Order

Michigan Supreme Court
Lansing, Michigan

April 7, 2020

ADM File No. 2020-08

Administrative Order No. 2020-6

Order Expanding Authority for Judicial Officers to Conduct Proceedings Remotely

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

In response to the extraordinary and unprecedented events surrounding the COVID-19 pandemic in Michigan, the Court has adopted a number of administrative orders authorizing courts to implement emergency measures to mitigate the transmission of the virus and provide the greatest protection possible to those who work and have business in our courts. During the past few weeks, Michigan's judges, court administrators, court staff, court clerks, attorneys, law enforcement officers, probation staff and many others who support our courts have continued to serve the public with courage and conviction and have shown they are up to the challenge of both limiting foot traffic in our courts while creatively adopting new business methods and implementing new technologies to conduct the court's business and ensure that our courts remain accessible to the public to the greatest extent possible during this crisis.

Although our highest priority during this crisis is for courts to continue to be vigilant and protect against further spread of the coronavirus, we must also continue to ensure that our courts operate as efficiently and effectively as possible under the circumstances, continue to ensure timely hearing and disposition of essential matters, and make our best efforts to provide timely justice in all other matters. The purpose of the order is to empower our courts and judges to meet this challenge by allowing them to use innovative ways to conduct court business remotely, including best practices as identified by the State Court Administrative Office.

On order of the Court, pursuant to 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, the Court authorizes judicial officers to conduct proceedings remotely (whether physically present in the courtroom or elsewhere) using two-way interactive videoconferencing technology or other remote participation tools under the following conditions:

- any such procedures must be consistent with a party's Constitutional rights;
- the procedure must enable confidential communication between a party and the party's counsel;

- access to the proceeding must be provided to the public either during the proceeding or immediately after via access to a video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule;
- the procedure must enable the person conducting or administering the procedure to create a recording sufficient to enable a transcript to be produced subsequent to the activity.

While this order is in effect, and consistent with its provisions, all judges in Michigan are required to make a good faith effort to conduct proceedings remotely whenever possible. Although adjournments are permitted when necessary, courts are directed to implement measures to ensure all matters may proceed as expeditiously as possible under the circumstances, given the particular public health conditions in each locality and the technology resources and staffing situations in place at each court.[1] The Michigan Judicial Institute will continue to provide instruction and other training materials on procedures to conduct remote hearings. Courts should also consult with their regional administrators in working toward this goal.

A judge who wishes to participate from a location other than the judge's courtroom shall do so only with the written permission of the court's chief judge (email is sufficient). The chief judge shall grant such permission whenever the circumstances warrant, unless the court does not have and is not able to obtain any equipment or licenses necessary for the court to operate remotely.

Judges who conduct remote proceedings must provide notice of the time and procedure for participating in the remote hearing, and verify that all participants are able to proceed in this manner. Judges who operate under this method must comply with any standards promulgated by the State Court Administrative Office for purposes of this order. Courts may only operate remotely as long as they can do so safely and consistent with the Governor's recent executive orders relating to the COVID-19 pandemic.

This order is effective during the period of the State of Emergency declared by Governor Whitmer under Executive Order 2020-33 or as further ordered by the Court.

[1] To the extent Administrative Order No. 2020-2 may be interpreted to require the adjournment of some matters, this order replaces that directive.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 7, 2020

Clerk