

Judicial Council's Code of Civil Procedure Section 367.9 Working Group (367.9 Working Group)

Summary of Materials from Working Group Meeting on July 25, 2022

August 1, 2022

Presented/Provided Item	Source	Description
<i>General Civil Case Type Remote Proceedings Survey Results</i>	Presented and provided by Craig Peters, Attorney at Law, Altair Law	Full PowerPoint presentation delivered by Mr. Peters during the meeting.
Attachment A – D: Remote Civil Proceedings survey questions	Provided by Craig Peters, Attorney at Law, Altair Law	A twenty-page document containing the full list of questions and responses from the survey conducted by Mr. Peters.
<i>Remote Civil Proceedings</i>	Presented and provided by Oliver Dunlap, Principal and Shareholder, Bartko Zankel Bunzel & Miller	Full PowerPoint presentation delivered by Mr. Dunlap during the meeting.
<i>367.9 General Civil Data</i>	Presented and provided by Peter Stirling Doody, Attorney at Law, Higgs Fletcher & Mack LLP	Full PowerPoint presentation delivered by Mr. Doody during the meeting.

367.9 Working Group General Civil Case Type Remote Proceedings Survey Results

Craig Peters, Attorney at Law



Survey Outreach

Those polled were asked:

- Their general level of satisfaction with the ability to appear remotely
- What types of hearings they prefer *not* be remote
- Experiences with court reporters having trouble reporting remote proceedings, and, if so, any issues they experienced
- Experiences with court *interpreters* in remote proceedings and any issues they experienced
- What could be improved about remote proceedings

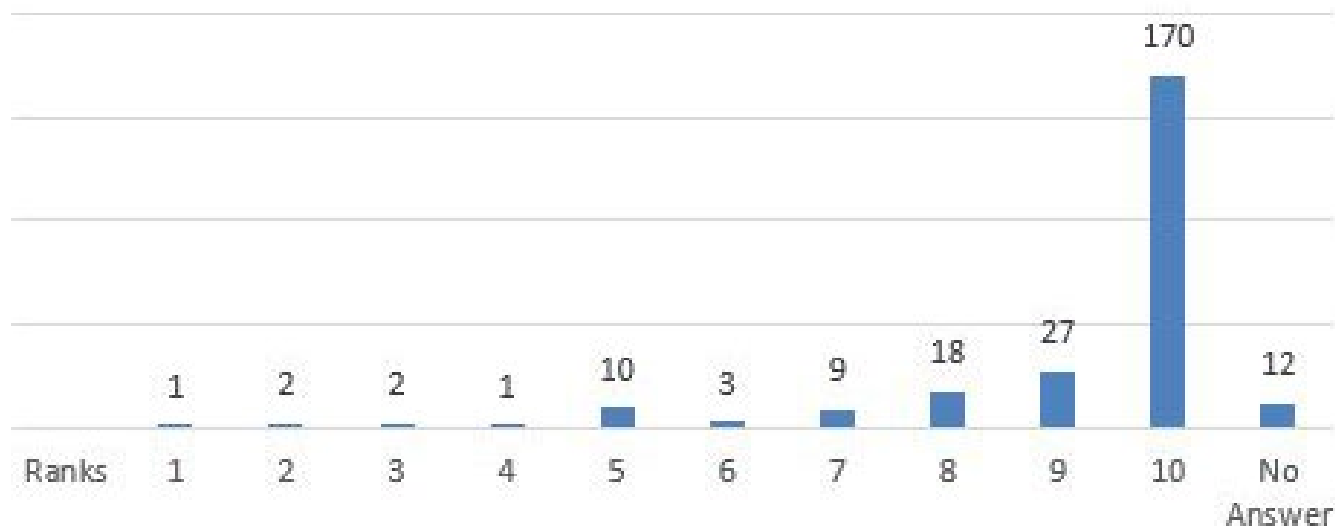


Survey Outreach

- 2,043 emails successfully delivered
- 918 opened emails
- 293 clicked on the survey
- 255 responses provided
- Attachments provided separately

Survey Question 1

What is your general level of satisfaction with being able to appear remotely for court proceedings (not including, if applicable, jury trials)?



Of the 255 respondents:

170 (69%) ranked their general level of satisfaction a 10

A total of 6 ranked their satisfaction under a 5

The average satisfaction rank was 9.2

Survey Question 2

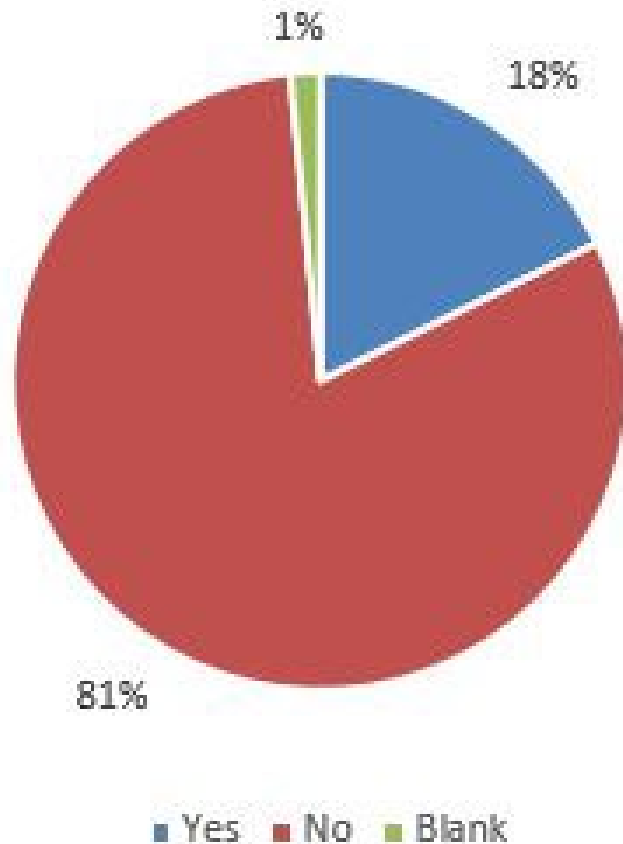
Are there any types of hearings that you would prefer *not* be allowed to be remote?

- 89 Responded “No”
- 103 responded “Yes” with a list of case types (Attachment A)
- 63 did not respond



Survey Question 3

Have you experienced court reporters having trouble reporting remote proceedings?



Of the 255 respondents:

206 (81%) have not experienced court reporter issues with remote proceedings

45 (18%) have experienced court reporter issues with remote proceedings

4 (1%) did not respond

Survey Question 3a

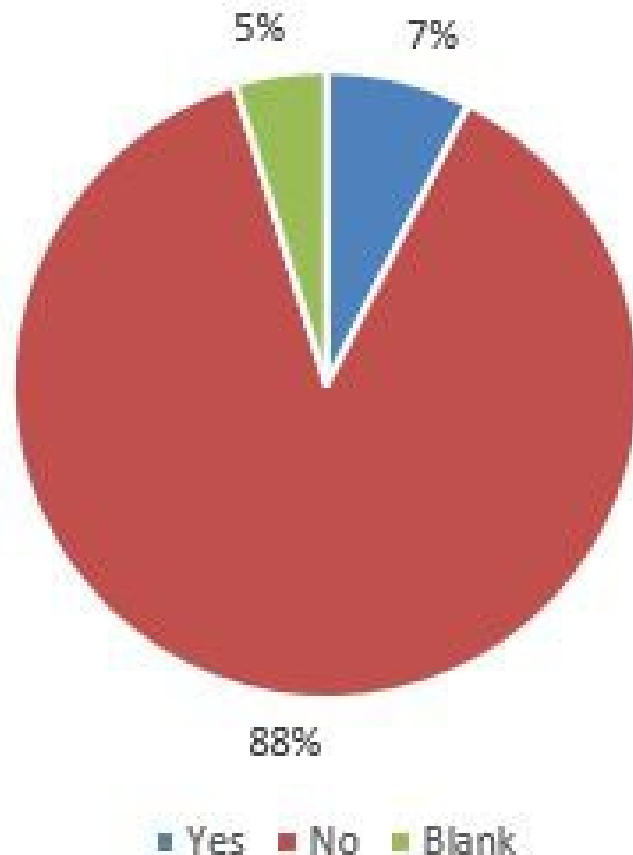
If you answered yes to the above, what were the problems that the court reporter experienced?

Of the 103 who answered yes, a handful of courts indicated problems they experienced with court reporters in their court (Attachment B).



Survey Question 4

Have you experienced interpreters having trouble with remote proceedings?



Of the 255 respondents:

224 (88%) have not experienced interpreter issues with remote proceedings

19 (7%) had experienced interpreter issues with remote proceedings

12 (5%) did not respond



Survey Question 4a

If you answered yes to the above, what were the problems that the interpreter experienced?

19 respondents answered yes and provided problems they experienced with interpreters in their court (Attachment C).

Survey Question 5

What could be improved about remote proceedings?

- Of the 255 respondents:
- 148 provided a response
(Attachment D)

General Survey Data

Of those that indicated trouble during remote proceedings, the bulk of responses fall within two categories:

- Fixable issues such as connectivity
- Issues related to in-person proceedings (people talking over each other or the court reporter having to intervene)



Attorney Feedback

Benefits expressed by attorneys as it relates to non-jury–related, remote appearances:

- Greater flexibility and access, resulting in cost savings to clients
- Convenience/cost savings to clients, interested parties, witnesses
 - Particularly true of those with disabilities or who come from historically marginalized and disenfranchised backgrounds
- People who work long hours denied access to justice
 - Remote appearances have reopened the courtroom doors to many who were previously shut out



Attorney Feedback

- Court reporter availability shrinking—allowing remote reporting provided increase in potential availability
- COVID backlog reduced quicker
- Improved problem of people speaking over each other; promotes easier reporting for stenographers.



Attorney Feedback

- Improved ability to see documents/exhibits
 - In the past, citing to motion sections in response to judge's question was independent; now everyone can see it simultaneously
- Hearings that require out-of-town participants created scheduling issues—now, easier scheduling and economical and environmental savings



367.9 Working Group

ATTACHMENT A – Judicial Council Remote Proceedings Survey

July 25, 2022

Specific types of hearings courts would prefer not be allowed remotely

Motions	Evidentiary Trials	Dispositive motions
MSJ	MILS	All substantive motions. Everything but Case Management conferences to set dates
Jury trials	Trials	Summary Judgement
Trials and motions and any other contested hearings	Appellate Oral Arguments	No. I prefer to appear in person on important motions, like dispositive motions, but it all depends on the Covid situation
Depos	I do not think remote proceedings are appropriate or helpful in any instance	Trial proceedings
All law and motion should be allowed to appear in person if you are able. Too much at stake on some motions to do by zoom	Yes. CMC's especially and probably discovery motions	Juries should be present in court (witness are ok remote)
Perhaps dispositive hearings to avoid the opportunity for technical glitches that have serious consequences	Any hearing where witnesses are evaluated	Motion Hearings

Specific types of hearings courts would prefer not be allowed remotely

Other than trials, which I don't feel should be remote, I am okay with any kind of remote hearing being optional	No, remote appearance should always be an option.	Formal motions
Jury Selection and Trial	Contested motions	Law and motion
Not really. I find remote hearings more cost effective for the Client, for the lawyer, and possibly for the Court	Trials -- witness testimony ok, but not full trials	Summary judgment
Daubert	Motions in limine	No, they all should be.
Possible Jury	No. All types of hearings should be allowed to be virtual	No. Having the option to choose is ideal
No. As long as its my choice	Not at the present time	Complex motion hearings
Trials unless stipulated to by all	Evidentiary hearings with live testimony	n/a
MSC	Appeals	Preference for in person trials
I think it should be left to the parties to decide whether to be live or remote and I would not prohibit certain types of hearings from being remote	Having the choice for either side is key	trial, but would agree to witness appearing remotely

Specific types of hearings courts would prefer not be allowed remotely

Just those requiring testimony of a witness	Unlimited Civil Trials; Criminal Trials should include waivable right to in person at option of defendant	Minor's Compromise Hearings
No. In person might make more sense for complex motions, for example, but I don't think there should be any proceedings that cannot be heard remote	pre-trial or trial readiness conferences (where the parties are prepared to proceed)	Bench trials
Special needs of plaintiff/party appearing; where necessary to review documents under seal	substantive motions	evidentiary motions
	No, I think remote hearings are the best thing since electricity was invented	Jury trials unless there is a need because of COVID in which case I'd prefer they be remote than shut down indefinitely
Trial and Trial Readiness Conferences	Nope. If I can conduct a trial remotely, I would. Actually I have, it was nice.	No, it should be up to counsel and their client if in person is necessary or beneficial vs remote
A Defense Person Most Qualified deposition presided over by an appointed discovery master.	Trials. Pre-trial Conferences. MSJ hearings. Also, allowing remote appearance is less an issue - the problem is Court's requiring it.	EC Section 402

Specific types of hearings courts would prefer not be allowed remotely

Binding arbitrations	NO; this is one of the great things that came out of COVID	I think atty should be able to decide. Certain motions like MSJ or demurrer, new trial, etc
----------------------	--	--

367.9 Working Group

ATTACHMENT B – Judicial Council Remote Proceedings Survey

July 25, 2022

Issues experienced by court reporters reporting remote proceedings

Connection delays and questionable clarity of speech

Inability to hear, technical issues (like connection issues)

I have problems with documents in taking depositions. I don't want the witness to review and discuss with lawyers beforehand but I've had it occur that lawyer for deponent cant read it on his end for whatever reason and doing on screen is nerve wracking.

The reporter cannot hear correctly.

could not hear words clearly, signal cutting out

People talk over each other and bad volume, to name a few.

Difficulty identifying and hearing the speakers

Can't find for Sac Co law and motion in time after tentative ruling and before oral argument. Also court reporters too months to get transcript back.

video lags or sound issues but all were resolved; a small price to pay for huge convenience of not having to leave office/incur travel costs!

poor internet connection

connectivity; lagging; unable to use link

Audio clarity

other participants not muting; bandwidth/video issues

Inability to hear clearly what is being said

Issues experienced by court reporters reporting remote proceedings

Some struggles with getting witness connected and poor audio, distracting background environment, etc.

All problems can be easily solved by reporters who are adequately trained and comfortable with technology.

The court reporter couldn't hear the lawyers who were in the courtroom on a MSJ hearing.

N/A

It should be noted that the only issues are hearing the parties, which I have encountered during remote and live hearings. This could be due to the Parties speaking too fast, English is not their first language, etc.

Inability to handle exhibits, trouble understanding witnesses.

internet glitch

Difficulty if court reporters are appearing in person or remotely and attorney is not with them. Have had to start argument over due to confusion.

The broadband capacity can lead to audio and visual problems.

Zoom audio issues during depositions

Bad technology

Sometimes the transmission of voices is fragmented and the court reporter has difficulty reporting the testimony.

Difficulty understanding argument or testimony

Difficulty hearing

sometimes the connection/court video has been unstable- but that was more of an issue in 2020; sometimes they still have difficulty hearing the speaker, but that is usually correctible

Being able to hear the speaker if the internet connection was not clear

can't hear as well, delays caused by poor internet makes things harder

One court reporter was quite inaccurate in her transcription (court hearing, not deposition) Other than that one time, the court reporters have been fine.

Issues experienced by court reporters reporting remote proceedings

during depositions the feed sometimes is "glitchy"

Audio problems. Sometimes connectivity.

internet connectivity issues

Connectivity issues.

Reporter can't hear counsel on the phone well enough. 1-3 second delay on phone causes issues when court reporter needs to interrupt counsel to ask for clarification.

Volume is poor sometimes.

The court reporter I used for a bench trial expressed no issues.

Sound, AV functionality, connection

Bad connection or difficult of court reporter hearing testimony

Not being able to hear clearly

Connection / Audio Issues

Most hearings no longer have CR

just being able to book a court reporter, courts should provide

People talking at same time

not having a good connection and missing words or testimony

Understanding the deponent in depositions.

video freezing; audio drop-outs

367.9 Working Group

ATTACHMENT C – Judicial Council Remote Proceedings Survey

July 25, 2022

Issues experienced by interpreters reporting remote proceedings

Interpreters not certified, also problems with court reporters and interpreters hearing exactly what said via zoom.

Yes, but I have also had trouble with interpreters in person.

needing clarification because deponent's testimony was fragmented/unclear

hearing and translating people who are present in person

delay

n/a

There were issues at first when the pandemic and remote hearings were first offered. Now, I have not encountered any issues.

I have not experienced issues with interpreters because I will not use an interpreter for remote proceedings.

Couldn't hear litigants

Not hearing properly.

no experience with interpreters remote

can't hear as well, delays caused by poor internet makes things harder

Counsel forgets there is an interpreter and doesn't allow time for the interpreter to conclude translation before moving on. Judge interrupts interpreter or counsel waiting for interpreter to finish.

Once, interpreter's internet went out for a minute during a deposition at a very emotional moment that had to be repeated. The risk of this outweighs the benefits of remote hearings, and can be addressed.

I never used an interrupter in a hearing but they do not expresses issues for depositions. They like working from home.

Sound, AV functionality, connection

Only that they need all participants to be wearing headphones for the deposition

Issues experienced by interpreters reporting remote proceedings

An extremely time consuming deposition which took significantly longer than an in-person translation depos (which are already very difficult) and where interpreter had trouble keeping track and asked for questions and answers to be re-read. difficulty with hearing deponent and interpreter clearly

Connection / Audio Issues

The interpreters were present w the deponents to prevent any issues.

Technical early on; not so much for the last year or so).

not having a good connection and missing words or testimony

Seems to be taking a lot longer

367.9 Working Group

ATTACHMENT D – Judicial Council Remote Proceedings Survey

July 25, 2022

What could be improved about remote proceedings?

difficulty hearing some judges

ease of access for clients, publication of the IP addresses in more than one place, buried in a web site.

One consistent free platform across all courts eg Zoom, Teams rather than different platforms for different courts.

LA Connect is horrible

Get rid of Teams; use Zoom

For video proceedings, having the Judge on camera, which is not always the case. Improvement in Courtroom technical facilities so that the parties and counsel can be heard clearly.

Making them the exception rather than the rule would be the best way forward, IMO.

rules re lighting, mikes, attire, etc

Unknown

Stop remote proceedings.

Eliminate all of them, except for the most basic. Trial lawyers need to go into a courtroom---not some video cameo appearance.

confirm working technology before start time

What could be improved about remote proceedings?

they are good

Consistent means of remote access throughout all CA courts

Should be available to all litigants - the future is here

Nothing

In law, communication and determining whether listener is attentive cannot be achieved by zoom. In person is always ideal, especially trials and substantive law and motion matters.

It's pretty good

Making sure court's have the appropriate technology.

Courts having easy and standard way to link

Court wifi systems

More detailed simple access and appearance instructions

I can't think of anything offhand. Sorry.

The judicial council and the legislature need to authorize remote depositions and remote hearings.

Court technology can always be improved. For example, info when you will be called so one can be prepared immediately when called.

Overall, I have not had any issues appearing remotely.

always having a video option

What could be improved about remote proceedings?

That they always be made an option

As long as whoever is appearing remotely is able to see whoever is appearing in the courtroom, I think it is a great way to save time, aggravation, and the clients' money

Nothing. My experience has been good so far in multiple courts.

1. Should have remote checkin, like in Orange County. 2. Should have button to show that your client/both clients submit on the tentative. Court staff should occasionally login as an audience member to see if there is an audio/video problem. 3. No way to easily report a technology problem to the court. 4. There should be a standard of what is shown from the court on video. 5. The court should have the ability to turn off video of who is not arguing at that exact moment.

I am ok with the way it is.

The main issue seems to be just technology glitches. When things are running smoothly, remote hearings seem fine.

They are working well. I hope they continue going forward.

Audio technology and set up.

Courtrooms with better tech

Mandatory headsets.

Audio and video when one party appears in court with the other appearing virtually

Uniform and universal access. Protects against COVID, saves time and client money and saves the environment by reducing energy usage/emissions.

My only complaint is that some judges don't think they need to turn on their cameras and appear on camera in a remote appearance. it is very weird to be on camera and have opposing counsel on camera and talk to a blank screen where judge has chosen not to appear. being able to see and interact with the Judge is an important part of an appearance. I

What could be improved about remote proceedings?

usually will not do court call if I can be in court in person for that reason on matters that are substantive, rather than simple case management conferences or other "check in" type appearances. but if the court will not fully participate in a remote/video conference then it is no better than court call.

Limited to routine CMCs and OSCs, depositions only if all parties agree or ordered by the Court, consistent platform and connection process throughout the state.

Simplicity

Our own efforts at getting clients into an area with high speed internet would help considerably.

The Court being able to/known how to mute everyone. The Court knowing how to allow people to share screen. The Judge appearing in chambers instead of open court if there is no one in the courtroom.

The LASC Teams is clunky and difficult to access.

More uniformity from court to court. Every court has a different procedure. Some courts are still only using court call. Would prefer that all courts use zoom or bluejeans

Information when the case will be heard instead of holding for a long period without any information as to when the court will call the case

Reliable connectivity, though it seems to be much improved from early pandemic days.

more accessible platforms, preferably run by the court system

I think that remote proceedings have improved and are cost effective for the parties and the attorneys.

Make them more available for more types of proceedings.

Better technology and set up

What could be improved about remote proceedings?

More judges being willing to do it.

They can be standardized better. Each court has a different procedure, and sometimes each judge in a court has a different procedure.

Continue offering them. It has been incredibly beneficial to my practice.

Video would be helpful. And stricter control by the court (muting, etc.) would be helpful.

Free access for everyone to appear remotely

More bandwidth on the court side. Additional courtroom cameras to allow persons to be seen more clearly - currently most departments use one camera for both counsel table. Depending on placement, the attorneys and parties at the table are viewed from an angle.

Notice requirements are unnecessary. Also, a lack of uniformity in the manner of how one appears could be squared away and a single manner of appearance would be nice.

Nothing that the Judicial Council can do.

Try to have other counties agree to a uniform procedure.

Set individual times for hearings

Courts making them a permanent option for law-and-motion hearings.

There really was no reason for attorneys to appear for routine matters. The remote proceedings have been long overdue. Remote proceedings are really a fantastic option.

People learning how to speak one at a time (more human error)

What could be improved about remote proceedings?

I think that a zoom recording could be used in lieu of transcript

Ease of use. Some counties systems are very smooth and user friendly. Some still require Courtcall or similar vendor.

Make them free like Los Angeles does; and have all courts have the capability for video appearances (for example, San Bernardino generally only has call in numbers)

More video, fewer telephonic

More camera angles to observe the demeanor of participants appearing from the courtroom such as the judge and witnesses.

The L.A.S.C. system appears to no longer be activating the video function. The phone connection works well though.

internet speed/quality

Requirement for specific hardware on site

a method to request priority or if a trial is requested

Better connectivity.

More of them - among other things, this makes leading litigation and developing a public reputation for excellence accessible for traditionally underrepresented caretakers.

Remote court hearings have been fine. Remote depositions sometimes have technical issues with one of the participant's technology. Exhibits don't work as well.

Connection information should be streamlined through each department and not sent at last minute (Alameda County is particularly bad)

What could be improved about remote proceedings?

Use of a single platform for state case and/or federal cases. (Consistency, whether at federal or state level.) It is difficult toggling between Zoom, Teams, BlueJeans, etc.

The current rules vary widely from Court to Court, along with the procedures for requesting remote proceedings. It would be efficient and practical to have some uniformity across courts. For example, allowing all CMCs may be conducted remotely through a pre-established zoom link listed on the tentative or department website as a matter of right and not by request. This might alleviate some stress parties have before hearings trying to determine what is the proper procedure.

Document Handling

CourtCall cost is excessive. Court should not require exclusive vendor whose rates greatly exceed minimal cost of service.

More available is more efficient and makes everyone more productive

assure good views of faces of the judge and the speaking , or lead counsel, to allow for understanding of reactions and for visible cues to further discussion points that can sometimes lead to resolution

A standard means for finding the appropriate link and joining proceedings

Keep getting the tech kinks out of meetings. We are all still learning.

too the extend practiable, parties exchanging exhibits in advance of remote proceedings would save all paticiapants time, as sharing the screen and use of exhibits slow remoter proceedings down. would save time

Nothing that I can think of needs to be improved, it has been so helpful and such a positive change for everyone, especially working parents.

It's usually other attorneys who are the issue -- not on mute when not speaking or it is someone else's hearing; not allowing other attorneys to finish before speaking. Generally, the same type of problems encountered on Court Call.

What could be improved about remote proceedings?

Not having to request leave and suitable remedies for technical difficulties

uniformity among the counties

nothing, I think it is great!

Just having one main remote service. It could just be Zoom or Microsoft Meet etc. Instead of some being Zoom others Mircosoft etc.

Primarily educating judges and counsel on how to properly pause and stop talking when appropriate. Counsel on the phone should keep responses short and to the point, and stop talking immediately when there is an interruption (and not ask What? or say I didn't hear that?...just stop talking)

Seek local rules in California Federal District Courts presuming remote depositions.

Free of charge

Ensure the best equipment is used. They are judicial proceedings.

One provider ie Zoom

In criminal proceeding .. having ALL the courtrooms send the sockets from the hearing to the Attorney . A few do it and I've been told it's "No extra Burden" For example Dept 5 in Vista

Judges having empty courtrooms during hearings so they can take off their masks.

They work well.

Expanded use.

What could be improved about remote proceedings?

Remote proceedings are awesome and need to keep being encouraged. The improvement needs to come from the user -- counsel, wits, etc. need to make sure they have adequate internet bandwidth, etc. Overall, however, remote appearances are one of the best developments in my opinion ever. please keep them for all we can.

I believe the remote hearings are being conducted such that Court Call is being eliminated. That is a good thing in my opinion.

Just internet connectivity. But the problems with remote proceedings are not outweighed by their benefits. Love saving on traveling and parking.

If judge has 40 things on calendar, start half at 9 and rest at 10.

Document sharing either by platform or email

Consistent platform for use (e.g. all Teams or Zoom)

Elimination of services such as Court Call and Blue Jeans which are unnecessarily costly and otherwise have clunky/erratic connectivity issues. Court wide uniformity in vendors like Zoom.

I would like to see CAOC fighting against required remote trial proceedings including PTC. Also would like more uniformity in platform rather than some counties using zoom. some using bluejeans, some using courtcall, some using Microsoft Teams.

Not all judges turn on their video for remote proceedings, so there are times you're just staring at opposing counsel.

Just ensuring that all participants are using state of art tech.

Court rooms should be equipped to display remote witnesses

Sound quality

It is very helpful when the courtroom lists instructions regarding how to join a remote proceeding on the court's website. It would also be nice to be able to listen to a judge's remote calendar even when I am not appearing (so as to get a feel for

What could be improved about remote proceedings?

the judge and her rulings on MSJ's, etc., prior to my hearing). In MDL's this is possible, but I'm not aware of this capability in all state courts.

Better, clearer connections

Simple link for all hearings (as is practice in many counties) as opposed to having to make a reservation 48 hours before (for Los Angeles)

Orange County has the best system. It should be followed

Please make them permanent. All hearings other than trials can be done remotely, not unnecessarily spending money, time or risking injury during travel,

Seeing adversary if they appear in person

No issues so far

So far so good

I prefer the way Orange County conducts theirs. When you sign in you identify who you are and what case you are appearing on by checking some boxes. This allows the Clerk to immediately identify your case, without a "role call" She/he then "renames" your zoom appearance with your case position ie "Lauren Vogt #10" Then when your case is called (and only when your case is called) are you required to turn on your mic AND video. These run very smoothly!!

Quality of video/audio can always be improved.

All Court's should follow the Riverside County Superior Court model of just having one link for daily proceeding by Department on the their website.

Keep permanently

What could be improved about remote proceedings?

Clarity and enforcement, wherein counsel is not required to battle with defense to have matters be remote especially if an attorney or their client has a medical need/or a disability (accommodation.)

the court should go back to providing court reporters entire state should be using same system

Unifying the platform different Courts use

Prefer zoom to la court connect.

Standardized platform/app, instead of every court has its own.

Come up with state-wide uniform rules and one provider, like Zoom video

No suggestions at this time; I believe remote proceedings work well, save time, especially in Courts that have posted tentative rulings in advance.

Some proceedings it is hard to see the Court, I would prefer to see the judge and sometimes it is hard to understand if they are wearing a mask.

Greater continuity between the counties. Should all have the same remote systems

Equal technology or standardized method of attending.

Check in procedure

Have more of them

OLIVER DUNLAP
PRINCIPAL AND
SHAREHOLDER,
BARTKO ZANKEL
BUNZEL & MILLER

Remote Civil Proceedings

Everyday Hearings: Fully Remote

Clients

3

What Works

- ▶ Greater access
- ▶ Improved attendance/reduced burden and impact
- ▶ Trust and faith in “modern” court system
- ▶ Perception of faster, more direct justice

Clients

4

What Doesn't Work

- ▶ Confusion over platforms
- ▶ Access and connectivity
- ▶ Concerns about perception (calling in from mobile device)
- ▶ Concerns about remote recordings of proceedings and ability of court to control or monitor same

Courts

5

What Works

- ▶ More efficient; larger number of hearings accommodated per day
- ▶ Potential assignments across state/to other courthouses with lower usage rates
- ▶ Could ultimately assist in reducing case backlog and delays that developed during pandemic

Courts

6

What Doesn't Work

- ▶ Requires greater IT understanding by court staff, involving increased training costs/time.
- ▶ Requires additional advanced notice, preparation, and links for hearings

Courts

7

- ▶ Longer set-up/slower start times
- ▶ Challenges for court reporters to hear (poor audio lines or microphones)
 - ▶ Visual not always available
- ▶ AV set up requirements still required in many courts (cameras, mic systems, wifi, bandwidth).

Courts

- ▶ Greater access = greater potential for security/data breaches
- ▶ Sealing issues can require multiple lines and to “turn off” public line as needed

Counsel

9

What Works

- ▶ Reduced travel times and greater focus on case
- ▶ Reduced litigation costs to clients
- ▶ Greater client access and involvement
- ▶ General appreciation for virtual calendars, court flexibility, and related heightened professionalism and consideration

Counsel

10

What Doesn't Work

- ▶ Requires detailed local understanding of courthouse, judge, and clerks
- ▶ Requires counsel to have access to videoconferencing platforms and software
- ▶ Need to keep courts open and moving, but calendaring has been a challenge

Counsel

11

- ▶ General perception that it is harder for courts and parties (lack of body language, gestures)
- ▶ Fully remote proceedings enable judges to be distracted/disengaged from oral argument
- ▶ Greater emphasis on tentative
- ▶ Issues around clarifying requirements/guidelines

Everyday Hearings: Hybrid

Clients

13

What Works

- ▶ All heightened access points.
- ▶ Easier scheduling, higher attendance/participation rates.

What Doesn't Work

- ▶ Issues above – including especially confusion over platform and connectivity/audibility – are often magnified when only some parties are not in person.

Courts

14

What Works

- ▶ Heighted accommodations equates to greater access to justice.
- ▶ Greater efficiency, less rescheduling.

What Doesn't Work

- ▶ Disparities in party equipment, audibility, connectivity
- ▶ AV set up requirements
- ▶ In-person system needs to accommodate up to three parties
 - ▶ One screen/AV cart likely not enough if sealing involved

Counsel

15

What Works

- ▶ Flexibility and virtual calendars appreciated
- ▶ Reduced travel, litigation savings, increased ability to focus on case
- ▶ Mixed view of calendars for multiparty

Counsel

16

What Doesn't Work

- ▶ Constant confirmation with court as to videoconferencing system
- ▶ Requests to clerks for access and links
- ▶ Familiarity with local preferences
- ▶ Sometimes remote parties get phone access; sometimes video access
- ▶ Disparity in party and courthouse equipment
 - ▶ Party/press/public don't have screen to review remote parties

Evidentiary and/or Dispositive Hearings

Clients

18

What Works

- ▶ Can encourage case resolution

What Doesn't Work

- ▶ Greater sensitivity to connectivity problems, given heightened importance of hearing

What Works

- ▶ Increases access to justice through greater client participation
- ▶ More flexible scheduling/less dependent upon party travel and calendars

What Doesn't Work

- ▶ Nuances of courtroom decorum and judge setting tone or communicating non-verbally
- ▶ Added complications/additional technology, given use of exhibits/witness testimony
- ▶ Need for special accommodations/arrangements/access rules to allow sharing/uploading large exhibits or documents

What Works

- ▶ Greater client access/reduced litigation and travel costs
- ▶ Greater flexibility for witness and counsel schedules
- ▶ Hearings can be scheduled/held notwithstanding witness or client travel concerns/schedules

What Doesn't Work

- ▶ Sealing and related difficulties

Clients and Courts

22

What Does and Does not Work

- ▶ Same findings as everyday fully remote and hybrid hearings

What Works

- ▶ Concerns regarding in-person options with hybrid (party has option to appear in-person)

What Doesn't Work

- ▶ Additional vendors/staff required
 - ▶ Adds to hearing cost and pre-hearing complications and prep-time
- ▶ Sealing/selective courtroom access or exhibit/testimony display issues

Remote Civil Trials

What Works

- ▶ Reduced business disruption while allowing daily trial monitoring
- ▶ Increase in involvement = more in-trial case resolution

What Doesn't Work

- ▶ Not receiving a full or fair trial:
 - ▶ Juror attentiveness
 - ▶ Juror ability to fully and fairly evaluate witnesses
 - ▶ Inability to fully confront witnesses

What Works

- ▶ More efficient/less disruptive witness testimony
- ▶ Fuller trial days/less downtime for witness schedules = shorter trials

What Doesn't Work

- ▶ Challenging public access questions sufficiency of audio vs AV access
 - ▶ Similar issues related to potential need for multiple access lines
- ▶ Access/AV issues magnified when exhibits and testimony sealed

- ▶ Requirement of different systems for submission; extensive advance work
- ▶ Court clerks can't monitor participants while handling other trial tasks
 - ▶ Multiple lines/access points needed for different third-party witnesses, public, and parties/counsel

What Works

- ▶ Avoids trial continuances based on witness availability
- ▶ Allows greater flexibility in trial day schedule
- ▶ Can reduce litigation and trial costs (need for war rooms and equipment)
- ▶ More desirable for shorter trials; less so for more complicated trials

What Doesn't Work

- ▶ Issues magnified when sealing and third parties involved
 - ▶ Sealing of documents/testimony requires certain third parties be excluded at select times, necessitating multiple remote feeds and links
 - ▶ Similar complications vis-à-vis use of official deposition transcripts at trial or to impeach

- Concerns about potential witness interference or tampering at remote sites/off screen
- Concerns about parties having to cover costs to supplement courthouse resources for remote or hybrid proceedings

What Doesn't Work for Civil Hybrid

- ▶ Least favored format.
- ▶ Ability to adequately confront key witnesses
 - ▶ Parties may try to game the system with witness availability

- Pre-testimony preparation/document sharing with remote witnesses related to service and pre-trial access issues
 - Sealed boxes or binders?
 - What if the courier fails to deliver?
- Sealing and remote access concerns related to additional costs for vendors; multiple access lines

367.9 Working Group General Civil Data

MR. PETER DOODY, ATTORNEY AT LAW

General Civil Casetype Outreach

2

- ▶ Association of Defense Counsel of Northern California
- ▶ Association of Southern California Defense Counsel
- ▶ Approximately 50 people
- ▶ Three areas:
 - ▶ Remote Hearings for General Matters
 - ▶ Dispositive Law and Motion and Evidentiary Hearings
 - ▶ Remote Jury Trials and Witnesses

Remote Hearings for General Matters

Types of Remote Hearings for General Matters

4

- ▶ Case management conferences
- ▶ Ex-parte hearings
- ▶ Formal and informal discovery through dispute proceedings
- ▶ Non-dispositive law and motion hearings

Overall Opinion

5

- ▶ Overwhelming majority support the hearings remaining in place and always available.
- ▶ Some judges have rule that attorney bringing motion must appear in person or seek prior leave of court to appear remotely.

Comments Received

6

▶ Pros

- ▶ Remote appearances work well and smoothly for Case Management Conferences and non-dispositive motions.
- ▶ Remote hearings should remain. In the world we live in it just does not seem practical to constantly be traveling to court for civil hearings. A lot of time and money has been saved due to the ability of attorneys to appear remotely at civil hearings.

Comments Received

7

- ▶ People save money on gas and the roads and freeways are less congested.
- ▶ An appellate attorney commented, “The appellate court should continue the live streaming of appellate oral arguments. It is a huge client access to justice issue.

Comments Received

8

► Cons

- Personal appearance at Case Management Conferences give the attorneys the opportunity to meet each other in person which leads to less discovery battles and promotes initial settlement discussions. This is lost if everyone is remote.
- Remote and hybrid judicial settlement conferences do not work. The judges' Zoom equipment is set up for open court. The settlement judge does not have the ability to Zoom in chambers with an attorney and party who are remote.

Dispositive Law and Motion Evidentiary Hearings

Comments Received

10

- ▶ In favor
 - ▶ There should be no problem with remote hearings on dispositive and important law and motion matters. There should be a statewide rule enacted to allow remote law and motion hearings if the party / attorney requests it.
 - ▶ It makes no sense to fly to L.A. because a local rule requires personal attendance at a hearing.

Comments Received

11

- ▶ *Not In favor*
 - ▶ Dispositive motions such as summary judgment should be in-person as much as possible. A lot of time in Remote law and motion matters the camera is not on the judge so you cannot read the body language of the judge.
 - ▶ I do not recommend remote hearings for important law and motion matters. The background noise can be very distracting especially when other parties have not muted themselves while the other attorney is arguing.

Comments Received

12

- ▶ I would never do a dispositive motion remotely and I would include Anti-SLAPP in this category.
- ▶ An attorney should always have the option of appearing in-person to argue an important motion. The Court should never be able to make a blanket ruling forbidding in-person oral argument..

Remote Jury Trials and Remote Witnesses

Comments Received

14

► In favor

- Some witnesses appearing remotely at trial now seems to be the new normal.
- Some arbitrations are completely remote, so it makes some sense jury trials should be as well.
- An expert witness appearing remotely can save a lot of money for the client in lieu of paying the expert to travel all the way to court.

Comments Received

15

- ▶ I tried a case in Yolo County and all experts for each side appeared remotely and it worked well. This was a huge cost savings on experts.
- ▶ Logistics of document presentation to the remote witness is severely compounded especially for impeachment.

Comments Received

16

▶ *Not In favor*

- ▶ No jury trial should ever be done remotely.
- ▶ A jury should never be remote. The Judge, the jury and parties and attorneys should always be in-person at trial. Certain witnesses should be permitted to testify at trial by Zoom.
- ▶ The jury should never be outside the courtroom. There would be no judicial control over them.
- ▶ From an attorney who actually tried a jury trial remotely: “Zoom fatigue is a real thing.” “It is tiresome to be on Zoom 8 hours a day.” “It is difficult and can be awkward objecting on Zoom.”

Comments Received

17

- ▶ If the remote witness has insufficient technology, it is a nightmare for the court and can waste time. In one case I tried the jury and court had to wait 40 minutes for the plaintiff attorney and the remote witness to coordinate their technology.
- ▶ The downside of having a remote witness at trial, is if you show (i.e. share) a document with the remote witness it “mutes” the witness which is odd and awkward.
- ▶ Logistics of document presentation to the remote witness is severely compounded especially for impeachment.