



VIA EMAIL ONLY

April 30, 2020

Milton L. Mack, Jr.
State Court Administrator
State Court Administrative Office
Hall of Justice
925 W. Ottawa Street
Lansing, MI 48915

Re: State Court Administrative Office's Order No. 2020-6, Expanding Authority for Judicial Officers to Conduct Proceedings Remotely

Dear Mr. Mack:

I write in my capacity as Executive Director of the National Crime Victim Law Institute (NCVLI) to recommend amendment of the State Court Administrative Office (SCAO)'s plan to provide all Michigan courts with the ability to host remote court proceedings as explained in Administrative Order No. 2020-6, Order Expanding Authority for Judicial Officers to Conduct Proceedings Remotely (Order No. 2020-6), issued April 7, 2020 (https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-04-07_FormattedOrder_AO2020-6.pdf). NCVLI is a nonprofit educational and advocacy organization located at Lewis & Clark Law School in Portland, Oregon, where I am also a Clinical Professor of Law. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education and resource sharing. NCVLI accomplishes its mission through education and training; technical assistance to criminal justice practitioners and policy makers; and amicus curiae participation in cases nationwide.

Recognizing the unprecedented times we live in, we applaud the SCAO's efforts to ensure access to Michigan's courtrooms, and to have procedures consistent with a party's constitutional rights. We hope, however, that the SCAO will act expeditiously to modify its order, and the guidance contained in the Frequently Asked Questions Regarding Expansion of Remote Proceedings (FAQs), last updated April 21, 2020 (<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/COVID-19/RemoteHearingAdditionalFAQs.pdf>), to more clearly ensure protection of crime victims' rights and interests, including their constitutional "right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process." Mich. Const. art. 1, § 24.¹

¹ See, e.g., *People v. Law*, 591 N.W.2d 20, 22 n.6 (Mich. 1999) (recognizing that crime victims are guaranteed rights under the Michigan Constitution, including "[t]he right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process"); *People v. Peters*, 537 N.W.2d 160, 164 (Mich. 1995) (providing that "the Michigan Crime Victim's Rights Act was enacted . . . in response to growing recognition of the concerns of crime victims"); see also Mich. Comp. Laws Ann. § 780.758 (affording victims privacy protections in court; recognizing that victims have a constitutional "right to be treated with respect for their dignity and privacy"; and providing victims with privacy protections over their "information and visual representations" in connection with the "freedom of information act"); Mich. Comp. Laws Ann. § 780.788 (providing the same protections); Mich. Comp. Laws Ann. § 780.818 (providing the same protections).

Of particular concern is the FAQ suggestion that providing access to “public” proceedings requires use of mediums such as YouTube, and the fact that the FAQs, citing the Michigan Trial Courts Virtual Courtroom Standards and Guidelines, hold out use of YouTube as a best practice. Both live streamed and recorded proceedings on YouTube have the potential of reaching millions of viewers and the risks to victims’ health and safety from this extraordinary access cannot be overstated. In these unprecedented times affirmatively putting in place restrictions and clear guidance on limited access is appropriate; further, placing the burden on those seeking access to information rather than automatic availability is fully in line with the law.²

On behalf of crime victims impacted by Order No. 2020-6, we request the SCAO to amend the guidance to ensure hearings in cases that involve or concern crime victims are conducted in a manner protective of victims’ rights, including their right to be treated with fairness and respect for their dignity and privacy. Such guidelines may include:

- Not livestreaming hearings via YouTube or alternative channels for criminal and civil protection order proceedings, release hearings or other hearings in which the court anticipates testimony or other evidence concerning the victim will be at issue;
- Preventing release of recordings of hearings to public websites, or if such release is to happen for it not to happen without prior review by a victim, their advocate and their attorney to ensure nondisclosure of any information that jeopardizes victim privacy or safety;
- Ensuring that no cameras capture a victim’s image during any livestreamed proceeding or during a recorded proceeding that will be broadcast, or ensuring redaction prior to broadcast;
- Ensuring that no audio recording is made of a victim’s voice during any livestreamed proceeding or during any recorded proceeding that will be broadcast or ensuring redaction prior to broadcast;
- Limiting the number of “public” participants for any Zoom or otherwise technology-assisted hearing to a number that does not exceed the physical capacity of the courtroom in which the hearing would have been conducted under ordinary circumstances;
- Affording the victim an opportunity to proceed via a pseudonym in any technology-assisted hearing—and upon such election issuance of a court order directing all parties and witnesses to refer to the victim via the pseudonym;³ and
- Requiring any argument or reference to the victim’s confidential, private or otherwise sensitive information—*e.g.*, date of birth, home address, place of employment, doctor’s name—to be submitted via paper and not verbally revealed in a Zoom or any technology-assisted hearing.

Incorporating these protections is necessary to comply the law and is in the best interest of the administration of justice. *See Payne v. Tennessee*, 501 U.S. 808, 827 (1991) (“[J]ustice, though due to

² Michigan courts have long recognized the propriety of closing and partially closing the courtroom to protect victim interests. *See, e.g., People v. Kline*, 494 N.W.2d 756 (Mich. Ct. App. 1992) (allowing for partial closure of the courtroom during the victim’s testimony); Mich. Admin. Code, R. 8.116 (providing instances when a court may limit access to proceedings).

³ Michigan laws explicitly recognize propriety of pseudonyms in certain contexts. *See, e.g., People v. Waclawski*, 780 N.W.2d 321, 331 n.3 (Mich. Ct. App. 2009) (explaining that in order to maintain “the privacy of the victims in this case, [the court] refer[s] to each of the three victims only by the first letter of their first name to ensure anonymity”); *People v. Katt*, 639 N.W.2d 815, 828 n.17 (Mich. Ct. App. 2001), *aff’d*, 662 N.W.2d 12 (Mich. 2003) (providing that “[f]or the purposes of protecting the victims’ privacy, [the court] use[s] a pseudonym to identify the relevant individuals”); *People v. Smith*, 625 N.W.2d 46, 48 (Mich. Ct. App. 2000) (using pseudonyms when referencing the victims).

the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.” (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1934))). Failure to include such guidelines risks court congestion and increased health risks for the community as victims whose rights may be or have been violated will have to move the court for redress, which may entail additional hearings. Victims should not have to choose between accessing justice and safeguarding their health and privacy.

Thank you for your work during these trying times and for your quick attention to this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Meg Garvin". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Meg Garvin, M.A., J.D.
Executive Director