until mid-January and I still can't drive. But I attended every single one of my hearings and did not have to send a local counsel who was inexperienced or not knowledgeable about the case and did not miss a beat with handling all my clients' cases because of the ability to attend a hearing like I am today. Prior to CO—prior to COVID and the initiation of Zoom hearings, I would probably spend ten thousand to twelve thousand miles a year, driving all over the state because we do have a statewide practice. That is a lot of mileage that I'm not putting on and a lot of risk that I am not taking of a potential accident, a whole lot of CO^2 emissions that have been taken off the books for the state of Michigan. I don't know if anybody's mentioned that but this change of Zoom has got to reduce the state's COVID footprint—or the state's CO^2 emission footprint dramatically. It's far more efficient. I spend way more time with my family than I used to. I can—instead of spending six hours round trip going to Macomb or Oakland, I spend 20 minutes to 30 minutes and I don't have the risk of an accident or not making it in time or many other things that would come up. I spend more time with my staff, getting things done. It's been one of the best—the Zoom—going to the Zoom hearing's been one of the best things that ever happened in my practice and I'd like to see that be the presumption, at least in civil cases where most of what we can—needs to be done is done in 20 minutes to 15 minutes on a hearing or a status conference or a pre-trial. Maybe that's different in criminal matters. Maybe there needs to be a bifurcation between what's handled in a civil situation versus a criminal because it sounded like there were some good reasons to have more in-person, like Judge Gotti said. And I can appreciate that. But for what we're doing, you know, most of these things are resolved prior to trial and if the basics—the pre-trial, the status conferences, the motion hearings—are handled by Zoom, I think that's the most efficient for everyone involved and the greater degree of attendance for those participating. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you very much for being here and thank you for your comments. I didn't mean to skip Seth Goldner. I apologize. Mr. Goldner, you may you may be heard next.

SETH GOLDNER: Ah, thank you very much. It's a real pleasure and an honor to be able to address everyone in attendance today. The Justices and all those in attendance, I thank you very much. I'll try and keep my comments very limited. I'm a solo practitioner. I've been practicing in civil and criminal law for 31 years—almost finished my—about to start my 32nd. I've been practicing in courtrooms throughout the state since 1991. I am the past president of the Michigan Creditors Bar and I would identify that association as a group of very high volume filers of civil lawsuits, obviously in the collection area. I concur with the statements of Mike Buckles and Mr. Muller and overall our association, I should say, does agree 100 percent with the comments of Chief Justice McCormack as contained in the Administrative Order of July 26, '21. I want to speak in favor of this proposed rule in that I think it's a reasonable presumption and the principles of access to justice and courtroom transparency really trump and should be the prevailing interests overall to serve the interests of justice. That doesn't mean that all of these very serious matters raised by all of these respected judges who I practice in front of, it doesn't mean those problems aren't to be addressed and aren't to be taken seriously. But I

think we've heard tremendous statements in terms of the ability of people to participate in their hearings. And, if people are abusing that privilege, that's a completely different problem to be addressed. New technology requires adaptation and I think that, as a profession, the law and perhaps in particular I think if we're being honest, the bench is slow to change. The outside world practices digitally. The outside world uses technologies well in advance of the courts, and the courts are always catching up. And I think there's a certain value to that but this pandemic has taught us a great many things and this is a tremendous tool. I think the presumption should be in favor of it and we should all work together to solve some of these problems we've talked about—the inability of so many people to get child care, transportation, or don't want to risk their jobs. This is true for civil and criminal participants in the sys—in the system. We have health and safety concerns, not just the pandemic. But again, think about all the tens and tens of thousands of miles people are exposing themselves to risk on the highway, think about the carbon footprint of all this gas. I've driven hours and hours literally for a five minute hearing before. It's happened to all of us. Judicial efficiency is very important. I think we've heard a lot about judicial efficiency or I'm also—again I'm very sympathetic to the challenges the court faces and I think we can bridge some of these gaps. We know from the practitioners what a great tool Zoom is. It is a tool. I think the presumption should be in its favor and I think we should work to correct as much as we can as far as providing additional administrative support, training, and technology to solve this problem. And I so thank everyone for giving me this opportunity. Thank you again.

CHIEF JUSTICE MCCORMACK: Thank you for your comments and for your time. We appreciate it. Next is Daniel Goeman.

DANIEL GOEMAN: Thank you, Your Honor. Madam Chief Justice and the other Justices, I echo the sentiments of my partner, Scott Mancinelli, and the other attorneys and speakers that have spoken primarily on the value of utilizing Zoom in a civil proceeding. We primarily—we have thousands of cases. We file in just about all the district courts in Michigan and there's no question that the use of Zoom has been a valuable tool, not just for us saving us so much time. I mean, you have 60 some speakers here today and we've been—this hearing started at 9:30. It's an important matter. If we had all been sitting in the courtroom waiting to be—waiting to speak plus travel time, you're looking at almost 30 some days of attorneys' time, legal time wasted or that could have been utilized elsewhere. This is more efficient. We've been able to get work done and do some other things. But so have those—especially in pro per defendants who appear by Zoom. I have found that they are less intimidated. They appear. They then go into breakout rooms and, predominantly, there's a settlement or a payment plan that's entered into once they participate. But if they're frozen with fear or uncertainty or etc. or they can't find child care, they can't find transportation, that's primarily why they're under financial stress and probably in debt collection matters, is that they're struggling. This is a huge help to them and a huge efficiency. One of the main concerns that I've heard is that is the decorum and the loss of control that courts have in the hearings. But I would say that the Zoom instructions come with admonitions about clothing and behavior and all of those things, and language. If those admonitions aren't enforced by courts, by judges, they're going to be ignored and that is going to create a slippery slope. However, if those admonitions are enforced, it—word will spread, I

think, throughout the community that that kind of—those kind of games aren't allowed and those kind of games are going to stop. Will it stop in all cases? No. But the tools are there already to have the decorum and I think it's just got to be a matter of actually enforcing the order. But by and large, there's no question that the Zoom hearings and the tools have saved a lot of time for everybody, saved a lot of money, reduced attorneys' fees, etc. that would go into judgments. And so I wholeheartedly endorse the continuation of that. Thank you.

CHIEF JUSTICE MCCORMACK: Thank you very much. Thanks for your time and your comments. Next is Robert Warner.

ROBERT WARNER: Thank you. Good morning, Madam Chief Justice, all the Justices and everyone. Thank you for allowing me to appear. My name is Rob Warner. I'm an attorney here in Troy. I have a civil law practice. I've been in practice since '93 and I'm a past president of the Michigan Creditors Bar Association. We all know many civil hearings and matters are short and last mere minutes. And, as Mr. Goeman just pointed out, the attorney spends a large part of that time traveling in their car. It's inefficient. They wait in court for long periods of time at times. And this can even translate to clients being charged for unnecessary travel and wait time. You know, multiple hearings handled remotely is not a bad thing. It may be efficient to the clients. I mean, I think about the days, you know, we have live hearings and attorneys handling multiple hearings. They're outside in the hall. They're in another courtroom. No one really knows where they are sometimes. I remember on my days in the Wayne County Circuit Court, you know, running up and down the stairs, elevators, trying to get to different courtrooms, remember that, you know, and that doesn't have to be done anymore. You know I've noticed unrepresented parties can definitely be intimidated by a court environment.

JUSTICE BERNSTEIN: I just have a quick question. Because I'm listening very closely to what you're saying and I really appreciate it. Isn't that part of the experience, though? I mean, I remember when I was a litigator I used to love Friday mornings on—at Wayne County. You'd visit with everybody. You'd see everybody you know. There was something about that experience of racing into the Wayne County Court, going from courthouse, going from courtroom to courtroom, doing motions. You'd see everybody. There was a community. I mean, isn't that kind of why we become lawyers to have that experience and be part of that?

MR. WARNER: I guess it's one part of it. I have, you know, some memories of, you know, being there and seeing some friends I know and things like that. But I probably am a little happier those days are over to you to be honest. They were—they were tough, a little stressful. Handling remote hearings can be stressful I'm sure. You know and it's for, you know, for unrepresented parties I know, you know, there might be tongue in cheek do we really, you know, how do we really feel about them, you know, but, really, honestly, it saves time and expense to engage them and it is helpful to have them up front. It allows us to gauge the case, understand what's happening, perhaps resolve with them, or perhaps say this is—this is just going nowhere. You know, moving away from judgments and garnishments and things like that. That is the reality of a more volume type of work, is making those decisions. You know, just as perhaps it's not a good idea for a court to hold all hearings remotely, it's probably not a

good idea for them never to hold remote hearings, which, you know, I think that's what's caused the issue today. So should there be a presumption or not or which way should it go. I think it's clear from today that certain matters in certain hearings work remotely better than others. Maybe there could be a rule detailing along matter- and hearing-type lines, with some being presumed to be remote and others presumed to be live with an option for the court or litigants to, you know, request an alternative method in a matter. I thought it was interesting to hear some—what other states have handled. How other states, you know, a lot of times when we are deciding cases and things like that, you look to sister states. You know, what are they doing with these, you know? This impacted the entire country, you know. How does this impact city courts, rural courts? I thought it was interesting to hear, you know. I didn't think about that. I'm in the metro area but what about these rural courts where the court can be an hour away? I haven't really thought about that. But that's the reality there, too. So you know, I think today was the start of a great discussion as to the benefits and challenges and issues regarding what I think is this amazing technology and tool that we have, you know, that so many people have said today. What was really great was to hear the creative and thoughtful solutions and ideas from many practitioners and the judges and courts as to how they handle these issues. You know one of them that just came up was, you know, these people behaving inappropriately. Well, there's rules for that and they should be enforced. So I appreciate your time. Thank you very much.

CHIEF JUSTICE MCCORMACK: Thank you, counsel. The next two speakers are not here so I'm going to go to John Muller.

JOHN MULLER: I'm sorry. Can you hear me? I'm sorry; I wasn't expecting you to jump a couple of speakers. I apologize—

CHIEF JUSTICE MCCORMACK: I know, we had two not here so you're up next, Mr. Muller. No problem.

MR. MULLER: Good afternoon and good afternoon, Madam Chief Justice. Thank you for the opportunity to speak before the court today. I think you've heard the lawyers have probably been mostly civil collection lawyers and I fall into that bracket as well. I'm not the technical person at the office so I had to go—be dragged kicking and screaming even in the email let alone Zoom. Right now, I can't imagine going back. What a godsend. Again, I would never tell judges that they shouldn't have any discretion. But for civil matters? I heard Justice Bernstein mentioned the experience of going to court in Wayne County and maybe I was a little excited about that 38 years ago but after doing it for 38 years I can't imagine going back. Oakland County, it's on Wednesday; Macomb County on Monday, Wayne County motion is on Friday. Having to do that three days a week and for a 15-minute motion hearing and being a collection lawyer, being the last on the docket normally I think the waste of time is obscene. I would never tell a judge they shouldn't have the discretion to have in-person hearings, especially on criminal matters. I don't conduct criminal matters but on general civil stuff—pre-trials, motions, show cause hearings. I just can't imagine going back. I know my experience is limited and I speak only on that—for that experience but, as a member of the bar for 38 years, I

would implore the Court to keep the rule, the preference, and the presumption for video conference at least on general civil matters. And I would echo what Mike Buckles said, who's probably the godfather of our industry for collection lawyers. I was surprised pro per defendants are actually participating more. Creditor examinations. They don't have to come into my office and sit across a big legal table across from me and be intimidated or—not that I'm intimidating but they don't want to be there. They actually participate. Anyway that's my two cents in it and thank you for the time.

CHIEF JUSTICE MCCORMACK: Sorry about that. I was muted. Joel Grand is next.

JOEL GRAND: I'd like to thank the Justices for the opportunity to address you. I don't want to reiterate what many people have said before but I personally think that we should keep a presumption that cases should be handled remotely for all civil cases and really even in criminal cases for except for things that require confrontational testimony. Those do not work well over Zoom but virtually everything else is far better on Zoom. It saves so much time for the litigants and I personally see a lot more participation from the defendants, both in my landlord-tenant practice and in my collection practice. Where they can appear by Zoom, far more of them do appear. We go into breakout rooms. We work out resolutions. Really, the only Achilles heel of Zoom hearings is that it requires a little more gymnastics in order to get orders entered to memorialize what happened in the court. As the court continues to adopt towards e-filing, that resolves that problem. The e-filing courts, that's not a problem. You finish the hearing; you create the order; you upload the proposed order and it comes back to all of the parties remotely. I don't want to belabor this so if the Justices have any questions, I'd be happy to answer them. But I would urge you to retain the presumption that all hearings should be first held remotely and handle the exceptions to that as an exception, as opposed to a rule.

CHIEF JUSTICE MCCORMACK: Thank you very much for your comments and time. We appreciate it. Next is Dawn Blair.

DAWN BLAIR: Good morning, Your Honors. My name is Dawn Blair and I'm an attorney, specializing in debt collection. I'd like to share that I've been appearing for many years in multiple district courts throughout the state multiple times per week. Prior to Zoom, I would have a defendant appear maybe twice a week. In my experience with the change to Zoom, it has been very rare that the defendant fails to appear, which speaks to the convenience of Zoom and making the justice system more accessible to the people, particularly those who find themselves in financial hardship. Because of this, I would like to support the position of the Michigan Creditors Bar Association in their request to continue that Zoom be utilized in civil matters, specifically for pre-trials, motions, settlement conferences, and post-judgment matters. Thank you for listening to my comments.

CHIEF JUSTICE MCCORMACK: Thank you very much. Thanks for your comments and your time. Curtis Robertson is next.

CURTIS ROBERTSON: May it please the Court. Good afternoon, Justices. Thank you for allowing me to speak today. My name is Curtis Robertson. I'm an attorney at the law firm Weber & Olcese in Troy, Michigan. Our firm specializes, like many others, [in] creditors rights and we participate in hundreds of civil hearings annually in the various Michigan courts. And it's from that day-to-day perspective that I offer my opinion. I speak today in support of MCR 2.407(g) regarding the video conferencing. I echo many of the sentiments of the other speakers who have spoken today in support of the rule. It's been our firm's experience that since the Court effectuated the administrative orders to promote the remote participation that we've seen an increase in litigating—litigant participation, which apparently many of others have seen as well. I believe that the rule as currently presented with its presumptions toward remote participation is equitable and that the rule also makes for allowances for those who can and cannot participate remotely. By the Court adopting this rule, it will allow the court to meet the technological advancements of the present day and continue to increase litigant participation in the court process. And I thank you.

CHIEF JUSTICE MCCORMACK: Thank you. Thanks for your time and your comments. Michael Stillman is next.

MICHAEL STILLMAN: Good afternoon, Justices. Thank you for allowing me this opportunity to speak to you today. I echo pretty much all the comments that were made by the civil litigants that have come before you today. Mike—Michael Buckles was the first one to really succinctly spell out the position that I follow as well. Having practiced for 32 years exclusively in the area of civil litigation, I think that Zoom hearings have changed the landscape dramatically. We've heard from not only my colleagues but some of my team members on this call. I think it's made a big difference. You know contrary to what some may believe, we don't want default judgments. They don't they just make it hard for everybody. One person mentioned that, you know, you get a default judgment and the next day you've got a litigant filing a motion to set aside a default judgment. We want to work things out. Our clients want us to work things out. That is the ultimate goal and having the ability to do that via Zoom has proved to be a very positive experience. I know everyone's getting hungry so the only thing I want to say in follow-up is that I do practice in several other states and I saw how those states dealt with the pandemic. And Michigan was at the forefront of at least the states that we practice in and that I'm licensed in in terms of being up and running on the Zoom hearings and doing it efficiently. And I thank everybody for that so I am definitely a proponent of the presumption being to have the remote hearings and I thank you for your time.

CHIEF JUSTICE MCCORMACK: Thank you for your comments and your time as well. Michael Benkstein, please.

MICHAEL BENKSTEIN: Good afternoon. Thank you so much for bringing us all together to discuss this important public issue. In some ways the Zoom technology made this discussion with so many wonderful speakers possible. I have very little experience in criminal cases so I will limit the balance of my time to discuss Zoom's impact on civil cases. I understand the concerns expressed by some other speakers about inappropriate conduct on the part of

certain parties in proceedings conducted via Zoom. But it seems to me the majority of those concerns were in the context of criminal proceedings. So I would make a distinction between Zoom's appropriateness in criminal matters as opposed to civil matters. My perspective on this issue comes from my work as a debt collection attorney at Stillman Law Office. I've seen how the use of Zoom has increased access to justice for defendants in district court. Defendant participation has increased substantially and I think I know why. Prior to my debt collection work, I was a bankruptcy attorney for 14 years and involved in over 5,000 bankruptcy cases. So I'm intimately familiar with the financial exigencies of debtors. It's hard for people who are already experiencing financial difficulty to take time off work, arrange and pay for child care, and transportation costs in the midst of decade-high gasoline prices. These barriers to justice can be insurmountable for some defendants. The Zoom option is indispensable to support access to justice for all. Thank you very much.

CHIEF JUSTICE MCCORMACK: Thank you. Next is Deborah Winslow.

DEBORAH WINSLOW: Good afternoon. My name is Deborah Winslow. I'm an attorney from Szuba and Associates. I've been practicing for over 20 years and our firm handles a large volume of civil collection cases in the district courts and circuit courts throughout the entire state of Michigan. I would just like to echo some of the earlier comments and the efficiency of attending hearings via Zoom. We, as the attorneys of record, are appearing on almost 100 percent of our cases. We feel that that helps us to resolve the matters, instead of just having a local attorney appear and perhaps not know the case as well. Not to say that they don't do an effective job but sometimes it's more efficient just to be able to sit and talk with the defendant in a breakout room and then we can resolve it immediately. We have seen a great increase in the defendants appearing, fewer default judgments, greater resolution. We do feel that the Zoom option is very beneficial and we would like to see it continue. That's all. Thank you for the opportunity.

CHIEF JUSTICE MCCORMACK: Thank you very much for being here and for your comments and your time. Bradley Johnson.

BRADLEY JOHNSON: Okay. Good afternoon, Justices. My name's Brad Johnson. I've been a collections attorney for six years and I appreciate this opportunity to address this Honorable Court on such a significant issue. I practice almost exclusively in our district courts and I'd say about 90 percent of the litigants I encounter are in pro per defendants. I know change is hard. The pandemic forced Zoom on all of us. It's been an adjustment but I believe a worthwhile investment. For example, before the pandemic, a typical pre-trial would consist of me appearing in court, shouting out the defendant's name to the gallery, waiting for a response, and then taking the defendant into the hallway or a private meeting room to discuss the case. Going in, I would have no idea what the defendant even looked like. Sometimes the defendant would not want to meet with me. I would hear something like, "I want to talk to the judge first" or "I don't want to talk to you about my business in a hallway." In this setting, the defendant was already on edge. They possibly had to miss work, arrange for childcare to be in court. They possibly could have been intimidated by a courtroom. As always, I would try my best to listen to

the defendant, explain my position, and try and come up with a mutually agreeable outcome. It worked. But that was all I knew, you know. Since the pandemic and Zoom, my interactions with these in pro per defendants have greatly improved. The parties are introduced via court staff or judge with instructions to see if the parties can resolve. Parties are seen as equals, not where one party is demanding that the other speak with them in an unfamiliar setting. Now, the party's go into a breakout room to discuss the matter in private. When they are done the court staff is notified that they are ready to have their case heard. The court staff knows which parties are ready, which need more time to talk while the docket is progressing virtually. Zoom has been a great benefit and I can see it in my day-to-day work. It's better for me, too. I can more zealously represent my clients in my office while on a Zoom hearing, whereas before I was spending, as you've heard, a lot of time driving where I could not do any legal work. I can see the efficacy of in-person for a civil trial or a contentious dispositive motion hearing but not for these routine pre-trials or post-judgment proceedings. And I think the district courts know which files need that extra step just by the amount of paper, you know, in the file, especially—just on the general civil side. I don't want to repeat anything so I appreciate your time and consideration.

CHIEF JUSTICE MCCORMACK: Thank you very much for your comments and your time. Stuart Best.

STUART BEST: Yes, good afternoon, Justices. My name is Stuart Best, a partner of the firm of Weltman Weinberg & Reis. We are one of the largest case filers in the state of Michigan. As a whole, we have found across our entire filings that we find many, many more defendants appear during Zoom hearings and, as has been noted many times, the default system which we go in, take a default, and its attempt to set aside later, is less—substantially less common when we have Zoom and they have the opportunity to appear. You've heard from the defense bar today extensively. We found the same as the defense bar that, even if you have indigent clients, that they have the ability—or indigent defendants—they have the ability to get their hands on access and access to justice actually better through technology than physically appearing at the courthouse. Tomorrow I'll be in Kent County in the morning on a hearing that has an indigent client, indigent defendant and in pro per. I guarantee that person has substantial issues in getting into the courthouse on a regular basis. Via Zoom, they've never had an issue appearing. The numerous times or the more opportunity we have to talk to a defendant, assist across the board, reduces future hearings and allows us to typically work out scenarios. Basically, as the court has probably identified this morning and this afternoon, there is a definite diversion between the criminal and the civil side. In the civil side, we clearly can see the benefits, although I agree with Justice Bernstein—I do miss going down to Wayne County in the mornings on Friday and do miss that interaction. Yet the upside and the benefit to the ju—the system as a whole has been enormous. The efficiencies are much better. In fact, this morning while waiting for my—what appears to be the last person on the list to appear—I've actually attended a client meeting as well as handle two motions for summary. The efficiencies are enormous. I believe it is for the courts as well and, as a shout out to former District—I mean Circuit Court [Judge] Zahra, we find also that if your courtroom is handled in an appropriate manner, the same as he used to handle when he was on the Wayne County bench, that efficiency also flows over to

Zoom. Justices that were efficient in Zoom—or in person are just as efficient or potentially more efficient using Zoom and an in person is detrimented by that. I think that you see a Justice that takes the time to work with their staff to get that system in place and work with all parties, the efficiencies of the court can be greatly increased. Does the court have any questions?

CHIEF JUSTICE MCCORMACK: I don't see any but thank you very much for your comments and your time.

JUSTICE BRIAN ZAHRA: My only question, Mr. Best, are you referring to my staggered motion call?

MR. BEST: Yes, absolutely.

JUSTICE ZAHRA: Okay, thank you. Thank you for remembering that. I didn't think there's anyone still alive who knew of that.

MR. BEST: I utilized that on a regular basis to explain how it should be done.

JUSTICE ZAHRA: Thank you.

CHIEF JUSTICE MCCORMACK: Next is Jim Schaafsma.

JIM SCHAAFSMA: Thank you, Chief Justice McCormack, and good afternoon, Justices. I'm the housing attorney at the Michigan Poverty Law Program. And I think I'll regard it as a privilege but my focus will not be on remote hearings. I'm wanting to thank you for your commitment to Administrative Order 2020-17, which as you know applies to eviction cases. I urge you to keep it in place. The order has been an effective, if not essential, companion to the state's emergency rental assistance program, CERA, which in less than a year has paid more than 520 million dollars to Michigan landlords. And while the limited data shows that since the entry of the order the default rate in eviction cases has gone down, it's fair to say that the order, you know, along with remote hearings, which you've heard a lot about, has contributed to enhancing access to justice for defendants in these cases, as several landlord attorneys and many creditor attorneys have acknowledged today. And incidentally, but significantly, during the pandemic, the order has promoted housing stability which we know serves several interests, including public health. Now I could go on but I'll mostly leave it at that, other than to say that the order is consistent with the application of the statutory eviction process. And thank you again and I urge you to maintain this order.

CHIEF JUSTICE MCCORMACK: Thank you very much for your time and your comments. One speaker who was not here when we when called on before is here now, Judge Raymond Kostrzewa. And I apologize for botching your name; I hope you'll correct me.

JUDGE RAYMOND KOSTRZEWA: Yeah, it's Judge Kostrzewa. And thank you very much, Chief Justice. I appreciate you giving me an opportunity to speak. I had a full docket of

preliminary examinations this morning and I was unable to be here at the called upon time. But thank you again. I'm chief judge of the 60th District Court in Muskegon, Michigan, and I speak on behalf of my colleagues in the district court here, Judge Mathes and Judge Nolan and Judge Ladas Hoopes. We've discussed this matter many times. I'm also the Region 5 representative on the District Judges Association. And I'd just like to echo, in short, Judge Fratarcangeli's very apt analogy to the medical profession that we should do no harm. But I think more directly we, as the judicial branch of government, need to follow canon number one and that's that our primary objective is to serve the public and the litigants. And I would just encourage the Supreme Court, when they're entertaining the notion of making a blanket presumption, to keep in mind Justice Viviano's question to Judge Mack that he posed in regard to Judge Mack's very appropriate comment that there are some judges that I would say are just rogue and they're just going to do their own thing. But to make a blanket rule that covers every judge in the state because there's a few judges who won't follow that rule that we're here to serve the litigant and that we're here to serve the public probably isn't appropriate. I would say this, I've been a public servant since 1992. I spent 22 years in the prosecutor's office litigating cases and then, since 2014, I've been on the bench. And I chose to be a public servant and I chose the judicial branch of government because I want to serve the community and do the best I can to serve the litigants. And that I asked the Supreme Court just to trust the judicial branch of government to do the right thing. Without a question, the Zoom proceedings have contributed to serving justice. And my colleagues on the district bench here in Muskegon have committed to continuing to use Zoom, but in the appropriate circumstance. And to equate, as I've som—as I've heard some people do here this morning and this afternoon, the use of Zoom to this proceeding that we are conducting right now is probably doing a disservice to reality because everybody that's participated here has have—has had the opportunity to utilize great information technology. And that is not the case in district court where the bulk of many, both criminal and civil, litigants are self-represented. They simply don't have the technology. They certainly don't have the extensive knowledge in the court rules and the Michigan rules of evidence and how things should go. And I've seen great shortcomings and justice with the use of Zoom. That's not to say that many of the civil attorneys that spoke today don't speak the truth when they say it's served justice well. I and—I'm committed to using Zoom. I promise I'm going to use Zoom. It's made me and my docket much more efficient. But I just think a blanket rule to cover a couple rogue judges that won't do the right thing is probably not appropriate. I thank you for your time and attention to this matter and the opportunity to speak.

CHIEF JUSTICE MCCORMACK: Thank you very much. Thanks for your comments and for making time for this amid doing your job. We appreciate it.

JUDGE KOSTRZEWA: My pleasure.

CHIEF JUSTICE MCCORMACK: If there's anybody else who is here who I haven't called on, would you please raise your hand in the Zoom room so I can make sure there's nobody I've skipped over? Okay, then I think we have heard from everybody who showed up. We are very grateful for all of the time you took and the thoughtful comments. And this hearing is adjourned.