

**STATE OF MICHIGAN**  
**IN THE COURT OF APPEALS**

THE PEOPLE OF THE  
STATE OF MICHIGAN,

Plaintiff-Appellee,

vs

KATHERINE LINDSEY HENRY,

Defendant-Appellant,

COURT OF APPEALS NO: 356828

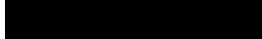
CIRCUIT COURT NO: 21-64004-AR

LOWER COURT NO: 203569SM

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MEREDITH R. BEIDLER (P78256)  
Assistant Prosecuting Attorney  
113 Chestnut Street  
Allegan, Michigan 49010  
(269) 673-0280

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KATHERINE L. HENRY  
Defendant in Pro Per  
7194 Michael Drive  
Hudsonville, Michigan 49426  


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**PEOPLE'S RESPONSE TO DEFENDANT'S**  
**APPLICATION FOR LEAVE TO APPEAL**

**ORAL ARGUMENT REQUESTED**

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## I. STATEMENT OF JURISDICTION

Plaintiff-Appellee agrees that because the circuit court denied Defendant-Appellant's untimely interlocutory application for leave to appeal, further pursuit of interlocutory appeal is to the Court of Appeals. MCR 7.203(B)(1).

## II. QUESTIONS PRESENTED

- A. In Michigan, the constitution permits the use of standby counsel as a matter of grace, but not as a matter of right. The Defendant brought a person with her, who happened to be an attorney, and stated that this person was a part of her hearing assistance, not her attorney. Was the Defendant denied counsel?

Defendant-Appellant's Answer: Yes

Plaintiff-Appellee's Answer: No

Trial Court's Answer: No

- B. Title II of the Americans with Disabilities Act requires that courts provide reasonable accommodations to persons with disabilities. The court provided the Defendant with an in-person hearing and offered a hearing assistance device which the Defendant summarily dismissed as unreasonable. Did the court violate the Defendant's rights?

Defendant-Appellant's Answer: Yes

Plaintiff-Appellee's Answer: No

Trial Court's Answer: No

- C. MCR 1.109(D)(10) requires that a request to have personal information redacted in court documents be made in writing. The Defendant requested that her personal information be redacted orally on the record at a motion hearing. Did the court comply with the court rules?

Defendant-Appellant's Answer: No

Plaintiff-Appellee's Answer: Yes

Trial Court's Answer: Yes

- D. MCR 8.116(D) requires that courtrooms be open to the public. During the pandemic, SCAO issued guidance explaining that courts should livestream court proceedings. The court held the motion hearing in person, allowing only the parties into the courtroom and streamed the hearing on YouTube. Did the court comply with the court rules?

Defendant-Appellant's Answer: No

Plaintiff-Appellee's Answer: Yes

Trial Court's Answer: Yes

- E. The Sixth Amendment guarantees a criminal defendant to confront the witnesses against him or her. The district court has not, and will not, conduct jury trials virtually and jury trials have been suspended since the beginning of the pandemic. Have the Defendant's constitutional rights been violated?

Defendant-Appellant's Answer: Yes

Plaintiff-Appellee's Answer: No

Trial Court's Answer: No

### III. COUNTER-STATEMENT OF FACTS

On November 3<sup>rd</sup>, 2020, the police were dispatched to a report of trespassing involving the Defendant. The Defendant was issued a trespass ticket pursuant to MCL 750.552. The Defendant was arraigned on the charges on January 11, 2021. At the Arraignment Hearing, the District Court Judge asked the Defendant if she had the money to hire an attorney for the case. The Defendant responded, “I am an attorney your honor.” (Arraignment, 4).

Thereafter the Defendant filed a Motion to Dismiss under the Rules of Civil Procedure. The District Court held a motion hearing on February 4, 2021, regarding the Defendant’s Motion to Dismiss. The Defendant brought a person into the courtroom with her on that date. When the judge asked if the person seated at the table with her was her attorney, Ms. Henry stated that this person was a “part of her ADA request...” (Motion Hearing, 2). The Judge made the person, who happened to be an attorney, but not the Defendant’s attorney, leave the courtroom.

THE COURT: You are?

MS. HENRY: I’m Katherine Henry Your Honor.

THE COURT: Alright. And you are?

MR. TODD: Gregory Todd your Honor.

THE COURT: You’re not a defendant in this matter.

MS. HENRY: No he’s –

MR. TODD: I’m an attorney your Honor.

THE COURT: But are you representing her in this? You haven’t filed an appearance. We’re not –

MS. HENRY: It’s part of my ADA request your Honor.

The Court offered the Defendant a hearing assistance device which the Defendant stated would not work.

THE COURT: You can have a hearing assistance device if you'd like.

MS. HENRY: It doesn't help – this is my hearing assistance, I read lips.

THE COURT: No, you can leave the room. We can provide you with a hearing assistance device.

MS. HENRY: That's not a reasonable accommodation your Honor.

THE COURT: It is.

MS. HENRY: No it's not because it's not going to actually help me hear.

THE COURT: Well –

MS. HENRY: I read lips. That's how I communicate so –

THE COURT: We are communicating right now and we'll keep our conversation at this level. You can leave the room sir.

The Court continued with the motion hearing. During the motion hearing, the Defendant was able to respond to each claim made by the Prosecutor and responded to the judge's questions and prompts, only stating once that she had trouble hearing. Ms. Henry requested orally during the hearing that her personal information be redacted from pleadings. (Motion Hearing, 21). Ultimately, the District Court denied the Defendant's Motion to Dismiss.

Ms. Henry claims that she requested a DVD of the proceedings and was denied use of the video on her social media. The People understand that Ms. Henry requested the DVD and the District Court placed restrictions on her use of the DVD.

Following the Court's denial of the Defendant's Motion to Dismiss, the parties participated in a pretrial conference. The Defendant's Notice to Appear states that she reads lips and not to utilize a telephone for her hearing. Unfortunately, the Court told her to call the prosecutor to discuss the case. The Court itself did not conduct the hearing via the telephone, but told Ms. Henry to communicate with the prosecutor via telephone. After the phone call, it appears the Defendant emailed the clerk to ensure she heard everything correctly over the phone with the prosecutor.

At the pretrial, the parties determined that the case should be set for a jury trial. The Court sent out notice of the trial but had to reschedule due to COVID-19 restrictions. The jury trial was rescheduled until it could be held in person. So while the Defendant's Notice to Appear may say "zoom", the parties were well aware that the court was not conducting jury trials virtually.

The Defendant appealed several issues, labeled a "procedural due process appeal" to the circuit court which issued an order on April 20, 2021. The circuit court's order noted that the Defendant filed two separate appeals based on the same district court order but did "not state a valid legal reason to discriminate between substantive due process and procedural due process in the filing of an appeal or in the timing of filing an appeal." (Circuit Court Order, 1).

The court noted that the Defendant's appeal to the circuit court was both untimely and exceeded the page limit. The circuit court denied the Defendant's appeal stating that her claim that she was denied assistance of counsel was not

supported by the record. (Circuit Court Order, 2). The circuit court also explained that the Defendant was not denied an open courtroom because the hearing was streamed live on YouTube. *Id.* The court also explained that a request to redact personal information must be made in writing under the court rules. (Circuit Court Order, 3). Finally, the court explained that the jury trials have not, and will not be conducted virtually; so the claim was untimely and not supported by the record. The Defendant now brings these claims to the Court of Appeals following the circuit court's denial of her procedural due process appeal.

## IV. ARGUMENT

### **The Defendant's due process rights have not been violated.**

The Defendant makes several claims regarding her due process rights that are simply not supported by the record. The Defendant's due process rights have not been violated and this appeal is not ripe for review.

#### **A. The Defendant has not been denied counsel.**

The Defendant is an attorney, which she made known to both the district court and this court. At the motion hearing, the Defendant indicated she was appearing in pro per. (Motion Hearing, 3). The Defendant now states that she wanted standby counsel all along. (Def's Br., 24). However, standby counsel did not file an appearance until March 2, 2021—nearly a month after the Defendant's motion hearing. Further, “[i]n many respects, standby counsel is not counsel at all, at least not as that term is used in the Sixth Amendment.” *United States v Taylor*, 933 F.2d 307 (C.A.5, 1991). Standby counsel is not the same as regular counsel. *Id.* Standby counsel does not represent the defendant; the defendant represents herself. *Id.* The defendant may not seek or heed the advice of the standby attorney. *Id.* “As such, the role of standby counsel is more akin to that of an observer, an attorney who does not speak for the defendant or bear responsibility for his defense.” *Id.* “Thus, as useful as standby counsel may be when a defendant wishes to represent himself, this Court holds that standby counsel is not ‘counsel’ within the meaning of the Sixth Amendment.” *Id.*

Moreover, “the federal courts have uniformly held that neither the right to standby counsel nor hybrid representation are absolute under the Sixth Amendment, but rather are within the sound discretion of the trial judge.” See *United States v Betancourt-Arretuche*, 933 F.2d 89 (C.A.1, 1991); see also *United States v Mosely*, 810 F.2d 93, 97 (C.A.6, 1987). In Michigan, the constitution “permits the use of standby counsel as a matter of grace, but not as a matter of right.” *People v Dennany*, 445 Mich 412, 443 (1994).

In this case, when the judge asked the Defendant at her arraignment if she could afford an attorney, the Defendant answered, “I am an attorney your honor.” (Arraignment, 4). The judge then asked her if she would like the case set for a trial before a jury or a judge. (Arraignment, 4). The Defendant did not correct the judge or indicate that she wished to have an attorney as standby counsel.

The Defendant’s claim that she was denied counsel at her motion hearing is simply erroneous. The Defendant was not denied counsel; she was denied a person, who happened to be an attorney, to sit at her table to assist her in reading lips. As noted above, the Defendant entered the courtroom with Mr. Gregory Todd. He indicated that he was an attorney. However, the Defendant jumped in and stated that Mr. Todd was a “part of [her] ADA request...” (Motion Hearing, 2). She never stated that Mr. Todd was her attorney or standby counsel for the case. She then introduced herself as appearing in pro per. (Motion Hearing, 3). Thus, the Defendant was not denied counsel.

**B. The Court attempted to provide reasonable accommodations for the Defendant's disability.**

The Defendant explains in her brief that she has a hearing disability and she reads lips to communicate. She states that she cannot participate in hearings via zoom, thus the District Court tried to accommodate her and held her motion hearing in person rather than virtually. In doing so, the judge and the prosecutor chose to keep their masks on to protect themselves from COVID-19. Pursuant to MCR 8.110(C), members of the public who refuse to wear a face covering will be asked to leave the court facility. (Administrative Order, p. 5, Attachment A). Further, SCAO issued a memo on May 14, 2021, stating that court staff and visitors must continue to wear face covering and follow social distancing practices. (SCOA Memo, 5/14/21, Attachment B).

SCAO issued guidance for accommodating persons with disabilities during the pandemic. SCAO explained that “[t]he need for accommodations under the ADA will continue with remote hearings, although many may look different in a remote world.” Remote Hearings and Accommodations under the ADA, <<https://courts.michigan.gov/News-Events/covid19-resources/Documents/ADA-RemoteHearingsInfo.pdf>> (accessed May 26, 2021) (Attachment C). SCAO explained that there may be some instances where accommodations cannot be made for remote hearings and the court may have to conduct in-person hearings so that a person with a disability can participate. *Id.*

In this case, the court allowed the Defendant to have an in-person hearing to accommodate her hearing disability when she said she could not participate

virtually. When the Defendant told the court that Mr. Todd was there to assist her in the hearing, the court offered the Defendant a hearing assistance device. The Defendant claims that the judge did not describe the hearing device or show it to her. (Def's Br., 28). In reality, the judge offered the Defendant a hearing assistance device and without seeing the device, the Defendant stated that would not help. (2/4/21 Motion Hearing, 2). When the judge stated again that he would provide the Defendant with a hearing assistance device, she stated, again without seeing the device, that it was not a reasonable accommodation.

The court attempted to offer the Defendant reasonable accommodations for her disability. It held an in-person motion hearing when all other hearings were being conducted remotely. And, when the Defendant arrived for her in-person hearing, the judge offered her a hearing assistance device which she summarily dismissed. The court did not violate the Defendant's rights.

**C. The Court followed the Court Rules in regards to the Defendant's personal information.**

Under MCR 1.109(D)(10), a party must file a written request for personal information to be redacted. At that time of the motion hearing, the Defendant had not filed a written request. (4/20/21 Order, 3). She made the request orally on the record at the motion hearing on February 4. However, that request did not comport with the court rules which require that the request be made in writing. MCR 1.109(D)(10)(c)(i) states, "Protected personal identifying information contained in a document and filed with the court shall be redacted by the clerk of the court *on written request* by the person to whom it applies." (Emphasis added). The party

requesting the redaction must specify the protected personal identifying information to be redacted. *Id.* The Court Rule also states that a party “may file an ex parte motion asking the court to direct the clerk to redact the information from that document or to make the information either confidential or nonpublic.” MCR 1.109(D)(10)(c)(ii). In this case, the Defendant neither filed an ex parte motion nor made a request in writing. Thus, the court did not violate her due process rights by not addressing the issue orally on the record on February 4.

**D. The courtroom remained open to the public via YouTube.**

MCL 600.1420 requires that courts shall be open to the public except for good cause shown. The Michigan Court Rules also require that the courtrooms be open to the public. MCR 8.116(D). However, the courts have had to adjust their procedures due to the COVID-19 pandemic. SCAO issued Michigan Trial Courts Virtual Courtroom Standards and Guidelines to assist courts in developing procedures for operating during the pandemic. State Court Administrative Office, Michigan Trial Courts Virtual Courtroom Standards and Guidelines, <[https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR\\_stds.pdf](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf)> (accessed May 26, 2021) (Attachment D). SCAO’s guidelines state, “Access to proceedings must be provided to the public either during the proceeding or immediately after via video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule.” The guidance further states that the court should create a YouTube account and that information

about public availability of court proceedings via livestreaming must be accessible to the public and press. *Id.*

In this case the court streamed the motion hearing on YouTube. Thus, the courtroom remained open to the public through a video recording that was accessible while the hearing took place. The courts were limiting access to the building and to the courtrooms based on SCAO guidance and thus physical access to the courtroom was limited. However, the notion that the Defendant was denied an open hearing is incorrect.

**E. The District Court has not, and will not, conduct jury trials virtually.**

Allegan County has not, and will not, hold jury trials virtually. The Defendant is, or at least should be, well aware of this as her jury trial has been adjourned due to COVID-19 concerns. The jury trial that was scheduled for April 28, 2021, was adjourned because it could not be held in person. While the Defendant's Notice to Appear for settlement and jury trial states that it is a zoom hearing, the Defendant is well aware that the jury trial will not be conducted over zoom.

Administrative Order No. 2020-14 directed trial courts to "adhere to the phased return of operations as determined by policy guidelines established by the State Court Administrative Office." The Michigan Supreme Court has authority to do this pursuant to 1963 Const, Art VI, Sec. 4, which gives the Supreme Court control over all state courts.

SCAO provided guidelines for reopening the courts. In Phase One, the courts are required to “implement measures to limit gatherings and to ensure minimal foot traffic in the building.” Return to Full Capacity, COVID-19 Guidelines for Michigan’s Judiciary, <<https://courts.michigan.gov/News-Events/covid19-resources/Documents/ReturntoFullCapacityGuide.pdf>> (accessed May 26, 2021). The guidance also states that large venues, including courtrooms and jury rooms should be closed to the greatest extent possible. *Id.* And, face coverings are required in court facilities at all times. *Id.*

The 57<sup>th</sup> District Court’s Plan to Return to Full Capacity is on file with SCAO. In the plan, which requests to move to Phase 2 of Return to Full Capacity, the court states that proceedings will be conducted virtually to the maximum extent possible, consistent with Administrative Order No. 2020-6. The plan also states that in-person court proceedings will be allowed on a limited basis. Moreover, the court issued an order, which can be found on the court’s website, indicating the parameters that must be met before it will hold a jury trial. (Administrative Order, Attachment E). The Order states, “A jury trial may not commence if a determination is made that such a trial would create an excessive public health risk.” *Id.* To hold a jury trial, either the 7-day average of daily percent positive test results is under 10% and the 7-day average number of cases per day, per million is 70 or less or the court must be in Phase 3 of the Return to Full Capacity Guide. Because the county has not reached these objectives, the courts are not holding jury trials.

The court will not hold a jury trial virtually. In fact, the District Court has not held a jury trial since the beginning of the pandemic in March 2020. And, the Defendant is well aware that the court is not holding jury trials virtually. As explained above, the first trial scheduled in April was adjourned because the court could not hold in-person trials. Therefore, the Defendant's constitutional rights have not—and will not—be violated.

## V. CONCLUSION

The Defendant's due process rights have not been violated. She has not been denied counsel. As explained, she was denied a person, who happened to be an attorney, in attendance as part of what she stated was her hearing assistance. The Court made reasonable accommodations for the Defendant's disability including holding an in-person hearing and offering a hearing assistance device. The court also complied with the court rules regarding the Defendant's personal information.

The Defendant's claim regarding the courtroom being open to the public is not correct. As noted, the courtroom was open to the public via YouTube, which is recommended by SCAO. Finally, the Defendant's claim regarding her jury trial being conduct via zoom should be disregarded. The court has not, and will not conduct a jury trial virtually. Therefore, the People respectfully request that this Honorable Court deny the Defendant's Application for Leave to Appeal.

Dated: May 28, 2021

Respectfully submitted,



Meredith R. Beidler (P78256)  
Assistant Prosecuting Attorney

MRB/plc

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7194 Michael Drive  
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**PEOPLE'S RESPONSE TO DEFENDANT'S  
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**ATTACHMENT A**

(Administrative Order D57 2021-06J)

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STATE OF MICHIGAN 48th Judicial Circuit Court 57th District Court Allegan County Probate Court	ADMINISTRATIVE ORDER PLAN TO RETURN TO FULL CAPACITY PHASE TWO (FORWARD)	ORDER NO. C48 2021-05J D57 2021-06J P03 2021-05J
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113 CHESTNUT STREET, ALLEGAN, MI 49010

In accordance with Administrative Order No. 2020-14, effective May 6, 2020, and upon approval of the State Court Administrative Office (SCAO), the chief judges of the 48th Circuit Court, 57th District Court, and the Allegan County Probate Court have consulted with the local health department and determined that gating criteria is satisfied as of May 6, 2021. Specifically:

1. There have been no COVID-19 confirmed or suspected cases in the court facility within a 14-day period; and,
  2. There is 7-day average of 15% or less for positive tests as a percent of total tests; and there is a downward trajectory of documented cases within a 14-day period and,
  4. State and local orders restricting movement and/or requiring shelter-in-place have been rescinded or limited and the SCAO has determined that existing orders would not prevent the court from implementing Phase Two requirements; and,
  5. The chief judge has consulted with health authorities confirming that regional health care facilities are able to treat all patients without crisis care; and,
  6. The chief judge has consulted with health authorities confirming that there is no evidence of COVID-19 rebound within the local community and no need to implement additional social distancing measures based upon a resurgence of infections in the local area.
- A. In order to protect the health and safety of employees and the public, the 48th Circuit Court, 57th District Court and Allegan County Probate Court have agreed to follow the Allegan County COVID-19 Preparedness, Response and Safe Workplace Plan approved on May 14, 2020 and last revised on January 27, 2021, except Page 9 "Reporting Unsafe Working Conditions" which is expressly excluded and replaced with #13 below and Page 11 of "Sick Leave" which is expressly excluded and replaced with #14 below. In addition, the 48th Circuit Court, the 57th District Court and the Allegan County Probate Court also have enacted the following protections:
1. Employees will self-screen for COVID-19 symptoms prior to traveling to the building. Employees who feel sick or have any COVID-19 symptoms will not report to work. Employees who feel sick or display symptoms at work will be sent home.<sup>1</sup> The current employee screening form is included as Appendix A to the Allegan County COVID-19 Preparedness, Response and Safe Workplace Plan.

<sup>1</sup> Guidance on COVID-19 symptoms is evolving rapidly. The most up-to-date information about symptoms of COVID-19 are available on the CDC website at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

2. Court employees have been surveyed and those employees who have self-identified as a vulnerable employee and unable to return to work have been offered appropriate accommodations, including the ability to work remotely if their job lends itself to remote work.
3. To the extent possible, court employees who can work remotely will be allowed the opportunity to work remotely
4. Face coverings for employees will be required in a manner consistent with the SCAO Return to Full Capacity Guide. The court has taken the following steps to ensure proper social distancing and employee:
  - a. Placed physical barriers between workspaces that are not at least six feet apart.
  - b. Marked the floor in common spaces to indicate six-foot intervals.
  - c. Required employees to wear masks while in public spaces.
  - d. Required employees handling mail to wear masks and gloves.
  - e. Implemented staggered shifts of employees to reduce crowd size and the risk of people gathering at start and close times.
  - f. Limited capacity in break rooms.
  - g. Non-essential meetings are being conducted remotely by call-in.
5. Employees will practice good hygiene through hand washing, frequent disinfecting of used items and surfaces, sneezing or coughing into a tissue or elbow, and avoiding touching their faces.
6. Employees will not travel for non-essential business.
7. The court has consulted with the local health department and developed policies regarding employee travel outside of Michigan. Any quarantine and/or isolation requirements will be implemented consistent with the most current guidance from the Centers for Disease Control and/or local public health officials.
8. Employees have been trained regarding COVID-19. The training included good hygiene practices, updated personnel policies, and safety controls at the court facilities.
9. Court facilities have posted signage emphasizing proper handwashing.
10. Shared equipment will be cleaned and sanitized before each use. Examples of shared equipment include copiers, fax machines, and telephones used by more than one

employee during a single shift or in consecutive shifts. This equipment should be wiped down with disinfectant or a disinfectant wipe between uses.

11. The court is following the CDC guidance on cleaning and disinfecting if the facility is exposed to COVID-19.
  12. The court has developed a contact tracing policy and will implement contact tracing procedures after receiving notification that the court facility has had confirmed exposure to COVID-19. These procedures will help the court identify and notify individuals who may have been exposed to COVID-19 and will identify exposure locations that need to be cleaned and disinfected pursuant to CDC guidelines.
  13. Promptly report the unsafe or unhealthful working conditions to your supervisor or Court Administrator.
    - a. Correction of the conditions are essential to protect the health and safety of our employees, officials and the public.
    - b. Supervisors are responsible for correcting health and safety hazards in their workplace and providing specific instructions on proper safety procedures and practices.
    - c. If the unsafe condition cannot be corrected by your supervisor, the supervisor will submit a Track-it work order to Facilities Management.
    - d. If you believe that there is imminent danger to life or health, immediately make a report by calling Facilities Management at (269) 673-0474 and notifying your Court Administrator.
    - e. Anyone who reports an unsafe or unhealthful workplace condition or hazard will not be subject to retaliation, discrimination, or reprisal.
  14. Page 11, Section "Sick Leave," replace "contact Human Resources" with "contact your supervisor or Court Administrator."
  15. All questions or concerns related to this Order or the Allegan County COVID-19 Preparedness, Response and Safe Workplace Plan should be directed to your supervisor and or Court Administrator.
- B. The 48th Circuit Court, 57th District Court, and the Allegan County Probate Court are maintaining the following measures related to public entry into court facilities:
1. The public will be asked to self-screen using posted screening questions prior to entering the court building or will be screened by court personnel or security personnel prior to entering the court building. Screening questions will include, but are not limited to, the following:
    - a. Before Entering This Building:

- Do you have a fever or feel feverish?
  - A touchless thermometer is located at the entrance and all members of the public must past it for entry.
- Do you have any chills?
- Do you have a headache?
- Do you have a sore throat?
- Do you have a runny nose or congestion?
- Do you have a new or worsening cough?
- Do you have shortness of breath?
- Do you have a loss of smell or taste?
- Do you have muscle aches?
- Are you fatigued or tired?
- Are you nauseous or vomiting?
- Do you have diarrhea?
- Have you been in contact with anyone with confirmed Coronávirus (COVID-19)?

b. Do you have a temperature greater than 100.4 degrees? (A touchless thermometer machine is available at the public entrance to the courthouse and is being utilized.)

Any individual responding “yes” to the screening questions or who has a temperature of 100.4 or higher will not be allowed to enter the courthouse. Screening personnel will notify the court of any individual who does not pass the screening procedure. If the person came to the court to file documents, the court will accept those documents for filing. If the person was scheduled to appear as a party or witness in a court proceeding, the court will work to reschedule the hearing/trial as a remote proceeding or to a future date when the person may pass courthouse screening. The County must provide appropriate personal protective equipment (PPE) to any personnel.

- C. In order to facilitate increased activity in the courthouse, the court(s) is/are using the following measures related to court proceedings:
1. Proceedings will be conducted virtually to the maximum extent possible, consistent with Administrative Order No. 2020-6.
  2. In-person court proceedings will be allowed on a limited basis.
  3. In-person court proceedings will be limited to no more than ten people or any number that ensures six-foot social distancing at all times. Face coverings will be required in court in a manner consistent with the SCAO Return to Full Capacity Guide. Masks will be provided by the County prior to entry into the building.
  4. Off-site visits with probationers and clients will resume.

5. Large venues and common areas in the courthouse (e.g. waiting areas, sit-down dining, etc.) will not be open for use.
6. Pursuant to MCR 8.110(C), members of the public or staff who refuse to wear required face coverings or adhere to social distancing requirements may be asked to leave the court facility.
7. Any member of the public who is asked to leave the court facility must be offered an opportunity to conduct court business virtually, attend court proceedings virtually, file documents in an alternative manner, or confer with court administration to determine alternate arrangements for accessing the court.

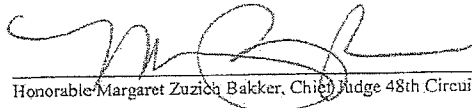
The 48th Circuit Court, 57th District Court and Allegan County Probate Court are regularly meeting with local public health officials to monitor local public health conditions related to COVID-19.

Effective Date: 5/6/2021

Date:

5/6/21

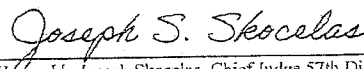
48th Circuit Chief Judge Signature:

  
 Honorable Margaret Zuzick Bakker, Chief Judge 48th Circuit Court

Date:

May 6, 2021

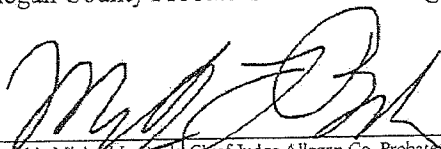
57th District Chief Judge Signature:

  
 Honorable Joseph Skocelas, Chief Judge 57th District Court

Date:

5.6.21

Allegan County Probate Court Chief Judge Signature:

  
 Honorable Michael L. Buck, Chief Judge Allegan Co. Probate Court

STATE OF MICHIGAN

IN THE COURT OF APPEALS

THE PEOPLE OF THE  
STATE OF MICHIGAN,

Plaintiff-Appellee,

vs

KATHERINE LINDSEY HENRY,

Defendant-Appellant,

COURT OF APPEALS NO: 356828

CIRCUIT COURT NO: 21-64004-AR

LOWER COURT NO: 203569SM

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MEREDITH R. BEIDLER (P78256)  
Assistant Prosecuting Attorney  
113 Chestnut Street  
Allegan, Michigan 49010  
(269) 673-0280

KATHERINE L. HENRY  
Defendant in Pro Per  
7194 Michael Drive  
Hudsonville, Michigan 49426

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**PEOPLE'S RESPONSE TO DEFENDANT'S  
APPLICATION FOR LEAVE TO APPEAL**

**ATTACHMENT B**

(SCOA Memo)

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## Michigan Supreme Court

State Court Administrative Office  
Michigan Hall of Justice  
P.O. Box 30048  
Lansing, Michigan 48909  
Phone 517-373-0128

Thomas P. Boyd  
State Court Administrator

### MEMORANDUM

DATE: May 14, 2021

TO: All Judges  
Court Administrators  
Probate Registers

FROM: Thomas P. Boyd

RE: Guidance Regarding Court Operations

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Keeping both court visitors and staff safe remains our number one priority. Downward trends in COVID-19 cases and test positivity, along with increased vaccination rates, keep Michigan's judiciary on a steady path to increase capacity. However, current public health conditions warrant continued safety precautions as outlined in Administrative Order 2020-14 and the corresponding Return to Full Capacity Guide. Simply put, both staff and visitors wear masks and follow social distancing practices as described in the Guide.

On May 13, the Centers for Disease Control issued guidance that fully vaccinated people no longer need to wear face coverings in indoor or outdoor spaces, and may not be required to practice social distancing in some instances. Courts statewide have asked how this revised recommendation impacts court operations. CDC guidance informs individual behavior, and does not have the force of law. The guidance very clearly notes that it DOES NOT APPLY when face coverings and social distancing are required by regulations implemented by other jurisdictions. More importantly, such advice, in the absence of any way to identify who is vaccinated and who is not, creates an unacceptable level of risk.

With safety and access in mind, we will continue to evaluate federal, state, and local guidance and adjust Return to Full Capacity as warranted. For now, we can take a deep breath and continue to protect court employees and the public with current safety measures.

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[REDACTED]

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**PEOPLE'S RESPONSE TO DEFENDANT'S**  
**APPLICATION FOR LEAVE TO APPEAL**

**ATTACHMENT C**

(Remote Hearings and Accommodations under the ADA)

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## Remote Hearings and Accommodations under the ADA

Title II of the Americans with Disabilities Act (ADA)<sup>1</sup> requires that state and local governments provide reasonable accommodations to persons with disabilities to provide access to a court program, service, or building. 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.

Because of the spread of the coronavirus and COVID-19 illness, court facilities closed to the public in March 2020. In order to continue conducting court business, Michigan courts began holding proceedings remotely beginning at the end of March 2020.<sup>2</sup> The need for accommodations under the ADA will continue with remote hearings, although many may look different in a remote world. Michigan courts use Zoom to hold remote proceedings.<sup>3</sup>

If a person requests an ASL interpreter for an ADA accommodation, the interpreter will appear as a participant, just like a party to the case. In Zoom, their name should include “Interpreter” so that participants can easily identify the interpreter. The party who requested the interpreter may wish to “pin” the interpreter’s video feed. Pinning a specific user’s video won’t affect the view of other participants and will not affect cloud recordings.<sup>4</sup> You may find instructions [here](#). If a party who has an ASL interpreter is moved into a breakout room, the ASL interpreter will need to be assigned to the breakout room as well.

Zoom has the capacity to allow closed captioning for participants. If closed captioning is being provided as an accommodation under the ADA, the court must use a Communication Access Real-Time Transcriber (CART). Many Court Stenographic Reporters (CSRs) are also CART-certified and may be utilized to provide this service. If the court does not have a CART-certified CSR, then the court must contact a third-party CART provider for the service. You may find instructions on setting up closed captioning for a proceeding in Zoom [here](#).

Other participants may have visual impairments. If the court is going to utilize the Zoom share screen or chat feature to share information, the court should verbalize what is being displayed on the screen or in the chat. The court could consider reading any chat comments aloud, saving the entire chat for later reference and to share with participants, and sending links or documents shared through the chat to participants via e-mail. Documents or videos shared through the share screen feature would be shared ahead of any proceedings. If it is not, then it should be shared with all parties after the hearing.

There may be some instances where accommodations cannot be made for remote hearings, and the court may have to hold an in-person hearing so that a person with a disability will be able to participate in the proceeding. Persons who require tactile interpretation<sup>5</sup> would be an example. Tactile interpretation requires an interpreter to be in close proximity to the person he or she is interpreting for; for example, a person who is deafblind may have an interpreter who may sign what is spoken onto the person’s hand. It may also be appropriate to hold a proceeding in person for parties who require other types of interpretation or other accommodations to facilitate communication, access, and participation.

The need for ADA accommodations has not disappeared with remote proceedings, but the type of accommodations may look different than courts are accustomed to. Please contact your regional administrator or Court Services at [courtservices@courts.mi.gov](mailto:courtservices@courts.mi.gov) with questions.

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<sup>1</sup> [https://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm)

<sup>2</sup> Michigan Supreme Court *Administrative Order 2020-6* authorized remote proceedings whenever possible.

<sup>3</sup> The Michigan Supreme Court provided a Zoom license to each judge, magistrate, and referee in the state. If a court has elected not to use Zoom, there are other captioners that are compatible with Cisco WebEx and Adobe Connect Pro.

<sup>4</sup> Zoom Help Center “[Pin or Spotlight Video](#)”

<sup>5</sup> Tactile interpretation includes tactile signing, finger spelling (dactylology), and Print-on-Palm (POP). Please see the *Handbook for Michigan Courts on Accessibility and Accommodation for Individuals with Disabilities*.

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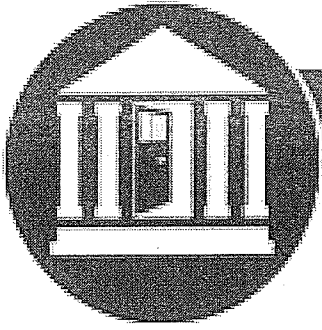
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**PEOPLE'S RESPONSE TO DEFENDANT'S  
APPLICATION FOR LEAVE TO APPEAL**

**ATTACHMENT D**

(Michigan Trial Courts Virtual Courtroom Standards and Guidelines)

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State Court Administrative Office

# Michigan Trial Courts Virtual Courtroom Standards and Guidelines

April 7, 2020  
Revised August 4, 2020

INDEPENDENCE · ACCESSIBILITY · ENGAGEMENT · EFFICIENCY



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The Michigan Supreme Court and the State Court Administrative Office would like to thank the Virtual Courtroom Task Force for their invaluable assistance in preparing these standards, guidelines, and best practices. They convened in record time, reviewed best practices from across the state and nation, and provided thoughtful insights based on their own experiences. With the help of this innovative guidance, Michigan trial courts will be empowered to better serve the public with accessible virtual courtrooms.

### Taskforce Members

**Hon. Kathryn A. Viviano, Chair**  
Judge, C16/Macomb County

**Ms. Laura Brandon-Maveal**  
County Clerk – Gladwin

**Ms. Christina Bujak**  
Chief Court Business Operations – C06/Oakland County

**Hon. Freddie G. Burton, Jr.**  
Chief Judge, Wayne County Probate Court

**Ms. Jodi R. Gordon**  
Court Administrator, Montmorency County Probate Court

**Ms. Elizabeth Hundley**  
County Clerk, Livingston County

**Hon. Darnell Jackson**  
Chief Judge, C10/Saginaw County

**Hon. Bradley S. Knoll**  
Chief Judge, D58/Ottawa County

**Ms. April Lynch**  
Deputy County Executive, Oakland County

**Mr. Martin Marshall**  
County Administrator, Lenawee County

**Ms. Margaret McAvoy**  
County Administrator/Controller, Isabella County

**Mr. John Nizol**  
Deputy Court Administrator, C16/Macomb County

**Hon. Mark S. Switalski**  
Judge, C16/Macomb County

**Mr. William Vaillencourt**  
Prosecuting Attorney, Livingston County (PAAM)

**Ms. Janet Welch**  
State Bar of Michigan

**Ms. Zenell Brown**  
Executive Court Administrator – C03/Wayne County

**Ms. Lori Buiteweg**  
State Bar of Michigan

**Ms. Kristi Cox**  
Chief Deputy Clerk, C44/Livingston County

**Hon. Timothy G. Hicks**  
Chief Judge, C14/Muskegon County

**Ms. Megan Ivey**  
Court Administrator, C22/Washtenaw County

**Hon. Eric R. Janes**  
Chief Judge, Isabella County Trial Court

**Hon. Carol A. Kuhnke**  
Chief Judge, C22/Washtenaw County

**Ms. Ann Marie Main**  
County Clerk, Presque Isle County

**Ms. April Maycock**  
Probate Register, Wayne County Probate Court

**Mr. James McGrail**  
Court Administrator/Magistrate, D41B/Clinton Twp.

**Mr. Avery Rose**  
Probate Register, Kent County Probate Court

**Mr. Andrew Thalhammer**  
Court Administrator, C17/Kent County

**Mrs. Dawn Wagoner**  
Deputy Court Administrator/Magistrate, D86/Grand Traverse County

## Governing Authority

Administrative Order No. 2020-6, Administrative Order No. 2020-14, and Administrative Order No. 2020-19 authorize judicial officers to conduct proceedings remotely (whether physically present in the courtroom or elsewhere). The guidance provided here is designed to ensure that courts conducting remote proceedings pursuant to Administrative Order Nos. 2020-6, 2020-14, and 2020-19 do so based on standards, guidelines, and best practices.

The Virtual Courtroom Task Force has identified current best practices from your colleagues around the state. These best practices are not the only way to meet a standard, but they are examples of what is working and are offered to assist each court and judicial officer to develop their own procedures. The Michigan Trial Court Standards for Courtroom Technology provides guidance on the requirements to support audio and video recording and guidance on the types of court proceedings authorized to use videoconferencing and the authorized uses for videoconferencing. The Michigan Judicial Institute (MJI) has developed resources to assist courts with setting up and conducting a remote proceeding, including a checklist and a bench card for judges.

## A. Virtual Hearings

### 1. Standard

At the start of each hearing, the court must verify with each participant that they are able to proceed and are aware of the procedure for participation, including the time and method of participating. Criminal defendants have the right to be present for each critical stage of a criminal proceeding<sup>1</sup> and all procedures associated with remote hearings must be consistent with a party's Constitutional rights.<sup>2</sup> A defendant may waive the right to be physically present for a hearing and appear by video.<sup>3</sup> Victims have a Constitutional and statutory right to be present. See Const 1963, art 1, § 24 (crime victims have the "right to attend trial and all other court proceedings the accused has the right to attend"); see also MCL 780.761; MCL 780.765(1).

### Guidelines

The court should address, on the record, that the parties are waiving any right they may have to be present in the courtroom for the proceeding. In addition, if there is a victim involved, the court must ensure that the victim's right to be present is addressed on the record.

### Best Practices

The Van Buren Circuit Court (C36) addresses parties on the record to verify that they are waiving their right to be present in the courtroom for the proceedings. If there is a victim involved, the court ensures that the victim's rights are also addressed on the record.

### 2. Standard

Proceedings conducted via videoconferencing technology must be recorded by the court, except for those hearings that are not required to be recorded, such as small claims proceedings<sup>4</sup> or informal traffic hearings.<sup>5</sup> The required recording must be sufficient to produce a verbatim written transcript as if the hearing were held in person in the courtroom.

For purposes of generating a transcript, courts may use the recording of a remote proceeding generated using Zoom or another remote meeting service provider. MCR 8.109(A) authorizes courts to use audio and video recording equipment for making a record of court proceedings; however, it must comply with the Michigan Trial Court Standards for Courtroom Technology.<sup>6</sup> The audio or video recording that is created pursuant to MCR 8.109(A) is the recording from which a transcript can be produced. 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.

<sup>1</sup> *People v Mallory*, 421 Mich 229 (1984)

<sup>2</sup> The Michigan Supreme Court recently affirmed that a defendant has the right to face-to-face confrontation of witnesses in *People v Jemison*, \_\_\_ Mich \_\_\_, (2020) (Docket No. 157812)

<sup>3</sup> *People v Buie*, 298 Mich App 50, 57 (2012), 494 Mich 854 (2013); *People v Heller*, 316 Mich App 314 (2016); MCR 6.006; MCR 3.904

<sup>4</sup> MCL 600.8411(2)

<sup>5</sup> MCL 600.8719(1); MCL 600.8819(1); MCR 2.407(D)

<sup>6</sup> See sections D. Storage and E. Playback and Transcription.

## Guidelines

When using videoconferencing technology or telephonic equipment, best practice is for the system to feed directly into the court's recording system. When the court calls into the Zoom virtual courtroom using Polycom, the courtroom's recording system will record the proceeding in the same way that it would for making a point-to-point Polycom call. Where a direct feed into the recording system is not possible due to equipment limitations, a microphone should be placed near the speaker.

Alternatively, courts that use Justice AV Solutions (JAVS) may purchase Notewise software to record computer-based conference calls. Notewise is a digital recording application that allows direct recording of any conference calls through Zoom, GoToMeeting, and other similar software. It allows operators to listen to monitoring streams and make time-stamped notes, either manually or through quick keys.<sup>7</sup> Courts using other digital recording systems are encouraged to explore similar options for those programs.

### Best Practice

The Macomb County Circuit Court (C16) is using the recording feature in Zoom to create a record of their proceedings. They are utilizing the audio transcript feature in Zoom to create a log for future transcribing.

### 3. Standard

When using Zoom, participants should not have their phone number displayed on the screen, yet this is the default setting in Zoom. The court should change the phone number to the participant's name. Directions for doing this are found [here](#).

### Best Practice

The Oakland County Circuit Court (C06) changes a participant's phone number to their name after they sign in and are in the waiting room.

### 4. Standard

When hosting hearings, the court should enable the "Waiting Room" function in Zoom. Using the waiting room allows the host to control who is admitted to the hearing and prevent participation by individuals who are not litigants in that case. This allows the court to keep the courtroom secure while still allowing the public to view proceedings via YouTube.

### Best Practice

The 41B District Court in Clinton Township (Macomb County) is using Zoom's "Waiting Room" function.

### 5. Standard

Courts should post their daily dockets (on the court's website, if available) and indicate on the docket which hearings are being held virtually.<sup>8</sup> Instructions on how to access virtual hearings should also be provided. To avoid disruption and keep the virtual courtroom secure, Zoom meeting ID(s) should not be provided to the public or press; nonlitigants should only have access to the YouTube channel where the proceeding is livestreamed.

### Best Practice

The Van Buren Circuit Court (C36) and the Alpena and Montmorency County Courts display their daily dockets/court calendars on their websites and livestream their hearings.

The Oakland County Probate Court shares its docket in Google Docs. The court and the parties can update the document as the court calls and completes cases. Parties know their case is going to be called soon, and all participants know what cases are complete. The docket sheet also advises parties if a document, such as a proof of service, is needed.

The 54B District Court has included a link to its dockets in the Virtual Courtroom Directory.

<sup>7</sup> [Notewise can record your computer-based video conference calls.](#)

<sup>8</sup> [Michigan Trial Court Records Management Standards, 3.4.1.2.](#)

## B. Attorney/Client Communication

### 1. Standard

The court must provide a method to enable confidential communication between a party and their counsel.

#### Guidelines

In Zoom, courts can allow an attorney to meet with their client in a breakout room. Breakout rooms will not be audio or video recorded under certain circumstances. If the meeting is being Cloud recorded (recommended), it will only record the main room, regardless of what room the meeting host is in. If local recording is being used (not recommended), it will record the room the participant who is recording is in. The host can set a predetermined amount of time and bring them back into the meeting. If the host does not want to put a time constraint on the breakout room, the host can send a time warning to the breakout room participants to notify them that they should wrap up. If selected as a breakout room option, participants in the breakout room can rejoin the hearing when they are done meeting.

#### Best Practices

The Oakland County Circuit Court (C06) has successfully used the breakout room to accommodate attorneys who need to confidentially meet with a client.

## C. Public and Press Access

### 1. Standard

Access to proceedings must be provided to the public either during the proceeding or immediately after via video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule.<sup>9</sup>

#### Guidelines

The court should create a YouTube account (livestreaming channel) and work with its local court website administrator to post a link to the YouTube channel. Information about public availability of court proceedings via livestreaming must be accessible to the public and press. This can be accomplished by posting the information on the court's website. If the court does not have a website, it is the court's responsibility to develop another method to effectively communicate the availability of court proceedings. Further information about setting up and enabling a YouTube account can be found [here](#).

YouTube automatically records and stores content that is streamed on a channel per its licensing agreements. A YouTube recording is not the official record of the court and need not be maintained on the court's YouTube Channel. 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.

A court may also provide access to the public by encouraging members of the press and public to contact the court to receive the Zoom meeting information to watch proceedings. Courts that elect this method of access must take precautions to avoid malicious interruption of proceedings, such as Zoombombing.

#### Best Practice

The 41B District Court in Clinton Township (Macomb County) is using YouTube to live stream court proceedings. Their livestream website can be found [here](#).

Many courts are livestreaming their proceedings on YouTube. A directory may be found [here](#).

## D. Making a Clear Record

### 1. Standard

Courts shall make a verbatim record of each proceeding.<sup>10</sup>

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<sup>9</sup> MCL 600.1420; MCR 8.116; see also *Limiting Access to Criminal Proceedings Benchcard* and *Limited Access to Family Division Proceedings Benchcard*.

<sup>10</sup> MCR 8.108, MCL 600.8635

## Guidelines

These guidelines are intended to provide instruction on how to ensure that the recording is clear and can be used to accurately develop a transcript. Also see [section A2](#) for standards and guidelines on using Zoom to record proceedings.

### Use Gallery View

When multiple people talk at once, the Zoom system may have difficulty determining which participant is speaking. This is because the default function is to shift the screen to the person speaking. Using the “gallery view” will allow the court to see all of the participants and the court reporter/recorder to know who was speaking. Click [here](#) to learn more about the gallery view.

### Advise Parties to Speak Slowly and to Wait Until Prompted

Judges and court staff must be vigilant in ensuring quality recording so an accurate transcript can be prepared. Because of a few second time delay when participating via telephone or video conferencing, parties may be more likely to overlap when talking, so judges or court staff should frequently remind parties to speak slowly and to not interrupt. If overlap occurs, courts should ask parties to repeat what they said and encourage parties to only speak when they have been prompted to do so, unless there is an objection or some other reason to speak out of turn. **At a minimum, parties appearing telephonically should be instructed to identify themselves each time they speak.**

### Courts Must Act as Zoom Host to Control Meetings

Zoom has a number of features to control who may enter a virtual hearing and who may speak during it. The host of the proceeding has the ability to mute and unmute all participants in the virtual courtroom, but the host be logged into Zoom to create that control. Zoom also allows the designation of a co-host; judges can be the host and a staff member, either a clerk or recorder/operator, can be the co-host and manage participants. The host can also engage a feature that mutes participants upon entry into the virtual courtroom. Judges should advise participants that they are using that feature. Participants who want to speak may “raise their hand;” the host can then unmute them so they can speak. The judge is responsible for maintaining order and decorum just as they do in the physical courtroom. For more information on hosting a meeting, click [here](#).

### Allow or Limit Chat Functionality

The court, through the host (or co-host), can allow the host and participants to “chat” with everyone, with only the host, with everyone publicly or privately, or with no one. The chat function allows participants to type text (comments) during the proceeding. It is up to the court to allow or limit the function. For example, a private chat between an attorney and client may be desirable; however, a chat between the court and one attorney could allow for ex parte communication or comments to be made that are not included in the official record. If a court elects to enable the chat feature, public chats (not private chats) may be saved. When saving the chat, the court can save any chat messages that the host received privately or those chat messages that were sent to “everyone.” Messages sent privately between participants, not including the host, cannot be saved by the host. For more information on the chat functionality, click [here](#).

Judges should use caution when using the chat feature to ensure there is no ex parte communication between the judge and one party.

### Remove Disruptive Participants

Zoom allows a host to remove a participant, if needed. If the court is using the waiting room feature, a participant can be returned to the waiting room. That participant cannot rejoin the meeting on their own and can only be readmitted by the host. To learn more about the waiting room functionality, click [here](#). See [section A4](#) for further information regarding utilizing this function.

### Put a Participant on Hold

A host can temporarily remove a participant from the virtual courtroom, while the rest of the participants continue the meeting. When one or more participants are put on hold, their video and audio connections will be disabled. This might be used when the judge wants to speak to the attorneys (without a witness hearing) or address an issue with only court personnel. For more information on putting participants on hold, click [here](#).

### Play Sound when a Participant Enters or Leaves a Meeting

A host can configure settings to play a sound when someone enters or leaves a proceeding. This may help the court

and the recorders and operators track the participants in the hearing. Information about these settings can be located [here](#).

### Troubleshoot an Audio Echo in a Meeting

There are three causes of an audio echo, or feedback, during a Zoom meeting:

- 1) The participant called in by phone and is using his or her computer's audio at the same time;
- 2) There are participants with computer or telephone speakers that are too close together; or
- 3) There are multiple computers with active audio in the same conference room.

In each instance, the feedback can be eliminated if there is only one audio source. Zoom has [step-by-step instructions](#) to address this issue.

### Best Practice

The [Oakland County Circuit Court \(C06\)](#) downloads the Zoom recording into their own digital recorder (FTR) to assist them in making a verbatim record of the proceedings.

## 2. Standard

Numerous security incidents have occurred nationwide involving the use of video and teleconferencing platforms. The following steps will help mitigate such hijacking:

- Do not make Zoom meetings open to the public. In Zoom, use the waiting room feature and control the admittance of guests.
- For a separate private meeting, use the scheduling options in Zoom to create a meeting for a specific time, and with a unique meeting ID that is shared only with the invited participants.
- Do not share any meeting ID on an unrestricted, publicly-available social media post. Only provide the meeting ID and password(s) directly to specific litigants.
- Manage screen sharing options by limiting screen sharing to "Host Only."<sup>11</sup>

### Best Practices

The [41B District Court in Clinton Township \(Macomb County\)](#) is using Zoom's waiting room function to ensure that the correct participants are in the hearing.

## E. Logging Requirements

### 1. Standard

Videoconferencing a proceeding must allow for the person conducting or administering the proceeding to create a recording sufficient to enable a transcript to be produced subsequent to the hearing. Comply with current logging standards<sup>12</sup> to facilitate accurate transcript preparation.

### Guidelines

To assist in complying with logging standards, the judge or hearing officer should establish and adhere to certain verbal practices, including:

- Stating the case number and title;
- Indicating the start and end time of the hearing;
- Requiring each participant to state and spell their name;
- Reminding all participants to speak slowly, clearly, and one at a time.

Zoom has a private messaging "chat" feature that may be used to create the log. Any content created using the "chat feature" is saved along with the audio/video when it is being recorded. The chat file in Zoom provides a time-stamped log of the chat messages, showing who the message was from and the time it was sent. The person in

<sup>11</sup> [Federal, State, and Local Law Enforcement Warn Against Teleconferencing Hacking During Coronavirus Pandemic](#)

<sup>12</sup> See the [Manual for Court Reporters and Recorders](#) and [Michigan Trial Court Standards for Courtroom Technology](#); see also [MCR 8.109](#)

charge of recording may create the log by typing notes into the “chat” feature, including the name of the court, name of the judge, case number, case name, parties present, witnesses called, and any other essential notations during the hearing. When a transcriber is producing a transcript from one of these recordings, looking at the play timeline at the bottom of the screen will allow him or her to obtain the time of any witnesses speaking and assist in the production of an accurate transcript.

Courts may also contract with freelance CSRs, CERs, and CEOs for recording purposes. If the court uses a CSR to stenographically record the hearing as a Zoom participant, there is no need to log the proceeding or record the proceeding separately because the stenographer’s recording and notes are the official recording from which the transcript is prepared. It is recommended that the court maintain a backup recording of a CSR’s record of the proceeding. The SCAO maintains a list of currently certified reporters and recorders and a list of registered reporting firms. The CSR stenographically recording a proceeding has the same responsibility to interrupt and clarify as if all participants were physically present in a courtroom.

The host of the meeting should monitor the hearing to ensure that the sound is functioning, speaking is clearly heard, and the video is recording. This will ensure that the record is captured appropriately and thoroughly for future transcription. Judges should consider allowing staff to host or co-host each hearing to facilitate this responsibility.

### **Best Practice**

The Oakland County Circuit Court (C06) uses Zoom to create their record.

## **F. Exhibits**

### **1. Standard**

Materials that are intended to be used as evidence at or during a trial shall not be filed with the clerk of the court, but shall be submitted to the judge for introduction into evidence as exhibits.<sup>13</sup>

### **Guidelines**

Courts may allow exhibits to be submitted to the court via e-mail prior to the proceeding so they can be marked and logged before the hearing. Courts may also consider other available technologies, such as document-sharing software, to accomplish this. The court and parties should determine in advance how proposed exhibits will be displayed to witnesses. During remote proceedings, the court may allow parties to share their screen to display an exhibit. Files may also be shared through Zoom’s chat feature.

If the evidence is a physical object and is not transferrable by file transfer, such as a weapon, and the parties do not agree that a photograph of the evidence suffices, then, pursuant to MRE 612, the court may order it made available for inspection at a designated location, day, and time.<sup>14</sup>

## **G. Witnesses**

### **1. Standard**

Trial courts may conduct certain proceedings through the use of two-way interactive video technology, including hearings where a witness may testify.<sup>15</sup> The use of videoconferencing technology must be consistent with a party’s Constitutional rights.<sup>16, 17</sup>

### **Guidelines**

The task force has issued a companion document titled “Remote Witness Instructions.” Courts may provide the document to witnesses ahead of time so they will be prepared to testify.

<sup>13</sup> MCR 2.518

<sup>14</sup> For the use of exhibits during jury trials, please refer to the *Standards and Recommendations for Remote Jury Trials*.

<sup>15</sup> MCR 2.407 (general civil); MCR 3.904 (delinquency and child protective); MCR 5.140 (probate); MCR 6.006 (criminal).

<sup>16</sup> The Michigan Supreme Court recently affirmed that a defendant has the right to face-to-face confrontation of witnesses in People v Jemison, \_\_ Mich \_\_; (2020) (Docket No. 157812).

<sup>17</sup> Administrative Order No. 2020-6 reiterates that the use of videoconferencing technology must be consistent with a party’s Constitutional rights.

If a court sequesters a witness, the court could consider not livestreaming a relevant proceeding, but posting the video of the proceeding after it happens. Alternatively, the court could instruct the witness not to watch the livestream or they will be found in contempt of court.

If it appears that a witness is being coached by someone off-camera, the court may order them *sua sponte* to change the camera to show any other person who may be in the room with them. The court may take necessary and appropriate steps to assure witness testimony is without influence or distraction.

Witnesses may experience technology issues similar to parties, attorneys, and the court. If there are technology issues while a witness is testifying and those issues cannot be resolved, the court should adjourn the hearing and reschedule for in-person testimony.

## H. Providing Zoom Meeting Information to Parties

### 1. Standard

The court shall provide adequate notice to the parties and ensure that they are able to participate remotely.

#### Guidelines

The court can provide the Zoom hearing information to parties in the following ways:

- a. Court staff may phone the parties in advance and obtain the e-mail address to which the meeting code/invitation and any password can be sent;
- b. If the party does not have e-mail or the ability to join by video, the court should provide the telephone number to join the meeting and the meeting code so that the party can participate via phone; or
- c. The court may design a new document that lists the court proceeding, court date, time of hearing, and the Zoom meeting ID.

#### Best Practice

The 41B District Court in Clinton Township (Macomb County) e-mails specific instructions to participants about how to access Zoom, along with the meeting ID. The court also sends a text message to parties with their Zoom meeting information a set number of days before the proceeding. The text message includes a link to the Zoom information so the party can connect through the text message.

The Kent County Probate Court (P41) modifies the SCAO notice of hearing form to add the Zoom meeting ID generated when scheduling the proceeding, including a password if applicable, and information about accessing Zoom.

## I. Business Processes in Support of Virtual Courtroom

### 1. Standard

Courts must be able to support their fundamental business processes when establishing a virtual courtroom. This includes the ability to operate as if the court was using its traditional brick and mortar courthouse. The court needs to account for electronically filing documents, electronically signing orders to document the court's hearings, and maintaining the decorum of the court. Each court will have slightly different business processes to account for local differences.

#### Guidelines

##### Electronic Filing

If in-person filing of court pleadings is limited due to the state of emergency, Administrative Order No. 2020-19 allows for court pleadings to be accepted for filing by other means, such as U.S. mail, e-Filing, e-mail, or facsimile, until further order of the Court.

#### Best Practice

The Livingston County Circuit Court (C44) is allowing PPO documents to be filed via e-mail from a local domestic violence shelter.

## Electronic Signatures

MCR 1.109(E) permits electronic signatures on documents. While it may seem more efficient to allow staff to stamp the judge's signature on orders that were entered on the record or could be approved in the judge's absence, it is prohibited and only the judge should be affixing his or her signature to documents. MCL 8.3g requires a signature to be the proper handwriting of the person signing or, if the person is unable to write, the person's proper mark. Clerks are prohibited from affixing a judge's signature to a document unless the judge signed the original document and the clerk is affixing the signature to a duplicate copy.

## Best Practice

The Oakland County Circuit Court (C06) is using Adobe to sign and exchange documents.

## Maintaining the Decorum of the Court

Despite not being physically in the courtroom, the court should continue to remind participants of the following:

- a. The proceeding is live. Anything said during the proceeding may be overheard by all of those observing.
- b. The proceedings are being recorded. Everything said will be captured and made part of the record, just as in a physical courtroom.
- c. Courtroom decorum rules still apply. Those participating should continue to operate as if they were inside the courthouse. Standards, including decorum, demeanor, and dress code, still apply.
- d. Staff participating in virtual proceedings should have a professional background. Courts are encouraged to use pictures of their courtroom as the background. If the court does not have one available, SCAO can provide one. Information on how to set up a virtual background for the court can be found [here](#).

## Best Practice

The Van Buren Circuit Court (C36) provides participants with instructions on how to join a virtual court proceeding. The instructions remind participants that the "call is a court proceeding and an extension of the court."

The Alpena and Montmorency County Probate Courts conduct weekly Zoom training sessions for any member of the public who wishes to participate. This training educates the participant on how to use Zoom functions and what to expect in the remote proceeding.

## Interpreters

There are remote proceedings where ASL interpreters and foreign language interpreters will be necessary to ensure full participation and access by one or more parties in a case.

Interpreters will appear as a participant in a remote hearing, just like a party to the case. In Zoom, the interpreter's name should include "Interpreter" so that he or she may be easily identified.

A participant may "pin" the interpreter's video feed in their view to be able to view him or her easily. If the party and their attorney are moved into a breakout room, the interpreter will need to be assigned to the breakout room and brought back to the hearing at the same time as the parties.

The use of video remote interpreting (VRI) often requires the use of the consecutive interpreting mode.<sup>18</sup> Simultaneous mode interpreting functionality<sup>19</sup> is available on some VRI platforms (e.g. Zoom). It is likely, depending on what platform is being used, that foreign language interpreters will be using the consecutive mode of interpretation.

The task force issued a companion document titled "Remote Proceedings and Accommodations under the ADA," which provides an overview of different types of accommodations that may be requested by individuals and how courts provide those accommodations.

<sup>18</sup> Consecutive interpretation is where a person speaks and the interpreter says what the person said when they stop speaking.

<sup>19</sup> Simultaneous interpretation is where the interpreter provides the interpretation as the person is speaking.

**STATE OF MICHIGAN**  
**IN THE COURT OF APPEALS**

THE PEOPLE OF THE  
STATE OF MICHIGAN,

Plaintiff-Appellee,

vs

KATHERINE LINDSEY HENRY,

Defendant-Appellant,

COURT OF APPEALS NO: 356828


CIRCUIT COURT NO: 21-64004-AR

LOWER COURT NO: 203569SM

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MEREDITH R. BEIDLER (P78256)  
Assistant Prosecuting Attorney  
113 Chestnut Street  
Allegan, Michigan 49010  
(269) 673-0280

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KATHERINE L. HENRY  
Defendant in Pro Per  
7194 Michael Drive  
Hudsonville, Michigan 49426  


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**PEOPLE'S RESPONSE TO DEFENDANT'S  
APPLICATION FOR LEAVE TO APPEAL**

**ATTACHMENT E**

(Administrative Order D57 2021-07J)

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STATE OF MICHIGAN 48th Judicial Circuit Court 57th District Court Allegan County Probate Court	ADMINISTRATIVE ORDER Establish Parameters for Conducting In-Person Jury Proceedings during the Covid-19 Pandemic	ORDER NO. C48 2021-06J D57 2021-07J P03 2021-06J
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113 CHESTNUT STREET, ALLEGAN, MI 49010

This administrative order is issued in accordance with Michigan Supreme Court Administrative Order No. 2020-19, effective June 26, 2020. The purpose of this order is to establish parameters for conducting in-person jury proceedings during a pandemic.

The court shall:

- Work in ongoing consultation with the local public health department to determine whether conducting each jury proceeding will create an excessive public health risk, by assessing the following metrics:
  - The 7-day average of daily percent positive test results for the county must be 10 percent or less AND the 7-day average of number of cases per day, per million people in the county, must be 70 or less. (If a county has a daily 7-day average of fewer than 20 cases, the criteria of 70 cases per million or less may not apply, depending on county population.)
  - OR
  - The court is in Phase 3 under the Return to Full Capacity Guide.
  - In addition, the court's decision about whether to proceed with a jury trial must consider the following:
    - The percentage of cases in the county that are associated with localized outbreaks, such as nursing homes;
    - The number of deaths among county residents;
    - The proportion of emergency department visits for coronavirus-like symptoms for the Michigan Economic Recovery Council region;
    - The COVID hospitalization rates for the Michigan Economic Recovery Council region; and,
    - Whether there have been known COVID-19 cases associated within the court facility during the past 14 days, and if the building has evidence of ongoing transmission.
- A jury trial may not commence if a determination is made that such a trial would create an excessive public health risk. Excessive risk, is risk of disease transmission that cannot be reasonably mitigated through implementation of the safety precautions provided here or otherwise recommended by the local public health department.
- Maximize the use of remote participation as much as possible for all other court proceedings within the courthouse on the days of jury proceedings.
- On days when jury proceedings are being conducted, to the extent possible, collect the names and contact information of anyone coming into the building. Assure the individual that the collected information will only be used for contact tracing, if necessary.
- Adhere to the following checklist regarding risk mitigation measures.

**Section 1. Stakeholders**

The court shall consult with all of the following stakeholders for planning and preparation prior to commencing each scheduled trial:

- Health Department

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- Attorneys
- Sheriff or Court Security
- Facilities Maintenance
- Information Services and Technology
- County Clerk
- Courtroom Staff
- Other city/county offices that would be impacted by jury traffic.

## Section 2. Physical Location

The court has reviewed and determined the following physical specifications for on-site or off-site locations.

- For all jury trial activities, including selection, trial, and deliberations, the court requires six-foot social distancing and face coverings consistent with the Return to Full Capacity Guidance.
- Security needs have been met.
- If an off-site location is used, the court will post notice of the off-site location for the public, but will not need to complete a separate LAO for places of holding court.
- The trial will be recorded according to SCAO standards.
- The court will adhere to ADA compliance.
- The layout of the room allows for: jurors to see witnesses; jurors to hear the proceedings; parties/attorneys to interact easily with jurors; and the judge to see all participants.

## Section 3. Summoning Jurors

- Panel selection will remain consistent with MCR 2.511.
- Communication addressing safety concerns, selection, and trial location will be provided to all prospective jurors.
- Courts will consider and grant any requests for excusals or deferrals because a juror or person residing with them may be considered high-risk for COVID-19.

## Section 4. Jury Selection

- Jurors will be screened for COVID-19 symptoms in accordance with the protocols established in the court's return to full capacity phased plan. A juror that cannot pass the screening will not be allowed to enter the facility.
- Any jury selection held at the courthouse will be done in a room that can accommodate the number of potential jurors summoned for jury duty, either in bulk or by staggered reporting, with proper social distancing.
- Any jury selection held remotely via Zoom will be consented to by all the parties if required.<sup>1</sup> Additionally, all parties and potential jurors must be provided instructions for how to access the remote jury selection.

## Section 5. Jury Trial

The court has determined processes for the following trial aspects:

- The process for side bars with attorneys will be that both attorneys will wear masks and keep the side bars as brief as possible.
- The process for handling exhibits, including sharing with the jury, will be that each individual will receive their own copy of each exhibit that is a document or picture and any other items that are exhibits will require anyone who touches the item to use a sanitizing wipe before access.

<sup>1</sup> See Remote Jury Trial Discussion Guide for considerations.

- The district court will have all exhibits available for review by the jurors on an extra table in the courtroom. Jurors will be asked to wear gloves if they want to touch an exhibit. If gloves are not used, the exhibit will be wiped down with a sanitizing wipe after touching it.
- The process for hearing motions outside the presence of the jurors will be to move the jurors into a separate room and use the courtroom.
- The process for addressing a seated juror who does not pass the health screening or who becomes ill during the proceedings will be to not let them enter the building or ask them to leave the building immediately and have an alternate juror step in to complete the process.
- The process for juror breaks and refreshments will be that jurors will be provided individually wrapped food items and hand wipes and they will be allowed to obtain their own lunch of their choosing during their lunch break and they will have a bathroom designated specifically for jurors which only allows for one person at a time and will be cleaned regularly.

**Section 6. Jury Deliberations**

- Jury deliberations will be held in the courtroom instead of the jury room for district court. Recording equipment in the courtroom will be turned off during deliberations.
- Jury deliberations will be held in a private space at the courthouse large enough to accommodate physical distancing for the Circuit Court most likely the large jury assembly room on the main floor.

**Section 7. Public Access**

- The public may view the proceeding in the courtroom or at the off-site location up to a maximum room capacity, adhering to six-foot social distancing measures and wearing face coverings.
  - If the location cannot accommodate public viewing, public access will be provided by other means as authorized by SCAO. Note: Please review MCR 8.115 and Administrative Order 1989-1 regarding livestreaming of jurors or the jury selection process.
- Keep a record of all jury proceedings held that includes case number and date of jury proceeding, to submit to SCAO as requested.

Effective Date; May 10, 2021

Date:

5/10/21

48th Circuit Chief Judge Signature:

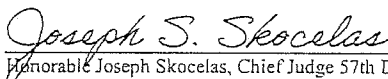


Honorable Margaret Zuzich Wacker, Chief Judge 48th Circuit Court

Date:

May 7, 2021

57th District Chief Judge Signature:

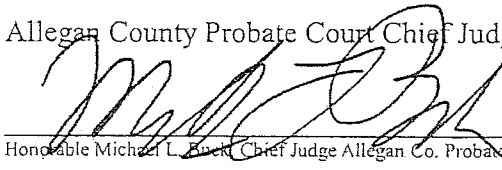


Honorable Joseph Skocelas, Chief Judge 57th District Court

Date:

5-10-21

Allegheny County Probate Court Chief Judge Signature:



Honorable Michael L. Buck, Chief Judge Allegheny Co. Probate Court