

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**  
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**Report**

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee  
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DATE: August 5, 2009

SUBJECT: Appellate Procedure: Videoconferencing Oral Argument in the  
Superior Court Appellate Division (amend Cal. Rules of Court, rules  
8.885 and 8.929) (Action Required)

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Issue Statement

In many superior courts, particularly those with a small number of judges, the individuals who are assigned to the court's appellate division may include judges from the superior courts in neighboring counties. The courthouses in each county are often long distances from each other. Assembling judges from multiple counties in order to hold oral argument in these appellate divisions often means many hours of travel time for the participating judges and travel costs for the courts. Difficulties in finding a day when all of the appellate division judges can clear their calendars for such travel often means long waits for the parties before oral argument can be scheduled.

Recommendation

To help courts preserve resources and improve public access to oral argument in the superior court appellate division, the Appellate Advisory Committee and Trial Court Presiding Judges Advisory Committee recommend that the Judicial Council amend rules 8.885 and 8.929, effective January 1, 2010, to:

1. Authorize oral argument to be conducted using videoconferencing in a superior court appellate division either on order of the presiding judge of the appellate division or his or her designee or if the court has local rules authorizing the use of videoconferencing; and
2. Establish basic requirements for any oral argument conducted by videoconference, including that:
  - a. The appellate division must ensure that during oral argument the participants are visible and their statements audible to all other participants, court staff, and any members of the public who are in attendance;
  - b. Unless otherwise provided by local rule or ordered by the presiding judge or his or her designee, all the parties must appear for oral argument at the superior court that issued the judgment or order that is being appealed;
  - c. Oral argument must be open to the public at the superior court that issued the judgment or order that is being appealed; and
  - d. A party must not be charged a fee to participate in oral argument by videoconference if the party participates from the superior court that issued the judgment or order that is being appealed or from a location from which a judge of the appellate division panel is participating in oral argument.
3. Clarify that appellants may reserve some of their oral argument time for reply.

The text of the amended rules is attached at pages 6–10.

#### Rationale for Recommendation

Under article VI, section 4 of the California Constitution, there is an appellate division in each of the superior courts in the state. These appellate divisions hear appeals and writ proceedings in limited civil, misdemeanor, and infraction cases. The Chief Justice of the California Supreme Court assigns judges to the appellate division for specified terms to promote the independence of the appellate division. The judges assigned to the appellate division may include judges from another county or a panel of judges from different superior courts who sit in turn in each of the participating courts.

For the past four years, the Superior Courts of Lassen, Modoc, Plumas, and Sierra Counties have participated in a four-county regional appellate division program. Under this program, which won a Kleps Award for innovation in 2007, one judge from each of these superior courts is assigned to the regional appellate division. When a matter comes to the appellate division from one of these superior courts, it

is heard by the judges of the other three courts, thereby promoting the independence of the appellate division from the trial court.

An important innovation that has allowed this regional appellate division program to succeed has been the participation of the appellate division judges in oral argument by videoconferencing. Each of the participating counties is geographically large, and the courthouses in each county are long distances from each other. Without videoconferencing, assembling judges from these counties to hold oral argument in person would mean many hours of travel time for the participating judges—hours not available for other judicial duties—as well as travel costs for the courts. Difficulties in finding a day when all of the appellate division judges could clear their calendars for such travel would also mean long waits for the parties before oral argument could be scheduled. By using videoconferencing, oral argument is held without the judges from the different counties having to travel from their home courts. This technology allows parties and judges to fully participate in oral argument, seeing and hearing each other as if they were in the same room, while freeing up judicial time and court resources. It also reduces delays for the parties in scheduling oral argument, as the participating judges need only calendar the time actually needed for the oral argument, not all the time for travel to a remote hearing site. Thus, using videoconferencing for oral argument in this regional appellate division program has improved both public access and the efficient use of public resources.

Many other superior courts might benefit from using videoconferencing to conduct oral argument in their appellate division proceedings. All of the superior courts with three or fewer judges, as well as some other small to medium-size courts, currently have judges from several different counties serving on their appellate division. These courts could also benefit from this approach. In addition, many other superior courts might be interested in a multicounty approach if the logistical problem of travel for oral argument is addressed.

To consider how the Judicial Council might be able to expand the benefits of videoconferencing for oral argument to other appellate divisions, the Appellate Advisory Committee and the Trial Court Presiding Judges Advisory Committee formed a joint working group.<sup>1</sup> The working group developed the attached proposal, which was endorsed by both advisory committees, to authorize other

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<sup>1</sup> The members of this working group were Justice Dennis A. Cornell of the Court of Appeal, Fifth Appellate District, Presiding Judge Stephen H. Baker of the Superior Court of Shasta County, and Presiding Judge William W. Pangman of the Superior Court of Sierra County. Mr. Larry Allen, District Attorney of Sierra County, and Ms. Lynne Woods, Court Operations Manager for the Superior Court of Lassen County also served as advisors to the working group.

superior courts to conduct oral argument in appellate division proceedings by videoconferencing.

Specifically, this proposal would amend the rules relating to oral argument in the appellate division to authorize that oral argument be conducted using videoconferencing either on order of the presiding judge of the appellate division or if the court has local rules that authorize the use of videoconferencing. It would establish some basic parameters for this process, including that: (1) the appellate division must ensure that during oral argument, the participants are visible and their statements audible to all other participants, court staff, and any members of the public who are in attendance; (2) unless otherwise provided by local rule or ordered by the presiding judge or his or her designee, all the parties must appear for oral argument at the superior court that issued the judgment or order that is being appealed; (3) oral argument must be open to the public at the superior court that issued the judgment or order that is being appealed and may be open in other locations; and (4) a party must not be charged a fee to participate in oral argument by videoconference if the party participates from the superior court that issued the judgment or order that is being appealed or from a location from which a judge of the appellate division panel is participating in oral argument.

In addition to allowing oral argument to be set sooner, this proposal could improve access for parties in other ways. Under the proposed rule amendments, with the presiding judge's consent or under the court's local rules, a party could participate in oral argument from any of the locations from which a judge of the appellate panel is participating. In some cases, participating from one of these other locations may be more convenient for a party than participating from the originating trial court location.

This proposal would also amend the rules regarding the length of oral argument to indicate that appellants can reserve part of their time for reply to the respondent's argument.

#### Alternative Actions Considered

The committees considered not recommending any statewide rules about the use of videoconferencing for oral argument. The committees concluded, however, that it would assist those local courts that might be interested in implementing a program of videoconferencing for oral argument if there were statewide enabling rules.

#### Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2009 comment cycle. Seven individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, one agreed with the proposal if

amended, and one did not indicate a position on the proposal but provided minor editing suggestions. The full text of the comments received and the committees' responses are attached beginning on page 12.

As circulated for public comment, the proposal would have permitted the use of videoconferencing for oral argument only on order of the presiding judge of the appellate division. The Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group (Joint Rules Working Group) suggested that courts should also be permitted to authorize the use of videoconferencing for oral argument by local rule. The committees agreed with this suggestion and revised their proposal to incorporate this change.

As circulated for public comment, the proposal would have required that oral argument be open to the public at any location from which a judge of the appellate division was participating in oral argument. The Joint Rules Working Group pointed out that few people would likely be interested in oral argument outside of the county in which the case arose and that requiring multiple locations to be open to the public would add to court security and other expenses. Based on these comments, the committees revised the proposal to provide that oral argument must be open to the public at the superior court that issued the judgment or order that is being appealed but may also be open at other locations. This should reduce court expenses and ensure greater public access, because more people from the originating county are likely to be interested in the case.

#### Implementation Requirements and Costs

The amendments proposed in this rule do not require any court to conduct oral argument by videoconference; they establish an authorization for courts to conduct oral argument in this manner if they so choose. Thus this proposal does not impose any implementation requirements or costs on courts. If a court does choose to implement the use of videoconferencing for oral argument as authorized in this proposal, there would be some up-front costs for videoconferencing equipment, the development of local procedures, and staff training. However, once implemented, the use of videoconferencing for oral argument could save judicial time and court resources.

Attachments



Rules 8.885 and 8.929 of the California Rules of Court are amended, effective January 1, 2010, to read:

1                   **Chapter 4. Briefs, Hearing, and Decision in Limited Civil**  
2   **and Misdemeanor Appeals**

3  
4   **Rule 8.885. Oral argument**

5  
6   **(a) \* \* \***

7  
8   **(b) Oral argument by videoconference**

9  
10   **(1) Oral argument may be conducted by videoconference if:**

11  
12       **(A) It is ordered by the presiding judge of the appellate division or the**  
13       **presiding judge’s designee on application of any party or on the**  
14       **court’s own motion. An application from a party requesting that**  
15       **oral argument be conducted by videoconference must be filed**  
16       **within 10 days after the court sends notice of oral argument under**  
17       **(c)(1); or**

18  
19       **(B) A local rule authorizes oral argument to be conducted by**  
20       **videoconference consistent with these rules.**

21  
22   **(2) If oral argument is conducted by videoconference:**

23  
24       **(A) Each judge of the appellate division panel assigned to the case**  
25       **must participate in the entire oral argument either in person at the**  
26       **superior court that issued the judgment or order that is being**  
27       **appealed or by videoconference from another court.**

28  
29       **(B) Unless otherwise allowed by local rule or ordered by the presiding**  
30       **judge of the appellate division or the presiding judge’s designee,**  
31       **all the parties must appear at oral argument in person at the**  
32       **superior court that issued the judgment or order that is being**  
33       **appealed.**

34  
35       **(C) The oral argument must be open to the public at the superior court**  
36       **that issued the judgment or order that is being appealed. If**  
37       **provided by local rule or ordered by the presiding judge of the**  
38       **appellate division or the presiding judge’s designee, oral argument**  
39       **may also be open to the public at any of the locations from which a**  
40       **judge of the appellate division is participating in oral argument.**

1  
2 (D) The appellate division must ensure that:

3  
4 (i) During oral argument, the participants in oral argument are  
5 visible and their statements are audible to all other  
6 participants, court staff, and any members of the public  
7 attending the oral argument;

8  
9 (ii) Participants are identified when they speak; and

10  
11 (iii) Only persons who are authorized to participate in the  
12 proceedings speak.

13  
14 (E) A party must not be charged any fee to participate in oral argument  
15 by videoconference if the party participates from the superior court  
16 that issued the judgment or order that is being appealed or from a  
17 location from which a judge of the appellate division panel is  
18 participating in oral argument.

19  
20 ~~(b)~~(c) **Notice of argument**

21  
22 (1) As soon as all parties' briefs are filed or the time for filing these briefs  
23 has expired, the appellate division clerk must send a notice of the time  
24 and place of oral argument to all parties. The notice must be sent at least  
25 20 days before the date for oral argument. The presiding judge may  
26 shorten the notice period for good cause; in that event, the clerk must  
27 immediately notify the parties by telephone or other expeditious  
28 method.

29  
30 (2) If oral argument will be conducted by videoconference under (b), the  
31 clerk must specify, either in the notice required under (1) or in a  
32 supplemental notice sent to all parties at least 5 days before the date for  
33 oral argument, the location from which each judge of the appellate  
34 division panel assigned to the case will participate in oral argument.

35  
36 ~~(e)~~(d) \* \* \*

37  
38 ~~(d)~~(e) **Conduct of argument**

39  
40 Unless the court provides otherwise:

- 1 (1) The appellant, petitioner, or moving party has the right to open and  
2 close. If there are two or more such parties, the court must set the  
3 sequence of argument.  
4
- 5 (2) Each side is allowed 10 minutes for argument. The appellant may  
6 reserve part of this time for reply argument. If multiple parties are  
7 represented by separate counsel, or if an amicus curiae—on written  
8 request—is granted permission to argue, the court may apportion or  
9 expand the time.  
10
- 11 (3) Only one counsel may argue for each separately represented party.  
12

13 Advisory Committee Comment  
14

15 **Subdivision (a).** Under rule 10.1108, the appellate division must hold a session at least once each  
16 quarter, unless no matters are set for oral argument that quarter, but may choose to hold sessions  
17 more frequently.  
18

19  
20 **Chapter 5. Appeals in Infraction Cases**  
21

22 **Article 3. Briefs, Hearing, and Decision in Infraction Appeals**  
23

24 **Rule 8.929. Oral argument**  
25

26 (a) \* \* \*

27  
28 **(b) Oral argument by videoconference**  
29

30 (1) Oral argument may be conducted by videoconference if:  
31

32 (A) It is ordered by the presiding judge of the appellate division or the  
33 presiding judge's designee on application of any party or on the  
34 court's own motion. An application from a party requesting that  
35 oral argument be conducted by videoconference must be filed  
36 within 10 days after the court sends notice of oral argument under  
37 (c)(1); or  
38

39 (B) A local rule authorizes oral argument to be conducted by  
40 videoconference consistent with these rules.  
41

42 (2) If oral argument is conducted by videoconference:  
43

- 1           (A) Each judge of the appellate division panel assigned to the case  
2           must participate in the entire oral argument either in person at the  
3           superior court that issued the judgment or order that is being  
4           appealed or by videoconference from another court.  
5  
6           (B) Unless otherwise allowed by local rule or ordered by the presiding  
7           judge of the appellate division or the presiding judge’s designee,  
8           all of the parties must appear at oral argument in person at the  
9           superior court that issued the judgment or order that is being  
10           appealed.  
11  
12           (C) The oral argument must be open to the public at the superior court  
13           that issued the judgment or order that is being appealed. If  
14           provided by local rule or ordered by the presiding judge of the  
15           appellate division or the presiding judge’s designee, oral argument  
16           may also be open to the public at any of the locations from which a  
17           judge of the appellate division is participating in oral argument.  
18  
19           (D) The appellate division must ensure that:  
20  
21           (i) During oral argument, the participants in oral argument are  
22           visible and their statements are audible to all other  
23           participants, court staff, and any members of the public  
24           attending the oral argument;  
25  
26           (ii) Participants are identified when they speak; and  
27  
28           (iii) Only persons who are authorized to participate in the  
29           proceedings speak.  
30  
31           (E) A party must not be charged any fee to participate in oral argument  
32           by videoconference if the party participates from the superior court  
33           that issued the judgment or order that is being appealed or from a  
34           location from which a judge of the appellate division panel is  
35           participating in oral argument.  
36

37 ~~(b)~~(c) **Notice of argument**

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39           (1) As soon as all parties’ briefs are filed or the time for filing these briefs  
40           has expired, the appellate division clerk must send a notice of the time  
41           and place of oral argument to all parties. The notice must be sent at least  
42           20 days before the date for oral argument. The presiding judge may  
43           shorten the notice period for good cause; in that event, the clerk must

1 immediately notify the parties by telephone or other expeditious  
2 method.

3  
4 (2) If oral argument will be conducted by videoconference under (b), the  
5 clerk must specify, either in the notice required under (1) or in a  
6 supplemental notice sent to all parties at least 5 days before the date for  
7 oral argument, the location from which each judge of the appellate  
8 division panel assigned to the case will participate in oral argument.

9  
10 ~~(e)~~**(d)** \* \* \*

11  
12  
13 ~~(d)~~**(e) Conduct of argument**

14  
15 Unless the court provides otherwise:

- 16  
17 (1) The appellant, petitioner, or moving party has the right to open and  
18 close. If there are two or more such parties, the court must set the  
19 sequence of argument.  
20  
21 (2) Each side is allowed 5 minutes for argument. The appellant may reserve  
22 part of this time for reply argument. If multiple parties are represented  
23 by separate counsel, or if an amicus curiae—on written request—is  
24 granted permission to argue, the court may apportion or expand the  
25 time.  
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27 (3) Only one counsel may argue for each separately represented party.

28  
29 Advisory Committee Comment

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31 **Subdivision (a).** Under rule 10.1108, the appellate division must hold a session at least once each  
32 quarter, unless no matters are set for oral argument that quarter, but may choose to hold sessions  
33 more frequently.  
34  
35



## SPR09-11

### Appellate Procedure: Videoconferencing Oral Argument in the Superior Court Appellate Division (amend Cal. Rules of Court, rules 8.885 and 8.929)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Committee on Appellate Courts The State Bar of California by Saul Bercovitch Legislative Counsel	A	<p>The Committee supports this proposal.</p> <p>The Committee recognizes the efficiencies that courts can achieve by videoconferencing oral argument. The Committee supports the proposal as written and agrees that in all appellate division cases, the presiding judge should have authority to order videoconferencing.</p> <p>Some members of the Committee recommend that the proposal be modified to require the consent of all parties. This recommendation is based upon videoconference and teleconference experience that suggests that the effectiveness of oral argument will often be impaired.</p>	<p>No response required.</p> <p>The committees considered, but ultimately decided against, recommending that use of videoconferencing be limited to cases in which all parties consent. The committees believe that the proposed rules appropriately protect litigants' ability to participate in oral argument while providing courts with a mechanism to reduce delay and to be careful stewards of scarce judicial time and public resources.</p>
2.	Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District	NI	<p>For ease of reading and clarity, it is suggested that commas be inserted as follows in (c)(2) of each of the above proposed rules:</p> <p style="padding-left: 40px;">If the presiding judge of the appellate division orders oral argument to be conducted by videoconference under (b), the clerk must specify, either in the notice required under (1) or in a supplemental notice sent to all parties at least 5 days before the date for oral argument, the location from which each judge of the</p>	<p>The committees agree with these suggestions and have revised their proposal to incorporate these changes.</p>

**SPR09-11****Appellate Procedure: Videoconferencing Oral Argument in the Superior Court Appellate Division** (amend Cal. Rules of Court, rules 8.885 and 8.929)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			appellate division panel assigned to the case will participate in oral argument.	
3.	Orange County Bar Association by Michael G. Yoder, President	A	No additional comments.	No response required.
4.	Superior Court of Los Angeles County	A	No additional comments.	No response required.
5.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	A	No additional comments.	No response required.
6.	Superior Court of Ventura County by Julie Camacho Court Program Manager	A	No additional comments.	No response required.
7.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group by Patrick Danna Court Services Analyst	AM	1. The rule proposal requires that the proceeding be open to the public from any location where the judge of the appellate panel is participating yet requires participants to be in the original court of jurisdiction. The requirement to have the proceedings open to the public in any location where a judge is participating will triple the resources required for these hearings (courtrooms, bailiffs, clerks, etc.). The likelihood of the public wanting to participate in the other participating court locations is minimal. It does not seem that the limited opportunity for benefit would justify the increased resources required to implement and	1. The committees agree with the concerns raised by the commentator and, in light of these concerns, have amended their proposal to provide that oral argument must be open to the public at the superior court that issued the judgment or order that is being appealed. Because this is the same location from which the litigants are generally required to participate and the county in which the underlying case originated, the committees concluded that this will better serve members of the public who are likely to be interested in the proceedings and conserve scarce public resources. The proposal also provides, however, that oral argument may be open in other

## SPR09-11

### Appellate Procedure: Videoconferencing Oral Argument in the Superior Court Appellate Division (amend Cal. Rules of Court, rules 8.885 and 8.929)

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	Commentator	Position	Comment	Committee Response
			<p>this requirement could serve as a barrier/disincentive to implementation;</p> <p>2. Recommend modified language, in addition to on the court's own motion or by order of the presiding judge to allow the participation of an appellate panel judge in oral arguments by videoconference by local rule; and</p> <p>3. A working group operational impact review on this proposal is available by contacting working group staff.</p>	<p>locations on order of the presiding judge or by local rule.</p> <p>2. The committees agree with this suggestion and have revised their proposal to incorporate this suggested change. Allowing courts to adopt the use of videoconferencing by local rule will eliminate the need for the presiding judge to make case-by-case determinations about the use of this technology. The required public comment process for the development of local rules will ensure that members of the bar and other interested parties have an opportunity to review and comment on any proposed local rule.</p>