

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

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Title	Action Requested
Trial Courts: Permanent Authorization for Remote Video Proceedings in Traffic Infraction Cases	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.220; amend form TR-500-INFO	January 1, 2016
Proposed by	Contact
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Executive Summary and Origin

The Traffic Advisory Committee and Court Technology Advisory Committee propose amending rule 4.220 of the California Rules of Court and corresponding *Instructions to Defendant for Remote Video Proceeding* (form TR-500-INFO). Rule 4.220 authorizes trial courts to establish remote video pilot projects by local rule, subject to the approval of the Judicial Council, in cases involving traffic infraction violations. The rule only remains in effect until January 1, 2016, unless the council amends the rule.

This proposal would remove the sunset language in rule 4.220 and convert the rule into a standing rule of court. The amendments would allow trial courts to conduct remote video proceedings (RVP) in eligible traffic cases after January 1, 2016, so long as the courts adopt a local rule permitting RVP, notify the council, and comply with a semiannual reporting requirement. Minor changes would also be made to form TR-500-INFO to eliminate references to the pilot project. This proposal originated from the Superior Court of Fresno County, which has successfully implemented a pilot project under the current rule.

Background

The Judicial Council adopted rule 4.220 and corresponding forms, effective February 1, 2013, to January 1, 2016. The Court Technology Advisory Committee and Traffic Advisory Committee

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

recommended rule 4.220 based on a suggestion from the Superior Court of Fresno County. Seeking to ameliorate the impact of multiple court closures on the public, the court saw RVP as an effective way to continue offering services to outlying areas.

In trial courts that institute RVP pilot projects under rule 4.220, defendants in eligible cases may elect to appear at trial by two-way video from remote locations designated by the court. Under the rule, RVP is authorized in cases involving alleged infractions of the Vehicle Code or any local ordinance adopted under the Vehicle Code, excluding alcohol and drug infractions under article 2 of chapter 12 of division 11 of the Vehicle Code and cases filed with an informal juvenile and traffic court under Welfare and Institutions Code sections 255 and 256. (Cal. Rules of Court, rule 4.220(b)(1).) Participation in the RVP pilot project is voluntary; the defendant must request to proceed by RVP and submit a signed notice of rights and waiver form to the court (form TR-505 or form TR-510). (*Id.*, rule 4.220(e).)

The Superior Court of Fresno County applied for and received council approval for an RVP pilot project under rule 4.220. It then adopted a local rule establishing the pilot project that became effective March 1, 2013. The court began offering RVP in April at two remote sites located in Mendota and Coalinga. To date, the Superior Court of Fresno County is the only court to have requested and received council authorization for an RVP pilot project.

The Superior Court of Fresno County has submitted four semiannual reports describing its experience under the pilot project. RVP usage has steadily increased since the court initiated the pilot project, although these cases still represent a small fraction of the total number of citations issued near the remote sites. Technical issues have been infrequent and minor, and they have been resolved promptly by onsite court staff. Postappearance surveys reflect the participants' overall high satisfaction with RVP and the quality of the services provided. Based on its positive experience under the pilot project, the Superior Court of Fresno County has requested that rule 4.220 be amended to allow it to continue offering RVP in eligible cases after January 1, 2016.

The Proposal

Without amending rule 4.220, trial courts will no longer be authorized to offer RVP in traffic infraction cases after January 1, 2016. This proposal is necessary to allow courts to continue conducting RVP in eligible cases. It would not make any substantive changes to the rule's procedural requirements or scope.

Eliminate sunset and convert to standing rule of court

This proposal would eliminate the sunset language in rule 4.220 and convert it into a standing rule. Trial courts could offer RVP in eligible cases after they have adopted a local rule permitting RVP and have notified the Judicial Council. Trial courts would no longer be required to request and receive council authorization for pilot projects implementing RVP.

Specifically, subdivision (q), which currently provides the effective dates for the rule, would be removed, as would other references to effective dates in subdivisions (a)(1) and (c). Subdivision

(a), which provides the authorization for RVP, would be amended by removing subpart (2) because this subpart requires that courts request and receive council authorization to conduct pilot projects. Other “pilot project” references would also be stricken from subdivisions (a), (c), (e), (o), and (p). In addition, language would be added to subdivision (p) to provide that courts must notify the council that they will begin offering RVP under the rule.

Retain current reporting requirement

The reporting requirement in subdivision (p) would be retained. Under subdivision (p), trial courts “must institute procedures as required by the Judicial Council for collecting and evaluating information about that court’s pilot project and must prepare semiannual reports to the Judicial Council that include an assessment of the costs and benefits of the project.” (Cal. Rules of Court, rule 4.220(p).)

Under the current guidelines, these reports contain information about the number and types of RVP conducted for arraignments, trials, and other proceedings; the locations and facilities used to conduct RVP; details on the type of technology used to conduct RVP; the number of appeals from RVP and the outcome of the appeals; and the number of cases where the law enforcement officer appeared at court instead of at the remote location with the defendant. They should also include information that would help the council evaluate whether it should modify rule 4.220 or expand RVP to other case types.

Retaining this semiannual reporting requirement would enable the council to continue monitoring the use of this new technology in the courts. This information and data might provide valuable feedback to the council as it considers whether to expand RVP to other case types.

Retain current procedural requirements and scope

This proposal would not make substantive changes to the procedural requirements under the rule for implementing RVP at the trial courts, nor does it expand RVP to other case types. The Superior Court of Fresno County has expressed its satisfaction with the current requirements and has not sought any modification to the RVP procedure set forth in the rule. Its semiannual reports do not reflect any issues with the implementation of this procedure.

Make minor changes to form TR-500-INFO

Form TR-500-INFO provides information and instructions to defendants in RVP, including how to request RVP, the opportunity to appeal the court’s ruling, and which rights the defendant will be waiving by requesting to appear in RVP. This proposal would make the language of the form consistent with the amendments to rule 4.220 by removing references to a “pilot project.”

Alternatives Considered

The Traffic Advisory Committee and Court Technology Advisory Committee considered the following alternatives to this proposal:

- Amend rule 4.220 by removing not only the sunset language, but also any requirement that trial courts provide notice and semiannual reports to the Judicial Council;

- Amend rule 4.220 by extending the effective date for an additional period of years, but not eliminating the sunset language; or
- Not seek an amendment to the rule.

Alternative 1: Eliminate notice and semiannual reporting requirements

The first alternative considered has the benefit of reducing the time that trial courts must spend preparing and submitting notices and semiannual reports to the council, and that the council and its staff must devote to reviewing them. In light of this concern, the advisory committees have requested comments regarding the costs and benefits of retaining the semiannual reporting requirement, and whether subdivision (p) of rule 4.220 should be amended to include a sunset provision, such that courts would only be required to submit semiannual reports for a certain period of years.

Implementing the first alternative would limit the council's oversight of RVP at the trial court level. The council and its staff would have no effective means of knowing which trial courts are conducting RVP or of gathering information and data about the implementation of RVP by trial courts, including any issues, concerns, and creative solutions. Such information and data presented in the semiannual reports could prove useful to the advisory committees as they review possibilities for expanding RVP at the trial courts.

Alternative 2: Extend pilot project

The second alternative—extending the pilot project—would continue the provisional nature of the rule for an additional period of years. This option would give the council an opportunity to carefully review each court's request for a pilot project. In comparison with the above proposal, however, this alternative would result in an additional cost to trial courts as they would need to prepare and present an application to the Judicial Council for its approval before they could start offering RVP in traffic infraction cases. It would also require that the council and its staff spend time reviewing these applications and, if desired, amend the rule to extend or eliminate the effective date at a later time. The benefit of this additional oversight is minimal in light of the notice and semiannual reporting requirements contained in the above proposal.

Alternative 3: Allow rule to sunset

The last alternative is not to seek an amendment to the rule and allow it to sunset. Weighing in favor of this approach is the fact that only one trial court has requested and implemented an RVP pilot project since rule 4.220 was adopted two years ago. And no other courts have expressed an interest in establishing a pilot project to the advisory committees or Judicial Council staff. Yet, this alternative would effectively end the Superior Court of Fresno County's RVP program on January 1, 2016. The Superior Court of Fresno County has successfully implemented the pilot project, has reported its overall satisfaction with the project, and has expressed an interest in continuing to offer these services in outlying areas. Moreover, this alternative would prevent other courts from conducting RVP in traffic cases in the future. As trial courts are forced to close courthouses in the face of budget constraints, they may follow the Superior Court of Fresno County's lead and elect to offer RVP in remote locations in an effort to increase public access.

Implementation Requirements, Costs, and Operational Impacts

Implementation of this proposal will allow the Superior Court of Fresno County to continue offering this service, which has preserved access to the public in outlying areas and resulted in efficiencies and cost savings for the court. Otherwise, it will have no effect on the court since it is currently preparing and submitting semiannual reports.

For other trial courts that may decide to offer RVP under the rule in the future, the implementation costs will decrease slightly. These courts will no longer be required to apply for and receive Judicial Council approval before offering RVP in eligible cases under the rule. Instead, they will only need to notify the council. Otherwise, implementation and its associated costs will remain the same as they are under the current rule. Collaboration between courts, local cities and counties, law enforcement, and members of the public will be required.

There will be a need for planning and the allocation of resources—including physical locations, technology, and staffing. There will also be a need to train public employees to act as deputy clerks and provide security for the remote video trials at the local community facilities and to provide information to the public. These additional expenses may be offset by savings for the courts in terms of reduced maintenance of court facilities, and for the public and law enforcement in terms of reduced travel time and expense. Because implementation is voluntary, each court will determine if the benefits outweigh the costs in deciding whether to offer RVP.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committees also seeks comments from *courts* on the following cost and implementation matters:

- Should the semiannual reporting requirement be retained? Do the benefits outweigh the costs of preparing and submitting the reports?
- Should subdivision (p) include sunset language providing that courts only be required to submit semiannual reports for a certain period of years?

Attachments

1. Cal. Rules of Court, rule 4.220, at pages 7–12
2. Form TR-500-INFO, at page 13

Rule 4.220 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 4.220. Remote video proceedings in traffic infraction cases**

2
3 **(a) Authorization for ~~pilot project~~ remote video proceedings**

4
5 ~~(1) With the approval of the Judicial Council, a~~ A superior court may establish by
6 local rule a ~~pilot project through December 31, 2015,~~ to permit arraignments, trials,
7 and related proceedings concerning the traffic infractions specified in (b) to be
8 conducted by two-way remote video communication methods under the conditions
9 stated below.

10
11 ~~(2) To obtain approval of the Judicial Council to conduct a pilot project for~~
12 ~~remote video proceedings under this rule, a court must submit an application~~
13 ~~to the council that includes details on what procedures and forms the court~~
14 ~~intends to institute for processing cases in the pilot project.~~

15
16 **(b) Definitions**

17
18 For the purposes of this rule:

19
20 (1) “Infraction” means any alleged infraction involving a violation of the Vehicle
21 Code or any local ordinance adopted under the Vehicle Code, other than an
22 infraction cited under article 2 (commencing with section 23152) of chapter
23 12 of division 11 of the Vehicle Code, except that the procedures for remote
24 video trials authorized by this rule do not apply to any case in which an
25 informal juvenile and traffic court exercises jurisdiction over a violation
26 under sections 255 and 256 of the Welfare and Institutions Code.

27
28 (2) “Remote video proceeding” means an arraignment, trial, or related
29 proceeding conducted by two-way electronic audiovisual communication
30 between the defendant, any witnesses, and the court in lieu of the physical
31 presence of both the defendant and any witnesses in the courtroom.

32
33 (3) “Due date” means the last date on which the defendant’s appearance is timely
34 under this rule.

35
36 **(c) Application**

37
38 This rule establishes the minimum procedural requirements and options for courts
39 that conduct a ~~pilot project for~~ remote video proceedings for cases in which a
40 defendant is charged with an infraction as defined in (b) and the defendant’s
41 requests to proceed according to this rule ~~is for a trial or related proceeding that is~~
42 ~~set for a date after January 31, 2013.~~

1 (d) **Designation of locations and presence of court clerk**

- 2
- 3 (1) The court must designate the location or locations at which defendants may
- 4 appear with any witnesses for a remote video proceeding in traffic infraction
- 5 cases.
- 6
- 7 (2) The locations must be in a public place, and the remote video proceedings
- 8 must be viewable by the public at the remote location as well as at the
- 9 courthouse.
- 10
- 11 (3) A court clerk must be present at the remote location for all remote video
- 12 proceedings.
- 13

14 (e) ~~Scope of court pilot project~~ **Required procedures and forms and request by**

15 **defendant**

16

17 A court that conducts remote video proceedings under this rule must comply with

18 the ~~The~~ following procedures and required forms in this section ~~must be included in~~

19 ~~the court's pilot project for remote video proceedings.~~ In addition to following the

20 standard provisions for processing traffic infraction cases, the defendant may

21 request to proceed by remote video proceeding as provided below.

22

23 (1) *Arraignment and trial on the same date*

24

25 The following procedures apply to a remote video proceeding when the court

26 grants a defendant's request to have an arraignment and trial on the same

27 date:

28

29 (A) The defendant must review a copy of the *Instructions to Defendant for*

30 *Remote Video Proceeding* (form TR-500-INFO).

31

32 (B) To proceed by remote video arraignment and trial, the defendant must

33 sign and file a *Notice and Waiver of Rights and Request for Remote*

34 *Video Arraignment and Trial* (form TR-505) with the clerk by the

35 appearance date indicated on the *Notice to Appear* or a continuation of

36 that date granted by the court and must deposit bail when filing the

37 form.

38

39 (C) A defendant who is dissatisfied with the judgment in a remote video

40 trial may appeal the judgment under rules 8.901–8.902.

41

42 (2) *Arraignment on a date that is separate from a trial date*

43

1 The following procedures apply to a remote video proceeding when the court
2 grants a defendant's request to have an arraignment that is set for a date that
3 is separate from the trial date:
4

- 5 (A) The defendant must review a copy of the *Instructions to Defendant for*
6 *Remote Video Proceeding* (form TR-500-INFO).
7
- 8 (B) To proceed by remote video arraignment on a date that is separate from
9 a trial date, the defendant must sign and file a *Notice and Waiver of*
10 *Rights and Request for Remote Video Proceeding* (form TR-510) with
11 the clerk by the appearance date indicated on the *Notice to Appear* or a
12 continuation of that date granted by the court.
13

14 (3) *Trial on a date that is separate from the date of arraignment*
15

16 The following procedures apply to a remote video proceeding when the court
17 grants a defendant's request at arraignment to have a trial set for a date that is
18 separate from the date of the arraignment:
19

- 20 (A) The defendant must review a copy of the *Instructions to Defendant for*
21 *Remote Video Proceeding* (form TR-500-INFO).
22
- 23 (B) To proceed by remote video trial, the defendant must sign and file a
24 *Notice and Waiver of Rights and Request for Remote Video Proceeding*
25 (form TR-510) with the clerk by the appearance date indicated on the
26 *Notice to Appear* or a continuation of that date granted by the court and
27 deposit bail with the form as required by the court.
28
- 29 (C) A defendant who is dissatisfied with the judgment in a remote video
30 trial may appeal the judgment under rules 8.901–8.902.
31

32 (4) *Judicial Council forms for remote video proceedings*
33

34 The following forms must be made available by the court and used by the
35 defendant to implement the procedures that are required by a court's pilot
36 project under this rule:
37

- 38 (A) *Instructions to Defendant for Remote Video Proceeding* (form TR-500-
39 INFO);
40
- 41 (B) *Notice and Waiver of Rights and Request for Remote Video*
42 *Arraignment and Trial* (form TR-505); and
43

1 (C) *Notice and Waiver of Rights and Request for Remote Video Proceeding*
2 (form TR-510).

3
4 **(f) Deposit of bail**

5
6 (1) If a defendant requests to proceed by remote video arraignment and trial as
7 provided in section (e)(1), the defendant must deposit bail, at the same time
8 the request is filed, in the amount established in the uniform traffic penalty
9 schedule under Vehicle Code section 40310.

10
11 (2) If a defendant requests to proceed by remote video proceeding for a trial as
12 provided in section (e)(3), the judicial officer may require deposit of bail, at
13 the same time the request for remote video proceeding is filed, in the amount
14 established in the uniform traffic penalty schedule under Vehicle Code
15 section 40310.

16
17 **(g) Appearance of witnesses**

18
19 On receipt of the defendant's waiver of rights and request to appear for trial as
20 specified in section (e)(1) or (e)(3), the court may permit law enforcement officers
21 and other witnesses to testify at the remote location or in court and be cross-
22 examined by the defendant from the remote location.

23
24 **(h) Authority of court to require physical presence of defendant and witnesses**

25
26 Nothing in this rule is intended to limit the authority of the court to issue an order
27 requiring the defendant or any witnesses to be physically present in the courtroom
28 in any proceeding or portion of a proceeding if the court finds that circumstances
29 require the physical presence of the defendant or witness in the courtroom.

30
31 **(i) Extending due date for remote video trial**

32
33 If the clerk receives the defendant's written request for a remote video arraignment
34 and trial on form TR-505 or remote video trial on form TR-510 by the appearance
35 date indicated on the *Notice to Appear* and the request is granted, the clerk must,
36 within 10 court days after receiving the defendant's request, extend the appearance
37 date by 25 calendar days and must provide notice to the defendant of the extended
38 due date on the *Notice and Waiver of Rights and Request for Remote Video*
39 *Arraignment and Trial* (form TR-505) or *Notice and Waiver of Rights and Request*
40 *for Remote Video Proceeding* (form TR-510) with a copy of any required local
41 forms.
42

1 **(j) Notice to arresting officer**

2
3 If a court grants the defendant’s request for a remote video proceeding after receipt
4 of the defendant’s *Notice and Waiver of Rights and Request for Remote Video*
5 *Arrestment and Trial* (form TR-505) or *Notice and Waiver of Rights and Request*
6 *for Remote Video Proceeding* (form TR-510) and bail deposit, if required, the clerk
7 must deliver, mail, or e-mail a notice of the remote video proceedings to the
8 arresting or citing law enforcement officer. The notice to the officer must specify
9 the location and date for the remote video proceeding and provide an option for the
10 officer to request at least five calendar days before the appearance date to appear in
11 court instead of at the remote location.
12

13 **(k) Due dates and time limits**

14
15 Due dates and time limits must be as stated in this rule, unless extended by the
16 court. The court may extend any date, and the court need not state the reasons for
17 granting or denying an extension on the record or in the minutes.
18

19 **(l) Ineligible defendants**

20
21 If the defendant requests a remote video proceeding and the court determines that
22 the defendant is ineligible, the clerk must extend the due date by 25 calendar days
23 and notify the defendant of the determination and the new due date.
24

25 **(m) Noncompliance**

26
27 If the defendant fails to comply with this rule (including depositing the bail
28 amount, signing and filing all required forms, and complying with all time limits
29 and due dates), the court may deny a request for a remote video proceeding and
30 may proceed as otherwise provided by statute.
31

32 **(n) Fines, assessments, or penalties**

33
34 This rule does not prevent or preclude the court from imposing on a defendant who
35 is found guilty any lawful fine, assessment, or other penalty, and the court is not
36 limited to imposing money penalties in the bail amount, unless the bail amount is
37 the maximum and the only lawful penalty.
38

39 **(o) Local rules and forms**

40
41 A court establishing a remote video ~~trial project~~ proceedings under this rule may
42 adopt such local rules and additional forms as may be necessary or appropriate to
43 implement the rule and the court’s local procedures not inconsistent with this rule.

1 (p) **Notice and collection of information and reports on remote video proceedings**
2 **pilot project**

3
4 Each court that establishes a local rule authorizing remote video proceedings ~~a pilot~~
5 ~~project~~ under this rule must notify the Judicial Council, institute procedures as
6 required by the ~~Judicial~~ council for collecting and evaluating information about that
7 court's ~~pilot project~~ program, and ~~must~~ prepare semiannual reports to the ~~Judicial~~
8 council that include an assessment of the costs and benefits of remote video
9 proceedings at that court ~~the project~~.

10
11 ~~(q)~~ **Effective dates**

12
13 This rule is adopted effective February 1, 2013, ~~and remains in effect only until~~
14 ~~January 1, 2016, and as of that date is repealed, unless a rule adopted before~~
15 ~~January 1, 2016, repeals or extends that date.~~

INSTRUCTIONS TO DEFENDANT FOR REMOTE VIDEO PROCEEDING

A court may by local rule permit remote video arraignments and trials for traffic infraction cases. (Cal. Rules of Court, rule 4.220.) If the court where your case is filed permits remote video proceedings (RVP), you may be able to appear by video as allowed by local rule at a remote location designated by the court without having to appear in person at court. RVP is available in cases involving Vehicle Code infractions or local ordinances adopted under the Vehicle Code. The procedure does not apply to traffic offenses that involve drugs or alcohol or are filed in Informal Juvenile and Traffic Court. The procedure provides a convenient process for resolving cases by consideration of disputed facts and evidence with the use of two-way audiovisual communication between the court and a local facility. Defendants who request to appear by RVP must waive (give up) certain rights that apply to trial of criminal offenses, including traffic infractions. The instructions below explain procedures for requesting RVP for traffic infraction cases:

1. To request arraignment and trial on the same day, you may file a *Notice and Waiver of Rights and Request for Remote Video Arraignment and Trial* (form TR-505). To request RVP for arraignment or trial on separate days, you may file a *Notice and Waiver of Rights and Request for Remote Video Proceeding* (form TR-510).
2. Return the completed and signed form to the clerk with payment of the bail amount required by local rule or as ordered by the court. A completed form TR-505 or TR-510 with a deposit of the required bail payment must be received by the clerk by the appearance date on the Notice to Appear citation or continuation date granted by the court. If the form is received after the due date or without deposit of bail as required, the court may require a court appearance or bail deposit to schedule an arraignment or trial. **Failure to file the form and deposit bail as required by local rule by the due date may subject you to other charges, penalties, assessments, and actions, including a civil assessment under Penal Code section 1214.1 of up to \$300 and a hold on your driver's license.**
3. When the clerk receives a timely request for RVP with payment of the bail required by local rule or as ordered by the court, the court will rule on the request and provide notice of the court's decision on eligibility for RVP. If the court denies the request, the court may order you to respond within 10 court days of the notice of the order to schedule an arraignment or trial or appear in court. If the court approves the request, the court will notify you and the officer of the extended date and location to appear. The court may grant a request by the officer that issued the ticket and any other witnesses to appear in court to testify and be cross-examined while you appear at the remote location.
4. After a remote video trial is completed, if you are dissatisfied with the court's judgment, you may file an appeal under California Rules of Court, rules 8.901–8.902 within 30 days of the judgment. A new trial (“trial de novo”) is not allowed. Always include your citation number in any correspondence with the court.
5. **IMPORTANT:** You have the right to appear for an in-person arraignment and trial at the court. If you appear at court for your case, your rights include:
 - The right to be represented by an attorney employed by you;
 - The right to request court orders without cost to subpoena and compel the attendance of witnesses and the production of evidence on your behalf;
 - The right to appear in person in court before a judicial officer for an arraignment to be informed of the charges against you, to be advised of your rights, and to enter a plea;
 - The right to request that a trial be scheduled for a date that is after your arraignment in court;
 - The right to have a speedy trial;
 - The right to be physically present in court at all stages of the proceedings including, but not limited to, presentation of testimony and evidence and arguments on questions of law at trial and sentencing; and
 - The right to have the witnesses testify under oath in court and to confront and cross-examine witnesses in court.

By voluntarily requesting to appear for arraignment and/or trial by RVP, you will agree to waive (give up):

- Your right to appear in person in court before a judicial officer for arraignment and/or trial;
- Your right to a speedy trial within 45 days; and
- Your right to be physically present in court for trial and sentencing and all stages of the proceedings, including, but not limited to, presentation of testimony and evidence and arguments on questions of law, and confrontation and cross-examination in person of the officer that issued the ticket and other witnesses.