



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

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ITAC: RULES & POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

July 2, 2019

12:10 PM – 1:30 PM

Teleconference

Subcommittee Members Present: Hon. Peter J. Siggins; Hon. Julie Culver; Hon. Louis R. Mauro; Hon. Kimberly Menninger; Mr. Darrell Parker

Subcommittee Members Absent: Hon. Samantha Jessner; Mr. Don Willenburg

Others Present: Ms. Fati Farmanfarmaian; Ms. Andrea Jaramillo

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:00 PM and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the January 22, 2019, Rules and Policy Subcommittee meeting.

There were no public comments for this meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1 – 4)

Item 1

Trial Court Rules and Statutes Revisions: Proposal to Amend the Penal Code Section 1203.01 (Action Required)

Review public comments and decide whether to recommend the Judicial Council sponsor legislation to amend Penal Code section 1203.01. The proposed amendments provide an electronic alternative to mailing certain statements and reports.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee
Ms. Andrea Jaramillo, Attorney II, Legal Services

Action: Justice Siggins reviewed comments received. San Diego court commented regarding paragraph C1 that it should be in writing or on the record that could be done from prison and not the court. Another item is on page 15 of the PDF materials, there will be some locations that it won't be feasible to send electronic and could entail more work. It's recommended not to change paragraph 2 as it addresses those situations.

Motion to recommend proposed amendments to Penal Code 1203.01 Information Technology Advisory Committee with the addition of “a written or on the record notification” in paragraph C1. Otherwise unmodified.

Approved.

Item 2

Trial Court Rules and Statutes Revisions: Proposal to Amend the Code of Civil Procedure Section 1010.6 (Action Required)

Review public comments and decide whether to recommend the Judicial Council sponsor legislation to amend Code of Civil Procedure section 1010.6. The proposed amendments allow courts to recover actual costs of permissive electronic filing and mandatory electronic filing by court order, just as they can with mandatory electronic filing by local rule, and clarify a provision for signatures made not under penalty of perjury to account for signatures of non-filers.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee
Ms. Andrea Jaramillo, Attorney II, Legal Services

Action: Justice Siggins reviewed comments. Rules of Court will be capitalized to refer to the California Rules of Court. There were no necessary comments or changes to the first item on page 35 of the PDF materials. Comments on page 36 of the materials were supportive, there were some confusion regarding fees the court will be collecting. A proposed change is: “the court may charge fees of no more than the court’s actual cost...”. Another change will be to reorder paragraph 7 before paragraphs 6 and then 8.

Motion to recommend proposed amendments to Code of Civil Procedure 1010.6 Information Technology Advisory Committee making clear in in 2(a) sub 2 that the person must have signed the document pursuant to the Rules of Court. Also, that he court may not charge fees of more than their actual costs and reordered paragraphs.

Approved.

Item 3

Trial Court Rules and Statutes Revisions: Proposed Amendments to the Electronic Filing and Service Rules (Action Required)

Review public comments and decide whether to recommend the Judicial Council approve amendments to the electronic filing and services rules. The proposed amendments to rule 2.251 clarify how notice of consent to electronic service is to be given and provide an advisory comment on consent language. The proposed amendments to rule 2.257 revise language on signatures of opposing parties, and make minor revisions consistent with Code of Civil Procedure section 1010.6.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee
Ms. Andrea Jaramillo, Attorney II, Legal Services

Action: Justice Siggins reviewed proposed amendments to rule 2.251 pertaining to electronic service. The objective of this rule is to comply with Code of Procedure section 1010.6 that a party must manifest consent by giving notice by agreeing to terms of service or filing a consent. There was some concern about the court having to accept and retain these notices, but the concern is more about rule 1010.6 and not this rule. Changes to rule 2.251 will be submitted as is. Clarification will be made to 2.251(b) to express an earlier change so the language tracks with rule 1010.6 at a future time.

Page 63 of PDF to rule 2.255 didn't have substantive changes. Rule 2.257 deals with documents signed under penalty of perjury. Language around when a declaration is invalid, if data is changed a signature may be invalidated by the court. Comments were not supportive of this change. One suggestion, to go back to the original language and place and advisory comment in its place. The advisory comment will be "The requirements for electronic signatures that are compliant with the rule do not impair the power of the court to resolve disputes about the validity of the signature".

Motion to recommend proposed amendments to Information Technology Advisory Committee regarding rule 2.251 and modify the proposed language in rule 2.257 and add an advisory comment.

Approved.

Item 4

Trial Court Rules and Statutes Revisions: Proposed Amendments to the Rules on Remote Access to Electronic Records (Action Required)

Review public comments and decide whether to recommend the Judicial Council approve amendments to the rules on remote access to electronic records. The proposed amendments to rule 2.540 add more clarity and additional local government entities.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee
Ms. Andrea Jaramillo, Attorney II, Legal Services

Action: Justice Siggins advised this change is to add public conservator and public administrator and there were no public comments regarding this change.

Motion to recommend proposed amendments to Information Technology Advisory Committee regarding rule 2.540 to add public conservator and public administrator.

Approved.

One informational item is to remove electronic standards for data from the annual agenda.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:45 PM.

Approved by the subcommittee on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

September 26, 2019

Action Requested

Please Review

To

Rules and Policy Subcommittee,
Information Technology Advisory Committee

Deadline

October 1, 2019

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Contact

Andrea L. Jaramillo
916-263-0991 phone
andrea.jaramillo@jud.ca.gov

Subject

Proposed Amendment to 2019 Annual
Agenda to Participate in a Joint Ad Hoc
Subcommittee to Work on Legislative and
Rule Proposals for Remote Video
Appearances

Background

In 2017, Chief Justice Tani G. Cantil-Sakauye directed the Information Technology Advisory Committee (ITAC) 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). To that end, ITAC formed the Remote Video Appearances Workstream, which analyzed the current state of video and digital appearances in California, and presented its final report to ITAC in August 2019.

In its final report, the workstream made several recommendations that ITAC accepted including amending the Code of Civil Procedure and California Rules of Court. (ITAC Remote Video Appearances Workstream, Remote Video Appearances for Most Noncriminal Hearings 2018–2019 (2019), pp. 12–24 (Final Report).) The workstream recommended that amendments to the California Rules of Court should be done “in cooperation with appropriate advisory committees.” (Final Report, p. 19.) ITAC approved the recommendations at its August 2019 meeting.

To support this work in 2020, ITAC staff have identified the following as the appropriate committees to work with:

- Civil and Small Claims Advisory Committee,
- Family and Juvenile Law Advisory Committee, and
- Probate and Mental Health Advisory Committee.

Recommendation

Staff recommend that the Rules and Policy Subcommittee recommend to ITAC an amendment to the 2019 ITAC annual agenda to authorize ITAC to participate in a joint ad hoc subcommittee with these committees to work on the Remote Video Appearances Workstream’s recommendations for both legislation and rules. Staff expect this work to begin in the fall of 2019 and carry over into 2021. The other committees have agreed to include this work on their annual agendas. ITAC anticipates the Rules and Projects Committee will consider the other committees’ annual agendas in late October 2019. If ITAC recommends that the Judicial Council Technology Committee (JCTC) approve the amendment, staff expect that the JCTC will consider the amendment also in late October 2019.

Rationale

The joint ad hoc subcommittee approach has worked effectively in the past when ITAC has worked in conjunction with other committees. Most recently, ITAC took this approach with the joint ad hoc subcommittee on remote access, which was made up of members from nine total committees. Using a joint ad hoc subcommittee ensures multiple subcommittees do not need to meet and coordinate on the same topic or try and resolve differing recommendations. At present, the proposed joint ad hoc subcommittee would still seek formal approvals through the four advisory committees whose members comprise it. However, this may be revised in the future to more streamline the process once the membership of the subcommittee is established.

In its final report, the Remote Video Appearances Workstream did not have specific legislative or rule recommendations to address digital evidence, but rather recommended that the

development of such policies should be in collaboration with appropriate advisory committees. (Final Report, p. 30.) At its August 2019 meeting, ITAC discussed the matter and determined that the next phase of remote video appearances work should also involve the Digital Evidence Workstream.

Because the joint ad hoc subcommittee would be working on policy on remote video appearances in evidentiary hearings, the topic of any needed changes to statutes or rules related to evidence may arise. ITAC staff recommend that the proposed joint ad hoc subcommittee on remote video appearances work cooperatively, when appropriate, where there is crossover between its work and the work of the Digital Evidence Workstream.¹ These two bodies could be resources for one another as their work relates to remote video appearances in civil proceedings. At least one member of ITAC staff would be both staffing the joint ad hoc subcommittee and serving as a member of the Digital Evidence Workstream. This should help avoid duplication of effort, and facilitate cooperation and sharing of knowledge.

Rules and Policy Subcommittee's Task

- Decide whether to recommend to ITAC the proposed amendment to the 2019 ITAC annual agenda to authorize ITAC to participate in a joint ad hoc subcommittee to develop rules and legislation for remote video appearances in civil proceedings; or
- Make an alternative recommendation to ITAC.

Attachments

1. Proposed amendment to the 2019 ITAC annual agenda, page 4.
2. Memorandum from Chief Justice Tani G. Cantil-Sakauye to Justice Douglas P. Miller, et al., May 2017, pages 5–7.
3. Remote Video Appearances Workstream Final Report, pages 8–64.

¹ The overall scope of the Digital Evidence Workstream is broader than civil proceedings and remote video appearances. Therefore, there will be matters, such as criminal proceedings, where it would not make sense for the workstream and joint ad hoc subcommittee to work together.

One-Time Project (Ending 2021)	
Remote Video Appearances in Civil Proceedings	<i>Priority 2¹</i>
<p>Project Summary: Develop legislative and rule proposals to further the recommendations of the Commission on the Future of California’s Court System (Futures Commission) relating to video remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings (pursuant to directive to ITAC from the Chief Justice).</p> <p>Key Objectives:</p> <ul style="list-style-type: none"> (a) Building on the recommendations of the Futures Commission and ITAC Remote Video Appearances Workstream, participate in a joint ad hoc subcommittee with Civil and Small Claims, Family and Juvenile Law, and Probate and Mental Health Advisory Committees to develop legislative and rule proposals to allow video remote appearances in most civil court proceedings. (b) Work cooperatively with the ITAC Digital Evidence Workstream, when needed. <p>Origin of Project: In April 2017, the Futures Commission recommended allowing remote video appearances at trials and evidentiary hearings in civil matters. In May 2017, the Chief Justice directed ITAC to consider feasibility and resource requirements for implementing pilot projects for remote video appearances. ITAC formed the Remote Video Appearances Workstream for this purpose, which issued its final report and recommendations to ITAC, including policy recommendations in August 2019.</p> <p>Status/Timeline: December 2021, effective by January 2022 (Anticipate that legislative proposal would go to the council in November 2020, and to the Legislature in 2021, with rule proposals to be developed concurrently.)</p> <p>Resources:</p> <ul style="list-style-type: none"> • <i>ITAC:</i> Joint Ad Hoc Subcommittee on Remote Video Appearances; Digital Evidence Workstream • <i>Judicial Council Staffing:</i> Information Technology, Legal Services, Center for Families, Children & the Courts, Governmental Affairs • <i>Collaborations:</i> Civil and Small Claims, Family and Juvenile Law, and Probate and Mental Health Advisory Committees; Digital Evidence Workstream 	

¹ For rules and forms proposals, the following priority levels apply: 1(a) urgently needed to conform to the law; 1(b) urgently needed to respond to a recent change in the law; 1(c) adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) useful, but not necessary, to implement statutory changes; 2(b) helpful in otherwise advancing Judicial Council goals and objectives.



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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

May 17, 2017

To: Hon. Douglas P. Miller, Chair, Executive and Planning Committee
Hon. Kenneth K. So, Chair, Policy Coordination and Liaison Committee
Hon. Harry E. Hull, Jr., Chair, Rules and Projects Committee
Hon. Marsha G. Slough, Chair, Technology Committee
Hon. David M. Rubin, Chair, Judicial Branch Budget Committee
Mr. Martin Hoshino, Administrative Director

Re: Addressing the recommendations of the Commission on the Future of
California's Court System

Dear Justice Miller, Judge So, Justice Hull, Justice Slough, Judge Rubin, and Mr. Hoshino:

On April 26, 2017, I received the final report of the Commission on the Future of California's Court System (Futures Commission). The report sets forth recommendations for legal and structural reforms for the judicial branch of government to improve access to justice and to better serve current and future generations of Californians.

My charge to the Futures Commission was to cast a wide net to capture and to explore transformative ideas for the judicial branch with due attention to the reality of what is both practical and achievable. I commend the commission members for successfully keeping to that charge in bringing forward recommendations addressing civil and small claims, criminal and traffic law and procedures, family and juvenile law, fiscal and administrative operations, and technology.

In April 2016, the commission delivered an interim report proposing a method to reallocate vacant judgeships to courts with the greatest workload needs. I referred this proposal to the Judicial Council for consideration. The council took prompt action to draft and sponsor proposed legislation that would authorize it to make such reallocations. The Governor has included a judgeship reallocation proposal in his 2017–2018 budget proposal, and the council is working with the Legislature and the Administration to move the proposal forward.

Now having reviewed and considered the commission's full report, I am directing Judicial Council action on its final recommendations.

Judicial Council Action on Recommendations

The recommendations in the final report are worthy of consideration and evaluation.

Implementation of certain proposals falls firmly within the purview of the judicial branch; others require the support of our sister branches of government and justice system partners and stakeholders. I recognize, however, that consideration must be given to how and when recommendations may be implemented relative to opportunity as well as resources. I am, therefore, directing immediate Judicial Council action on several of the recommendations as follows:

- ***Civil adjudication of minor traffic infractions.*** The Judicial Council's Traffic Advisory Committee, in collaboration with the Civil and Small Claims Advisory Committee, the Advisory Committee on Providing Access and Fairness, and the Criminal Law Advisory Committee, is directed to develop for Judicial Council consideration a proposal to implement and evaluate a civil model for adjudication of minor vehicle infractions. The proposal should include recommendations for statutory and rule changes as well as appropriate standardized processes to free up court and law enforcement resources and simplify procedures for defendants. Input on the proposal should be sought from law enforcement, the Department of Motor Vehicles, organizations representing the interests of low-income Californians, and other stakeholders. Further, the committee is directed to explore, evaluate, and recommend options for online processing for all phases of traffic infractions.
- ***Revision of civil case tiers and streamlined civil procedures.*** The Judicial Council's Civil and Small Claims Advisory Committee is directed to assess and make recommendations to the Judicial Council on advancing a legislative proposal for increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000, and creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000. Further, the committee is directed to propose for council consideration the streamlining of methods for litigating and managing all types of civil cases. The committee is directed to work with various bar groups and legal aid providers to ensure the fairness and equity of any proposal to modify existing jurisdictional amounts and civil procedures, in addition to working with trial court leadership to ensure the courts' ability to implement such changes.
- ***Assistance for self-represented litigants.*** The Judicial Council's Advisory Committee on Providing Access and Fairness is directed to develop a proposal for Judicial Council consideration of the structure, content, and resource requirements for an education program to aid the growing number of self-represented litigants (SRLs) in small claims and civil cases where SRLs are most common. This proposal should include options for improving access to local court-based assistance for SRLs. Further, in consultation with local and statewide self-help providers, Judicial Council staff is directed to develop a proposal to facilitate the provision of specialized state-level resources for SRLs. The proposal should rely to the extent feasible on existing resources and technology for the coordinated deployment of information, tools, and technical assistance for courts and justice system partners in their role as self-help providers.

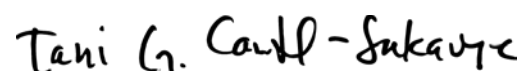
- ***Expansion of technology in the courts.*** The Judicial Council's Information Technology Advisory Committee is directed to consider, for presentation to the Judicial Council, the feasibility of and resource requirements for developing and implementing a pilot project to allow remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings. Further, the committee is directed to explore available technologies and make recommendations to the Judicial Council on the potential for a pilot project using voice-to-text language interpretation services at court filing and service counters and in self-help centers. Finally, the committee is directed to explore and make recommendations to the council on the potential for a pilot project using intelligent chat technology to provide information and self-help services. The committee should seek input for these efforts from pertinent council advisory committees and stakeholders. Where pilot projects are implemented, the committee is directed to report back on outcomes and make recommendations for statewide expansion.

I am requesting that each lead committee submit a status report on the assigned recommendations to its Judicial Council internal oversight committee at the end of the third quarter of 2017.

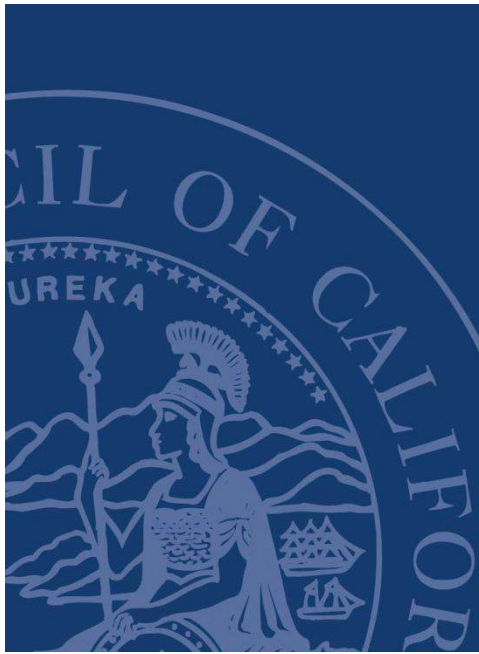
For the balance of the recommendations, I am directing the Executive and Planning Committee to make assignments to the appropriate council advisory committees for consideration. This should occur within the established annual agenda process for committees, taking into account current commitments and available resources.

The commission's report represents an important investment by the judicial branch in its future. It reflects the branch's openness to seek and receive input from the public and from stakeholder groups on how we can make our court system better. I look forward to timely progress by the Judicial Council in considering and acting on these assignments.

Sincerely,



Tani G. Cantil-Sakauye
Chief Justice of California and
Chair of the Judicial Council



Remote Video Appearances for Most Noncriminal Hearings 2018–2019

WORKSTREAM PHASE 1 REPORT,
FINAL

AUGUST 1, 2019



JUDICIAL COUNCIL
OF CALIFORNIA

TECHNOLOGY COMMITTEE

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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, 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.

- **Recommendation 6: ITAC should, in collaboration with appropriate advisory committees, seek, develop, or revise rules regarding digitized evidence for use in video or digital appearances.**

Rules pertaining to the presentation of evidence during a remote hearing will need to be developed as the process matures. Because of the infancy of the concept, the Workstream was unable to identify specific rules for adoption at present.

- **Recommendation 7: The Workstream recommends that ITAC undertake the necessary development to provide a simple, standard internet-based file-exchange service to facilitate the exchange of digital evidence between parties and the court, for courts implementing remote video appearance.**

The exchange of digital evidence before and/or during court hearings will be required for any court implementing remote video appearance. Although the required technology is not complex, it will need development and resources. ITAC could undertake this effort and provide the resulting service

for all courts, simplifying the implementation process for courts adopting remote video appearance, and providing consistency across venues for the parties.

- **Recommendation 8: Modify the Workstream’s Phase 2 work plan to focus on using the results of the innovations grant courts’ work as the basis for a production implementation for second-wave early-adopter courts. Revise the ITAC work plan to remove the tasks related to implementing a pilot, place the Remote Video Appearances Workstream on hiatus, and re-form the group after the work of the innovations grant courts is complete.**

The Workstream’s scope includes the implementation of pilot projects to evaluate various elements of remote video appearances. The innovations grant recipient courts are already serving in this role and are required to complete reports evaluating their results and, in some cases, produce guides to help other California courts implement their new service models. The Workstream recommends diverting from the original plan in which the Workstream and ITAC would sponsor the remote video appearance pilots. Instead, the Workstream recommends that the ITAC work plan for 2019 be updated to reflect a hiatus of the Workstream pending the completion of the first innovations grant evaluation report. At that time, the Workstream can be reformed to review the results of the innovations grant projects in this area, determine statewide cost estimates of expanding this service to all courts, and work with Judicial Council staff on statewide information materials to support the second round of early-adopter 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.

1.0 Introduction and Background

“In July of 2014, Chief Justice Tani G. Cantil-Sakauye established the Commission on the Future of California’s Court System (Futures Commission) to take an in-depth look at the way our trial courts are serving the people of California. The Futures Commission was asked to think creatively about how court operations could be improved and streamlined. [¶] California’s court system is the largest in the nation, serving a population of over 39 million. Every year, millions of Californians come to a courthouse, whether to serve as a juror, seek a restraining order, resolve a traffic citation, or litigate a case. What they encounter often differs little from what previous court users have experienced over the decades. Yet advances in technology, communications, and information processing all present opportunities for the judicial branch to give Californians greater, more efficient, and more responsive access to justice” (Commission on the Future of California’s Court System, *Report to the Chief Justice* (Apr. 2017), p. 1).

The Futures Commission sought practical ways to effectively adjudicate cases, achieve greater fiscal stability for the branch, and use technology to enhance the public’s access to its courts. One of the key recommendations included in the final report was to 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” (Futures Commission, *Report to the Chief Justice*, p. 24). The Futures Commission included a multipage discussion of the rationale and vision for this capability in its final report on pages 221–225 (see Appendix E). In summary, “[t]he Futures Commission believes that the option to attend court proceedings remotely should ultimately be available for all noncriminal case types and appearances, and for all witnesses, parties, and attorneys in courts across the state” (Futures Commission, *Report to the Chief Justice*, p. 222).

1.1 Directive from the Chief Justice and Formation of Workstream

After receiving the Futures Commission report, Chief Justice Cantil-Sakauye wrote, “The Judicial Council’s Information Technology Advisory Committee is directed 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).

ITAC undertook this charge and included the activity in its 2018 annual agenda and launched the Workstream on March 22, 2018. Its objectives were initially defined as a two-phase project. The following tasks were included in Phase 1 of the project:

- Identify and conduct a mock remote video hearing using a web conferencing system for a specific hearing type (e.g., civil–small claims) as a proof of concept in a court. Include one or more mock hearings of the selected hearing type.
- Capture learnings and report findings.
- Update Phase 2 of work plan based on results.

- Seek approval from ITAC and the Judicial Council Technology Committee to conclude Phase 1 and initiate Phase 2; amend the annual agenda accordingly.

Phase 2 was intended to serve as the formal pilot of remote video appearances. As initially conceived, this phase would have included the identification of pilot sites, preparation for the pilots, conduct of pilots, evaluation, and development of implementation and training guides for courts that followed the pilots.

1.2 Workstream Structure

The roster of Workstream members is included as Appendix D. The Workstream membership, chaired by Judge Samantha Jessner of the Los Angeles Superior Court, included participants from a diverse set of courts, including membership from the Video Remote Interpretation Pilot Workstream, and relevant Court Innovations Grant Program awardees.

During the course of its exploration, four subgroups were formed: Procedures, Evidence, Rules, and Technology. The subgroups met multiple times to develop initial recommendations on topics including user technical requirements, evidence exchange, and presentation rules.

1.3 Key Objectives and Concepts

The objectives and concepts discussed below formed the foundation for the Workstream’s exploration into remote video appearances.

Provide Access to Justice

Improved access to justice lies at the very heart of the remote video appearance initiative. California is a vast state with populations far from their nearest courthouse. Weather, mountainous terrain, vast distances, crushing traffic, and limited mobility can hinder or prevent litigants from making a traditional courtroom appearance. Our population is also increasingly familiar with remote video technology for training, services such as medical appointments, and social interaction. To improve access to justice, traditional in-person options must be preserved and expanded. Remote video appearance is seen as an additional, optional mechanism to provide more—and more convenient—access to our courts.

Preserve Litigant Rights

Preservation of litigant rights is inherent in the mission of the court. Although new tools and technologies may be available to many, not all litigants in California have the same experience, resources, and opportunity to access these enhanced capabilities. The use, or nonuse, of remote video appearance should neither benefit nor disadvantage one party over another. Litigants must retain their rights and opportunities to access their attorney, interpreter services, self-help, and other services.

Ensure Dignity and Integrity of Process

The courthouses and courtrooms of the California courts provide a dignified, respectful, and stable backdrop for the resolution of disputes. Maintaining the dignity and integrity of the process while providing remote video access from an unspecified and uncontrolled external location was an area explored by the Workstream in the course of its efforts.

Don’t Overcomplicate

The Workstream took care to develop a relatively simple set of guidelines that would place a minimal burden on both the litigants and the court. Although creating detailed, complex rules and rigid technology

solutions was an option, the Workstream focused on outlining broad guidelines that could be flexible over time and tailored to fit specific situations—erecting the fewest barriers possible for potential litigants.

1.4 Project Approach and Summary of Activities

The Workstream undertook its work through three primary steps: literature review, key issue identification, and mock hearings.

Literature Review

The Workstream explored the extent of research and current use of remote video appearance as an early part of the process. Use of remote video appearance between fixed points—commonly video arraignment between a courtroom and a jail, state prison, or mental health or other holding facility—has been extensive. California also has the necessary rules of court to support remote video appearance on infraction traffic cases, and such technology has been implemented in several courts. These statically positioned uses of video technology are well established in California and have been in use for more than 20 years.

There are also known implementations of remote video appearance for reviews of juvenile placements. Some of these hearings use commercial vendors to establish a link between a courtroom and a juvenile placement facility. These uses are characterized by having two fixed points of access. Equipment selection and networking between the two points can be explicitly specified and any deficiencies addressed. Exchange of evidence, waivers, or other materials can be specifically planned because the source and destination are well known and pre-established. The Workstream was also made aware of the use of remote video appearances in a small number of civil cases to facilitate witness testimony. Finally, at least one commercial service operating in California provides for the remote video appearance of attorneys in non-evidentiary civil and family law proceedings. This service is provided by the vendor as an enhancement to the vendor’s standard telephonic appearance service for a small additional fee, with the consent and assistance of the local court. These applications demonstrate the utility of video appearance and provide a strong foundation for even more flexible and widespread uses of the technology.

A literature search of the topic *remote video appearance* located several relevant publications:

- Center for Legal and Court Technology, Report to the Administrative Conference of the United States: Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings, www.acus.gov/sites/default/files/documents/Final_Best%2520Practices%2520Video%2520Hearings_11-03-14.pdf (as of May 21, 2019).
- Judicial Council of Cal., Advisory Com. Rep., *Video Remote Technology in California Courts: Survey and Findings* (Dec. 2014), www.courts.ca.gov/documents/02-ctac-20141205-materials-VRTsurveyandreport.pdf.
- National Association for Presiding Judges and Court Executive Officers, *Study of State Trial Courts Use of Remote Technology* (Apr. 2016), <http://napco4courtleaders.org/wp-content/uploads/2016/08/Emerging-Court-Technologies-9-27-Bridenback.pdf>.
- State Justice Institute, *Use of Telephonic and Video Conferencing Technology in Remote Court Appearances: A Supplemental Report to a State Justice Institute (SJI) Funded Project* (June 20, 2016), <https://www.ncsc.org/~media/Microsites/Files/Civil%20Justice/UseTelephonicVideoTechnology.ashx>.

- Self-Represented Litigation Network, *Remote Appearances of Parties, Attorneys and Witnesses: A Review of Current Court Rules and Practices* (Mar. 2017), www.srln.org/system/files/attachments/SRLN%20Remote%20Appearances%20Court%20Rules%20and%20Practices%20Report%204-2-17.pdf.

These publications were immensely valuable to the work of the Workstream because they raised and examined a broad range of issues on the topic of remote video appearance, encompassing many years of research.

Key Issue Identification

The Workstream effort was broken into four core areas: procedures, evidence, rules and legislation, and technology. A subcommittee was established to review issues by topic. The subcommittee identified the following issues:

- Procedures:
 - Participant scheduling
 - Process for documenting agreements
 - Video display during hearing
 - Facilitating of private discussions
 - Calendar management
- Evidence:
 - Evidence exchange and presentation
 - Facilitating of evidence exchange
- Rules and Legislation:
 - Participant environment at remote site
 - Allowing of hearings
 - Allowing of participants
 - Interpreter participation guidelines
 - Training program
 - Quality control
 - Record capture
 - Cost for remote appearance
- Technology:
 - Participant technical requirements at remote site
 - Evidence display during video appearance
 - Interpreter technical requirements
 - Signature-capture technology
 - Video displays in the courtroom
 - Technical guidelines for video connections

Mock Hearings

The mock hearings provided an opportunity to test the Workstream findings in a controlled, low-risk environment. The Superior Court of California, County of San Bernardino, is a Court Innovations Grant Program awardee with grants for two video appearance projects. The first grant project is the use of remote video appearance on traffic cases from one of its remote court locations into the Victorville

courthouse. As such, much of the in-courtroom video equipment required to host a remote video appearance hearing was already available. The second grant project is the provision of remote family law facilitator mediation to litigants in family law proceedings. This project provided the commercially available and readily usable video technology that allows anyone with a smart phone, personal computer, or other device to connect to a remote location. The Superior Court of San Bernardino County provided the technology from both innovations awards and hosted the mock hearings in the courtroom of Commissioner Susan Slater in the Victorville courthouse.

The two mock hearings consisted of a small claims case and a civil harassment hearing, scripted based on hearings originally held in the Superior Court of California, County of Placer. The small claims case had one remote party and one party in the courtroom and used electronic recording; in the civil harassment case, both parties were remote and a court reporter was used. The scripts for the two hearings and a full set of findings are included, respectively, as Appendixes B and C. Courtroom staff in San Bernardino conducted the hearing as they would any other. Workstream participants played the remainder of the roles in the mock hearing from their remote locations throughout California. The response from participants was overwhelmingly positive, with all participants reporting they were very satisfied (76.92 percent) or somewhat satisfied (23.08 percent) with the remote video appearance, 96 percent reporting that justice would have been served in the hearings, and 91 percent reporting that they would be likely to promote remote video appearance in their courtrooms. This survey was limited to those who participated in the event, all of whom were employees of a judicial branch entity. This was a proof-of-concept survey only and was not a large or diverse enough sample to make any final determinations. The survey was useful only to determine if the concept had a base level of viability.

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.</p> <p>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 such rules are unnecessary and that judicial officers will verify</p>	No	No

Topic	Workstream Consideration	Include in Rules of Court?	Include in “Key Considerations”?
	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 Considerations document (Appendix A). The Workstream does not	No	Yes

Topic	Workstream Consideration	Include in Rules of Court?	Include in “Key Considerations”?
	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. 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.	No	Yes
Quality Control and Reporting	The Workstream discussed whether rules of court should include a reporting requirement for local courts using video appearances. The Workstream does not recommend such a rule.	No	No
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, 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; 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; 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, ~~2014~~ 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, 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.

3.0 Procedural Considerations

The Workstream was specifically tasked with reviewing how video appearances could be used in evidentiary hearings. This directive expands the use of remote appearances beyond the more common telephonic appearances for procedural and motion hearings. The Workstream discussed the procedural implications on calendar management, evidence presentation and sharing, and ancillary services offered by some courts at the time of the hearing. This section provides a summary of those discussions and provides recommendations that are intended to further the judicial branch's efforts to implement video appearances.

3.1 Workstream Approach

The Workstream attempted to balance the need for branch-wide consistency against the autonomy and flexibility of local courts as they explore this new service model. That balance resulted in a focus on presenting the potential process and procedure challenges that courts may confront as they expand into video appearances and few recommendations for strict procedural rules.

The Workstream's approach also focused on video appearances as an option for litigants and assumed that no court will mandate appearance by video. This assumption is consistent with the existing rules for telephonic appearances. This optional nature was a key consideration as the Workstream evaluated potential prehearing and in-hearing impacts on litigants and witnesses.

Ultimately, the Workstream focused its attention on issues that could most affect litigant rights and severely affect calendar management and case resolution. These issues fall into three categories: evidence presentation, settlements and in-court document handling, and ancillary court services offered at the time of the hearing.

3.2 Evidence Presentation

The impact of remote video appearances in an evidentiary hearing may be best demonstrated in a small claims proceeding, which has no requirement for evidence exchange before the hearing. Instead, parties arrive at the hearing with their documents, pictures, or other evidence. At the start of the calendar, parties are instructed to exchange their evidence with the other party, and everyone quickly reviews what has been provided to them. The case is called and the parties provide their stacks of paper, pictures, or other evidence to the judicial officer. Some parties provide well-organized sets of documents. Others, given the informal nature of small claims proceedings and/or their lack of familiarity with the process, are less organized and require some level of clarification.

The Workstream considered how such an "on demand" delivery of evidence would be affected were one or more parties remote. With no rule to exchange evidence before the hearing, how do the parties see what the other has to offer? How does the court obtain the evidence from the remote party in a way that doesn't bring the court calendar to a standstill while the party is scanning documents or sharing photos?

This video-based evidence presentation scenario becomes less complicated the more complicated the case becomes. Rules and procedures for evidence are generally better understood or codified as the formality of the case moves from small claims to unlawful detainers to limited civil to unlimited civil. The higher-value cases tend to require more hearings, which also leads to greater organization as the case becomes clearer to all involved and the issues narrow for the evidentiary hearings. For these reasons, the

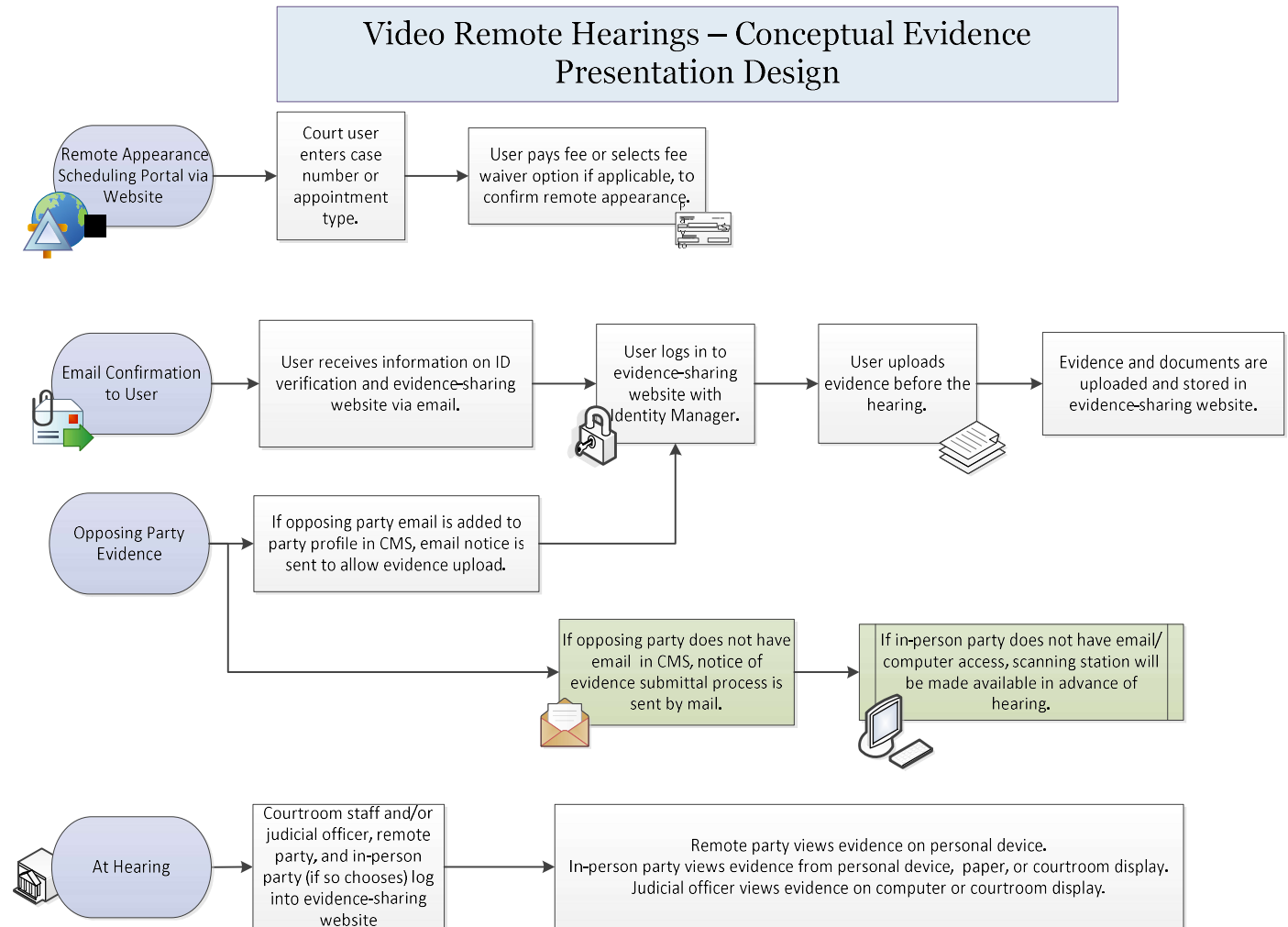
Workstream focused on the small claims case as the most complicated evidence-related case for video. Civil harassment hearings present similar challenges.

Workstream members initially disagreed about the court's need to facilitate evidence exchange to mitigate impacts on the parties and the court in video evidentiary hearings. The argument against facilitation centered around the concept that the parties are responsible for putting on their case and the court should not be directly involved in that process. Those in favor of court facilitation pointed out that it is in the court's interest to ensure that the matter is fully heard, court hearings move in a timely manner, and parties are able to present their cases without unnecessary hurdles and distractions.

Ultimately, the Workstream agreed that the introduction of video appearances necessitates court facilitation of evidence exchange before the video hearing.

Several Workstream participants are from courts working on video appearance solutions thanks to innovation grants from the Judicial Council (see exhibit 3). Collaborative discussions between those courts and their collective vendors has resulted in conceptual designs for evidence sharing. Exhibit 2, on the following page, provides a preliminary design of one such solution.

EXHIBIT 2: CONCEPTUAL DESIGN—EVIDENCE SHARING FOR REMOTE APPEARANCES



CMS = case management system

Source: Superior Court of California, County of Placer, *Video Appearance Project* (Jan. 2019), funded by the Judicial Council Court Innovations Grant Program.

The concept outlined in exhibit 2 then relies on the following steps (for a small claims case):

- Court user schedules a video appearance, based on case and hearing types authorized by the court.
- A folder is created in a secure document management system that can be accessed via the internet (SharePoint, Image Soft, etc.).
- The created folder is accessible only to the parties to the case and the court.

- Party logs into the evidence portal via authentication with the Judicial Branch Identity Manager.¹
- Party uploads its documents, photos, and other evidence. Naming conventions are to be clearly defined to help everyone identify evidence at the time of the hearing.
- Access to the uploaded information to view, add, modify, and delete is restricted to the party, or the party's delegate, until the time designated by the court.
- At a specified time, all evidence is locked and no further adds, deletes, or modifications can occur.
- At the appropriate time, following any necessary procedural due process, judicial officer reviews submitted evidence and identifies anything that should not be released or entered into evidence.²
- At a specified time, or on specific release by the court, the evidence is viewable to all parties.
- During the court hearing, the court may display evidence for all to see or refer to the specific file being discussed.

The steps outlined above have not been implemented as of the writing of this report. The process is still conceptual in nature, and the courts continue to evaluate any specific due process concerns and develop advisements, notices, and potential mitigation to concerns.

The conceptual process seeks to minimize disruptions during the court proceeding. This process does, however, require significant up-front work on the part of the remote party. It also creates the need for a party appearing *in person* for that hearing to digitize the party's evidence for the remote party.

The Workstream considered two policy and legal issues surrounding these requirements:

1. Can the Judicial Council and/or a court by rule require a party who has requested to appear remotely to submit their evidence at an earlier time frame than would be required if they appeared in person?
2. Can the Judicial Council and/or a court by rule require a party appearing in person—if the opposing party requested and is appearing remotely—to submit the party's evidence at an earlier time frame than would be required if all parties appeared in person?

The Workstream did not identify any authority that would prevent the Judicial Council from adopting a statewide rule or a trial court from adopting a local rule that would require parties to lodge exhibits with the court earlier than they would otherwise have been required to if a proceeding were to be held with one or both parties appearing remotely. The Judicial Council has the authority to make rules for court procedure as long as the rules are not inconsistent with statute (Cal. Const., art. VI, § 6(d)). Similarly, courts may make local rules for their own governance and to control proceedings before them in an orderly fashion as long as the local rules are not otherwise inconsistent with statutes, rules of court, or other law (Gov. Code, § 68070(a); *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967).

Many courts have existing local rules related to the submission of exhibits, for example:

¹ The Judicial Branch Identity Manager is currently being developed by the Superior Court of Los Angeles County, ITAC Identity Management Work Stream, and Judicial Council of California. Courts that move forward with video appearances before the completion of the Identity Manager would need some ability for user log in and authentication. The use case presented here is a potential end state.

² Court staff from the Superior Court of Placer County highlighted that this step is still under significant discussion. The specific mechanics of whether the opposing party sees all uploaded information before the judge's review is still under evaluation.

- Superior Court of Alameda County local rule 3.35(b): Index of exhibits in civil trial must be given to the courtroom clerk at the pretrial conference or on the first day of trial;
- Superior Court of Santa Clara County local rule 9D(2): Exhibit lists in civil matters must be lodged with the court by noon on the last court day before the date set for trial;
- Superior Court of San Francisco County local rule 11.13(C)(8): In family matters, where parties stipulate to documents or things to be admitted as evidence, the exhibits must be lodged with the court no later than five days before trial; and
- Superior Court of Fresno County local rule 3.6.3: In remote video traffic proceedings, exhibits should be submitted to the court either in person 5 court days before the trial or by mail 10 days before trial.

Based on the Workstream’s review, either the Judicial Council or a local court could establish rules defining when and how evidence must be provided to the court before a video appearance. Expedited civil jury trials present a limitation in that the court cannot require the parties to provide evidence more than 20 days in advance of the trial.

Requiring the party requesting the video appearance to upload information in advance would appear to be a reasonable tradeoff for the added convenience of the remote appearance. For a party appearing in person, however, there are non-legal considerations. Is this added burden fair to the party appearing in person? What if that party does not have the technological capability to perform the required tasks? Does this requirement place the party at a disadvantage?

The Workstream did not come to a conclusion on this topic. However, should courts decide to offer remote video appearance, they will likely need to provide self-help or other staff to assist litigants through the process of digitizing their records. Courts will need to consider adjusting calendar start times to allow non-remote parties time to digitize their records on the day of court. And additional staff and the purchase and installation of scanning centers for use by the public may be necessary to support this process.

Finally, the Workstream considered whether these digitized records create a potential evidentiary challenge. The primary question centers on whether the act of digitizing the evidence, assuming it was previously on paper, brings the digital replication into the “original writings” category for evidentiary purposes. New statutes have also clarified that a printout that faithfully represents electronically stored information is generally admissible. Whether going the opposite direction—digitizing a paper record—follows the same rules or rulings is unclear.

These issues may be addressed similarly to the handling of copies at trial. Existing rules govern the use of copies in lieu of originals, and the digitized copy could possibly fall under those same rules.

The Workstream did not undertake a full legal analysis, but rather raises these topics for further consideration.

In addition, the Workstream assumes that existing evidence retention and destruction rules would apply equally to remote appearances as they do to in-person appearances.

3.3 Procedural Recommendations

The Workstream offers one recommendation specific to procedural elements of remote video appearances.

Recommendation 6: ITAC should, in collaboration with appropriate advisory committees, seek, develop, or revise rules regarding digitized evidence for use in video or digital appearances.

The Workstream recommends that ITAC's Rules & Policy Subcommittee, in collaboration with subject matter advisory committees, develop a rule that addresses the issues of digitized records as evidence for remote or digital hearings. ITAC may want to consider developing a basic scheme of admission that could include the following:

- Some express or implied certification either that original documents exist, are in the parties' possession, and can be presented at a future hearing if there is a challenge to validity or that the party does not have an original but has duly digitized a copy.
- A requirement that the party present the item to the opposition, the court, and some witness for foundation and admission.
- A process for the parties to stipulate to the admission of the item without the need for witness foundation.

Recommendation 3, which includes a proposed rule of court for video or digital appearances, has language that requires a local court to provide information to litigants on how to upload their evidence. The proposed rule, if adopted, would ensure that courts consider these evidentiary issues before any formal resolution or form development specific to evidence.

3.4 Documenting Agreements

Remote appearances potentially complicate documenting stipulated agreements made by the parties on the day of the hearing. These agreements are typically either decided before the hearing or identified during the course of the hearing. The parties then document their agreement, typically off the record; sign the documents; and submit them to the court for filing and, potentially, disposition of the case.

The Workstream considered the impact on this process when one or both parties are appearing remotely. Although these issues are present today with telephonic appearances,³ the introduction of evidentiary hearings increases the potential impact of delay if agreements are not immediately documented by the parties.

The Workstream considered whether one party could provide the court with a copy of the agreement or stipulation (or other document) and the court, using the same tool as used for evidence presentation, could facilitate a handoff to the other party, or whether the court could send the document to the other party using a signature-capture solution.⁴

On review, the Workstream learned that rule 2.257 of the California Rules of Court, related to e-filing, would prevent this process from being implemented. When a document to be electronically filed requires the signatures of opposing parties, as would a stipulation, rule 2.257(d) requires the party filing the document to "obtain the signatures of all parties on a printed form of the document" (Cal. Rules of Court, rule 2.257(d)(1)). The filer is also required to "maintain the original, signed document and must make it available for inspection and copying" at the request of the court or another party (*id.*, rule 2.257(d)(2)).

³ The issue is likely to be more pronounced for video remote hearings, as proposed, because of the expansion into evidentiary hearings.

⁴ A master service agreement was recently established for use by all judicial branch entities.

Finally, by electronically filing, the filer “indicates that all parties have signed the document and that the filer has the signed original in his or her possession” (*id.*, rule 2.257(d)(3); see rule 2.257(b)(2) [stating that the filer “certifies” that he or she has the original signed document in the case of documents signed under penalty of perjury]).

The Workstream’s scenarios contemplate obtaining all signatures on stipulations while the parties are remote from one another. If one of the parties is an electronic filer, that filer will not have the printed form of the document signed by the other party in his or her possession at the time of filing.

The reliance on paper-and-ink signatures in rule 2.257 is an issue that the Information Technology Advisory Committee is already addressing through rule-making in 2019, along with a related legislative proposal to make the rules and statute more consistently aligned. If the Judicial Council adopts the proposed rule amendments this year, the new rule would allow an electronic filer to obtain electronic, rather than ink, signatures from opposing parties starting January 1, 2020, and this change would facilitate the filing of stipulations during remote video proceedings.

Given the work already underway by ITAC, the Workstream believes this issue will be resolved and will not present a problem for courts and parties moving forward. The Workstream does not make any specific recommendations in this area as a result but has included information for courts in the *Key Considerations* document in Appendix A.

3.5 In-Courtroom Services

The Workstream discussed the impact of remote appearances on the enhanced services that courts offer before or during a hearing, such as mediation services and same-day self-help services.⁵ The Workstream considered whether courts should be required to offer the same enhanced services to remote appearance users as are available to those present in court.

While this may be an aspirational goal, given the infancy of video and digital hearings for courts, the Workstream decided not to include requirements in this area. The Workstream acknowledged that this choice reduces some services available to remote participants but believes that this limitation is a necessary tradeoff for voluntary remote participation. Courts may want to monitor settlement rates for remote appearances to determine if there is a marked reduction after the introduction of video.

⁵ For the purposes of this discussion, interpreter services are not considered an “in-courtroom service.” The mandated nature of interpreters is seen by the Workstream as a core function that must be accommodated by the court and therefore is assumed to be provided whenever required.

4.0 Technical Considerations

The Workstream began its investigation of the technology requirements by examining the technologies already in use, including options being used by innovations grant courts and those found in the literature review. A separate inquiry was made to the Court Information Technology Officers Consortium, the organization representing court information technology leadership in courts across the country. This survey work resulted in a variety of potential solutions, encompassing: general commercial applications, purpose-built custom solutions for court use, and a number of service-provider options.

4.1 Workstream Approach and Key Technology Issues

Available Technology

A fundamental finding of the Workstream is that the technology exists today to support remote video appearance from a location that is convenient to the party and is not predesignated by the court. The investigatory process found examples of several widely available commercial services—including Skype, Zoom, WebEx, Blue Jeans, and FaceTime—already in use. Other robust video conferencing systems using Web Real-Time Communications (WebRTC) are also available to courts that desire a more customized solution. These services, with some limitation on the age of the device and operating system, allow anyone with a smartphone and an internet connection to connect to a court proceeding and appear remotely.

Product Agnostic

Initial discussions within the Workstream were that there may be a set of candidate solutions from which a court could select and that the Workstream could publish this recommended set of solutions. Over the course of the Workstream effort, this view changed as it became apparent that there were many potential solutions and courts could successfully select from a broad and expanding menu of options. The work and recommendations of the Workstream are therefore product agnostic and focus on the recommended technical capabilities for any solution to be successful.

Audio/Visual Integration Complexities

The Workstream saw integration with existing courtroom audio-visual systems as a potential barrier to the adoption of remote video appearance. Courtroom audio-visual systems are not standardized across the state—or even within counties and individual courthouses. Some courtrooms may have no audio-visual systems at all or only simple audio amplification systems. The diversity in these existing systems could necessitate their integration using a series of one-of-a-kind solutions, thereby increasing the complexity and failure rate of the required technology.

Fortunately, the Workstream determined through the course of its effort that the courtroom equipment for remote video appearance could be mobile and self-contained. The mock hearings demonstrated a mobile cart solution that included a computer and large video monitor. The audio and video qualities were similar to those of a party in the courtroom and easily audible to the judicial officer, electronic recording device, court reporter, opposing party, and courtroom audience. Some implementations of remote video appearance may benefit from integration with existing courtroom audio-visual systems; however, the Workstream determined that integration was not a requirement, and the lack of an existing courtroom audio-visual system was not a significant barrier for the implementation of remote video appearance. The number and types of these systems will become more apparent as the innovations grant courts complete their pilots and present their final reports.

4.2 Technology Recommendations

As the Workstream examined the current state of remote video technology and reviewed the work underway through the innovation grants, it became clear that the Workstream should focus on guidance and advice—rather than rigid rules or requirements—for early-adopter courts. This guidance has been summarized in Appendix A, *Key Considerations Guide for Early Adopters of Video Appearances in California Courts*.

Recommendation Not to Adopt Specific Technology as a Standard

The Workstream recommends against selecting a specific technology or product standard as the basis for remote video appearance. There are a variety of commercially available video-conferencing solutions that work on many different devices, including smart phones, personal computers, and tablets. Instead of specific technology or product recommendations, potential approaches to technological challenges are provided in Appendix A.

Recommendation to Adopt Requirements to Ensure Display of Multiple Camera Views and Inputs

The Workstream recommends that multiple cameras be addressed as an optional component of a remote video appearance implementation. There are advantages for multiple camera angles, principally one on the judicial officer and a second on the plaintiff/respondent area. The judicial camera angle is required, and the plaintiff/respondent camera allows both parties to be visible to each other, even when one is in the courtroom and the other is remote. If the hearing is evidentiary, then a court must have the capability to have the witness on camera. Whether this camera is the same as the one focused on the judge or a separate camera will be dictated by the size of the courtroom and the specific camera. Ultimately, a second camera is preferred but increases the complexity and cost of the implementation and should not become a requirement.

Signature Capability

As considered in section 3.4, some of the major products and services may provide a method of capturing signatures during a proceeding. However, the Workstream was concerned about the additional workload on courtroom staff who provide normal courtroom support and would have to facilitate the remote appearance. It appeared to the workstream that most signature capture was occurring outside the hearings so that shifting this workload to non-courtroom resources or, at minimum, to staff while they are not engaged in conducting the hearing may be possible. Questions remain regarding who would pay for electronic signature-capture services and how electronic signature capture would integrate with the various case management system platforms.

A competitively bid master agreement for electronic signature capture is now available. The Workstream recommends use of the selected solution where electronic signature capture is required.

Evidence-Sharing Solution

One of the more challenging topics for the Workstream, as discussed in section 3.2, was the court's role in facilitating the exchange of evidence between remote parties. The standard in-person hearing allows for the simple exchange and viewing of evidence, particularly in case types such as small claims. The introduction of remote video appearance requires a mechanism to replace the bailiff's handing papers to the other party. Although the Workstream was somewhat split as to whether the court should assist in evidence exchange, members agreed that a tool was required to fill this role. During the mock hearings, SharePoint was used to create a shared set of directories for each case, though any similar internet-based file-sharing service could have been used. The litigants and the court could see the images, documents,

and video placed in the shared directory. This service appears to offer a viable means of evidence exchange, though some development would be required to automate the creation of the directory structure, provide security for the litigants, and perform appropriate retention and destruction.

Recommendation 7: The Workstream recommends that ITAC undertake the necessary development to provide a simple, standard internet-based file-exchange service to facilitate the exchange of digital evidence between parties and the court, for courts implementing remote video appearance.

The exchange of digital evidence before and/or during court hearings will be required for any court implementing remote video appearance. Even though the required technology is not complex, the process will require some development and resources. ITAC could undertake this effort and provide the resulting service for all courts, simplifying the implementation process for courts adopting remote video appearance and providing consistency across venues for the parties.

5.0 Future Considerations

The Workstream's initial charge included a Phase 2 for the conduct and evaluation of the pilot project. During its Phase 1 work, which resulted in this report, the Workstream shifted focus to removing potential barriers to adoption of video appearances for all courts. This approach diverged, to a degree, from the Chief Justice's initial charge, reflecting the changing landscape of remote video appearance. 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.

The need for collaborative and non-duplicative work between this Workstream and the Court Innovations Grant Program was identified at the formation of the Workstream. Workstream participation was purposefully solicited from innovations grant recipients working on remote appearances to maximize information sharing and ensure that the Workstream could support those courts in their efforts. In this way, the Workstream combined its efforts with the already existing pilots, even though those pilots were not being managed specifically by ITAC or the Workstream.

The innovations grant courts are required to produce routine reports to the Court Innovations Grant Program, evaluate their results, and, in some cases, produce educational materials for use by other courts following the completion of their initial grant period. The Workstream thought that this structure was sufficient to support the early pilot programs in the remote appearance area.

This focus on information sharing shifted the Workstream's recommendations away from support for pilot courts—the local innovations grant courts reported no immediate obstacles to their work—and to recommendations that could benefit all courts looking to move ahead as early adopters of remote video appearances. By looking beyond the initial pilots, the Workstream's intent is to reduce the time between implementations of innovation grant courts and early-adopter courts.

The Workstream's Phase 1 work concentrated on identifying and recommending action to remove obstacles and barriers to court efforts in providing remote video appearances in most noncriminal proceedings. The recommendations outlined in this report, along with the guidelines documents included in the appendixes, may ultimately prove sufficient to enable the Chief Justice's vision of broad adoption of remote video appearances. Such broad adoption will be determined only following the work of the innovations grant recipients, listed in exhibit 3, working in this arena and perhaps the second round of courts that may follow.

EXHIBIT 3: COURTS WORKING ON REMOTE VIDEO APPEARANCE VIA JUDICIAL COUNCIL INNOVATIONS GRANTS

Location of Superior Court	Innovations Grant High-Level Scope
Butte County	Expand video-conferencing capability to support multisite self-help workshops.
Humboldt County	Establish video appearance capabilities with local mental health facility for Riese hearings.
Merced County	Establish point-to-point video capability to allow video appearances between the Los Banos courthouse and Merced court facilities.
Placer County	Establish a single software solution for use in mental health, criminal, civil, family law, and self-help that allows users to connect to the court from (nearly) any device. Grant expanded to include development of an evidence-sharing solution for remote video civil and family law hearings.
Sacramento County	Establish video appearance capabilities with seven mental health facilities for habeas corpus, Riese, and time-extension hearings.
San Bernardino (Project 1)	Establish video appearance capabilities for traffic and non-traffic proceedings, under existing rules of court, between courthouses in Victorville, Big Bear, Needles, and Barstow.
San Bernardino (Project 2)	Establish video capabilities for child custody recommending counseling sessions using commercially available software that enables parties to connect from nearly any device.

The innovations grant projects must be completed by June 2020, and each recipient is required to complete a final grant report with lessons learned and information on how their solution can be replicated in other California Courts.

Recommendation 8: Modify the Workstream’s Phase 2 work plan to focus on using the results of the innovations grant courts’ work as the basis for a production implementation for second-wave early-adopter courts. Revise the ITAC work plan to remove the tasks related to implementing a pilot, place the Remote Video Appearances Workstream on hiatus, and re-form the group after the work of the innovations grant courts is complete.

This report outlines immediate-term legislative and rule changes that are necessary to reduce the barriers and uncertainty of entry for early-adopter courts offering remote video appearances in most noncriminal proceedings. The Workstream did not identify outstanding topics or issues that would require its attention while the innovations grants courts, acting as a proxy for pilot courts, are completing their work. The Workstream’s recommendations for work on evidence-related rules can be efficiently and effectively handled in the existing ITAC structure, with the help of other advisory committees, as necessary, and the maintenance of the *Key Considerations* document can similarly be managed by ITAC with support from Judicial Council staff. Members of the Workstream remain on ITAC and can provide subject-matter support as needed without the need for the entire Workstream.

The Workstream acknowledges that the early-adopter courts will likely identify the need for more uniform forms, advisements, and declarations as they gain more experience. Further, the charge to develop cost

estimates for broad expansion of video appearances can best be developed using the output from the innovations grant courts.

For these reasons, the Workstream recommends a pause in its work until at least one of the innovations grant participants has completed its work. ITAC can then re-form the Remote Video Appearances Workstream to determine how best to convert the work of the innovations grant courts into a branch-wide effort and rollout.

Alternatively, ITAC could extend the Workstream's Phase 2 work plan over an additional year. The Workstream could use the balance of 2019 and all of 2020, up to the release of the first innovations grant report, to assist ITAC and other advisory committees in vetting and finalizing the legislation and rule proposals made in this report.

APPENDIX A: Key Considerations Guide for Early Adopters of Video Appearances in California Courts

Introduction

The provision of government services through the internet or remote digital means is no longer a novelty or surprising innovation. The public uses remote tools to perform daily tasks in their lives and expects government to be similarly accessible. For California courts, this reality presents new challenges as they adapt to the demands of the public while ensuring that the integrity and dignity of the court process is upheld and the rights of litigants in all cases are protected.

In 2017, the Commission on the Future of California’s Court System recommended the expansion of traditional remote telephonic appearances to include video or other digital appearances for all noncriminal case types. Chief Justice Tani G. Cantil-Sakauye responded in May 2017 by directing the Judicial Council’s Information Technology Advisory Committee (ITAC) to make recommendations in this area and support the development and implementation of pilot programs.

The Remote Video Appearances Workstream (Workstream), working under the direction of ITAC, began its work in 2018 and presented its Phase 1 report in Spring 2019.

This *Key Considerations Guide for Early Adopters of Video Appearances in California Courts* provides supplemental information to the report. The guide does not establish requirements for the provision of video or digital remote appearances. Instead, the guide is intended to simplify the implementation process for early-adopter courts by presenting a summary of key questions a court could or should consider when embarking on video appearances.

Legal Authority

As of June 2019, statutory and rule authority for remote video or digital appearances is provided through Government Code section 70630 and California Rules of Court, rule 5.324 (Telephone appearance in Title IV-D hearings and conferences).

The Workstream’s Phase 1 report, June 2019, includes initial recommendations for modifications to existing statutes and rules regarding video appearances. Before embarking on remote video or digital appearances, courts should determine the status of these recommendations and any rule or legislative changes made following the publication of this guide.

Key Considerations and Policy Guidelines

The information contained on the following pages summarizes the work of the Workstream’s review of various policy and process considerations. The information provided does not establish mandates for courts or present new requirements not otherwise outlined in statute or rule. This information is being presented to provide courts with practical information on how to approach key policy and process questions that need to be addressed when embarking on these types of appearances. The “Potential Approach” items are provided as one possible outcome as identified by ITAC’s Remote Video Appearances Workstream and are not binding on the Judicial Council or any individual trial court.

TECHNICAL CONSIDERATIONS FOR PARTIES

Topic	Key Questions	Potential Approach
Party and External User Technical Requirements	<p>What software or hardware will users need to access the court’s video or digital appearance system?</p> <p>How will the court user know he or she connects to the court?</p> <p>Are there minimum connection speeds?</p>	<p>Implement solutions that minimize the need for special software or hardware for accessing the remote video or digital appearances. Implementing systems that enable the remote user to appear using standard web browsers and hardware should be preferred.</p> <p>Publish the supported browsers and/or hardware on the court’s website and informational materials.</p> <p>Provide a mechanism for users to test their browsers before their hearings.</p>
User Environment When Connecting to the Hearing	<p>Is there a desire to limit the locations from which a party may connect?</p> <p>How will the court handle situations in which parties cannot hear or see?</p> <p>How will the court handle disruptions at the remote site?</p>	<p>Focus on the sound and video quality at the hearing rather than implementing detailed rules that may need frequent revision. The ultimate goal is to provide greater access while preserving the rights of the individuals or organizations and preserving the court process. The judicial officer hearing the case is likely in the best position to make a case-by-case evaluation and decision.</p> <p>Consider establishing clear rules and or instructions that inform the parties that poor sound or internet quality may result in a continuance and requirement to appear at an in-person hearing in the future.</p>

PRE-HEARING PROCESS CONSIDERATIONS

Topic	Key Questions	Potential Approach
Hearings Offered	<p>When and for what types of hearings are video/digital appearances available and allowed?</p> <p>Will these appearances be automatically granted in some circumstances?</p> <p>Will these appearances require preauthorization from a judicial officer?</p>	<p>Publish informational materials that outline where video/digital appearances are always allowed, if any, and where preapproval is required.</p> <p>Create forms to simplify the request process, if any.</p> <p>Consider proceeding unless a good cause basis is provided for an objection, ensure that there</p>

Notice Requirements	<p>Will the court require notice to the opposing party before authorizing a remote appearance?</p> <p>Will the court establish a cut-off time for scheduling to appear by video/digital means?</p>	<p>is a process for the non-requesting party to submit a timely objection to the court.</p> <p>Determine whether evidentiary hearings will be allowed remotely.</p> <p>Courts should consider mirroring telephonic appearance noticing requirements and timelines.</p> <p>Consider proceeding unless a good cause basis is provided for an objection, ensure that there is a process for the non-requesting party to submit a timely objection to the court.</p>
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EVIDENCE PRESENTATION CONSIDERATIONS

Topic	Key Questions	Potential Approach
Evidentiary Hearings	Will the court allow appearances in evidentiary hearings?	<p>Clearly define the types of hearings where video/digital appearance is allowed.</p> <p>Evaluate the court’s readiness for digital evidence presentation.</p> <p>Evaluate a support model for the non-requesting party. Determine whether the court will provide staffing and tools to support this process before the hearing (prior days, day of, or other).</p>
Evidence Sharing and Presentation	<p>How will the parties provide their evidence to each other and the court?</p> <p>Will the court facilitate evidence sharing?</p> <p>What will the court retain versus destroy and on what schedule?</p>	<p>Implement evidence-sharing tools that focus on the court process and not discovery.</p> <p>Develop support structures to assist in-person participants with digitizing their evidence before the hearing.</p> <p>Clearly define that evidence retention requirements match those submitted in traditional ways.</p> <p>Consider standard forms or advisements regarding retention of original documents and/or stipulation to review of evidence via digital methods.</p>

HEARING PROCESS CONSIDERATIONS

Topic	Key Questions	Potential Approach
Calendar Management	<p>Will video/digital hearings be heard at the same time as in-person hearings?</p> <p>Will video/digital hearing participants be able to see the matters before and after them?</p> <p>How will the court control pre- and post-hearing access remotely?</p>	<p>Consider separate calendars for video appearances during pilot programs. Integrate the matters into general calendars only when judicial officers and staff are comfortable with the technology.</p> <p>Consider whether remote participants can see and hear the courtroom before and after their appearance. If yes, ensure that the court’s solution allows full control to the court to mute, hide, or disconnect remote parties.</p>
Interpreters	<p>How will interpreters participate in the hearing?</p>	<p>Ensure mechanisms exist for interpreters to communicate with the remote party. See <i>Recommended Guidelines for Video Remote Interpreting (VRI) for Spoken Language-Interpreted Events</i> (Feb. 20, 2019) for more guidance.</p>
Facilitating Confidential Communication	<p>How will the court avoid delay when parties need to speak confidentially with their clients/attorneys/witnesses?</p>	<p>Include requirements that remote parties ensure they have means to communicate with counsel or witnesses, if any.</p>
Facilitating Mediations	<p>Will parties have access to supplemental services that are typically offered during the hearing or immediately following (e.g., mediation services or on-site self-help)?</p>	<p>Determine whether the court will offer identical services to remote participants.</p> <p>If not, clearly publicize the pros and cons of digital appearances to avoid confusion or frustration by the parties.</p>
Process for Recusals and Disqualifications	<p>How will the court handle same-day recusals or disqualifications?</p> <p>Will the court be able to hear the matter the same day?</p>	<p>Ensure that internal court processes are defined on how to handle same-day recusals. When possible, handle them in the same manner as they would be handled for in-person hearings.</p>

TRAINING CONSIDERATIONS

Topic	Key Questions	Potential Approach
Training Requirements	<p>Will the court provide training to remote parties?</p> <p>What training will court staff and judicial officers receive?</p>	<p>Consider publishing short videos to assist remote parties in understanding the process of how to connect and what will happen during their hearing.</p> <p>Develop training programs for judicial officers and court staff on how to use the technology and on the overall process.</p>
Technical Standards	<p>Are there relevant technical standards that implementing courts should observe?</p>	<p>The <i>Trial Court Facilities Standards(2011)</i>, Section 18: Audiovisual Systems, includes standards for audio visual systems in California courthouses.</p>
Internet Bandwidth Requirements	<p>Are there internet bandwidth requirements for hosting a remote video appearance?</p>	<p>Commercially available products recommend 1.5 to 3.0 megabytes per second of internet capacity to host a videoconferencing session. This capacity does not depend on the number of participants because the service combines all the video streams before transmitting the video to the court. However, use of a second camera location to display the counsel table can double the requirement because a second computer is acting as a separate participant in the courtroom.</p>

APPENDIX B: Mock Hearing Scripts

The Remote Video Appearance Workstream prepared mock scripts for two hearing types: a small claims case and a civil harassment case. These scripts were prepared after observation of real cases, modified to shorten the hearing and to remove any reference to the actual case participants.

Each script is provided below in its entirety.

Small Claims

Cast

- Clerk—San Bernardino staff
- Bailiff—San Bernardino staff
- Judicial officer (JO)—San Bernardino staff
- Petitioner—San Bernardino staff
- Respondent—*Remote* participant

This case type used digital recording in use (San Bernardino)

Clerk: Have all parties examined the evidence on SharePoint? If not, please do so now. The link is in your materials.

Brief pause.

Clerk performs roll call of all parties and mass swearing in.

Judicial officer enters courtroom.

Bailiff: Court is now in session. Please stand for pledge.

All: Pledge of Allegiance

JO calls case about defective car being sold.

Petitioner and respondent appear on video.

JO: Mr. Petitioner, please share your request.

Petitioner reads letter listing grievances.

Petitioner: I saw the Honda Civic advertised on Craigslist and messaged Mr. Respondent to come look at the vehicle. My daughter came with me to test drive the vehicle. We asked if anything was wrong with it and he said it was running great and nothing was wrong. We drove the car and it drove well. I purchased the vehicle for \$3,000 and gave it to my daughter to drive. Three weeks later it began acting up and overheating. I took it to a mechanic and he said the engine block was cracked and it was leaking coolant. I paid for two mechanics to look at the vehicle, and I have the bills and diagnosis I can show you. Do you want to see them?

JO says yes and asks what they are named in SharePoint. He continues speaking.

Petitioner: This vehicle is still parked at my house and I want it gone. I want my money back and I want him to pay for the mechanics' bills. I spent \$400 on this car to find out what's wrong.

JO: Thank you. Mr. Respondent, please share your response.

Respondent: I sold my Honda Civic to Mr. Petitioner three months ago and it was running very well. I drove it all over with my grandkids in the back. I took it to a mechanic about four months ago and because it was leaking coolant and he sealed the crack in the coolant system and I continued to drive the car. There were no issues when I sold it because the mechanic fixed the leak.

JO: Do you have evidence in SharePoint you would like to share with the court?

Respondent: Yes, it's *Civic Repair 1*.

JO: Did you notify Mr. Petitioner of the repair you had done at the time of the sale?

Respondent: No, because it was fixed and it wasn't the engine block, it was the coolant system. I sold it as is.

Petitioner: My mechanics said it was a crack in the engine block.

JO reviews evidence from both parties.

JO: I'm not a mechanic but sellers are obligated to disclose significant facts about the car such as a cracked engine block or a leaking coolant system to a potential buyer. I am granting the request for damages and the money shall be returned.

Petitioner: The car is still in my yard. I want the car gone.

JO: The car will be returned to Mr. Respondent.

Respondent: Where am I supposed to put the car? I don't have any way to get the car. I just moved to a retirement home. There is no place to put the vehicle. I am on a fixed income and I don't have any cash.

JO: I am simply undoing the sale and making it like it never happened.

Petitioner: Can mechanic costs and gas and storage fees can be recouped? I spent money on this car.

JO: I will undo the sale of the vehicle: \$3,000 must be returned to the petitioner, and the vehicle will be returned to Mr. Respondent. You have 30 days to comply with the order.

Clerk: We will e-mail the signed order.

Civil Harassment

Cast

- Clerk—San Bernardino staff
- Bailiff—San Bernardino staff
- Judicial officer—San Bernardino staff
- Court reporter—San Bernardino staff
- Petitioner—*Remote* location 1 (Los Angeles)
- Respondent—*Remote* location 2 (Placer)
- Respondent's attorney—Location 3 (San Francisco)

Bailiff: Remain seated and come to order. The court is now in session.

Judge calls case.

Parties appear on video.

JO: Please stand to be sworn in.

Clerk swears in parties.

JO: *Explaining status of case:* This order was previously granted as a TRO. Each party will have a chance to say their piece, then be cross-examined by the opposing party. Mr. Petitioner, tell me why you need this restraining order against Mr. Respondent.

Petitioner: He is always getting in my face and taking my picture. He set up game cameras all over the property, even by the swimming hole, and he is capturing images of my grandchildren skinny-dipping. He flew a drone over my property on the 7th of July, and my wife and grandkids saw it, too. There is proof. He filed a restraining order on me right before deer hunting season and took all my guns away to hurt my business. He cost me \$1,500. He knows it's my business.

JO listens and looks at case documents in SharePoint and asks about an existing criminal case.

Petitioner: It's about to be over tomorrow. The public defender told me to file this restraining order because Mr. Respondent showed officers an old video to try to get me arrested. Then he filed another restraining order just at the start of duck season so I couldn't have any of my guns for hunting. He's always getting up in my face. I go off on him. How much can a man take?

JO: Which restraining order are you talking about?

Petitioner: They filed one right before deer season and had all my guns taken away and then they filed another one to be malicious. It cost me my business for both hunting seasons. There was a mountain lion on my property and I had nothing to protect my family with. Why do they need two restraining orders?

JO: Clerk, can we look up the criminal case? Mr. Petitioner, do you have anything else?

Petitioner: That's all; I just want him to leave me alone.

Respondent's attorney begins cross-examination by going through each claim on the restraining order request.

Attorney: You say here that Mr. Respondent flew his drone over your property on July 7th. Do you have proof?

Petitioner: Yes, my wife and grandkids all saw it. We were outside, and they said "what's that?" Then I saw it land in the road by Mr. Respondent's son.

Attorney: You say here that Mr. Respondent tried to run you over by the mailbox while filming you. When did that occur?

Petitioner: It was probably in May; I don't have the date.

Attorney: This says May 2016.

Petitioner: I don't have the exact date.

Attorney: Mr. Respondent bought the property in 2017.

Petitioner: Then that's the year. It's a mistake. But he tried to run me over at the mailbox with his camera all in my face antagonizing me. I don't like my picture being taken; my wife will tell you that.

Attorney: You said he tried to get you arrested with an old video. Did you see the video?

Petitioner: No! I haven't seen any of the videos. But they told me, and that one was from before. They didn't let me say anything; they just came over and arrested me. There are sheriff records.

JO: Let's hold on for a moment because it seems like this other case might be open.

Attorney: Yes, that's fine, I will take a different approach to questioning to avoid the criminal matter.

Clerk: The criminal case is set for an early status conference, and a criminal protective order has been issued.

JO: Mr. Petitioner, this case is not nearly over. The restraining orders against you were filed by the district attorney, not Mr. Respondent. Do you understand?

Attorney: Okay, did you sell the property to Mr. Respondent?

Petitioner: Yes, Mr. Respondent bought the property from me and was supposed to provide an easement but didn't and then didn't give back any of the money. He knew we needed the easement to get to the other 10 acres. He got it for dirt cheap and reneged on the deal. He should just stay in the city if he doesn't like the way the country is.

Attorney: Okay.

JO: Are you finished with questions? *Attorney is.* Is there anything else you want to add, Mr. Petitioner?

Mr. Petitioner: No.

Attorney begins to ask respondent questions and refers JO to specific exhibits in SharePoint.

Attorney: Do you own a drone?

Respondent: No.

Attorney: Does your son own a drone?

Respondent: No.

Attorney: Did you fly a drone on July 7th, 2018?

Respondent: No, I hired a company to take aerial photographs of my property as I make progress towards cleaning it up. They have specific instructions to only take photographs of my property. I have receipts for each of the times they have come, and I believe it was in February, April, and August this year.

Attorney: Did you purchase the property from Mr. Petitioner.

Respondent: No, I bought it from Mr. so and so.

Petitioner interjects: My partner.

Attorney: Have you ever filmed or taken pictures of Mr. Petitioner?

Respondent: Yes, at the instruction of law enforcement. I have body cameras that I wear at all times on the property and keep multiple batteries. I have never started filming Mr. Petitioner prior to him acting up. It is a very big burden to be on high alert all the time on my property.

Petitioner interjects: He's lying.

Attorney: That's all my questions.

Respondent: Can I make a statement to the court?

Attorney confers and confirms.

Respondent: I bought this property with my wife as a retirement investment. We wanted a peaceful place to live, and my retirement has been destroyed by this conflict with Mr. Petitioner. We do not feel safe on the property.

JO: Thank you.

Attorney: I have one more question. Would the restraining order have other impacts on Mr. Respondent?

Respondent: Yes, I must maintain a security clearance for work. It is checked frequently as I often inspect defense equipment. Without it I would be unable to support my family.

JO: Mr. Petitioner, do you have questions for Mr. Respondent?

Petitioner: No.

JO reviews testimony for both parties out loud.

Petitioner interrupts: Not true.

Bailiff: Mr. Petitioner!

JO continues: This is a bad situation to have between neighbors, and you should simply leave each other alone. I always believe both parties, but I think there are misunderstandings. I hope you can find a peaceful resolution by leaving one another alone. I will not grant the restraining order due to the burden of proof not being met by the petitioner.

Attorney: Thank you.

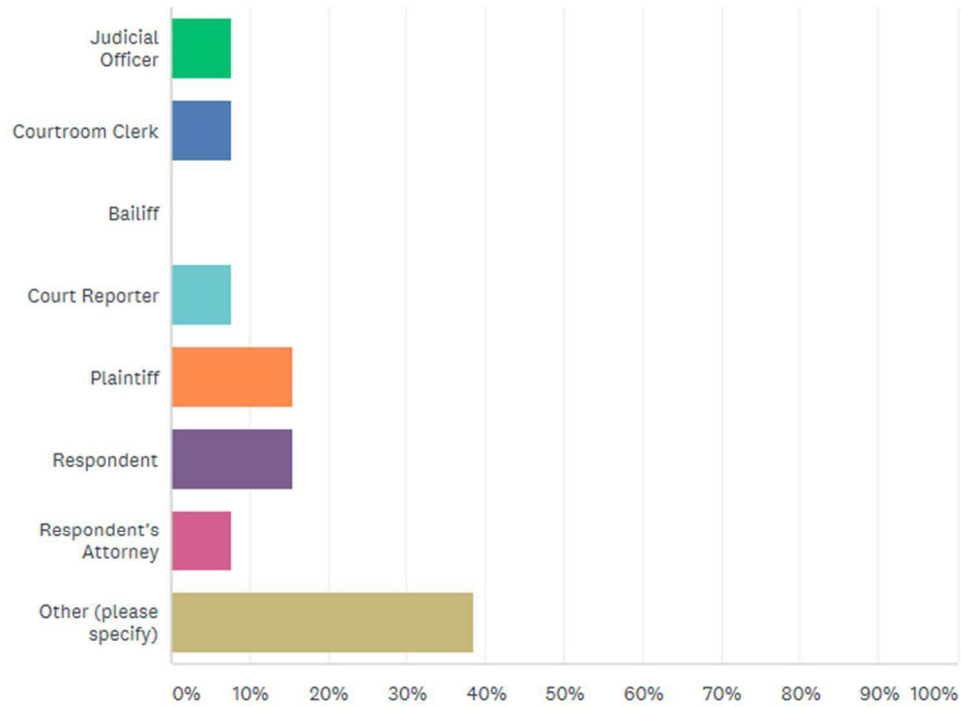
APPENDIX C: Mock Hearing Surveys

At the conclusion of the mock hearings, a survey was sent to all participants using the Survey Monkey® tool. The intent of the survey was to gather reaction to the use of the remote video appearance technology in a realistic setting. There was also a focus on gathering information to improve future pilot implementations. All participants in the mock hearings were judicial officers or employees of a judicial branch entity. The survey results should be considered in light of that participation and that they occurred on a single day in a mock setting. The purpose of the mock hearing, and subsequent surveys, were to determine that the remote appearance was viable conceptually and in a proof of concept.

The survey questions and results received follow:

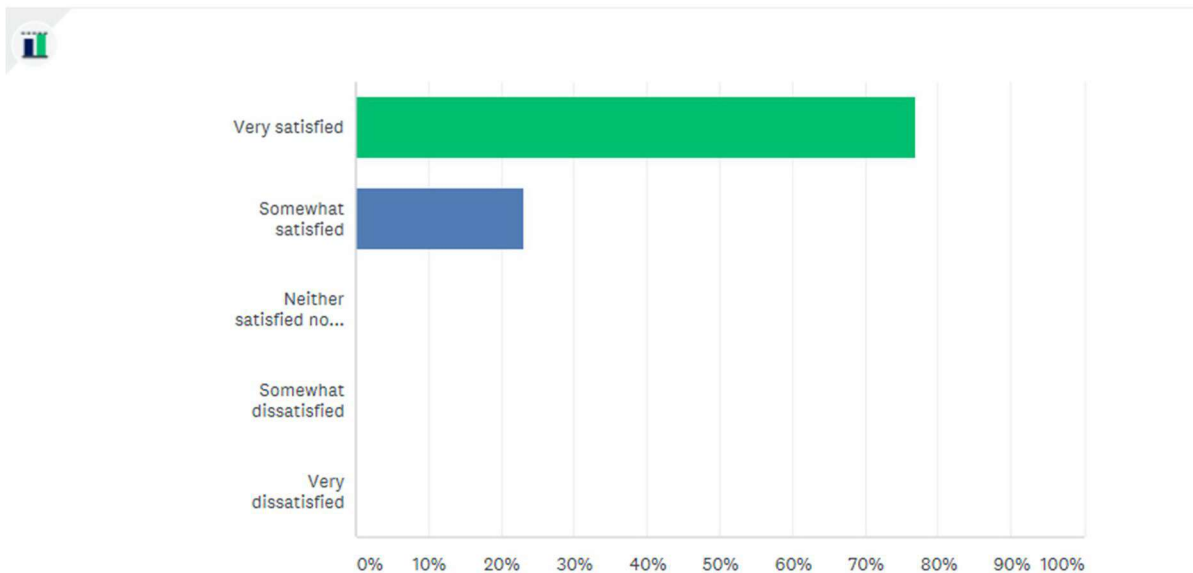
What was your role in the mock hearing?

Answered: 13 Skipped: 0



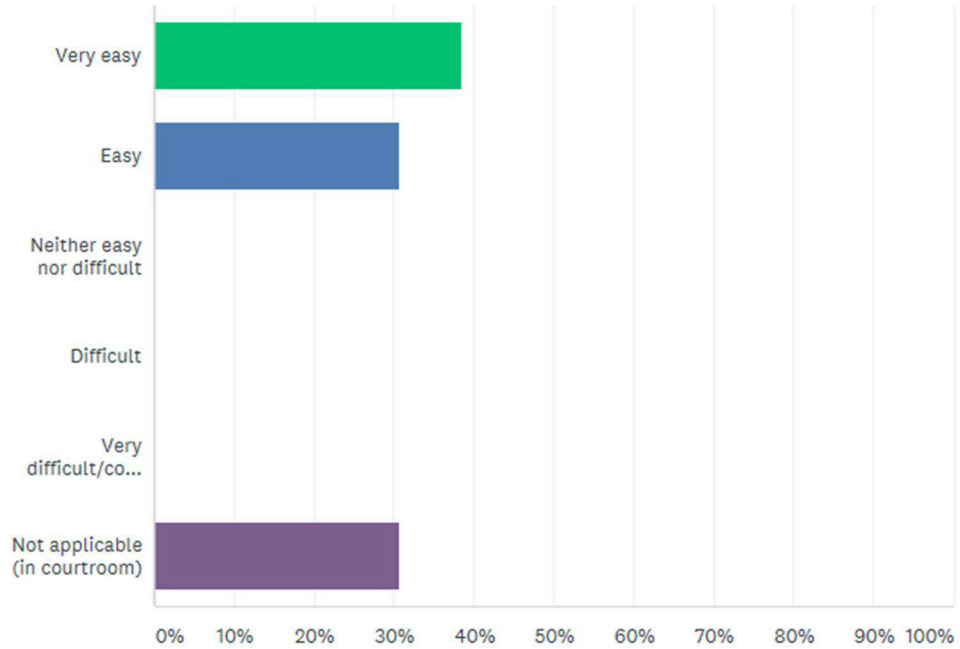
Overall, how satisfied or dissatisfied were you with the remote video appearance mock hearings?

Answered: 13 Skipped: 0



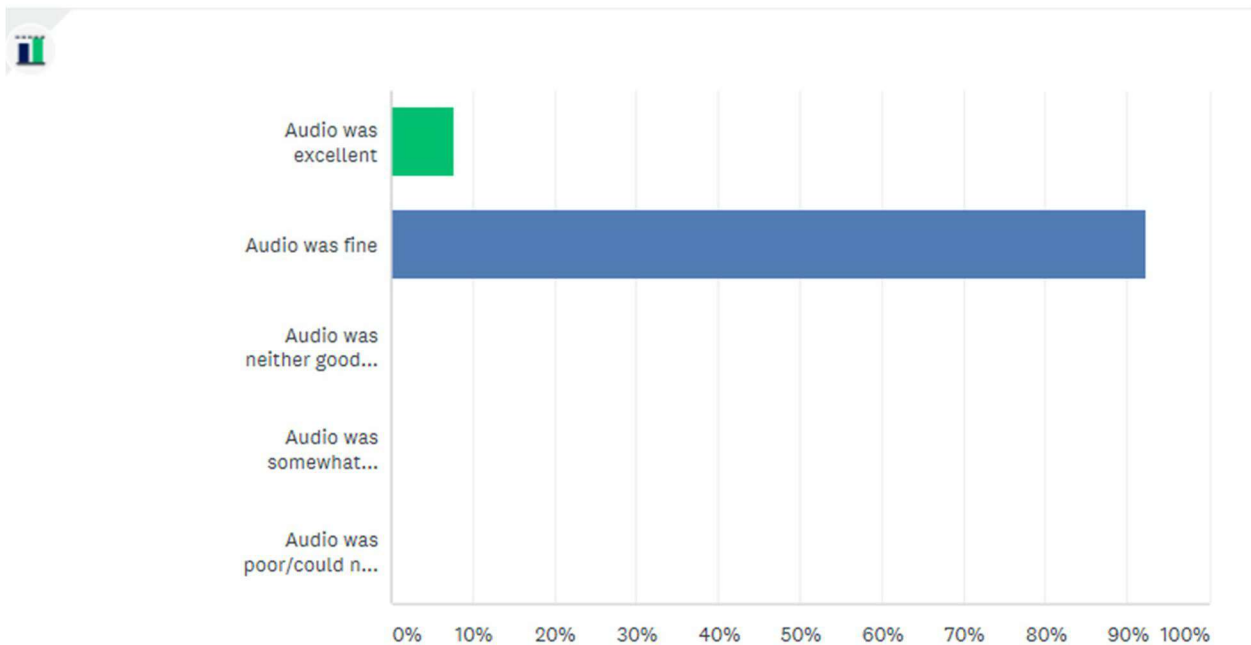
How would you rate the ease of connecting to the hearing?

Answered: 13 Skipped: 0



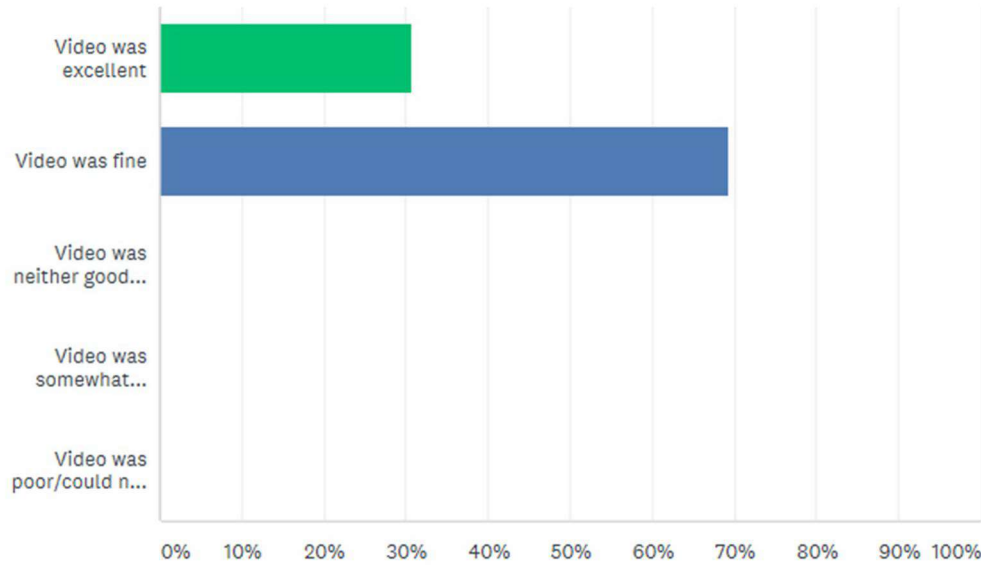
Could you hear the participants clearly?

Answered: 13 Skipped: 0



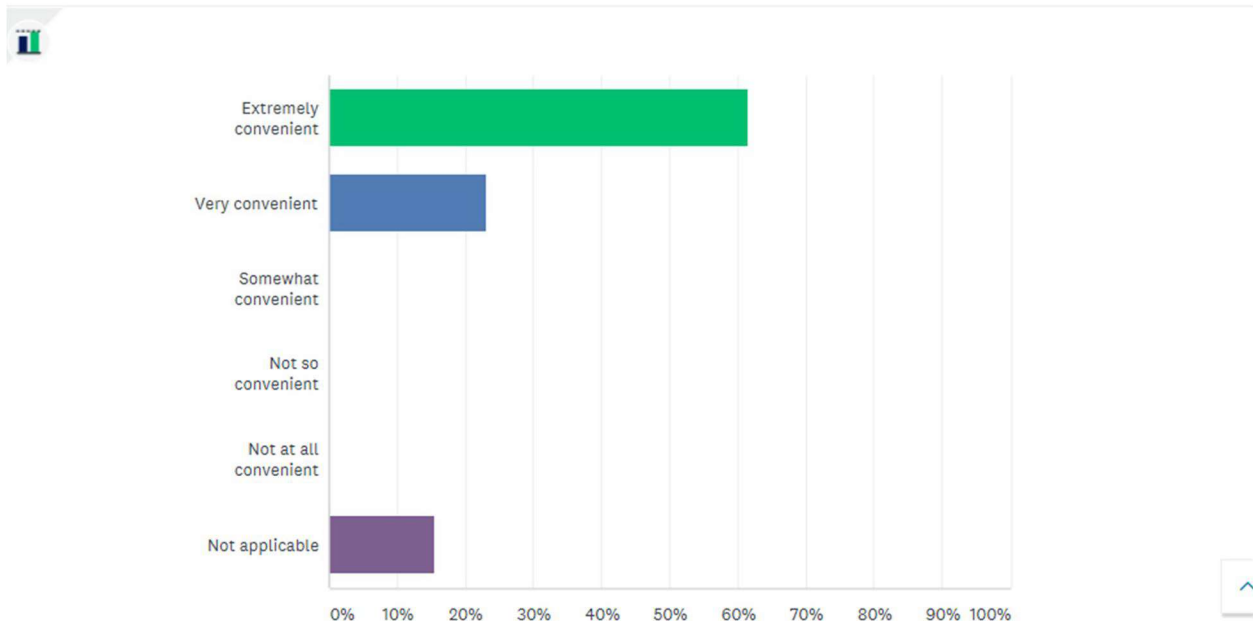
Could you see the video clearly?

Answered: 13 Skipped: 0



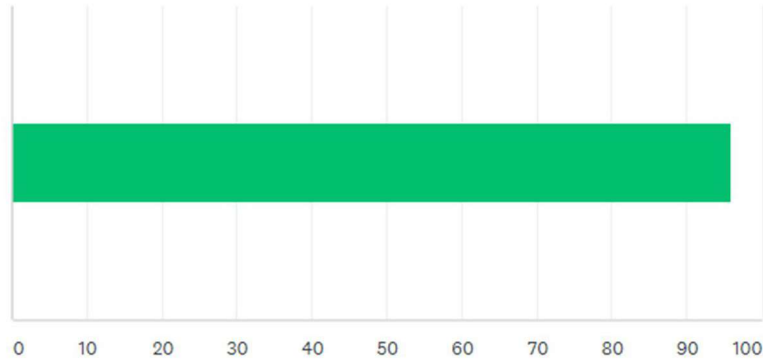
How would you rate the remote video experience in terms of convenience for the parties?

Answered: 13 Skipped: 0



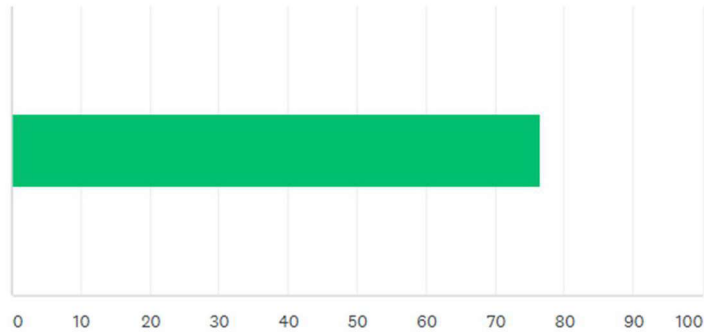
Are you satisfied that justice would have been served in these cases?

Answered: 13 Skipped: 0



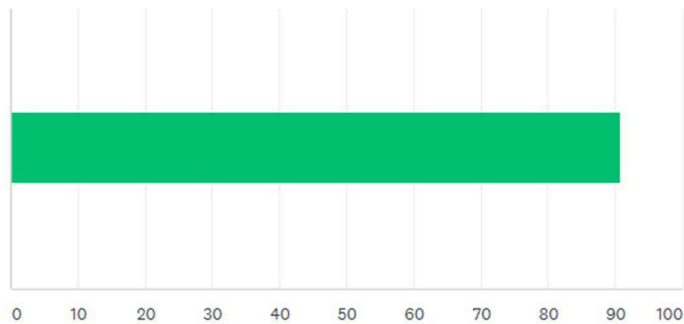
How likely would you be to use remote video appearance as a litigant if you, personally, were involved in a case?

Answered: 13 Skipped: 0



How likely would you be to promote remote video appearance for use in your courtroom?

Answered: 13 Skipped: 0



Specific comments were also requested as to how the remote video appearance could be improved:

- From an observers' perspective I would suggest the following: Provide ability for all parties to see each other. During the mock the party in the courtroom could not see the party appearing remotely. Also, we need to provide video proceeding observation to the public. Also, when the party is consulting with attorney, the audio muting process appeared clunky.
- I used my Bluetooth headset to hear the proceedings, thus at times I had trouble hearing a few words from the courtroom. This problem could have been my headset. Otherwise the experience was good!
- Only concern as a user would be if people are speaking over one another, that it would drop the audio during that time and there could possibly be a void in the final transcript. So speaking one at a time is key.
- Need to address how exhibits will be displayed/shared.
- Add TV cart speaker/microphone system to improve audio.
- The party's faces need to be larger at the bottom of the screen. The audio streaming needs to be quicker for response time and that the words spoken match the mouth movements. Also, I think there would be a problem with the audio when parties talk over one another which occurs daily with In Pro Per litigants.
- The streaming needs improvement. In a hearing, the ability to catch every word would be important. I would also like to see the party's faces clearly, not little boxes on the bottom of the screen. A split screen like you see on Judge Judy.
- Extra camera for all parties to see each other. It would be great for people traveling any distance.
- Enable the remote participants to see all participants in the courtroom. Include an explanation of how documents were uploaded into SharePoint and how a litigant uploads evidence into SharePoint.

APPENDIX D: Workstream Members

Hon. Samantha Jessner, Executive Sponsor

Judge
Superior Court of Los Angeles County

Mr. Alan Crouse, Project Manager

Deputy Court Executive Officer
Superior Court of San Bernardino County

Mr. Jake Chatters, Business Lead

Court Executive Officer
Superior Court of Placer County

Hon. David De Alba

Judge
Superior Court of Sacramento County

Hon. Carmen Luege

Commissioner
Superior Court of Orange County

Hon. Charles Margines

Judge
Superior Court of Orange County

Mr. Jeremy Gentry-George

Chief Information Officer
Superior Court of Fresno County

Ms. Sharon Oliveira

Asst. Court Executive Officer
Superior Court of Mono County

Ms. Linda Romero-Soles

Court Executive Officer
Superior Court of Merced County

Mr. Wannes Vanderbulcke

Technology Manager
Superior Court of Humboldt County

APPENDIX E: Futures Commission Discussion of Remote Video Appearance

(Commission on the Future of California's Court System, *Report to the Chief Justice* (Apr. 2017), pp. 221–224, citations omitted.)

Rationale for Recommendation #2: Remote Video Appearances

Today, video technology is integrated into most personal devices. As access to such devices increases, court users are becoming accustomed to, and often reliant on, video conferencing for both business and personal matters. Video conferencing is a reliable, cost-effective, and high-quality substitute to in-person appearances. Its use is becoming more common in court systems throughout the United States.

The high quality of existing video conferencing reflects advances in hardware and software, which have greatly improved services provided in business settings. Current video technology makes it possible to provide a 360-degree view of a room; recognize individual speakers through voice recognition, automatically switching focus and zooming in on the speaker; and allow documents to be viewed on a split screen. Telephonic appearances currently provide remote access to court proceedings in many courts. Video technology expands on this access by allowing the court and the remote participants to see as well as hear each other. The court can directly view an individual's demeanor.

The use of any type of remote appearance technology, including teleconferencing, is currently underused. For example, fewer than half the courts use video conferencing for arraignment. Although telephonic appearances are permitted in non-evidentiary hearings for civil and family law cases, this technology is used irregularly. One large court in California indicated that although it had the ability to use video conferencing, it was used an average of only 15 times in 2015 and 2016. A few examples of courts that use video conferencing follow:

- The Superior Court of Fresno County (Fresno Court) has been using video technology for a variety of remote appearances since 2013. The court began using this technology for traffic infraction cases with defendants who live in rural areas, letting parties appear at hearings by video from a north county location. For some parties, this service eliminated a 90-minute drive both to and from the main county courthouse. In 2014, the court started using video conferencing to provide certain interpreting services. The court also facilitates the use of these interpreters' services by other courts not able to provide the needed interpreter on their own court. Starting in 2016, the court began offering assistance to rural court users seeking domestic violence restraining orders and related services of domestic violence advocates via video conferencing from a Fresno Court courthouse to two secure locations in other parts of the county. This service allows the advocates and court users to view and complete documents simultaneously.
- The Superior Court of Merced County permits parties to request video appearances. It does not limit the types of proceedings for which a request may be made.
- Orange Court provides video remote appearance services in family law proceedings, including hearings on orders to show cause, law and motion, readiness conferences, trial setting and status conferences, settlement conferences, and fee waiver hearings.

Although remote video appearances are not used extensively throughout the trial courts, judicial officers who have used them are generally satisfied with the experience.

Reduced use of remote appearances may reflect a lack of awareness by court users that it is available. An additional barrier may include judges' willingness to permit remote appearances, and requirements for the consent of all parties. Statutory provisions encouraging the use of video appearance, a uniform and consistent use of video conferencing, and a branch-wide effort to inform court users of its availability would promote its use. Remote appearances would especially benefit those court users who face mobility and vulnerability barriers and individuals who live or work far from the courthouse.

The Futures Commission believes that the option to attend court proceedings remotely should ultimately be available for all noncriminal case types and appearances, and for all witnesses, parties, and attorneys in courts across the state. Judges should retain discretion to require in-person appearances, as appropriate.

The Futures Commission recommends the development of a pilot project in one or more courts for remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings, including evidentiary hearings, unless there is good cause for mandating a personal appearance.

Benefits to the parties and the courts

Video conferencing provides the following benefits:

- Gives participants options for appearance locations, including from their homes or workplaces.
- Saves time, cost of travel, and the need to miss work or arrange childcare.
- Provides easy access for those with physical disabilities or who live far from the courthouse.
- Offers predetermined, convenient video conferencing locations to be set up for users without access to needed devices.
- Provides individuals in custody the ability to appear in civil matters, reducing costs for the state and the person in custody.

Costs to implement

The costs to a court to implement video conferencing technology will vary. One-time cost for video conferencing hardware (i.e., cameras, microphones, and video screens) for one courtroom is approximately \$9,300. Usually, only one 360-degree camera is needed to provide video images, one LCD computer screen is needed for the judge's use, and at least one large LCD screen or projector screen is needed for the courtroom. The size and layout of the courtroom will determine the number of actual cameras, microphones, and video screens needed. Total cost for hardware also depends on the equipment already installed or available to the court. Courts may need to increase the capacity of their high-speed Internet connections to support conferencing equipment, or purchase software that facilitates the online connection between the courts and the remote participants. In the past few years, one court reported that a one-time purchase of software to provide this service cost approximately \$25,000. In another court, the system is provided by a third party vendor, at no cost to the court. The cost to the remote participant is approximately \$90 per session.

Courts will also need to commit staff resources to ensure proper system functioning and to troubleshoot any problems that may occur during use.

Public comment

Public comment on the proposal to use remote video appearances was generally positive for civil unlimited cases, certain family law cases, and traffic infraction cases. The Office of the Attorney General agreed with the proposal. Members of the California Police Chiefs Association's Technology Committee

indicated that remote appearances would be beneficial for off-duty officers who need to provide testimony.

Similar procedure implemented elsewhere

Other states have incorporated and expanded the use of video technology in settings such as SRL services, inmate competency evaluations, trial preparation, and attorney jail interviews. Some specific examples follow:

- Minnesota uses video conferencing for remote appearances in certain civil case types and to conduct child support enforcement hearings.
- Florida and New Jersey often use this technology for child dependency proceedings when one of the parents is in custody.
- Illinois uses video conferencing for a variety of court proceedings and meetings in 46 courtrooms and conference rooms.