



Republic of the Philippines  
Supreme Court  
Manila

A.M. No. 20-12-01-SC

**RE: PROPOSED GUIDELINES ON THE CONDUCT  
OF VIDEOCONFERENCING**

**WHEREAS**, the Supreme Court, under Section 5(5), Article VIII of the 1987 Constitution, is vested with the power to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged;”

**WHEREAS**, pursuant to this power, the Supreme Court authorized “the presentation of testimonial evidence by electronic means” in both civil and criminal cases under the *Rules on Electronic Evidence*;<sup>1</sup> and the use of live-link television testimony in criminal cases where the witness or the victim is a child under the *Rule on Examination of a Child Witness*;<sup>2</sup>

**WHEREAS**, the Supreme Court, recognizing the wide acceptance of “the use of videoconferencing technology” for “the remote appearance or testimony of the parties in court proceedings,” approved the *Guidelines on the Use of Videoconferencing Technology for the Remote Appearance and Testimony of Certain Persons Deprived of Liberty (PDLs) in Jails and National Penitentiaries*, which is being pilot tested between the Davao City Hall of Justice and Davao City Jail beginning September 1, 2019, “for a period of not more than two (2) years”;<sup>3</sup>

**WHEREAS**, in March 2020, the Novel Coronavirus disease (COVID-19) pandemic caused the declaration of states of public health emergency and calamity and the imposition of community quarantine in varying degrees across the country, resulting in reduced court operations, suspension of hearings nationwide, except on urgent matters, and the physical closure of courts;

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<sup>1</sup> July 17, 2001 and September 24, 2002 Resolutions in A.M. No. 01-7-01-SC (*Rules on Electronic Evidence*).

<sup>2</sup> November 21, 2000 Resolution in A.M. No. 004-07-SC (*Rule on Examination of a Child Witness*).

<sup>3</sup> June 25, 2019 Resolution in A.M. No. 19-05-05-SC (*Re: Proposed Guidelines on the Use of Videoconferencing Technology for the Remote Appearance or Testimony of Certain Persons Deprived of Liberty in Jails and National Penitentiaries*).

**WHEREAS**, in order to address the effects of the restraint on the movement and travel of court users for court proceedings, the Supreme Court designated pilot courts that were authorized to conduct hearings through videoconferencing, both in criminal and civil cases, through several issuances,<sup>4</sup> specifically indicated to apply only during the duration of the public health emergency;

**WHEREAS**, even with the gradual easing out of community lockdowns, videoconferencing continued to be adopted as a mode of conducting court proceedings;

**WHEREAS**, considering the commendable results of the use of videoconferencing in pilot court stations, the Supreme Court issued Memorandum Order No. 40-2020 dated May 29, 2020 creating the Special Committee on Virtual Hearings and Electronic Testimony (Special Committee) tasked, among other matters, to propose guidelines for the conduct of videoconferencing which shall be applicable even after the current public health emergency ceases;

**WHEREAS**, in criminal cases, there is a need to ensure that the constitutional rights of the accused are safeguarded during videoconferencing; and

**WHEREAS**, the Special Committee on Virtual Hearings and Electronic Testimony is composed of the following members:

Chairperson: **Hon. Diosdado M. Peralta**  
*Chief Justice*

Vice/Working Chairperson: **Hon. Alexander G. Gesmundo**  
*Associate Justice, Supreme Court*

Members: **Hon. Henri Jean Paul B. Inting**  
*Associate Justice, Supreme Court*

**Hon. Rodil V. Zalameda**  
*Associate Justice, Supreme Court*

**Hon. Jose Midas P. Marquez**  
*Court Administrator*

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<sup>4</sup> Administrative Circular (A.C.) No. 37-2020 dated April 27, 2020; OCA Circular No. 93-2020 dated May 4, 2020; A.C. No. 39-2020 dated May 14, 2020; and A.C. No. 41-2020 dated May 29, 2020.

**Hon. Maria Theresa Dolores C. Gomez-Estoesta**  
*Associate Justice, Sandiganbayan*

**Hon. Sarah Jane T. Fernandez**  
*Associate Justice, Sandiganbayan*

**Hon. Raul B. Villanueva**  
*Deputy Court Administrator*

**Atty. Jed Sherwin G. Uy**  
*Representative, Office of the Chief Justice*

**Mr. Joselito N. Enriquez**  
*Officer-in-Charge, Management Information  
Systems Office*

Secretariat: **Atty. Ralph Jerome D. Salvador**  
*Office of Chief Justice Diosdado M. Peralta*

**Atty. Antonio Ceasar R. Manila**  
*Office of Justice Alexander G. Gesmundo*

**Atty. Camille Sue Mae L. Ting**  
*Office of the Court Administrator*

**WHEREAS**, as per Memorandum Order No. 40-A-2020 dated June 15, 2020, the Technical Working Group of the Special Committee on Virtual Hearings and Electronic Testimony was created to fast-track the preparation of a working draft comprised of the following members:

Chairperson: **Hon. Rodil V. Zalameda**  
*Associate Justice, Supreme Court*

Vice-Chairperson: **Hon. Henri Jean Paul B. Inting**  
*Associate Justice, Supreme Court*

Members: **Hon. Jose Midas P. Marquez**  
*Court Administrator*

**Hon. Raul B. Villanueva**  
*Deputy Court Administrator*

**Atty. Jed Sherwin G. Uy**  
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**Mr. Joselito N. Enriquez**  
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**Atty. Ralph Jerome D. Salvador**  
*Office of Chief Justice Diosdado M. Peralta*

**Atty. Antonio Ceasar R. Manila**  
*Office of Justice Alexander G. Gesmundo*


**Atty. Camille Sue Mae L. Ting**  
*Office of the Court Administrator*

**NOW, THEREFORE**, acting on the recommendation of Chief Justice Diosdado M. Peralta, as the Chairperson of the Special Committee, the Court resolves to **APPROVE** the following **Guidelines on the Conduct of Videoconferencing**.

December 9, 2020.



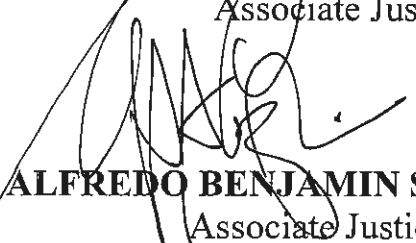
**DIOSDADO M. PERALTA**  
Chief Justice




**ESTELA M. PERLAS-BERNABE**  
Associate Justice



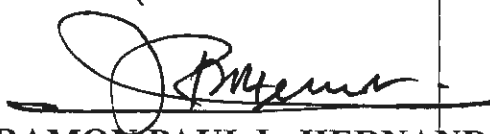
**MARVIC M.V.F. LEONEN**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice




**ALEXANDER G. GESMUNDO**  
Associate Justice



**RAMON PAUL L. HERNANDO**  
Associate Justice




**ROSMARID. CARANDANG**  
Associate Justice



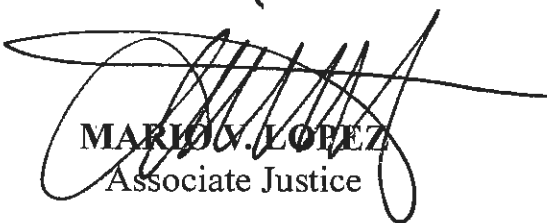
**AMY C. LAZARO-JAVIER**  
Associate Justice




**HENRI JEAN PAUL B. INTING**  
Associate Justice




**RODIL V. ZALAMEDA**  
Associate Justice



**MARIO V. LOPEZ**  
Associate Justice



**EDGARDO L. DELOS SANTOS**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice



**RICARDO R. ROSARIO**  
Associate Justice

## GUIDELINES ON THE CONDUCT OF VIDEOCONFERENCING

### I. Preliminary Provisions

#### 1. Policy

(a) The conduct of videoconferencing shall be considered as an **alternative mode** to in-court proceedings, which remains to be the primary mode in hearing cases.

(b) The presiding judge or justice shall, at all times, supervise and control the proceedings.

(c) The conduct of videoconferencing shall closely resemble in-court hearings, with remote locations viewed as extensions of the courtroom. The dignity and solemnity required in an in-court hearing, as well as the rules and practices on proper court decorum, shall be strictly observed.<sup>1</sup> Perjury and contempt laws shall apply.

(d) The rights of the accused to be present and defend in person at every stage of the proceedings, to testify as a witness in his or her own behalf, and to confront and cross-examine the witness against him or her at trial, are deemed observed when such appearance and/or testimony are done remotely through videoconferencing under these Guidelines with his or her consent.

(e) The confidentiality of attorney-client communications shall always be preserved. The litigants and their counsel participating in a videoconferencing shall be provided with private means of communication whenever necessary.

(f) The Rules of Court shall continue to be observed during videoconferencing, except with regard to the requirement that witnesses shall give testimony in open court under Section 1, Rule 132 of the Revised Rules on Evidence, as well as other special rules or issuances of the Supreme Court.

(g) When any party such as the accused Persons Deprived of Liberty (*PDLs*) invoke their constitutional right, including their right to confront witnesses in person at any stage of the proceeding, the court shall grant the same and suspend the videoconferencing, unless denial is warranted by a compelling state interest or public policy, as may be determined by the justice or judge.

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<sup>1</sup> Based on Sub-item 3, Item 1 (General Provisions), *Proposed Guidelines on the Use of Videoconferencing Technology for the Remote Appearance or Testimony of Certain PDLs* (A.M. No. 19-05-05-SC).

## 2. Definition of Terms

(a) *Videoconferencing* – court hearings and proceedings, including the taking of testimony, conducted through videoconferencing technology, or the use of video, audio, and data transmission devices to allow participants in different physical locations to simultaneously communicate by seeing and hearing each other.<sup>2</sup>

Videoconferencing hearings can be fully or partially remote:

i. Fully-remote videoconferencing hearings – videoconferencing where none of the participants is physically present in court, as all participants appear from remote locations using the authorized platform.

ii. Partially-remote videoconferencing hearings – videoconferencing where at least one of the participants appears physically in court, while the others appear from remote locations using the authorized platform.

(b) *Participants* – includes litigants, counsel, testifying witnesses, judges, justices, essential court staff,<sup>3</sup> and other interpreters.

(c) *Compelling state interest* – a valid or legitimate interest of the State so paramount as to justify limiting or subordinating the constitutionally-protected rights of the accused.<sup>4</sup>

(d) *Public policy* – principles and standards regarded by the legislature or courts as being of fundamental concern to the state and the whole of society.<sup>5</sup>

(e) *High-risk PDL* – a PDL who is:

i. charged with violation/s of laws penalizing terrorism and terrorism-related offenses;

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<sup>2</sup> Definition of “Videoconferencing” under Item III, *Proposed Guidelines on the Use of Videoconferencing Technology for the Remote Appearance or Testimony of Certain PDLs* (A.M. No. 19-05-05-SC).

<sup>3</sup> Based on WI Stat § 885.52 (2) (2013 through Act 380).

<sup>4</sup> See *Uphaus v. Wyman*, 360 U.S. 72, 79 (1959); *NAACP v. Button*, 371 U.S. 415, 438 (1963); *Sherbert v. Verner*, 374 U.S. 398, 406 (1963); *Maryland v. Craig*, 497 U.S. 386 (1990) (a State’s interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant’s right to face his or her accusers in court. That a significant majority of State have enacted statutes to protect child witnesses from the trauma of giving testimony in child abuse cases attests to the widespread belief in the importance of such a public policy); Stephen A. Siegel, *The Origin of the Compelling State Interest Test and Strict Scrutiny*, *The American Journal of Legal History*, Oct. 2006, Vol. 48, No. 4, 355 – 407.

<sup>5</sup> *Public policy*, Black’s Law Dictionary (10<sup>th</sup> Ed. for the iPhone and iPad 2014).

ii. charged with violation/s of laws penalizing crimes against international humanitarian law, genocide, and other crimes against humanity; or

iii. considered a “*high-value target*” because of the considerable threat he or she poses to the security of the jail facilities, the court, or the community, the risk of escape or attempted escape, and other safety and welfare considerations in transporting him or her to and from the jail and courtroom. This includes, but is not limited to, suspected members of local and foreign terrorist groups, and drug and other organized crime syndicates.

(f) *Consecutive interpretation* – mode of interpreting in which the speaker talks while the interpreter takes notes. The interpreter then reproduces what the speaker has said for the audience.<sup>6</sup>

(g) *Other interpreters* – includes foreign language, local dialect, and sign-language interpreters, other than court official interpreters.

(h) *Shared document repository*<sup>7</sup> – shared electronic storage space that can be accessed by authorized participants.

(i) *Virtual lobby or waiting area* – virtual space where participants wait before they are admitted to the videoconferencing by the court, as the host.

### 3. Coverage and Applicability

(a) *Courts covered by the Guidelines.* – These Guidelines shall govern the conduct of videoconferencing before the first and second level courts, Court of Appeals, Sandiganbayan, and Court of Tax Appeals.

(b) *Cases covered by the Guidelines.* – These Guidelines shall apply to all actions and proceedings, including small claims cases, in whatever stage thereof, as provided in the Rules of Court when, based on the attending circumstances, the court finds that the conduct of videoconferencing will be beneficial to the fair, speedy, and efficient administration of justice, such as in the following instances:

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<sup>6</sup> See Consecutive Interpreting, Knowledge Centre on Interpretation, (available at [https://ec.europa.eu/education/knowledge-centre-interpretation/conference-interpreting/consecutive-interpreting\\_en](https://ec.europa.eu/education/knowledge-centre-interpretation/conference-interpreting/consecutive-interpreting_en)).

<sup>7</sup> <https://www.business.com/articles/what-is-document-repository/>; Examples would be Files feature in Microsoft Teams, One Drive, Google Drive, iCloud, Adobe Cloud, etc.



- i. Acts of God, such as typhoons, floods, earthquakes, or other unforeseen events, and human-induced events, such as fires, strikes, lockdowns, those which limit physical access to the courts, and other instances posing threats to the security and safety of the courts and/or personnel;
- ii. Periods of public emergencies officially declared by the concerned agency of the government;
- iii. The inability or difficulty of a litigant, witness, or counsel to physically appear in court due to security risks in his or her transport in going to and from the court, real and apparent danger to his or her life, security or safety, serious health concerns, vulnerability of the witness due to age, physical condition, disability, or the fact that he or she is a victim of a sexual offense or domestic violence;
- iv. When the litigant or witness is a high-risk PDL, as defined under these Guidelines;
- v. When the litigant or witness is a PDL committed in a detention facility,<sup>8</sup> or a Child in Conflict with the Law (*CICL*) under A.M. No. 02-1-18-SC<sup>9</sup> committed in a center or facility operated or accredited by the Department of Social Welfare and Development (*DSWD*);
- vi. When the presence of a government agency witness<sup>10</sup> or an expert witness<sup>11</sup> is required but for justifiable grounds, he or she cannot attend an in-court hearing;
- vii. When a litigant or witness is an Overseas Filipino Worker or Filipino residing abroad or temporarily outside the Philippines;
- viii. When a litigant or witness is a non-resident foreign national who, while in the Philippines, was involved in any action pending before any court, and would like to appear and/or testify remotely from overseas;
- ix. When, based on the sound judgment of the court, there are compelling reasons that justify the resort to videoconferencing; and

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<sup>8</sup> Based on Sub-item 2, Item II, *Proposed Guidelines on the Use of Videoconferencing Technology for the Remote Appearance or Testimony of Certain PDLs* (A.M. No. 19-05-05-SC). As a policy, PDLs committed in national penitentiaries are not allowed to be brought outside said penal institutions to appear or attend proceedings before any court, except by express authority of the Court (19 November 2013 Resolution in A.M. No. 13-11-07-SC), resulting in either the waiver of their right to be present at any stage of trial, or the archival of the criminal case and suspension of the proceedings “until the Court shall have adopted the appropriate rules governing the continuation of proceedings where the accused refuses to waive his (or her right) to be present” (10 November 2015 Resolution in A.M. No. 15-08-07-SC (*Re: Administrative Matter for Agenda Requesting the Transfer of Venue of Pending Case/s Wherein the Accused is Currently Detained at the National Penitentiary by Virtue of a Conviction in Another Case*)).

<sup>9</sup> Rule on Juveniles in Conflict with the Law.

<sup>10</sup> Based on Sec. 5BAA, Evidence (Audio and Audio Visual Links) Act 1998 (New South Wales): “Subject to any applicable rules of court, a government agency witness must, unless the court otherwise directs, give evidence to the court by audio link or audio visual link from any place within New South Wales.” These can cover forensic chemists and police officers, especially those who have been re-assigned in other regions/provinces.

<sup>11</sup> Whether locally-based or abroad.

x. Such other circumstances or grounds that may hereafter be declared by the Supreme Court as sufficient to justify the conduct of videoconferencing.

(c) These Guidelines shall be applicable during the duration of the current pandemic and thereafter, unless revoked or modified by the Supreme Court.

## II. General Procedure

1. *Immediate order for the conduct of videoconferencing.* – In the instances covered under Item I (3)(b)(i), (ii), (iv), (v), and (x), the court may *motu proprio* order that hearings or proceedings be conducted through videoconferencing. High-risk PDLs under Item I (3)(b)(iv) shall exclude those considered as “*high-value targets*,” which shall be the subject of a motion under the next paragraph.

2. *Videoconferencing initiated by motion of a party.* – A party or counsel may, by motion, request that the proceedings be conducted via videoconferencing. To expedite the resolution of motions to conduct hearings through videoconferencing based on Item I(3)(b)(iii), (vi) to (ix), the movant shall file it electronically and/or personally with the court, serving a copy on the adverse litigant by the same means, at least ten (10) calendar days before the scheduled hearing dates.

a. *Contents of the motion.* – The motion to conduct hearings through videoconferencing must include the following:

- (i) the grounds being invoked by the movant;
- (ii) documentary and object evidence to support the grounds being invoked;
- (iii) the proceedings proposed to be conducted through videoconferencing;
- (iv) the names of the witnesses to be presented and the summaries of their testimonies;
- (v) the expected location of each participant;
- (vi) the e-mail addresses of the concerned litigants, their counsel, and the witnesses to be presented;
- (vii) special requirements necessary for the specific videoconferencing, if any, such as specialized software for the presentation of videos, and the like; and
- (viii) statement that the movant and the intended witnesses are technically ready to participate in the videoconferencing.

b. *Comment on or opposition to the motion.* – The adverse litigants shall file within five (5) calendar days from

receipt of the motion their comment or opposition, which shall be filed and served electronically and/or personally.

c. *Court's action on the motion.* – The court shall resolve the motion within five (5) calendar days before the scheduled videoconferencing, with or without the comment or opposition from the adverse litigant.

Should the court grant the motion, it shall issue an order, to be served electronically, containing the following matters:

- (i) the date and time of the videoconferencing;
- (ii) the proceedings covered;
- (iii) the names of the witnesses and the nature of their testimonies;
- (iv) the expected location of each participant;
- (v) the software or platform to be used for the videoconferencing;
- (vi) the e-mail addresses of the participants as reflected in court records and to be used for the purpose of the videoconferencing, with notice that said e-mail addresses are deemed valid unless the concerned participant informs the court of any changes thereto at least three (3) calendar days before the scheduled videoconferencing hearing; and
- (vii) such other matters as may be necessary to define the parameters of the videoconferencing.

Should the court deny the motion, in-court hearings shall proceed as scheduled.

The order of the court granting or denying the motion for videoconferencing shall not be subject to a motion for reconsideration, appeal or *certiorari*, except on constitutional grounds.

3. *Electronic filing and service of pleadings and court submissions.* – Electronic filing and service of pleadings shall be governed by the relevant provisions of the Rules of Court and pertinent or relevant issuances of the Supreme Court.

4. *No cancellation of scheduled videoconferencing hearings* – Except on meritorious grounds, the justice or judge shall not cancel scheduled videoconferencing hearings.

5. *Orders and actions issued during videoconferencing.* – The court shall issue its orders during the videoconferencing as if done in open court. Such orders shall have the same effect for purposes of

periods and remedies that may be availed of by the litigants. On the same day, the court shall send electronic copies of said open court orders to the litigants and their counsel. The court shall produce hard copies of the order, which shall form part of the records of the case.

6. *Minutes of videoconferencing hearings.* – It is sufficient that the minutes of the videoconferencing hearings is signed by the clerk of court, which shall form part of the records of the case.

**A. Pre-Hearing Preparations**

1. *Official software or platform for videoconferencing.* – Courts shall conduct videoconferencing by using only the secure software or platform authorized and provided by the Supreme Court, which contains or integrates the official e-mail accounts of the courts and an application to host the virtual hearings, with the capacity to record and store the same.

2. *Sufficient time to prepare equipment and facilities for videoconferencing.* – Sufficient time shall be given by the court to allow court personnel and the participants appearing remotely to test in advance the system to be used, to resolve technical problems, and to ensure proper and clear audio-video connection. For this purpose, the court shall ensure that there are no technical issues regarding the conduct of the videoconferencing at least one (1) day before the scheduled videoconferencing hearing.

3. *Notices, invitations and links for videoconferencing.* – The following shall be observed prior to a videoconferencing:

a. The court shall send out to all concerned participants' respective e-mail addresses the invitation or link to the videoconferencing at least twenty-four (24) hours before the scheduled hearing. Separate invitations or links shall be sent for morning and afternoon videoconferencing sessions.

b. Upon receipt of the invitation or link, participants shall immediately respond to the invite or send an acknowledgment e-mail confirming the receipt of the link to the videoconferencing. Proofs of receipt of the invitations shall be properly recorded by the court.

c. Any participant who has not received an invitation or link at least twenty-four (24) hours before the scheduled videoconferencing, or who cannot access it shall immediately inform the court of such fact through e-mail, phone call, or other electronic means.

d. The invitation or link must be treated with strict confidentiality and shall not be shared by its recipient with any other person. However, in the case of counsel, if they are unable to participate in the scheduled videoconferencing and have to be substituted by another, they must inform the court at least twenty-four (24) hours before the scheduled hearing so the court may notify the substitute counsel. The unauthorized sharing of the invitation or link may be considered a contempt of court.

e. Participants appearing remotely must be at the *virtual* or *waiting lobby* at least twenty (20) minutes before the scheduled videoconferencing.

4. *Technical personnel in remote locations.* – Where litigants and witnesses are testifying from remote locations, there must be technical personnel present in these remote locations to assist and address technical issues that may arise during the videoconference. In the absence of technical personnel, the litigants or witnesses testifying remotely shall assure the court of their capability to address technical issues.

5. *Public access to videoconferencing hearings.*<sup>12</sup> – Any individual who wishes to attend a videoconferencing hearing shall send a request to the concerned court at least three (3) days before the scheduled hearing through the court’s official email address and provide the following information:

- a. Full name;
- b. E-mail address;
- c. Contact number;
- d. Scanned copy of a government-issued ID bearing his or her photograph and signature; and
- e. Interest in attending the videoconferencing hearing.<sup>13</sup>

The court shall send the invitation or link to the videoconference through e-mail at least twenty-four (24) hours before the scheduled hearing. The invitation or link must be treated with strict confidentiality and shall not be shared by its recipient with any other person. The unauthorized sharing of its details and information may be considered a contempt of court. Individuals must be at the *virtual* or *waiting lobby* at least twenty (20) minutes before the scheduled videoconferencing.

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<sup>12</sup> Based on OCA Circular No.166-2020 dated 9 October 2020 (Public Access to Videoconferencing Hearings).

<sup>13</sup> The court may ask the public who wish to attend the videoconferencing hearing for their interest in doing so, considering that the public is not part of the definition of “participants” under these Guidelines, which is based on the Wisconsin statute.

The court shall have the discretion to refuse access if it finds that the information given is erroneous or fictitious. It may, likewise, exclude the public when the evidence to be adduced is of such nature as to require their exclusion in the interest of morality or decency<sup>14</sup> or when a child witness will testify.<sup>15</sup> The court may immediately order an individual's removal from a videoconferencing hearing to protect and preserve the dignity and solemnity of the proceedings.

## **B. Hearing Proper**

1. *Location of justices or judges, and court personnel during videoconferencing.* – Justices or judges shall preside over, while court personnel shall attend, videoconferencing hearings from the courtroom or chambers at all times. In exceptional circumstances, and with prior permission from the Presiding Justice or Executive Justices of the Court of Appeals, justices may conduct videoconferencing from remote locations within their territorial jurisdictions. Sandiganbayan and Court of Tax Appeals justices, with prior permission from the Presiding Justices, may likewise conduct videoconferencing from remote locations. For trial court judges, with prior permission from the Office of the Court Administrator (OCA), they may preside or attend from remote locations, provided they do so within their court's judicial region.

In all cases, said permission shall be reflected or stated in any order to be issued by the court during the videoconferencing hearing.

2. *Location of interpreter.* – An interpreter other than the court interpreter participating in a videoconference may either be co-located with the remote witness, in court, or in another remote location. When the interpreter participates from a remote location, the technical arrangements, including acoustics and quality of sound, in such remote location shall be tested beforehand to ensure that the interpretation will be properly understood by all participants.

3. *Use of earphones or headsets.* – Participants are encouraged to use earphones or headsets during videoconferencing, unless the courtroom or remote locations from which they participate have dedicated videoconferencing solutions with noise cancellation features in place.

4. *Videoconferencing colloquy and protocol for speaking and technical difficulties.* – At the beginning of the videoconferencing, the court shall conduct a colloquy with the participants appearing remotely (see Annex A). It shall also inform the participants of the protocol for

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<sup>14</sup> Sec. 2, Rule 135, Rules of Court.

<sup>15</sup> Sec. 23, A.M. No. 00-4-07-SC (Rule on Examination of a Child Witness).

speaking, which includes the order in which the participants shall be speaking, procedures for interrupting another participant, raising objections during the hearing, and conferring privately with counsel. When interpretation is to be used, participants shall be instructed to speak at an appropriate pace and to articulate and project their voice.

Participants shall also be informed of the procedure that the courts shall adopt for alerting the presiding justice or judge of any technical difficulties encountered during the hearing.

5. *Virtual inspection of remote locations.* – At the start of the videoconferencing hearing, the court shall require participants at remote locations to pan their cameras across the room to demonstrate that they are alone in the room, the windows and doors are closed, and there are no unauthorized means of communication available to them. This is to ensure that there will be no coaching or disturbance that may affect the proceedings. In the case of child witnesses, the court may allow them to testify in the presence of the persons enumerated in Section 25(g)(1) of A.M. No. 004-07-SC.

6. *Indication in case records of the conduct of videoconferencing and the locations of participants.* – The conduct of videoconferencing and the respective locations of the participants shall be indicated in the case records. Court orders issued during the videoconferencing hearings shall reflect such facts, including any inconvenience or difficulty experienced, and technical issues encountered which might affect the regularity of the proceedings.

7. *View and sound of speaking participants.* – Participants speaking or testifying must always be seen from a frontal angle and heard clearly by all the other participants. In all cases, the videoconferencing hearing shall be conducted in such a way that will not impede the court from exercising its crucial role in determining the credibility of the witnesses and their testimonies notwithstanding the remote observation of the latter's demeanor, conduct, and attitude during the taking of their electronic testimonies.

8. *Recording the videoconferencing hearing.* – The proceedings through videoconferencing shall be recorded by the court. It shall form part of the records of the case, appending thereto relevant electronic documents taken up or issued during the hearing. An encrypted master copy shall be retained by the court, while a backup copy shall be stored in a safe location. Litigants and their counsel may be allowed to view the recording upon application with and approval of the court. The court stenographer or other recorder authorized for the purpose shall, nonetheless, still transcribe stenographic notes to be attached to the records of the case.

Participants and other persons attending videoconferencing hearings are strictly prohibited from recording any portion of the proceedings through any means. Any unauthorized recording shall be considered a contempt of court, and must be permanently deleted or surrendered to the court for disposal.

9. *Signing of documents during videoconferencing.* – The OCA shall issue guidelines concerning the digital signing of documents during videoconferencing.

10. *Suspension or discontinuance of videoconferencing.* – The court may, at any point during the videoconferencing, suspend the proceedings should any technical issue tending to taint the regularity or fairness of the proceedings arise. Should the said technical issue remain unresolved despite efforts to fix the same, the court may altogether discontinue the proceedings. The same action shall be taken when matters arise warranting the physical appearance of a litigant or witness in the courtroom. In all cases, the reason/s for the suspension or discontinuance shall be reflected in an order to be issued by the court.

### **C. Presentation of Evidence**

1. *Documentary evidence and judicial affidavits.* – Subject to the provisions of the Rules on Evidence and of the Rules of Civil Procedure, for purposes of these Guidelines, documentary evidence and judicial affidavits, including attachments thereto, unless already part of the records of the case, shall be filed and served at least three (3) calendar days prior to the scheduled videoconferencing.

Colored and legible electronic copies of these documents shall also be made available through e-mail or the shared document repository of the court, to ensure that all concerned participants receive the exact copies, uneditable by any of them.

During the videoconferencing, the court may direct a counsel to share documentary evidence on-screen. Means shall be provided for sharing and viewing these documents for purposes of marking, authenticating and presenting them, such as through document cameras, digital screen-sharing function of the videoconferencing software or platform, and other electronic means.

Should the exhibition, examination or viewing of the documentary evidence be rendered impossible, insufficient or difficult by the limitations of the platform or for some other compelling reasons, in-court hearings may instead be ordered by the court for the purpose of presenting or completing the testimony of a witness.



2. *Object evidence.* – Object evidence may be presented during videoconferencing if the same can be exhibited to, examined or viewed by all participants, by displaying the object on the screen, or physically showing it to the witness testifying thereto at his or her location within full view of the participants.

Should the marking of exhibits or the examination of the object evidence be rendered impossible, insufficient or difficult by the limitations of the platform or for some other reasons, the court may direct that in-court hearings be held instead for the purpose of presenting the same for marking or identification, presenting or completing the testimony of the witness.

3. *Use of interpretation during videoconferencing.* – Where interpretation is required during videoconferencing, the court shall require consecutive interpretation in the taking of testimonial evidence. The interpreter shall always have a clear frontal view of all participants who will be speaking to allow him or her to observe lip movements, expressions and other non-verbal communications, avoid ambiguity and provide more accurate interpretation. The interpreter may move to interrupt the proceedings if the language becomes inaudible or the video unclear.

4. *Private communications between litigants and counsel.* – When litigants and their counsel are not present at the same location during videoconferencing, they shall be permitted to confer privately without the other participants overhearing them through the provision of means such as secure phone lines, separate meeting rooms within the videoconferencing platform, and other suitable electronic means.

### **III. Additional Procedure in Criminal Cases**

1. *Motion to conduct videoconferencing by the warden.* – In cases involving high-risk PDLs alleged to be high value targets and those with serious health conditions, the motion to conduct videoconferencing may be filed by the jail warden of the jail or detention facility where the concerned PDLs are being detained or held.

When the videoconferencing is intended to allow an accused PDL to testify or attend the proceedings, the motion may be granted *ex parte* by the court.

2. *Notices and service to PDLs and CICL.* – Notices and service of pleadings, motions, and other court papers to PDLs may be sent to the official e-mail address provided by the person in charge of the detention center or jail facility where the PDLs are currently being held or detained. With respect to CICL committed in a center or facility

operated or accredited by the DSWD, notices may be sent to the official e-mail address of the person in charge of the center or facility where they are committed.

3. *PDLs and CICL appearing from remote locations.* – PDLs participating remotely shall appear from an enclosed room in the detention center or jail facility where they are being detained or held. Jail facilities and detention centers shall ensure that they have sufficient rooms, equipment, and facilities appropriate for videoconferencing, even when such proceedings need to be conducted simultaneously by different courts. In the case of CICL committed in a center or facility operated or accredited by the DSWD, they shall testify from an enclosed room in such center or facility.

4. *Location of counsel for PDLs and CICL.* – At the option of PDLs and CICL, which choice shall be made on record at the start of the videoconference, their counsel may be physically present with them at the jail facility or detention center, in court, or in other remote locations. PDLs and CICL and their counsel shall be provided with facilities or means to privately communicate with each other throughout the videoconferencing.

5. *Certificate of arraignment.* – It is sufficient that the clerk of court issues a certification that the accused was arraigned, personally entered a plea of guilty or not guilty, or refused to enter a plea, as the case may be.

6. *Promulgation of judgment.* – If decisions or judgments are promulgated through videoconferencing with the accused as participants, said accused shall enjoy all the remedies available to them and within the period provided under the Rules of Court, as if they were physically present in court during promulgation.

#### **IV. Additional Procedure for Videoconferencing for Overseas Filipino Workers, Filipinos Residing Abroad or Temporarily Outside the Philippines, and Non-resident Foreign Nationals**

1. *Videoconferencing from Philippine embassies or consulates.* – Litigants and witnesses who are Overseas Filipino Workers, Filipinos residing abroad or temporarily outside the Philippines, or non-resident foreign nationals who would like to participate or testify through videoconferencing may do so upon proper motion with the court where the case is pending. Such videoconferencing may be conducted only from an embassy or consulate of the Philippines.

Philippine embassies and consulates shall conduct videoconferencing in accordance with the technical and operational standards laid out in these Guidelines.

2. *General procedure applicable.* – The general procedure outlined in these Guidelines shall be applicable insofar as these are not inconsistent with the provisions under this section.

3. *Motion for videoconferencing.* – The motion shall be filed by the litigants interested to avail of videoconferencing.

The same requirements for the contents of the motion under Item II (2)(a) of these Guidelines shall apply, with the additional requirement that the concerned embassy or consulate of the Philippines has allowed the use of its facilities for videoconferencing. When the assistance of an interpreter is needed in the videoconferencing, the movant shall secure the services of the official interpreter of the Philippine embassy or consulate.

4. *Embassy or consulate to be furnished with a copy of the court order.* – Should the court grant the motion for videoconferencing, it shall also furnish the concerned Philippine embassy or consulate, by the fastest means available, a copy of the said order.

5. *Costs of videoconferencing from a Philippine embassy or consulate.* – The movant shall defray all the expenses and costs that may be necessary for the conduct of videoconferencing from an embassy or consulate of the Philippines.

## **V. Facilities, Equipment and Training for Videoconferencing**

1. *Minimum requirements for technology, facilities and equipment.* – The technology, facilities and equipment to be used must be of such quality as to allow the conduct of videoconferencing as prescribed by these Guidelines. These must allow the participants to clearly observe the demeanor, non-verbal communications, and facial expressions of the other participants, and see and hear what is taking place in the courtroom and remote locations.

For this purpose, courtrooms shall be equipped with laptops and/or computers, video cameras, microphones, speakers, high definition monitors, printer-scanners, and other facilities needed for documentary and object evidence, sufficient in specifications, size, number, and placement.

Jail facilities and detention centers shall likewise ensure that they have sufficient equipment and facilities appropriate for videoconferencing, even when such proceedings need to be conducted simultaneously by different courts.

2. *Telephone lines and internet connectivity.* – Courts shall be provided with telephone lines and internet connectivity of sufficient bandwidth to support the conduct of simultaneous videoconferencing hearings in accordance with these Guidelines.

3. *Room set-up and layout.* – The courts, agencies or local government units managing the penal institutions and/or detention centers, and other participants to videoconferencing hearings shall ensure that the layout, lighting, acoustics, furniture design and décor of the courtroom and remote locations, as the case may be, are optimal and appropriate for videoconferencing purposes.

4. *Technical personnel.* – There shall be dedicated technical personnel in the court to maintain, troubleshoot, and repair videoconferencing equipment and manage internet connectivity.

5. *Technical Training.* – Justices, judges and concerned court personnel shall undergo orientation seminar workshops on these Guidelines, and the basic and essential features of the videoconferencing software or platform and equipment.

## **VI. Gross Misconduct in Videoconferencing**

Any intentional disruption of digital communications intended to deny participation by any party, coaching of any witness presented for examination, and knowingly presenting falsified digital images or evidence shall be considered as gross misconduct and shall be dealt with severely.

## **VII. Repealing Clause**

All prior Supreme Court issuances inconsistent with these Guidelines are hereby repealed or modified accordingly.

## **VIII. Transitory Provisions**

1. Courts shall continue to conduct videoconferencing using available facilities, equipment, computers, gadgets and devices, until such time that those prescribed under these Guidelines are available.

2. The Management Information Systems Office of the Supreme Court and the Management Information Systems Divisions of the tertiary courts shall ensure that the internet connections of their concerned courts are suitable for videoconferencing as contemplated under these Guidelines, and shall make the necessary recommendation for the procurement of higher quality internet connections or upgrading of bandwidth when needed.

**IX. Reporting and Review**

The OCA shall set a mechanism in place for the reporting of the experience, issues, and challenges encountered by the courts, participants, and other stakeholders in the conduct of videoconferencing, for the regular review and improvement of these Guidelines.

**X. Posting**

These Guidelines shall be posted in every courtroom and floor of all halls of justice nationwide, the Supreme Court website, Office of the Court Administrator website, websites of the tertiary courts, and offices of concerned government agencies, penal institutions and detention centers, the Integrated Bar of the Philippines and other Bar associations.

**XI. Effectivity**

These Guidelines shall take effect on January 16, 2021, following its publication in two (2) newspapers of general circulation.

## VIDEOCONFERENCING COLLOQUY<sup>1</sup>

To guarantee the rights of litigants and protect the court records, the court shall follow these procedures on the record at the start of each videoconferencing hearing:

1. Justice/Judge should identify the persons appearing remotely and then identify themselves and their court.
2. Questions for defendant:
  - a. “Can you hear me?”
  - b. “Can you see me?”
  - c. “If, at any time, there is a problem with your ability to hear or see what is happening in this videoconferencing hearing, you are to immediately inform the court by unmuting yourself and saying so.”
  - d. “Do you understand that you are testifying in connection with [Case title and Case Number] today by means of videoconferencing before a court of law?”
  - e. “Do you object to the use of videoconferencing in making your testimony?” If yes, the court needs to rule on that objection.
  - f. “Even though your testimony and participation in this case is occurring from a remote location, the same rules apply as if you were physically present in court.”
  - g. “Who is in the room with you at this time?”
  - h. “If at any time anyone in your room, other than your counsel, tells you what to say or tries to influence your answers in any way, you are to immediately inform the court.”

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<sup>1</sup> Based on the Waukesha County (County) Video Appearance Colloquy (Wisconsin Supreme Court Planning and Policy Advisory Committee and Videoconferencing Subcommittee, Bridging the Distance: Implementing Videoconferencing in Wisconsin, August 2017, Appendix C, available at <https://www.wicourts.gov/courts/committees/docs/ppacvidconf.pdf>) and Telephonic and Vide Hearings Colloquy, United States District Court of Maine (available at [https://www.med.uscourts.gov/opt/sites/default/files/COVID-19\\_Telephonic\\_and\\_Video\\_Conference\\_Script.pdf](https://www.med.uscourts.gov/opt/sites/default/files/COVID-19_Telephonic_and_Video_Conference_Script.pdf)).

- i. "If, at any time, during this hearing you would like to speak with your lawyer, please let the court know and I/we will give you the opportunity to privately confer with him/her.
3. Remind the participants and other persons attending the videoconferencing of the prohibition against photographing, recording, and rebroadcasting of the court proceedings. Violations of these prohibitions may result in sanctions, including contempt of court.
4. Identify for those appearing from a remote location any person in the courtroom who may not be visible to them. If the litigant or counsel wishes to see a particular individual, the court shall accommodate the request if appropriate.
5. Determine on record whether the equipment to be used and the remote location(s) meet the minimum standards for videoconferencing under the Guidelines approved by the Supreme Court.