

Family Law Issues Meeting

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FEBRUARY 24, 2019

1:55-3:30 P.M.

SACRAMENTO, CA



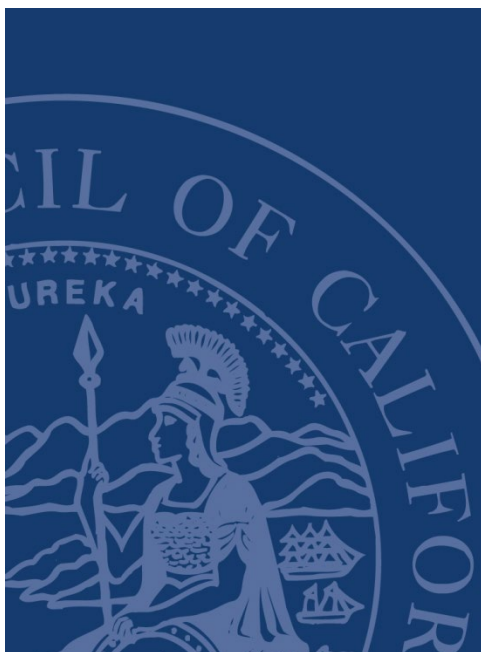
JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

Family Law Issues

Judicial Council, (Tower A)

- | | |
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| 1:55 – 2:15 p.m. | Joint Ad Hoc Subcommittee on Remote Video Appearances
<i>Andrea Jaramillo, Attorney, Legal Services</i> |
| 2:15 – 2:45 p.m. | Family Law Legislative Update
<i>Andi Liebenbaum, Attorney, Judicial Council Office of Governmental Affairs</i> |
| 2:45 - 3:30 p.m. | Setting Committee Priorities for 2020
<i>Hon. Mark A. Juhas, Cochair</i> |
| 3:30 – 4:00 p.m. | Reconvene as Full Committee for 2020 Priorities and Next Steps |



Remote Video Appearances for Most Noncriminal Hearings 2018–2019

WORKSTREAM PHASE 1 REPORT,
FINAL

NOVEMBER 20, 2019

The pages that follow are an excerpt and contain only the report's Executive Summary and section detailing the workstream's legislative and rule recommendations.

The full report is available online at:

<https://www.courts.ca.gov/documents/jctc-20191125-materials.pdf>



JUDICIAL COUNCIL
OF CALIFORNIA

TECHNOLOGY COMMITTEE

Executive Summary

The Remote Video Appearances Workstream (Workstream) was tasked by the Judicial Council’s Information Technology Advisory Committee (ITAC) with exploring possible implementation models for remote video appearance, investigating the issues and opportunities, hosting a mock implementation, and preparing for one or more pilot implementations in actual courtrooms for specific hearing types.

The Workstream’s efforts were informed by recommendations of the Commission on the Future of California’s Court System that the Judicial Branch press forward with remote video appearance for most noncriminal court proceedings.

“Technology can provide a less expensive and more effective way for parties and counsel to make court appearances. Statutes and rules of court currently permit granting a request for telephonic appearances at non-evidentiary hearings in most civil cases including unlawful detainer and probate matters, unless a court finds good cause to require a personal appearance. This rule should be expanded to include video appearance and to permit remote appearances at trials and evidentiary hearings in all civil tiers.”

(Commission on the Future of California’s Court System, *Report to the Chief Justice* (Apr. 2017), p. 24.)

Chief Justice Tani G. Cantil-Sakauye directed ITAC, and by extension the Workstream, to “consider, for presentation to the Judicial Council, the feasibility of and resource requirements for developing and implementing a pilot project to allow remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings” (Chief Justice Tani G. Cantil-Sakauye, mem. to Justice Douglas P. Miller, et al., “*Addressing the recommendations of the Commission on the Future of California’s Court System,*” May 17, 2017).

This report provides the Workstream’s analysis of the current state of video and digital appearances in California courts and makes recommendations to broaden adoption of this emerging model for court appearances. These recommendations focus on removing barriers broadly and to the benefit of all courts and court users, rather than on developing pilot projects.

In mid-2017, the Judicial Council of California awarded 53 grants to courts throughout California. These grants, authorized by the Budget Act of 2016, focused on a broad group of innovations, modernization, and efficiency in the California court system. Seven of these grants focused specifically on remote appearances, with some directly addressing criminal case types and others addressing noncriminal matters.

Since the innovation grant courts are actively implementing pilots, the Workstream purposefully solicited members from those courts to maximize information sharing and ensure that the Workstream could support those courts in their efforts.

The participation of members from the innovation grant courts proved extremely valuable in shaping and focusing the Workstream’s efforts. Early in the Workstream’s work, innovation grant court representatives reported no direct obstacles to their implementation efforts. With that information, the Workstream changed its focus to developing recommendations that can benefit all courts wanting to become early adopters of remote video appearances. The Workstream’s intent with the information in this report is to reduce the time between implementations of innovation grant courts and early-adopter courts.

Finally, the Workstream’s efforts did not include evaluation of juvenile delinquency or dependency proceedings. The unique nature of juvenile proceedings requires special attention and may require a completely different set of rules from those of other noncriminal proceedings. For that reason, the Workstream determined it best to leave these matters for future discussion.

Recommendations

The Workstream approached its work and the ultimate recommendations with the following key concepts in mind:

- Provide access to justice. Remote video appearance is an additional, optional mechanism.
- Preserve litigant rights. The use, or nonuse, of remote video appearances can neither benefit nor disadvantage one party over another.
- Ensure dignity and integrity of process. Remote appearances must retain a dignified and stable backdrop for the resolution of disputes.
- Don’t overcomplicate. Develop a relatively simple set of guidelines that would place a minimal burden on both the litigants and the court.

During the Workstream’s evaluation of the current state of video appearances, it became apparent that any recommendations should also ensure flexibility for early-adopter courts. The relative newness of these proceedings will necessitate iteration at the local court level. As such, recommendations for rules or legislation focused on ensuring the authority for courts to proceed while seeking to allow courts the ability to explore varied approaches, as the processes around the technology mature through experience. The Workstream has drafted potential rule and legislative changes for consideration by ITAC and other appropriate advisory committees as they continue this work. The Workstream does *not* anticipate that the recommended language would be adopted without further review and potential revision by those groups. Instead, the Workstream’s effort to draft language is intended to express the goals of the rule or legislative changes to the greatest extent possible.

The Workstream specifically makes the following recommendations:

- **Recommendation 1: ITAC should circulate through the normal process a recommendation that the Judicial Council pursue an amendment of Code of Civil Procedure section 367.5 to conform authorization for video and/or digital appearances to those made via telephone.**

As a start to supporting remote video or digital appearances, the Workstream recommends legislative changes to add these types of appearances to existing legislation for telephonic appearances. The Workstream believes that the provisions for remote video or digital appearance should generally parallel those for telephonic appearance, but should not create a presumptive authorization for video appearance, as exists for telephonic appearance during some types of hearings. Because of the infancy of the video appearance process, the Workstream prefers to leave the option to offer these types of appearances to the local jurisdiction.

- **Recommendation 2: ITAC should circulate through the normal process a recommendation that the Judicial Council pursue amendments to Code of Civil Procedure section 367.6 and Government Code section 72011, and the repeal of Government Code section 70630.**

Current law requires a court to charge a fee, established by the court, for any video appearance. The Workstream recommends conforming the fee structure for video appearances to those for telephonic appearances. Timing of this change is important to ensure that replacement legislation (Recommendation 1) and rules (Recommendations 3 and 4) are in place before the repeal.

- **Recommendation 3: ITAC should, in cooperation with appropriate advisory committees, develop a recommendation that the Judicial Council adopt a new rule of court, specific to video and digital appearances, that largely mirrors California Rules of Court, rule 3.670, regarding telephonic appearances.**

Existing rules provide guidance to courts and parties for telephonic appearances. The Workstream recommends a similar structure for a new rule specific to video and/or digital appearances. A separate rule is proposed to allow for a nuanced approach to evidentiary hearings—which are more appropriate for video or digital appearances than telephonic appearances—and variation in authorized case types.

- **Recommendation 4: ITAC should, in cooperation with appropriate advisory committees, seek amendment of California Rules of Court, rule 5.9, or any other related Rules of Court, to allow for video and digital appearances in family law proceedings.**

Current rule 5.9 allows for telephonic appearances in family law proceedings. The Workstream recommends a minor revision to allow for video or digital appearances in these case types.

- **Recommendation 5: ITAC should request that the Judicial Council, following appropriate vetting, adopt *Key Considerations Guide for Early Adopters of Video Appearances in California Courts*, included as Appendix A to this Phase 1 report, and ensure that a mechanism exists to make future revisions to the document as additional lessons are learned and to keep pace with technology changes.**

The Workstream recommends legislative and rule changes that make clear the authority for the courts to offer appearances by video or digital means. The Workstream, however, discussed other questions that are raised as courts approach a new method of access. The guide outlines key items for courts to address as they pursue local efforts. The guide is not a mandate, nor does it impose specific requirements on courts.

The Workstream’s recommendations for rule and legislative changes could move forward through existing ITAC subcommittees, in collaboration with other impacted advisory committees, without the need to maintain an additional Workstream infrastructure until the new rules and laws are in place and the first of the innovations grant courts has completed their work.

Report Structure

This final report provides the results of the Workstream’s Phase 1 work. Section 1 provides background information and key principles that guided the Workstream. Section 2 outlines the relevant legislative and rule-of-court foundation for the existing use of remote appearance and suggests the changes necessary to support broader adoption of this capability. Section 3 provides discussion regarding the procedural aspects of scheduling and conducting remote video appearance hearings. Section 4 focuses on the exploration of the technical aspect of remote video appearances and includes the technology recommendations of the Workstream. Section 5 looks to future next steps and further work required to fully define and implement remote video appearances across California’s courts. Finally, the Appendices

present a guide to key recommendations to assist early-adopter courts seeking to implement remote video appearance, expanded information on the mock hearings conducted by the Workstream and the original concept outlined by the Commission on the Future of California’s Court System, and the Workstream’s membership.

2.0 Legislative and Rule Considerations

Court hearings and related appearance by counsel and parties are conducted daily by telephone in courts throughout California. For limited and unlimited civil motions, rule 3.670 of the California Rules of Court is specifically intended to “promote uniformity,” allow parties to “appear by telephone,” and presumptively allow for telephonic appearances in certain circumstances. Legal authority for these appearances is well established in California Code of Civil Procedure section 367.5, which grants formal authority for telephonic appearances and states the Legislature’s stance that such telephonic remote appearance provides greater access to justice for parties.

The use of video or digital appearances is not clearly encouraged in statute and rule. Although the Legislature has granted the authority for use of video (see Gov. Code, § 70630), it has done so only through a code authorizing fees. In relevant part, Government Code section 70630 states: “If a court has made videoconferencing services available, the clerk of the court shall charge a reasonable fee to cover the cost of permitting parties to appear by videoconferencing.”

During the course of the Workstream’s efforts, concerns were raised by members and internal staff regarding the legality of telephone or video appearances for small claims cases in particular. The Workstream reviewed this issue, and although section 367.5 does not include small claims and some civil petitions (as defined) in the blanket authorization for telephonic appearance, it grants the Judicial Council broad authority to expand this authorization.

*“This section does not apply to any types of cases or types of conferences, hearings, and proceedings except those specified in subdivision (b). Consistent with its constitutional rulemaking authority, **the Judicial Council may by rule provide for the procedures and practices, and for the administration of, telephone appearances for all types of cases and matters not specified in subdivision (b).** For these other cases and matters, the Judicial Council may specify the types of cases and matters in which parties may appear by telephone, the types of cases and matters in which parties shall appear personally, the conditions under which a party may be permitted to appear by telephone, and any other rules governing telephone and personal appearances that are within its rulemaking authority.” (emphasis added)*
(Cal. Code Proc., § 367.5(e).)

Further, Government Code section 70630 does not provide a limitation on video appearances by case type and instead, on plain read, provides broad authority to the court to make video conferencing available. Individual courts would need to evaluate how to balance this generalized authority for video with the existing limitation on small claims cases for telephonic appearances. The following section presents the Workstream’s recommended branch-level approach.

Finally, video appearances are already authorized for title IV-D hearings per rule 5.324 of the California Rules of Court. Under that rule, *telephone appearance* is defined such that it includes appearances by “videoconferencing” (Cal. Rules of Court, rule 5.324(b)).

2.1 Workstream Approach to Legislative and Rule Changes

Consistent with the Workstream’s overall approach to the project, the preference was to keep legislative and rule changes to a minimum wherever possible. This approach was, in part, a response to the

recognition that early-adopter courts will need significant flexibility during initial testing and rollout of remote video appearances. Furthermore, the Workstream reviewed the existing rules pertaining to telephonic appearances and noted an approach that both allows for and requires local court variance in how telephonic appearances are held and recognizes the role of the judicial officer presiding over the proceeding to control for sound and demeanor, and to ensure that the rights of all parties are protected. The Workstream supports a nearly identical approach to appearances by video or other digital methods.

Exhibit 1 summarizes the topics considered by the Workstream for inclusion in a new rule and the ultimate decision on whether to recommend this rule. This exhibit does not address evidence submission, the way agreements are documented during proceedings, or potential fees for service, all of which are presented later in the report.

Exhibit 1: Video and Digital Appearance Rule Considerations

Topic	Workstream Consideration	Include in Rules of Court?	Include in “Key Considerations”?
Party and External User Technical Requirements	<p>The Workstream discussed whether local courts should be required to provide solutions that can be accessed by specific software or hardware in use by the public. The Workstream had experience across its membership with a variety of commercially available products and services providing remote video connectivity.</p> <p>Because the technology ecosystem conforms to one standard, similar to telephone standardization, a rule was not determined to be necessary.</p>	No	Yes
User Environment	<p>The Workstream considered whether specific rules should be developed regarding the physical location of the remote user, internet bandwidth requirements for that user, and/or whether to prohibit use of mobile phones.</p> <p>The Workstream decided that a general rule is needed to ensure the party can be seen and heard but that further details are unnecessary and would require frequent revision.</p> <p>In addition, the Workstream contemplated potential issues in cases where the remote party is in pro per or is participating in a small claims case.</p> <p>The Workstream recommends a rule requiring parties to affirm on the record that the party is not being provided assistance by anyone other than their attorney of record (where appropriate) or an interpreter. The definition of “assistance” should also be included.</p>	Yes	Yes
User Scheduling	<p>The Workstream discussed whether rules should be adopted to define how and when a user can schedule a video appearance.</p>	No	No

Topic	Workstream Consideration	Include in Rules of Court?	Include in “Key Considerations”?
	<p>The Workstream determined that this level of detail depends highly on the individual court and the hearings offered by that court. This level of variability does not lend itself to a rule of court.</p>		
Hearings Offered	<p>The Workstream discussed whether to define the specific hearings in which video appearance would be authorized.</p>	Yes	Yes
	<p>The Workstream determined that a two-fold approach would be appropriate. First, the California Rules of Court should authorize video consistent with the authorization for telephone and expand to clearly enable use of video in small claims, civil petitions not currently covered by the telephonic appearance rules, and family law. These expanded case types may not be appropriate for telephonic appearances in which the party cannot be seen or evidence presented. Video appearance provides enhanced abilities in these areas and can then expand the types of cases eligible for a remote appearance. Second, the rules should require local courts to post the types of hearings in which video appearances are allowed, consistent with the rules related to telephonic appearances.</p>		
Notice / Cut-Off Rules	<p>The Workstream had significant discussions regarding notice. Initial opinions differed on whether the opposing party should be provided notice. Arguments against such notice focused on potential delays to the court process and/or the need for additional judicial review before hearing. Arguments for such notice were more general in nature during the initial conversations.</p>	Yes	Yes
	<p>At present, the Workstream recommends notice to the court and the opposing party and a cutoff time frame for scheduling a video appearance. However, the Workstream also recommends that a good-cause basis be required for objection to video appearance. Future rules may be developed in this area after there is sufficient experience by the pilot courts.</p>		
Participants Allowed	<p>The Workstream discussed the types of participants who should be allowed to appear by video. The Workstream determined that anyone directly involved in the case (party, attorney, witness, interpreter, court reporter, etc.) should be allowed to appear by video.</p>	Yes	No
Identity Verification	<p>The Workstream discussed whether rules should specify how judicial officers or court staff verify the identity of a party appearing remotely. This item was deferred to the Identity Management Workstream. However, the consensus of the Workstream was that</p>	No	No

Topic	Workstream Consideration	Include in Rules of Court?	Include in “Key Considerations”?
	such rules are unnecessary and that judicial officers will verify identity for remote participants as they verify those appearing in person or on the telephone.		
Interpreter Guidelines	Specific topics related to provision of interpreters were deferred to the Video Remote Interpreting Pilot Workstream. However, the Remote Video Appearances Workstream saw no technical issues with connecting interpreters to the overall video appearance offerings.	No	Yes
Party View of the Hearing and/or Other Hearings	<p>The Workstream discussed the staging of multiple video hearings. For example, on a busy unlawful detainer calendar, should the parties in one case be allowed or prohibited from seeing the calendar proceedings that are being conducted by video ahead of them? The Workstream also considered whether rules should define how to organize calendars, specify queueing, and/or specify what precisely can be seen by and of the various participants during the hearing.</p> <p>The Workstream determined that rules pertaining to viewing need only include minimum requirements related to the ability to see and hear the participants. Local court technology capabilities will govern the number of cases that can be supported at any one time. The Workstream determined that rules that either require other case parties to or prohibit them from witnessing other cases on the same calendar were unnecessary.</p>	Yes to Ability to View and Hear Only	Yes
Facilitating Confidential Communication	<p>The Workstream discussed whether courts should be responsible for facilitating confidential communication between a party and its attorney or other representation.</p> <p>The Workstream determined that such a requirement on the court is neither necessary nor desirable. Appearance by video, as contemplated in this report, is not required of the party, and parties appearing by video would need to arrange with their counsel a reasonable way to communicate confidentially. This communication would likely occur via mobile phone.</p>	No	Yes
Facilitating Mediations	The Workstream determined that methods for providing mediation or other services offered by some courts before or after court hearings should be established at the local court level and not addressed in the rules of court.	No	Yes
Technical Requirements	This report includes discussion of minimum technical guidelines, which the Workstream recommends be included in the Key	No	Yes

Topic	Workstream Consideration	Include in Rules of Court?	Include in “Key Considerations”?
	Considerations document (Appendix A). The Workstream does not recommend the inclusion of technical requirements in the rules of court.		
Process for Recusals and Disqualifications	The Workstream discussed whether rules should define how to handle situations in which a judicial officer recuses himself or herself, or the parties seek a disqualification, on the day of a video appearance.	No	Yes
	The Workstream determined that recusals should be handled consistent with existing court practice and that each court, based on its technology capabilities and the availability of other judicial officers that day, should determine whether the matter should be continued, moved to a new courtroom, or otherwise addressed.		
Quality Control and Reporting	The Workstream discussed whether rules of court should include a reporting requirement for local courts using video appearances.	No	No
	The Workstream does not recommend such a rule.		
Record Capture	The Workstream does not recommend any special rules for the capture of the record in video hearings. Existing rules related to verbatim or electronic recording would apply. To be consistent with rules for telephonic appearances, rules related to video or digital appearances should include language similar to California Rules of Court, rule 3.670(o).	Yes	No

2.2 Legislative and Rule-Change Recommendations

The Workstream considered potential legislation or rules regarding authority, request process, type of technology, conduct during the hearing, training, and reporting. The Workstream has made an initial attempt at drafting specific language, but acknowledges that this language has not yet been reviewed by the appropriate Judicial Council internal committees or sent out for public comment. As such, the text of the proposals is—and should be—subject to further review before being introduced to the Legislature or recommended for final adoption by the Judicial Council. The Workstream has attempted to provide sufficient detail to convey the goal of the rule or legislative changes to facilitate the work of future committees.

Recommendation 1: ITAC should circulate through the normal process a recommendation that the Judicial Council pursue an amendment of Code of Civil Procedure section 367.5 to conform authorization for video and/or digital appearances to those made via telephone.

The Workstream recommends that ITAC pursue Judicial Council sponsorship of legislation to modify section 367.5 to expand its definition to include telephone, video, and digital appearances. Beyond adding

simple terminology to expand telephone options to include video and digital, the Workstream does not believe further revision to this section is necessary.

Specifically, the Workstream recommends the following amendments to section 367.5:

(a) It is the intent of this section to promote uniformity in the procedures and practices relating to telephone, video, or digital appearances in civil cases. To improve access to the courts and reduce litigation costs, courts should, to the extent feasible, permit parties to appear by telephone, video, or digital means at appropriate conferences, hearings, and proceedings in civil cases.

(b) * * *

(c) The court may require a party to appear in person at a hearing, conference, or proceeding listed in subdivision (b) if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

(d) Consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules effectuating the policies and provisions in this section by January 1, ~~2008~~ 2021, and may adopt rules relating to matters not covered by subdivision (a). The rules may prescribe, but are not limited to prescribing, the notice to be given by a party requesting a telephone, video, or digital appearance under subdivision (a);² the manner in which telephone, video, or digital appearances are to be conducted;² the conditions required for a party to be permitted to appear by telephone, video, or digital technology; and provisions relating to the courts' use of private vendors to provide ~~telephone~~ these services.

(e) This section does not apply to any types of cases or types of conferences, hearings, and proceedings except those specified in subdivision (b). Consistent with its constitutional rulemaking authority, the Judicial Council may by rule provide for the procedures and practices, and for the administration,² of telephone, video, or digital appearances for all types of cases and matters not specified in subdivision (b). For these other cases and matters, the Judicial Council may specify the types of cases and matters in which parties may appear by telephone, video, or digital technology;² the types of cases and matters in which parties shall appear personally;² the conditions under which a party may be permitted to appear by telephone, video, or digital technology;² and any other rules governing telephone, video, digital, and personal appearances that are within its rulemaking authority.

Recommendation 2: ITAC should circulate through the normal process a recommendation that the Judicial Council pursue amendments to Code of Civil Procedure section 367.6 and Government Code section 72011, and the repeal of Government Code section 70630.

ITAC should recommend amending Code of Civil Procedure section 367.6 to extend the authorized fee structure that exists for telephonic appearance to more broadly apply to all remote appearances. This amendment should be accomplished in conjunction with the repeal of Government Code section 70630 and the amendment of section 72011. The technology recommendations in section 4.2, below, provide consistency in fees and ensure that existing structures for telephonic appearances are not disrupted by the addition of video or digital appearances. Further, Government Code section 70630 does not allow for the retention of fees by either a vendor identified by a court or a court that provides video or digital

services directly. Repealing section 70630; ensuring that all telephone, video, and digital services have fees charged per Government Code section 72011; and implementing rules of court would result in more consistent fees across courts and deposits into the Trial Court Trust Fund.

Specifically, the Workstream recommends revisions to Code of Civil Procedure 367.7 and Government Code 72011 as follows:

Code Civ. Proc., § 367.6.

(a) On or before July 1, ~~2011~~ 2021, the Judicial Council shall establish statewide, uniform fees to be paid by a party for appearing by telephone, video, or digital means, which shall supersede any fees paid to vendors and courts under any previously existing agreements and procedures. The fees to be paid for telephone, video, or digital appearances shall include:

(1) A fee for providing the telephone, video, or digital appearance service pursuant to a timely request to the vendor or court.

(2) An additional fee for providing services if the request is made shortly before the hearing, as defined by the Judicial Council.

(3) A fee for canceling a telephone, video, or digital appearance request.

(b) If a party has received a waiver of fees pursuant to Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code, neither a vendor nor a court shall charge that party any of the fees authorized by this section, subject to the following:

(1) The vendor or court that provides the telephone, video, or digital appearance service shall have a lien, as provided by rule of court, on any judgment, including a judgment for costs, that the party may receive, in the amount of the fee that the party would have paid for the telephone, video, or digital appearance.

(2) If the vendor or court later receives a fee or a portion of a fee for appearance by telephone, video, or digital means that was previously waived, that fee shall be distributed consistent with Section 72011 of the Government Code.

(c) The fee described in this section shall be a recoverable cost under Section 1033.5 of the Code of Civil Procedure.

Gov. Code, § 72011.

(a) For each fee received for providing telephone, video, or digital appearance services, each vendor or court that provides for appearances by telephone, video, or digital means shall transmit twenty dollars (\$20) to the State Treasury for deposit in the Trial Court Trust Fund established pursuant to Section 68085. If the vendor or court receives a portion of the fee as authorized under paragraph (2) of subdivision (b) of Section 367.6 of the Code of Civil Procedure, the vendor or court shall transmit only the proportionate share of the amount required under this section. This section shall apply regardless of whether the Judicial Council has established the statewide uniform fee pursuant to Section 367.6 of the Code of Civil Procedure, or entered into one or more master agreements pursuant to Section 72010 of this code. This section shall not apply when a vendor or court does not receive a fee.

(b)—(e) * * *

Recommendation 3: ITAC should, in cooperation with appropriate advisory committees, develop a recommendation that the Judicial Council adopt a new rule of court, specific to video and digital appearances, that largely mirrors California Rules of Court, rule 3.670, regarding telephonic appearances.

The Workstream recommends that ITAC, with support and collaboration of other affected advisory committees, develop a new rule of court specifically dealing with video and digital appearances. The Workstream considered whether to recommend revisions to rule 3.670 rather than a new rule, but ultimately determined that there were sufficient nuanced differences to warrant a new rule. In part, these differences focus on the ability of video or digital appearances to better enable evidentiary hearings and hearings in case types that are not well suited for telephone because of the inability to see the speaker and evaluate demeanor or similar considerations.

Although the Workstream is not recommending rules in all areas investigated or discussed, it has communicated—in Appendix A: *Key Considerations Guide for Early Adopters of Video Appearances in California Courts*—important issues and considerations for courts as they embark on video appearances (see Recommendation 5).

Specifically, the Workstream recommends that ITAC work to adopt new rule 3.671, as follows:

Rule 3.671. Video and digital appearances

(a) Policy on video and digital appearances

The intent of this rule is to promote uniformity in the practices and procedures relating to remote video appearances in civil, probate, and family law cases. To improve access to the courts and reduce litigation costs, courts should permit parties, to the extent feasible, to appear by video or digital means at appropriate conferences, hearings, and proceedings in civil and family law cases.

(b) Application

This rule applies to proceedings in all general civil cases as defined in rule 1.6, and to unlawful detainer, small claims, family law, probate, and other civil petitions as defined in California Rules of Court, rule 1.6(5).

(c) General provision authorizing parties to appear by video or digital means

A court may authorize, as further described in this rule, matters to be heard by video or digital means. A court authorizing video or digital means must adopt a local rule that outlines the case types and/or types of conferences, hearings, and proceedings in which a video appearance may be allowed.

(d) *Saved for future use.*

(e) Required personal appearances

Except as permitted by the court under (f)(2), a personal appearance is required for the following persons:

- (1) Persons ordered to appear to show cause why sanctions should not be imposed for violation of a court order or a rule; or
- (2) Persons ordered to appear in an order or citation issued under the Probate Code.

At the proceedings described under (f)(2), parties who are not required to appear in person under this rule may appear by telephone.

(f) Court discretion to modify rule

- (1) *Court may require personal appearances*

Notwithstanding any local rule establishing video appearances, the court may require a party to appear in person at a hearing, conference, or proceeding if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the conduct of the proceedings or in the effective management or resolution of the particular case.

- (2) *Court may permit appearances by video or digital means*

The court may permit a party to appear by video or digital means at a hearing, conference, or proceeding under (e) if the court determines that such appearance is appropriate.

(g) Need for personal appearance

If, at any time during a hearing, conference, or proceeding conducted by video or digital means, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

(h) Notice by party

- (1) Unless a shorter period of time is specified by local court rule, a party seeking to appear by video or digital means, where allowed by local rule, must notify the court and opposing parties no less than 10 days before the court hearing of his/her/their intent to do so. Notice must be provided to the court under local court rule.
- (2) If a party that has given notice that he/she/they intend to appear by video or digital means under (1) subsequently chooses to appear in person, the party may appear in person.
- (3) A party may ask the court for leave to appear by video or digital means without the notice provided for under (1) or as otherwise defined in local rules. The court should permit the party to appear by video or digital means on a showing of good cause.

(i) Notice by court

The court must provide notice to all parties that a digital appearance has been set for all evidentiary hearings. Notice to all parties by the court is not required for non-evidentiary hearings.

After a party has requested a video or digital appearance under (h), if the court requires the personal appearance of the party, the court must give reasonable notice to all parties before the hearing and may continue the hearing, if necessary, to accommodate the personal appearance. The court may direct the court clerk, a court-appointed vendor, a party, or an attorney to provide the notification. In courts using a tentative ruling system for law-and-motion matters, court notification that parties must appear in person may be given as part of the court’s tentative ruling on a specific law-and-motion matter if that notification is given at least one court day before the hearing.

(j) Provision of video or digital appearance services

A court may provide for video or digital appearances only through one or more of the following methods:

- (1) An agreement with one or more vendors under a statewide master agreement or agreements; or
- (2) The direct provision by the court of video appearance services. If a court directly provides video appearance services, it must collect the remote appearance fees specified in (k), except as provided in (l) and (m). A judge may, at his or her discretion, waive remote appearance fees on a case-by-case basis for good cause.

(k) Video and digital appearance fee amounts

Fee amounts for parties making video or digital appearances, collectively referred to as remote appearance fees, must be charged, paid, and distributed in the same amount and manner as telephonic appearance fees as specified in California Rules of Court, rule 3.670.

(l) Fee waivers

(1) Effect of fee waiver

A party that has received a fee waiver must not be charged remote appearance fees provided under (k), subject to the provisions of Code of Civil Procedure section 367.6(b).

(2) Responsibility of requesting party

To obtain video or digital appearance services without payment of a remote appearance fee from a vendor or a court that provides video or digital appearance services, a party must advise the vendor or the court that he or she has received a fee waiver from the court. If a vendor requests it, the party must transmit a copy of the order granting the fee waiver to the vendor.

(3) Lien on judgment

If a party receives video or digital appearance services under this rule without payment of a fee based on a fee waiver, the vendor or court that provides the video or digital appearance services must have a lien on any judgment, including a judgment for costs, that the party may receive, in the amount of the fee that the party would have paid for the video or digital appearance. There is no charge for filing the lien.

(m) Title IV-D proceedings

(1) Court-provided video or digital appearance services

If a court provides video or digital appearance services in a proceeding for child or family support under title IV-D of the Social Security Act brought by or otherwise involving a local child support agency, the court must not charge a fee for those services.

(2) Vendor-provided video or digital appearance services

If a vendor provides video or digital appearance services in a proceeding for child or family support under title IV-D, the amount of the fee for a video or digital appearance under (k) is \$74 instead of \$94. No portion of the fee received by the vendor for a video or digital appearance under this subdivision is to be transmitted to the State Treasury under Government Code section 72011.

(3) Responsibility of requesting party

When a party in a title IV-D proceeding requests video or digital appearance services from a court or vendor, the party requesting the services must advise the court or vendor that the requester is a party in a proceeding for child or family support under title IV-D brought by or otherwise involving a local child support agency.

(4) Applicability of fee waivers

The fee waiver provisions in (l) apply to a request by a party in a title IV-D proceeding for video or digital appearance services from a vendor.

(n) Audibility and visibility of procedure

The court must ensure that the video or digital connection is sufficient to enable all parties to adequately view the parties, to the extent necessary for the type of proceedings; that the statements of participants are audible to all other participants and court staff; and that the statements made by a participant are identified as being made by that participant.

(o) Reporting

All proceedings involving video or digital appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

(p) Video or digital appearance vendor or vendors

A court may designate by local rule the digital appearance vendor or vendors that must be used for video or digital appearances.

(q) Information on video or digital appearances

The court must publish a notice describing the case types, hearing types, and trial types, if any, for which the court offers video or digital appearance. The notice must provide parties with the information necessary for them to appear by video or digital means at conferences, hearings, and proceedings in that court under this rule. The notice must include information on how parties are to submit and/or present evidence during a video or digital appearance at an evidentiary hearing.

(r) Party declarations specific to appearing by video or digital means

Parties making a video or digital appearance must declare under penalty of perjury (written or oral) that they are not being provided assistance by anyone in their testimony, statements, or presentation of evidence except for assistance provided by their attorney of record—unless in a small claims case in which no attorneys are permitted—or an interpreter. As used in this rule, “assistance” includes, but is not limited to, whispering to the parties, coaching, making hand gestures, and flashing words or pictures. Parties appearing by video or digital appearance must also declare under penalty of perjury (written or oral) that they are not recording or streaming and will not record or stream the proceedings.

(s) Prohibition from streaming, rebroadcasting, or recording proceedings

Parties are strictly prohibited from recording, streaming, rebroadcasting, or reproducing a video or digital appearance without the order of the court. Authorization must be accomplished under California Rules of Court, rule 1.150. Parties appearing by video or digital appearance must affirm under oath (written or oral) their acknowledgment of this section.

(t) Objections to remote video appearance

A party who has been notified that a video appearance has been requested in a proceeding may file an objection with the court no less than five days in advance of the hearing. The court may require a personal appearance by all parties on a showing of good cause.

Recommendation 4: ITAC should, in cooperation with appropriate advisory committees, seek amendment of California Rules of Court, rule 5.9, or any other related rules of court to allow for video and digital appearances in family law proceedings.

The Workstream recommends that ITAC, working with appropriate advisory committees, develop a formal recommendation to the Judicial Council to revise rule 5.9 to expand its application beyond telephone appearances to include video and digital appearances. This change is necessary to prevent conflict with the new rule of court proposed in Recommendation 3.

Proposed amendments to rule 5.9 follow:

Rule 5.9. Appearance by telephone, video, or digital means

(a) Application

This rule applies to all family law cases, except for actions for child support involving a local child support agency. Rule 5.324 governs telephone, video, and digital appearances in governmental child support cases.

(b) Telephone, video, and digital appearances

The court may permit a party to appear by telephone, video, or digital means at a hearing, conference, or proceeding if the court determines that a telephone, video, or digital appearance is appropriate.

(c) Need for personal appearance

(1) At its discretion, the court may require a party to appear in person at a hearing, conference, or proceeding if the court determines that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

(2) If, at any time during a hearing, conference, or proceeding conducted by telephone, video, or digital means, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

(d) Local rules

Courts may develop local rules to specify procedures regarding appearances by telephone, video, or digital means.

Recommendation 5: ITAC should request that the Judicial Council, following appropriate vetting, adopt *Key Considerations Guide for Early Adopters of Video Appearances in California Courts*, included as Appendix A to this Phase 1 report and ensure that a mechanism exists to make future revisions to the document as additional lessons are learned and to keep pace with technology changes.

As previously discussed, the Workstream had significant discussions about topics that are best addressed by local courts during their implementation of video or digital appearances. To support those courts in their efforts, and reduce the need for those courts to independently research the items reviewed by the Workstream, Appendix A provides the Workstream's thoughts on areas that courts should consider when implementing video appearances.

The Workstream further recommends that ITAC, with support from Judicial Council staff, periodically review and recommend updates to the document. Because of the relative infancy of video appearances on a wide scale in noncriminal matters, significant lessons that will necessitate updates to this early implementation guide are likely to be learned in the first few years.