

Videoconferencing Technology in Court Proceedings Frequently Asked Questions

Americans with Disabilities Act

Q: Does an ADA accommodation request automatically require the court to allow the use of videoconferencing technology?

No. The court should carefully consider on a case-by-case basis if it is necessary to hold a remote hearing rather than an in-person hearing given the specific nature of the accommodation being requested.

Q: My court holds remote proceedings via a videoconferencing platform. What accommodations do I need to make for persons with disabilities?

The need for accommodations under the ADA continues with videoconferencing, although many accommodations may look different in a remote world. Requests for accommodations are decided on a case-by-case basis, with the court and the requestor engaging in a dialogue to determine the best reasonable accommodation for the person. The Virtual Courtroom Task Force issued [guidance](#) on ADA accommodations and remote hearings in July 2020. Some accommodations cannot be made through Zoom and it may be necessary to hold in-person hearings to ensure that persons with disabilities can participate fully.

Contact Information

Q: MCR 2.407(D)(2) requires participants using videoconferencing technology to provide their contact information to the court. What should the court do if the participant refuses to provide that information?

[Form MC 505, Contact Information](#), may be used to assist the court with collecting contact information from each participant. If a participant refuses to provide their information, the court may consider their refusal as a factor under MCR 2.407(C) to determine whether videoconferencing technology is appropriate for that case or hearing. The refusal also might be considered an inability to adequately use videoconferencing technology under MCR 2.407(B)(4), depending on the circumstances.

Evidentiary Hearings

Q: Do MCR 2.408 and MCR 6.006 prohibit courts from conducting evidentiary hearings via videoconferencing technology?

No. A court is prohibited from conducting an evidentiary hearing in all civil proceedings, and criminal proceedings in circuit court, "... **except** in the discretion of the court after

all parties have had notice and opportunity to be heard on the use of videoconferencing technology.” MCR 2.408(A)(2); MCR 6.006(B)(4).

With district court criminal proceedings, a court is prohibited from conducting an evidentiary hearing, “...**except** in the discretion of the court.” MCR 6.006(C)(3).

Judicial Officers

Q: May a court require that criminal pretrial proceedings be conducted using videoconferencing technology?

MCR 6.006(A)(2) states that a court may, at the request of any participant, or sua sponte, allow the use of videoconferencing technology by any participant in any criminal proceeding.

When determining whether to utilize videoconferencing technology, the court must consider constitutional requirements and the factors contained in MCR 2.407. MCR 6.006(A)(3). However, MCR 2.407(B)(4) states a court cannot require videoconferencing for a person who requests to appear for a proceeding in person or is unable to adequately use videoconferencing technology.

Q: Are judicial officers required to be physically present in their courtroom during a proceeding conducted by videoconferencing technology?

[Administrative Order 2012-7](#) previously required a judicial officer who presides remotely to be physically present in a courthouse located within his or her judicial circuit, district, or multiple district area. However, AO 2012-7 was suspended during the pandemic and remains suspended pursuant to MCR 2.407(E), until further order of the Court. Trial courts will need to determine whether this continuing suspension authorizes judges to preside over cases from a remote location.

However, courts should remember that if a participant requests to appear in person or is unable to adequately use the videoconferencing technology, the presiding judge and any attorney of record for the participant **must** appear in person for the proceeding. MCR 2.407(B)(4).

Q: If the hearing officer is unable to appear in person but can handle a proceeding conducted via videoconferencing technology, would the parties’ consent be required to proceed?

Courts should consider any constitutional requirements and the factors identified in MCR 2.407(C) as well as any requirement to notify and provide a party the opportunity to be heard on the question when determining whether the use of videoconferencing technology is appropriate in a particular case. Additionally, a participant’s request to appear in person or inability to use videoconferencing technology will require the presiding judge to appear in person. MCR 2.407(B)(4).

Juvenile Proceedings

Q: Do the court rules regarding videoconferencing technology apply to juvenile delinquency and/or abuse and neglect proceedings?

Yes. Juvenile delinquency and child protective proceedings are eligible for the use of videoconferencing technology. MCR 3.904(A) and (B)

Livestreaming

Q: If the courtroom is open to the public, does the court still need to livestream or make the videoconferencing proceeding available immediately after the proceeding?

No, if the courtroom is open and the public can watch the remote proceeding in person, the court is not required to livestream or make the video recording available immediately after the proceeding. MCR 2.407(B)(10).

Probable Cause Conferences (PCCs)

Q: Although in-custody PCCs are “preferred” to be conducted by videoconferencing, does the PCC need to be conducted on the record or recorded verbatim?

No. MCR 2.407(B)(9) requires all proceedings that are held using videoconferencing technology to be recorded verbatim, *except hearings that are not required to be recorded by law*. MCL 766.4 does not require the PCC to be held on the record. In fact, it is recommended that the PCC not be conducted on the record because it often involves discussions regarding plea negotiations.

Q: May courts conduct PCCs with in-custody defendants in person, rather than remotely?

Although videoconferencing is the “preferred” mode for conducting PCCs, that preference is still subject to MCR 2.407(B)(4) and MCR 2.407(B)(5). In determining whether a case or proceeding should be conducted by videoconferencing, the court must consider constitutional requirements and the factors in MCR 2.407(C).

Recordings

Q: How long must a video recording of a proceeding be accessible to the public under MCR 2.407(B)(10)?

MCR 2.407(B)(10) requires courts to provide access to a proceeding held using videoconferencing technology to the public either during the proceeding *or immediately after* via access to a video recording of the processing, unless the proceeding is closed or access would otherwise be limited by statute or rule. MCR

2.407(B) does not identify the length of time the video recording must be accessible to the public. Court administrators should consult with their judges for guidance.

Q: What is the official recording of a proceeding (e.g. the recording fed directly or indirectly into the court's recording system, the Zoom recording, or the Livestream recording)?

Under MCR 8.109(A), courts are authorized to use audio and video recording equipment for making a record of court proceedings. The audio or video recording that is created for the purposes under MCR 8.109(A) is the official recording. For those courts using Zoom to conduct and record a remote proceeding, the generated recording is an MP4 format that complies with the Michigan Trial Court Standards for Courtroom Technology. Please review the Michigan Trial Courts Virtual Courtroom Standards and Guidelines for additional guidance.

Resources

Q: Are there resources available to assist a judicial officer to determine whether a proceeding should be held using videoconferencing technology?

Yes. There are bench cards for Circuit, District, Family Division (i.e. Juvenile) and Probate on the [Virtual Courtrooms webpage](#). Additional resources being updated include the ADA Handbook and FAQ, Caseflow Management Guide and LAO 22, Manual for Court Reporters and Recorders, Michigan Trial Court Standards for Courtroom Technology, and Virtual Courtroom Technology Standards.

Small Claims

Q: Are small claims proceedings allowed to use videoconferencing technology?

Yes. The use of videoconferencing technology for small claims is authorized under MCR 4.304(A).

Testimony

Q: MCR 2.408(A)(2) generally prohibits the use of videoconferencing technology in civil proceedings where testimony or the presentation of evidence may occur. May videoconferencing technology be used for pro confesso hearings?

Yes. The use of videoconferencing is presumed with testimonial proofs for hearings under MCR 3.210(A)(4).

Trials

Q: Do MCR 2.408 and MCR 6.006 prohibit courts from conducting a bench or jury trial via videoconferencing technology?

No. A court is prohibited from conducting a bench or jury trial in all civil proceedings, and criminal proceedings in circuit court, "... **except** in the discretion of the court after all parties have had notice and opportunity to be heard on the use of videoconferencing technology." MCR 2.408(A)(2); MCR 6.006(B)(4).

With district court criminal proceedings, a court is prohibited from conducting a bench or jury trial, "...**except** in the discretion of the court." MCR 6.006(C)(3).