



JUDICIAL COUNCIL OF CALIFORNIA

COURT TECHNOLOGY
ADVISORY COMMITTEE

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RULES AND POLICY SUBCOMMITTEE OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING RECORDED

Date: January 15, 2015
Time: 12:00 p.m. to 1:00 p.m.
Location: Telephonic
Public Call-In Number 1-877-820-7831 Public Access Code # 4348559

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Written Comment

In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to ctac@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, 5th Floor, San Francisco, CA 94102, attention: Patrick O'Donnell. Only written comments received by January 14, 2015, at 12:00 p.m. will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-2)

Item 1

Rules for Electronic Service

Review proposed revisions to trial court rules and decide whether to recommend circulation for public comment.

- Proposal to amend rule 2.251 to authorize electronic service on courts that consent to such service.

Presenters: Mr. Patrick O'Donnell, Managing Attorney, Legal Services Office
Ms. Tara Lundstrom, Attorney, Legal Services Office

Item 2

Remote Courtroom Video

Review proposed revisions to rules authorizing remote video proceedings in traffic cases.

- Proposal to amend rule 4.220 to allow courts to continue conducting remote video proceedings in traffic cases after January 1, 2016.

Presenters: Mr. Patrick O'Donnell, Managing Attorney, Legal Services Office
Ms. Tara Lundstrom, Attorney, Legal Services Office

IV. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

Rules Modernization Project

Status update on the Rules Modernization Project to modernize the rules to support e-business.

Presenters: Mr. Patrick O'Donnell, Managing Attorney, Legal Services Office
Ms. Tara Lundstrom, Attorney, Legal Services Office

V. ADJOURNMENT

Adjourn



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

January 12, 2015

Action Requested

Please review for January 15 meeting

To

Members of the Rules and Policy
Subcommittee

Deadline

January 15, 2015

From

Patrick O'Donnell, Managing Attorney
Tara Lundstrom, Attorney
Legal Services

Contact

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Subject

Proposed amendment to rule 2.251 to
authorize electronic service on consenting
superior courts

Introduction

This is a proposal to amend rule 2.251 of the California Rules of Court to authorize electronic service on consenting courts. It is similar to the proposal to amend appellate rule 8.71 that has been proposed by the Joint Appellate Technology Committee (JATS).

Background

In its 2015 annual agenda review, the Court Technology Advisory Committee (CTAC) tasked the Rules and Policy Subcommittee and JATS with developing and recommending amendments to the California Rules of Court governing electronic service. The purpose of these amendments is to resolve any ambiguity in the rules as to whether electronic service is authorized on the appellate and superior courts.

The proposal to amend the electronic service rules originated from a suggestion made by Ms. Sheran Morton, the Court Executive Officer of the Superior Court of Fresno County, during a meeting of the Appellate Advisory Committee (AAC). Given the subject matter of the suggestion, AAC referred the suggestion to JATS.

JATS acted on the suggestion last year, drafting amendments to the rule governing electronic service for appellate courts. The proposed amendments to rule 8.71, attached to this memorandum, would authorize electronic service on an appellate court if the court consented to such service by local rule or notice to the parties. In voting to submit these amendments to CTAC for its approval, JATS members recognized that the rule governing electronic service in trial courts should be similarly amended. Accordingly, JATS recommended that the Rules and Policy Subcommittee develop amendments to rule 2.251, which would be submitted to CTAC jointly with JATS's proposed amendments to rule 8.71.

Proposal

Several California Rules of Court require that certain documents be served on the superior court. For example, [rule 8.212\(c\)\(1\)](#) requires that one copy of each brief in a civil appeal must be served on the superior court clerk for delivery to the trial judge. Similar language also appears in [rule 8.360](#) (briefs in felony appeals), [rule 8.412](#) (briefs in juvenile appeals), and [rule 8.630](#) (briefs in capital appeals). [Rules 8.500](#) and [8.508](#), governing petitions for review filed in the Supreme Court, similarly require that copies of the petition be served on both the superior court and the Court of Appeal.

Ms. Sheran Morton suggested that parties should be allowed to electronically serve the court's copy of the briefs on a consenting court. According to Ms. Morton, authorizing electronic service on a court could improve efficiency for the court since the clerk could then forward the electronic copies to the trial judge by e-mail. She also indicated that electronic service would be more efficient for the parties in many cases.

There is some ambiguity as to whether the current rules authorize electronic service on a court. [Rule 8.25\(a\)](#), which generally addresses service of documents in appellate proceedings, requires that the parties serve documents "by any method permitted by the Code of Civil Procedure." [Code of Civil Procedure section 1010.6](#) (electronic service and filing in the trial courts), [rules 2.250](#) and [2.251](#) (electronic filing and service in the trial courts); and [rule 8.70](#) (electronic filing and service in the appellate courts) all define "electronic service" as service of a document "*on a party or other person*" (italics added); they do not expressly provide for service on a court.

Arguably, the term “other person” in these provisions could be interpreted to encompass courts. [Rule 1.6\(14\)](#) offers some support for this interpretation because it defines the term “person” as including “a corporation *or other legal entity* as well as a natural person.” (Italics added.)

Yet, there is also a reasonable counterargument. [Code of Civil Procedure section 1010.6](#) and [rules 2.251](#) and [8.71](#) specifically address electronic service *by* a court without mentioning service *on* a court. Under the general rules of statutory/rule interpretation, this absence could be interpreted as indicative of the legislative intent not to authorize electronic service on a court. (See *Blakely v. Superior Court* (2010) 182 Cal.App.4th 1445, 1454 [courts may “not insert what has been omitted” in construing a statute].)

Because it is unclear whether the statute and rules governing electronic service currently authorize electronic service on the court, JATS concluded that the preferable approach was to develop amendments to the rules to clarify that, with the court’s consent, service may be made on a court electronically.

Proposed rule amendment

Attached for the subcommittee’s review and consideration are draft amendments to rule 2.251 that expressly authorize electronic service on a superior court with that court’s consent. This proposal mirrors the amendments to rule 8.71 approved by JATS, which are also attached to this memorandum.

JATS modeled its proposal for rule 8.71(g) on the current language in rule 8.71(c)(2), which provides that a document may not be served on a nonparty unless that nonparty consents or electronic service is otherwise provided for by law or court order. Its proposed language for rule 8.71(g)(2) would similarly prohibit electronic service on a court without the court’s consent unless such service is provided for by law or court order.

JATS’s proposed amendments to subparts (A) and (B) of 8.71(g)(2) specify how a court may indicate its agreement to accept electronic service. JATS modeled subpart (A) on 8.71(2)(A), which provides that a party may indicate that it agrees to accept electronic service by serving a notice on all parties. Its draft of new 8.71(g)(2)(A) would similarly provide that a court may indicate that it agrees to accept electronic service by serving a notice on all parties. JATS’s new subpart (B) would provide that the court may also indicate its agreement to accept electronic service by adopting a local rule stating this.

The amendment before the Rules and Policy Subcommittee would add new subdivision (2) to 2.21(j), which currently addresses electronic service by a court. For purposes of consistency, the

language in this new subdivision is copied directly from JATS's proposed amendment to rule 8.71(g).

Members of the subcommittee should note that JATS's proposed amendments also include changes to subdivisions (a) and (c) of rule 8.71. These changes are intended to be nonsubstantive; their purpose is to make rule 8.71 more consistent with the language of rule 2.251 and to consolidate provisions related to the authorization for electronic service in the appellate courts.

Subcommittee Task

The subcommittee's task is to analyze this proposal and:

- Ask staff or subcommittee members for further information and analysis;
- Advise CTAC to:
 - recommend to RUPRO that all or part of the proposal be approved for circulation as drafted or as amended by the subcommittee; or
 - reject the proposal.

Attachments

- Proposed amendments to rule 2.251
- Proposed amendments recommended by JATS to rule 8.71

1 **Rule 2.251. Electronic service**

2
3 **(a) Authorization for electronic service**

4
5 When a document may be served by mail, express mail, overnight delivery, or fax
6 transmission, the document may be served electronically under Code of Civil
7 Procedure section 1010.6 and the rules in this chapter.
8

9 **(b) Electronic service by consent of the parties**

10
11 (1) Electronic service may be established by consent of the parties in an action.
12 A party indicates that the party agrees to accept electronic service by:

13
14 (A) Serving a notice on all parties that the party accepts electronic service
15 and filing the notice with the court. The notice must include the
16 electronic service address at which the party agrees to accept service; or

17
18 (B) Electronically filing any document with the court. The act of electronic
19 filing is evidence that the party agrees to accept service at the electronic
20 service address the party has furnished to the court under rule
21 2.256(a)(4). This subparagraph (B) does not apply to self-represented
22 parties; they must affirmatively consent to electronic service under
23 subparagraph (A).
24

25 (2) A party that has consented to electronic service under (1) and has used an
26 electronic filing service provider to serve and file documents in a case
27 consents to service on that electronic filing service provider as the designated
28 agent for service for the party in the case, until such time as the party
29 designates a different agent for service.
30

31 **(c) Electronic service required by local rule or court order**

32
33 (1) A court may require parties to serve documents electronically in specified
34 actions by local rule or court order, as provided in Code of Civil Procedure
35 section 1010.6 and the rules in this chapter.
36

37 (2) Except when personal service is otherwise required by statute or rule, a party
38 that is required to file documents electronically in an action must also serve
39 documents and accept service of documents electronically from all other
40 parties, unless:

41
42 (A) The court orders otherwise, or
43

1 (B) The action includes parties that are not required to file or serve
2 documents electronically, including self-represented parties; those
3 parties are to be served by non-electronic methods unless they
4 affirmatively consent to electronic service.
5

6 (3) Each party that is required to serve and accept service of documents
7 electronically must provide all other parties in the action with its electronic
8 service address and must promptly notify all other parties and the court of
9 any changes under (f).
10

11 **(d) Maintenance of electronic service lists**
12

13 A court that permits or requires electronic filing in a case must maintain and make
14 available electronically to the parties an electronic service list that contains the
15 parties' current electronic service addresses, as provided by the parties that have
16 filed electronically in the case.
17

18 **(e) Service by the parties**
19

20 (1) Notwithstanding (d), parties are responsible for electronic service on all other
21 parties in the case. A party may serve documents electronically directly, by
22 an agent, or through a designated electronic filing service provider.
23

24 (2) A document may not be electronically served on a nonparty unless the
25 nonparty consents to electronic service or electronic service is otherwise
26 provided for by law or court order.
27

28 **(f) Change of electronic service address**
29

30 (1) A party whose electronic service address changes while the action or
31 proceeding is pending must promptly file a notice of change of address
32 electronically with the court and must serve this notice electronically on all
33 other parties.
34

35 (2) A party's election to contract with an electronic filing service provider to
36 electronically file and serve documents or to receive electronic service of
37 documents on the party's behalf does not relieve the party of its duties under
38 (1).
39

40 (3) An electronic service address is presumed valid for a party if the party files
41 electronic documents with the court from that address and has not filed and
42 served notice that the address is no longer valid.
43

1 **(g) Reliability and integrity of documents served by electronic notification**

2
3 A party that serves a document by means of electronic notification must:

- 4
5 (1) Ensure that the documents served can be viewed and downloaded using the
6 hyperlink provided;
7
8 (2) Preserve the document served without any change, alteration, or modification
9 from the time the document is posted until the time the hyperlink is
10 terminated; and
11
12 (3) Maintain the hyperlink until either:
13
14 (A) All parties in the case have settled or the case has ended and the time
15 for appeals has expired; or
16
17 (B) If the party is no longer in the case, the party has provided notice to all
18 other parties that it is no longer in the case and that they have 60 days
19 to download any documents, and 60 days have passed after the notice
20 was given.

21
22 **(h) When service is complete**

- 23
24 (1) Electronic service of a document is complete at the time of the electronic
25 transmission of the document or at the time that the electronic notification of
26 service of the document is sent. If an electronic filing service provider is used
27 for service, the service is complete at the time that the electronic filing
28 service provider electronically transmits the document or sends electronic
29 notification of service.
30
31 (2) If a document is served electronically, any period of notice, or any right or
32 duty to act or respond within a specified period or on a date certain after
33 service of the document, is extended by two court days, unless otherwise
34 provided by a statute or a rule.
35
36 (3) The extension under (2) does not extend the time for filing:
37
38 (A) A notice of intent to move for a new trial;
39
40 (B) A notice of intent to move to vacate the judgment under Code of Civil
41 Procedure section 663a; or
42
43 (C) A notice of appeal.

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(4) Service that occurs after the close of business is deemed to have occurred on the next court day.

(i) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, except that the proof of service must state:

(A) The electronic service address of the person making the service, in addition to that person’s residence or business address;

(B) The date and time of the electronic service, instead of the date and place of deposit in the mail;

(C) The name and electronic service address of the person served, in place of that person’s name and address as shown on the envelope; and

(D) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) Proof of electronic service may be in electronic form and may be filed electronically with the court.

(3) Under rule 3.1300(c), proof of service of the moving papers must be filed at least five court days before the hearing.

(4) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant’s original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 2.257(a).

(j) Electronic service by or on court

(1) The court may electronically serve any notice, order, judgment, or other document issued by the court in the same manner that parties may serve documents by electronic service.

(2) A document may not be electronically served on a court unless the court consents to electronic service or electronic service is otherwise provided for

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by law or court order. A court indicates that it agrees to accept electronic service by:

(A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

Rule 8.71. Electronic service

(a) Consent to Authorization for electronic service

- (1) A document may be electronically served [on a party or other person] under these rules if:
 - (A) Electronic service is provided for by law or court order; or
 - (B) When a document may be served by mail, express mail, overnight delivery, or fax transmission, and the [recipient] [party or other person] agrees to accept electronic service of the document is permitted when authorized as provided by these rules.
- (2) A party indicates that the party agrees to accept electronic service by:
 - (A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or
 - (B) Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).
- (3) A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.
- (4) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

(b) Maintenance of electronic service lists

When the court orders or permits electronic filing in a case, it must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.

(c) Service by the parties

- (1)—Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

~~(2) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.~~

(d) – (g) * * *

(g) Electronic service by or on court

(1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.

(2) A document may not be electronically served on a court unless the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

(A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.



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MEMORANDUM

Date

January 12, 2015

Action Requested

Please review for January 15 meeting

To

Members of the Rules and Policy
Subcommittee

Deadline

January 15, 2015

From

Patrick O'Donnell, Managing Attorney
Tara Lundstrom, Attorney
Legal Services

Contact

Tara Lundstrom
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Subject

Proposed amendment to rule 4.220 and to
Form TR-500-INFO

Introduction

Two years ago, the Judicial Council adopted rule 4.220 of the California Rules of Court establishing a pilot project to allow trial courts to conduct remote video proceedings (RVP) in cases involving traffic infraction violations. Rule 4.220 authorizes trial courts, subject to the approval of the Judicial Council, to establish RVP pilot projects by local rule. The rule remains in effect until January 1, 2016, unless the council amends the rule. Before the subcommittee for its review are proposed amendments that would remove the sunset language in the rule and convert rule 4.220 into a standing rule. These amendments would allow trial courts to conduct remote video proceedings in eligible cases after January 1, 2016, so long as the courts notify the council and comply with a semiannual reporting requirement. Minor changes to a corresponding form are also proposed to make it conform to the proposed rule amendments.

Background

The Judicial Council adopted rule 4.220 and corresponding forms, effective February 1, 2013 to January 1, 2016. The Court Technology Advisory Committee (CTAC) and Traffic Advisory Committee (TAC) 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 three 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. Post-appearance surveys reflect the participants' overall high satisfaction with RVP and the quality of the services provided.

Proposed amendments to rules and forms

Attached for the subcommittee's review and consideration are draft amendments to rule 4.220 that would eliminate its sunset language and convert the rule into a standing rule of court. These amendments would allow trial courts to provide remote video proceedings in traffic infraction cases after January 1, 2016.

Under these proposed amendments, trial courts would be able to offer remote video proceedings in eligible cases after they have adopted a local rule permitting remote video proceedings and

have provided notice to the Judicial Council. Trial courts would no longer be required to request and receive council authorization for pilot projects implementing remote video proceedings.

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 remote video proceedings, 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.

Lastly, the reporting requirement in subdivision (p) would be retained. Under subdivision (p), trial courts currently “must institute procedures as required by the Judicial Council for collecting and evaluating information about that court’s pilot project and must prepare semi-annual reports to the Judicial Council that include an assessment of the costs and benefits of the project.”¹ (Cal. Rule of Court, rule 4.220(p).) The proposed amendments would retain this reporting requirement to enable the council to continue monitoring the use of this new technology in the courts. This information and data will provide valuable feedback to the council as it considers whether to expand RVP to other case types.

The proposed amendments do not make substantive changes to the procedural requirements under the rule for implementing RVP at the trial courts. Nor do they 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 semi-annual reports do not reflect any issues with the implementation of this procedure. In addition, the subcommittee should consider that action must be taken in the next rule cycle in order for any amendment to the rule to take effect by January 1, 2016. The subcommittee will have ample opportunity to explore the possible expansion of RVP to other case types in future discussions.

¹ The guidelines for complying with the reporting requirement are available on Serranus at <http://serranus.courtinfo.ca.gov/programs/tech/documents/GuidelinesforRVPReports.pdf>. Semiannual reports must 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. The semi-annual reports should also contain information that will help the council evaluate whether it should modify rule 4.220 or expand RVP to other case types. Relevant information may include how well the existing procedures and forms for RVP have worked and whether any changes are needed in these procedures and forms; how the court handled evidence and exhibits at RVP; the court’s experience with clerk activities at the remote location for RVP; any specific issues relating to the use of non-court facilities to conduct RVP; and any other experiences or issues, such as use of interpreters, encountered by the courts that may be relevant to evaluating RVP.

Attached also for the subcommittee's review and consideration are proposed modifications to form TR-500-INFO. This form provides information and instructions to defendants in remote video proceedings, including how to request remote video proceedings, the opportunity to appeal the court's ruling, and rights the defendant will be waiving by requesting to appear in remote video proceedings. The proposed changes are minor and will make the language of the form consistent with the proposed rule amendments by removing references to a "pilot project."

Alternatives considered

There are several alternatives available to the subcommittee. In addition to the proposal described above, the subcommittee could decide:

- To recommend amending rule 4.220 by removing not only the sunset language, but also any requirement that trial courts provide notice and semi-annual reports to the Judicial Council;
- To recommend amending rule 4.220 by extending the effective date for an additional period of years, but not eliminating the sunset language; or
- Not to seek an amendment to the rule.

The first alternative has the benefit of reducing the time that trial courts must spend preparing and submitting notices and semi-annual reports to the council and that the council and its staff must devote to reviewing them. Implementing the first alternative, however, would limit the council's oversight of remote video proceedings at the trial-court level. The council and its staff would have no effective means of knowing which trial courts are conducting RVP and 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 semi-annual reports could prove useful to CTAC and TAC as they review possibilities for expanding RVP at the trial courts.

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 remote video proceedings 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 effect 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.

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 CTAC 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 project, and has expressed an interest in continuing to offer these services in outlying areas. Moreover, this alternative would prevent other courts from conducting remote video proceedings 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.

Subcommittee's task

The subcommittee is tasked with analyzing this proposal and:

- Asking staff or subcommittee members for further information and analysis; or
- Advising CTAC to:
 - Recommend to RUPRO that all or part of the proposal be approved for circulation as drafted or as amended by the subcommittee; or
 - Reject the proposal.

Coordination with the Traffic Advisory Committee

The original proposal in the adoption of rule 4.220 was a joint effort of CTAC and TAC. Similarly, the proposal to amend rule 4.220 to eliminate the pilot and sunset should be a joint effort. Here, the recommendations of the Rules and Policy subcommittee and CTAC should be coordinated with TAC, which is also meeting in January to consider this proposal.

Attachments

- Proposed amendments to rule 4.220
- Proposed amendments to Form TR-500-INFO

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.

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

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

~~(q) Effective dates~~

~~This rule is adopted effective February 1, 2013, and remains in effect only until January 1, 2016, and as of that date is repealed, unless a rule adopted before 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 requests 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.