



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.:* 22-072

For business meeting on January 21, 2022

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**Title**

Judicial Branch Administration: Emergency Rules on Juvenile Dependency and Juvenile Delinquency Proceedings

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, emergency rules 6 and 7

**Recommended by**

Hon. Marsha G. Slough, Chair, Executive and Planning Committee  
Hon. David M. Rubin, Chair, Judicial Branch Budget Committee and Litigation Management Committee  
Hon. Kyle S. Brodie, Chair, Technology Committee  
Hon. Marla O. Anderson, Chair, Legislation Committee  
Hon. Carin Fujisaki, Chair, Rules Committee

**Agenda Item Type**

Action Required

**Effective Date**

January 21, 2022

**Date of Report**

December 23, 2021

**Contact**

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### Executive Summary

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council amend California Rules of Court, emergency rules 6 and 7, effective January 21, 2022, by replacing references to emergency rule 3 and rule 5.531 with references to new Code of Civil Procedure section 367.75 and its implementing rule, rule 3.672. The amendment would conform both rules to recent changes in the law regarding remote civil proceedings, which will be governed by section 367.75 and rule 3.672, effective January 1, 2022, and is consistent with the recent amendment to emergency rule 3 that removed rule 3's application to civil cases and confirmed its application to criminal cases.

## **Recommendation**

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council, effective January 21, 2022, amend California Rules of Court, emergency rules 6 and 7 by replacing references to emergency rule 3 and rule 5.531 with references to Code of Civil Procedure section 367.75 and its implementing rule, rule 3.672.

The proposed amended rules are attached at page 5.

## **Relevant Previous Council Action**

The Judicial Council, on April 6, 2020, adopted 12 emergency rules to address the impact of the COVID-19 pandemic on California residents and the courts in an effort to help courts continue to carry out their constitutional mission while protecting the health and safety of court users, court employees, and judicial officers. Among these rules was emergency rule 3, which authorized courts to conduct judicial proceedings and court operations using remote technology, as well as emergency rules 6 and 7, which set out emergency procedures for juvenile dependency and juvenile delinquency proceedings, respectively. At its meeting on November 19, 2021, the council approved amendments to emergency rule 3 that removed civil proceedings from the scope of the rule and confirmed that the rule will continue to apply to criminal proceedings.

## **Analysis/Rationale**

Emergency rules 6 and 7 were drafted to provide juvenile courts with sufficient flexibility to conduct all necessary proceedings during the COVID-19 pandemic, and both rules authorize juvenile courts to hold remote proceedings subject to the provisions of emergency rule 3 that, at the time they were adopted, authorized courts to use technology to conduct judicial proceedings remotely in both civil and criminal cases.

Due to the success of remote proceedings during the pandemic and the improvement in access to justice, stakeholders and the Judicial Council urged the Legislature to enact a statute that authorizes courts to use remote technology to conduct civil proceedings. In response to these efforts, the Legislature enacted Code of Civil Procedure section 367.75<sup>1</sup> as part of Senate Bill 241 (Stats. 2021, ch. 214) (Link A). Section 367.75 authorizes the use of remote proceedings in all civil cases beginning January 1, 2022, and requires the Judicial Council to adopt rules of court to implement the statute. A proposed new rule and rule amendments implementing section 367.75 went into effect January 1, 2022, via Circulating Order CO-21-05, coinciding with the effective date of the new statute.

The Judicial Council adopted emergency rule 3 early in the COVID-19 pandemic when the Legislature was not in session and could not take the actions necessary to explicitly authorize the use of remote judicial proceedings. By enacting section 367.75, the Legislature has now addressed the circumstances under which courts can conduct remote proceedings in civil cases, including juvenile dependency and delinquency proceedings. Now that emergency rule 3 no longer applies to dependency or delinquency

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure unless otherwise noted.

proceedings, it is necessary to revise emergency rules 6 and 7 so that there is no ambiguity about the procedures that apply to remote proceedings in these cases.

The revisions to emergency rules 6 and 7 would simply replace “rule 5.531 and emergency rule 3” with “Code of Civil Procedure section 367.75 and rule 3.672.” With this change, courts would have the authority to hold remote proceedings in dependency and delinquency matters subject to the requirements of the new statute and rule.

### **Policy implications**

Amending emergency rules 6 and 7 to update the references to the authority to conduct proceedings via remote technology to reflect the recent change in the law furthers the council’s mission to improve the administration of justice and to increase access to justice.

### **Comments**

The proposal to amend emergency rules 6 and 7 was not circulated for public comment. The primary reason is that it conforms the rule to changes in law resulting from the enactment of section 367.75, which will now govern the use of remote technology for civil proceedings, including juvenile matters. In addition, given that section 367.75, rule 3.672, and amendments to emergency rule 3 are effective on January 1, 2022, it is vital to conform rules 6 and 7 expeditiously to avoid any confusion or ambiguity about the conduct of juvenile proceedings via remote technology.

### **Alternatives considered**

The internal committee chairs considered taking no action or, alternatively, repealing emergency rules 6 and 7 entirely. If there is no amendment to these rules, there would be ambiguity and confusion as to how to implement them with regard to proceedings via remote technology. Section 367.75 and rule 3.762 clearly apply to dependency and delinquency matters, and thus the references to emergency rule 3 in rules 6 and 7 can only cause confusion. If the rules were repealed entirely, other provisions in the rules that provide flexibility during the pandemic would be lost. Given the uncertainty about the duration of the pandemic emergency it is premature to repeal those rules.

### **Fiscal and Operational Impacts**

Any costs and operational impacts resulting from revising emergency rules 6 and 7 to reflect the application of section 367.75 as of January 1, 2022 (e.g., costs for training court staff and judicial officers) would be the result of the new statute, and not of this proposed amendment conforming the rules to the statute. Amending emergency rules 6 and 7 is unlikely to have any direct fiscal and operational impacts.

### **Attachments and Links**

1. Proposed Cal. Rules of Court, emergency rules 6 and 7, at page 4
2. Link A: Sen. Bill 241 (Stats. 2021, ch. 214),  
[https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB241](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB241)

Emergency rules 6 and 7 of the California Rules of Court are amended, effective January 21, 2022, to read:

1 **Emergency rule 6. Emergency orders: juvenile dependency proceedings**

2  
3 **(a)–(b) \*\*\***

4  
5 **(c) Foster care hearings and continuances during the state of emergency**

6  
7 (1) A court may hold any proceeding under this rule via remote technology  
8 consistent with ~~rule 5.531 and emergency rule 3~~ Code of Civil Procedure  
9 section 367.75 and rule 3.672.

10  
11 (2)–(7) \*\*\*

12  
13 **(d) \*\*\***

14  
15  
16 **Emergency rule 7. Emergency orders: juvenile delinquency proceedings**

17  
18 **(a)–(b) \*\*\***

19  
20 **(c) Proceedings with remote appearances during the state of emergency.**

21  
22 (1) A court may hold any proceeding under this rule via remote technology  
23 consistent with ~~rule 5.531 and emergency rule 3~~ Code of Civil Procedure  
24 section 367.75 and rule 3.672.

25  
26 (2)–(4) \*\*\*

27  
28 **(d)–(f) \*\*\***



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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-074*

For business meeting on January 21, 2022

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**Title**

Civil Practice and Procedure: Technical  
Changes to Civil Rules

**Agenda Item Type**

Action Required

**Effective Date**

January 21, 2022

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rules 3.722,  
3.1207, and 3.2226

**Date of Report**

January 4, 2022

**Recommended by**

Judicial Council staff  
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### Executive Summary

Judicial Council staff recommend amending rules 3.722, 3.1207, and 3.2226 of the California Rules of Court, effective January 21, 2022, to provide for appearances “remotely” rather than just “by telephone” and to change references to rule 3.670 to new rule 3.672. The amendments would make the rules consistent with recently adopted rule 3.672 and avoid confusion among court users, court staff, and judicial officers about which rule applies to civil remote appearances.

### Recommendation

Judicial Council staff recommend that the Judicial Council, effective January 21, 2022, amend California Rules of Court, rules 3.722, 3.1207, and 3.2226, to replace references to “by telephone” and rule 3.670 with references to “remotely” and rule 3.672, respectively.

The proposed amended rules are attached at pages 4–5.

## **Relevant Previous Council Action**

The Judicial Council recently adopted rule 3.672<sup>1</sup> to implement Code of Civil Procedure section 367.75,<sup>2</sup> a new statute that authorizes courts to conduct civil proceedings and parties to appear via remote technology, not limited to telephone. The new rule and several rule amendments—including the suspension of most of the procedures in rule 3.670, the rule regarding telephone appearances—went into effect January 1, 2022, via circulating order, coinciding with the effective date of the new statute.

## **Analysis/Rationale**

The rules proposed to be amended each require parties and/or their counsel to appear in person or “by telephone” at a particular civil proceeding: a case management conference (rule 3.722), an ex parte application determination (rule 3.1207), and an initial case management conference in a case under the California Environmental Quality Act that is receiving expedited review (rule 3.2226). Because, under new section 367.75, remote appearances in civil proceedings are not limited to telephone appearances but may be handled by videoconference as well, these rules are inconsistent with statute as of January 1, 2022. Amending the phrase “by telephone” with the broader term “remotely” will ensure that the rules conform to the new law. The notice provisions in new rule 3.672, along with recently adopted Remote Appearance forms, will apply to these proceedings.

In addition, rules 3.722 and 3.1207 each expressly refer to rule 3.670, the current telephone appearance rule. However, the subdivisions in that rule setting out procedures for notifying the court and other parties of the intent to appear remotely have been suspended, with new rule 3.672 governing in their place. Also, the form referenced in rule 3.670 has been revoked. Changing the references in rule 3.722 and 3.1207 will conform these rules with current law and avoid confusion among parties, court staff, and judicial officers.

## **Policy implications**

Amending the rules to update the references to appearances via remote technology to reflect the recent change in the law furthers the council’s mission to improve the administration of justice and to increase access to justice.

## **Comments**

This proposal was not circulated for public comment because the changes are minor substantive changes that are unlikely to create controversy and are therefore within the Judicial Council’s purview to adopt without circulation. (See rule 10.22(d)(2).)

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<sup>1</sup> This and all further rule references are to the California Rules of Court.

<sup>2</sup> See Link A. All further statutory references are to the Code of Civil Procedure.

### **Alternatives considered**

Because the changes are needed to ensure that the rules are consistent with the new statute and new and amended rules, no alternatives were considered.

### **Fiscal and Operational Impacts**

Any costs and operational impacts resulting from revising these rules to reflect the application of section 367.75 as of January 1, 2022 (e.g., costs for training court staff and judicial officers) would be the result of the statute and not of this proposed rule amendment. Amending these rules is unlikely to have any direct fiscal or operational impacts.

### **Attachments and Links**

1. Cal. Rules of Court, rules 3.722, 3.1207, and 3.2226, at pages 4–5
2. Link A: Code Civ. Proc., § 367.75:  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=367.75](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=367.75)

Rules 3.722, 3.1207, and 3.2226 of the California Rules of Court are amended, effective January 21, 2022, to read:

1 **Title 3. Civil**

2  
3 **Division 7. Civil Case Management**

4  
5 **Chapter 3. Case Management**

6  
7 **Rule 3.722. Case management conference**

8  
9 **(a)–(b) \* \* \***

10  
11 **(c) Preparation for the conference**

12  
13 At the conference, counsel for each party and each self-represented party must  
14 appear ~~by telephone or personally~~ in person or remotely as provided in rule ~~3.670~~  
15 3.672; must be familiar with the case; and must be prepared to discuss and commit  
16 to the party’s position on the issues listed in rules 3.724 and 3.727.

17  
18 **(d)–(e) \* \* \***

19  
20  
21 **Division 11. Law and Motion**

22  
23 **Chapter 4. Ex Parte Applications**

24  
25 **Rule 3.1207. Appearance requirements**

26  
27 An applicant for an ex parte order must appear, either in person or ~~by telephone~~ remotely  
28 under rule ~~3.670~~ 3.672, except in the following cases:

- 29  
30 (1) Applications to file a memorandum in excess of the applicable page limit;  
31  
32 (2) Applications for extensions of time to serve pleadings;  
33  
34 (3) Setting of hearing dates on alternative writs and orders to show cause; and  
35  
36 (4) Stipulations by the parties for an order.  
37  
38

39 **Division 22. Petitions Under the California Environmental Quality Act**



1           **Chapter 2. California Environmental Quality Act Proceedings Under Public**  
2           **Resources Code Sections 21168.6, 21178–21189.3, and 21189.50–21189.57**

3  
4           **Rule 3.2226. Initial case management conference**

5  
6           **(a)–(d) \* \* \***

7  
8           **(e) Preparation for the conference**

9  
10           At the conference, lead counsel for each party and each self-represented party must  
11           appear ~~by telephone or personally~~ in person or remotely, must be familiar with the  
12           case, and must be prepared to discuss and commit to the party’s position on the  
13           issues listed in (c).