



Judicial Council of California

Rules Committee

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rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Thursday, March 28, 2024

12:10 p.m. - 1:40 p.m.

Rules Committee Members Present:	Hon. Carin T. Fujisaki, Chair, Hon. Michelle Williams Court, Vice-Chair, Ms. Kate Bieker, Hon. Charles S. Crompton, Hon. Maria D. Hernandez, Ms. Rachel W. Hill, and Mr. Charles Johnson.
Rules Committee Members Absent:	Hon Erica R. Yew, Ms. Rachel Hill, and Mr. Maxwell V. Pritt.
Rules Committee Staff Present:	Ms. Anne M. Ronan and Ms. Benita Downs
Advisory Bodies Chair(s) and Staff Present	James Barolo, Tony Cheng Theresa Chiong, Kerry Doyle, Sarah Fleischer-Ihn Diana Glick, Jenny Grantz, Kendall Hannon, Frances Ho, Eric Long, Jason Mayo, Daniel Richardson, Jamie Schechter, Gabrielle Selden, and Christy Simon.
Other JC Staff Present	Audrey Fancy, Michael Giden, Stephanie Lacambra, Anna Maves, Leah Rose-Goodman, and Marymichael Smrdell.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m., and Ms. Downs took roll call.

Approval of Minutes

Approve minutes of the February 7 and February 20 meetings.

DISCUSSION AND ACTION ITEMS (ITEMS 01-32)

APPELLATE

Invitation to Comment-Recommend Circulation for Comment

Item 01/SPR24-02

Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time

The committee reviewed a proposal from the Appellate Advisory Committee recommending revising the Civil Case Information Statement (form APP-004) to allow the appellant to provide a nonstatutory reason why the appeal is eligible for calendar preference and amending rule 8.100 to require the civil case information statement to be filed within 15 days after the Court of Appeal lodges the notice of appeal and assigns the appeal a case number. The Appellate Advisory Committee also proposed adopting a new mandatory form for requesting extensions of time to file a brief in misdemeanor appeals, revising all existing forms for requesting an extension of time to file briefs to make the forms mandatory, and revising the rules to reflect this new mandatory status. This proposal originated with a suggestion from the former Chief Justice's Appellate Caseflow Workgroup and a committee member.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 02/SPR24-03

Appellate Procedure: Expanded Clerk's Transcript in Criminal Appeals

The committee reviewed a proposal from the Appellate Advisory Committee recommending amending California Rules of Court, rule 8.320 to authorize the Courts of Appeal to require, by local rule, that the clerk's transcript in felony appeals include either (1) all contents of the superior court file or (2) additional items from the superior court file beyond those currently required in rule 8.320(b). This proposal is designed to help minimize delays in felony appeals occasioned by the need to cure omissions from, or make augmentations to, the clerk's transcript. This proposal originated from a recommendation of the former Chief Justice's Appellate Caseflow Workgroup.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 03/SPR24-04

Appellate Procedure: Deadline for Amicus Curiae Briefs

The committee reviewed a proposal from the Appellate Advisory Committee recommending amending California Rules of Court, rule 8.200 to provide a deadline for filing an application to file an amicus brief when no respondent's brief has been filed. The current rule requires that applications to file an amicus brief be filed within 14 days after the reply brief "is filed or could have been filed." The rule, however, does not provide a deadline in cases where the respondent does not file a brief and, therefore, there is no reply brief. The proposed amendment would close this gap in the rules. This proposal originated with a suggestion from the Family Violence Appellate Project.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 04/SPR24-05

Appellate Procedure: Form Briefs for Use in Limited Civil Appeals

The committee reviewed a proposal from the Appellate Advisory Committee recommending the approval of three optional forms that parties in limited civil appeals can use to draft their appellate briefs and an information sheet that explains the use of these form briefs. Additionally, the committee proposed amending one rule of court and revising one form to address these new form briefs. The new form briefs are intended to assist self-represented litigants and attorneys unfamiliar with appellate practice in drafting effective briefs in limited civil appeals before the appellate division. The proposal originated with a suggestion from the California Lawyers Association.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

CIVIL

Invitation to Comment–Recommend Circulation for Comment

Item 05/SPR24-06

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee recommending revisions to form CIV-165, Order on Unlawful Use of Personal Identifying Information, effective January 1, 2025, to include information about the business entity at issue in the petition underlying an order. The proposed revisions respond to a request from the Secretary of State's office for more information to allow it to act on a court's determination that a petitioner's personal identifying information was used unlawfully. The revisions are intended to assist the Secretary of State in (1) redacting the victim's name and personal identifying information from the business entity filing or label the data to show that it is impersonated and (2) removing the data from publicly accessible electronic indexes and databases.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 06/SPR24-07

Civil Practice and Procedure: Memorandum of Costs

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee recommending revising the optional form for claiming prejudgment costs under Code of Civil Procedure sections 1032 and 1033.5 (form MC-010), effective January 1, 2025, to add a certification under penalty of perjury for the costs submitted. The committee also proposed (1) removing item 15 from both form MC-010 and form MC-011 (the companion worksheet) because fees for hosting electronic documents have sunsetted as an expressly allowable cost under section 1033.5 and (2) relocating "Models, enlargements, and photocopies of exhibits" on both forms to follow more closely the sequence of costs in section 1033.5. The changes are recommended based on a litigant's challenge to form MC-010's verification language, a sunset provision in the statute, and a suggestion from a paralegal.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 07/SPR24-08

Civil Practice and Procedure: Implementation of Assembly Bill 1119

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee recommending adopting one rule and six mandatory forms and revising one form to implement Assembly Bill 1119 (Stats. 2023, ch. 562), enacted October 8, 2023. AB 1119 creates special procedures for debtor's examinations for judgments concerning consumer debts awarded on or after January 1, 2025, and requires the Judicial Council to adopt new forms to implement these procedures.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 08/SPR24-09

Civil Practice and Procedure: Tentative Rulings

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee recommending amending California Rules of Court, rule 3.1308 to remove the outdated requirement that courts make tentative rulings available by telephone.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 09/SPR24-10

Civil Practice and Procedures: Case Dismissal with Retained Jurisdiction

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee recommending amending California Rules of Court, rule 3.1385 and revising form CIV-110 to implement amended Code of Civil Procedure section 664.6, which allows courts to dismiss cases without prejudice and retain jurisdiction to enforce settlement terms.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 10/SPR24-11

CEQA Actions: Initial Case Management Conferences

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee recommending amending rule 3.2226 of the California Rules of Court to implement the provisions of Senate Bill 149 concerning initial case management conferences for actions brought under the California Environmental Quality Act.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

CENTER FOR JUDICIAL EDUCATION AND RESEARCH (CJER)

Invitation to Comment–Recommend Circulation for Comment

Item 11/SPR24-13

Judicial Branch Education: Fairness and Access Requirements

The committee reviewed a proposal from the Center for Judicial Education and Research Advisory Committee recommending amending rule 10.469 of the California Rules of Court and adopting rule 10.465 to clarify existing fairness and access education requirements for judicial officers.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

COURT INTERPRETERS

Invitation to Comment–Recommend Circulation for Comment

Item 12/SPR24-14

Court Interpreters: Implementation of Assembly Bill 1032

The committee reviewed a proposal from the Court Interpreters Advisory Panel recommending amending rule 2.893 of the California Rules of Court and revise four forms to conform with recent statutory changes enacted by Assembly Bill 1032 (Pacheco; Stats. 2023, ch. 556), relating to provisionally qualified court interpreters.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

CRIMINAL**Invitation to Comment–Recommend Circulation for Comment****Item 13/SPR24 15****Criminal Law: Parole Period Advisement**

The committee reviewed a proposal from the Criminal Law Advisory Committee recommending amending rule 4.433 of the California Rules of Court to add a reference to the parole periods described in Penal Code section 3000.01. This reference would appear in subdivision (e), which describes the sentencing judge's advisement to the defendant about the parole period to be served after expiration of the sentence.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 14/SPR24-16**Criminal Law: Firearm and Body Armor Prohibitions**

The committee reviewed a proposal from the Criminal Law Advisory Committee recommending revising six criminal forms to incorporate firearm and body armor prohibitions enacted in recent legislation. The committee also proposed further revisions to the plea and relinquishment forms in this proposal (forms CR-101, CR-102, and CR-210) to reflect new procedures on firearm relinquishment, clarify prohibited items and relinquishment requirements, and refer to the possibility of a lifetime prohibition on firearm possession for misdemeanor domestic violence offenses. Finally, the committee proposed additional revisions to the felony plea form (form CR-101) based on other statutory changes, and to the criminal protective orders (forms CR-160 and CR-161) based on stakeholder suggestions.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

FAMILY AND JUVENILE LAW**Invitation to Comment–Recommend Circulation for Comment****Item 15/SPR24-18****Jointly with the Criminal Law Advisory Committee****Criminal Law and Family Law: Changes to Form MIL-100**

The committee reviewed a joint proposal from the Family and Juvenile Law Advisory Committee and Criminal Law Advisory Committee recommending revising form MIL-100, effective January 1, 2025. The Family and Juvenile Law Advisory Committee proposed revising form MIL-100 to implement the requirements of Family Code section 211.5, which was added by Senate Bill 1182 (Stats. 2022, ch. 385). The proposed changes would allow the court to comply with section 211.5 when the form is filed

in a family law case involving a person who has military, veteran, reserve, or active status. The Criminal Law Advisory Committee recommended additional revisions to form MIL-100 to clarify procedures under Penal Code section 858 when the form is filed in a criminal case, and to reference treatment options for pretrial diversion under Penal Code section 1001.80. The committees also recommended updating and reformatting the information on the back of the form for improved readability.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 16/SPR24-19

Juvenile Law: Harm of Removal

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee recommending amending three rules and revising one Judicial Council form, effective January 1, 2025. Senate Bill 578 (Ashby; Stats. 2023, ch. 618) amended Welfare and Institutions Code section 319 to require the court to consider the impact on the child when being separated from their parent or guardian at a detention hearing. The proposal would amend rules and revise a form related to the detention hearing to address the new reporting requirements and clarify the court's role in mitigating harm to the child related to removal from their home.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 17/SPR24-20

Juvenile Law: Retention of Jurisdiction and Petitions Requesting Juvenile Case Files of Deceased Children

The committee reviewed a Family and Juvenile Law Advisory Committee recommending amending one rule of court to implement Assembly Bill 1756 (Stats. 2023, ch. 478, § 62), which amended Welfare and Institutions Code section 10850.4 to extend the juvenile court's jurisdiction in cases involving the death of a child or nonminor dependent. The committee also recommended adopting one rule of court, amending two rules of court, adopting a new form, and revising six forms to clarify the different legal standards for petitions seeking disclosure of a living child's juvenile case file under section 827(a)(3) and a deceased child's juvenile case file under section 827(a)(2).

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

~~Item 18/SPR24-21 (Item deferred-moved to the April 4 meeting)~~

Item 19/SPR24-23**Family Law: Adoption Forms**

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee recommending the adoption of one new form and revising six forms to simplify the process for all adopting parents, and their counsel if represented. The committee further recommended revising the adoption request form to conform to a portion of Assembly Bill 1650 (Patterson; Stats. 2023, ch. 76) which requires that the petitioner inform the court, in writing, whether the petitioner has entered, or has agreed to enter, into a postadoption contact agreement.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 20/ SPR24-26**Family Law: Custody Forms and a Standard of Judicial Administration Under Senate Bill 5999**

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee recommending implementing Senate Bill 599 by amending one standard of judicial administration relating to supervised visitation, approving a new information sheet to include the new statutory definition of virtual visitation, and revising three forms relating to child custody and visitation (parenting time) for cases involving allegations of a parent or parents' history of abuse or substance abuse under Family Code section 3011.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 21/SPR24-27 (Item deferred-moved to the April 4 meeting)**JUDICIAL ADMINISTRATION****Invitation to Comment–Recommend Circulation for Comment****Item 22/SPR24-01****Trial Courts: Standard 2.2 Diversion Reporting**

The committee reviewed a proposal from the Court Executives Advisory Committee recommending that the Judicial Council amend standard 2.2 of the California Standards of Judicial Administration, which gives guidance to trial courts on the types of matters that remove a case from court control for purposes of calculating computation of time. The standard calls out cases in drug diversion programs under Penal Code section 1000 et seq. but is unclear as to whether other types of diversion programs should be treated similarly. The issue was raised to the committee's Judicial Branch Statistical Information System Subcommittee by a court seeking clarity on whether the time reporting guidelines for drug diversion programs under Penal Code 1000 et seq. were intended to apply to other types of

diversion programs. Revising the language in the standard is intended to increase clarity and help ensure consistent data reporting.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

PROBATE AND MENTAL HEALTH

Invitation to Comment—Recommend Circulation for Comment

Item 23/SPR24-28

Probate Conservatorship: Care Plan

The committee reviewed a proposal from the Probate and Mental Health Advisory Committee, to implement recent legislation, for the adoption of one form and the revision of another for mandatory use by a conservator of the person to prepare and file the care plan required, effective January 1, 2025, by Probate Code section 2351.2.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 24/SPR24-29

Probate Conservatorship: Confidential Declaration Forms

The committee reviewed a proposal from the Probate and Mental Health Advisory Committee recommending adopting one form, revising one form, and revoking one form related to probate conservatorships. The new mandatory form would be used to certify that a conservatee, proposed conservatee, or person alleged to lack capacity is medically unable to attend a hearing that they would otherwise be required to attend. The revised form—also mandatory—would (1) expand the scope of the existing capacity declaration to allow the assessing clinician to provide additional information needed by the court to make the legal determinations at issue, and (2) incorporate other capacity determinations related to a conservatee's treatment for a major neurocognitive disorder, such as dementia. The existing attachment form for major neurocognitive disorder capacity determinations would be revoked as no longer necessary. The proposal is part of the committee's project to update the conservatorship forms to conform to recent legislation promoting self-determination for persons subject to protective proceedings, including conservatorships.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 25/SPR24-30**Probate Guardianship: Participation of a Minor Ward in Court**

The committee reviewed a proposal from the Probate and Mental Health Advisory Committee recommending amending rule 7.1016 of the California Rules of Court to conform to recent legislation that amended Family Code section 3042. The legislation changed the conditions under which a minor child participates or testifies in court in a child custody or visitation proceeding, including a probate guardianship of the person. The committee also proposed amending the rule to conform more closely to statute by narrowing the scope of its application and expanding the protections afforded to wards who are parties, as well as to clarify its requirements and simplify its language.

Action: *The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.*

TRAFFIC**Invitation to Comment—Recommend Circulation for Comment****Item 26/SPR24-32****Traffic: Officer's Declaration in Trial by Written Declaration**

The committee reviewed a proposal from the Traffic Advisory Committee recommending revising form TR-235, *Officer's Declaration*, used in trials by written declaration for certain traffic infractions. The committee recommended revising the form to state that an officer should verify that the current version of the engineering and traffic survey (ETS) is on file with the court before checking a box that states the ETS is on file. The committee also recommended amending an out-of-date reference to the length of validity of an ETS and other minor updates to the form.

Action: *The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.*

Item 27/SPR24-33**Traffic: Mandatory Reminder Notices—Traffic Procedures**

The committee reviewed a proposal from the Traffic Advisory Committee recommending revising a rule of court to clarify the procedures for a court to follow for sending infraction notices. The committee recommends exceptions to the notice procedures when a court does not have a litigant's address or the information necessary (or the technological capability) to send a notice electronically. Additionally, the proposal included revisions to improve readability and changes to comply with current law.

Action: *The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.*

Item 28/SPR-34**Traffic: Instructions for Notice to Appear and Related Forms**

The committee reviewed a proposal from the Traffic Advisory Committee recommending revising form TR-INST for clarification. Form TR-INST provides a manual of instructions for the notice to appear and related forms that include forms TR-100, TR-106, TR-108, TR-115, TR-120, TR-130, and TR-140. The proposal addresses technical amendments and corrections and responds to several suggestions from forms users.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 29/SPR24-35**Traffic: Ability-to-Pay Request Form and Court Order**

The committee reviewed a proposal from the Traffic Advisory Committee recommending changes to form TR-320/CR-320, *Can't Afford to Pay Fine: Traffic and Other Infractions*, and to form TR-321/CR-321, *Can't Afford to Pay Fine: Traffic and Other Infractions (Court Order)*. Several courts have specifically requested that these forms provide an option for a litigant to enter a plea on the form itself, so that litigants would not be required to appear in court to enter a guilty or no-contest plea in traffic and other infraction cases. Stakeholders have also requested the types of public benefits listed on the form be expanded. The Traffic Advisory Committee recommended changes that would make the forms conform with the options currently offered through the court's online ability-to-pay tool, MyCitations.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

TRIBAL COURT–STATE COURT FORUM**Invitation to Comment–Recommend Circulation for Comment****Item 30/SPR24-36****Family and Juvenile Law: Recognition and Enforcement of Tribal Court Child Custody Orders**

The committee reviewed a joint proposal from the Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommending that, effective January 1, 2025, the Judicial Council approve two new forms and revise four existing forms to clarify that the requirement to recognize and enforce child custody orders under the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (found in sections 3400–3465 of the Family Code) applies to custody orders issued by a tribal court. Tribal court judges reported that they have experienced problems having their child custody orders registered and enforced because the existing form refers only to out-of-state custody orders and does not reference tribal court orders.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

PROTECTIVE ORDERS

Invitation to Comment–Recommend Circulation for Comment

Item 31/SPR24-22

Juvenile Law: Restraining Orders

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee recommending amending several rules of the California Rules of Court and revising several forms to conform to recent statutory changes enacted by Assembly Bill 1621 (Gipson; Stats. 2022, ch. 76) and Assembly Bill 92 (Stats. 2023, ch. 232). AB 1621 redefines “firearm precursor parts” and AB 92 specifies that a person who is from possessing firearms is also prohibited from possessing, owning, or buying body armor. The committee also proposed a new notice of hearing form that is separate from the temporary restraining order forms and a new rule clarifying the requirement that the juvenile court that has jurisdiction of a child or youth must hear requests for restraining orders initiated by or brought against the child or youth.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 32/SPR24-24

Protective Orders: Rule and Form Changes to Implement Senate Bill 459

The committee reviewed a proposal from the Family and Juvenile Law Advisory recommending adopting several domestic violence restraining order forms to allow either party to request to change or end a domestic violence restraining order. The proposal also included changes to existing family law forms and a family law rule of court to reflect the new proposed process. The proposed changes would help parties, attorneys, and court professionals understand the changes in the procedures when a party wants to ask the court to change or end orders made in a domestic violence restraining order. to implement Senate Bill 459 (Stats. 2023, ch. 874), the Family and Juvenile Law Advisory Committee.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 33/SPR24-25

Protective Orders: Changes to Domestic Violence Forms to Implement New Laws

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee recommending the approval and revision of several domestic violence restraining order forms to comply with new requirements for child custody and visitation orders (Senate Bill 599), and include body armor prohibitions (Assembly Bill 92)

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

Item 34/SPR24-31

Protective Orders: Revisions to Civil Forms to Implement New Law

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee recommending the revision of numerous protective order forms. These revised forms implement three significant changes to the law. First, changes are needed to all the restraining order form series, including the Gun Violence, Civil Harassment, Elder Abuse, Workplace Violence, and Private Post-Secondary School Violence forms addressed in this proposal to implement a new law prohibiting the possession of body armor by those who are prohibited from possessing firearms. Second, further changes are needed to gun violence restraining order forms to reflect a new law that permits the acquisition of body armor to be considered as evidence in determining whether to issue such a restraining order. Finally, the proposal also implements new laws concerning workplace violence restraining orders that add harassment as a basis for orders, permit collective bargaining representatives to petition for orders, and allow the employee who suffered the harassment, violence, or threat of violence to opt out of being named in orders.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

The Next Rules Committee meeting will be held on: April 4, 2024.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:38 p.m.

Approved by the committee on



RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Thursday, April 4
12:10 p.m. - 1:40 p.m.

Rules Committee Members Present:	Hon. Carin T. Fujisaki, Chair, Hon. Michelle Williams Court, Vice-Chair, Hon. Charles S. Crompton, Hon. Maria D. Hernandez, and Mr. Charles Johnson.
Rules Committee Members Absent:	Hon. Erica Yew, Ms. Kate Bieker, Ms. Rachel W. Hill, and Mr. Maxwell Pritt.
Rules Committee Staff Present:	Ms. Anne M. Ronan and Ms. Benita Downs
Advisory Bodies Chair(s) and Staff Present	Karen Alvarado, Theresa Chiong, Sarah Fleischer-Ihn, Kendall Hannon, and Eric Long.
Other JC Staff Present	Audrey Fancy, Michael Giden, Anna Maves, Mary Smrdeli, and Jemery Varon.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:11 p.m., and Ms. Downs took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 01-07)

CENTER FOR JUDICIAL EDUCATION AND RESEARCH (CJER)

Judicial Council Report—Recommend Council Action

Item 01

Judicial Branch Education: Judicial Schedules

The committee reviewed a recommendation from the Center for Judicial Education and Research Advisory Committee that the Judicial Council make a technical amendment to rule 10.603 of the California Rules of Court to replace outdated references with citations to the current judicial education requirements.

Action: The committee unanimously approved the Center for Judicial Education and Research Advisory Committee recommendation, which is to go to the Judicial Council for action at the May council meeting.

CIVIL JURY INSTRUCTIONS (CACI)

MEMORANDUM

Item 02

Civil Jury Instructions: Instructions With Minor or Nonsubstantive Revisions (Release 45)

The committee reviewed a recommendation from the Advisory Committee on Civil Jury Instructions for final action by the Rules Committee for minor or nonsubstantive revisions to the Civil Jury Instructions (CACI), which the council has delegated authority to the Rules Committee to approve.

Action: The committee took final action in approving the minor and nonsubstantive revisions to the civil jury instructions.

Judicial Council Report–Recommend Council Action

Item 03

Jury Instructions: Civil Jury Instructions (Release 45)

The committee reviewed a recommendation from the Advisory Committee on Civil Jury Instructions to approve the revised civil jury instructions and verdict forms prepared by the committee. Among other things, these changes bring the instructions up to date with developments in the law over the previous six months. Upon Judicial Council approval, the instructions will be published in the official midyear supplement to the 2024 edition of the Judicial Council of California Civil Jury Instructions (CACI).

Action: The committee unanimously approved the Advisory Committee on Civil Jury Instructions recommendation, which is to go to the Judicial Council for action at the May council meeting.

CRIMINAL

Judicial Council Report–Recommend Council Action

Item 04

Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)

The committee reviewed a recommendation from the Criminal Law Advisory Committee to adopt rule 4.553 of the California Rules of Court to implement legislation requiring the Judicial Council to develop qualifications for the appointment of counsel in superior court habeas corpus proceedings under Penal Code section 1473(e). Section 1473(e) provides for relief under the California Racial Justice Act of 2020, which prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin and allows petitioners to make claims for relief based on violations of the act.

Action: The committee unanimously approved the Criminal Law Advisory recommendation, which is to go to the Judicial Council for action at the May council meeting.

Item 05

Criminal Procedure: Racial Justice Act

The committee reviewed a joint recommendation from the Appellate Advisory Committee and the Criminal Law Advisory Committee to amend rules 4.551, 8.385, and 8.386 of the California Rules of Court and revise *Motion to Vacate Conviction or Sentence* (form CR-187), *Order on Motion to Vacate Conviction or Sentence* (form CR-188), and *Petition for Writ of Habeas Corpus* (form HC-001), to implement the Racial Justice Act, which prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin.

Action: The committee unanimously approved the joint recommendation from the Appellate Advisory Committee and the Criminal Law Advisory Committee, which is to go to the Judicial Council for action at the May council meeting.

FAMILY AND JUVENILE LAW

Judicial Council Report—Recommend Council Action

Item 06 (Deferred to later meeting)

Item 06(A) (Deferred to later meeting)

PROBATE AND MENTAL HEALTH

Judicial Council Report—Recommend Council Action

Item 07

Mental Health Law: CARE Act Rule Amendments and Form Revisions

The committee reviewed a recommendation from the Probate and Mental Health Advisory Committee to amend four rules of court and revise seven forms to implement Senate Bill 35 (Stats. 2023, ch. 283), which amended both substantive and procedural aspects of the Community Assistance, Recovery, and Empowerment (CARE) Act. In addition, the statute updated the mandate that the Judicial Council adopt rules implementing the policies and provisions of the act to add a requirement that the rules include “communications between the CARE Act court and the juvenile court, if applicable,” and to remove the requirement that the rules include “the clerk’s review of the petition.” The Family and Juvenile Law Advisory Committee joined in recommending the amendment of rule 7.2210(d)–(f), and the revision of forms CARE-050-INFO and CARE-100 to the extent those proposed changes address communications between the CARE Act court and the juvenile court.

Action: The committee unanimously approved the Probate and Mental Health Advisory Committee recommendation, which is to go to the Judicial Council for action at the May council meeting.

Invitation to Comment–Recommend Circulation for Comment

Item 09

Mental Health Law: CARE Act and Related Proceedings

The committee reviewed a proposal from the Probate and Mental Health Advisory Committee proposing approval of an optional form for the court’s use to order the county agency to provide information to the respondent’s attorney— in specified related proceedings—that a petition to commence proceedings under the Community Assistance, Recovery, and Empowerment (CARE) Act has been filed on the respondent’s behalf. This form would facilitate the process required by recommended rule 7.2210(e) of the California Rules of Court in response to statutory amendments and input from courts and counties.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 3.

I. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Next Rules Committee meeting will be held on: May 2024 date to be determined.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:28 p.m.

Approved by the committee on

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: May 1, 2024

Rules Committee action requested [Choose from drop down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Civil Remote Proceedings: Standards for When a Judicial Officer may Preside Remotely

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
 Adopt Cal. Rules of Court, rule 10.635

Committee or other entity submitting the proposal:
 Trial Court Presiding Judges Advisory Committee

Staff contact (name, phone and e-mail): Michael Giden, (415) 865-7977, Michael.Giden@jud.ca.gov; Saskia Kim, (916) 643-6951, Saskia.Kim@jud.ca.gov; Grace DiLaura, (415) 865-4353, Grace.DiLaura@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
 Annual agenda approved by Rules Committee on (date): Approved by Executive and Planning Committee on December 12, 2023.

Project description from annual agenda: As required by California Code of Civil Procedure [section] 367.10, consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom. The working group will provide preliminary recommendations on remote proceeding standards for judicial officers. Input on more substantive policy decisions will first be vetted by the Trial Court Presiding Judges Advisory Committee and then presented to the Judicial Council for final review.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

An out-of-cycle effective date of July 1, 2024, is requested to promptly comply with Code of Civil Procedure section 367.10's statutory mandate requiring a rule of court concerning when a judicial officer may preside over a remote court proceeding from a location other than a courtroom.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
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- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-094

For business meeting on May 17, 2024

Title

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 10.635

Recommended by

Trial Court Presiding Judges Advisory Committee
Hon. Maria D. Hernandez, Chair

Agenda Item Type

Action Required

Effective Date

July 1, 2024

Date of Report

April 17, 2024

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Executive Summary

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt a rule of court concerning when a judicial officer may preside remotely in civil cases subject to Code of Civil Procedure section 367.75, effective July 1, 2024. The proposed rule satisfies the statutory mandate contained in Code of Civil Procedure section 367.10 which requires the council to adopt a rule that includes “standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)

Recommendation

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt California Rules of Court, rule 10.635, effective July 1, 2024.

The proposed rule is attached at pages 8–9.

Relevant Previous Council Action

The council has taken no previous action regarding when a judicial officer may preside over a remote court proceeding from a location other than a courtroom.

Analysis/Rationale

Background

Code of Civil Procedure section 367.10 requires the council to adopt a rule establishing standards for when a judicial officer may preside over a remote proceeding from a location other than a courtroom. The statute provides that judicial officers may do so “in limited situations and in the interest of justice.”¹

Proposed rule

The Trial Court Presiding Judges Advisory Committee recommends adoption of proposed rule 10.635 to fulfill the statutory mandate expressed in Code of Civil Procedure section 367.10. As required by the statute, the rule sets out the limited circumstances under which, in the interest of justice, a judicial officer may preside remotely from a location other than a courtroom.

The proposed rule does not address the ability of any party or other participant to appear remotely. That option is governed by Code of Civil Procedure section 367.75 and rule 3.672. The rule also in no way limits the court’s ability to conduct remote proceedings; in accordance with the statute, it limits only the location from which the judicial officer may preside over such proceedings.

The proposed rule applies only in civil cases subject to Code of Civil Procedure section 367.75 and does not apply in criminal proceedings, juvenile justice proceedings, or proceedings in matters identified in Code of Civil Procedure section 367.76 (civil commitments and other specified proceedings). The rule also does not apply when a judicial officer presides in person over a remote proceeding.

Purpose of the proposed rule

Subdivision (a) describes the purpose of the proposed rule, consistent with the statutory mandate in section 367.10. The provision explains that the rule prescribes when, in limited situations and in the interest of justice, a judicial officer may use remote technology to effectuate their own participation in a proceeding—that is, preside remotely—from a location other than a courtroom.²

Scope of the proposed rule

Subdivision (b) describes the scope of the proposed rule, designating the circumstances and types of cases in which the rule applies.

¹ Code Civ. Proc., § 367.10.

² Proposed rule 10.635(a).

With respect to the circumstances covered by the proposed rule, the rule is limited to situations in which a judicial officer is using remote technology to effectuate their own participation in the proceeding.³ This language clarifies that if a judicial officer is presiding in person but “using” remote technology to effectuate others’ participation (such as admitting remote participants from a virtual waiting room or muting disruptive remote participants), the rule does not apply. The rule therefore does not affect the location of a judicial officer who is presiding in person, even if one or more participants join a proceeding remotely.⁴

With respect to the types of cases to which the proposed rule applies, subdivision (b)(3) establishes that the rule applies to civil cases subject to Code of Civil Procedure section 367.75. The rule therefore does not apply in juvenile justice proceedings or proceedings in certain specific matters listed in section 367.76 that are expressly excised from section 367.75 (judicial commitments, involuntary treatment and conservatorships, contempt proceedings, mentally disordered offender proceedings, commitment proceedings under the Penal Code, competency proceedings, outpatient placement and revocation proceedings, and involuntary medication and treatment hearings). Other statutory provisions already include requirements concerning the location of a judicial officer during a remote proceeding in these types of cases.⁵

The proposed rule also does not apply in criminal proceedings. The omission of criminal proceedings from the rule is not intended to authorize a judicial officer to preside remotely over such proceedings where not otherwise allowed. Because the statutory authorization for criminal remote proceedings sunsets effective January 1, 2025, it would be premature to address criminal proceedings in the proposed rule while extension of that authority is pending in the Legislature.

In addition, the proposed rule does not apply to superior court appellate division proceedings because the Appellate Advisory Committee is considering revisions to rule 8.885 (which governs oral argument in misdemeanor and limited civil appeals) and rule 8.929 (which governs oral argument in infraction appeals) that should clarify the use of remote proceedings in appellate division proceedings.⁶

³ Proposed rule 10.635(b)(1).

⁴ Accordingly, the proposed rule does not affect a court’s existing authority to convene in-person hearings outside of a courtroom. (See, e.g., Code Civ. Proc., § 651(a), (b) (authorizing site visits outside of a courtroom, including the taking of evidence at such site visits, to aid a trier of fact in determining a case); Gov. Code, § 68115(a)(1) (in times of specified emergencies, a presiding judge may request authorization to hold court sessions anywhere within the county).)

⁵ See Code Civ. Proc., § 367.76(d) (if the subject person is physically present in court, absent exceptional circumstances and exempting certain state department counsel, specified other participants and the judicial officer must be physically present in the courtroom); Welf. & Inst. Code, § 679.5(c), (d) (minor has the right to the physical presence of the defense counsel, any testifying prosecution witnesses, and the judicial officer, subject to the minor’s waiver).

⁶ Judicial Council of Cal., Advisory Comm. Agenda (Oct. 26, 2023), item 13 Update rules regarding oral argument in the appellate divisions, p. 11, <https://www.courts.ca.gov/documents/aac-annual.pdf>.

Paragraph (b)(4) of the proposed rule clarifies that the rule does not otherwise limit any powers judicial officers have to perform certain judicial functions outside of a courtroom, as permitted by law. For example, the rule does not affect existing law permitting specific judicial acts to be performed at any place in the state.⁷

Definitions

Subdivision (c) of the proposed rule defines several of the terms used in the rule. The rule incorporates existing definitions from rule 3.672(c) (which governs remote proceedings) and Government Code section 70301(d) (which defines “court facilities” under the Trial Court Facilities Act of 2002). Incorporating existing definitions is intended to maintain clarity and consistency within the law.

Situations in which a judicial officer may preside remotely from a location other than a courtroom

The statutory mandate directs the council to adopt a rule describing “limited situations” in which, “in the interest of justice,” a judicial officer may preside remotely from a location other than a courtroom. To comply with this mandate, subdivisions (d) and (e) of the proposed rule place clear limits on judicial officers presiding remotely from locations outside of a courtroom.

To achieve appropriate limitations on judicial officers presiding remotely, the rule divides its strictures into two situations: when a judicial officer is in a court facility but not presiding from a courtroom, and when a judicial officer is outside of a court facility. The rule provides graduated provisions for these two scenarios, recognizing that only the most extraordinary circumstances will justify a judicial officer presiding remotely from outside of a court facility.

Two general limitations apply in all scenarios: (1) presiding remotely requires the approval of the presiding judge, and (2) presiding remotely must be in the interest of justice. These requirements serve two functions. First, requiring presiding judge approval assures that presiding judges have the necessary authority to exercise their assignment duties and ensure the effective management and administration of their courts in accordance with their responsibilities under rule 10.603. Their approval also ensures that the rule’s limitations will be faithfully observed. Second, requiring that presiding remotely be in the interest of justice ensures consistency with the clear statutory mandate.

Under subdivision (d) of the proposed rule, a judicial officer may preside remotely from a location within a court facility that is not a courtroom if the presiding judge approves, presiding remotely is in the interest of justice, and either (1) the proceeding is fully remote because no parties are appearing in person, or (2) no courtrooms are available in the court facility. These limitations prioritize presiding over remote proceedings from a courtroom in most cases but permit some flexibility for particular circumstances. This is especially true when limited courtroom space may favor judicial officers presiding over remote proceedings from other parts

⁷ See, e.g., Code Civ. Proc., § 166(b) (authorizing judges to exercise certain powers out of court, anywhere in the state).

of a court facility, such as a conference room or chambers, to keep courtrooms available for in-person proceedings.

Under subdivision (e) of the proposed rule, a judicial officer may preside remotely from a location outside of a court facility only in very limited circumstances. Again, presiding remotely must be approved by the presiding judge and be in the interest of justice. But in addition, a judicial officer may preside remotely from a non-court location only if either (1) hazardous conditions prevent the judicial officer from safely accessing a court facility (proposed rule 10.635(e)(1)), or (2) presiding remotely in the matter is essential to preventing a significant delay that will substantially prejudice the litigants (proposed rule 10.635(e)(2)). These provisions allow cases to proceed even if external conditions prevent a judicial officer from using a court facility and give presiding judges necessary tools to prevent excessive case delays that harm litigants.

Policy implications

Adopting the proposed rule describing the limited situations in which a judicial officer may preside remotely from a location other than a courtroom will satisfy a statutory mandate. The proposed rule is carefully drafted to achieve a balance between maintaining flexibility for individual courts and effectuating the Legislature’s mandate that presiding remotely be “in limited situations and in the interest of justice.”

Comments

The proposed rule was circulated for public comment from February 8 to March 15, 2024, as part of a special cycle, and 11 comments were received. The committee received comments from the following: four individual judges, the Superior Court of San Diego County, the Family Law and Juvenile Divisions of the Superior Court of Orange County, a judicial officer at the Superior Court of Riverside County, a group of judicial officers at the Superior Court of San Bernardino County, a group of deputy directors at the Superior Court of San Bernardino County, Court Technology Services at the Superior Court of San Bernardino County, and the Orange County Bar Association. Two commenters agreed with the proposal, six commenters agreed with the proposal if modified, one commenter did not agree, and two did not indicate a position but provided suggested revisions to the proposed rule.

A chart with the full text of the comments received and the committee’s responses is attached at pages 10–22. The principal comments and the committee’s responses are summarized below. Also, several commenters provided comments addressing fiscal or operational impacts of the proposal which are described below in “Fiscal and Operational Impacts.”

Scope of the proposed rule

Two commenters suggested that it should be made clear in a comment to the proposed rule or text accompanying the rule that the rule does not apply to superior court appellate division proceedings. As noted above, the Appellate Advisory Committee is considering revisions to the rules that govern the use of remote proceedings in appellate division proceedings. For this reason, the committee is not recommending adopting the commenters’ specific proposed

modifications. The committee does agree, as stated previously, that the proposed rule does not apply to appellate division oral arguments.

Approval by presiding judge

Two commenters suggested that, in addition to presiding judges, supervising judges be allowed to approve a request from a judicial officer to preside remotely, explaining that “[i]n bigger courts, judges have more immediate access to their supervising judges.” The committee is not recommending a change to the rule, but agrees that, in larger courts, presiding judges may determine that a supervising judge will have a more granular understanding of day-to-day issues in a particular courthouse, including the caseloads and calendars of the judicial officers. As a result, the presiding judge in such a court may find it appropriate to delegate this responsibility.

One commenter objected to the proposed rule’s requirement of presiding judge approval in order for a judicial officer to preside remotely. As discussed above and in the attached comment chart, the committee concludes an approval requirement is necessary to balance the flexibility individual courts need to ensure litigants have timely and suitable access to justice with implementing the legislative mandate to prioritize presiding from courtrooms. Moreover, that requirement assures that presiding judges are able to ensure the effective management and administration of their courts, consistent with the rule.

Location of the rule

In response to a question posed in the invitation to comment regarding whether the proposed rule should be located in title 3 (Civil) of the California Rules of Court or whether it would be more appropriate to locate it in another title (e.g., title 10 (Judicial Administration)), the Superior Court of San Diego County and the Family Law and Juvenile Divisions of the Superior Court of Orange County commented that title 10 was the more appropriate location. The deputy directors at the Superior Court of San Bernardino County, commented that title 3 seemed appropriate because of its proximity to other rules on remote proceedings.

In considering the issue, the committee believes that it is more appropriate to locate the rule in title 10. Although there is some advantage to locating the proposed rule near rule 3.672 due to their similar subject matter (remote proceedings), the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. Moreover, locating the rule in title 10 offers proximity to other rules governing the duties and responsibilities of presiding judges (rule 10.603) and trial court judges (rule 10.608). For these reasons, the committee is recommending that the location of the rule be revised accordingly.

The Family Law and Juvenile Divisions of the Superior Court of Orange County also suggested that the rule be located in title 1 (Rules Applicable to All Courts). However, the committee is not recommending that the rule be located there because the rule is not applicable to all courts.

Alternatives considered

Because Code of Civil Procedure section 367.10 mandates that the council adopt a rule of court, the committee did not consider the alternative of taking no action or an alternative that did not include adopting a rule.

Fiscal and Operational Impacts

The committee does not anticipate that this proposal would result in substantial fiscal or operational impacts on the courts. Because judicial officers and courts gained experience with remote proceedings during the height of the COVID-19 pandemic, the committee anticipates that courts will not need to make substantial operational changes to implement the proposed rule. Moreover, the rule does not mandate any court actions. Rather, the rule establishes those limited situations in which a judicial officer may preside remotely, when in the interest of justice and with the presiding judge's approval.

The committee received comments from three courts in response to questions posed in the invitation to comment regarding fiscal and operational impacts of the proposed rule. Although the courts reported a possible need for additional procedures or training concerning the proposed rule, no court reported substantial fiscal or operational burdens as a result of the proposal.

Finally, the committee anticipates no impact on litigants or other court participants because the rule addresses only the situations in which judicial officers may preside remotely; it has no bearing on whether or when parties or other participants may appear remotely.

Attachments and Links

1. Cal. Rules of Court, rule 10.635, at pages 8–9
2. Chart of comments, at pages 10–22
3. Link A: Code Civ. Proc., § 367.10,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.10.&lawCode=CCP

Rule 10.635 of the California Rules of Court is adopted, effective July 1, 2024, to read:

1 Title 10. Judicial Administration Rules

2
3 Division 4. Trial Court Administration

4
5 Chapter 1. General Rules on Trial Court Management

6
7
8 **Rule 10.635. Limited situations in which a judicial officer may preside remotely**
9 **from a location other than a courtroom**

10
11 **(a) Purpose**

12
13 This rule prescribes when, in limited situations and in the interest of justice, a
14 judicial officer may use remote technology to effectuate their own participation in a
15 proceeding from a location other than a courtroom.

16
17 **(b) Application**

18
19 (1) This rule applies when a judicial officer presiding from a location other than
20 a courtroom uses remote technology to effectuate their own participation in
21 the proceeding.

22
23 (2) This rule does not apply when a judicial officer presides in person over a
24 proceeding convened in a location other than a court facility, even if another
25 participant appears remotely.

26
27 (3) This rule applies to all civil cases subject to Code of Civil Procedure section
28 367.75.

29
30 (4) Nothing in this rule limits a judicial officer from engaging in any other
31 judicial functions, duties, or actions authorized by law to be performed in a
32 location other than a courtroom.

33
34 **(c) Definitions**

35
36 As used in this rule:

37
38 (1) “Court facility” has the same meaning as that provided in Government Code
39 section 70301(d).

40
41 (2) The following terms have the same meaning as those provided in rule
42 3.672(c):

Rule 10.635 of the California Rules of Court is adopted, effective July 1, 2024, to read:

1 (A) “Proceeding.”

2
3 (B) “Remote proceeding.”

4
5 (C) “Remote technology.”

6
7 **(d) Location of a judicial officer within a court facility**

8
9 A judicial officer may preside remotely from a location within a court facility other
10 than a courtroom only if doing so is in the interest of justice, the presiding judge
11 approves, and either:

12
13 (1) No parties are appearing in person at the proceeding; or

14
15 (2) No courtrooms are available in the court facility.

16
17 **(e) Location of a judicial officer outside a court facility**

18
19 A judicial officer may not preside remotely from a location outside a court facility
20 unless doing so is in the interest of justice, the presiding judge approves, and

21
22 (1) The judicial officer cannot safely access or preside from a court facility
23 because of hazardous conditions, including those resulting from:

24
25 (A) Natural disaster;

26
27 (B) Severe weather;

28
29 (C) Public emergency;

30
31 (D) Facilities failure;

32
33 (E) Security threats; or

34
35 (F) Other extraordinary circumstances as determined by the presiding
36 judge; or

37
38 (2) Presiding remotely in a matter is essential to prevent a significant delay that
39 would substantially prejudice the litigants.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Janet M. Frangie Judge, Superior Court of San Bernardino County	N	<p>What is the rationale for this rule? While remote proceedings have shown to be effective during the Pandemic and afterwards for consumers and attorneys, this rule seeks to restrict the court from implementing its own rules for remote access for judicial officers tailored to that court’s specific needs.</p>	<p>Proposed rule 10.635 is a response to the Legislature’s mandate in Code of Civil Procedure section 367.10 that “the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)</p>
			<p>For example, in San Bernardino County, the largest county size wise in the contiguous United States, there may be an occasion where a judicial officer is called on to handle a calendar in a court far from his/her sitting court and remote proceedings for non-trial/evidentiary hearing purposes would be advantageous and cost-effective.</p>	<p>The committee agrees that judicial officers presiding remotely can offer convenience and efficiency in counties with large and diverse geography. The committee notes that nothing in the rule prevents a judicial officer from using remote technology to preside from their own bench over a proceeding in a different courthouse. If no courtrooms are available in their own courthouse, they may preside remotely from any location within the court facility under subdivision (d)(2).</p>
			<p>Does this rule apply to judges conducting settlement conferences and Informal Discovery Conferences in chambers via Zoom where all other parties/attorneys are also on Zoom? It would seem to.</p>	<p>In the described circumstances, the rule would apply and, assuming the presiding judge has approved and presiding remotely is in the interest of justice, the judicial officer would be authorized to preside remotely from chambers under subdivision (d)(1) because the judicial officer is within a court facility and all parties are appearing remotely.</p>
			<p>I have sat on many calendars after the Pandemic where the only person in the courtroom was me.</p>	<p>The committee appreciates the information.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>My courtroom and the civil courtrooms in San Bernardino County contain three large screens for those present in the courtroom. When I have appeared remotely during the Pandemic from outside the court (due to quarantining), my appearance is much larger on the screen than when I am physically present in the court.</p>	
			<p>I urge this body to not restrict a particular court’s ability to allow remote proceedings where the presiding judge or court determines that remote proceedings can be conducted by a judicial officer outside the courtroom in non-trial/evidentiary proceedings.</p>	<p>In light of the Legislature’s requirement that the Judicial Council adopt rules that permit presiding remotely only in limited situations and in the interest of justice, the council cannot decline to adopt a rule that applies to all courts. The committee believes the rule is faithful to the legislative mandate while allowing courts the flexibility they need to ensure litigants have timely and convenient access to justice.</p>
			<p>At the most, this rule should be limited to non-trial/evidentiary proceedings.</p>	<p>The committee appreciates this comment but, in light of the Legislature’s mandate, does not recommend that the rule’s scope should be narrowed based on type of proceeding.</p>
2.	<p>Hon. Harold W. Hopp Judge, Superior Court of Riverside County</p>	AM	<p>I agree with the proposed rule, but suggest an edit to the language. Twice the proposed rule includes "effectuate their own participation" (subsections a and b(1)). I suggest that "participate" would convey the same meaning and save a few words. I note that elsewhere, the proposed rule uses "preside", which would also be a better alternative than the proposed language, in my view.</p>	<p>The committee appreciates the commenter’s suggestion and agrees that using “preside” or “participate” in the referenced instances presents a more streamlined approach. The committee recommends the proposed language, however, to emphasize that presiding using remote technology does not include a judicial officer using remote technology to effectuate the participation of others at the hearing (when a judicial officer uses a</p>

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SP24-02

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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	Commenter	Position	Comment	Committee Response
				remote technology platform to admit a party from an electronic waiting room, for example). The committee is concerned that using only “preside” or “participate” may suggest that the rule includes when a judicial officer is presiding in person but using remote technology for other purposes. Because the rule does not encompass that situation, the committee does not recommend modifying the language.
3.	Orange County Bar Association by Christina Zabat-Fran, President	A	The Orange County Bar Association agrees with the above referenced proposals [including instant SP24-02].	No response required.
4.	Hon. Annemarie Pace Judge, Superior Court of San Bernardino County	NI	I support the ability for judicial officers to appear by remote proceedings under the proposed rule. It promotes access to justice and the speedy resolution of matters. I have conducted hearings remotely where I was recovering from surgery or illness. My ability to do my calendar from home made it so families were not subjected to continuances or long waits for their cases to be heard. It also limited the burden on the other judges who already have full calendars.	The committee appreciates the information.
			My suggested modification would be to allow supervising judges as well as the PJ to approve remote proceedings. In bigger courts, judges have more immediate access to their supervising judges.	The committee appreciates this suggestion and notes that it expects presiding judges in larger courts may find it appropriate to delegate responsibility for approving such requests.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
5.	Superior Court of Orange County, Family Law and Juvenile Divisions by Katie Tobias, Operations Analyst	NI	This proposal will clearly state when a Judicial Officer may or may not appear remotely outside of the Court Facility and why.	The committee appreciates this comment.
			<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal does appropriately address the stated purpose.</p>	The committee appreciates the responses to the specific questions posed in the invitation to comment.
			<p><i>What would the implementation requirements be for courts—for example, training staff (please identify positions and expected hours of training) and revising processes and procedures (please describe)?</i> Communication of the new rule and training sessions (2-4 hours) for new judicial officers on how to conduct hearings remotely utilizing different devices. Court Technology Services will be impacted to provide equipment and update security protocols. If new equipment is incorporated, additional training would be needed (hours dependent on type of equipment) and training materials would have to be produced.</p>	
			<p><i>Would the proposal provide cost savings? If so, please quantify.</i> The proposal does not appear to provide cost savings.</p>	
			<p><i>Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would</i></p>	The committee agrees that it is more appropriate to locate the rule in title 10 (Judicial Administration).

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p><i>it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?</i> The following locations are more appropriate for the proposed rule: Title 1 (Rules Applicable to All Courts) or Title 10 (Judicial Administration).</p> <hr/> <p><i>Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Our court is a large court and 90 days is more appropriate for implementation.</p>	<p>Although there is some advantage to locating the rule near rule 3.672 due to their similar subject matter, the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. In light of this, the committee recommends revising the location of the rule accordingly. The committee is not recommending that the rule be located in title 1 because the rule is not applicable to all courts.</p> <hr/> <p>The committee appreciates this response to the specific question posted in the invitation to comment. In light of the legislative mandate, the committee does not recommend revising the effective date.</p>
6.	Superior Court of Riverside County, “Judicial Officer” by Sarah Hodgson, General Counsel	AM	<p>Judicial officer comment: A judicial officer should not need approval from the presiding judge to preside remotely from one's chambers. It is common to do Informal Discovery Conferences, MSCs, and other work from chambers and to do so remotely. Technically, one is still presiding over these matters. Also, if technology in the courtroom is not working, it is common to preside over fully remote matters in chambers.</p>	<p>The committee appreciates this comment. The committee included the required approval by presiding judges to achieve a balance between maintaining flexibility for individual courts and effectuating the Legislature’s mandate that presiding remotely be “in limited situations in the interest of justice.” The committee believes presiding judge approval is essential to this balance and necessary for presiding judges to effectively fulfill their duties. The committee therefore does not recommend revising this language.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
7.	Superior Court of San Bernardino County, Court Technology Services, by Brenda Martin Del Campo, Management Analyst II	AM	<p>In the last sentence of the second paragraph on page 4, it seems reasonable (and likely) that a judicial officer may preside from their chambers in these circumstances as well, we could suggest that be added as an example “....such as a conference room or chambers...”</p> <p>This option could also possibly lead to different courtroom footprint needs if we could assign cases to “hearing rooms” that could potentially be smaller and/or with fewer requirements than full-blown courtrooms.</p> <p>Some things to consider might be:</p> <ol style="list-style-type: none"> 1.Procedures clarifying criteria and process for Presiding Judge approval 2.Procedures for staff support for a remote judicial officer 3.CMS Calendar/scheduling/remote appearance solution (e.g. Zoom) considerations when not in a courtroom <p>Since it’s not a requirement for a judge to conduct proceedings remotely, I don’t know that the timeline from approval would affect implementation, but rather how long it would take our court to develop and communicate procedures and make any associated case management changes.</p>	<p>The committee agrees that, if a judicial officer otherwise meets the requirements of subdivision (d)(1), they may preside remotely from any location within the court facility, including a conference room or chambers. The committee will include the suggested example to the report to the council.</p> <p>No response required.</p> <p>The committee appreciates this information. The committee expects that individual courts will implement procedures as necessary to meet their needs.</p> <p>The committee appreciates the response to the specific question posed in the invitation to comment.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			This is not called out in the proposed rule, but I do think that part of the presiding judge procedure to authorize a judge to conduct a proceeding outside of the courthouse, may want to include the remote judge confirming they have adequate internet bandwidth and equipment to adequately conduct a courtroom session.	The committee appreciates this suggestion and expects that individual courts will implement procedures as necessary to meet their needs.
8.	Superior Court of San Bernardino County, “Deputy Director Feedback” by Brenda Martin Del Campo, Management Analyst II	AM	The proposal does appropriately address the status purpose.	The committee appreciates the response to the specific questions posed in the Invitation to Comment.
			Title 3 seems appropriate because it would follow the other rules regarding Hearings, Conferences and Proceedings re: Telephone Appearances and Remote Proceedings.	The committee thanks the commenter for its response to the question concerning the location of the proposed rule. The committee is recommending that the rule be located in title 10 (Judicial Administration) because the rule is fundamentally one of court administration that imposes no duties or obligations on parties, as discussed further in the response to Comment no. 5, <i>supra</i> .
			Currently we use Zoom and all our staff (CA and JA) are trained on how to use Zoom – However, if a different program is to be used we would need training. As we have experienced with Civil Remote Proceedings in the past implementation requirements should have minimal effect. However, we will need to implement procedures	The committee appreciates the responses to the specific questions posed in the invitation to comment.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>to properly notify the public, litigants, and counsel of when a judicial officer intends to preside remotely over a specific hearing.</p> <p>It would be necessary to create procedures for requests to the presiding judge that a judicial officer preside over a hearing remotely in the interest of justice or to prevent a significant delay that would substantially prejudice the litigants. Ex. Petitions for Request for Release of Remains.</p> <p>We think it wouldn't be cost saving but at the same time it shouldn't cost the court more money as the judges have computers. As long as we use systems that the court currently use the cost should be the same.</p> <p>I truly see very minimal cost savings in the use of Civil Remote Proceedings, because although the Court facilities and utilities may not be being used during remote proceedings, we still have the overhead costs of technology to support the remote proceedings and the time, resources and staffing effort and materials required to properly notify the public, litigants, and counsel of when a judicial officer intends to preside remotely over a specific hearing.</p> <p>This depends on the technology already available to the court. If it is not necessary to purchase new equipment and it is merely a matter of installing it in conference rooms for the remote appearance of</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>a judicial officer, then it might save the court the need to remodel and create new courtrooms in counties with a greater need.</p>	
			<p>45-60 days from the approval of this by the JCC, should provide sufficient time for implementation.</p>	<p>The committee appreciates this response to the specific question posed in the invitation to comment. The committee does not recommend any change to the implementation date, as discussed further in the response to Comment no. 5, <i>supra</i>.</p>
			<p>I know CCP367.75 outlines the proceedings eligible for remote appearance; however trials will be problematic or any evidentiary hearing because of exhibits.</p>	<p>The committee appreciates this information. The committee notes that the rule would not provide any limitations or authorizations beyond existing law governing when a court may conduct remote proceedings, or in which types of cases a court may do so.</p>
			<p>Does location matter, in terms of the judge being in the county the case resides?</p>	<p>The committee notes that the rule does not place any limitations on a judicial officer’s specific location beyond whether the judicial officer is in a courtroom, in a court facility, or outside a court facility. However, to the extent existing law addresses the locations from which a judge may perform certain functions, that law would continue to govern.</p>
<p>9.</p>	<p>Superior Court of San Bernardino County, “Judicial Officer Feedback” by Brenda Martin Del Campo, Management Analyst II</p>	<p>AM</p>	<p>I would be completely supportive of a Judges ability to appear remotely. Especially when a Judge is ill or must quarantine secondary to COVID or any other infectious process that would</p>	<p>The committee appreciates this information. The committee notes that whether an illness or quarantine will justify a judicial officer’s presiding remotely under the rule will depend on the individual circumstances at issue.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			be a source or contamination for the staff as well as the public.	
			I support it as I have used this option during an illness and that it prevented delays for the families waiting for their cases to be heard.	The committee appreciates this information.
			I also suggested that the supervising judge be able to approve remote proceedings by the judge.	Please refer to the committee’s response to Comment no. 4, <i>supra</i> .
			Not sure why it is necessary to make a distinction between on facility and off facility. Seems like remote is remote. Clearly, they are discouraging off facility appearances. Is it because of logistics? (files, staff...?) or security (signing in from unsecure equipment?) which leads to my second thought...	Proposed rule 10.635 is a response to the Legislature’s mandate in Code of Civil Procedure section 367.10 that “the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)
			Is there any limitations on the security of the equipment being used? Does it have to be on court provided equipment? Is this something to be determined on a Court by Court basis?	Nothing in the rule addresses required equipment or security protocols. The committee is not recommending changes in response to this suggestion because it is outside the scope of the current proposal.
			Do they need to address staff, JA, Reporter? Does this contemplate they will also be appearing remotely, but at the facility? especially for off facility hearings?	The rule addresses only the location from which a judicial officer may preside remotely. Separate statutes and rules govern the location of other court staff. The committee notes that if an “off-facility hearing” is an in-person hearing, then the rule does not apply. Even if one or more participants appear remotely at such a hearing, if the judicial officer is presiding in person, the rule does not apply. (See Proposed rule 10.635(b)(2).)

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>I support the proposal, but there are two clarifications that would be helpful. First, the comments accompanying the rule could make clear that the presiding judge could authorize a judicial officer to conduct multiple hearings away from court, for a period of time, encompassing multiple cases.</p>	<p>The committee appreciates these comments. The committee expects that individual courts will implement procedures as necessary to meet their needs.</p>
			<p>Second, as the rule is currently written it appears to be limited to "hazardous conditions." Presumably that could include a hazard to a judge's health, but the phrasing of the rule makes it appear to be focused on external factors. Those might already be implied, given the breadth of the proposal, but it seemed worth mentioning.</p>	<p>The committee notes that the rule does not include health hazards to a judicial officer as a specific, enumerated basis for presiding remotely. However, it is possible that such hazards may constitute "other extraordinary circumstances as determined by the presiding judge" under subdivision (e)(1)(F), or may authorize presiding remotely to prevent a significant and prejudicial delay under subdivision (e)(2), provided the other requirements of the subdivision are met. This will depend on the individual circumstances at issue.</p>
			<p>Another small point: appellate division hearings do not raise the same concerns as other court proceedings. California's appellate courts have conducted oral arguments with justices not being in a court location, which speaks to the nature of appellate calendars – there are no witnesses, no evidence, and no juries. That being so, I believe the text accompanying the rule (in particular, the second paragraph of the executive summary) should state that just as the rule does not apply to non-civil proceedings, it does not apply to appellate division proceedings.</p>	<p>The committee appreciates this comment and will integrate the suggested reference into the report to the council.</p>

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	<p><i>Does the proposal appropriately address the state purpose?</i> Yes.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) and revising processes and procedures (please describe)?</i> Updating procedures and minute orders.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> No.</p> <p><i>Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	The committee appreciates the responses to the specific questions posed in the invitation to comment.
			<p><i>Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?</i> It would be more appropriate to locate the rule in Title 10 Judicial Administration.</p>	The committee agrees that it is more appropriate to locate the rule in title 10 (Judicial Administration). Although there is some advantage to locating the rule near rule 3.672 due to their similar subject matter, the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. In light of this, the committee recommends revising the location of the rule accordingly (see response to Comment no. 5, <i>supra</i>).

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
11.	Hon. Helen Williams Judge, Superior Court of Santa Clara County	A	It would seem that the proposed rule is not intended to cover appellate division oral arguments, which include limited civil cases and which are elsewhere covered at rule 8.885. These arguments occur in superior courts. This appellate division rule (which needs to be updated) allows oral argument by "videoconference" or for judges to appear/preside that way under certain circumstances. It might help to have a comment to the proposed rule [10.635] that expressly says it is not intended to cover appellate division arguments occurring in superior court.	<p>The committee thanks the commenter for the suggestion and agrees that the rule does not encompass appellate division oral arguments. Because the Appellate Advisory Committee is considering revisions to rules 8.885 and 8.929, which govern the use of remote proceedings in appellate division proceedings, the committee does not recommend adopting this modification.</p> <p>In order to clarify the rule’s scope, however, the committee will note in the report to the council that the rule does not impact appellate division proceedings (see response to Comment no. 9, <i>supra</i>).</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-094

For business meeting on May 17, 2024

Title

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 10.635

Recommended by

Trial Court Presiding Judges Advisory Committee
Hon. Maria D. Hernandez, Chair

Agenda Item Type

Action Required

Effective Date

July 1, 2024

Date of Report

April 17, 2024

Contact

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Executive Summary

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt a rule of court concerning when a judicial officer may preside remotely in civil cases subject to Code of Civil Procedure section 367.75, effective July 1, 2024. The proposed rule satisfies the statutory mandate contained in Code of Civil Procedure section 367.10 which requires the council to adopt a rule that includes “standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)

Recommendation

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt California Rules of Court, rule 10.635, effective July 1, 2024.

The proposed rule is attached at pages 8–9.

Relevant Previous Council Action

The council has taken no previous action regarding when a judicial officer may preside over a remote court proceeding from a location other than a courtroom.

Analysis/Rationale

Background

Code of Civil Procedure section 367.10 requires the council to adopt a rule establishing standards for when a judicial officer may preside over a remote proceeding from a location other than a courtroom. The statute provides that judicial officers may do so “in limited situations and in the interest of justice.”¹

Proposed rule

The Trial Court Presiding Judges Advisory Committee recommends adoption of proposed rule 10.635 to fulfill the statutory mandate expressed in Code of Civil Procedure section 367.10. As required by the statute, the rule sets out the limited circumstances under which, in the interest of justice, a judicial officer may preside remotely from a location other than a courtroom.

The proposed rule does not address the ability of any party or other participant to appear remotely. That option is governed by Code of Civil Procedure section 367.75 and rule 3.672. The rule also in no way limits the court’s ability to conduct remote proceedings; in accordance with the statute, it limits only the location from which the judicial officer may preside over such proceedings.

The proposed rule applies only in civil cases subject to Code of Civil Procedure section 367.75 and does not apply in criminal proceedings, juvenile justice proceedings, or proceedings in matters identified in Code of Civil Procedure section 367.76 (civil commitments and other specified proceedings). The rule also does not apply when a judicial officer presides in person over a remote proceeding.

Purpose of the proposed rule

Subdivision (a) describes the purpose of the proposed rule, consistent with the statutory mandate in section 367.10. The provision explains that the rule prescribes when, in limited situations and in the interest of justice, a judicial officer may use remote technology to effectuate their own participation in a proceeding—that is, preside remotely—from a location other than a courtroom.²

Scope of the proposed rule

Subdivision (b) describes the scope of the proposed rule, designating the circumstances and types of cases in which the rule applies.

¹ Code Civ. Proc., § 367.10.

² Proposed rule 10.635(a).

With respect to the circumstances covered by the proposed rule, the rule is limited to situations in which a judicial officer is using remote technology to effectuate their own participation in the proceeding.³ This language clarifies that if a judicial officer is presiding in person but “using” remote technology to effectuate others’ participation (such as admitting remote participants from a virtual waiting room or muting disruptive remote participants), the rule does not apply. The rule therefore does not affect the location of a judicial officer who is presiding in person, even if one or more participants join a proceeding remotely.⁴

With respect to the types of cases to which the proposed rule applies, subdivision (b)(3) establishes that the rule applies to civil cases subject to Code of Civil Procedure section 367.75. The rule therefore does not apply in juvenile justice proceedings or proceedings in certain specific matters listed in section 367.76 that are expressly excised from section 367.75 (judicial commitments, involuntary treatment and conservatorships, contempt proceedings, mentally disordered offender proceedings, commitment proceedings under the Penal Code, competency proceedings, outpatient placement and revocation proceedings, and involuntary medication and treatment hearings). Other statutory provisions already include requirements concerning the location of a judicial officer during a remote proceeding in these types of cases.⁵

The proposed rule also does not apply in criminal proceedings. The omission of criminal proceedings from the rule is not intended to authorize a judicial officer to preside remotely over such proceedings where not otherwise allowed. Because the statutory authorization for criminal remote proceedings sunsets effective January 1, 2025, it would be premature to address criminal proceedings in the proposed rule while extension of that authority is pending in the Legislature.

In addition, the proposed rule does not apply to superior court appellate division proceedings because the Appellate Advisory Committee is considering revisions to rule 8.885 (which governs oral argument in misdemeanor and limited civil appeals) and rule 8.929 (which governs oral argument in infraction appeals) that should clarify the use of remote proceedings in appellate division proceedings.⁶

³ Proposed rule 10.635(b)(1).

⁴ Accordingly, the proposed rule does not affect a court’s existing authority to convene in-person hearings outside of a courtroom. (See, e.g., Code Civ. Proc., § 651(a), (b) (authorizing site visits outside of a courtroom, including the taking of evidence at such site visits, to aid a trier of fact in determining a case); Gov. Code, § 68115(a)(1) (in times of specified emergencies, a presiding judge may request authorization to hold court sessions anywhere within the county).)

⁵ See Code Civ. Proc., § 367.76(d) (if the subject person is physically present in court, absent exceptional circumstances and exempting certain state department counsel, specified other participants and the judicial officer must be physically present in the courtroom); Welf. & Inst. Code, § 679.5(c), (d) (minor has the right to the physical presence of the defense counsel, any testifying prosecution witnesses, and the judicial officer, subject to the minor’s waiver).

⁶ Judicial Council of Cal., Advisory Comm. Agenda (Oct. 26, 2023), item 13 Update rules regarding oral argument in the appellate divisions, p. 11, <https://www.courts.ca.gov/documents/aac-annual.pdf>.

Paragraph (b)(4) of the proposed rule clarifies that the rule does not otherwise limit any powers judicial officers have to perform certain judicial functions outside of a courtroom, as permitted by law. For example, the rule does not affect existing law permitting specific judicial acts to be performed at any place in the state.⁷

Definitions

Subdivision (c) of the proposed rule defines several of the terms used in the rule. The rule incorporates existing definitions from rule 3.672(c) (which governs remote proceedings) and Government Code section 70301(d) (which defines “court facilities” under the Trial Court Facilities Act of 2002). Incorporating existing definitions is intended to maintain clarity and consistency within the law.

Situations in which a judicial officer may preside remotely from a location other than a courtroom

The statutory mandate directs the council to adopt a rule describing “limited situations” in which, “in the interest of justice,” a judicial officer may preside remotely from a location other than a courtroom. To comply with this mandate, subdivisions (d) and (e) of the proposed rule place clear limits on judicial officers presiding remotely from locations outside of a courtroom.

To achieve appropriate limitations on judicial officers presiding remotely, the rule divides its strictures into two situations: when a judicial officer is in a court facility but not presiding from a courtroom, and when a judicial officer is outside of a court facility. The rule provides graduated provisions for these two scenarios, recognizing that only the most extraordinary circumstances will justify a judicial officer presiding remotely from outside of a court facility.

Two general limitations apply in all scenarios: (1) presiding remotely requires the approval of the presiding judge, and (2) presiding remotely must be in the interest of justice. These requirements serve two functions. First, requiring presiding judge approval assures that presiding judges have the necessary authority to exercise their assignment duties and ensure the effective management and administration of their courts in accordance with their responsibilities under rule 10.603. Their approval also ensures that the rule’s limitations will be faithfully observed. Second, requiring that presiding remotely be in the interest of justice ensures consistency with the clear statutory mandate.

Under subdivision (d) of the proposed rule, a judicial officer may preside remotely from a location within a court facility that is not a courtroom if the presiding judge approves, presiding remotely is in the interest of justice, and either (1) the proceeding is fully remote because no parties are appearing in person, or (2) no courtrooms are available in the court facility. These limitations prioritize presiding over remote proceedings from a courtroom in most cases but permit some flexibility for particular circumstances. This is especially true when limited courtroom space may favor judicial officers presiding over remote proceedings from other parts

⁷ See, e.g., Code Civ. Proc., § 166(b) (authorizing judges to exercise certain powers out of court, anywhere in the state).

of a court facility, such as a conference room or chambers, to keep courtrooms available for in-person proceedings.

Under subdivision (e) of the proposed rule, a judicial officer may preside remotely from a location outside of a court facility only in very limited circumstances. Again, presiding remotely must be approved by the presiding judge and be in the interest of justice. But in addition, a judicial officer may preside remotely from a non-court location only if either (1) hazardous conditions prevent the judicial officer from safely accessing a court facility (proposed rule 10.635(e)(1)), or (2) presiding remotely in the matter is essential to preventing a significant delay that will substantially prejudice the litigants (proposed rule 10.635(e)(2)). These provisions allow cases to proceed even if external conditions prevent a judicial officer from using a court facility and give presiding judges necessary tools to prevent excessive case delays that harm litigants.

Policy implications

Adopting the proposed rule describing the limited situations in which a judicial officer may preside remotely from a location other than a courtroom will satisfy a statutory mandate. The proposed rule is carefully drafted to achieve a balance between maintaining flexibility for individual courts and effectuating the Legislature’s mandate that presiding remotely be “in limited situations and in the interest of justice.”

Comments

The proposed rule was circulated for public comment from February 8 to March 15, 2024, as part of a special cycle, and 11 comments were received. The committee received comments from the following: four individual judges, the Superior Court of San Diego County, the Family Law and Juvenile Divisions of the Superior Court of Orange County, a judicial officer at the Superior Court of Riverside County, a group of judicial officers at the Superior Court of San Bernardino County, a group of deputy directors at the Superior Court of San Bernardino County, Court Technology Services at the Superior Court of San Bernardino County, and the Orange County Bar Association. Two commenters agreed with the proposal, six commenters agreed with the proposal if modified, one commenter did not agree, and two did not indicate a position but provided suggested revisions to the proposed rule.

A chart with the full text of the comments received and the committee’s responses is attached at pages 10–22. The principal comments and the committee’s responses are summarized below. Also, several commenters provided comments addressing fiscal or operational impacts of the proposal which are described below in “Fiscal and Operational Impacts.”

Scope of the proposed rule

Two commenters suggested that it should be made clear in a comment to the proposed rule or text accompanying the rule that the rule does not apply to superior court appellate division proceedings. As noted above, the Appellate Advisory Committee is considering revisions to the rules that govern the use of remote proceedings in appellate division proceedings. For this reason, the committee is not recommending adopting the commenters’ specific proposed

modifications. The committee does agree, as stated previously, that the proposed rule does not apply to appellate division oral arguments.

Approval by presiding judge

Two commenters suggested that, in addition to presiding judges, supervising judges be allowed to approve a request from a judicial officer to preside remotely, explaining that “[i]n bigger courts, judges have more immediate access to their supervising judges.” The committee is not recommending a change to the rule, but agrees that, in larger courts, presiding judges may determine that a supervising judge will have a more granular understanding of day-to-day issues in a particular courthouse, including the caseloads and calendars of the judicial officers. As a result, the presiding judge in such a court may find it appropriate to delegate this responsibility.

One commenter objected to the proposed rule’s requirement of presiding judge approval in order for a judicial officer to preside remotely. As discussed above and in the attached comment chart, the committee concludes an approval requirement is necessary to balance the flexibility individual courts need to ensure litigants have timely and suitable access to justice with implementing the legislative mandate to prioritize presiding from courtrooms. Moreover, that requirement assures that presiding judges are able to ensure the effective management and administration of their courts, consistent with the rule.

Location of the rule

In response to a question posed in the invitation to comment regarding whether the proposed rule should be located in title 3 (Civil) of the California Rules of Court or whether it would be more appropriate to locate it in another title (e.g., title 10 (Judicial Administration)), the Superior Court of San Diego County and the Family Law and Juvenile Divisions of the Superior Court of Orange County commented that title 10 was the more appropriate location. The deputy directors at the Superior Court of San Bernardino County, commented that title 3 seemed appropriate because of its proximity to other rules on remote proceedings.

In considering the issue, the committee believes that it is more appropriate to locate the rule in title 10. Although there is some advantage to locating the proposed rule near rule 3.672 due to their similar subject matter (remote proceedings), the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. Moreover, locating the rule in title 10 offers proximity to other rules governing the duties and responsibilities of presiding judges (rule 10.603) and trial court judges (rule 10.608). For these reasons, the committee is recommending that the location of the rule be revised accordingly.

The Family Law and Juvenile Divisions of the Superior Court of Orange County also suggested that the rule be located in title 1 (Rules Applicable to All Courts). However, the committee is not recommending that the rule be located there because the rule is not applicable to all courts.

Alternatives considered

Because Code of Civil Procedure section 367.10 mandates that the council adopt a rule of court, the committee did not consider the alternative of taking no action or an alternative that did not include adopting a rule.

Fiscal and Operational Impacts

The committee does not anticipate that this proposal would result in substantial fiscal or operational impacts on the courts. Because judicial officers and courts gained experience with remote proceedings during the height of the COVID-19 pandemic, the committee anticipates that courts will not need to make substantial operational changes to implement the proposed rule. Moreover, the rule does not mandate any court actions. Rather, the rule establishes those limited situations in which a judicial officer may preside remotely, when in the interest of justice and with the presiding judge's approval.

The committee received comments from three courts in response to questions posed in the invitation to comment regarding fiscal and operational impacts of the proposed rule. Although the courts reported a possible need for additional procedures or training concerning the proposed rule, no court reported substantial fiscal or operational burdens as a result of the proposal.

Finally, the committee anticipates no impact on litigants or other court participants because the rule addresses only the situations in which judicial officers may preside remotely; it has no bearing on whether or when parties or other participants may appear remotely.

Attachments and Links

1. Cal. Rules of Court, rule 10.635, at pages 8–9
2. Chart of comments, at pages 10–22
3. Link A: Code Civ. Proc., § 367.10,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.10.&lawCode=CCP

Rule 10.635 of the California Rules of Court is adopted, effective July 1, 2024, to read:

1 **Title 10. Judicial Administration Rules**

2
3 **Division 4. Trial Court Administration**

4
5 **Chapter 1. General Rules on Trial Court Management**

6
7
8 **Rule 10.635. Limited situations in which a judicial officer may preside remotely**
9 **from a location other than a courtroom**

10
11 **(a) Purpose**

12
13 This rule prescribes when, in limited situations and in the interest of justice, a
14 judicial officer may use remote technology to effectuate their own participation in a
15 proceeding from a location other than a courtroom.

16
17 **(b) Application**

18
19 (1) This rule applies when a judicial officer presiding from a location other than
20 a courtroom uses remote technology to effectuate their own participation in
21 the proceeding.

22
23 (2) This rule does not apply when a judicial officer presides in person over a
24 proceeding convened in a location other than a court facility, even if another
25 participant appears remotely.

26
27 (3) This rule applies to all civil cases subject to Code of Civil Procedure section
28 367.75.

29
30 (4) Nothing in this rule limits a judicial officer from engaging in any other
31 judicial functions, duties, or actions authorized by law to be performed in a
32 location other than a courtroom.

33
34 **(c) Definitions**

35
36 As used in this rule:

37
38 (1) “Court facility” has the same meaning as that provided in Government Code
39 section 70301(d).

40
41 (2) The following terms have the same meaning as those provided in rule
42 3.672(c):

Rule 10.635 of the California Rules of Court is adopted, effective July 1, 2024, to read:

1 (A) “Proceeding.”

2
3 (B) “Remote proceeding.”

4
5 (C) “Remote technology.”

6
7 **(d) Location of a judicial officer within a court facility**

8
9 A judicial officer may preside remotely from a location within a court facility other
10 than a courtroom only if doing so is in the interest of justice, the presiding judge
11 approves, and either:

12
13 (1) No parties are appearing in person at the proceeding; or

14
15 (2) No courtrooms are available in the court facility.

16
17 **(e) Location of a judicial officer outside a court facility**

18
19 A judicial officer may not preside remotely from a location outside a court facility
20 unless doing so is in the interest of justice, the presiding judge approves, and

21
22 (1) The judicial officer cannot safely access or preside from a court facility
23 because of hazardous conditions, including those resulting from:

24
25 (A) Natural disaster;

26
27 (B) Severe weather;

28
29 (C) Public emergency;

30
31 (D) Facilities failure;

32
33 (E) Security threats; or

34
35 (F) Other extraordinary circumstances as determined by the presiding
36 judge; or

37
38 (2) Presiding remotely in a matter is essential to prevent a significant delay that
39 would substantially prejudice the litigants.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Janet M. Frangie Judge, Superior Court of San Bernardino County	N	<p>What is the rationale for this rule? While remote proceedings have shown to be effective during the Pandemic and afterwards for consumers and attorneys, this rule seeks to restrict the court from implementing its own rules for remote access for judicial officers tailored to that court’s specific needs.</p>	<p>Proposed rule 10.635 is a response to the Legislature’s mandate in Code of Civil Procedure section 367.10 that “the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)</p>
			<p>For example, in San Bernardino County, the largest county size wise in the contiguous United States, there may be an occasion where a judicial officer is called on to handle a calendar in a court far from his/her sitting court and remote proceedings for non-trial/evidentiary hearing purposes would be advantageous and cost-effective.</p>	<p>The committee agrees that judicial officers presiding remotely can offer convenience and efficiency in counties with large and diverse geography. The committee notes that nothing in the rule prevents a judicial officer from using remote technology to preside from their own bench over a proceeding in a different courthouse. If no courtrooms are available in their own courthouse, they may preside remotely from any location within the court facility under subdivision (d)(2).</p>
			<p>Does this rule apply to judges conducting settlement conferences and Informal Discovery Conferences in chambers via Zoom where all other parties/attorneys are also on Zoom? It would seem to.</p>	<p>In the described circumstances, the rule would apply and, assuming the presiding judge has approved and presiding remotely is in the interest of justice, the judicial officer would be authorized to preside remotely from chambers under subdivision (d)(1) because the judicial officer is within a court facility and all parties are appearing remotely.</p>
			<p>I have sat on many calendars after the Pandemic where the only person in the courtroom was me.</p>	<p>The committee appreciates the information.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>My courtroom and the civil courtrooms in San Bernardino County contain three large screens for those present in the courtroom. When I have appeared remotely during the Pandemic from outside the court (due to quarantining), my appearance is much larger on the screen than when I am physically present in the court.</p>	
			<p>I urge this body to not restrict a particular court’s ability to allow remote proceedings where the presiding judge or court determines that remote proceedings can be conducted by a judicial officer outside the courtroom in non-trial/evidentiary proceedings.</p>	<p>In light of the Legislature’s requirement that the Judicial Council adopt rules that permit presiding remotely only in limited situations and in the interest of justice, the council cannot decline to adopt a rule that applies to all courts. The committee believes the rule is faithful to the legislative mandate while allowing courts the flexibility they need to ensure litigants have timely and convenient access to justice.</p>
			<p>At the most, this rule should be limited to non-trial/evidentiary proceedings.</p>	<p>The committee appreciates this comment but, in light of the Legislature’s mandate, does not recommend that the rule’s scope should be narrowed based on type of proceeding.</p>
2.	<p>Hon. Harold W. Hopp Judge, Superior Court of Riverside County</p>	AM	<p>I agree with the proposed rule, but suggest an edit to the language. Twice the proposed rule includes "effectuate their own participation" (subsections a and b(1)). I suggest that "participate" would convey the same meaning and save a few words. I note that elsewhere, the proposed rule uses "preside", which would also be a better alternative than the proposed language, in my view.</p>	<p>The committee appreciates the commenter’s suggestion and agrees that using “preside” or “participate” in the referenced instances presents a more streamlined approach. The committee recommends the proposed language, however, to emphasize that presiding using remote technology does not include a judicial officer using remote technology to effectuate the participation of others at the hearing (when a judicial officer uses a</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SP24-02

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
				remote technology platform to admit a party from an electronic waiting room, for example). The committee is concerned that using only “preside” or “participate” may suggest that the rule includes when a judicial officer is presiding in person but using remote technology for other purposes. Because the rule does not encompass that situation, the committee does not recommend modifying the language.
3.	Orange County Bar Association by Christina Zabat-Fran, President	A	The Orange County Bar Association agrees with the above referenced proposals [including instant SP24-02].	No response required.
4.	Hon. Annemarie Pace Judge, Superior Court of San Bernardino County	NI	I support the ability for judicial officers to appear by remote proceedings under the proposed rule. It promotes access to justice and the speedy resolution of matters. I have conducted hearings remotely where I was recovering from surgery or illness. My ability to do my calendar from home made it so families were not subjected to continuances or long waits for their cases to be heard. It also limited the burden on the other judges who already have full calendars.	The committee appreciates the information.
			My suggested modification would be to allow supervising judges as well as the PJ to approve remote proceedings. In bigger courts, judges have more immediate access to their supervising judges.	The committee appreciates this suggestion and notes that it expects presiding judges in larger courts may find it appropriate to delegate responsibility for approving such requests.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
5.	Superior Court of Orange County, Family Law and Juvenile Divisions by Katie Tobias, Operations Analyst	NI	This proposal will clearly state when a Judicial Officer may or may not appear remotely outside of the Court Facility and why.	The committee appreciates this comment.
			<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal does appropriately address the stated purpose.</p>	The committee appreciates the responses to the specific questions posed in the invitation to comment.
			<p><i>What would the implementation requirements be for courts—for example, training staff (please identify positions and expected hours of training) and revising processes and procedures (please describe)?</i> Communication of the new rule and training sessions (2-4 hours) for new judicial officers on how to conduct hearings remotely utilizing different devices. Court Technology Services will be impacted to provide equipment and update security protocols. If new equipment is incorporated, additional training would be needed (hours dependent on type of equipment) and training materials would have to be produced.</p>	
			<p><i>Would the proposal provide cost savings? If so, please quantify.</i> The proposal does not appear to provide cost savings.</p>	
			<p><i>Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would</i></p>	The committee agrees that it is more appropriate to locate the rule in title 10 (Judicial Administration).

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p><i>it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?</i> The following locations are more appropriate for the proposed rule: Title 1 (Rules Applicable to All Courts) or Title 10 (Judicial Administration).</p> <hr/> <p><i>Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Our court is a large court and 90 days is more appropriate for implementation.</p>	<p>Although there is some advantage to locating the rule near rule 3.672 due to their similar subject matter, the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. In light of this, the committee recommends revising the location of the rule accordingly. The committee is not recommending that the rule be located in title 1 because the rule is not applicable to all courts.</p> <hr/> <p>The committee appreciates this response to the specific question posted in the invitation to comment. In light of the legislative mandate, the committee does not recommend revising the effective date.</p>
6.	Superior Court of Riverside County, “Judicial Officer” by Sarah Hodgson, General Counsel	AM	<p>Judicial officer comment: A judicial officer should not need approval from the presiding judge to preside remotely from one's chambers. It is common to do Informal Discovery Conferences, MSCs, and other work from chambers and to do so remotely. Technically, one is still presiding over these matters. Also, if technology in the courtroom is not working, it is common to preside over fully remote matters in chambers.</p>	<p>The committee appreciates this comment. The committee included the required approval by presiding judges to achieve a balance between maintaining flexibility for individual courts and effectuating the Legislature’s mandate that presiding remotely be “in limited situations in the interest of justice.” The committee believes presiding judge approval is essential to this balance and necessary for presiding judges to effectively fulfill their duties. The committee therefore does not recommend revising this language.</p>

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
7.	Superior Court of San Bernardino County, Court Technology Services, by Brenda Martin Del Campo, Management Analyst II	AM	<p>In the last sentence of the second paragraph on page 4, it seems reasonable (and likely) that a judicial officer may preside from their chambers in these circumstances as well, we could suggest that be added as an example “....such as a conference room or chambers...”</p> <p>This option could also possibly lead to different courtroom footprint needs if we could assign cases to “hearing rooms” that could potentially be smaller and/or with fewer requirements than full-blown courtrooms.</p> <p>Some things to consider might be:</p> <ol style="list-style-type: none"> 1.Procedures clarifying criteria and process for Presiding Judge approval 2.Procedures for staff support for a remote judicial officer 3.CMS Calendar/scheduling/remote appearance solution (e.g. Zoom) considerations when not in a courtroom <p>Since it’s not a requirement for a judge to conduct proceedings remotely, I don’t know that the timeline from approval would affect implementation, but rather how long it would take our court to develop and communicate procedures and make any associated case management changes.</p>	<p>The committee agrees that, if a judicial officer otherwise meets the requirements of subdivision (d)(1), they may preside remotely from any location within the court facility, including a conference room or chambers. The committee will include the suggested example to the report to the council.</p> <p>No response required.</p> <p>The committee appreciates this information. The committee expects that individual courts will implement procedures as necessary to meet their needs.</p> <p>The committee appreciates the response to the specific question posed in the invitation to comment.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			This is not called out in the proposed rule, but I do think that part of the presiding judge procedure to authorize a judge to conduct a proceeding outside of the courthouse, may want to include the remote judge confirming they have adequate internet bandwidth and equipment to adequately conduct a courtroom session.	The committee appreciates this suggestion and expects that individual courts will implement procedures as necessary to meet their needs.
8.	Superior Court of San Bernardino County, “Deputy Director Feedback” by Brenda Martin Del Campo, Management Analyst II	AM	The proposal does appropriately address the status purpose.	The committee appreciates the response to the specific questions posed in the Invitation to Comment.
			Title 3 seems appropriate because it would follow the other rules regarding Hearings, Conferences and Proceedings re: Telephone Appearances and Remote Proceedings.	The committee thanks the commenter for its response to the question concerning the location of the proposed rule. The committee is recommending that the rule be located in title 10 (Judicial Administration) because the rule is fundamentally one of court administration that imposes no duties or obligations on parties, as discussed further in the response to Comment no. 5, <i>supra</i> .
			Currently we use Zoom and all our staff (CA and JA) are trained on how to use Zoom – However, if a different program is to be used we would need training. As we have experienced with Civil Remote Proceedings in the past implementation requirements should have minimal effect. However, we will need to implement procedures	The committee appreciates the responses to the specific questions posed in the invitation to comment.

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>to properly notify the public, litigants, and counsel of when a judicial officer intends to preside remotely over a specific hearing.</p> <p>It would be necessary to create procedures for requests to the presiding judge that a judicial officer preside over a hearing remotely in the interest of justice or to prevent a significant delay that would substantially prejudice the litigants. Ex. Petitions for Request for Release of Remains.</p> <p>We think it wouldn't be cost saving but at the same time it shouldn't cost the court more money as the judges have computers. As long as we use systems that the court currently use the cost should be the same.</p> <p>I truly see very minimal cost savings in the use of Civil Remote Proceedings, because although the Court facilities and utilities may not be being used during remote proceedings, we still have the overhead costs of technology to support the remote proceedings and the time, resources and staffing effort and materials required to properly notify the public, litigants, and counsel of when a judicial officer intends to preside remotely over a specific hearing.</p> <p>This depends on the technology already available to the court. If it is not necessary to purchase new equipment and it is merely a matter of installing it in conference rooms for the remote appearance of</p>	

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>a judicial officer, then it might save the court the need to remodel and create new courtrooms in counties with a greater need.</p>	
			<p>45-60 days from the approval of this by the JCC, should provide sufficient time for implementation.</p>	<p>The committee appreciates this response to the specific question posed in the invitation to comment. The committee does not recommend any change to the implementation date, as discussed further in the response to Comment no. 5, <i>supra</i>.</p>
			<p>I know CCP367.75 outlines the proceedings eligible for remote appearance; however trials will be problematic or any evidentiary hearing because of exhibits.</p>	<p>The committee appreciates this information. The committee notes that the rule would not provide any limitations or authorizations beyond existing law governing when a court may conduct remote proceedings, or in which types of cases a court may do so.</p>
			<p>Does location matter, in terms of the judge being in the county the case resides?</p>	<p>The committee notes that the rule does not place any limitations on a judicial officer’s specific location beyond whether the judicial officer is in a courtroom, in a court facility, or outside a court facility. However, to the extent existing law addresses the locations from which a judge may perform certain functions, that law would continue to govern.</p>
<p>9.</p>	<p>Superior Court of San Bernardino County, “Judicial Officer Feedback” by Brenda Martin Del Campo, Management Analyst II</p>	<p>AM</p>	<p>I would be completely supportive of a Judges ability to appear remotely. Especially when a Judge is ill or must quarantine secondary to COVID or any other infectious process that would</p>	<p>The committee appreciates this information. The committee notes that whether an illness or quarantine will justify a judicial officer’s presiding remotely under the rule will depend on the individual circumstances at issue.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			be a source or contamination for the staff as well as the public.	
			I support it as I have used this option during an illness and that it prevented delays for the families waiting for their cases to be heard.	The committee appreciates this information.
			I also suggested that the supervising judge be able to approve remote proceedings by the judge.	Please refer to the committee’s response to Comment no. 4, <i>supra</i> .
			Not sure why it is necessary to make a distinction between on facility and off facility. Seems like remote is remote. Clearly, they are discouraging off facility appearances. Is it because of logistics? (files, staff...?) or security (signing in from unsecure equipment?) which leads to my second thought...	Proposed rule 10.635 is a response to the Legislature’s mandate in Code of Civil Procedure section 367.10 that “the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)
			Is there any limitations on the security of the equipment being used? Does it have to be on court provided equipment? Is this something to be determined on a Court by Court basis?	Nothing in the rule addresses required equipment or security protocols. The committee is not recommending changes in response to this suggestion because it is outside the scope of the current proposal.
			Do they need to address staff, JA, Reporter? Does this contemplate they will also be appearing remotely, but at the facility? especially for off facility hearings?	The rule addresses only the location from which a judicial officer may preside remotely. Separate statutes and rules govern the location of other court staff. The committee notes that if an “off-facility hearing” is an in-person hearing, then the rule does not apply. Even if one or more participants appear remotely at such a hearing, if the judicial officer is presiding in person, the rule does not apply. (See Proposed rule 10.635(b)(2).)

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>I support the proposal, but there are two clarifications that would be helpful. First, the comments accompanying the rule could make clear that the presiding judge could authorize a judicial officer to conduct multiple hearings away from court, for a period of time, encompassing multiple cases.</p>	<p>The committee appreciates these comments. The committee expects that individual courts will implement procedures as necessary to meet their needs.</p>
			<p>Second, as the rule is currently written it appears to be limited to "hazardous conditions." Presumably that could include a hazard to a judge's health, but the phrasing of the rule makes it appear to be focused on external factors. Those might already be implied, given the breadth of the proposal, but it seemed worth mentioning.</p>	<p>The committee notes that the rule does not include health hazards to a judicial officer as a specific, enumerated basis for presiding remotely. However, it is possible that such hazards may constitute "other extraordinary circumstances as determined by the presiding judge" under subdivision (e)(1)(F), or may authorize presiding remotely to prevent a significant and prejudicial delay under subdivision (e)(2), provided the other requirements of the subdivision are met. This will depend on the individual circumstances at issue.</p>
			<p>Another small point: appellate division hearings do not raise the same concerns as other court proceedings. California's appellate courts have conducted oral arguments with justices not being in a court location, which speaks to the nature of appellate calendars – there are no witnesses, no evidence, and no juries. That being so, I believe the text accompanying the rule (in particular, the second paragraph of the executive summary) should state that just as the rule does not apply to non-civil proceedings, it does not apply to appellate division proceedings.</p>	<p>The committee appreciates this comment and will integrate the suggested reference into the report to the council.</p>

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	<p><i>Does the proposal appropriately address the state purpose?</i> Yes.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) and revising processes and procedures (please describe)?</i> Updating procedures and minute orders.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> No.</p> <p><i>Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	The committee appreciates the responses to the specific questions posed in the invitation to comment.
			<p><i>Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?</i> It would be more appropriate to locate the rule in Title 10 Judicial Administration.</p>	The committee agrees that it is more appropriate to locate the rule in title 10 (Judicial Administration). Although there is some advantage to locating the rule near rule 3.672 due to their similar subject matter, the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. In light of this, the committee recommends revising the location of the rule accordingly (see response to Comment no. 5, <i>supra</i>).

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
11.	Hon. Helen Williams Judge, Superior Court of Santa Clara County	A	It would seem that the proposed rule is not intended to cover appellate division oral arguments, which include limited civil cases and which are elsewhere covered at rule 8.885. These arguments occur in superior courts. This appellate division rule (which needs to be updated) allows oral argument by "videoconference" or for judges to appear/preside that way under certain circumstances. It might help to have a comment to the proposed rule [10.635] that expressly says it is not intended to cover appellate division arguments occurring in superior court.	<p>The committee thanks the commenter for the suggestion and agrees that the rule does not encompass appellate division oral arguments. Because the Appellate Advisory Committee is considering revisions to rules 8.885 and 8.929, which govern the use of remote proceedings in appellate division proceedings, the committee does not recommend adopting this modification.</p> <p>In order to clarify the rule’s scope, however, the committee will note in the report to the council that the rule does not impact appellate division proceedings (see response to Comment no. 9, <i>supra</i>).</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: May 1, 2024

Rules Committee action requested [Choose from drop down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Civil Remote Proceedings: Standards for When a Judicial Officer may Preside Remotely

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
 Adopt Cal. Rules of Court, rule 10.635

Committee or other entity submitting the proposal:
 Trial Court Presiding Judges Advisory Committee

Staff contact (name, phone and e-mail): Michael Giden, (415) 865-7977, Michael.Giden@jud.ca.gov; Saskia Kim, (916) 643-6951, Saskia.Kim@jud.ca.gov; Grace DiLaura, (415) 865-4353, Grace.DiLaura@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
 Annual agenda approved by Rules Committee on (date): Approved by Executive and Planning Committee on December 12, 2023.

Project description from annual agenda: As required by California Code of Civil Procedure [section] 367.10, consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom. The working group will provide preliminary recommendations on remote proceeding standards for judicial officers. Input on more substantive policy decisions will first be vetted by the Trial Court Presiding Judges Advisory Committee and then presented to the Judicial Council for final review.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

An out-of-cycle effective date of July 1, 2024, is requested to promptly comply with Code of Civil Procedure section 367.10's statutory mandate requiring a rule of court concerning when a judicial officer may preside over a remote court proceeding from a location other than a courtroom.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-094

For business meeting on May 17, 2024

Title

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 10.635

Recommended by

Trial Court Presiding Judges Advisory Committee
Hon. Maria D. Hernandez, Chair

Agenda Item Type

Action Required

Effective Date

July 1, 2024

Date of Report

April 17, 2024

Contact

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Executive Summary

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt a rule of court concerning when a judicial officer may preside remotely in civil cases subject to Code of Civil Procedure section 367.75, effective July 1, 2024. The proposed rule satisfies the statutory mandate contained in Code of Civil Procedure section 367.10 which requires the council to adopt a rule that includes “standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)

Recommendation

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt California Rules of Court, rule 10.635, effective July 1, 2024.

The proposed rule is attached at pages 8–9.

Relevant Previous Council Action

The council has taken no previous action regarding when a judicial officer may preside over a remote court proceeding from a location other than a courtroom.

Analysis/Rationale

Background

Code of Civil Procedure section 367.10 requires the council to adopt a rule establishing standards for when a judicial officer may preside over a remote proceeding from a location other than a courtroom. The statute provides that judicial officers may do so “in limited situations and in the interest of justice.”¹

Proposed rule

The Trial Court Presiding Judges Advisory Committee recommends adoption of proposed rule 10.635 to fulfill the statutory mandate expressed in Code of Civil Procedure section 367.10. As required by the statute, the rule sets out the limited circumstances under which, in the interest of justice, a judicial officer may preside remotely from a location other than a courtroom.

The proposed rule does not address the ability of any party or other participant to appear remotely. That option is governed by Code of Civil Procedure section 367.75 and rule 3.672. The rule also in no way limits the court’s ability to conduct remote proceedings; in accordance with the statute, it limits only the location from which the judicial officer may preside over such proceedings.

The proposed rule applies only in civil cases subject to Code of Civil Procedure section 367.75 and does not apply in criminal proceedings, juvenile justice proceedings, or proceedings in matters identified in Code of Civil Procedure section 367.76 (civil commitments and other specified proceedings). The rule also does not apply when a judicial officer presides in person over a remote proceeding.

Purpose of the proposed rule

Subdivision (a) describes the purpose of the proposed rule, consistent with the statutory mandate in section 367.10. The provision explains that the rule prescribes when, in limited situations and in the interest of justice, a judicial officer may use remote technology to effectuate their own participation in a proceeding—that is, preside remotely—from a location other than a courtroom.²

Scope of the proposed rule

Subdivision (b) describes the scope of the proposed rule, designating the circumstances and types of cases in which the rule applies.

¹ Code Civ. Proc., § 367.10.

² Proposed rule 10.635(a).

With respect to the circumstances covered by the proposed rule, the rule is limited to situations in which a judicial officer is using remote technology to effectuate their own participation in the proceeding.³ This language clarifies that if a judicial officer is presiding in person but “using” remote technology to effectuate others’ participation (such as admitting remote participants from a virtual waiting room or muting disruptive remote participants), the rule does not apply. The rule therefore does not affect the location of a judicial officer who is presiding in person, even if one or more participants join a proceeding remotely.⁴

With respect to the types of cases to which the proposed rule applies, subdivision (b)(3) establishes that the rule applies to civil cases subject to Code of Civil Procedure section 367.75. The rule therefore does not apply in juvenile justice proceedings or proceedings in certain specific matters listed in section 367.76 that are expressly excised from section 367.75 (judicial commitments, involuntary treatment and conservatorships, contempt proceedings, mentally disordered offender proceedings, commitment proceedings under the Penal Code, competency proceedings, outpatient placement and revocation proceedings, and involuntary medication and treatment hearings). Other statutory provisions already include requirements concerning the location of a judicial officer during a remote proceeding in these types of cases.⁵

The proposed rule also does not apply in criminal proceedings. The omission of criminal proceedings from the rule is not intended to authorize a judicial officer to preside remotely over such proceedings where not otherwise allowed. Because the statutory authorization for criminal remote proceedings sunsets effective January 1, 2025, it would be premature to address criminal proceedings in the proposed rule while extension of that authority is pending in the Legislature.

In addition, the proposed rule does not apply to superior court appellate division proceedings because the Appellate Advisory Committee is considering revisions to rule 8.885 (which governs oral argument in misdemeanor and limited civil appeals) and rule 8.929 (which governs oral argument in infraction appeals) that should clarify the use of remote proceedings in appellate division proceedings.⁶

³ Proposed rule 10.635(b)(1).

⁴ Accordingly, the proposed rule does not affect a court’s existing authority to convene in-person hearings outside of a courtroom. (See, e.g., Code Civ. Proc., § 651(a), (b) (authorizing site visits outside of a courtroom, including the taking of evidence at such site visits, to aid a trier of fact in determining a case); Gov. Code, § 68115(a)(1) (in times of specified emergencies, a presiding judge may request authorization to hold court sessions anywhere within the county).)

⁵ See Code Civ. Proc., § 367.76(d) (if the subject person is physically present in court, absent exceptional circumstances and exempting certain state department counsel, specified other participants and the judicial officer must be physically present in the courtroom); Welf. & Inst. Code, § 679.5(c), (d) (minor has the right to the physical presence of the defense counsel, any testifying prosecution witnesses, and the judicial officer, subject to the minor’s waiver).

⁶ Judicial Council of Cal., Advisory Comm. Agenda (Oct. 26, 2023), item 13 Update rules regarding oral argument in the appellate divisions, p. 11, <https://www.courts.ca.gov/documents/aac-annual.pdf>.

Paragraph (b)(4) of the proposed rule clarifies that the rule does not otherwise limit any powers judicial officers have to perform certain judicial functions outside of a courtroom, as permitted by law. For example, the rule does not affect existing law permitting specific judicial acts to be performed at any place in the state.⁷

Definitions

Subdivision (c) of the proposed rule defines several of the terms used in the rule. The rule incorporates existing definitions from rule 3.672(c) (which governs remote proceedings) and Government Code section 70301(d) (which defines “court facilities” under the Trial Court Facilities Act of 2002). Incorporating existing definitions is intended to maintain clarity and consistency within the law.

Situations in which a judicial officer may preside remotely from a location other than a courtroom

The statutory mandate directs the council to adopt a rule describing “limited situations” in which, “in the interest of justice,” a judicial officer may preside remotely from a location other than a courtroom. To comply with this mandate, subdivisions (d) and (e) of the proposed rule place clear limits on judicial officers presiding remotely from locations outside of a courtroom.

To achieve appropriate limitations on judicial officers presiding remotely, the rule divides its strictures into two situations: when a judicial officer is in a court facility but not presiding from a courtroom, and when a judicial officer is outside of a court facility. The rule provides graduated provisions for these two scenarios, recognizing that only the most extraordinary circumstances will justify a judicial officer presiding remotely from outside of a court facility.

Two general limitations apply in all scenarios: (1) presiding remotely requires the approval of the presiding judge, and (2) presiding remotely must be in the interest of justice. These requirements serve two functions. First, requiring presiding judge approval assures that presiding judges have the necessary authority to exercise their assignment duties and ensure the effective management and administration of their courts in accordance with their responsibilities under rule 10.603. Their approval also ensures that the rule’s limitations will be faithfully observed. Second, requiring that presiding remotely be in the interest of justice ensures consistency with the clear statutory mandate.

Under subdivision (d) of the proposed rule, a judicial officer may preside remotely from a location within a court facility that is not a courtroom if the presiding judge approves, presiding remotely is in the interest of justice, and either (1) the proceeding is fully remote because no parties are appearing in person, or (2) no courtrooms are available in the court facility. These limitations prioritize presiding over remote proceedings from a courtroom in most cases but permit some flexibility for particular circumstances. This is especially true when limited courtroom space may favor judicial officers presiding over remote proceedings from other parts

⁷ See, e.g., Code Civ. Proc., § 166(b) (authorizing judges to exercise certain powers out of court, anywhere in the state).

of a court facility, such as a conference room or chambers, to keep courtrooms available for in-person proceedings.

Under subdivision (e) of the proposed rule, a judicial officer may preside remotely from a location outside of a court facility only in very limited circumstances. Again, presiding remotely must be approved by the presiding judge and be in the interest of justice. But in addition, a judicial officer may preside remotely from a non-court location only if either (1) hazardous conditions prevent the judicial officer from safely accessing a court facility (proposed rule 10.635(e)(1)), or (2) presiding remotely in the matter is essential to preventing a significant delay that will substantially prejudice the litigants (proposed rule 10.635(e)(2)). These provisions allow cases to proceed even if external conditions prevent a judicial officer from using a court facility and give presiding judges necessary tools to prevent excessive case delays that harm litigants.

Policy implications

Adopting the proposed rule describing the limited situations in which a judicial officer may preside remotely from a location other than a courtroom will satisfy a statutory mandate. The proposed rule is carefully drafted to achieve a balance between maintaining flexibility for individual courts and effectuating the Legislature’s mandate that presiding remotely be “in limited situations and in the interest of justice.”

Comments

The proposed rule was circulated for public comment from February 8 to March 15, 2024, as part of a special cycle, and 11 comments were received. The committee received comments from the following: four individual judges, the Superior Court of San Diego County, the Family Law and Juvenile Divisions of the Superior Court of Orange County, a judicial officer at the Superior Court of Riverside County, a group of judicial officers at the Superior Court of San Bernardino County, a group of deputy directors at the Superior Court of San Bernardino County, Court Technology Services at the Superior Court of San Bernardino County, and the Orange County Bar Association. Two commenters agreed with the proposal, six commenters agreed with the proposal if modified, one commenter did not agree, and two did not indicate a position but provided suggested revisions to the proposed rule.

A chart with the full text of the comments received and the committee’s responses is attached at pages 10–22. The principal comments and the committee’s responses are summarized below. Also, several commenters provided comments addressing fiscal or operational impacts of the proposal which are described below in “Fiscal and Operational Impacts.”

Scope of the proposed rule

Two commenters suggested that it should be made clear in a comment to the proposed rule or text accompanying the rule that the rule does not apply to superior court appellate division proceedings. As noted above, the Appellate Advisory Committee is considering revisions to the rules that govern the use of remote proceedings in appellate division proceedings. For this reason, the committee is not recommending adopting the commenters’ specific proposed

modifications. The committee does agree, as stated previously, that the proposed rule does not apply to appellate division oral arguments.

Approval by presiding judge

Two commenters suggested that, in addition to presiding judges, supervising judges be allowed to approve a request from a judicial officer to preside remotely, explaining that “[i]n bigger courts, judges have more immediate access to their supervising judges.” The committee is not recommending a change to the rule, but agrees that, in larger courts, presiding judges may determine that a supervising judge will have a more granular understanding of day-to-day issues in a particular courthouse, including the caseloads and calendars of the judicial officers. As a result, the presiding judge in such a court may find it appropriate to delegate this responsibility.

One commenter objected to the proposed rule’s requirement of presiding judge approval in order for a judicial officer to preside remotely. As discussed above and in the attached comment chart, the committee concludes an approval requirement is necessary to balance the flexibility individual courts need to ensure litigants have timely and suitable access to justice with implementing the legislative mandate to prioritize presiding from courtrooms. Moreover, that requirement assures that presiding judges are able to ensure the effective management and administration of their courts, consistent with the rule.

Location of the rule

In response to a question posed in the invitation to comment regarding whether the proposed rule should be located in title 3 (Civil) of the California Rules of Court or whether it would be more appropriate to locate it in another title (e.g., title 10 (Judicial Administration)), the Superior Court of San Diego County and the Family Law and Juvenile Divisions of the Superior Court of Orange County commented that title 10 was the more appropriate location. The deputy directors at the Superior Court of San Bernardino County, commented that title 3 seemed appropriate because of its proximity to other rules on remote proceedings.

In considering the issue, the committee believes that it is more appropriate to locate the rule in title 10. Although there is some advantage to locating the proposed rule near rule 3.672 due to their similar subject matter (remote proceedings), the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. Moreover, locating the rule in title 10 offers proximity to other rules governing the duties and responsibilities of presiding judges (rule 10.603) and trial court judges (rule 10.608). For these reasons, the committee is recommending that the location of the rule be revised accordingly.

The Family Law and Juvenile Divisions of the Superior Court of Orange County also suggested that the rule be located in title 1 (Rules Applicable to All Courts). However, the committee is not recommending that the rule be located there because the rule is not applicable to all courts.

Alternatives considered

Because Code of Civil Procedure section 367.10 mandates that the council adopt a rule of court, the committee did not consider the alternative of taking no action or an alternative that did not include adopting a rule.

Fiscal and Operational Impacts

The committee does not anticipate that this proposal would result in substantial fiscal or operational impacts on the courts. Because judicial officers and courts gained experience with remote proceedings during the height of the COVID-19 pandemic, the committee anticipates that courts will not need to make substantial operational changes to implement the proposed rule. Moreover, the rule does not mandate any court actions. Rather, the rule establishes those limited situations in which a judicial officer may preside remotely, when in the interest of justice and with the presiding judge's approval.

The committee received comments from three courts in response to questions posed in the invitation to comment regarding fiscal and operational impacts of the proposed rule. Although the courts reported a possible need for additional procedures or training concerning the proposed rule, no court reported substantial fiscal or operational burdens as a result of the proposal.

Finally, the committee anticipates no impact on litigants or other court participants because the rule addresses only the situations in which judicial officers may preside remotely; it has no bearing on whether or when parties or other participants may appear remotely.

Attachments and Links

1. Cal. Rules of Court, rule 10.635, at pages 8–9
2. Chart of comments, at pages 10–22
3. Link A: Code Civ. Proc., § 367.10,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.10.&lawCode=CCP

Rule 10.635 of the California Rules of Court is adopted, effective July 1, 2024, to read:

1 Title 10. Judicial Administration Rules

2
3 Division 4. Trial Court Administration

4
5 Chapter 1. General Rules on Trial Court Management

6
7
8 **Rule 10.635. Limited situations in which a judicial officer may preside remotely**
9 **from a location other than a courtroom**

10
11 **(a) Purpose**

12
13 This rule prescribes when, in limited situations and in the interest of justice, a
14 judicial officer may use remote technology to effectuate their own participation in a
15 proceeding from a location other than a courtroom.

16
17 **(b) Application**

18
19 (1) This rule applies when a judicial officer presiding from a location other than
20 a courtroom uses remote technology to effectuate their own participation in
21 the proceeding.

22
23 (2) This rule does not apply when a judicial officer presides in person over a
24 proceeding convened in a location other than a court facility, even if another
25 participant appears remotely.

26
27 (3) This rule applies to all civil cases subject to Code of Civil Procedure section
28 367.75.

29
30 (4) Nothing in this rule limits a judicial officer from engaging in any other
31 judicial functions, duties, or actions authorized by law to be performed in a
32 location other than a courtroom.

33
34 **(c) Definitions**

35
36 As used in this rule:

37
38 (1) “Court facility” has the same meaning as that provided in Government Code
39 section 70301(d).

40
41 (2) The following terms have the same meaning as those provided in rule
42 3.672(c):

Rule 10.635 of the California Rules of Court is adopted, effective July 1, 2024, to read:

1 (A) “Proceeding.”

2
3 (B) “Remote proceeding.”

4
5 (C) “Remote technology.”

6
7 **(d) Location of a judicial officer within a court facility**

8
9 A judicial officer may preside remotely from a location within a court facility other
10 than a courtroom only if doing so is in the interest of justice, the presiding judge
11 approves, and either:

12
13 (1) No parties are appearing in person at the proceeding; or

14
15 (2) No courtrooms are available in the court facility.

16
17 **(e) Location of a judicial officer outside a court facility**

18
19 A judicial officer may not preside remotely from a location outside a court facility
20 unless doing so is in the interest of justice, the presiding judge approves, and

21
22 (1) The judicial officer cannot safely access or preside from a court facility
23 because of hazardous conditions, including those resulting from:

24
25 (A) Natural disaster;

26
27 (B) Severe weather;

28
29 (C) Public emergency;

30
31 (D) Facilities failure;

32
33 (E) Security threats; or

34
35 (F) Other extraordinary circumstances as determined by the presiding
36 judge; or

37
38 (2) Presiding remotely in a matter is essential to prevent a significant delay that
39 would substantially prejudice the litigants.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Janet M. Frangie Judge, Superior Court of San Bernardino County	N	<p>What is the rationale for this rule? While remote proceedings have shown to be effective during the Pandemic and afterwards for consumers and attorneys, this rule seeks to restrict the court from implementing its own rules for remote access for judicial officers tailored to that court’s specific needs.</p>	<p>Proposed rule 10.635 is a response to the Legislature’s mandate in Code of Civil Procedure section 367.10 that “the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)</p>
			<p>For example, in San Bernardino County, the largest county size wise in the contiguous United States, there may be an occasion where a judicial officer is called on to handle a calendar in a court far from his/her sitting court and remote proceedings for non-trial/evidentiary hearing purposes would be advantageous and cost-effective.</p>	<p>The committee agrees that judicial officers presiding remotely can offer convenience and efficiency in counties with large and diverse geography. The committee notes that nothing in the rule prevents a judicial officer from using remote technology to preside from their own bench over a proceeding in a different courthouse. If no courtrooms are available in their own courthouse, they may preside remotely from any location within the court facility under subdivision (d)(2).</p>
			<p>Does this rule apply to judges conducting settlement conferences and Informal Discovery Conferences in chambers via Zoom where all other parties/attorneys are also on Zoom? It would seem to.</p>	<p>In the described circumstances, the rule would apply and, assuming the presiding judge has approved and presiding remotely is in the interest of justice, the judicial officer would be authorized to preside remotely from chambers under subdivision (d)(1) because the judicial officer is within a court facility and all parties are appearing remotely.</p>
			<p>I have sat on many calendars after the Pandemic where the only person in the courtroom was me.</p>	<p>The committee appreciates the information.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>My courtroom and the civil courtrooms in San Bernardino County contain three large screens for those present in the courtroom. When I have appeared remotely during the Pandemic from outside the court (due to quarantining), my appearance is much larger on the screen than when I am physically present in the court.</p>	
			<p>I urge this body to not restrict a particular court’s ability to allow remote proceedings where the presiding judge or court determines that remote proceedings can be conducted by a judicial officer outside the courtroom in non-trial/evidentiary proceedings.</p>	<p>In light of the Legislature’s requirement that the Judicial Council adopt rules that permit presiding remotely only in limited situations and in the interest of justice, the council cannot decline to adopt a rule that applies to all courts. The committee believes the rule is faithful to the legislative mandate while allowing courts the flexibility they need to ensure litigants have timely and convenient access to justice.</p>
			<p>At the most, this rule should be limited to non-trial/evidentiary proceedings.</p>	<p>The committee appreciates this comment but, in light of the Legislature’s mandate, does not recommend that the rule’s scope should be narrowed based on type of proceeding.</p>
2.	<p>Hon. Harold W. Hopp Judge, Superior Court of Riverside County</p>	AM	<p>I agree with the proposed rule, but suggest an edit to the language. Twice the proposed rule includes "effectuate their own participation" (subsections a and b(1)). I suggest that "participate" would convey the same meaning and save a few words. I note that elsewhere, the proposed rule uses "preside", which would also be a better alternative than the proposed language, in my view.</p>	<p>The committee appreciates the commenter’s suggestion and agrees that using “preside” or “participate” in the referenced instances presents a more streamlined approach. The committee recommends the proposed language, however, to emphasize that presiding using remote technology does not include a judicial officer using remote technology to effectuate the participation of others at the hearing (when a judicial officer uses a</p>

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SP24-02

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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	Commenter	Position	Comment	Committee Response
				remote technology platform to admit a party from an electronic waiting room, for example). The committee is concerned that using only “preside” or “participate” may suggest that the rule includes when a judicial officer is presiding in person but using remote technology for other purposes. Because the rule does not encompass that situation, the committee does not recommend modifying the language.
3.	Orange County Bar Association by Christina Zabat-Fran, President	A	The Orange County Bar Association agrees with the above referenced proposals [including instant SP24-02].	No response required.
4.	Hon. Annemarie Pace Judge, Superior Court of San Bernardino County	NI	I support the ability for judicial officers to appear by remote proceedings under the proposed rule. It promotes access to justice and the speedy resolution of matters. I have conducted hearings remotely where I was recovering from surgery or illness. My ability to do my calendar from home made it so families were not subjected to continuances or long waits for their cases to be heard. It also limited the burden on the other judges who already have full calendars.	The committee appreciates the information.
			My suggested modification would be to allow supervising judges as well as the PJ to approve remote proceedings. In bigger courts, judges have more immediate access to their supervising judges.	The committee appreciates this suggestion and notes that it expects presiding judges in larger courts may find it appropriate to delegate responsibility for approving such requests.

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
5.	Superior Court of Orange County, Family Law and Juvenile Divisions by Katie Tobias, Operations Analyst	NI	<p>This proposal will clearly state when a Judicial Officer may or may not appear remotely outside of the Court Facility and why.</p> <p><i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal does appropriately address the stated purpose.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify positions and expected hours of training) and revising processes and procedures (please describe)?</i> Communication of the new rule and training sessions (2-4 hours) for new judicial officers on how to conduct hearings remotely utilizing different devices. Court Technology Services will be impacted to provide equipment and update security protocols. If new equipment is incorporated, additional training would be needed (hours dependent on type of equipment) and training materials would have to be produced.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> The proposal does not appear to provide cost savings.</p> <p><i>Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would</i></p>	<p>The committee appreciates this comment.</p> <p>The committee appreciates the responses to the specific questions posed in the invitation to comment.</p> <p>The committee agrees that it is more appropriate to locate the rule in title 10 (Judicial Administration).</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p><i>it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?</i> The following locations are more appropriate for the proposed rule: Title 1 (Rules Applicable to All Courts) or Title 10 (Judicial Administration).</p> <hr/> <p><i>Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Our court is a large court and 90 days is more appropriate for implementation.</p>	<p>Although there is some advantage to locating the rule near rule 3.672 due to their similar subject matter, the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. In light of this, the committee recommends revising the location of the rule accordingly. The committee is not recommending that the rule be located in title 1 because the rule is not applicable to all courts.</p> <hr/> <p>The committee appreciates this response to the specific question posted in the invitation to comment. In light of the legislative mandate, the committee does not recommend revising the effective date.</p>
6.	Superior Court of Riverside County, “Judicial Officer” by Sarah Hodgson, General Counsel	AM	<p>Judicial officer comment: A judicial officer should not need approval from the presiding judge to preside remotely from one's chambers. It is common to do Informal Discovery Conferences, MSCs, and other work from chambers and to do so remotely. Technically, one is still presiding over these matters. Also, if technology in the courtroom is not working, it is common to preside over fully remote matters in chambers.</p>	<p>The committee appreciates this comment. The committee included the required approval by presiding judges to achieve a balance between maintaining flexibility for individual courts and effectuating the Legislature’s mandate that presiding remotely be “in limited situations in the interest of justice.” The committee believes presiding judge approval is essential to this balance and necessary for presiding judges to effectively fulfill their duties. The committee therefore does not recommend revising this language.</p>

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
7.	Superior Court of San Bernardino County, Court Technology Services, by Brenda Martin Del Campo, Management Analyst II	AM	<p>In the last sentence of the second paragraph on page 4, it seems reasonable (and likely) that a judicial officer may preside from their chambers in these circumstances as well, we could suggest that be added as an example “....such as a conference room or chambers...”</p> <p>This option could also possibly lead to different courtroom footprint needs if we could assign cases to “hearing rooms” that could potentially be smaller and/or with fewer requirements than full-blown courtrooms.</p> <p>Some things to consider might be:</p> <ol style="list-style-type: none"> 1.Procedures clarifying criteria and process for Presiding Judge approval 2.Procedures for staff support for a remote judicial officer 3.CMS Calendar/scheduling/remote appearance solution (e.g. Zoom) considerations when not in a courtroom <p>Since it’s not a requirement for a judge to conduct proceedings remotely, I don’t know that the timeline from approval would affect implementation, but rather how long it would take our court to develop and communicate procedures and make any associated case management changes.</p>	<p>The committee agrees that, if a judicial officer otherwise meets the requirements of subdivision (d)(1), they may preside remotely from any location within the court facility, including a conference room or chambers. The committee will include the suggested example to the report to the council.</p> <p>No response required.</p> <p>The committee appreciates this information. The committee expects that individual courts will implement procedures as necessary to meet their needs.</p> <p>The committee appreciates the response to the specific question posed in the invitation to comment.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			This is not called out in the proposed rule, but I do think that part of the presiding judge procedure to authorize a judge to conduct a proceeding outside of the courthouse, may want to include the remote judge confirming they have adequate internet bandwidth and equipment to adequately conduct a courtroom session.	The committee appreciates this suggestion and expects that individual courts will implement procedures as necessary to meet their needs.
8.	Superior Court of San Bernardino County, “Deputy Director Feedback” by Brenda Martin Del Campo, Management Analyst II	AM	<p>The proposal does appropriately address the status purpose.</p> <p>Title 3 seems appropriate because it would follow the other rules regarding Hearings, Conferences and Proceedings re: Telephone Appearances and Remote Proceedings.</p> <p>Currently we use Zoom and all our staff (CA and JA) are trained on how to use Zoom – However, if a different program is to be used we would need training.</p> <p>As we have experienced with Civil Remote Proceedings in the past implementation requirements should have minimal effect. However, we will need to implement procedures</p>	<p>The committee appreciates the response to the specific questions posed in the Invitation to Comment.</p> <p>The committee thanks the commenter for its response to the question concerning the location of the proposed rule. The committee is recommending that the rule be located in title 10 (Judicial Administration) because the rule is fundamentally one of court administration that imposes no duties or obligations on parties, as discussed further in the response to Comment no. 5, <i>supra</i>.</p> <p>The committee appreciates the responses to the specific questions posed in the invitation to comment.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>to properly notify the public, litigants, and counsel of when a judicial officer intends to preside remotely over a specific hearing.</p> <p>It would be necessary to create procedures for requests to the presiding judge that a judicial officer preside over a hearing remotely in the interest of justice or to prevent a significant delay that would substantially prejudice the litigants. Ex. Petitions for Request for Release of Remains.</p> <p>We think it wouldn't be cost saving but at the same time it shouldn't cost the court more money as the judges have computers. As long as we use systems that the court currently use the cost should be the same.</p> <p>I truly see very minimal cost savings in the use of Civil Remote Proceedings, because although the Court facilities and utilities may not be being used during remote proceedings, we still have the overhead costs of technology to support the remote proceedings and the time, resources and staffing effort and materials required to properly notify the public, litigants, and counsel of when a judicial officer intends to preside remotely over a specific hearing.</p> <p>This depends on the technology already available to the court. If it is not necessary to purchase new equipment and it is merely a matter of installing it in conference rooms for the remote appearance of</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>a judicial officer, then it might save the court the need to remodel and create new courtrooms in counties with a greater need.</p>	
			<p>45-60 days from the approval of this by the JCC, should provide sufficient time for implementation.</p>	<p>The committee appreciates this response to the specific question posed in the invitation to comment. The committee does not recommend any change to the implementation date, as discussed further in the response to Comment no. 5, <i>supra</i>.</p>
			<p>I know CCP367.75 outlines the proceedings eligible for remote appearance; however trials will be problematic or any evidentiary hearing because of exhibits.</p>	<p>The committee appreciates this information. The committee notes that the rule would not provide any limitations or authorizations beyond existing law governing when a court may conduct remote proceedings, or in which types of cases a court may do so.</p>
			<p>Does location matter, in terms of the judge being in the county the case resides?</p>	<p>The committee notes that the rule does not place any limitations on a judicial officer’s specific location beyond whether the judicial officer is in a courtroom, in a court facility, or outside a court facility. However, to the extent existing law addresses the locations from which a judge may perform certain functions, that law would continue to govern.</p>
<p>9.</p>	<p>Superior Court of San Bernardino County, “Judicial Officer Feedback” by Brenda Martin Del Campo, Management Analyst II</p>	<p>AM</p>	<p>I would be completely supportive of a Judges ability to appear remotely. Especially when a Judge is ill or must quarantine secondary to COVID or any other infectious process that would</p>	<p>The committee appreciates this information. The committee notes that whether an illness or quarantine will justify a judicial officer’s presiding remotely under the rule will depend on the individual circumstances at issue.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			be a source or contamination for the staff as well as the public.	
			I support it as I have used this option during an illness and that it prevented delays for the families waiting for their cases to be heard.	The committee appreciates this information.
			I also suggested that the supervising judge be able to approve remote proceedings by the judge.	Please refer to the committee’s response to Comment no. 4, <i>supra</i> .
			Not sure why it is necessary to make a distinction between on facility and off facility. Seems like remote is remote. Clearly, they are discouraging off facility appearances. Is it because of logistics? (files, staff...?) or security (signing in from unsecure equipment?) which leads to my second thought...	Proposed rule 10.635 is a response to the Legislature’s mandate in Code of Civil Procedure section 367.10 that “the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)
			Is there any limitations on the security of the equipment being used? Does it have to be on court provided equipment? Is this something to be determined on a Court by Court basis?	Nothing in the rule addresses required equipment or security protocols. The committee is not recommending changes in response to this suggestion because it is outside the scope of the current proposal.
			Do they need to address staff, JA, Reporter? Does this contemplate they will also be appearing remotely, but at the facility? especially for off facility hearings?	The rule addresses only the location from which a judicial officer may preside remotely. Separate statutes and rules govern the location of other court staff. The committee notes that if an “off-facility hearing” is an in-person hearing, then the rule does not apply. Even if one or more participants appear remotely at such a hearing, if the judicial officer is presiding in person, the rule does not apply. (See Proposed rule 10.635(b)(2).)

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			<p>I support the proposal, but there are two clarifications that would be helpful. First, the comments accompanying the rule could make clear that the presiding judge could authorize a judicial officer to conduct multiple hearings away from court, for a period of time, encompassing multiple cases.</p>	<p>The committee appreciates these comments. The committee expects that individual courts will implement procedures as necessary to meet their needs.</p>
			<p>Second, as the rule is currently written it appears to be limited to "hazardous conditions." Presumably that could include a hazard to a judge's health, but the phrasing of the rule makes it appear to be focused on external factors. Those might already be implied, given the breadth of the proposal, but it seemed worth mentioning.</p>	<p>The committee notes that the rule does not include health hazards to a judicial officer as a specific, enumerated basis for presiding remotely. However, it is possible that such hazards may constitute "other extraordinary circumstances as determined by the presiding judge" under subdivision (e)(1)(F), or may authorize presiding remotely to prevent a significant and prejudicial delay under subdivision (e)(2), provided the other requirements of the subdivision are met. This will depend on the individual circumstances at issue.</p>
			<p>Another small point: appellate division hearings do not raise the same concerns as other court proceedings. California's appellate courts have conducted oral arguments with justices not being in a court location, which speaks to the nature of appellate calendars – there are no witnesses, no evidence, and no juries. That being so, I believe the text accompanying the rule (in particular, the second paragraph of the executive summary) should state that just as the rule does not apply to non-civil proceedings, it does not apply to appellate division proceedings.</p>	<p>The committee appreciates this comment and will integrate the suggested reference into the report to the council.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	<p><i>Does the proposal appropriately address the state purpose?</i> Yes.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) and revising processes and procedures (please describe)?</i> Updating procedures and minute orders.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> No.</p> <p><i>Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	The committee appreciates the responses to the specific questions posed in the invitation to comment.
			<p><i>Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?</i> It would be more appropriate to locate the rule in Title 10 Judicial Administration.</p>	The committee agrees that it is more appropriate to locate the rule in title 10 (Judicial Administration). Although there is some advantage to locating the rule near rule 3.672 due to their similar subject matter, the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. In light of this, the committee recommends revising the location of the rule accordingly (see response to Comment no. 5, <i>supra</i>).

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
11.	Hon. Helen Williams Judge, Superior Court of Santa Clara County	A	It would seem that the proposed rule is not intended to cover appellate division oral arguments, which include limited civil cases and which are elsewhere covered at rule 8.885. These arguments occur in superior courts. This appellate division rule (which needs to be updated) allows oral argument by "videoconference" or for judges to appear/preside that way under certain circumstances. It might help to have a comment to the proposed rule [10.635] that expressly says it is not intended to cover appellate division arguments occurring in superior court.	<p>The committee thanks the commenter for the suggestion and agrees that the rule does not encompass appellate division oral arguments. Because the Appellate Advisory Committee is considering revisions to rules 8.885 and 8.929, which govern the use of remote proceedings in appellate division proceedings, the committee does not recommend adopting this modification.</p> <p>In order to clarify the rule’s scope, however, the committee will note in the report to the council that the rule does not impact appellate division proceedings (see response to Comment no. 9, <i>supra</i>).</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: May 1, 2024

Rules Committee action requested [Choose from drop down menu below]:
Submit to JC (without circulating for comment)

Title of proposal: Rules and Forms: Order for Debtor's Examination in Small Claims Cases

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Revise form SC-134

Committee or other entity submitting the proposal:
Judicial Council staff

Staff contact (name, phone and e-mail): Jenny Grantz, (415) 865-4394, jenny.grantz@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: Item 3: Develop form recommendations as appropriate. AB 1119, which goes into effect January 1, 2025, creates a separate set of requirements and a new procedure for judgment creditors to examine judgment debtors with consumer debt. This new procedure includes different notices than what currently appears on the council forms and requires that the Judicial Council create an additional financial affidavit form for the judgment debtor to serve on the judgment creditor in lieu of appearing for an examination.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Action must be taken out of cycle because the portion of AB 1119 implemented by this proposal took effect on January 1, 2024, so form SC-134 no longer reflects current law.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-034

For business meeting on May 17, 2024

Title

Rules and Forms: Order for Debtor's
Examination in Small Claims Cases

Rules, Forms, Standards, or Statutes Affected

Revise form SC-134

Recommended by

Judicial Council staff
Anne M. Ronan, Supervising Attorney
Legal Services

Agenda Item Type

Action Required

Effective Date

June 1, 2024

Date of Report

April 19, 2024

Contact

Jenny Grantz, 415-865-4394
jenny.grantz@jud.ca.gov

Executive Summary

Judicial Council staff recommend revising the instructions on one Judicial Council form to implement a statutory change made by Assembly Bill 1119 (Stats. 2023, ch. 562), enacted October 8, 2023. Revisions to the form will ensure that it conforms to existing law and avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective June 1, 2024, revise *Application and Order to Produce Statement of Assets and to Appear for Examination* (form SC-134) to reflect the revised deadline set in AB 1119 for service of an order for examination of a judgment debtor.

The proposed revised form is attached at pages 4–5.

Relevant Previous Council Action

Form SC-134 was adopted effective January 1, 1998, and has been revised by the council several times since then. The most recent revision, effective January 1, 2017, clarified the form's instructions for service and reorganized portions of the form to improve clarity and readability.

Analysis/Rationale

Judgments in small claims cases may be enforced under the same provisions applicable to all civil cases, including examination of judgment debtors.¹ Judgment creditors in small claims cases can use either *Application and Order for Appearance and Examination* (form AT-138/EJ-125) or *Application and Order to Produce Statement of Assets and to Appear for Examination* (form SC-134) to seek an examination of the judgment debtor.²

Prior law required a judgment creditor to serve a copy of an order to appear for a debtor's examination on the judgment debtor no less than 10 days before the date of the examination. AB 1119³ changes this deadline to 30 days for all judgment debtors.⁴ This change in law became effective on January 1, 2024.

This deadline is stated in item 4 on page 2 of form SC-134. Staff recommend changing "10 calendar days" to "30 calendar days" to reflect the requirements of AB 1119.⁵

Policy implications

The proposed revisions to the form implement an amended statute that changes the deadline for a judgment creditor to serve a judgment debtor with an order to appear for examination. Accordingly, the key policy implication is to ensure that this council form correctly reflects the law.

Comments

This proposal was not circulated for public comment because the changes are noncontroversial and directly implement a change in statute and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).) The Civil and Small Claims Advisory Committee will be asking to circulate other revisions to this form later this year as part of a proposal to implement other provisions in AB 1119, but the current changes are needed to ensure that the form is not stating incorrect law in the meantime.

Alternatives considered

The alternative of no action was not considered because, without the proposed revisions, the form does not reflect current law.

¹ Code Civ. Proc., § 116.820.

² Form SC-134 is also used to enforce the requirement in Code of Civil Procedure section 116.830 for the judgment debtor to complete *Judgment Debtor's Statement of Assets* (form SC-133).

³ See Link A.

⁴ Code Civ. Proc., § 708.110(d).

⁵ Form AT-138/EJ-125 has already been updated to reflect the new deadline. Judicial Council of Cal., Staff Rep., *Rules and Forms: Order for Debtor's Examination* (Feb. 15, 2024), <https://jcc.legistar.com/View.ashx?M=F&ID=12701049&GUID=532D0822-334E-4355-A9F1-84D3029C7798>.

Fiscal and Operational Impacts

Staff anticipate that this proposal will require courts to train court staff and judicial officers on the changes in law reflected in the revised form. Because the revisions reflect changes in statute, these operational impacts cannot be avoided.

Attachments and Links

1. Form SC-134, at pages 4–5
2. Link A: Assem. Bill 1119,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1119

DRAFT

FOR COURT USE ONLY

DRAFT

04/15/2024

NOT APPROVED

BY COUNCIL

PLAINTIFF/DEMANDANTE (name, address, and telephone number of each):

Telephone No.:

DEFENDANT/DEMANDADO (name, address, and telephone number of each):

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

**ORDER TO PRODUCE STATEMENT OF ASSETS
AND TO APPEAR FOR EXAMINATION**

1. TO JUDGMENT DEBTOR (name):
2. YOU ARE ORDERED
 - a. to pay the judgment and file proof of payment (a canceled check or money order or cash receipt, and a written declaration that shows full payment of the judgment, including postjudgment costs and interest) with the court before the hearing date shown in the box below, **OR**
 - b. to
 - (1) personally appear in this court on the date and time shown below, and
 - (2) bring with you a completed *Judgment Debtor's Statement of Assets* (form SC-133).

**Hearing
Date**

→ Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:

If you fail to appear and have not paid the judgment, including postjudgment costs and interest, a bench warrant may be issued for your arrest, you may be held in contempt of court, and you may be ordered to pay penalties.

Si usted no se presenta y no ha pagado el monto del fallo judicial, inclusive las costas e intereses posteriores al fallo, la corte puede expedir una orden de detencion contra usted, declararle en desacato y ordenar clue pague multas.

3. This order may be served by a sheriff, marshal, or registered process server.

Date: _____ _____
(SIGNATURE OF JUDGE)

APPLICATION FOR THIS ORDER

(See Instructions on reverse)

- A. Judgment creditor (the person who won the case) (name): _____ applies for an order requiring judgment debtor (the person or business who lost the case and owes money) (name): _____ to (1) pay the judgment or (2) personally appear in this court with a completed *Judgment Debtor's Statement of Assets* (form SC-133), explain why judgment debtor did not pay the judgment or complete and mail form SC-133 to judgment creditor within 30 days after the *Notice of Entry of Judgment* was mailed or handed to judgment debtor, and answer questions about judgment debtor's income and assets.
- B. I, judgment creditor, state the following:
- (1) Judgment debtor has not paid the judgment.
 - (2) Judgment debtor either did not file an appeal or the appeal has been dismissed or judgment debtor lost the appeal.
 - (3) Judgment debtor either did not file a motion to vacate or the motion to vacate has been denied.
 - (4) More than 30 days have passed since the *Notice of Entry of Judgment* was mailed or delivered to judgment debtor.
 - (5) I have not received a completed *Judgment Debtor's Statement of Assets* from judgment debtor.
 - (6) The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ _____
(TYPE OR PRINT NAME) (DECLARANT)

– The county provides small claims advisor services free of charge –

INSTRUCTIONS FOR APPLICANT

1. This form is intended to be an easy tool to enforce your right to receive a completed *Judgment Debtor's Statement of Assets* (form SC-133). This form is not intended to replace the *Application and Order for Appearance and Examination* (form EJ-125), often called an "Order for Examination." The *Application and Order for Appearance and Examination* should still be used to enforce a small claims judgment if you are not seeking at the same time to make the debtor complete a *Judgment Debtor's Statement of Assets*.
2. To set a hearing on an *Application and Order to Produce Statement of Assets and to Appear for Examination*, you must complete this form, present it to the court clerk, and pay the fee for an initial hearing date or a reset hearing date.
3. After you file this form, the clerk will set a hearing date, note the hearing date on the form, and return two copies or an original and one copy of the form to you.
4. If you want to be able to ask the court to enforce the order on the judgment debtor (the person or business who lost the case), you must have a copy of this form and a blank copy of the *Judgment Debtor's Statement of Assets* (form SC-133) personally served on the judgment debtor by a sheriff, marshal, or registered process server at least **30 calendar days** before the date of the hearing, and have a proof of service filed with the court. The law provides for a new fee if you reset the hearing.
5. If the judgment is paid, including all postjudgment costs and interest, you must immediately complete the *Acknowledgment of Satisfaction of Judgment* on the reverse of the *Notice of Entry of Judgment* (form SC-130) and file a copy with the court.
6. You must attend the hearing unless the judgment has been paid.



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation* (form MC-410). (Civil Code, § 54.8.)