

Michigan Office of Administrative Hearings & Rules

Standards and Guidelines for Remote Hearings

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The Michigan Office of Administrative Hearings and Rules extends gratitude to the members of MOAHR’s remote hearing manual workgroup for their invaluable assistance in preparing these standards, guidelines, and best practices. They convened regularly for weeks, reviewed best practices within the Michigan court system, and provided instructive insights based on their own experiences conducting remote hearings. Through this manual, MOAHR has endeavored to improve the accessibility of the remote administrative hearing process and, ultimately, improve service to the public.

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The following guidelines and standards contain useful information and best practices relevant to the conduct of remote, i.e. “virtual,” hearings for all practice areas within MOAHR, except for Corrections and the Tax Tribunal. Subject to the rules of each practice area within MOAHR and the discretion of the individual administrative law judge, the procedural requirements of these guidelines and standards may be relaxed to facilitate the resolution of a matter without prejudice to the parties and in a manner consistent with the requirements of the Administrative Procedures Act or other applicable law.

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I. Governing Authority

A. Temporary Suspension of Hearings Policy

MOAHR Executive Director Suzanne Sonneborn has issued a policy temporarily suspending in-person hearings and converting those hearings to telephone, teleconference, or video conference hearings, with proper party notifications. See MOAHR Policy No. 15, which may be updated as necessary.

B. Administrative Hearings Rules

Rule 121(1) of the Administrative Hearing Rules, R 792.10121(1), authorizes administrative law judges to conduct all or part of a hearing by video conference or other electronic means.

II. Remote Hearings Generally

A. Continuity

Remote hearings will be conducted in a manner as closely as possible to regular in-person hearings at MOAHR. The rules and procedures applicable to in-person hearings are applicable to a hearing held by video conference or other electronic means and compliance by the parties and their representatives is expected. Remote hearings do not change the order of presentation of witnesses or the burden of proof.

B. Decorum

All participants must comply with the MOAHR administrative rules and all rules of decorum, civility, and ethics during remote hearings. Participants must display respect for the dignity of the proceedings by their conduct, language, and attire. If a participant violates these rules, the administrative law judge may remove that participant from the virtual hearing room. A participant also may be placed in a waiting room, if enabled. That participant cannot rejoin the hearing on their own and may only be readmitted by the host. The administrative law judge should

remind those participating of these rules and standards at the start of the hearing.

MOAHR staff participating in the remote hearing should have a professional background displayed, preferably a photograph of the hearing room or State of Michigan seal whenever possible.

C. Electronic Devices

Participants must not record, duplicate, save, photograph, or livestream any audio, video, or image of any portion of the remote hearing, including virtual waiting rooms, without the express approval of the administrative law judge.

All participants must turn their cell phones, secondary computers, tablets, etc. on silent mode. A cell phone may be used during the hearing only for the purpose of participating in the hearing or communicating with counsel or other identified participants, excluding witnesses when that witness is testifying.

Witnesses may not have any electronic devices present during the remote hearing other than the device that they are using to access the remote hearing. While testifying, witnesses may not access other applications or browser windows without the express permission of the administrative law judge through written order or on the record.

D. Presence of Others

Witnesses may not have persons unrelated to the conduct of the remote hearing in the room with themselves without the express permission of the administrative law judge through written order or on the record.

III. Pre-hearing Procedures

A. Notice of Remote Hearings

MOAHR will provide notice of the hearing date and time, including the *Zoom* or *Microsoft Teams* invitation, to all counsel of record or other authorized representatives, all self-represented parties, and the assigned court reporter, if applicable, by delivery to their email addresses, if any, on record. This notice shall include both a link to access the hearing by video and a telephone number that will permit the participant to connect by audio only. Participants who do not have access to reliable Internet video may connect by audio if determined necessary by the administrative law judge. Counsel or other representatives and self-represented parties may forward the notice to witnesses and assistants. Technical information relative to *Zoom* and *Microsoft Teams* can be found on those platforms. For more information on creating a *Zoom* invitation, see [here](#). For more information on creating a *Microsoft Teams* invitation, see [here](#).

It is the responsibility of each party to send copies of the *Zoom* or *Microsoft Teams* invitation to their witnesses and to assure that each witness is available and prepared to testify. If a party's witness is unable to testify by video conference, that party must notify the administrative law judge so that alternative arrangements can be made.

B. Objections to Remote Hearings

Any party who objects to the hearing being conducted remotely must notify the administrative law judge in writing within ten (10) days of receipt of the notice of hearing and show good cause why the hearing should not proceed remotely. The administrative law judge may deny the request, adjourn the hearing, or take any other action in compliance with these guidelines, the MOAHR administrative rules, and the MOAHR policy temporarily suspending in-person hearings.

C. Designation of Host Status

Whenever possible, the administrative law judge should be designated as the host of the proceeding at the time the remote hearing is scheduled. If that is not possible, the scheduler must give the administrative law judge additional privileges prior to the start of the hearing. *Zoom* allows the designation of a co-host. In *Microsoft Teams*, participants can be given “presenter” status using the Meeting Options setting. For more information on host and co-host controls in a meeting on *Zoom*, see [here](#). For more information on presenter mode in *Microsoft Teams*, see [here](#).

IV. Making a Record

A. Standard

In all hearings held by video conference, it is essential that a reliable and continuous video connection with the judge, attorneys, representatives, witnesses and the court reporter, if applicable, is maintained to ensure the integrity of the record. The following guidelines are intended to provide instruction on how to ensure that a clear record of the proceeding is made.

1. View Options

When multiple people talk at once, it may be difficult to determine which participant is speaking. Using the “gallery view” will allow the administrative law judge to see all of the participants and permit the court reporter to know who is speaking.

Zoom defaults to shift the screen to the person speaking. Change to gallery view at the start of the hearing. For *Microsoft Teams*, gallery view is the default option.

For more information on view options in *Zoom*, see [here](#). For more information on view options in *Microsoft Teams*, see [here](#).

2. Advise Parties to Speak Slowly and to Wait Until Prompted

Video/audio lag in a remote hearing often results in parties being more likely to overlap when talking. The administrative law judge should frequently remind participants to speak slowly and not to interrupt each other. If overlap occurs, the administrative law judge should ask the participants to repeat what they just said and encourage the parties to only speak when they have been prompted to do so, unless there is an objection or some other reason to speak out of turn. Any participant appearing only by telephone should be instructed to identify themselves each time they speak.

If a court reporter is being used, the administrative law judge should advise the reporter to immediately notify the administrative law judge when a technical issue arises that may impact the preparation of an accurate transcript.

3. Control of Hearing

Both *Zoom* and *Microsoft Teams* have features that allow the administrative law judge to control the conduct of participants to the virtual hearing. Both platforms give the host the ability to mute participants upon entry into the virtual hearing room and to mute and unmute all or some participants during the hearing. Participants who wish to speak may “raise their hand” by clicking the appropriate icon in the toolbar; the administrative law judge can then unmute them so that they can speak. Both platforms also allow the host to remove a participant from the meeting; such a participant cannot rejoin the meeting on their own and can only be readmitted by the host.

*Key differences between the platforms: On **Zoom**, the administrative law judge can mute individual participants to the virtual hearing or all participants at once and the individuals remain muted until allowed to speak. On **Microsoft Teams**, participants must be muted on an individual basis and participants may unmute themselves at*

any time without the permission of the host. For more information on muting and unmuting participants on Zoom, see [here](#).

In addition, **Zoom** allows participants to be removed from the meeting and placed in a waiting room, if enabled, or on hold, whereas those features are not available on **Microsoft Teams**. To learn more about placing participants on hold or moving them to waiting rooms on **Zoom**, see [here](#).

4. Use of Chat Functionality

Zoom offers a feature that allows the host and participants to “chat” with all participants, with only the host, with everyone publicly or privately, or with no one. This feature can be enabled by the administrative law judge on a per-hearing basis. It is up to the administrative law judge to determine whether it is appropriate to allow or limit the feature. For example, a private chat between an attorney and client may be desirable, except while the client is testifying, while a chat between the administrative law judge and one attorney may constitute impermissible ex parte communication or comments to be made that are not included in the official record. If the administrative law judge elects to enable the chat feature, public chats may be saved. When saving the chat, the host can save a chat message that he or she received privately or those chat messages that were sent to all participants. Messages sent privately between participants, not including the host, cannot be saved by the host. For more information on using in-meeting chat on *Zoom*, see [here](#).

Microsoft Teams also offers a chat function, but it is not as fully featured. There is no way for the host to disable the chat function on a per-hearing basis, nor can the host limit those to whom a private chat message may be sent or received. There is also no option for the host to save the contents of the chat. For more information on how to use Chat in *Microsoft Teams*, see [here](#).

5. Play Sound When a Participant Enters or Leaves a Meeting

On both *Zoom* and *Microsoft Teams*, the host can configure settings to play a sound when someone enters or leaves the hearing. This may help the administrative law judge and the court reporter, if applicable, to track the participants.

6. Troubleshoot Audio and Video Problems During Hearing

To avoid audio problems, participants should be directed to mute themselves whenever they are not speaking during the hearing. The administrative law judge may also mute participants as needed.

If an audio problem such as echo or feedback arises during the hearing, there are several possible causes.

- One or more participants called in by phone and are using their computer's audio at the same time. *Solution: Ask the participant to mute his or her computer audio.*
- There are one or more participants with computer speakers that are too close together or too close to their microphones. *Solution: Ask the participant to use headphones or earbuds or, at minimum, to turn down the volume of their speakers.*
- There are multiple computers with active audio in the same conference room. *Solution: Ensure that all participants are in separate rooms at the start of the virtual hearing.*

To avoid video problems during a *Zoom* hearing, all participants, including the administrative law judge, should ensure that HD video is disabled. This will help to ensure that there is adequate bandwidth for streaming.

There is no option in *Microsoft Teams* to change the streaming quality. However, the administrative law judge can ask the

participant to disable his or her video to resolve bandwidth-related issues.

For help troubleshooting audio and video connections and other issues on *Zoom*, see [here](#). For help troubleshooting audio and video connections and other issues on *Microsoft Teams*, see [here](#).

B. Official Record

MOAHR shall maintain an official record of each case conducted by video conference. Where required by statute or rule, a court reporter must attend the hearing as a virtual participant and take a verbatim record of the proceeding. In *Zoom*, the court reporter's name should include "Court Reporter" so that he or she may be easily identified. In all other cases, the official record shall consist of a digital audio recording of the proceeding made by the administrative law judge.

The administrative law judge may make a digital video recording of the virtual proceeding in addition to the audio recording or record maintained by the court reporter. The administrative law judge may also authorize a participant of the proceeding to record the hearing. However, such recordings shall not be accepted to challenge the official record unless adopted by the administrative law judge.

Whenever an audio or video recording of the hearing is made by the administrative law judge, that recording must be downloaded and stored on the administrative law judge's computer hard drive and/or uploaded to the network file system. If a video recording is made by the administrative law judge, MOAHR shall ensure that a copy of the recording is maintained until the case is closed. Thereafter, the recording may be destroyed.

V. Exhibits

A. Advanced Submission

With the exception of confidential or sensitive information as discussed below, parties must submit all proposed exhibits, including documents,

photographs and videos, to the administrative law judge or MOAHR support staff via email no later than three (3) business days before the start of the hearing, unless the administrative law judge specifies a different deadline or form of transmission. All exhibits must be numbered and labeled accordingly and be accompanied by an exhibit list describing each exhibit by number and label. Whenever possible, documents should be in .pdf format. The case number and docket and a specific reference to the filing of exhibits must be included in the subject line of transmittal email(s).

Each party must provide to each opposing party an email address for the purpose of exchanging exhibits, unless the administrative law judge expressly permits another means of exchange.

B. Confidential or Sensitive Information

Exhibits containing confidential or sensitive information should not be submitted to the administrative law judge before the hearing. Instead, the party seeking to proffer an exhibit containing confidential or sensitive information must notify the administrative law judge of the document in advance of the deadline for submission of exhibits. The administrative law judge will then provide instructions to the parties for handling the exhibit. The parties should expect that documents containing confidential or sensitive information will be shared only with those parties or participants authorized by the administrative law judge to receive such documents.

C. Additional Exhibits

A party may seek to introduce an exhibit which was not submitted in advance of the hearing for the purposes of rebuttal or impeachment, or upon showing that the exhibit could not have been reasonably anticipated prior to hearing. A party may upload such exhibits by use of the Chat function within *Zoom* or *Microsoft Teams*, or by emailing a copy directly to the administrative law judge or MOAHR support staff, with a copy sent to all other parties.

D. Screen Sharing

Whenever possible, the parties must provide copies of all exhibits to their witnesses before the start of the hearing. However, the administrative law judge may show exhibits to witnesses by use of the Share Screen function within *Zoom* or *Microsoft Teams* absent objection of the party proffering the exhibit. Share Screen also can be used for purposes such as laying a foundation, refreshing the recollection of a witness, and authenticating signatures. For help with the Share Screen function on *Zoom*, see [here](#). For help with the Share Screen function on *Microsoft Teams*, see [here](#).

VI. Witnesses

The administrative law judge must direct the witnesses that:

- Witnesses may not communicate with other witnesses regarding the subject of the hearing before, during or after the witnesses' testimony.
- Witnesses may not use chat features or otherwise communicate with a party, their representative, or others during their testimony in a manner that is not open to all participants in the hearing.
- Witnesses may not consult notes or other material while testifying unless permission is granted by the administrative law judge.

If the administrative law judge determines that sequestration of the witnesses is necessary, the judge shall place each witness in a waiting room until it is time for that witness to testify. Alternatively, if a witness is willing to provide his or her contact information to the administrative law judge, that witness may disconnect from the hearing and wait for notification from the administrative law judge that it is time to testify.

For longer hearings, witnesses may be permitted to wait offline until they are needed. In such instances, it is the responsibility of the party seeking to call the witness to contact that individual when it is time for his or her testimony.

Sample witness instructions are provided [below](#).

VII. Waiting Rooms, Lobbies and Breakout Rooms

Both video conference platforms allow the host to require that participants are placed in a “waiting room” (*Zoom*) or a “lobby” (*Microsoft Teams*) before the start of the hearing. This ensures that participants are not able to enter the virtual hearing room until the administrative law judge is ready to start the proceeding. It also gives the administrative law judge the opportunity to confer with counsel without participants being present. When in a waiting room or lobby, participants are not able to communicate with each other.

When using *Zoom*, the administrative law judge may also place one or more participants in a waiting room during the hearing. This is useful for sequestration of witnesses. In *Microsoft Teams*, the lobby feature is not available once the hearing has started. For help using a waiting room on *Zoom*, see [here](#). For help using a lobby in *Microsoft Teams*, see [here](#).

*Note that **Zoom** also has a feature that allows the administrative law judge to place one or more participants in a breakout room so that they may confer with each other privately. This is especially useful for attorney-client communications. For technical reasons, however, breakout rooms will not be available on MOAHR Zoom accounts until the 4th Quarter of 2021. **Microsoft Teams** does not offer a breakout room feature.*

VIII. Virtual Backgrounds

Administrative law judges presiding over virtual hearings should have a professional background. A photo featuring the State of Michigan Seal will be made available for use as a background during hearings. For help using a virtual background on *Zoom*, see [here](#). For help using a virtual background in *Microsoft Teams*, see [here](#).

If the administrative law judge is unable to use a virtual background, he or she should attempt to use a solid color, plain background.

IX. Accommodations under the ADA

Title II of the Americans with Disabilities Act (ADA)¹ requires that state and local governments provide reasonable accommodations to persons with disabilities to provide access to a court program, service, or building.

The State Court Administrative Office Trial Court Division has developed a [Handbook for Michigan Courts on Accessibility and Accommodation for Individuals with Disabilities](#), which serves as a guide to assist judges and court staff in being fully compliant with the federal statutes.

- Part II of the Handbook provides guidelines to follow when interacting with people who are deaf or hard of hearing, those who have speech or language disorders, and those who are blind or visually impaired, including the importance of using Person-First Language during communications.
- Part IV of the Handbook provides guidance on Removing Common Barriers to Access-Communication.

If requested, appropriate accommodations must be provided to all participants of a meeting or hearing, whether in person or in a virtual setting.

Requests for disability accommodations for virtual hearings can be made using the [MOAHR Disability Accommodation Request Form](#) and should be submitted within five days of receipt of the Notice of Hearing. Requests should specify the impairment for which the accommodation is needed, for example, visual or hearing impaired and the type of accommodation needed.

Requests for disability accommodations are decided on a case-by-case basis, with the court and the requestor engaging in a dialogue to determine the best reasonable accommodation for the person. Some accommodations can only be met using a specific technology. The use of Zoom for American Sign Language interpretation and public meetings is strongly encouraged.

¹https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm

Accessibility Notice: If the notice of hearing issued to the parties does not already include a notice on accessibility and/or process for accommodation requests, this information should be posted in the Zoom or Microsoft Teams registration information and/or meeting invitation, with a department point of contact for requests.

Note that accessibility also extends to presentation materials, exhibits, and content. Whenever necessary, an accessibility check should be completed in hearings where accommodations have been requested.

A. Interpreters

The [Michigan Deaf Persons' Interpreters Act \(1982 PA 204\)](#), in addition to the federal requirements under the ADA, provide for and regulate the use of interpreters for administrative and judicial proceedings. There are remote proceedings where American Sign Language (ASL) interpreters or foreign language interpreters will be necessary to ensure full participation and access by one or more parties in a case.

If an ASL interpreter is requested, Zoom must be used to accommodate that request. It is the only approved solution that can appropriately incorporate an ASL interpreter into the meeting.

When procuring an ASL interpreting service, consideration should be given to the interpreter level (1, 2, or 3), the context of the meeting/hearing, how many interpreters are needed (often based on hearing duration), and the cancellation policy.

Video remote interpreting (VRI) often requires the use of the consecutive interpreting mode, where a person speaks, and the interpreter says what the person said when they stop speaking.

Simultaneous mode interpreting functionality, where the interpreter provides the interpretation as the person is speaking, is available on some VRI platforms, including *Zoom*. This feature can be enabled by contacting Zoom support and may require additional set up/configurations and account prerequisites. For more information on simultaneous interpretation and *Zoom* capabilities, click [here](#). *Microsoft Teams* does not

have simultaneous interpretation functionality, and instead, recommends the combined use of [Microsoft Teams and Microsoft Translator](#). Additional information on Microsoft Translator live features is available [here](#).

Notwithstanding the functionality of simultaneous interpretation among the two platforms, it is more likely that ASL or foreign language interpreters will be using the consecutive mode of interpretation for the virtual hearing, as MOAHR, or another agency typically pre-arranges for an interpreter's participation.

Advanced settings, including language interpretation, are available in Zoom and can be enabled or disabled. It is recommended that the language interpretation feature setting in Zoom be disabled and not used to designate an ASL interpreter or in other instances when an interpreter may be required to "voice" for someone in a hearing.

1. Pinning and Spotlighting Videos in Zoom and Teams

In a remote hearing, interpreters will appear as a participant, just like a party to the case. In *Zoom* and *Microsoft Teams*, the interpreter's name should include "Interpreter" so that he or she may be easily identified.

The party who requested the interpreter may "pin" the interpreter's video feed to easily view the interpreter.

- In *Zoom*, pinning a specific user's video feed will not affect the view of other participants and will not affect cloud recordings, if being utilized. The Zoom Help Center provides instructions on how to [Pin Video](#).
- In *Microsoft Teams*, right click on the video and select pin. The video will be pinned to their view regardless of who is talking. In *Microsoft Teams*, you can pin as many videos as will fit on the screen. Video options in *Microsoft Teams*, including how to pin, can be found [here](#).

- Spotighting a video is like pinning it for everyone in the meeting. If you are the organizer or a presenter, you can choose one or more participants as the primary active speaker for all participants. Instructions on how to spotlight a video in *Zoom* can be found [here](#). Similarly, Microsoft Support provides instructions on how to [Spotlight](#) a video using *Teams*.

2. Breakout Rooms

If the party who requested the interpreter is moved into a breakout room with their attorney for example, the interpreter will need to be assigned to the breakout room and brought back to the hearing at the same time as the parties.

Note: For technical reasons, however, breakout rooms will not be available on MOAHR Zoom accounts until the 4th Quarter of 2021. Microsoft Teams does not offer a breakout room feature.

3. Interpreter Limitations in Virtual Hearings

Some individuals, including those who are deaf and blind (“deafblind”), may require tactile interpretation that may not be accommodated during a remote hearing. Tactile interpretation can include tactile signing, finger spelling (dactylology), and Print-on-Palm (POP).² This requires an interpreter to be in close proximity to the person he or she is interpreting for, as the interpreter signs what is being spoken during the hearing onto the individual’s hand. For written communication, individuals who are deafblind may also rely extensively on braille. An in-person hearing may be more appropriate in this case.

² See page 13 of the [Handbook for Michigan Courts on Accessibility and Accommodation for Individuals with Disabilities](#).

B. Hearing Impairments

1. Communication Access Real-Time Translations (CART)

If closed captioning is being provided as an accommodation under the ADA, MOAHR must use a CART provider. CART³ provides a text display of all speech that occurs in the courtroom. A CART provider uses a steno machine, notebook computer, and Realtime software to render instant speech-to-text translation on a computer monitor or other display media for an individual or group.

Many Court Stenographic Reporters (CSRs) are also CART-certified and may be utilized to provide this service. If MOAHR does not have a CART-certified CSR, a third-party CART provider should be contacted.

Support for integrated captions within *Zoom* can be accomplished as long as the CART provider is able to use a captioning platform that supports *Zoom*'s Closed Captioning REST API. This allows caption providers to stream their captions directly into the *Zoom* interface. *Zoom*'s Cloud Room Connector and Virtual Room Connector also provide support for displaying closed captioning on H.323 devices. VITAC is a CART provider that supports *Zoom*'s Closed Captioning API.

Microsoft Teams does not provide support for third party CART providers.

2. Closed Captioning

Zoom has the capacity to allow for closed captioning for participants. Meeting hosts may type the captions themselves or assign another participant/provider to type closed captioning.

³ Further information about CART may be found on the [National Association of the Deaf website](#). If an assistive device is needed, contact the [Michigan Coalition for Deaf and Hard of Hearing](#) or the [Michigan Division of Civil Rights – Department of Deaf, DeafBlind, and Hard of Hearing](#).

Instructions for setting up closed captioning for a *Zoom* proceeding can be found [here](#).

Microsoft Teams uses the Microsoft Automatic Speech Recognition (ASR) technology service to generate captions. This feature detects what is said in a meeting and presents real-time captions. To use live captions in *Microsoft Teams*, click [here](#).

Note: Closed captioning or CART services utilized during a virtual hearing are not saved and are not to be considered the official hearing record or transcript.

C. Visual Impairments

Zoom is accessible for users with visual impairments and supports common screen readers such as NVDA, JAWS, VoiceOver, and Android Talkback.

Microsoft Teams has been tested to support NVDA and JAWS screen readers⁴. For support in using a screen reader in *Microsoft Teams*, click [here](#) and [here](#).

If the *Zoom/Microsoft Teams* share screen or chat features are being utilized to share information, the administrative law judge or parties should verbalize what is being displayed on the screen or in the chat.

The administrative law judge should consider reading any chat comments aloud, saving the entire chat for later reference and to share with participants, and sending links or documents shared through the chat to participants in the hearing via email.

In order to make the contents of the screen share accessible to hearing participants who use screen readers, the parties should share the relevant documents or video ahead of time with the hearing participants. If not

⁴ [How Screen Readers Work with Microsoft Office](#).

shared prior to the hearing, the documents should be shared with all parties after the hearing.

D. Resources and Further Reading

Additional information on accessibility support and features for each platform can be found by visiting the following website pages:

Microsoft Teams:

- [Accessibility Support for Microsoft Teams](#)
- [Accessibility Overview of Microsoft Teams](#)
- [Disability Answer Desk](#)

Zoom:

- [Accessibility Features](#)
- [Accessibility FAQs](#)

There may be some instances where necessary accommodations are not feasible for remote hearings, and an in-person hearing should be held so that a person with a disability will be able to fully participate in the proceeding. It may also be appropriate to hold a proceeding in person for parties who require other types of interpretation or other accommodations not identified above to facilitate communication, access, and participation.

X. Public Access to Hearings

A. Authority for the Public Right to Access Hearings

The Michigan Court Rules apply to administrative hearings when there is no applicable administrative rule.⁵ The governing statute and administrative rules for the specific case type must first be consulted. Michigan's court rules and statutes require that all court proceedings be open to the public unless otherwise provided by statute or court rule.⁶ The Michigan Court Rules require a balancing test before limiting access by

⁵ [Administrative Hearing Rule 792.10102\(3\)](#).

⁶ [MCR 8.116\(D\)\(1\)](#); [MCL 600.1420](#).

the public to any court proceeding; specifically: “Except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless

(a) a party has filed a written motion that identifies the specific interest to be protected, or the court sua sponte has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access;

(b) the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect the interest; and

(c) the court states on the record the specific reasons for the decision to limit access to the proceeding.”⁷

Alternatives to complete closure of a hearing if a livestream is being used to grant public access include, but are not limited to, reducing testimony to affidavit, providing audio-only streaming, providing a phone number for audio access only, prohibiting screen sharing of exhibits, and temporarily interrupting the livestream.⁸ In addition, Rule 106(1)(c) allows an administrative law judge to exercise discretion with regard to the exclusion of parties, their attorneys or authorized representatives or other persons when necessary to avoid undue disruption of the proceedings.

The Michigan Judicial Institute has provided a thorough [legal analysis](#) of the public right to access remote hearings, and the State Court Administrator’s Office has compiled a [chart of authority](#) for public access to courts, as well as authority for court closures.

B. Media Access to Hearings

Requests for media access to a remote hearing that is not scheduled to be streamed live to the general public must be made in writing at least three

⁷ [MCR 8.116\(D\)\(1\)](#).

⁸ The Michigan Judicial Institute has [more information](#) on limiting access when necessary.

(3) business days before the proceeding is scheduled to begin. The administrative law judge may waive these requirements for good cause. The administrative law judge may deny the request where: (1) the law requires exclusion, (2) the interests of justice require exclusion, or (3) this guideline or associated rules have been violated.

Media representatives granted access to a proceeding that is not being streamed live to the general public will be provided with instructions on accessing the remote hearing. Media must put themselves on mute for the duration of the hearing and may not ask questions of any participant during the hearing. Media may not make an audio or video recording of the proceeding absent express permission of the administrative law judge through written order or on the record.

C. How to Grant Public Access to a Remote Hearing

There are two options to grant public access to a hearing: (1) the hearing may be live streamed via YouTube, or (2) a link or invitation to the remote hearing can be provided to those interested in observing.

1. Live Streaming via YouTube

SCAO has recommended live streaming hearings via YouTube.⁹ While that may not be practical or necessary for all administrative hearings, it may be useful to administrative law judges holding hearings where public interest is substantial, as there are limits on how many individuals can join a *Zoom* or *Microsoft Teams* hearing.¹⁰ Live streaming via YouTube is only available through *Zoom*.

To prepare for live streaming via *Zoom*:

- Set Google Chrome as the default browser on your computer.

⁹ A virtual courtroom directory is available [here](#), and shows which judges are currently live streaming.

¹⁰ There is a limit of 100 participants on *Zoom*, and 250 participants on *Teams*.

- Set up a new Gmail account – a personal account should not be used.
- Use your new Gmail account to sign into YouTube.
- Once signed into YouTube, select **Settings > Create a Channel**.
- Once you have created your channel, enable live streaming.
- You will then have to verify your account (which takes 24 hours) before you can live stream.
- After the waiting period, you will be able to live stream on YouTube through *Zoom*.
- To enable live streaming through Zoom, sign into the *Zoom* web portal. Select **Account Management > Account Settings**. Toggle **Allow live streaming the meetings** under **In Meeting (Advanced)** and enable YouTube.

[To stream a hearing via Zoom:](#)

- Start the *Zoom* meeting.
- Under **Meeting Controls**, select **More > Live on YouTube**.
- You will need to log in to YouTube using your new Gmail account.
- After logging in, you will receive a prompt where you can name the meeting and select the **Public** option.
- Click **Go Live!** and you will see a progress bar while the meeting is being prepared for livestreaming.

- Streaming stops either when you end the meeting, or by selecting **Meeting Controls > More > Stop Live Stream**.

2. Best Practices for Live Streaming Via YouTube:

You may want to [add](#) a “Do Not Record” [watermark](#) to the live stream.

You will need to [disable the Live Chat feature](#) on YouTube while live streaming.

You will need to [turn off all comments](#) on your YouTube channel.

YouTube will automatically record the live hearing session, but the recording does not need to be retained because it is not the official record. Further, given that YouTube’s Terms of Service allows YouTube to reproduce and display saved content, it is advisable to [delete the recording](#) from your YouTube channel after live streaming is finished. You can [download a local copy](#) of the live stream if you would like.

YouTube requires individuals to [label whether their content is made for kids](#). To change to the appropriate setting, log into YouTube. Then, select **Settings > Channel > Advanced Settings**. Under **Audience**, select “No, set this channel as not made for kids. I never upload content that’s made for kids.” Click **Save**.

Sequestered witnesses should be advised not to watch the hearing live on YouTube. If there are concerns about sequestered witnesses watching the hearing live on YouTube, the administrative law judge can [record the hearing via Zoom](#) and upload the video recording online immediately after the hearing to allow for public access.

3. Sharing an Invitation with Observers

Microsoft Teams does not provide any mechanism for administrative law judges to live stream their hearings to YouTube.

If the administrative law judge is conducting the hearing via *Microsoft Teams*, an invitation would need to be sent to any observers. For those administrative law judges using *Zoom*, but not live streaming hearings via YouTube, a link can be sent to individuals who are interested in observing the hearing. Most states using videoconferencing to conduct administrative hearings have added a statement to the administrative hearing office's website¹¹ that a member of the public wishing to attend a hearing should call the hearing office so that they can be provided a link or invitation to the remote hearing.

The link or invitation to attend the virtual hearing should not be provided on the Notice of Hearing because it is a public document. If the link or invitation to attend the virtual hearing is widely disseminated, it increases the possibility of "Zoombombing" where uninvited individuals disrupt the hearing with inappropriate language or visuals.¹² In order to avoid Zoombombing, the administrative law judge should [enable the waiting room feature](#), and require the host to be present before the meeting starts by [disabling the join before host feature](#). *Zoom* also has settings to [require a passcode](#) for participants joining by phone, [disabling recording by a participant](#), and [prevent participants from screen sharing](#). *Microsoft Teams* has similar features to avoid disruptions by uninvited individuals, including [using a lobby](#) to control who can enter the hearing, and [not allowing participants to record](#). *Microsoft Teams* does not have a way to prevent participants from screen sharing.

XI. Self-Represented Parties

Many hearing participants are not represented by an attorney or authorized representative. This may present several challenges. Self-represented parties may also participate in an administrative hearing remotely by telephone or by video conference through *Zoom* or *Microsoft Teams*. The likelihood of the

¹¹ [Arizona](#) and [Maryland](#) are two particularly instructive examples.

¹² Both courts and public meetings have been subject to Zoombombing, as noted [here](#) and [here](#). However, *Zoom* has updated and improved [security settings](#) since these incidents.

remote hearing being successful is dependent upon their ability to effectively join and participate. A self-represented party may lack sufficient resources or be unfamiliar with conference call lines or video conferencing or be anxious about using them.

A. “Remote” Hearing Guide for Self-Represented Parties

Many self-represented parties have never previously attended an administrative hearing or a court proceeding, let alone a video conference or remote hearing. Michigan Legal Help has created the following guide to assist self-represented parties prepare for and participate in a virtual hearing, available [here](#).

1. Preparing for the Remote Hearing

To prepare for a remote hearing, the self-represented party must have (1) a smart device (e.g., laptop, tablet, smartphone, or personal computer with a camera and microphone), (2) access to an internet connection, and (3) a cell phone number and an email address. Self-represented parties should be instructed to immediately notify MOAHR if they do not have the capability to participate in a remote hearing.

Although not required, the self-represented party may be advised to create an account and download [Microsoft Teams](#) or [Zoom](#).

Any exhibits should be scanned and sent to the administrative law judge, and the opposing party, prior to the hearing as indicated in the notice of hearing or as ordered by the administrative law judge. The exchange of exhibits is discussed [above](#) in greater detail.

The self-represented party should be advised to become familiar with in-meeting controls for the applicable video conferencing platform. *Zoom* provides instructions for its control bar [here](#). Instructions for using the control bar in *Teams* can be found [here](#).

2. Conducting the Hearing

Before the virtual hearing, the self-represented party should be provided with the following instructions:

- Dress as if you were appearing in court.
- Find a safe and quiet place to help limit distractions. You may use headphones. **DO NOT DRIVE WHILE PARTICIPATING IN THE HEARING.**
- Position the camera at eye level or slightly above eye level. If using a smartphone, place the phone in a stationary location to minimize unnecessary movement.
- Check your lighting. Avoid a room that is too light or too dark. The light should be facing you rather than behind you. Do not use a virtual background.
- Plan to call or log in at least 10 minutes before the hearing. Turning on the computer, establishing a connection, navigating a web page, and beginning the video conference hearing may take longer than expected. Test your camera, speaker, and microphone before the hearing.
- Locate the phone number for MOAHR in case you have technical difficulties or are disconnected.
- If you have any witnesses who may testify at the hearing, it is your responsibility to make sure your witness is provided with instructions about how to join the remote hearing and has a copy of your exhibits prior to the hearing. Sample witness instructions are included [below](#).
- Keep yourself on mute until it is your turn to speak.

- Be courteous, respectful and maintain proper decorum at all times.

B. Remote Hearing Tips for the Administrative Law Judge

During the introduction of the hearing, the administrative law judge may want to confirm the following with any self-represented party:

- Do you understand that you have the right to be represented by an attorney?
- Do you understand that MOAHR cannot provide you with, or pay for, an attorney to represent you in this matter?
- Do you agree not to record and publish this hearing on the internet, social media, or any other location?
- Parties must speak one at a time and try not to talk over each other. You can keep your mute button “on” and feel free to utilize the “raise your hand” button to notify the judge when you have something to say.
- If you lose your connection or have technical difficulties, you should call MOAHR for assistance.

XII. Sample Witness Instructions

Remote Hearing Witness Instructions to be forwarded to the parties for dissemination to witnesses before the hearing.

Important – Remember that an administrative proceeding held through videoconferencing (*Microsoft Teams* or *Zoom*) or by telephone is the same as an in-person hearing in the courtroom. Standards of decorum, behavior, and dress are the same. The virtual hearing room is an extension of the physical hearing room. Follow the instructions below when you testify as a witness:

1. You are NOT permitted to:

- Discuss your testimony with anyone, except lawyers and their staff, until after the remote hearing has concluded in full.
- Listen to, read, or watch anything that would reveal what is happening in the hearing before your testimony unless expressly permitted by the administrative law judge. This includes text messages and social media.

2. *Microsoft Teams* or *Zoom* Hearing Invitation:

You have received or will receive an invitation to join the video conference hearing via e-mail. If you do not receive the invitation within three business days before the hearing, please contact the party coordinating your testimony at the hearing for additional instructions. Remember that this is a notice to appear for a formal administrative hearing.

3. Downloading and Testing Software

When you receive the hearing invitation, it is your responsibility to click on the link and download the software (*Microsoft Teams* or *Zoom*). The software can be downloaded via computer, smart phone or other device (such as a tablet). Download the application on the device you intend to use during the hearing and make sure that the device has a microphone and webcam (most laptops, smart phones, and tablets do). You can test your connection and settings with a test meeting.

4. Joining the Hearing:

Please wait for the judge, the lawyer, or party coordinating your testimony to direct you to connect to the hearing. Keep in mind that you may be in an electronic waiting room until the judge admits you to the remote hearing.

5. Sequestration:

There may be a need for you to be sequestered during the proceeding. This means the judge will order you to be excluded from the proceeding until it is time for you to testify. In order to protect you from being influenced by other evidence or tailoring your testimony to fit the testimony of others, you will not be allowed to listen to or watch the hearing and you will be placed into a virtual waiting room until it is your turn to testify.

6. Recording of Proceedings:

The proceeding that you are participating in will be recorded. Please keep the following in mind:

- Everything said will be captured and made part of the record just as in a courtroom.
- No recording or dissemination of any hearing proceeding or its livestream is permitted. Recording the proceeding and showing it on the Internet is strictly prohibited.
- Be careful of any small talk or personal conversations during a recess as they may end up as part of the hearing record.

7. Environment During Testimony:

- You must be alone in a quiet area where you will not be overheard or disturbed by others.
- Apart from a party's lawyer and the lawyer's staff, no third parties may be physically present in the room where you are testifying.
- You must not reference any notes or any other items during your testimony unless that has been authorized by the judge on the record.
- You must turn off all electronic devices, except for the device enabling participation in the hearing.
- You must not exchange any electronic messages, or other messages, with anyone during your testimony.

8. Tips for a Successful Remote Hearing:

- Ensure a good video or telephone connection with the judge.
- Your screen will identify you during the hearing. Make sure the personal identifier on the screen shows your name and not your phone number.
- When speaking, remember to look at the webcam.
- Try to place your mobile device on a solid surface with the camera at eye level or slightly above eye level. Avoid carrying the mobile device in your hand during the proceeding.
- **Do not participate while operating a motor vehicle.**
- Be mindful of what is behind you. Choose a solid neutral wall, if possible, as a background.
- If you will be using a video, make sure there is good lighting. It is best to position a lamp or sit facing a window where light is directly on your face.
- Do not talk over others. Wait until the judge asks you to speak. Speak one at a time and pause prior to speaking in case there is an audio/video delay.
- Keep yourself on mute when not speaking. This reduces feedback and limits background noise. There is an icon located on the screen to mute or unmute.
- Do not do other things while on the call/video conference. Pay attention so that you do not miss anything. Turn off any televisions, radios, or other devices.
- Behave as normally expected of you during a court proceeding.

XIII. Quick Links for Zoom and Microsoft Teams Basics

General Zoom Web Conferencing Basics	General Microsoft Teams Basics
<u>Schedule a Meeting</u>	<u>Schedule a Meeting</u>
<u>Start a Meeting as a Host</u>	
<u>Join a Meeting</u>	<u>Join a Meeting</u>
<u>Giving Scheduling Permission to an Assistant</u>	
<u>Testing Audio and Video</u>	Using <u>Audio</u> and <u>Video</u>
<u>Audio Echo (Feedback)</u>	
<u>Using Waiting Room Features</u>	<u>Using the Lobby</u>
<u>Managing Breakout Rooms</u>	
<u>Sharing a Screen/Document through Zoom</u>	<u>Sharing Your Screen</u> and <u>Other Content</u>
<u>Participant List Controls (Including Locking a Meeting)</u>	<u>Change Participant Settings</u>
<u>Using Virtual Backgrounds</u>	<u>Change Your Background</u>
<u>Keyboard Shortcuts</u>	<u>Keyboard Shortcuts</u>

SCAO has also held several [webinars](#) on using Zoom to conduct hearings.