

PRIMER ON VIDEOCONFERENCING

Sources:

- A.M. 20-12-01-SC - Guidelines on the Conduct of Videoconferencing (December 9, 2020)
- OCA Circular No. 06-2021 - Use of Videoconferencing in Cases Involving Persons Deprived of Liberty as Authorized under A.M. 20-12-01-SC (January 16, 2021)
- OCA Circular No. 171-2022 - Guidelines on the Conduct of Videoconferencing with respect to remote appearance from abroad and requirement of prior request for Mutual Legal Assistance, among others (July 7, 2022)
- OCA Circular No. 133-2021 - Guidelines on the Conduct of Videoconferencing with remote appearance abroad (November 3, 2021)
- OCA Circular No. 216-2022 - Addendum to OCA Circular No. 171-2022 (August 19, 2022)

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I. Purpose

The primer aims to guide the members of the legal profession in using videoconferencing as an alternative mode of communication in court hearings and other proceedings. With the commendable results in pilot stations during the initial implementation of videoconferencing, the Supreme Court issued Guidelines on the Conduct of Videoconferencing which shall be applicable even if the current public health emergency caused by COVID-19 pandemic ceases. This primer provides the instances when videoconferencing may be resorted to. This also includes the procedures which shall be observed by the parties when using videoconferencing in court proceedings.

In line with DLSU Law Clinic (DLC)'s commitment to promoting and protecting human rights, this primer is designed to aid lawyers in protecting the rights of their clients. This is also intended to inform any person to be of their rights in any proceeding through videoconferencing.

Q1: What is Videoconferencing?

Videoconferencing is defined as "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." (I, Sec. 2 (a), A.M. 20-12-01-SC)

The conduct of videoconferencing, under the supervision and control of the presiding judge or justice, is just an alternative mode to in-court proceedings. Thus, the dignity, solemnity, rules, and practices required in

an in-court hearing shall also be strictly observed in videoconferencing. (I, Sec. 1, A.M. 20-12-01-SC)

II. Application

Q2: What are the courts covered by the Guidelines on the Conduct of Videoconferencing (A.M. 20-12-01-SC)?

The Guidelines shall apply to all actions and proceedings in Metropolitan Trial Courts (MeTC), Municipal Trial Courts in Cities (MTCC), Municipal Trial Court (MTC), and Municipal Circuit Trial Courts (MCTC), Regional Trial Courts, Court of Appeals, Sandiganbayan, and Court of Tax Appeals when the court finds that the conduct of videoconferencing will be beneficial to the fair, speedy, and efficient administration of justice. (I, Sec. 3 (a), A.M. 20-12-01-SC)

Q3: What is the duration of applicability of the Guidelines on the Conduct of Videoconferencing?

It shall be applicable during the duration of the pandemic and thereafter unless revoked or modified by the Supreme Court. The Guidelines on the Conduct of Videoconferencing were approved by the Supreme Court last 09 December 2020 and took effect last January 16, 2021. (XI, A.M. 20-12-01-SC)

Q4: What are some instances that would justify the conduct of videoconferencing?

The instances that would justify the conduct of videoconferencing include but are not limited to the presence of typhoons, floods, earthquakes,

lockdowns, situations that will limit access to courts, public emergencies as declared by concerned government agencies, as well as other unforeseen and human-induced events. It may also be availed of if the litigant, witness, or counsel is unable to appear in court due to security risks, health concerns, or when the participant is a victim of a sexual offense or domestic violence.

Videoconferencing may also be used when the litigant or witness is a high-risk Person Deprived of Liberty (PDL), as defined by the subsequent section, or is a PDL committed in a detention facility or a Child in Conflict with the Law (CICL) committed in a center or facility operated by DSWD. Aside from them, videoconferencing is justified when an agency or expert witness cannot attend in-person hearings, a litigant or witness is an OFW or Filipino residing or temporarily abroad, a non-resident foreign national who was involved in any action pending before any court while in the Philippines would like to appear remotely from overseas.

The courts may also decide, based on sound judgment, whether there are compelling reasons to resort to videoconferencing. (I, Sec. 3 (b), A.M. 20-12-01-SC)

Q5: What is a high-risk Person Deprived of Liberty (PDL)?

For purposes of the Guidelines on Videoconferencing, a high-risk PDL is a person:

- a. charged with violation/s of laws penalizing terrorism or related offenses;
- b. charged with violation/s of laws penalizing crimes against international

humanitarian law, genocide, and other crimes against humanity; or

c. considered a high-value target because of the threat he or she poses to the security of the jail facilities, the court or the community, and other safety considerations in transporting him to and from the jail and courtroom. (I, Sec. 2 (e), A.M. 20-12-01-SC)

Q6: Can videoconferencing hearings be done partially remote?

Yes. In partially-remote video conferencing hearings, at least one of the participants appears in court, while the others appear from remote locations. On the other hand, in fully-remote conferencing hearings, none of the participants are physically present in court. (I, Sec. 2 (a)(i)(ii), A.M. 20-12-01-SC)

III. Procedure

Q7: When can the court immediately and motu proprio order the conduct of videoconferencing?

The court may *motu proprio* order the conduct of video conferencing in the presence of the following instances:

- a. Acts of God such as but not limited to typhoons, floods and earthquakes;
- b. human-induced events such as fires, strikes, and lockdowns;
- c. when there is a public emergency as declared by a concerned government agency;
- d. when a litigant or witness is a high-risk PDL except “high-value target” PDLs;
- e. when the litigant or witness is a PDL committed in a detention facility or a Child in Conflict with the Law committed in a

center or facility operated or accredited by DSWD; and

f. other circumstances that may be declared by the Supreme Court as sufficient to justify the conduct of videoconferencing. (Sec. 3 (a), A.M. 20-12-01-SC)

Q8: Can Videoconferencing be initiated by a motion of a party?

Yes. A party or counsel may, by motion, request that the proceedings be conducted via videoconferencing. The party must file the motion 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. (II, Sec. 2, A.M. 20-12-01-SC)

Q9: What should be included in a motion to conduct hearings through videoconferencing?

The motion to conduct hearings through videoconferencing shall include the following contents:

- a. the grounds being invoked by the movant;
- b. documentary and object evidence to support the grounds being invoked;
- c. the proceedings proposed to be conducted through videoconferencing;
- d. the names of the witnesses to be presented and the summaries of their testimonies;
- e. the expected location of each participant;
- f. the e-mail addresses of the concerned litigants, their counsel, and the witnesses to be presented;
- g. special requirements necessary for the specific videoconferencing, if any,

such as specialized software for the presentation of videos, and the like; and

h. statement that the movant and the intended witnesses are technically ready to participate in the videoconferencing.

Q10: Can the adverse litigants comment on or oppose the motion?

Yes. The adverse litigants shall file within five (5) calendar days from receipt of the motion their comment or opposition, which shall also be filed and served electronically and/or personally. (II, Sec. 2(b), A.M. 20-12-01-SC)

Q11: How long will the Court resolve the motion to conduct hearings through videoconferencing?

The court shall resolve the motion within five (5) calendar days before the scheduled videoconferencing with or without opposition from the adverse litigant. (II, Sec. 2(c), A.M. 20-12-01-SC)

Q12: What is the remedy in case of denial of the motion?

As a general rule, it shall not be subject to a motion for reconsideration, appeal or certiorari, except on constitutional grounds. (II, Sec. 2(c), A.M. 20-12-01-SC)

Q13: Can scheduled videoconferencing hearings be canceled by either party?

No. The justice or judge shall not cancel scheduled videoconferencing hearings, except on meritorious grounds. (II, Sec. 4, A.M. 20-12-01-SC)

Q14: How will the orders and actions be issued by the Court during videoconferencing?

The Court shall issue its orders during videoconferencing as if done in open court, by sending electronic copies of open court orders to the litigants and their counsel on the same day. The court shall produce hard copies of the order, which shall form part of the records of the case. (II, Sec. 5, A.M. 20-12-01-SC)

Q15: Can any software or platform be used for videoconferencing?

No. The guidelines on the conduct of videoconferencing provided that the Court shall conduct videoconferencing by using only the secure software or platform authorized and provided by it. Presently, by virtue of Administrative Circular 37-2020, the Supreme Court authorized and established Microsoft Teams as the only platform that shall be used for videoconference proceedings. (II(A), Sec. 1, A.M. 20-12-01-SC)

Q16: Who shall send the invitation link for the video conference?

The court shall send out to all concerned participants' respective email addresses the invitation or link. (II(A), Sec. 3(a), A.M. 20-12-01-SC)

Q17: When shall the invitation link be sent?

The invitation link shall be sent at least twenty-four (24) hours before the scheduled hearing. Participants must respond to the invite or send an acknowledgment email confirming receipt of the link to the videoconferencing. (II(A), Sec. 3(a) and (b), A.M. 20-12-01-SC)

Q18: What if one does not receive an invitation link? What should one do?

If you are a participant and you did not receive an invitation or link at least twenty-four (24) hours before the scheduled videoconferencing, you must inform the court of such fact through email, phone call, or other electronic means.

The same procedure must be followed by participants who received the invitation or link but cannot access it. (II(A), Sec. 3(c) and (d), A.M. 20-12-01-SC)

Q19: When is the proper time to enter the scheduled videoconferencing?

Participants must be at the virtual or waiting lobby at least twenty (20) minutes before the scheduled videoconferencing. (II(A), Sec. 3(e), A.M. 20-12-01-SC)

Q20: Can anyone from the public access videoconference hearings?

Yes, provided that the 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. The individual must provide the following information:

- a. Full name;
- b. Email 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.

The Court, however, shall have the discretion to refuse access on the following grounds:

- a. If it finds that the information given is erroneous or fictitious;
- b. When the evidence to be adduced is of such nature as to require the exclusion of the public in the interest of morality or decency; or
- c. When a child witness will testify.

In such instances, the court may immediately order an individual's removal from a videoconferencing hearing to protect and preserve the dignity and solemnity of the proceedings. (II(A), Sec. 5, A.M. 20-12-01-SC)

Q21: May one share the invitation or link to the videoconference with anyone?

No. The invitation or link must be treated with strict confidentiality and shall not be shared by its recipients with any other person. The unauthorized sharing of its details and information may be considered a contempt of court. (II(A), Sec. 5, A.M. 20-12-01-SC)

IV. Hearing Proper

Q22: Where shall justices or judges, and court personnel conduct the videoconference?

Justices or judges shall preside over, while court personnel shall attend, videoconferencing hearings from the courtroom or chambers at all times.

In exceptional circumstances, however, judges or justices may conduct videoconferencing from remote locations subject to the following conditions:

- a. Presiding Justice or Executive Justice of the Court of Appeals - the remote location is within their territorial jurisdictions;
- b. Justices of the Sandiganbayan and Court of Tax Appeals - they acquire prior permission from the Presiding Justices;
- c. Trial Court Judges - they acquire prior permission from the Office of the Court Administrator (OCA), and the remote location is 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. (II(B), Sec. 1, A.M. 20-12-01-SC)

Q23: May one use earphones or headsets during videoconferencing?

Yes, and it is highly encouraged. If, however, the courtroom or remote location has dedicated videoconferencing solutions with noise-cancellation features in place, the use of earphones or headsets may be dispensed with. (II(B), Sec. 3, A.M. 20-12-01-SC)

Q24: Is there a need to inspect the location where the videoconferencing will take place? If so, what is the purpose of this?

At the start of the video conferencing hearing, the participants are required to pan their cameras across the room to show that they are alone in the room, that the windows and doors are closed, and that there are no unauthorized means of communication around the room. The purpose of this is to make sure that there will be no coaching or disturbance that

may affect the proceedings. (II(B), Sec. 5, A.M. 20-12-01-SC)

Q25: *Is there a preferred angle in which participants must position themselves in before proceeding with the video conference?*

The participants in the video conferencing should always be seen at a frontal angle and be heard clearly by everyone in the conference. The video conference should always be conducted in a manner so as not to impede the Court from exercising its role in determining the credibility of the witnesses and their respective testimonies. (II(B), Sec. 7, A.M. 20-12-01-SC)

Q26: *Is there a need to record the video conference?*

Yes, the videoconferencing shall be recorded by the Court and form part of the records of the case, attaching thereto the relevant electronic documents taken up during the hearing. Only the Court can record the proceedings; the participants and other persons attending the video conference are prohibited from recording any portion of the proceedings through any means. Doing so will be considered contempt of court. (II(B), Sec. 8, A.M. 20-12-01-SC)

Q27: *How should evidence be presented in a video conference hearing?*

Judicial affidavits and other pieces of documentary evidence should be filed and served at least three (3) days before the scheduled video conference. Object evidence may be presented during the video conference if the same can be

exhibited to, examined, or viewed by all participants, by displaying the object on the screen. (II(B), Sec. 1 and 2, A.M. 20-12-01-SC)

V. Additional Procedures in Criminal Cases

Q28: *How does videoconferencing affect the required attendance of PDLs?*

With the issuance of A.M. No. 20-12-01-SC (Re: Guidelines on the Conduct of Videoconferencing), effective 16 January 2021, all judges who require the attendance or appearance of a PDL detained in a national penitentiary are DIRECTED to avail of the alternative mode of videoconferencing, unless the PDL is authorized by the Supreme Court to be brought to the court to attend in-court hearings. (OCA Circular No. 06-2021)

Q29: *Who may file the motion to conduct video conferencing in cases involving high-risk PDLs?*

The motion to conduct videoconferencing may be filed by the jail warden of the jail or detention facility where the concerned PDLs are being held. Such motion may be granted *ex parte* by the Court. (III, Sec. 1, A.M. 20-12-01-SC)

VI. Additional Procedures for Overseas Filipino Workers, Filipinos Residing Abroad, or Temporarily Outside the Philippines, and Non-Resident Foreign Nationals

Q30: *Can there be remote appearances through video conferencing?*

Yes, Motions for Videoconferencing from Philippine embassies or consulates may now be acted upon, provided "that the concerned embassy or consulate of the Philippines has allowed the use of its facilities for videoconferencing," pursuant to Item IV (3), A.M. No. 20-12-01-SC, taking into account their views on the applicable laws and regulations of, and agreement with, their respective host countries, and operational concerns by reason of COVID-19 and other circumstances.

Q31: How can Overseas Filipino Workers residing abroad or temporarily outside the Philippines, or non-resident foreign nationals, participate or testify through videoconferencing?

Upon proper motion with the court where the case is pending. This shall be filed by the litigants interested in availing videoconferencing. (IV, Sec. 1, A.M. 20-12-01-SC)

Q32: Where can such videoconferencing take place?

This may be conducted only by an embassy or consulate of the Philippines. (III, Sec. 1, A.M. 20-12-01-SC)

Q33: When can such videoconferencing take place?

The videoconferencing hearings must be scheduled during the working hours of the Philippine courts, with proper coordination with the concerned embassy or consulate, at the expense of the moving party, if any. (OCA Circular No. 133-2021)

Q34: Who should pay for the costs of videoconferencing?

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. (OCA Circular No. 171-2022)

VII. Facilities, Equipment, and Training for Videoconferencing

Q35: What are the minimum requirements for technology, facilities, and equipment for video conferencing?

The technology, facilities, and equipment to be used must be of such quality as to allow the conduct of videoconferencing as prescribed by the 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 in remote locations.

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. The same applies to jail facilities. (V, Sec. 1, A.M. 20-12-01-SC)

VIII. Gross Misconduct in Videoconferencing

Q36: What constitutes 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 gross misconduct and shall be dealt with severely. (VI, A.M. 20-12-01-SC)

IX. Country-Specific Additional Requirements for Remote Appearances Abroad

France

Civil and Commercial:

- In the absence of an agreement between France and the Philippines, the request for obtaining evidence must be made on the basis of international comity and reciprocity.
- Filipino consular officers can hear their nationals without the need for an authorization from the French Ministry of Justice.

Criminal:

- The organization of a videoconference by the Filipino legal authorities entails that a request for mutual assistance in criminal matters be made to the French judicial authorities.
- In the absence of a mutual judiciary assistance agreement between France and the Philippines, the request for mutual legal assistance in criminal matters must be made through diplomatic channels on the basis of international comity and reciprocity. (OCA Circular No. 216-2022)

Germany

The hearing of a witness (in criminal and civil proceedings) via video conference in

a Philippine consular or diplomatic mission in Germany is not allowed, without the approval of responsible German authorities, regardless of the nationality of the witness. The approval can only be granted within the framework of an official request for legal assistance from the Philippine government to the German government through diplomatic channels. In civil matters, such approval would generally be given on a contractual basis. (OCA Circular No. 171-2022)

Indonesia

Non-criminal:

A Philippine court may validly hold a hearing via videoconference for the examination of a Filipino witness who is in Indonesia under the following conditions:

1. Prior notice is given to the Indonesian MFA; and
2. The videoconference hearing is conducted with the Filipino witness inside the premises of the Philippine consular office (Embassy or Consulate General).

Criminal:

- There is a need to make a formal request for legal assistance under the Mutual Legal Assistance on Criminal Matters (MLAT) through the designated central authorities, i.e., DOJ for the Philippines and the Ministry of Law and Human Rights (MLHR) for Indonesia.
- The conduct of the hearing through videoconference, its conditions, requirements, procedures, and other related matters will be subject to the agreement between the DOJ and MLHR in line with the MLAT. (OCA Circular No. 216-2022)

Macau

- Judicial organs of Macau have never permitted any request from foreign counterparts for questioning a witness residing within Macau.
- Macau's Office of the Secretary for Administration and Justice further emphasized that taking of testimony or statements is listed as one of the issues for which Macao (sic) could provide international legal assistance in criminal matters, in accordance with Macau's Law No. 6/2006 on Mutual Legal Assistance in Criminal Matters. (OCA Circular No. 171-2022)

Portugal

- VCHs cannot be held in a foreign consular section or post in Portugal even with the presence of a Portuguese judicial authority as there is a lack of legal support for Portuguese authorities to go to the premises of diplomatic missions.
- However, it will be necessary to request international judicial cooperation in criminal matters addressed to Portuguese judicial authorities, which will carry out themselves the inquiry of the concerned persons, either by VCH or in the facilities or premises of Portuguese courts or the Prosecutor General's Office.
- Meanwhile, the Philippine Embassy in Lisbon is awaiting the response of the Portuguese government on the conduct of VCH at the Embassy premises on civil cases when it involves the participation of foreign and Portuguese nationals. (OCA Circular No. 171-2022)

Qatar

The Qatar Ministry of Foreign Affairs informed that VCH relating to criminal actions to be conducted in Philippine Embassy's premises will require a prior request for mutual legal assistance (MLA) submitted by the Philippine competent authority to the Public Prosecution of Qatar through diplomatic channels, indicating information on the requesting authority in the Philippines and the case/s at bar. (OCA Circular No. 171-2022)

Singapore

- VCH requests related to criminal proceedings should be made by the relevant Philippine central authority (i.e. Department of Justice) on mutual legal assistance in criminal matters to its counterpart in Singapore, the Attorney-General's Chambers.
- Per the Guidelines on the Taking of Voluntary Evidence via Videoconference in a Civil Proceeding (can be accessed on the website of the Embassy of the Philippines in Singapore), which includes the following requirements of the Singapore Ministry of Law:
 - a. A clear statement that the VCH only applies to the taking of voluntary evidence in a civil proceeding;
 - b. Obtaining the permission of the Singapore government for a witness in Singapore, regardless of nationality or residency, to give evidence via videoconference; and
 - c. Details to be indicated in the request for permission to take evidence via videoconference. (OCA Circular No. 171-2022)

Sweden

Criminal:

Examination of a witness in Sweden via videoconference requires a request for legal assistance. The request shall be addressed to the Ministry of Justice.

Civil:

Permission is not needed to conduct an examination via videoconference of a witness in Sweden, if the witness consents. (OCA Circular No. 171-2022)

Switzerland

- Hearing by videoconferencing of a witness in a criminal and civil case by foreign authorities in Switzerland cannot be regarded as an act falling within the scope of consular functions within the meaning of Article 5 of the Vienna Convention on Consular Relations of 24 April 1963.
- Mutual assistance in criminal matters is regulated by the treaty on mutual legal assistance in criminal matters concluded between the Philippines and the Swiss Confederation.
- Mutual assistance in civil matters between the Philippines and Switzerland is not regulated by a treaty.
- A judicial authority of the Philippines may submit, through diplomatic channels, a Letter of Request for mutual legal assistance in civil matters for the hearing of a witness carried out by a Swiss court.
- In highly exceptional cases and only if the ordinary channel does not allow satisfactory results (i.e., if it appears practically impossible to ask Swiss authorities to assist in the matter), an authorization for a hearing by videoconference carried out by a

Philippine court directly or with the active or passive participation of a consular or diplomatic agent may, on request, be granted by the Swiss competent authority. (OCA Circular No. 171-2022)

United Arab Emirates

The UAE Ministry of Justice conveyed that the "competent Filipino authorities must submit a request for legal assistance that meets the conditions through the recognized diplomatic channels." (OCA Circular No. 171-2022)

Vietnam

The Ministry of Justice (MOJ) of Vietnam conveyed that it may allow remote testimonies on the condition that each specific case is reviewed by competent Vietnamese authorities. The MOJ of Vietnam will need to ensure that each request complies with the following conditions:

- a. The conduct of the hearing complies with Vietnamese laws, respects the independence and sovereignty of Vietnam, and does not interfere in the internal affairs of Vietnam; and
- b. The case is not related to the national security, sovereignty, or rights of sovereignty of Vietnam and contains no complicated political issues relevant to Vietnam. (OCA Circular No. 171-2022)

X. Possible Constitutional Issues as a Result of Videoconferencing

Possible violation of the right to be informed of the nature and cause against him

Section 1, Article III of the 1987 Constitution provides that “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” Accordingly, Section 14 thereof provides for the rights of an accused. It states that “no person shall be held to answer for a criminal offense without due process of law.” Moreover, this includes the accused’s right to be informed of the true nature and cause of the accusation against him. (Art. III, Sec. 14 (2), 1987 Constitution)

As held in *Villarba v. CA*, the constitutional right to be informed of the nature and cause of the accusation against an accused further requires a sufficient complaint or information (*Villarba v. CA*, G.R. No. 227777, June 15, 2020). It is deeply rooted in one’s constitutional rights to due process and the presumption of innocence. Thus, it is important that there be a sufficient complaint or information provided to the accused. In *Enrile v. Manalastas*, it was held that in determining whether the averments of a complaint or information are sufficient, the test is whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense (*Enrile v. Manalastas*, G.R. No. 171222, February 18, 2015).

In *People v. Bayabos*, the Supreme Court highlighted Section 14, Article III of the Constitution, which recognizes the right of the accused to be informed of the nature and cause of the accusation against them. As a manifestation of this constitutional right, the Rules of Court requires that the information charging persons with an offense be “sufficient.” One of the key components of a “sufficient information” is the statement of the acts or omissions constituting the offense charged, subject of the complaint. The information must also be crafted in a language ordinary and concise enough to enable persons of common understanding to know the offense being charged against them (*People v. Bayabos*, G.R. No. 171222, February 18, 2015). Doing so allows the accused to sufficiently prepare for his defense since he/she is presumed to have no knowledge of the facts constituting the offense he/she was charged with.

Ultimately, an information will not be sufficient if it does not accurately and clearly allege the elements of the crime charged. Such an information violates the right of an accused to be informed of the true nature or cause against him. (*People v. Valdez and Valdez*, G.R. No. 175602, January 18, 2012).

How can possible violation of this right be avoided?

Since compliance with Section 14, Article III of the Constitution rests upon a sufficient complaint or information, the right of the accused to be informed of the nature and cause against him would not be violated by conducting hearings through Videoconferencing.

According to II(3) of A.M. No. 20-12-01-SC, electronic filing and service of pleadings will be governed by the relevant procedures of the Rules of Court and pertinent or relevant issuances of the Supreme Court. The law specifically provides that the same rights and remedies will be afforded the parties as if the proceedings were held in open court. Thus, the accused's right to be informed of the nature and cause against him will still be protected.

Possible violation of the right to be heard by himself and by counsel

One of the rights enshrined in Article 14(2), Article III of the Constitution is the right of an accused to be heard by himself and by counsel. The essence of this right is best captured in the case of *People v. Holgado*.

The Court therein stated:

“One of the great principles of justice guaranteed by our Constitution is that “no person shall be held to answer for a criminal offense without due process of law”, and that all accused “shall enjoy the right to be heard by himself and counsel.” In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated.” (People v.

Holgado, G.R. No. L-2809, 22 March 1950)

The very spirit of this provision is to assure that the rights of the accused are protected. The Constitution may have made these rights explicit, but without an agent of the law to enforce and protect it, even an innocent man could lose his freedom. Therefore, the presence of competent and independent counsel at all times throughout the proceedings has now become mandatory.

With the adaptation of videoconferencing, however, in criminal proceedings, the question of whether the right to be heard by himself and counsel is violated arises. During videoconferencing, it is more likely to assume that the accused is remotely situated from his counsel given that they are in separate locations. Therefore, private communication between attorney and client during videoconferencing proceedings has become difficult if not impossible.

Such was the case in the U.S. upon the full implementation of videoconferencing during the onset of the pandemic. In the article, *The Impact of Video Proceedings on Fairness and Access to Justice in Court*, the challenges of communication between counsel and accused were tackled. It stated that:

“Diamond’s Cook County study on the impact of video proceedings on bail observed that separating attorneys and clients made it harder for them to quickly confer during a bail hearing. She noted that such a communication challenge could be consequential in a bail hearing: a defendant may be able to provide ‘mitigating details regarding past

convictions that will greatly assist counsel... Obviously, such communications must occur immediately if counsel is to be able to make use of his client's information during a fast-paced bail hearing.” (The Impact of Video Proceedings on Fairness and Access to Justice in Court, by Alicia Bannon and Janna Adelstein, 10 September 2020)

Considering that the U.S. has far better facilities than here in the Philippines, it is safe to assume that private communications between the accused and his counsel are far worse impaired here.

How can possible violation of this right be avoided?

Although there is no deprivation of this right, there is a risk of impairing the same through videoconferencing. Nevertheless, it cannot be argued that videoconferencing for criminal proceedings is unconstitutional since due process is not hindered.

In the case of *People v. Holgado*, the Court stated that “One of the great principles of justice guaranteed by our Constitution is that ‘no person shall be held to answer for a criminal offense without due process of law,’ and that all accused ‘shall enjoy the right to be heard by himself and counsel.’” The same case discussed, therefore, the duties of the court when a defendant appears without an attorney as provided under the Rules of Criminal Procedure.

Under Section 6 of Rule 116, when a defendant appears without an attorney, the court has four important duties to comply with:

1. It must inform the defendant that it is his right to have an attorney before being arraigned;
2. After giving him such information the court must ask him if he desires the aid of an attorney;
3. If he desires and is unable to employ an attorney, the court must assign an attorney *de officio* to defend him; and
4. If the accused desires to procure an attorney of his own the court must grant him a reasonable time therefor.

Additionally, under the preliminary provisions of A.M. 20-12-01-SC, it provides that “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.” (I, Sec. 1(e), A.M. 20-12-01-SC)

With these provisions in place, it is clear that the law is always poised to uphold the right of the accused to be heard by himself and by counsel.

Possible violation of the right to a speedy, public, and impartial trial

The 1987 Constitution requires the trial of the accused to be public, speedy, and impartial as added guarantees of due process of law.

A trial must be public in order to prevent abuses that may be committed by the Court. In *Perez v. Estrada* (Re: Request Radio-TV Coverage of the Trial in the Sandiganbayan of the Plunder Cases against the former President Joseph E.

Estrada, A.M. No. 01-4-03-SC, June 29, 2001), the Court pronounced that a public trial ensures that the accused is dealt with fairly under the law, that he would not be unjustly condemned, and that his rights would not be compromised.

Flores v. People defines a speedy trial as that which is free from capricious and oppressive delays. (*Flores v. People*, G.R. No. L-25769, December 10, 1974) This constitutional right, however, does not mean that trials should be rushed. Careful and deliberate consideration as regards the administration of justice, respect for the accused's rights, and due process of law should still be observed, as ruled by the Court in the case of *Amberti v. Court of Appeals* (*Amberti v. Court of Appeals* G.R. No. 79981, April 2, 1991).

A judge's impartiality is an integral part of procedural due process. The Court, in the case of *Bilbao v. People* ruled that a judge must not only be impartial but must also appear to be impartial to assure the parties that his decision will be just. The parties must trust the judge and believe he can render a just and unbiased decision (*Bilbao v. People*, G.R. No. 175999, July 1, 2015).

How can possible violation of this right be avoided?

One of the whereas clauses in the Proposed Guidelines for A.M. No. 20-12-01-SC stresses the need to uphold an accused's constitutional rights during videoconferencing. Since the conduct of videoconferencing closely resembles in-court hearings, constitutional rights should still be strictly observed.

These rights are still upheld without physical and face to face confrontation since technology permits both the accused and the judge to be present, although virtually, at all stages of the proceedings.

Moreover, it is stated under the Guidelines on Videoconferencing that except on meritorious grounds, the justice or judge shall not cancel scheduled videoconference hearings. (III, Sec. 4, A.M. No. 20-12-01-SC) This ensures the right of the accused to the speedy disposition of his or her case.

Possible violation of the right to confront witnesses

The Constitution provides that every accused shall be afforded the right to confront a witness against him. (Art. III, Sec. 14 (2), 1987 Constitution)

People v. Sergio provides that the right to confrontation of a witness which is part of due process has a two-fold purpose which includes the following: (1) to afford the accused an opportunity to test the testimony of the witness by cross-examination; and (2) to allow the judge to observe the deportment of the witness. (*People v. Sergio*, G.R. No. 240053, 09 October 2019)

How can possible violation of this right be avoided?

According to I(1)(f) of A.M. No. 20-12-01-SC, the Rules of Court shall continue to be observed during videoconferencing, except as to the requirement that witnesses shall give testimony in open

court under Sec. 1, Rule 132 of the Revised Rules on Evidence. Thus, **notwithstanding the remote set-up of the proceeding, the accused still has the opportunity to test the testimony of the witness by cross-examination.** The conduct of videoconferencing will not hinder the accused to confront the witness against him.

This is safeguarded by II(B)(5) of A.M. No. 20-12-01-SC which requires the participants to pan their cameras across the room to demonstrate that they are alone and therefore cannot be coached or disturbed which may affect the proceeding. An exception to this rule is when a witness testifying is a child in which case, he or she may be in the presence of any of the following as provided under the Rule on Examination of a child witness:

- a. guardian ad litem;
- b. one or both of his support persons;
- c. the facilitator and interpreter, if any;
- d. a court officer appointed by the court;
- e. persons necessary to operate the closed-circuit television equipment;
- f. and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child. (Section 25(g)(1) of A.M. No. 004-07-SC)

To comply with the **second requirement**, the Guidelines on the Conduct of Videoconferencing provides that participants in the proceeding who will speak or testify **shall always be seen from a frontal angle and heard clearly by all other participants, including the presiding judge.**

It is also provided that the proceeding using videoconferencing **shall be conducted in such a way that it will not impede the court in determining the credibility of the witnesses** and their testimonies even though the witnesses' demeanor, conduct, and attitude are observed remotely. (II(B)(7), A.M. No. 20-12-01-SC)

The same provision ensures that even though the trial is held remotely, the judge still has the opportunity to examine the demeanor and deportment of witnesses to determine their credibility in testifying against the accused in criminal cases as long as the procedures in the Guidelines are followed.