

Title	Appellate Procedure: Videoconferencing Oral Argument in the Superior Court Appellate Division (amend rules 8.885 and 8.929)
Summary	These amendments would authorize the presiding judge of the appellate division to order that oral argument be conducted using videoconferencing.
Source	<p>Trial Court Presiding Judges Advisory Committee Hon. Kenneth K. So, Chair</p> <p>Appellate Advisory Committee Justice Kathryn Doi Todd, Chair</p>
Staff	Heather Anderson, Appellate Advisory Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>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 those courts.</p> <p>For the last four years, the Superior Courts in Lassen, Modoc, Plumas, and Sierra Counties have participated in a four-county regional appellate division program. Under this program, which won an 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.</p> <p>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 via 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 multiple counties in order to hold oral argument in person meant many hours of travel time for</p>

the participating judges—hours that were 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 also often meant long waits for the parties before oral argument could be scheduled. By using videoconferencing, oral argument can be 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.

This proposal would help expand these benefits by facilitating the use of videoconferencing for oral argument in other appellate divisions. 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 and could therefore benefit from this approach. In addition, there may be many other superior courts that might be interested in this multicounty approach if the logistical problem of travel for oral argument is addressed.

This proposal would authorize the presiding judge of any appellate division to order that oral argument be conducted using videoconferencing either at the request of the parties or on the court's own motion. It would also establish some basic parameters for this process, including specifying that: (1) the appellate division must ensure that during oral argument, the participants are visible and their statements audible to all other participants, any court staff, and any members of the public who are in attendance; (2) unless otherwise ordered, all the parties must appear for oral argument at the superior court that issued the judgment or order that is being appealed; and (3) a party must not be charged a fee to participate in oral argument by videoconference if the party participates 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 also improve access for parties in other ways. Under the

proposed rule amendments, with the presiding judge's consent, 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 closing argument.

The proposed rule text is attached at pages 4-8.

Attachment

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

5
6 (ii) Participants are identified when they speak.

7
8 (iii) Only persons who are authorized to participate in the
9 proceedings speak.

10
11 (D) A party must not be charged any fee to participate in oral argument
12 by videoconference if the party participates from a location from
13 which a judge of the appellate division panel is participating in
14 oral argument.

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16 **(b)(c) Notice of argument**

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

25
26 (2) If the presiding judge of the appellate division orders oral argument to
27 be conducted by videoconference under (b), the clerk must specify
28 either in the notice required under (1) or in a supplemental notice sent to
29 all parties at least 5 days before the date for oral argument the location
30 from which each judge of the appellate division panel assigned to the
31 case will participate in oral argument.

32
33 **(e)(d) Waiver of argument**

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35 Parties may waive oral argument.

36
37 **(d)(e) Conduct of argument**

38
39 Unless the court provides otherwise:
40

- 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 closing 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.
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- 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) Calendaring and sessions**
27

28 Unless otherwise ordered, all appeals in which the last reply brief was filed
29 or the time for filing this brief expired 45 or more days before the date of a
30 regular appellate division session must be placed on the calendar for that
31 session by the appellate division clerk. By order of the presiding judge or the
32 appellate division, any appeal may be placed on the calendar for oral
33 argument at any session.
34

35 **(b) Oral argument by videoconference**
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- 37 (1) On application of any party or on the court's own motion, the presiding
38 judge of the appellate division may order that oral argument be
39 conducted by videoconference. An application from a party requesting
40 that oral argument be conducted by videoconference must be filed
41 within 10 days after the court sends notice of oral argument under
42 (c)(1).
43

1 (2) If the presiding judge orders that oral argument be conducted by
2 videoconference:

3
4 (A) Each judge of the appellate division panel assigned to the case
5 must participate in the entire oral argument either in person at the
6 courthouse of the superior court that issued the judgment or order
7 that is being appealed or by videoconference from another court.
8 The oral argument must be open to the public at each of the
9 locations from which a judge of the appellate division panel is
10 participating.

11
12 (B) Unless otherwise ordered by the presiding judge, all the parties
13 must appear in person at the courthouse of the superior court that
14 issued the judgment or order that is being appealed.

15
16 (C) The appellate division must ensure that:

17
18 (i) During oral argument, the participants in oral argument are
19 visible and their statements are audible to all other
20 participants, any court staff, and any members of the public
21 attending the oral argument; and

22
23 (ii) Participants are identified when they speak.

24
25 (iii) Only persons who are authorized to participate in the
26 proceedings speak.

27
28 (D) A party must not be charged any fee to participate in oral argument
29 by videoconference if the party participates from a location from
30 which a judge of the appellate division panel is participating in
31 oral argument.

32
33 **(b)(c) Notice of argument**

34
35 (1) As soon as all parties' briefs are filed or the time for filing these briefs
36 has expired, the appellate division clerk must send a notice of the time
37 and place of oral argument to all parties. The notice must be sent at least
38 20 days before the date for oral argument. The presiding judge may
39 shorten the notice period for good cause; in that event, the clerk must
40 immediately notify the parties by telephone or other expeditious
41 method.
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Item SPR09-11 Response Form

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

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.