

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, June 20, 2013 – 1 to 3 PM**

1-877-352-9775, Passcode 9152168764#

MINUTES

Committee Members: Ryan Lee Berman, Mary Alexis Bowen, Thomas P. Clement, Nichole Jongsma Derks, Nimish R. Ganatra, J. Kevin McKay, Donna McKneelen, Julie A. Powell, Jonathan Sacks, Samuel R. Smith
SBM Staff: Peter Cunningham, Carrie Sharlow

1. Call to Order & Welcome
2. Old Business

a. [2013-18 - Proposed Amendments of Rules 3.210, 3.215, and 6.104 of the Michigan Court Rules and Proposed New Rule 8.124 of the Michigan Court Rules](#)

The new court rule would allow courts to use videoconferencing in court proceedings upon request of a participant or *sua sponte* by the court, subject to specified criteria and standards published by the State Court Administrative Office (SCAO). Amendments of MCR 3.210, MCR 3.215, and MCR 6.104 would be necessary to include references to the new court rule. If the new rule is ultimately adopted, MCR 3.904, MCR 5.738a, and MCR 6.006, and Administrative Order No. 2007-01 would be rescinded. To provide context for consideration of the proposed rule, the proposed standards for the use of videoconferencing are attached below. In addition, the proposal includes a draft administrative order that would require SCAO to adopt videoconferencing standards, and require courts to comply with those standards.

[2013-18 – Proposed Administrative Order No. 2013-](#)

This proposed administrative order would require the State Court Administrator to establish videoconferencing standards and would require that the appellate and trial courts conform to those standards. Please note that this proposed administrative order is part of a group of documents in this file that has been published for comment, including proposed videoconferencing rules that would amend MCR 3.210, 3.215, and 6.104, and would adopt MCR 8.124, a new rule, and draft videoconferencing standards, which are attached at the end of that order.

Issued: May 1, 2013

Comment period expiration: September 1, 2013

Liaisons: Nimish R. Ganatra and Jonathan Sacks

After much discussion, the committee voted unanimously to support the video-conferencing proposed rules with the amendment to MCR 8.124(B)(3):

MCR 8.124(B)(3)

In all criminal proceedings, where evidence is taken or punishment imposed
~~In criminal trials and evidentiary hearings that occur as part of a criminal trial,~~ the defendant shall either be physically present in the courtroom or shall consent to the use of videoconferencing technology for participation. At trial, the witness shall be either physically present or the parties shall stipulate to the use of videoconferencing technology for participation. In all other court proceedings that relate to criminal matters, the court may determine whether to use videoconferencing technology for the defendant's participation. In delinquency adjudications and evidentiary hearings that occur as part of a delinquency adjudication, the juvenile shall either be physically present in the courtroom or a parent, guardian, or the attorney for the juvenile shall consent to the use of videoconferencing technology for the juvenile's participation.

The committee expressed concerns with the current language in that (1) 8.124(B)(3) requires a defendant to consent to video substituting for his physical presence "in criminal trials and evidentiary hearings that occur as part of a criminal trial." While requiring consent for trials is an excellent idea, when liberty is on the line, a defendant should have the opportunity to physically appear at sentencing, pre-trial evidentiary hearings, and post-conviction evidentiary hearings. Sentencing especially is a huge concern as a judge can much better evaluate expressions of remorse and responsibility in person than on video. And,

(2) Although the MI Supreme Court did not reach the issue in *People v Buie*, many other jurisdictions have found that video technology implicates the Confrontation Clause at trial. Allowing a court to order video testimony without consent of the parties could be unconstitutional (some cases like child sexual assault victims are less controversial, but other witnesses could certainly create constitutional problems if testifying via video without consent).

Therefore, the committee offered the above amendment.

3. New Business

a. Mental Health Courts

[HB 4694](#) (Rep. Cotter) Courts; circuit court; mental health court; create.

[HB 4695](#) (Rep. Haines) Courts; circuit court; mental health court; create.

[HB 4696](#) (Rep. Walsh) Courts; circuit court; mental health court; create.

[HB 4697](#) (Rep. O'Brien) Courts; circuit court; mental health court; create.

Liaisons: J. Kevin McKay, Samuel R. Smith, and Julie A. Powell

The committee voted unanimously to support the bills to create mental health courts.

The committee agreed that it is better to treat mental health issues rather than merely incarcerate the individual. There were some questions as to repeat-participation and definition of mental illnesses referred to in the bill, but the committee voted to support the bills.

4. Reports

- a. Criminal Law Section – The Section is on break for the summer. This committee can designate a representative to the Section, as requested by the Section Chair-Elect Judge David Hoort. Interested members should contact Kevin or Nichole.
- b. Eyewitness Task Force – Nothing new to report.
- c. Indigent Defense – The bills are on their way to Governor Snyder.

5. Adjournment.