

Frequently Asked Questions Regarding Expansion of Remote Proceedings

- 1. How do we maximize remote participation and access for self-represented litigants? Courts do not always have accurate contact information. Are there some good ideas for gathering accurate contact information to improve odds of participation?**

While there may not be accurate telephone or e-mail information on file with the court, the court could take steps to obtain further contact information from the parties. Consider mailing the virtual hearing information to the SRL with clear instructions on how to contact the court to arrange remote participation. Encourage the SRL to reach out to the court with any concerns or questions.

Courts can also consider telephone appearances if the SRL does not have the means to videoconference into a court proceeding. Appendix A (pp 29-33) of Chapter 1 of the [Standards for Videoconferencing Technology](#) lists all the cases that can utilize videoconferencing. SRLs can generally participate in most hearings (with court permission) through telephonic means in accordance with MCR 2.004, 2.402, 3.708, 6.006, and 6.901. Telephonic testimony must be able to be heard on the court recording, if any.

Courts should not default an SRL for failure to appear at a proceeding via phone or videoconferencing when there is no option to appear at the court proceeding in person. As addressed in the [FAQs and General Guidance Regarding Emergency Response to COVID-19](#), we recommend that you do not default or issue a bench warrant for individuals who fail to appear for their scheduled proceeding unless that individual presents a specific and verifiable threat of criminal activity.

Finally, the [Michigan Legal Help website](#) has extensive resources for self-represented litigants on a wide range of topics related to coronavirus. Courts should encourage SRLs to visit the site for legal resources.

- 2. How does the court handle a victim who wants to address the court?**

Victims have a Constitutional and statutory right to attend court proceedings. Const 1963, art 1, § 24; see also [MCL 780.761](#) and [MCL 780.765\(1\)](#). Courts should follow their current practice for notifying victims. In some courts, the prosecutor notifies the victim of any proceedings. In other courts, the court may send notice to the victim when it sends notice to the defendant.

- 3. If the court is not ready to live stream on YouTube yet and does not have capacity to video record, should the court adjourn the remote proceeding?**

It is the court's responsibility to conduct hearings accessible to the public either during the proceeding or immediately after via access to a recording of the proceeding. See [Administrative Order No. 2020-6](#). During the COVID-19 crisis, some hearings on essential matters have been conducted without providing such

access. This was unavoidable for a short period of time. The State Court Administrative Office has now given you the technology and training needed to meet this mandate. The Virtual Courtroom [Resources Center](#) can answer most questions you may have in this regard. If you still believe you do not have the capacity to live stream or record court hearings, please contact your Regional Administrator.

4. Is an audio recording sufficient to satisfy the public access standard?

No it is not. [Administrative Order No. 2020-6](#) specifically states that access to the proceeding must be provided to the public either during the proceeding or immediately after via access to a video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute.

5. How soon after a hearing must the recording be available? Must the recording be posted on the web?

[Administrative Order No. 2020-6](#) states that access to the proceeding must be provided to the public either during the proceeding or immediately after via access to a video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute. The video must be made available to the public. Broadcasting or streaming live to the court's YouTube channel or the court's website is sufficient. YouTube automatically records the live court session. This recording is not the official court record and it need not be retained. The court should provide the public with a link or information on where they can watch a video proceeding live. If not streamed live, the court must provide a link to a recorded version of each and every proceeding. Some courts are providing this information on their websites.

6. Are there alternatives to YouTube for allowing public access to Zoom hearings, such as posting a Zoom access code?

There are many ways in which a court can provide public access as required by statute, court rule and administrative order. We **strongly** recommend that courts not publish the Meeting ID for a courtroom because that could invite bad actors to invade a hearing, take over, and share inappropriate material or behavior. The [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#) have identified using the YouTube live stream function as a best practice.

7. Is SCAO requiring the courts to use YouTube live streaming? Do we have to keep the recordings on YouTube after a proceeding is over?

Constitutional, statutory, and court rule requirements for court proceedings to be public all remain in effect during the state of emergency. Therefore, courts must provide public access to court proceedings unless limits to public access are allowed by statute or court rule and the court imposes those limits in accordance with those statutes and rules. Courts may accomplish public access in a variety of ways, including in an open courtroom (while abiding by social distancing and allowing no more than 10 people in a public space), through broadcasting or live streaming proceedings, or by sharing a copy of the live stream after the proceeding.

If a court chooses to live stream on a service such as YouTube, that live stream is not the official record of the proceeding and does not need to be maintained through the live stream service. Each court is urged to review YouTube's Terms of Service [here](#), especially the possible uses of content recorded to YouTube, to decide whether recordings should be maintained there.

The judge's authority is the same in the virtual courtroom as the physical courtroom, and if at any time during the proceeding, the judge decides that the live stream should be stopped to protect the public interest, they may do so as long as such action meets the previously noted statutory and court rule limitations. In addition, the judge may announce at the start of proceedings that anyone who makes an unauthorized recording may be subject to contempt proceedings. Even with this safeguard, we acknowledge that it will be difficult to control individuals who may record the live stream at a remote location.

8. Are there any helpful hints or information regarding creating and/or setting up a watermark on YouTube live stream videos?

If a court is considering adding a "Do Not Record" watermark, here is an [example](#) you can use on your live stream using the instructions [here](#) (use the option "entire video").

9. Will SCAO be coming out with a list of cases to prioritize since capacity is limited?

[Administrative Order No. 2020-6](#) indicates that "although our highest priority during this crisis is for courts to continue to be vigilant and protect against further spread of the coronavirus, we must also continue to ensure that our courts operate as efficiently and effectively as possible under the circumstances, continue to ensure timely hearing and disposition of essential matters, and make our best efforts to provide timely justice in all other matters. The court should prioritize those cases that are essential matters, while making an attempt to fit in as many other matters as possible. Please review the following documentation regarding triaging case actions during the COVID-19 crisis:

- [Circuit Court](#)
- [District Court](#)
- [Probate Court](#)

10. What if limited capacity does not allow a court to live stream from every courtroom?

Each judge was given a Zoom account for the purpose of conducting remote proceedings. The court has the option to record the video proceeding and post it on YouTube or their website immediately after the proceeding if they do not have the means to live stream all proceedings at the same time.

11. What about sensitive family and child welfare cases? Should those be live streamed? Likewise, what about HYTA cases?

The general rule is that cases are open to the public unless specifically excepted by law. Each judge must determine if and when a case may be closed to the public. For example, Child Welfare cases are public cases and the proceedings are generally open to the public. However, there is an ability to motion the court under MCL 712A.17(7) and MCR 3.925 to close the court during testimony. Delinquency cases are also generally open to the public, except for consent calendar cases. You should consider whether all proceedings on HYTA cases are closed to the public once HYTA is assigned. *People v. Bobek*, 217 Mich. App. 524 (1996) and *People v. GR*, No. 346418, 2020 WL 354932 (Mich. Ct. App. Jan. 21, 2020). Also see the [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#) for further information on live streaming proceedings.

The courtroom has always been a public place. Today we provide access to this public place through remote technology tools. We will return to open courthouses and open courtrooms when it is safe to do so. Each case presents unique questions of fact and law upon which the rare decision to close the courtroom is based. These decisions are the same in both the physical and virtual courtroom.

12. Can Personal Protection Order (PPO) proceedings be live streamed?

MCR 3.705(C) states that under federal law,¹

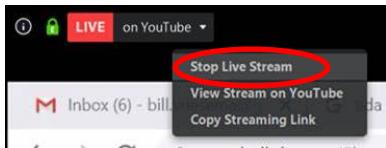
a court is prohibited from making available to the public on the Internet any information regarding the registration of, filing of a petition for, or issuance of an order under this rule if such publication would be likely to publicly reveal the identity or location of the party protected under the order.

Please review the [Zoom instructions](#) on how to turn live streaming on and off. The following is a brief illustration of the process:



Once someone starts live streaming, they will see the control and decoration in the upper left of Zoom:

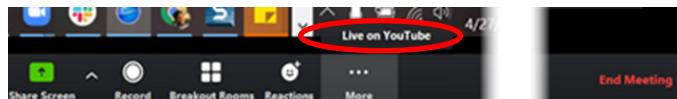
¹ 18 USC 2265(d)(3)



Select Stop Live Stream from the dropdown menu (Zoom meeting continues)

The First live stream will end, Zoom will continue...

When the court is ready to return to live stream, reselect Live on YouTube a new live stream will start.



13. Courts are getting inquiries about resuming landlord/tenant dockets. How does the expansion of remote proceedings affect this docket?

Governor Whitmer has extended the moratorium on evictions to May 15, 2020, through [Executive Order 2020-54](#). Language in this extension prohibits “a demand for possession, or other threat of eviction, based on the nonpayment of rent.” Courts should review the [April 20, 2020 SCAO memo from Bobbi Morrow](#) and the [April 14, 2020 SCAO memo from Tom Boyd](#) to determine how to proceed with these cases.

14. Can our court provide the public an opportunity to request that a particular hearing be broadcast after providing notice of hearing? If they do not receive such a request, then they will not live stream the hearing.

[Administrative Order No. 2020-6](#) states that access to the hearing *must* be provided to the public either during the proceeding or immediately after via access to a video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule. If the hearing would normally have been an open courtroom, the administrative order is very specific that the court *must* provide access to the hearing via one of the ways mentioned above. There is not an option for this process to be conducted by means of a request. If the court chooses not to live stream the hearing, the court may upload the video proceeding immediately afterward.

15. If we are having an evidentiary hearing and witnesses are sequestered in the Zoom waiting room, how do we verify witnesses are not watching the hearing live on YouTube?

The court could consider not live streaming these types of hearings. There is an option in [Administrative Order No. 2020-6](#) to upload the video recording immediately after the proceedings. This may prevent a sequestered witness from being able to sit in the Zoom waiting room while watching the proceeding live on YouTube. Judges should continue to use their discretion of such cases when deciding whether the case should be live streamed or uploaded immediately after the proceeding.

Another option could be for the court to issue instructions to witnesses who are sequestered, or an order directing them not to view the live stream of the proceeding. The penalty of violating the order could be holding the witness in contempt of court.

ZOOM-Specific Questions

16. How does my court provide the Meeting Room ID to participants in a hearing?

Most courts do not have a party's e-mail address on file unless the party has agreed to electronic notification under court rule. The court could contact the party, receive their e-mail address, and e-mail the Zoom information to the parties. If the court is not successful at obtaining an e-mail address, or if the court wishes to send a notice through traditional methods, the court could incorporate its Zoom meeting information into its notice. If the court provides Zoom information through a notice of hearing document, please be aware that the notice document is a public document that could be obtained by others.

17. How do I mute/remove/put in waiting room participants from the courtroom Polycom?

This is not possible. Polycom technology does not allow for control of the Zoom meeting. A host (or co-host) must be in the meeting using a PC/Mac or tablet/smartphone app to allow control of participants in a meeting.

18. Can the host unmute a participant that has muted themselves?

No. When a participant puts themselves on mute, only they can change that back. The host may consider sending a private chat to that participant letting them know they are muted (the sent chat will flash for the participant and may get their attention). The court or the host may also ask a participant to unmute their microphone – much like recognizing the next person to speak in the physical courtroom.

19. As the host, can I mute everyone in a meeting and keep them muted?

Yes. You may set an option to mute participants as they enter the meeting; during a meeting, from Manage Participants, you can “mute all”; from Manage Participants, use the More menu to disallow Participants to Unmute Themselves.



20. Can participants talk while in the waiting room? Can the host talk to folks in the waiting room?

Participants cannot communicate when in the waiting room for a Zoom meeting. The host cannot speak/share audio with those in the waiting room, but can send them a chat* message (i.e. “please wait until the judge is ready to hear your case”).

**Those joining with phone call only or using the browser-only interface will not see waiting room chat messages.*

21. Can participants talk to the courtroom while they are in a breakout room?

Participants who are assigned to the same breakout room may communicate with each other and have full audio, video, and screen sharing capabilities. Participants may ask the host for help while in their breakout room; then the host can join the breakout room and communicate. A host may also send a broadcast message to all breakout rooms. If the Zoom meeting is being recorded, any conversation in the breakout room will **not** be automatically recorded.

Users who join a Zoom meeting from the Zoom mobile app or from H.323/SIP devices can participate in breakout rooms, but they cannot manage them. Users who join using Chromebooks/Chrome OS or Zoom Rooms cannot join breakout rooms. When setting up the meeting, hosts can select whether to allow participants to rejoin the main meeting room when they wish or whether to close a breakout room automatically after a set amount of time.

22. Does recording a Zoom meeting comply with Court Technology Standards for making an official recording

Yes, please review the [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#) for additional details.

23. Is the e-mail link to the Zoom recording a file that a transcriber can keep permanently, since recordings are to be kept for a certain amount of years?

According to the Michigan Trial Court Standards for Courtroom Technology, the court must keep a redundant copy of a recording of a proceeding. Keeping the e-mail link to the Zoom recording is not sufficient under the standards. The court should download the file and ensure that is maintained in accordance with the [Michigan Trial Court Standards for Courtroom Technology](#).

24. Can cloud meeting recordings be backed up to a DVD to include both audio and video, and not just the audio portion?

Zoom users who create an audio and video recording in the cloud are able to download and back up the files using whatever existing backup process the court has for other digital files. Please review the “[Managing Cloud Records](#)” page on the Zoom help center for additional details.