

Public Policy Position
ADM File No. 2020-08

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,588 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. The State Bar of Michigan has authorized the Section to submit its position to the Court.

The Family Law Section has a public policy decision-making body with 23 members. On October 9, 2021, the Section adopted its position after a discussion and vote at a scheduled meeting. 15 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 8 members did not vote.

Support with emphasis on the importance of the sequestration of witnesses and children during Zoom proceedings, perhaps by way of clarifying MCR 2.407(G).

Explanation:

Family Law Council had an in-depth discussion about ADM File 2020-08, both in the Court Rules Subcommittee meeting and the scheduled Council meeting. There were a number of triers of fact and practitioners who described situations in which the litigants in family law proceedings had their children present or other third party individuals who were not identified or whose presence was not made known to the Court. The sequestration of third parties, particularly children, is a top priority in family law matters in order to prevent coaching and the exposure of children to court proceedings. While Council is supportive of ADM File 2020-08, Council felt that MCR 2.407(G) could be clarified to emphasize and prioritize sequestration for remote proceedings.

Rule 2.407 Videoconferencing

(A)-(F) [Unchanged.]

(G) Notwithstanding any other provision in this rule, until further order of the Court, AO No. 2012-7 is suspended and trial courts are required to use remote participation technology (videoconferencing under this rule or telephone conferencing under MCR 2.406) to the greatest extent possible. In doing so, courts must:

(1) Verify that participants are able to proceed remotely, and provide reasonable notice of the time and format of any such hearings for parties, other participants, and the general

public in a manner most likely to be readily obtained by those interested in such proceedings.

(2) Allow some participants to participate remotely even if all participants are not able to do so. Judicial officers who wish 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. 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.

(3) Ensure that any such proceedings are consistent with a party's Constitutional rights, and allow confidential communication between a party and the party's counsel.

(4) Provide access 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.

(5) Ensure that the manner in which the proceeding is conducted produces a recording sufficient to enable a transcript to be produced subsequent to the proceeding.

(6) Ensure that any such remote hearings comply with any standards promulgated by the State Court Administrative Office for conducting these types of proceedings.

(7) Waive any fees currently charged to allow parties to participate remotely. Courts may collect contact information, including mobile phone number(s) and email address(es) from any party or witness to a case to facilitate scheduling of and participation in remote hearings or to otherwise facilitate case processing. A court may collect the contact information using a SCAO-approved form. The contact information form used under this provision to collect the information shall be confidential. An email address for an attorney must be the same address as the one on file with the State Bar of Michigan.

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