

STATE OF MAINE
SUPREME JUDICIAL COURT



VALERIE STANFILL
CHIEF JUSTICE

MAILING ADDRESS:
163 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0163
(207) 213-2951
EMAIL: chiefjustice@courts.maine.gov

**Judicial Branch testimony in opposition to LD 921, An Act
to Expand Use of Electronic Proceedings in the Judicial Branch**

Senator Carney, Representative Kuhn, members of the Joint Standing Committee on Judiciary, I am Chief Justice Valerie Stanfill of the Maine Supreme Judicial Court, and I represent the Court and the Judicial Branch. I would like to present testimony in opposition to LD 921.

The Supreme Judicial Court and the Judicial Branch oppose this bill pursuant to the separation of powers explicit in our Constitution. Article III, Section 1 of the Maine Constitution states that "The powers of this government shall be divided into 3 distinct departments, the legislative, executive and judicial." Section 2 makes clear that "No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted." As has long been recognized, "[b]ecause of article III, section 2, the separation of governmental powers mandated by the Maine Constitution is much more rigorous than the same principle as applied to the federal government." *State v. Hunter*, 447 A.2d 797, 799 (Me. 1982). Thus, "[t]he judicial power of this State . . . is the exclusive province of the courts." *Anderson v. Elliott*, 555 A.2d 1042, 1047 (Me. 1989) (quotation marks omitted).

Specifically, "[t]he Supreme Court has the inherent right to establish rules for the orderly conduct of business before it." *Fox v. Conway Fire Ins. Co.*, 53 Me. 107, 110 (1865). Indeed, this is recognized in statutes such as 4 M.R.S. § 8 and § 9 (providing that the Supreme Judicial Court shall have the power and authority to prescribe the rules of practice and procedure in civil and criminal cases). See *Direct Letter of Address in re Chapter 515, Public Laws of 1985*, (reported in Me. Rptr., 498-509 A.2d CXXVI (April 25, 1986)) (Supreme Judicial Court notifying the Legislature and the Governor that the Judicial Branch would decline to comply with P.L. 1985, ch. 515 regarding television coverage of trials because governance of media access to courtrooms is solely committed to the judicial power) (Copy attached). See also Me. R. Civ. P. 81(e) (inconsistent statutes yield to court rules).

The decision when, either in an individual case or through a general rule, a court proceeding should be held remotely goes to the core function of the Judicial Branch and thus lies within the exclusive authority of that Branch to determine. An attempt to legislate how judges exercise their discretion in deciding whether to conduct a proceeding in person or remotely is not far from telling judges how to decide cases because it involves a judge's authority over the courtroom. As we said in *Matter of Benoit*, "we agree completely" with the

view of the Massachusetts Supreme Judicial Court that the inherent common law and constitutional powers of the court include the power of the Supreme Judicial Court “to establish and enforce rules of court for the orderly conduct . . . of judicial business and administration.” 487 A.2d 1158, 1171 (Me. 1985). *See also Westbrook v. Wallace*, 478 A.2d 687, 689 (Me. 1984) (noting the inherent authority of the courts to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”)

There is no question that remote proceedings can be beneficial in certain instances. The SJC recognized this in issuing an Administrative Order governing remote appearances. See AO-JB-21-05 (last amended August 18, 2023) (copy attached). That Order governs the presumed format, remote or in-person, for different court proceedings. The presumption favors in-person proceedings, and it is the Judicial Branch that weighs whether, as a class or individually, that presumption is overcome by countervailing interests. Even when proceedings are presumed to be in-person, any party may request to appear remotely upon good cause shown. Factors the presiding judge or justice considers in each case include the ability of parties to participate remotely or to be present; the availability of constitutionally required counsel to other people and in the courts; and the availability of judicial officers, courtroom space, judicial marshals, technology assistance, and clerical assistance. Requests to appear remotely are routinely granted and rarely denied. As many of you have recently seen in an actual Maine courtroom, a large screen and Zoom cart is set up in the courtroom and attorneys and litigants often attend remotely.

On the other hand, widespread usage of remote proceedings can de-humanize the process, undermine confidence in the court system, and diminish the view of the courtroom as a site of justice, with a concomitant loss of decorum, formality, and sense of place. *See, e.g., Susan A. Bandes & Neal Feigenson, Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom*, 68 Buff. L. Rev. 1275, 1319 (2020) (“The substantiality of the courtroom in the courthouse, the formality that the configuration of the room encourages, and the state authority that the building’s and room’s symbolism convey all tend to make participants in proceedings feel that they have had the opportunity to be heard.”)¹

¹ *See also* Marissa Pasnick, *Washington Civil Jury Trials via Zoom: Perspectives from the Bench*, 99 Wash. L. Rev. 685, 694 (2024) (“Physically entering a courthouse takes people away from their everyday lives and into a separate environment--an environment that signals that they are about to engage in a ‘culturally acknowledged’ activity that calls for specific decorum. For many, being in a physical courthouse is an important component of feeling as if they have had their day in court. ‘The physical reality of the building and the courtroom binds each litigant’s experience not only to the experiences of their contemporaries but to the community’s ongoing legal tradition.’”)

Regarding this tradition, Bandes and Feigenson note that “[s]ince at least the time of Homer, authoritative justice has been performed at a ‘proclaimed place’ known to the entire community.”) They continue:

What basic values are served by insisting that adjudication be conducted in courtrooms inside courthouses? In principle, it serves every value we’ve identified. Holding hearings and trials at a publicly known and accessible venue promotes inclusiveness. The nobility and often grandeur of the courthouse and the courtrooms within it reaffirm the authority of the state and the centrality of adjudication to good government while simultaneously recognizing every litigant and witness as worthy of equal dignity and respect. A courtroom

The bill applies to attorneys and self-represented litigants. Not all parties will have the necessary equipment to participate in a remote mediation, and our courthouses are currently not equipped to provide parties with those resources. Many people do not have computers and use their cell phones to join remote proceedings. Indeed, litigants frequently do not even seem to understand they are “in court” during remote proceedings. They attend while driving a car or working; while eating, drinking, and smoking; while lying in bed or on the beach; and with pajamas or little or no clothing on. Litigants have been known to ask at the end of a remote hearing, “When is my court date?”

I also note that most court proceedings must be open to the public, meaning that even when attorneys or parties appear remotely, the proceeding is nonetheless held in open court. It can be a struggle to maintain open courts when all participants appear remotely. It is critical to maintain transparency and open courtrooms where Maine residents can view the legal process and enjoy firsthand access to our system of justice.

Maine judges have reported that in-person discussions between the parties and attorneys are far more likely to result in an agreed-upon resolution of the case and this, in turn, helps to clear the docket and reduce the backlog. In addition, when an agreement is reached in a criminal case with counsel appearing remotely, the case frequently must be reset for another in-person proceeding to take care of the agreement, again increasing the time and number of appearances. Whether requests to appear remotely are granted or denied is entirely within the discretion of the judge under the circumstances of a particular case.

Moreover, conditions and needs vary in different regions of the state. For instance, the Cumberland County Sheriff’s Office generally transports incarcerated persons to the court in person for proceedings because for them, it is less of a strain on resources. Other County Jails vastly prefer to handle appearances of incarcerated persons remotely, also for resource reasons. The Judicial Branch works with local stakeholders to try to accommodate as many of these interests as we reasonably can but needs vary across the state.

In sum, “remote proceedings, despite the greatly improved and available technologies, simply do not compare to face-to-face interaction.” *People v. Anderson*, 341 Mich. App. 272, 286–87, 989 N.W.2d 832, 843 (2022); *see also United States v. Lawrence*, 248 F.3d 300, 304 (4th Cir. 2001) (“virtual reality is rarely a substitute for actual presence and ...even in an age of advancing technology, watching an event on the screen remains less than the complete equivalent of actually attending it”); *United States v. Williams*, 641 F.3d 758, 764 (6th Cir. 2011) (same).

designed to provide clear sight lines among all the participants and to make each one's speech clearly audible throughout the room enhances the fairness of the proceedings and the accuracy of the resulting judgment. And, to the extent that testimony, other evidence, and argument are also plainly visible and audible to members of the public and press, the courtroom promotes transparency.

I could go on, but I also want to address other problematic portions of the bill.

There seems to be an assumption in the bill that remote proceedings are more efficient for everyone. See LD 921, § 2003(1) (requiring annual report addressing cost savings achieved by the judicial branch). They may be more efficient for other participants, but they are more costly for the Judicial Branch. For example, in a higher volume criminal docket where some parties and attorneys appear remotely, managing the proceeding requires both a clerk and a court technology assistant: one to manage the paperwork and the other to manage not only the recording but moving people in and out of the zoom and electronic waiting rooms. If the proceeding is entirely in person, the second staff person is not needed.

In addition, conducting effective and high-quality remote proceedings requires significant investments in technology. Our Office of Information Technology is already facing challenges with aging or failing A/V equipment in many of our courtrooms. Additionally, we need more people to effectively maintain and support courtroom technology. Increasing the scope and volume of remote proceedings would drastically decrease both the efficacy and quality of remote proceedings given our current state.

Section 2002(5) requires the Judicial Branch to provide training and technical assistance not only to our own staff, but to attorneys, parties and witnesses. We do not have the training resources to do that, nor is it part of the mission of the Judicial Branch.

Section 2003(1)(A) would likely require programming in our case management system to capture the data we would be required to report on, to the extent we can obtain it at all. In some dockets the data would have to be tracked and compiled manually, which is also not be feasible with current recourses.

Section 2003(1)(B) requires us to report on the cost savings achieved by the Judicial Branch as well as attorneys, parties and witnesses. As discussed, there will be no cost savings to the courts. As to the other participants, the Judicial Branch does not have any ability to know or track this information.

Section 2003(1)(C) seems to require the Branch to conduct market surveys and analysis, something we have no ability or expertise to do.

In short, we will submit a fiscal note for the additional people and technology that would be needed to comply with this proposed legislation.

Finally, Section 2 of the bill, "Report regarding laws no longer in effect," requires the Supreme Judicial Court to report on the effectiveness of statutes. This is not an area in which the SJC generally offers advisory opinions and would decline to do so in this instance.

Matters involving the operation of the courts and court procedure lie exclusively within the purview of the courts. As we said in the Direct Address cited above, ["i"]n

discharging the judicial function, courts have crafted a process and preserved an atmosphere designed to facilitate the pursuit of truth and justice.” *Direct Letter of Address* at CXXIX. Moreover, the Court has the power allocated to it under the Maine Constitution “to preserve the ability of the judiciary to function in the manner determined to be the most conducive to the performance of its assigned task.” *Id.* To interfere with court procedure as suggested by LD 961 is violative of the doctrine of separation of powers, one of the cornerstones of both the Maine and the U.S. Constitution.

On behalf of the Supreme Judicial Court and the Judicial Branch, I respectfully request an ought-not-to-pass vote on this legislation. Thank you.

MAINE REPORTER



Cases Decided
in the
SUPREME JUDICIAL COURT

Reported in
ATLANTIC REPORTER
Second Series

498 A.2d – 509 A.2d

ST. PAUL, MINN.
WEST PUBLISHING CO.
1986

Reprinted from
Atlantic Reporter, Second Series, Volumes 498-509,
COPYRIGHT © 1985 and 1986 by WEST PUBLISHING CO., St. Paul, Minnesota
All rights reserved



The above symbol and Atlantic Reporter are registered trademarks of West Publishing Co.
Registered in U.S. Patent and Trademark Office. Maine Reporter is a trademark of West
Publishing Co.

Ms.Rep. 498-509 A.2d



DIRECT LETTER OF ADDRESS

STATE OF MAINE SUPREME JUDICIAL COURT

IN RE CHAPTER 515, PUBLIC LAWS OF 1985

April 25, 1986

The Honorable Joseph E. Brennan
Governor of Maine
State House
Augusta, Maine 04333

The Honorable Charles P. Pray
President of the Senate
State House
Augusta, Maine 04333

The Honorable John L. Martin
Speaker of the House of Representatives
State House
Augusta, Maine 04333

Gentlemen:

We submit this direct letter of address¹ to you, the representatives of our two coordinate branches of government, in order to inform you promptly of our reasons for not complying with the provisions of P.L. 1985, ch. 515. We are compelled by the Maine Constitution not to follow the expressed mandate of the Legislature. Out of respect for our coordinate branches of government, we choose to respond forthrightly rather than await an adversary challenge to our failure to act in accordance with the provisions of the statute.

With the enactment of P.L.1985, ch. 515, which becomes effective July 16, 1986, the Legislature has directed this Court to promulgate rules governing photographic and electronic media coverage of proceedings in the trial courts of this State. Upon due consideration, this Court concludes that the governance of media access to courtrooms is

1. A direct letter of address has been used by other courts in circumstances where the court was prevented by the separation of powers doctrine from executing a legislative mandate. *See, e.g., In Re 42 Pa.C.S. § 1703*, 482 Pa. 522, 394 A.2d 444 (1978).

Court rules and related materials supplied by the courts are included in appropriate units of the National Reporter System. Since not all rules and amendments are supplied, the clerk of the court should be consulted to determine the current rules.

DIRECT LETTER OF ADDRESS

within the judicial power committed to this Court by the Maine Constitution. Me. Const. art. VI, § 1. Chapter 515 constitutes an exercise of judicial power by the Legislature in violation of the provisions of the Constitution allocating the powers of government among three distinct departments and forbidding any person belonging to one department from exercising any power properly belonging to another department. Me. Const. art. III, §§ 1, 2. Accordingly, we respectfully decline to promulgate rules as contemplated by the legislative act.

The Supreme Judicial Court has previously given extensive consideration to the question of allowing electronic media coverage in the courtrooms of Maine. In response to requests from representatives of the media that they be allowed to photograph and broadcast court proceedings, this Court requested a thorough study by its Advisory Committee on Criminal Rules. In December, 1981, the Committee, after extensive examination of the issue, produced a report and recommendations. In January, 1982, this Court invited all interested parties to submit written comments upon the report. After considering, in addition to the Advisory Committee's report and comments thereon, relevant decisions of the United States Supreme Court; the actions of other states concerning media access; the official positions of the American Bar Association, the American Judicature Society, and the Conference of Chief Justices; various arguments presented in a debate between former Chief Justice Arthur J. England, Jr., of the Florida Supreme Court and Dean George Gerbner of the Annenberg School of Communications of the University of Pennsylvania; arguments advanced during the ABA's Open Meeting on Cameras in the Courtroom on January 26, 1982; and voluminous writings on the subject, this Court promulgated on April 2, 1982 the current administrative order governing media access to Maine courts.

The current order allows the media to photograph, record, and broadcast oral arguments before the Supreme Judicial Court sitting as the Law Court. As to all other court proceedings, photographing, recording, or broadcasting is prohibited, subject to minor exceptions. The exceptions permit a judge to allow use of electronic or photographic means for purposes of judicial administration, such as the presentation or perpetuation of evidence; to allow photographing, recording, or broadcasting of naturalization and other ceremonial proceedings; and to allow photographic or electronic recording and reproduction of other court proceedings under certain conditions, including *inter alia* that the reproduction not be exhibited until the determination of the case has become final and that it be exhibited only for instructional purposes at educational institutions or as otherwise specifically approved by the Supreme Judicial Court.

The statute enacted by the Legislature states in relevant part:

The taking of photographs or radio or television broadcasting or transmitting of judicial proceedings in the Superior Court [and District Court] shall be permitted upon the promulgation of and in accordance with rules adopted by the Supreme Judicial Court.

CXXVII

DIRECT LETTER OF ADDRESS

P.L.1985, ch. 515 (effective July 16, 1986) (to be codified as 4 M.R.S.A. §§ 119, 182). As described above, the current administrative order does provide for photographing, recording and broadcasting of judicial proceedings other than those of the Law Court, albeit in strictly limited circumstances. Thus, Chapter 515 could be construed as requiring nothing more than compliance with this Court's existing order. The context in which chapter 515 was enacted, however, demonstrates that the Legislature intended to mandate the promulgation of rules providing generally for the photographing, recording, and broadcasting of proceedings in the Superior and District Courts. We conclude that such a mandate violates the separation of powers provisions of the Maine Constitution, and accordingly, in obedience to the Constitution and our oath of office, we decline to accept the legislative mandate as binding upon this Court.

Article III of the Maine Constitution, with double emphasis, calls for a strictly formal separation of governmental powers. *State v. Hunter*, 447 A.2d 797, 799-800 (Me.1982). Section 1 of that article declares that governmental powers "shall be divided into three *distinct* departments, the legislative, executive and judicial" (emphasis added). Section 2 commands: "No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others"

Article VI, section 1 of our Constitution vests the "judicial power of this State" in the Supreme Judicial Court and other courts established by the Legislature. By this provision, the people of Maine conferred all of the judicial power upon the judicial department and left none to be exercised by the Legislature, except in cases of impeachment. *District Court for District IX v. Williams*, 268 A.2d 812, 813 (Me.1970); *Opinion of the Justices*, 157 Me. 104, 108, 170 A.2d 647, 650 (Me.1961); *Bowden's Case*, 123 Me. 359, 366, 123 A. 166, 169 (1924); *Lewis v. Webb*, 3 Me. 326, 330 (1825). Thus within its power, the judiciary acts with exclusive authority, *Williams*, 268 A.2d at 813, and any attempt by the Legislature to exercise judicial power constitutes an invasion of the province of the judiciary in violation of article III of the Constitution. *Lewis*, 3 Me. at 331.

At the core of the judicial power is the authority to hear and determine controversies between adverse parties. *State v. LeClair*, 86 Me. 522, 531, 30 A. 7, 9 (1894). When this Court, after thorough investigation and a complete and open airing of opposing views, decided in 1982 to limit media access, we did so to protect the judiciary's decision-making function from potentially serious and unnecessary impediment. We noted the risks that cameras in the courtroom might pose to the fairness of criminal trials, to the willingness of witnesses to become involved in criminal or civil proceedings, and to the ability of jurors to devote their full attention to the fair and impartial determination of disputes. *In re Photographic and Electronic Coverage of the Courts*, SJC-221 (April 2, 1982). Since this Court promulgated its 1982 Order, the Judicial Conference of the United States, adopting a recom-

DIRECT LETTER OF ADDRESS

498

mendation of its Ad Hoc Committee on Cameras in the Courtroom, refused to allow electronic media coverage of federal court proceedings. The Ad Hoc Committee based its recommendation, as we did our 1982 Order, upon perceived risks to the administration of justice. In addition to those dangers noted in our Order, the Committee cited the additional burden that judges would face if the need to supervise media personnel were added to the already difficult task of controlling court proceedings. The Committee also noted that cameras in the courtroom would potentially give rise to additional expense and detract from the solemnity and dignity of the courtroom. *Report of the Judicial Conference Ad Hoc Committee on Cameras in the Courtroom* (Sept. 1984).

101

In discharging the judicial function, courts have crafted a process and preserved an atmosphere designed to facilitate the pursuit of truth and justice. In 1981, representatives of the media asked this Court to allow television coverage to become a part of our system of justice. We declined based on this Court's perception of potential adverse impact upon the most integral actors in the trial process. This action fell squarely within this Court's power to preserve the ability of the judiciary to function in the manner determined to be most conducive to the performance of its assigned task. *See District Court for District IX v. Williams*, 268 A.2d at 814 ("constitution confers on judicial department all authority necessary to exercise its powers" quoting *Gray v. Clerk of Common Pleas Court*, 366 Mich. 588, 595, 115 N.W.2d 411, 414 (1962)). Through enactment of chapter 515 the Legislature has attempted to overrule a considered decision of this Court made in the exercise of its judicial power. Article III of Maine's Constitution does not allow the Legislature to review the judicial acts of this Court. *Lewis v. Webb*, 3 Me. at 332-33 (Legislature cannot grant appeal in finally decided case because such would nullify an exercise of judicial power); *see Williams*, 268 A.2d at 813 (executive review of exercise of judicial power prohibited by article III). Because chapter 515 violates the separation of powers provisions of the Maine Constitution, and because we have previously rejected a proposal for photographing, recording and broadcasting trial court proceedings, we are compelled to conclude that its mandate is ineffective.

Dated: April 25, 1986

Respectfully submitted

VINCENT L. McKUSICK
Chief Justice

DAVID A. NICHOLS
DAVID G. ROBERTS
ELMER H. VIOLETTE
DANIEL E. WATHEN
CAROLINE D. GLASSMAN
LOUIS SCOLNIK
Associate Justices

STATE OF MAINE
SUPREME JUDICIAL COURT
ADMINISTRATIVE ORDER JB-21-05 (A. 8-23)

**ORDER REGARDING TRIAL COURT REMOTE PROCEEDINGS
AND PUBLIC ACCESS**

Effective: August 18, 2023

Increasingly, many attorneys have multiple competing obligations and court appearances. For many court users, it can be burdensome and difficult to appear in person at a courthouse, particularly for short or routine matters. While the ability to appear remotely through video or telephonic formats continues to be a convenient, effective format for certain proceedings, experience has also shown that, where feasible, it is important for all participants to be physically present at a courthouse for other proceedings.

This Order governs the presumed formats—whether remote or in-person—for court proceedings and the processes to be used for remote court proceedings in all cases. Although this Order is otherwise effective immediately, it shall not operate to change the format of a matter which has already been scheduled.

I. PRESUMED FORMATS FOR TRIAL COURT PROCEEDINGS

A. Unless the regional scheduling jurist or presiding judicial officer specifically orders otherwise as discussed in sections II or III below, the following proceedings shall be held remotely:

1. Pretrial or status conferences and non-testimonial hearings other than initial case management conferences in Family Matters (FM) cases;
2. Uncontested final hearings in Family Matters (FM) cases;
3. Pretrial, discovery or status conferences and non-testimonial hearings in civil (CV) cases;
4. Status and pretrial conferences in Child Protection (PC) cases;
5. Mental Health (MH) hearings;
6. All Violations Bureau (VB) (traffic) hearings; and

7. Arraignments and initial appearances for incarcerated individuals in criminal (CR) cases.

B. All other proceedings shall be held in person unless the regional scheduling jurists or presiding judicial officer specifically order otherwise as discussed in section II below. Proceedings to be held in person shall include, but are not limited to, all testimonial hearings and trials in any case type; hearings, conferences and all other proceedings in criminal matters; and post-judgment FM dockets.

II. CHANGES IN PRESUMED FORMAT

A. Regional changes. On a regional basis, the court, acting through the regional scheduling jurists, may order any presumptively in-person proceedings or dockets to be held remotely, or any presumptively remote proceedings or dockets to be held in person, where deemed necessary after consideration of availability of attorneys, parties, other court users, judicial officers, courtroom space, judicial marshals, technology assistance, and clerical assistance.

B. Change in presumed format at the request of a party. Any party may file a motion requesting that a proceeding presumed or scheduled to be heard in person be heard remotely. Any party may file a motion requesting that a proceeding presumed or scheduled to be heard remotely be heard in person. Any such motion must explain with specificity the basis for the request. Except as provided below, the motion must (1) provide the email address of the moving party and the responding party, if known; and (2) be filed and served on the other party or parties no later than fourteen days before the scheduled hearing date, unless otherwise ordered by the court. If a party objects to the motion, the objecting party must file a written opposition no later than seven days after the motion is filed, unless otherwise ordered by the court.

If the party filing the motion for a change in the presumed format believes that the health, safety, or liberty of the party or a minor child would be jeopardized by disclosure of identifying information, the party may provide the email address to the court without providing that information to the other party, and file an Affidavit of Confidential Address (PA-015) to request that the party's email address be sealed by the court pursuant to 19-A M.R.S. § 4008.

C. Standard for changing the presumed format upon motion. The standard for granting a motion and ordering that the presumed format of a proceeding should change is good cause shown. In making the determination, the court must consider the ability of parties to participate remotely or to be present; the availability of constitutionally required counsel to other people and in the courts; and the availability of judicial officers, courtroom space, judicial marshals, technology assistance, and clerical assistance.

D. In-person hearing on the order of a court. A trial jurist may, without a motion and upon reasonable notice to the parties, require that a particular presumptively in-person proceeding be held remotely if Judicial Branch resources are insufficient to accommodate an in-person proceeding and if it is otherwise appropriate considering the nature of the proceeding.

III. CONDUCTING REMOTE PROCEEDINGS

A. The trial court will initiate all video or telephone proceedings and will provide information and instructions to all parties for how to access the conference or hearing.

B. Invitations to video or telephonic conferences or hearings will be sent to the parties by the clerk's office. To ensure that the invitations are received, each party is required to provide to the court an email address for official court communications.

C. The official audio recording of a remote proceeding shall be created by the Judicial Branch's electronic recording system, For the Record ("FTR").

D. If an evidentiary hearing will be held remotely, no later than seven days before the hearing any party intending to offer any exhibits during the hearing must mark, copy, and exchange those exhibits with the other party or parties. The offering party must also file copies of those exhibits with the court no later than seven days before the trial, unless the court orders a different time period. During a remote video hearing, the court may permit rebuttal exhibits to be uploaded electronically to the video conference platform. Electronically filed exhibits must be in a standard, non-proprietary format: MP4 for video; MP3 or MP4A for audio; PDF for documents; JPG for photographs. Exhibits in other electronic formats may be filed only with leave of the court. A paper copy

of any exhibit offered in rebuttal, if not previously filed with the court, must be filed within 5 business days after the final hearing.

E. Self-represented litigants are held to the same standards as represented parties. A litigant will not be afforded any special consideration because of self-represented status. All court rules of procedure and process, including the rules of evidence, and the rules of contempt, apply during remote hearings and conferences.

F. All parties are required to comport themselves as though the hearing or conference were occurring in person. Standards, including decorum, demeanor, and dress code, still apply. Those participating shall behave as if they were inside the courtroom.

G. Each witness must be alone in a quiet room while testifying and may not use a virtual background unless a virtual background is necessary for the safety and security of the witness or party. Each witness is ordered, subject to contempt of court, to turn off all electronic devices except for the device enabling participation in the hearing and to refrain from exchanging any electronic messages with anyone while testifying.

H. When any proceeding is scheduled to be held remotely, counsel and parties shall be ready to proceed at the scheduled date and time. Private conversations and consultations outside the presence of the court will not generally be available on the remote platform.

IV. PUBLIC ACCESS TO REMOTE COURT PROCEEDINGS

A. JB-05-15 shall apply to media coverage of remote court proceedings during a pandemic. The Media Notification-Requested Coverage of Court Proceeding form, found on the Judicial Branch website at

<https://www.courts.maine.gov/news/media.html>

shall be the means for requests by members of the media for

1. Direct access to cover a public but remote court proceeding being conducted solely by video or telephone; and

2. Access to or recording of a live audio stream of a court proceeding.

B. The trial court retains discretion to approve, approve on conditions, or deny media coverage requests made pursuant to section A(1) above, or to allow access and coverage of remote court proceedings on its own or at the request of a party.

C. Members of the public who wish to observe or listen to remote court proceedings should contact the clerk of the court where the hearing is being held. A list of addresses and telephone numbers for each clerk's office is attached to this order.

Promulgation Date: August 18, 2023

For the Court:

_____/s/_____
Valerie Stanfill
Chief Justice, Supreme Judicial Court

ATTACHMENT: Clerk's Office Telephone Numbers

Order Regarding Trial Court Remote Proceedings and Public Access

AO JB-21-05 (A. 8-23) dated August 18, 2023, and effective August 18, 2023.

Signed by: Valerie Stanfill, Chief Justice, Maine Supreme Judicial Court

Issued to provide clarifying language and acknowledge that particularly in criminal proceedings, it is important, when feasible, for all participants to be physically present at a courthouse. Section I is amended to authorize regional scheduling jurists to order variation in the list of proceedings that must be held remotely. Section I(A) is amended to add docket indicators for all case types and to add to the list of proceedings to be held remotely all Violations Bureau hearings, and arraignments and initial appearances for incarcerated individuals in criminal cases. Section I(B) now provides that all other proceedings shall be held in person unless there is a change in the presumed format under section II and identifies certain proceedings that are presumed to be held in person. Former sections II and III have been merged into a new Section II, which, as revised, authorizes changes in the presumed format on a regional basis by the regional scheduling jurists or by the court at the request of a party upon good cause shown; and allows a court to order, if appropriate, that a specific proceeding be held in a different format, upon reasonable notice to the parties, if Judicial Branch resources are insufficient to accommodate an in-person proceeding. Former section IV is relabeled as section III. Section III(D) is amended to eliminate the requirement that "paper" copies of exhibits be filed. Former section V has been relabeled as section IV, and a cross-reference in section IV(B) has been updated.

Historical Derivation of JB-21-06

Order Regarding Trial Court Remote Proceedings and Public Access

AO JB-21-05 dated September 24, 2021, and effective October 4, 2021.

Signed by: Valerie Stanfill, Chief Justice, Maine Supreme Judicial Court

SUPERIOR COURT
(For all Courts: TTY 711 Maine Relay)

ANDROSCOGGIN County Superior Court
330-7500

AROOSTOOK County Superior Court
498-8125 (Caribou)
532-6563 (Houlton)

CUMBERLAND County Superior Court
822-4200

FRANKLIN County Superior Court
778-3346

HANCOCK County Superior Court
667-7176

KENNEBEC County Superior Court
Capital Judicial Center
213-2800

KNOX County Superior Court
594-2576

LINCOLN County Superior Court
882-7517

OXFORD County Superior Court
743-8936

PENOBSCOT County Superior Court
Penobscot Judicial Center
561-2300

PISCATAQUIS County Superior Court
Piscataquis Judicial Center
564-2240

SAGadahoc County Superior Court
442-0200

SOMERSET County Superior Court
474-5161

WALDO County Superior Court
Waldo Judicial Center
338-1940

WASHINGTON County Superior Court
255-3326

YORK County Superior Court
283-6000

DISTRICT COURT

AUGUSTA District Court
Capital Judicial Center
213-2800

BANGOR District Court
Penobscot Judicial Center
561-2300

BELFAST District Court
338-1940

BIDDEFORD District Court
283-6000

BRIDGTON District Court
647-3535

CALAIS District Court
454-2055

CARIBOU District Court
493-3144

DOVER-FOXCROFT District Court
Piscataquis Judicial Center
564-2240

ELLSWORTH District Court
667-7141

FARMINGTON District Court
778-2119

FORT KENT District Court
834-5003

HOULTON District Court
532-2147

LEWISTON District Court
795-4800

LINCOLN District Court
794-8512

MACHIAS District Court
255-3044

MADAWASKA District Court
728-4700 or 834-5003

MILLINOCKET District Court
723-4786 or 794-8512

NEWPORT District Court
368-5778

PORTLAND District Court
822-4200

PRESQUE ISLE District Court
764-2055

ROCKLAND District Court
596-2240

RUMFORD District Court
364-7171

SKOWHEGAN District Court
474-9518

SOUTH PARIS District Court
743-8942

WATERVILLE District Court
873-2103

WEST BATH District Court
442-0200

WISCASSET District Court
882-6363

VIOLATIONS BUREAU

VIOLATIONS BUREAU Helpline
783-5422