

Remote Hearings and Access to Justice

During Covid-19 and Beyond



**Created by the California Commission on
Access to Justice**

Lightly Adapted for Use By:



Remote Hearings Guide

INTRODUCTION

Objective of this guide. After the COVID-19 crisis, the use of technology for court appearances will very probably continue. This guide brings together issues and suggestions from the most comprehensive guides we have located on that subject. Court users need equal access to justice in remote proceedings in civil legal matters that touch on critical needs and interests such as evictions, temporary restraining orders, child custody disputes, health care, or debt collection. Judicial officers and court staff need efficient and effective processes for providing such services with the goal of reaching a resolution with minimal access impediments.

How to use this document. Decisions about whether and how to organize and conduct proceedings remotely are for the courts to make. Local needs, conditions, and capabilities must govern. One size does not fit all. Courts are making decisions based on technological considerations, using the expertise of the court's IT staff, working with the Judicial Council Information Technology office. This guide focuses on considerations about access to justice in making arrangements for remotely conducted proceedings — providing a topical discussion of issues, resources, and recommendations from cited sources. We suggest using the topics at least as a checklist in planning for and conducting remote court proceedings.

Additional resources and assistance. While this guide seeks to consolidate a number of helpful resources, others maintain webpages dedicated to the COVID-19 crisis and remote hearings that are regularly updated:

- The American Bar Association's Standing Committee on Legal Aid and Indigent Defense (SCLAID) has compiled materials on *COVID-19 Resources* at https://www.americanbar.org/groups/legal_aid_indigent_defendants/resources/covid-19-resources/?cpx_camp_rule_id=3565
- National Center for State Courts has a site, *Coronavirus and the courts*, at <https://www.ncsc.org/pandemic>
- The Courts of the State of Michigan, at <https://courts.michigan.gov/News-Events/Pages/VCR.aspx>
- The Texas Judicial Branch maintains a site on *Zoom Information and YouTube Support*, TX JUDICIAL BRANCH, <https://www.txcourts.net/electronic-hearings-zoom>

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TOPICS, RESOURCES, AND RECOMMENDATIONS

I. DECIDING WHICH PROCEEDINGS TO CONDUCT REMOTELY

After the court closures to respond immediately to the COVID-19 crisis, courts in California and some other jurisdictions have been encouraged to engage in remote hearings where possible.¹ The local needs and practices of Superior Courts will suggest priorities for types of proceedings that would be appropriate for early adoption of remote hearing technologies.

It may be helpful to consider different categories of proceedings in deciding which deserve priority.² One category consists of critical court services that need to be provided to self-represented litigants (SRLs) and court users generally, especially and particularly during and after the pandemic. These are matters surrounding essential areas of life, such as personal safety (domestic violence), emergency child custody matters, and proceedings that affect the health of, and access to health care for, people affected by the virus. For example, the Superior Court of Alameda in California is conducting a select number of teleconferenced hearings, primarily focusing on domestic violence and family law.³

A second category could consist of proceedings that are amenable to remote hearing technology and procedures — especially for issues that affect people's ability to get on with their lives. Examples might be guardianships, uncontested divorces,⁴ and probate proceedings. This category might include defaults, provided that there must be adequate assurance that notice was proper — with attention to whether service may have been made to an address that was not accessible during shelter-in-place periods — and that documentation requirements are satisfied. On the other hand, proceedings involving submission of substantial documentary evidence are more difficult to conduct using remote technology, absent advance staging and/or robust technology available to all participants.

A third category could include procedures capable of reducing or alleviating the backlog of some types of hearings that will take place when the courts fully reopen. For example, evictions and foreclosures are suspended in many jurisdictions. When they resume, courts may face enormous backlogs. Before that happens, courts might use remote hearing technology for mandatory settlement conferences (perhaps conducted by experienced attorneys acting as pro tem settlement judges). Mandatory settlement conferences and/or preliminary pretrial

¹ See NATIONAL CENTER FOR STATE COURTS, *Virtual Hearings: Statewide Orders for Virtual Hearings*, <https://public.tableau.com/profile/ncscviz#!/vizhome/StateCourtResponses to COVID-19/CovidTheCourts> (California's order urges use and suspends conflicting rules).

² NATIONAL CENTER FOR STATE COURTS, CIVIL JUSTICE INITIATIVE, *Findings and Recommendations on Remote Conferencing*, <https://www.ncsc.org/~/media/Microsites/Files/Civil-Justice/NCSC-CJI-Appendices-G.ashx> ("The higher the stakes of the hearing or case event, the better technology needs to be (e.g., transition from use of telephonic conferencing to video conferencing as complexity of case event increases).").

³ SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, *April 16, 2020 Press Release*, <http://www.alameda.courts.ca.gov/Pages.aspx/COVID-19>.

⁴ See, e.g., *Order Providing Guidance on Videoconference Hearings for uncontested divorces in Ohio*, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-covid-19-oh-order-providing-guidance-videoconference-hearings.pdf.

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conferences in civil cases could be conducted remotely (and some might be conducted by pro tem judges), which might reduce backlogs or, at least, provide information for use in setting scheduling priorities for later in-person proceedings. Judges handling civil law and motion matters might consider whether there are additional categories of matters that they can restart sooner using remote hearing technology, reducing the backlog when courthouses reopen.

II. SELECTING AND IMPLEMENTING THE TECHNOLOGY⁵

For efficiency, many courts — and some entire states — tend to select a single technology platform for their remote proceedings. Although a single vendor, Zoom, is being widely used, a number of alternative vendors exist. A March 30, 2020 Judicial Council memorandum identifies products available for use by courts for videoconferencing.⁶ Because the sources we are summarizing all refer to Zoom, it will be the focus of many of the points in this guide. However, there could be reasons for making a different selection.⁷ Along with the other points discussed below, a court might already have a relationship with a vendor, such as CourtCall.

Courts' Information Technology staffs, working with the Judicial Council Information Technology office, will, of course, play a key role in the selection of a platform for remote conduct of proceedings. The trial courts of the State of Michigan began using Zoom technology for remote proceedings a year before the current health crisis. They have generated a wealth of guidance on technical and operational matters.⁸

The availability to the courts and individual judicial officers of suitable hardware — such as wide-band connections, computers with cameras, scanners, printers, and suitable audio equipment — may narrow or determine the choice of technology. The Michigan materials cited in footnote 8 offer detailed suggestions about these matters. The focus of this guide, however, is on arrangements that may make remote proceedings less of an impediment to providing equal access to justice to all those who use the courts.

⁵ See generally JOINT TECHNOLOGY COMMITTEE, *JTC Quick Response Bulletin: Strategic Issues to Consider when Starting Virtual Hearings* (Apr. 7, 2020), https://www.ncsc.org/~/media/Files/PDF/About%20Us/Committees/JTC/2020-04-07%20QR%20Virtual%20hearings_final.ashx.

⁶ <https://www.courts.ca.gov/documents/Memorandum-to-Grant-Recipients-during-COVID-19.pdf> at page 3; see also S. Whaley, *Use of Telephonic and Video Conferencing Technology in Remote Court Appearances* (June 20, 2016) <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/tech/id/850>.

⁷ See generally NATIONAL CENTER FOR STATE COURTS, *Video Conferencing Configurations*, <https://www.ncsc.org/~/media/Files/PDF/Newsroom/Coronavirus%20Resources/Video-Conferencing-Configurations.ashx> ("There are many useful virtual conferencing platforms. Most have fairly similar features," but there are some basics that your platform should have, such as an "auto-generated meeting ID," the ability to prevent "participants from entering a meeting before the host," and a "waiting area" function). See also *Key Virtual Hearing Platform Capability Considerations, Version 1*, NATIONAL CENTER FOR STATE COURTS (Apr. 7, 2020), <https://www.ncsc.org/~/media/Files/PDF/Newsroom/Coronavirus%20Resources/Key-Virtual-Hearing-Platform-Capability.ashx>.

⁸ See *Michigan Trial Court Standards for Courtroom Technology* (revised April 17, 2020). https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_stds.pdf; *Michigan Trial Court Standards for Courtroom Technology* (4/20), https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/ct_stds.pdf#search=%22technology%20standard%22.

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Possible technology selection criteria affecting access to justice

1. “Digital Divide” — Accessibility to users without technologically compatible devices.

Almost everyone has, or can use, a telephone. Many people have smartphones (although they can present obstacles, as noted below). But proceedings that require a personal computer may not be accessible to many self-represented litigants.

Consider using a technology that allows the option of voice-only participation and can be accessed via a toll-free telephone number. Where the fairness of a proceeding might be affected by differences in the mode of access, the court might determine through questioning before a hearing whether to conduct the proceeding for all participants via voice only, if that is the only mode of access available to one of the parties.

As distancing rules and circumstances permit, the court’s Self-Help center may offer information and assistance regarding places where self-represented litigants can use computer equipment to participate in remote court proceedings.

2. Is cost to users a barrier?

Consider whether a technology platform imposes charges⁹ that are inconsistent with the intent of the fee waiver in the jurisdiction. Zoom, for example, charges a subscription fee to the host, but not to other users. CourtCall charges users, except that it waives the fee to those who have received a court fee waiver.

3. Is the technology platform compliant with requirements for accessibility to persons with disabilities?

Ensuring accessibility for persons with disabilities is essential for creating an inclusive justice system operating remotely. Apart from being technically inaccessible, remote technology can cause dizziness, nausea, and other feelings of illness. Critical yet fundamental accessibility features are closed captioning, keyboard accessibility, automatic transcripts, and screen reader support, as a minimum.¹⁰ All documents, presentations, and other materials should comply with the Web Content Accessibility Guidelines (WCAG) 2.1.¹¹ The platform should also comply with the 21st Century Communications and Video Accessibility Act (CVAA)¹² — which provides appropriate standards to follow even where it is not legally applicable.

⁹ NATIONAL CENTER FOR STATE COURTS, CIVIL JUSTICE INITIATIVE, *Findings and Recommendations on Remote Conferencing*, *supra*, FN 2 (“Cost and convenience to litigants should be taken into account when implementing videoconferencing.”).

¹⁰ These four accessibility features are included with Zoom and serve as an example. See *Accessibility Features*, Zoom, <https://zoom.us/accessibility>. BlueJeans features similar accessibility features. See *Accessibility Features for Meetings and Events*, <https://www.bluejeans.com/accessibility-video-conferencing-features>.

¹¹ *Web Content Accessibility Guidelines (WCAG) 2.1* (2018), <https://www.w3.org/TR/WCAG21/>.

¹² THE 21ST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010, <http://www.gpo.gov/fdsys/pkg/BILLS-111hr3101pcs/pdf/BILLS-111hr3101pcs.pdf>.

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4. Can first-time users navigate the technology without difficulty, without the need for court personnel to give instructions during the proceeding, and without delaying the court proceedings?

Below, we suggest that as part of implementing procedures for remote proceedings, courts should provide users with “how-to” information that is available via the same technologies (phone, smartphone, PC) before the proceeding begins.

The courts of Michigan have been using remote hearings via Zoom for a year. They have developed materials that discuss specific solutions to common problems, which personnel implementing remote proceedings in California courts may find useful.¹³

Judicial officers and court personnel in charge of remote proceedings should note repeated user problems and glitches and report them to a staff member coordinating with the vendor.

5. Can the technology platform accommodate self-represented litigants and witnesses who are not English speakers?

If written instructions are part of the use of the technology, are they available to users in languages other than English?

We understand that Remote translation using video is generally preferred over voice-only because of the additional visual clues to the interpreter.¹⁴ This means that there may be tradeoffs between access for non-English speakers and self-represented litigants who do not have video technology.

6. Does use of the technology unduly disadvantage persons whose literacy is limited?

The fact that a person speaks English does not mean that they are conversant with vocabularies often used in court proceedings. Conducting the proceedings remotely using technology can compound the unfamiliarity of some self-represented people with the words used by a judicial officer or opposing lawyer.

Among other considerations discussed in Section III, this counsels against a technology for which the instructions to users are not conveyed in simple language.

7. How do participants present documentary evidence or use visual aids? Is there a way of doing so that does not exclude those who participate by telephone or Smartphone?

If remote technology is to be used for hearings involving documents, and especially for submission of documentary evidence, the technology must be capable of presenting a usable, clear picture of the documents to all participants. It must also be capable of preserving a record of the documents presented, without uncertainty as to whether the documents in the record are the same as were used in the hearing. If not all participants have access to the same technology, those who do not may be denied an equal opportunity to present their positions. But differences such as in screen size and resolution can impose disadvantages on some parties that may not be apparent to the judicial officer during the hearing.

¹³ *Virtual Courtrooms*, MICH. COURTS, available at web address on Pg. 1.

¹⁴ *Video Remote Interpreting (VRI)*, JUDICIAL COUNCIL, <https://www.courts.ca.gov/VRI.htm>.

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This constraint may not dictate the selection of a technology for remote hearings, but instead it may affect the choice of hearings to be conducted remotely.

In theory, documents can be used by distributing copies to all parties before a hearing and referring to them by identifying names or numbers. However, such practices require much familiarity with the process and are likely to be ineffective with self-represented litigants who are not sophisticated.

8. Does the platform provide tools for the court in exercising control over the proceedings?

- Can the judicial officer or court personnel admit or exclude participants, where appropriate?
- Can the court and other participants identify every speaker?
- Is there a method for persons wishing to speak to make that known to the judicial officer?
- Can the judicial officer or court personnel control which participants are or are not muted?
- Does the technology allow court personnel to move quickly and efficiently from one proceeding (and one set of participants) to another?
- Can the judicial officer or court personnel pass a matter for a period of time, leaving participants online, and return to it after handling another matter?
- Is the proceeding open to public observation, unless good cause for confidentiality exists? Public access can be provided by giving notice of the time and method of observing proceedings as they happen. An alternative, if appropriate, may be to allow public access to recordings after the proceeding has ended.
- Where confidentiality is required, can the judicial officer or court personnel ensure it?
- Can the judicial officer or court personnel disable any facility for recording of the proceeding by other participants (where doing so would violate a statute or rule)?
- Can the judicial officer or court personnel control communications among the parties during the hearing? Using Zoom's Chat feature, participants can communicate with each other in writing. Avoiding improper use of this side-channel, e.g. for witness tampering, may require the court to control it by issuing an order or local rule.
- Is there a method for a subset of the participants to communicate without the presence of other participants (e.g. allowing a confidential consultation between clients and their representatives in different locations)? Zoom's breakout room feature may be used for this purpose.

9. Will the technology, and other arrangements, generate a useable official record?

The court's official reporters may be able to participate, and if that will be done regularly for a type of proceeding, the reporters might be asked to comment on the selection of a technology platform. Emergency Rule 3(a)(3) also permits "the use of remote reporting and electronic recording to make the official record of an action or proceeding."

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- Consider the medium on which the remote proceeding platform generates a recording, and whether that medium can conveniently be stored and maintained as part of the court’s electronic file system.
- Consider whether, under what circumstances, and by whom a written transcript may be prepared from the electronic recording; and whether that can be made part of the official record.
- Also consider whether there are reliable, workable, and convenient methods and procedures for the court’s permanent record to include documentary evidence (and visual aids where appropriate) used remotely during the proceeding?
- Determine whether reviewing courts will be authorized, able, and willing to accept the electronic recording as the official record. This includes, but is not limited to, applicable court rules and (emergency) orders, as well as the technology available to the reviewing court.

Technology, or court reporters, can convert an electronic recording into a transcript if necessary to facilitate appellate review. If this is done, there should be an opportunity for participants to review both the transcript and the electronic recording, and a procedure for parties to meet and confer about disagreements and present them if unresolved to the trial court for resolution. This is new ground that may be necessary because of the emergency; but may allow development of less costly and more accessible procedures for general use in the future.

III. ADOPTING GENERAL PROCEDURES AND PRACTICES CONSISTENT WITH OPEN AND EQUAL ACCESS

1. “Digital divide”¹⁵ considerations

- Access to technology is inequitable and there is a persistent socioeconomic “digital divide.” Many Americans do not have access to the technologies needed to participate in remote hearings conducted using online videoconferencing. This reminder is not to dissuade courts from adopting remote technologies, but to note that access considerations require creative and inclusive practices beyond a blanket requirement for litigants to participate in hearings remotely.
 - Lack of Internet access: Many Americans might not have access to the Internet, or reliable Internet, in their homes. For example, as of 2017, 90 percent of California households used the Internet and 74 percent had broadband subscriptions at

¹⁵ See, e.g., Monica Anderson & Madhumitha Kumar, *Digital divide persists even as lower-income Americans make gains in tech adoption*, PEW RESEARCH (May 7, 2019), <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>; Andrew Perrin, *Digital gap between rural and nonrural America persists*, PEW RESEARCH (May 31, 2019), <https://www.pewresearch.org/fact-tank/2019/05/31/digital-gap-between-rural-and-nonrural-america-persists/>; *The Digital Divide*, STANFORD CS, <https://cs.stanford.edu/people/eroberts/cs181/projects/digital-divide/start.html>.

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home, overall.¹⁶ But, just 55 percent of low-income Californians had broadband subscriptions at home.¹⁷ If in-home Internet is inaccessible, an individual might access it outside of the home, but there are privacy issues with accessing the Internet in public places like libraries and coffee shops, which are also unlikely to be open under shelter-in-place rules.¹⁸

- Limited access to phone data/call minutes: Because some litigants may only have phones with a limited number of minutes or restricted data plans, they might not be able to use their phone to participate in hearings.¹⁹
- Limited access to email: Some litigants may not have an email account set up or may not be able to access email due to a lack of Internet access, which could disrupt their ability to communicate with the court, such as to receive electronic court documents and other essential information about the hearing. Even if a litigant has an email account, they might not know to check it often to hear about information for their case. The court should offer information about how to use electronic court file systems, instruct the litigant to check their email daily for this information and, if the litigant has a preferable means of contact, arrange for information to be disseminated that way for proper, individualized notice.²⁰
- Private nature of proceeding: As discussed more in Part 4 of Section V, care should be paid to cases with sensitive issues, such as domestic violence, that inherently have privacy concerns as well as those who are unable to “get away” from their household responsibilities (e.g., presence of children) to find a quiet place to participate privately.
- As shelter-at-home restrictions relax,²¹ courts and court Self Help Center staffs could consider working with local legal aid programs, County Law Librarians and public libraries, and other locations to establish and publicize venues where self-represented persons can obtain internet access to participate in remote proceedings.
It may be possible in some areas to establish temporary or mobile internet access facilities for this purpose.

¹⁶ *California's Digital Divide*, PUBLIC POLICY INSTITUTE OF CALIFORNIA, <https://www.ppic.org/publication/californias-digital-divide/>.

¹⁷ *California's Digital Divide*, PUBLIC POLICY INSTITUTE OF CALIFORNIA, *supra*, FN 16.

¹⁸ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, <https://gato-docs.its.txstate.edu/jcr:27c725a8-4dbc-44f0-a58a-96a8b121e3d0/Best%20Practices%20for%20Courts%20in%20Zoom%20hearings%20Involving%20Self%20Represented%20Litigants.pdf>.

¹⁹ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

²⁰ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

²¹ See NATIONAL CENTER FOR STATE COURTS, *Statewide Plans to Resume Court Operations*, <https://public.tableau.com/profile/ncscviz#/vizhome/StateCourtResponses to COVID-19/CovidTheCourts>.

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The staff of the California Commission on Access to Justice is available to attempt to assist individual courts in exploring options available for such cooperation, if that would be helpful.

2. Consider designating a staff person responsible for coordination of remote proceedings.

A single staff member who deals with the technology provider and is aware of all issues, glitches, and best practices can save judicial officers' and other staff members' time, as well as providing the best services efficiently. Depending on the court's available resources and volume of work, this might be the supervisor of a group of others. The role is not simply, or even primarily, concerned with making the technology work correctly. So, it may not be sufficient to use an IT specialist instead of someone familiar with court procedures and the substance of the proceedings.

3. Provide information to users before the hearing begins about the procedures to follow and how the technology works.

To conduct efficient remote hearings, use the judicial officer's time well, and accommodate the needs and overcome obstacles to equal participation, consider a practice of conducting preliminary calls between a court staff member and parties before their initial remote hearings. The purpose would be to learn about special issues — limited technology, needs for interpretation or technology for persons with disabilities — in advance and to alert the participants to available information about the technology and the procedures that will apply to the proceeding.

Ways of providing information to participants are discussed further in Section IV.

4. Accessibility to non-English speakers

As noted above, the court should have procedures to determine before the hearing begins whether interpretation services for non-English speakers will be needed.²² Conferencing technology may provide for remote interpretation.²³ However, for content such as testimony, the use of an "English only" audio feature that does not allow an adversary to check the accuracy of a translation may be problematic.

The Judicial Council issued guidelines in 2019 on Virtual Remote Interpretation,²⁴ and is seeking funding in the budget to make VRI more broadly available. Remote proceedings involve added challenges for high quality interpretation — especially if the persons needing interpretation are not on video. On the other hand, remote participation may make a larger number of qualified interpreters available.

²² See, e.g., *Remote Interpreting Best Practices during the COVID-19 Emergency*, WASH. COURTS, https://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/Remote%20Interpreting%20Best%20Practices.pdf.

²³ Zoom, for example, facilitates simultaneous foreign language interpretation. See <https://www.youtube.com/watch?v=nldGntmE7mQ>.

²⁴ *Recommended Guidelines for Video Remote Interpreting (VRI) for Spoken Language-Interpreted Events*, March 15, 2019, CALIFORNIA JUDICIAL BRANCH, <https://www.courts.ca.gov/documents/vri-guidelines.pdf>.

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The court should explore these possibilities and consult with representative interpreters who will be used in remote hearings, while the court is designing its procedures for remote proceedings. If local interpreters are not available to consult, the staff of the Access Commission would be willing to seek to facilitate discussions with representatives of interpreters' organizations.

5. Accessibility to persons with disabilities

The capability to provide accommodations for persons with disabilities should be established as part of the development of a court's capability for remote proceedings.

To facilitate needs in any given hearing, the appropriate questions should be asked by court personnel long enough before the hearing begins to make the arrangements in time.

6. If remote proceedings continue, judges might consider using “asynchronous” proceedings for some purposes in the future.

Technology for remote participation in hearings makes it possible to change how the proceedings are conducted in substantial ways that may differ, if productive and fair, from customary procedures. In-person hearings are “synchronous.” All participants are present at the same time and in the same place. Some proceedings using technology might be organized differently — with different participants making presentations that would be recorded without the judicial officer's presence (but perhaps conducted by a judge pro tem or a member of the court's staff). The presentations, which might involve both sides (to allow, e.g., cross-examination) or one side at a time, could be time-limited and recorded to be assembled into a record available to both sides, and to the public, that the judge could review. A judge could conduct a shorter, synchronous proceeding after reviewing the presentations to ask questions; or the judicial officer could rule based on the submitted presentations. The judicial officer could choose after viewing the presentation.

Such asynchronous proceedings might allow courts to catch up on backlogs of proceedings suited for such presentations, making best use of scarce time on judges' calendars.

It remains to be seen whether this would be more effective and fairer than submitting a matter based on written briefs and documentary submissions alone. For self-represented litigants (and some lawyers), the inability to express themselves clearly and effectively in writing is a limitation that might make recorded, asynchronous voice and video presentations more effective than submission for decisions based on documents alone.

7. Practice reluctance to punish parties for non-appearance.

This is a challenging time for court users and judicial officers alike. Courts are encouraged to practice leniency, at least initially, when litigants do not show up remotely. Additional effective notice before punitive action is taken as a result of non-appearance is highly recommended (e.g., an additional mailed notice of a new hearing date with a description of where to find the information on how to appear remotely for the continued hearing).

Ways of providing notice and information to participants are discussed further in Section IV.

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IV. PROVIDING INFORMATION AND TRAINING TO COURT PERSONNEL AND USERS

1. Scheduling and notice of remote proceedings

- Courts should consider how hearings are scheduled: If a court traditionally docket multiple hearings at the same time, that court might need to switch to individual scheduling with time-certain proceedings in order to provide more certainty and transparency to litigants.²⁵ This will provide litigants with other responsibilities during shelter-in-place, such as childcare or healthcare support for parents, to have a discrete time to call-in to participate in their hearing.
- Provide extra notice of hearings: Court staff should email all attorneys or self-represented litigants several days in advance to ensure all parties have hearing and login information as well as to offer to assist with troubleshooting issues and answer any questions.²⁶ In case a party does not have access to a computer but does have a telephone, the court's notice should include a call-in number and access code.²⁷ Another option for providing notice is to send out text message reminders as well.²⁸ The purpose of this is to ensure that litigants are well-aware that their hearing is occurring and what is expected of them.
- Clear notices: The notice(s) should clearly state that the hearing will take place via a video-conferencing platform (describing that platform and how to access it) and that the individual should not go to the courthouse.²⁹ For court users with limited English proficiency, the notice should also provide translated versions (or a way for the litigant to request translation), along with an explanation of how to access an interpreter if needed via an online system.³⁰
- Daily dockets should be made available online: The docket should clearly indicate which hearings will be held virtually, along with instructions on how to access those hearings.³¹ Public notice should be consistent with the ways for providing open hearings generally, where applicable; if the way is contemporaneous observation of the video and audio feed, the notice should provide sufficient information for the public to do so (e.g., (YouTube live-streaming described below.)³²

²⁵ CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES, https://www.americanbar.org/content/dam/aba/administrative/child_law/conducting-remote-hearings.pdf.

²⁶ CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES, *supra*, FN 25.

²⁷ NATIONAL CENTER FOR STATE COURTS, REMOTE COURT OPERATIONS INCORPORATING A2J PRINCIPLES (Mar. 27, 2020), <https://www.ncsc.org/-/media/Files/PDF/Newsroom/Coronavirus%20Resources/Remote-Court.ashx>.

²⁸ NATIONAL CENTER FOR STATE COURTS, REMOTE COURT OPERATIONS INCORPORATING A2J Principles (Mar. 27, 2020), *supra*, FN 27.

²⁹ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

³⁰ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

³¹ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

³² STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

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- Comprehension of notices and video-conferencing systems by litigants: Use plain language in notices and instructions, avoiding legalese and technical terms.³³ Ensure that litigants understand what is required of them and understand the consequences of not taking action to meet those requirements.³⁴ Admonish court users that they should do everything in their power to comply and participate, but consider developing a system that is non-punitive for dealing with unintentional misunderstandings by litigants regarding when and how their participation is required.

2. Webpages and instructional materials for users

- Provide clear, simple, and accessible web pages³⁵ that clearly lay out procedures for engaging in remote hearings and proceedings.³⁶ Pages should avoid legal jargon and provide self-represented litigants and others with a direct path to understand whether their hearing is virtual; how and when the virtual proceeding will occur; and a description of how to prepare for and access that virtual proceeding.³⁷
- Pages and resources should be accessible for people with disabilities as well as ensure language access for court users with limited English proficiency.³⁸
- Maximize the number of avenues for litigants to comprehend remote systems. This includes using multiple remote services (e.g., telephone, e-mail, live chat, videoconferencing, and text messaging) to notify, communicate with, and instruct court users on remote processes, which is ultimately beneficial to both the user as well as the efficiency of the court system.³⁹ This starts with a high-quality, thorough webpage.

³³ See, e.g., THE NATIONAL ASSOCIATION FOR COURT MANAGEMENT, 2019 PLAIN LANGUAGE GUIDE, <https://nacmnet.org/wp-content/uploads/NACM-Plain-Language-Guide-20190107.pdf>. See also Plain Language Resource Guide, NATIONAL CENTER FOR STATE COURTS, <https://www.ncsc.org/Topics/Access-and-Fairness/Plain-Language/Resource-Guide.aspx>.

³⁴ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

³⁵ NATIONAL CENTER FOR STATE COURTS, REMOTE COURT OPERATIONS INCORPORATING A2J PRINCIPLES (Mar. 27, 2020), *supra*, FN 27 (“Whenever possible, forms and instructions should be written at a 5th grade reading level, and where possible, legal jargon and Latin should be stripped, or at the very least, explained.”).

³⁶ See, e.g., THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER, <http://www.placer.courts.ca.gov/RAS.shtml>. See generally SELF-REPRESENTED LITIGATION NETWORK (SRLN), SERVING SELF-REPRESENTED LITIGANTS REMOTELY: A RESOURCE GUIDE (2016), https://www.srln.org/system/files/attachments/Remote%20Guide%20Final%208-16-16_0.pdf (“Providing services in a way that does not require the public to visit a courthouse or office is advantageous in terms of time and cost savings both for self-represented litigants and for the organizations that serve them.”).

³⁷ See, e.g., *Preparing to Participate in a Zoom Video Conference*, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, <https://www.cand.uscourts.gov/zoom/>.

³⁸ NATIONAL CENTER FOR STATE COURTS, REMOTE COURT OPERATIONS INCORPORATING A2J PRINCIPLES (Mar. 27, 2020), *supra*, FN 27.

³⁹ SELF-REPRESENTED LITIGATION NETWORK (SRLN), SERVING SELF-REPRESENTED LITIGANTS REMOTELY: A RESOURCE GUIDE (2016), *supra*, FN 36.

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3. Provide a means to respond to individual users' questions

- Court staff (or perhaps Self-Help Center staff) can hold “virtual office hours” to train and/or work with self-represented litigants and attorneys to ensure all participants will be able to access the platform.⁴⁰
- Courts can provide step-by-step plain language instructions on how to use the video-conferencing software, assuming the user has never used that platform, along with contact information for a court staff person who can assist them with any issues.⁴¹ The court should further provide step-by-step plain language instructions for any relevant court procedures for virtual hearings, such as e-filing of evidence and other documents.⁴²

V. GUIDELINES FOR CONDUCTING PROCEEDINGS REMOTELY⁴³

1. General accessibility issues

- Before the hearing, if the litigant is unrepresented, the court should provide a list of legal aid organizations in their area relevant to their legal issue.
- Before the hearing, the court should request information from the litigant on their technological capacity. Namely, the court will need to find out if the litigant has access to the Internet and, if so, can download and navigate the preferred video conferencing platform. The court should also find out if the litigant has any ADA accommodations or language access needs.
- During the hearing, the judicial officer may need to make reasonable accommodations to make sure all litigants have what they need to be heard while not infringing upon their duty to remain impartial.⁴⁴ In so doing, “a judge may consider the totality of the circumstances, including the type of case, the nature and stage of the proceeding, and the training, skill, knowledge, and experience of the persons involved when making reasonable accommodations.”⁴⁵

⁴⁰ CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES, *supra*, FN 25.

⁴¹ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18. See, e.g., THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER, *Video FAQ*, <http://www.placer.courts.ca.gov/RAS-faq-video.shtml>.

⁴² TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

⁴³ See Cal. Judicial Council Information Technology, “Technology Advisory and Best Practices for Video Teleconferencing,” April 20, 2020, (copy available on request from ikaddoura@CalATJ.org); see also, e.g., NATIONAL CENTER FOR STATE COURTS, *Checklist for judges in virtual proceedings*, <https://www.ncsc.org/~/media/Files/PDF/Newsroom/Coronavirus%20Resources/Checklist-for-judges-virtual-proceedings.ashx>.

⁴⁴ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

⁴⁵ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

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- For example, a judge may: “Construe pleadings and briefs liberally; ask neutral questions to elicit or clarify information; modify the mode and order of evidence as permitted by the rules of procedure and evidence, including allowing narrative testimony; explain the basis for a ruling; and/or inform litigants what will be happening next in the case and what is expected of them.”⁴⁶
- If an SRL is significantly disadvantaged by having a remote hearing, the court and advocates can consider whether there should be a continuance in the case.⁴⁷ Alternatively, if an SRL’s case is continued and he or she is disadvantaged by *not* having a hearing, consider whether the SRL should be requesting a remote hearing or an in-person hearing under appropriate circumstances.⁴⁸

2. General tips to prepare⁴⁹

- Consider visibility when preparing what you will wear: Dress in a solid color (e.g., black robe for judges) and, if a tie is worn, use a solid tie, not one with a pattern.
- Remember your background: Choose a solid colored wall, such as a neutral white wall, or use one of the videoconferencing platforms generated backgrounds.
- Pay attention to lighting: Light from behind you might make you appear dark and hard to see, while light from the center of the room might cast a shadow too.
- Test your connection and setup: Before the hearing, test Zoom and your Internet connection, such as with a test meeting.

3. Public access

- **Court hearings presumptively are public.**⁵⁰ Public access may be provided by giving notice on a court website or otherwise identifying the proceedings, scheduled times, and manner of joining the proceeding (if permitted).
- **Security is paramount.** Whichever method is proposed, the security of the proceedings is absolutely critical. Issues like “Zoombombing” by members of the public can be disruptive and, at times, indecent or explicit.⁵¹ For this reason, courts should avoid making meetings public if allowed (make private and require password) or sharing the Zoom link or password publicly (such as on a publicly accessible webpage).⁵² Also, the court should manage screensharing options so only the “Host” (the court) can

⁴⁶ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

⁴⁷ CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES, *supra*, FN 25.

⁴⁸ CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES, *supra*, FN 25.

⁴⁹ 4. *Tips for Successful Virtual Court Proceedings*, JUDICIAL INFORMATION SERVICES, <https://info.courts.mi.gov/virtual-courtroom-info#ZoomBasics>.

⁵⁰ *Background and Legal Standards — Public Right to Access to Remote Hearings During COVID-19*, TEXAS JUDICIAL BRANCH (link currently unavailable).

⁵¹ AG’s Office Issues Tips for Safe Video Conferencing During COVID-19 Pandemic, MASS.GOV (Apr. 10, 2020), <https://www.mass.gov/news/ags-office-issues-tips-for-safe-video-conferencing-during-covid-19-pandemic>.

⁵² AG’s Office Issues Tips for Safe Video Conferencing During COVID-19 Pandemic, MASS.GOV (Apr. 10, 2020), *supra*, FN 51.

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screenshare and consult the IT department for how to make the meeting as secure as possible (highest Zoom security settings).⁵³

- **Record the proceedings to provide to the public.** The court may also consider providing public access, although not in real time, by posting recordings of the proceedings in the court file for the proceeding, with notice to the public that the recordings are available and how to access them. Non-real time access may be subject to challenge if it is not announced, if content is not complete (absent good cause for confidential proceedings under existing legal standards), or if access is delayed.
- **Allow public access through a YouTube channel.** If real-time public access is allowed, the court should take reasonable steps to restrict full participation to the parties and court staff. For example, the Zoom platform allows the court to email the link to the Zoom meeting only to those participating in the proceeding, and provide simultaneous access to the public by giving notice of the information necessary to view the proceeding on a YouTube channel that the court can establish.⁵⁴
 - **Public Access via Live Streaming.**⁵⁵ “Follow the instructions [here](#) to set up and enable YouTube Live Streaming from your Zoom meetings (initiated/controlled by a Host). Consider adding a “Do Not Record” watermark ([link to example you can use](#)) to your live stream using the instructions [here](#) (use the option “entire video”). YouTube automatically saves and makes available recordings of live streamed video; manage these recordings appropriately after live streaming is completed (these recordings should not be considered an official court record). YouTube automatically enables a Live Chat feature when live streaming; your court should be aware of the settings to control or disable this feature, please see YouTube support on this topic [here](#).”
- To conduct a confidential hearing remotely, the court must make a record of good cause either before or at the outset of the hearing. Texas has prepared a detailed bench card for doing so, which can serve as a model.⁵⁶

4. Arrangements for documentary evidence

The information provided to court users in advance of remote hearings should explain how to submit and use documentary evidence. It will facilitate hearings to require advance submission of exhibits, to the extent possible, and specify any required technology and format for dealing with exhibits.⁵⁷

⁵³ AG’s Office Issues Tips for Safe Video Conferencing During COVID-19 Pandemic, MASS.GOV (Apr. 10, 2020), *supra*, FN 51.

⁵⁴ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

⁵⁵ RECOMMENDATIONS ON USING ZOOM & PUBLIC ACCESS FOR COURT PROCEEDINGS, JUDICIAL INFORMATION SERVICES, <https://info.courts.mi.gov/virtual-courtroom-info#LiveStreamInfo>.

⁵⁶ Bench Card for Closing Courtroom, TEXAS JUDICIAL BRANCH, https://81db691e-8a8c-4e25-add9-60f4845e34f7.filesusr.com/ugd/64fb99_1e6097e7fa4d4e079f58f5a12f3a27ef.pdf.

⁵⁷ A form order entitled *Order Setting Hearing* from Texas for Zoom hearing procedures states: “All exhibits to be considered by the Court must be transmitted to the Court Coordinator and copied to opposing counsel no later

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5. Basic procedures during remote hearings

- Remind participants (and do so yourself) to speak to the computer camera, not the screen, and position the camera to be at eye level or slightly above eye level.
- When participants use Zoom via a phone, their phone number might be displayed. Change this to their name.
- When hosting hearings, the court should enable the “waiting room” function in Zoom. Use Zoom’s “waiting room” function to allow individuals into the “virtual courtroom”; place disruptive participants into the waiting room if necessary.⁵⁸
- The court should address, on the record, that the parties waive any rights they may have to be present in the courtroom for the proceeding and, in criminal proceedings at least, that they consent to the proceeding being conducted via videoconference technology.⁵⁹
- At the outset of the hearing, address any technical difficulties and provide litigants with a clear process to deal with any impediments, such as what to do if their connection drops.⁶⁰ Potentially, a court can build anticipated technical difficulty time into the allotted time for each hearing, to avoid running over into other hearings.
- At the outset of the hearing, the court should again ask if the litigant has any unmet ADA accommodations or if they need an interpreter.⁶¹ The court should also ask if the litigant has caretaker responsibilities or privacy issues (especially for domestic violence matters) at the location where they are participating in the remote hearing.⁶²
- The court should then provide an overview of how the hearing will proceed.⁶³ Instruct participants to be sure their line is muted when they are not speaking. Lay out the rules and procedures clearly so that all participants are on the same page, such as instructions for how the judicial officer prefers the litigant to interact with other participants over the videoconferencing platform (e.g., whether they will be muted and should use the hand-raising function if they wish to speak.)⁶⁴

than 5:00 PM on the business day immediately preceding the date of the hearing. Acceptable formats are PDF, JPG, PNG, and MP4. No other file types will be accepted. Unanticipated rebuttal evidence may be submitted during the hearing through the Chat-Files feature.”

⁵⁸ State Court Administrative Office, Michigan Trial Courts Virtual Courtroom Standards and Guidelines (Apr. 17, 2020), *supra*, FN 8.

⁵⁹ State Court Administrative Office, Michigan Trial Courts Virtual Courtroom Standards and Guidelines (Apr. 17, 2020), *supra*, FN 8.

⁶⁰ State Court Administrative Office, Michigan Trial Courts Virtual Courtroom Standards and Guidelines (Apr. 17, 2020), *supra*, FN 8.

⁶¹ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

⁶² TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

⁶³ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

⁶⁴ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

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- If a witness is testifying, ensure you can see the witness clearly. For objections, attorneys can type “objection” in the chat box or raise a hand (if muted), as these will likely be better for the court’s process and the audio recording and transcription than crosstalk on the videoconferencing platform.⁶⁵
- If the platform allows “break-out” rooms (such as on Zoom), these can be utilized for sidebar conversations that others should not hear (such as “bench conferences, attorney-client discussions, or judicial officer interviews of children if traditionally done one-on-one”); the private chat function can also be used for this purpose.⁶⁶ Where applicable, attorney-client discussions in “breakout rooms” should be considered private and not be audio- or video-recorded.⁶⁷
- “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.”⁶⁸
- When the hearing concludes, confirm with the litigant that they have an email address. If they do, inform them again that the court will contact them regarding any future hearings or information about their case via that email address.⁶⁹ The court should also review next steps for the litigant, including what is expected of the litigant (including what possible repercussions there are) and when the next hearing date is.⁷⁰

6. Practices to produce a clear record

- The proceedings conducted via videoconference must be recorded by the court.⁷¹ Courts must create a verbatim record of each proceeding with this recording. In order to produce an accurate verbatim record, the recording must be clear. To produce a clear recording, it is important that parties be advised to speak slowly and wait to speak until prompted. To avoid overlap in the recording between speakers, the judicial officer ought to remind parties to talk slowly and avoid interrupting others. Parties should identify themselves each time they speak.

⁶⁵ CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES, *supra*, FN 25.

⁶⁶ CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES, *supra*, FN 25.

⁶⁷ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

⁶⁸ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

⁶⁹ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

⁷⁰ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, *supra*, FN 18.

⁷¹ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

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- The court should be the Zoom “host” and can thereby control functions of the courtroom, such as muting participants.⁷² Additionally, use “Gallery View” in Zoom to avoid the program function that switches between participants when they speak. Gallery View enables the judicial officer to see all participants and the court reporter/recorder to know who is speaking.⁷³
- If a court is using Polycom as well as Zoom, the videoconferencing technology can feed directly into the court’s recording system, such that when the court calls into the Zoom virtual courtroom, the court’s recording system will record just like any other use of Polycom.⁷⁴ “Where a direct feed into the recording system is not possible due to equipment limitations, a microphone should be placed near the speaker.”⁷⁵ “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 though Zoom, GoToMeeting, and other software.”⁷⁶

⁷² STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

⁷³ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

⁷⁴ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

⁷⁵ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.

⁷⁶ STATE COURT ADMINISTRATIVE OFFICE, MICHIGAN TRIAL COURTS VIRTUAL COURTROOM STANDARDS AND GUIDELINES (Apr. 17, 2020), *supra*, FN 8.