



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

www.courts.ca.gov/itac.htm
itac@jud.ca.gov

INFORMATION TECHNOLOGY ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

May 21, 2020
12:00 PM - 1:00 PM
Videoconference

Advisory Body Members Present: Hon. Sheila F. Hanson, Chair; Hon. Louis R. Mauro, Vice Chair; Mr. Brian Cotta; Mr. Adam Creiglow; Mr. Alan Crouse; Hon. Julie R. Culver; Hon. Tara Desautels; Hon. Michael S. Groch; Mr. Paras Gupta; Hon. Samantha P. Jessner; Hon. Kimberly Menninger; Hon. James Mize; Mr. Snorri Ogata; Mr. Darrel Parker; Hon. Peter Siggins; Hon. Bruce Smith; Hon. Donald Segerstrom; Ms. Jeannette Vannoy; Mr. Don Willenburg; Mr. David H. Yamasaki; Hon. Theodore Zayner

Advisory Body Members Absent: Assemblymember Marc Berman; Mr. Jake Chatters; Ms. Alexandra Grimwade; Senator Robert Hertzberg; Hon. Joseph Wiseman

Others Present: Mr. Kevin Lane; Ms. Heather Pettit; Mr. Mark Dusman; Ms. Jamel Jones; Mr. Alex Barnett (Sen. Hertzberg office); Mr. Richard Blalock; Ms. Camilla Kieliger; Ms. Andrea Jaramillo; Ms. Nicole Rosa; Ms. Jackie Woods and other JCC staff present

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:01, and took roll call.

Approval of Minutes

The advisory body approved the April 20, 2020 of the Information Technology Advisory Committee minutes at this meeting.

There were no public comments for this meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1 – 6)

Item 1

Chair's Report

Presenter: Hon. Sheila F. Hanson, Chair

Report: Judge Hanson welcomed members to the meeting and provided her update.

The findings and recommendations from the IT Community Development workstream were approved by the Judicial Council Technology Committee and with their approval, the workstream is formally sunset. Congratulations were expressed for the entire workstream and their efforts in recommending ways to improve the branch community through resource sharing, educational opportunities, and collaborative tools. Judge Hanson is looking forward to receiving updates on the progress of executing those recommendations, in the months ahead.

During today's meeting the updated written workstream reports will be reviewed. Recognizing that efforts may be impacted by COVID-19, members were asked to share how their efforts are being impacted.

The nominations deadline to fill vacancies within the Judicial Council's advisory bodies is June 5 and Judge Hanson encouraged anyone interested in applying to do so.

Item 2

Judicial Council Technology Committee (JCTC) Update

Update on activities and news coming from this internal oversight committee.

Presenter: Hon. Kyle S. Brodie, Chair, JCTC

Report: Judge Brodie provided an update on the Judicial Council Technology Committee's progress since April 2020. He noted that the State budget situation has not improved, and some courts are still working remotely. Although, some counties are relaxing stay-at-home orders and reopening, there is still a need for technology.

The Judicial Council Technology Committee held a meeting on May 11 and the Judicial Council held their meeting on May 15.

Reports and actions taken by the Judicial Council Technology Committee were reprioritizing technology-related Budget Change Concepts (BCCs) for submission to Budget Committee supporting Branch IT Security and the Virtual Courthouse. They also reviewed and approved the IT Community Development workstream's findings and final report.

The next Judicial Council Technology Committee meeting is June 8, agenda is under development.

Lastly, Judge Brodie thanked Judge Hanson and members for their continued collaborative efforts for the judicial branch.

Item 3

Branch Budget Update

Receive an update on the branch budget and technology funding priorities for both FY2020-2021 and FY2021-2022.

Presenter: Ms. Heather Pettit, Chief Information Officer

Report: Ms. Pettit noted that Judge Brodie's budget update provided all current information and she didn't have any additional comments at this time.

Item 4

Futures Commission Directive: Intelligent Chat for Self Help Services – Status and Final Report (Action Requested)

Review and discuss the executive summary and draft report to the Judicial Council on the potential of a pilot project using intelligent chat technology to provide information and self-help services. Decide the report's readiness to recommend to the Judicial Council Technology Committee for acceptance and submission of the report to the Judicial Council.

Presenters: Hon. Michael Groch, Workstream Executive Sponsor
Mr. John Yee, Enterprise Architect, Information Technology

Report: Judge Groch noted that the review and feedback given has been included in the executive summary. Recognizing that some may not read the full report, this summary includes key findings and recommendations.

Mr. Yee reviewed the executive summary sections that include an overview of the initial project from July 2018; stakeholder engagement and workstream activities; maturity of chat relative to customer service; key findings; key benefits and risks; recommendations and next steps; and the conclusion. This summary will provide users with key information provided in more detail in the Intelligent Chat workstream final report.

Motion to accept the updated Intelligent Chat Workstream report.

Approved.

Item 5

Comments and Questions Regarding Written Workstream and Subcommittee Reports

Futures Commission Directive: Voice-to-Text Language Services Outside the Courtroom

Hon. James Mize, Executive Sponsor

Judge Mize added, although COVID-19 may have caused a pause, it hasn't stopped the project and technology is moving forward fast and this will benefit the branch greatly when implemented.

Tactical Plan for Technology Update Workstream

Hon. Sheila F. Hanson, Executive Sponsor

Judge Hanson noted a formal launch and solicitation for participation will go out soon. Taking time for lessons learned from the last update and she expects this time it will be more streamlined as many items can be incorporated into new plan.

Identity and Access Management Strategy Workstream

Mr. Snorri Ogata, Executive Sponsor

Mr. Ogata noted that due to pandemic, some policy recommendations have already been implemented by early adopters in the judicial branch out of necessity. A secondary component was identity proofing, verifying the online person is the same as physical person. This will be included in the report to the committee.

Digital Evidence: Rules, Technology, and Pilot Evaluation

Hon. Kimberly Menninger, Executive Sponsor

Judge Menninger noted that this workstream has not stopped. The goal is to identify as many vendors that will work and demos from those vendors. June 3 is the next meeting. The workstream will share with the committee at a future meeting.

Data Analytics: Assess and Report

Hon. Tara Desautels and Mr. David Yamasaki, Executive Sponsors

Judge Desautels working with Gartner at start of the year, but once the COVID-19 hit, it slowed down workstream work. The Judicial Council staff has been helpful to get project moving. Mr. Yamasaki added, that they have identified tools in his court to help with restarting work at courts. He will share as soon as they are finalized.

Disaster Recovery Initial Pilot and Knowledge Sharing

Mr. Paras Gupta, Executive Sponsor

Mr. Gupta noted that they had to shift resources earlier, but they are back on track with project. This has been a challenging workstream due to the many options and individual court's needs. He will be sharing more at a future meeting.

Online Dispute Resolution (ODR): Research Workstream

Hon. Julie Culver, Executive Sponsor

Judge Culver noted that she has received between 15 – 20 requests to join this workstream and invite will be sent shortly. Looking to identify a project manager from that group or if members have a suggestion, please contact Judge Culver. They want to build roadmaps on any courts interested in ODR and how to go about it.

Branchwide Information Security Roadmap Workstream

Hon. Donald I. Segerstrom and Mr. Brian Cotta, Executive Sponsors

Judge Segerstrom has started participating as a new sponsor. Mr. Cotta added that had some slowdown, but Judicial Council staff has helped with tasks. Still identifying how much output will be requirement, recommendations, etc. Charged with building integration with other workstreams to align efforts with branch technology, conversations have begun.

Remote Video Appearances in Criminal Proceedings: Research

Executive Sponsor TBD

This workstream has not started.

Rules & Policy Subcommittee

Hon. Peter Siggins, Chair

Justice Siggins noted work continues and there are two items out for public comment and should be on track as work continues.

Joint Ad Hoc Subcommittee: Remote Video Appearances in Civil Proceedings

Hon. Peter Siggins, Chair

No additional comments.

Item 6

Facilities Workgroup Update

Receive an update on the Facilities Workgroup's progress in modernizing the California Trial Court Facilities Standards document, including an overview of the next steps.

Presenter: Mr. Richard Blalock, Senior Business Systems Analyst, Information Technology
Mr. Blalock provided an update on the workgroup of eleven courts. Focus was on two chapters in the Standards Manual to align with court needs and branch technology goals. Using more specific and identifying language that does a better job of expressing information. Ms. Kackie Cohen noted that facilities are now using the Standards Manual for all construction.

Next steps, update of remainder of manual by a separate working group; invite to comment on manual; and finally seek approval from the Judicial Council.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:52 PM.

Approved by the advisory body on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

www.courts.ca.gov/itac.htm
itac@jud.ca.gov

INFORMATION TECHNOLOGY ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

June 5, 2020
10:00 AM - 11:35 PM
Videoconference

Advisory Body Members Present: Hon. Sheila F. Hanson, Chair; Hon. Louis R. Mauro, Vice Chair; Mr. Jake Chatters; Mr. Brian Cotta; Mr. Adam Creiglow; Mr. Alan Crouse; Hon. Julie R. Culver; Hon. Tara Desautels; Ms. Alexandra Grimwade; Hon. Michael S. Groch; Mr. Paras Gupta; Hon. Kimberly Menninger; Hon. James Mize; Mr. Snorri Ogata; Mr. Darrel Parker; Hon. Bruce Smith; Hon. Donald Segerstrom; Ms. Jeannette Vannoy; Mr. David H. Yamasaki; Hon. Theodore Zayner

Advisory Body Members Absent: Assemblymember Marc Berman; Senator Robert Hertzberg; Hon. Samantha P. Jessner; Hon. Peter Siggins; Mr. Don Willenburg; Hon. Joseph Wiseman

Others Present: Mr. Kevin Lane; Ms. Heather Pettit; Mr. Mark Dusman; Ms. Jamel Jones; Mr. Alex Barnett (Sen. Hertzberg office); Mr. Richard Blalock; Ms. Camilla Kieliger; Ms. Andrea Jaramillo; Ms. Nicole Rosa; Ms. Jackie Woods and other JCC staff present

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 10:01, and took roll call.

Approval of Minutes

The advisory body did not approve minutes at this meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1 – 4)

Item 1

Chair's Report

Presenter: Hon. Sheila F. Hanson, Chair

Report: Judge Hanson welcomed members to the meeting and provided an update since the last meeting, only two weeks prior.

The nominations deadline is today, June 5 to fill vacancies within the Judicial Council's advisory bodies. She encourages anyone interested in applying to do so.

There are two workstreams requesting extensions on their estimated completion dates. The Disaster Recovery workstream, also presenting today, is requesting an extension to

December 2020. Additionally, the Identity and Access Management workstream is requesting an extension to December 2020 as they continue to draft their findings recommendations for presentation to this committee later this year. There we no member objections to these extensions and they were approved. Staff will amend the annual agenda.

Item 2

Innovation Grant Showcase: Remote Video Appearances

Receive a presentation from Placer Superior Court on their Remote Appearances System, created using awarded funds from the Court Innovation Grants program.

Presenter: Mr. Jake Chatters, Court Executive Officer, Superior Court of Placer County

Report: Mr. Chatters provided the committee an update on Placer County's Innovation Grant project, Integrated Remote Appearance System. The goal was to create an end-to-end solution that replicates the court experience, provide heavy court control, and minimize impact on court users and staff. He also noted this solution was developed pre-COVID 19.

There is a single point of entry and control for courtroom proceedings using Evergreen Cypress MCU, CO-Turn Harden application, and Compunetix Companion server. VCourt: ATI is used to minimize number of systems and controls necessary for courtroom staff. This is all integrated with the court's various courtroom audio/visual systems. Users have the ability to connect from anywhere on any device. Also, this is integrated with the court case management system and online appointment system. The planned pilot implementation spanned December 2019 to March 2020 and included self-help appointments, review hearings (transfer of Probation and Drug Court), mental health hearings from State hospitals, victim impact statements, and civil (small claims, unlawful detainer, and civil harassment). Due to court operations modifications because of COVID 19, some hearing types were not being held; however, eligible hearing types expanded to cover criminal, family law and expanded civil.

Item 3

Workstream Spotlight: Disaster Recovery Initial Pilot and Knowledge Sharing

Receive an overview of the workstream's recent progress.

Presenter: Mr. Paras Gupta, Workstream Executive Sponsor

Report: Mr. Gupta reported on the Disaster Recovery Phase II workstream using IG: Cloud-Based Disaster Recovery. Project goals were to use cloud solutions; reduce infrastructure footprint; collaborate on solutions; gain efficiencies using local resources; hold knowledge sessions for adoption; and reduce interruption to court services.

Monterey Superior Court leveraged the Innovations Grant they received 3 years and are working with courts of all sizes on Phase II. In progress all critical services could be taken to the cloud, but the telephone system is still under review.

Some challenges are costs; ongoing funding; focus on disaster recover and not cloud hosting; current technology investment; and building internal resources knowledge to own and support. Building blocks to get to the cloud: court facilities & connectivity; local infrastructure; storage, replication solution, templates and automation.

Mr. Brian Damschen, project manager in Monterey Superior Court explained that it's important to assess and leverage your current situation and products. With virtualization platforms it's important to make sure you can work with evolving products. You will need to make sure your secure as you connect to the cloud. Storage has cold and warm tiers, Monterey found warm tiers were fairly cost effective and offer more options. Replication should leverage existing cloud, consider recovery time objectives (RTO), and make sure it's simple. With automation, run books specific for each service, infrastructure as code for quick deployments, and use creative scripting.

Item 4

Liaison Reports

Reports from members appointed as liaisons to/from other advisory bodies.

Presenters:

Report: Judge Culver: COVID working group has a new document that will offer information for the branch.

Mr. David Yamasaki: The Data Exchange workgroup has been active working on new exchange regarding sex offenders with the Department of Justice. Also, technology solutions that courts are adopting during pandemic is very encouraging.

Justice Mauro: 5 rules proposals out on the courts website and ends June 7. Signage and technology grant funds deadline is June 30.

Judge Groch: Education is developing new was for judicial education during pandemic. Working on more webcast and podcast training. They continue to deliver education.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at enter time.

Approved by the advisory body on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

2860 Gateway Oaks Drive, Suite 400 • Sacramento, California 95833-4336

Telephone 916-263-7885 • Fax 916-263-1966 • TDD 415-865-4272

MEMORANDUM

Date

July 2, 2020

Action Requested

Please Review

To

Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Deadline

July 8, 2020

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Contact

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

Subject

Comments on Legislative Proposal for
Remote Video Appearances in Civil

In early 2020, the Joint Ad Hoc Subcommittee on Remote Video Appearances developed a legislative proposal to enact Code of Civil Procedure section 367.7, which would provide statutory authority for courts to allow video proceedings in all civil matters including evidentiary trials. During the spring, the Civil and Small Claims Advisory Committee (CSCAC), Information Technology Advisory Committee (ITAC), and Family and Juvenile Law Advisory Committee (FJLAC) circulated the proposal for public comment. The public comment period concluded on June 9, 2020.

Eighteen commenters responded to the Invitation to Comment. Overall, the commenters were supportive of the proposal. The Joint Ad Hoc Subcommittee will be meeting on July 6, 2020, to consider comments and make a recommendation to CSCAC, ITAC, and FJLAC. A copy of the memorandum written for the Joint Ad Hoc Subcommittee is attached for reference. It includes analysis of comments suggesting a change to the proposal and a copy of all comments received, as well as the proposal itself.

Following the Joint Ad Hoc Subcommittee meeting, staff will send supplemental materials to ITAC if the subcommittee recommends a change to the proposal. A verbal update on the subcommittee discussion and recommendation will be provided at the ITAC meeting on July 8, 2020.

Attachment

1. Memorandum, including attachments, to Joint Ad Hoc Subcommittee on Remote Video Appearances.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date

June 29, 2020

Action Requested

Please review

To

Joint Ad Hoc Subcommittee on Remote
Video Appearances
Hon. Ann I. Jones, Co-chair
Hon. Peter J. Siggins, Co-chair

Deadline

July 6, 2020

Contact

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

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Subject

Legislative Proposal: Review public
comments and make recommendation on
sponsoring legislation to enact Code of Civil
Procedure section 367.7

Background

In early 2020, the Joint Ad Hoc Subcommittee on Remote Video Appearances developed a legislative proposal to enact Code of Civil Procedure section 367.7, which would provide statutory authority for courts to allow video proceedings in all civil matters including evidentiary trials. During the spring, the Civil and Small Claims Advisory Committee, Information Technology Advisory Committee, and Family and Juvenile Law Advisory Committee circulated the proposal for public comment. The public comment period concluded on June 9, 2020.

Discussion

The following eighteen commenters responded to the Invitation to Comment:

1. Alliance for Children’s Rights
2. Andrew Jablon, Attorney
3. California Commission on Access to Justice
4. California Department of Child Support Services
5. California Lawyers Association, Executive Committee of the Family Law Section
6. California Lawyers Association, Litigation Section, Committee on Administration of Justice
7. California Lawyers Association, Executive Committee of the Trusts and Estates Section
8. Child Support Directors Association
9. Child Support Directors Association, Judicial Council Forms Committee
10. Legal Aid Association of California
11. Orange County Bar Association
12. Orange County Public Defender
13. Public Law Center
14. Superior Court of Los Angeles County
15. Superior Court of Orange County, Family Law Division
16. Superior Court of Orange County, Juvenile Law Division
17. Superior Court of Orange County, Training and Analyst Group
18. Superior Court of San Diego County

Overall, the commenters were supportive of the proposal. Several commenters made suggestions for rules when they are developed, which the subcommittee can consider when it works on rule development. In addition, some commenters recommended modifications to the proposal. The suggested modifications are addressed in more detail below. The complete list of public comments is included in the draft comment chart attached at pages 10-31. In addition to the formal public comments, the Criminal Law Advisory Committee (CLAC) has suggested a modification to how the statute should relate to the rules of court, which is also discussed below.¹

A. CLAC suggestion to add language that authority to allow video appearances is subject to limitations imposed by the California Rules of Court

CLAC recommended that the proposal be revised to clearly state that the use of video is subject to any limitations imposed in the California Rules of Court. To that end, CLAC proposed the following revision to strengthen the rulemaking provision:

¹ This comment was part of broader informal input from that advisory committee that it would like to see legislation authorizing video appearances in criminal proceedings. As discussed in an earlier meeting of the subcommittee, such a proposal would be beyond the scope of the subcommittee’s charge and entail significant constitutional issues relating the right of confrontation that are not pertinent to the current proposal. Accordingly, use of video in criminal proceedings should be considered by the Judicial Council separately from this proposal.

(b) A court may permit a person to appear by video in any civil action or proceeding.

(c) The exercise of the authority granted the court in subdivision (b) shall be subject to rules of court adopted by the Judicial Council ~~may adopt rules effectuating~~ to effectuate this section.

Staff recommend this change be adopted as it is consistent with providing broad statutory authority for video appearances while still allowing the Judicial Council to provide requirements for practice and procedure by rule. The stronger language would avoid any dispute that a limitation by rule could possibly conflict with subdivision (b) providing broad authority to the courts.

B. Commenter suggestion to add language to avoid potential conflict with statutes that require an in-person appearance

The California Lawyers Association, Executive Committee of the Trusts and Estates Section (TEXCOM) commented that there are provisions of the Probate Code that “require a physical appearance, such as Probate Code section 1825, which provides that a proposed conservatee ‘shall be produced at the hearing’ except if out-of-state when served and not the petitioner or unable to attend for medical inability.”

TEXCOM noted that this could be the case in other code sections and could create a conflict between those code sections and proposed Code of Civil Procedure section 367.7, which is meant to apply to “any civil action or proceeding.” TEXCOM suggested “rather than having to amend potentially dozens of statutes throughout the various California codes,” the matter could be resolved by adding the following language to the proposal: “Notwithstanding any provision of law to the contrary...”

In development of the proposal, the subcommittee meant to provide broad statutory authority for video appearances. However, the subcommittee did not address specific statutes that expressly require a person to attend proceedings in-person, and did not discuss overriding any such statutes. While TEXCOM notes that not addressing the issue here could mean revising “potentially dozens of statutes” in the future, if a statute requires an in-person appearance, it may be preferable for that statute to be revised individually so due consideration can be given for why in-person has been required.

In addition, the proposed authority is permissive and intended to be used “as appropriate.” Accordingly, if a court believed an in-person appearance was required by statute, the court would not have to allow a video appearance.

C. Commenter suggestion to add language stating courts cannot require video appearances in juvenile dependency and sexually violent predator (SVP) cases

The Orange County Public Defender (OCPD) commented, “the statute as currently written is vague as to whether a court can require a party or witness to appear via video.” Similarly, the Alliance for Children’s Rights, though it did not state it found the proposed legislation vague, urged the “Judicial Council to maintain flexibility for courts by making remote appearances voluntary...” Conversely, the Child Support Directors Association Judicial Council Forms Committee noted that a reason it supports the proposal is because it allows courts to permit, but not mandate, video appearances.

The proposal states a court may *permit* a person to appear by video. That is, it may “allow,” “grant consent or leave to,” or “afford opportunity or possibility for.” (American Heritage Dict. (5th ed. 2020) <<https://ahdictionary.com/word/search.html?q=permit>> [as of June 17, 2020].) It does not state that a court may require a person to appear by video and the subcommittee could further address this point in the California Rules of Court.

The proposal does not address whether a court may permit a witness to appear over the objection of a party. This is something the OCPD also highlights as a concern in its comments. The OCPD explained that that being forced to confront witnesses appearing by video rather than in-person could impact due process rights of sexually violent predators and parents in dependency proceedings where, it argues, the confrontational rights are similar to those in criminal cases. The OCPD suggested the committees revise the proposal to address this.

Specifically, the OCPD suggested the following revision:

- (a) It is the intent of this section to improve access to the courts and reduce litigation costs by providing that a court may, as appropriate and practical, and at the express request of either party in a Sexually Violent Predator case and any party in a juvenile dependency case, permit any party to appear in court by video in all civil actions and proceedings including trials and evidentiary hearings.
- (b) With the agreement of all parties in a Sexually Violent Predator proceeding and in a juvenile dependency proceeding, a court may permit a ~~person~~ witness to appear by video in any civil action or proceeding.
- (c) The court may not permit a witness to appear by video for any trial or evidentiary hearing in a Sexually Violent Predator case or juvenile dependency case unless all parties consent to the witness appearing via video.
- (d) The Judicial Council may adopt rules effectuating this section.

The OCPD's change would be a substantial change to the proposal and addresses significant due process concerns. However, whether certain proceedings require consent of the parties for a court to allow a witness to appear remotely is a subject the subcommittee could address when it develops rules of court.

D. Commenter suggestions on fees

The Alliance for Children's Rights urged that video appearances be "provided at no cost/fee to claimants and their counsel as well as experts and witnesses, particularly those who have qualified for a fee waiver." The Child Support Directors Association similarly commented that video appearance fees "would be contrary to the objective of using technology to increase access for the public" and recommended "the proposal include a provision permitting fee waivers."

The authority to set fees is in Government Code section 70630 (which states that a court "shall charge a reasonable fee" for costs incurred for videoconference services) and would require legislation to change, but the applicability of a fee waiver to any fees charged by a court for video appearances could be set by rule. Government Code section 68631 states, "An initial fee waiver excuses the applicant from paying fees for the first pleading or other paper, and other court fees and costs... as specified in rules adopted by the Judicial Council..." Accordingly, this is something the subcommittee could consider during rule development.

As far as fees charged by outside vendors, those are not directly waivable by the court, but are the subject of contracts in which this issue would have to be addressed.

E. Commenter suggestion to change "practical" in subdivision (a) to "practicable"

Subdivision (a) of proposed Code of Civil Procedure section 367.7 states:

It is the intent of this section to improve access to the courts and reduce litigation costs by providing that a court may, as appropriate and *practical*, permit parties to appear in court by video in all civil actions and proceedings including trials and evidentiary hearings.

(Emphasis added.) The Superior Court of Los Angeles County suggests changing "practical" to "practicable."

"Practical" has a number of meanings, but most accurate in this context is "Capable of or suitable to being used or put into effect; useful." (American Heritage Dict. (5th ed. 2020) <<https://ahdictionary.com/word/search.html?q=practical>> [as of June 17, 2020].)

"Practicable" means "Capable of being effected, done, or put into practice; feasible" and

“[u]sable for a specified purpose.” American Heritage Dict. (5th ed. 2020) <<https://ahdictionary.com/word/search.html?q=practicable>> [as of June 17, 2020].) The American Heritage Dictionary notes the terms have similarities, but a subtle distinction where “practical” is something useful “useful” and “practicable” is something feasible. (*Ibid.*)

In the context of the proposal, either term works. It could be that courts may permit video as “appropriate and practical [i.e., useful]” or “appropriate and practicable [i.e. feasible].” The subcommittee could recommend the proposal:

- Remain as-is,
- Change “practical” to “practicable,” or
- Keep “practical” and add “practicable” (“a court may, as appropriate, practical, and practicable...”)

F. Commenter suggestion to make subdivisions (a) and (b) consistent with references to “parties” and “persons”

Subdivision (a) of proposed Code of Civil Procedure section 367.7 is a statement of intent, which says, “It is the intent of this section to improve access to the courts and reduce litigation costs by providing that a court may, as appropriate and practical, permit *parties* to appear in court by video in all civil actions and proceedings...” (Emphasis added.)

Subdivision (b) states what a court may do under the provision. Specifically, “A court may permit *a person* to appear by video in any civil action or proceeding.” (Emphasis added.)

The Los Angeles court suggested that subdivisions (a) and (b) be revised to be more consistent with one another with respect to “parties” and “persons.”

Staff recommend making this change. The scope of the proposal and whether it should apply to “persons” or be more specific as to which persons was a topic of discussion at one of the subcommittee’s prior meetings. The subcommittee recommended and subsequently the full committees recommended using “person” rather than specifying particular persons (e.g., parties and witnesses). It was simply inadvertence that the wording in subdivision (a) was not made the same. For this reason, to ensure alignment between subdivisions (a) and (b), staff recommend replacing “parties” in subdivision (a) with “persons.”

G. Commenter suggestion to specify real-time video

The Los Angeles court commented “[t]he rule should make clear that appearances by ‘video’ means real-time as opposed to videotaped.” Staff can clarify the report to the Judicial Council that the proposal contemplates real-time proceedings by video. If further clarification is needed, the issue could be addressed in rulemaking.

H. Commenter suggestion to account for technical difficulties

The Public Law Center, a non-profit legal services organization serving low-income clients, commented it “would encourage the court to not automatically default a party, particularly a self-represented party, based on their inability to connect due to technical difficulties, and at times allow exceptions so that litigants may be able to appear in person if needed (as well as a simple process to request the in-person appearance).” Additional commenters such as the Legal Aid Association of California also noted issues concerning challenges for people with limited internet access or limited knowledge on the use of technology. Staff recommend the subcommittee take these considerations in account for rule development.

I. Responses to the request for specific comments

The committees requested specific comments on a few issues. The committees asked whether the proposal appropriately addressed its stated purpose and commenters who responded agreed that it did.

The committees also asked whether any actions should be excluded from the scope of the proposed legislation.

- One commenter suggested excluding cases involving confidentiality which the commenter thought “should be heard in person or by remote teleconferencing, as appropriate.” It is not clear why teleconferencing would be preferable to video for confidential matters. Confidentiality is a significant issue for consideration in rulemaking and implementation, but staff do not recommend excluding confidential proceedings from the legislation.
- Two commenters suggested excluding jury trials. One was concerned that allowing attorneys to appear remotely while requiring the jury to attend “will reduce morale and possibly erode confidence of, and opinions regarding, the courts and the practice of law.” The second commenter raised similar concerns, and concerns that there could be inequitable access as some litigants may not have access to the needed technology. Staff do not recommend excluding jury trials because the concerns raised are too speculative.

- In addition to the above comments, the San Diego court submitted comments recommending two exclusions.
 - First, the court suggested judgment debtor exam hearings be excluded because “after the judgment debtor is sworn, the judgment creditor and judgment debtor usually go to another location for the actual exam to take place and they only come back into court if a problem arises.” The court explained it would be too challenging to develop a system to handle these procedures. Staff recommend against excluding these proceedings because the proposal would not require the court to develop such a system. The proposal authorizes the court to allow video, but does not require the court to do so. Accordingly, the court need not allow video in this type of proceeding.
 - In addition, the court recommended excluding the process for obtaining property abatement warrants, which are issued to address issues like stagnant water and trash on property. The court commented that these “proceedings should still be done in person due to the need to swear the officer and sign the warrant.” Staff again recommend against excluding the proceedings because the proposed legislation does not require the court to offer video as an option.

Finally, the committees also sought specific comments from courts on whether the proposal would result in cost savings, what impact it would have on any current efforts to allow video appearances, how well it would work in courts of different sizes, and what challenges the court anticipated. One court commented that high-speed internet for video may be a challenge for courts in remote areas. Another court commented that the biggest challenges for courts is access to technology and connectivity as well as variability of court user knowledge on using technology. The court also noted that there would be an increase in cost due to equipment and software expenses as well as staff training. However, the costs for the public, litigants, and justice partners could be reduced because, for example, they would not need to travel to the court.

Subcommittee’s Tasks

- Consider the comments received on the proposal.
- Determine appropriate responses and decide whether to recommend the proposal for Judicial Council legislative sponsorship.

Attachments and Links

1. Text of proposed Code of Civil Procedure section 367.7 at page 9.
2. Chart of comments at pages 10–41.

Section 367.7 of the Code of Civil Procedure would be enacted, effective January 1, 2022, to read:

1 **§ 367.7**

2

3 (a) It is the intent of this section to improve access to the courts and reduce litigation
4 costs by providing that a court may, as appropriate and practical, permit parties to appear
5 in court by video in all civil actions and proceedings including trials and evidentiary
6 hearings.

7

8 (b) A court may permit a person to appear by video in any civil action or proceeding.

9

10 (c) The Judicial Council may adopt rules effectuating this section.

11

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
1.	Alliance for Children’s Rights by Kristin Power, Government Relations Director Los Angeles, CA	NI	<p>As evidenced by the massive court disruption caused by the current pandemic situation and need to provide safe access to courts for claimants and court personnel, and by the increasing use of remote appearances taking advantage of advances in technology, it is very timely to consider legislation allowing for remote video appearances in all civil actions and proceedings.</p> <p>The Alliance for Children’s Rights protects the rights of impoverished, abused and neglected children and youth. By providing free legal services, advocacy, and programs that create pathways to jobs and education, the Alliance levels the playing field and ensures that children who have experienced foster care are able to fulfill their potential.</p> <p>Support for Voluntary and Fee-free Remote Access</p> <p>Many of our attorneys have participated in remote appearances and appreciate the flexibility and inclusive nature of allowing for remote appearances. In fact, the Alliance co-sponsored AB 686 (Chapter 434, Statutes of 2019) to require the Judicial Council to establish a rule of court that authorizes the use of telephonic or other remote access by an Indian child’s tribe in proceedings where the Indian Child Welfare Act (ICWA) applies, to ensure that Indian tribes can fully participate in ICWA cases and preventing resource issues from negatively impacting Indian tribes’ participation in ICWA proceedings.</p> <p>In considering legislation, the Alliance urges Judicial Council to maintain flexibility for courts by making remote appearances voluntary to promote access to justice for claimants who do not have access to technology allowing for a video appearance.</p> <p>In addition, to ensure access, we urge that remote appearances are provided at no cost/fee to claimants and their counsel as well as experts and witnesses, particularly those who have qualified for a fee waiver. In recent actions, in order to appropriately provide counsel to clients, our attorneys would have had to pay a fee to participate in remote hearings.</p>

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

LEG20-02**Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)**

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

	Commenter	Position	Comment
			<p>Ensuring Fair Outcomes</p> <p>Given the relatively new nature of remote appearances, we urge Judicial Council to collect data on the outcomes of remote hearings to analyze whether remote appearances result in less favorable outcomes for claimants. In this way, we can consider such data and develop appropriate training and other resources to promote equal access and outcomes.</p> <p>Finally, we caution Judicial Council to carefully consider confidentiality during remote hearings. It is in the best interests of all involved to protect confidentiality. For example, if certain parties such as a birth parent were excluded during some portion of a dependency hearing because the court ruled it was in the best interest of the child, would the court be able to exclude that person from the call or prevent access to a portion of the hearing? If confidential documents are being entered as exhibits, would attendees be able to see those documents through the web-based platform? These issues may be best considered in implementation, however we wished to express the need for careful consideration.</p>
2.	Andrew Jablon Attorney	NI	<p>I am concerned that presents an inequitable access to the judicial system, as some litigants may not have the financial ability to provide witnesses with internet/computer capabilities to appear via video conference. Additionally, what are we saying to juries if they have to be in court but witnesses don't? At most, video appearances by witnesses should, without good cause, be allowed only for bench trials and evidentiary hearings to minimize issues of bias.</p> <p>I do think, however, that all depositions should be allowed to be taken via video conference, including not requiring a specific "location" for notice purposes if the deposition is going to be taken remotely.</p>
3.	California Commission on Access to Justice by Hon. Mark Juhas, Chair Oakland, CA	A	<p>The California Commission on Access to Justice appreciates the opportunity to comment to the Civil and Small Claims, Family and Juvenile Law, and Information Technology Advisory Committees on the proposed legislation adding Section 367.7 to the Code of Civil Procedure. The Access Commission supports the new Section with the recommendation that, once enacted, it be accompanied by rules for implementation in</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>ways that augment, not impede, fair and effective use of technology for remotely conducted hearings by self-represented litigants.</p> <p>For 23 years, the Access Commission has worked to advance access to justice for all Californians using broad-based strategies informed by diverse stakeholders. The Access Commission proposes innovative solutions and oversees efforts to increase resources and improve methods of helping the poor, those of moderate-income, and others struggling to address legal problems and vindicate legal rights.</p> <p>Proceedings conducted remotely with video technology can be used in ways that would enhance access to the courts on the part of litigants in remote areas, self-represented litigants, persons with disabilities or limited literacy, as well as others. For this to be the outcome of enactment and use of Section 367.7, however, it must be practiced in ways that avoid creating obstacles to low income Californians, non-English speakers, persons with disabilities, and those lacking technology or connectivity because of the digital divide.</p> <p>Proposed Section 367.7 provides that the Judicial Council may adopt rules for its implementation. Both in new rules and in best practices that courts should adopt voluntarily, there are a number of considerations that should be observed by courts using remote video appearances in civil actions. To assist courts in connection with access issues related to remote proceedings currently being done pursuant to the Judicial Council’s Emergency Rule 3 as well as continuing after expiration of the emergency rule, the Access Commission recently compiled a guide on “Remote Hearings and Access to Justice During COVID-19 and Beyond,” https://www.calatj.org/news (copy attached). The guide lists and discusses many of these concerns and issues. When the time comes to promulgate rules implementing Section 367.7, we will be happy to assist and comment on them.</p>

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

LEG20-02**Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)**

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

	Commenter	Position	Comment
			<p>One caution that courts should observe is that a substantial fraction of self-represented litigants do not possess the technology needed for remote video appearances. To avoid procedural inequity, courts will need to ensure their implementation rules enhance access to the courts for all individuals and communities, including the most disadvantaged, and do not create or compound inequities.</p> <p>Responding to the advisory committee’s specific questions, we note that proposed Section 367.7 does address its stated purpose appropriately, although, once enacted, it must be accompanied by rules and practices to enhance effective access to the courts for all. Considerations that might render some proceedings appropriate for remote appearances and others not will generally vary in ways that are not amenable to listing in Section 367.7 and may change over time. To allow flexibility, we believe the code section should allow the Judicial Council to provide for exclusion of particular civil actions or proceedings by rule.</p> <p>In short, the Access Commission considers the use of video technology for remote appearances to be a useful tool that courts should use with attention to the impact on those who may face greater obstacles than others in seeking justice in California’s courts.</p>
4.	California Department of Child Support Services by Yolanda Peneda, Attorney I Rancho Cordova, CA	NI	<p>The California Department of Child Support Services (department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the proposal for judicial council sponsored legislation with potential impacts to the department and its stakeholders follows.</p> <p>The department applauds efforts to provide statutory authority that allows courts to expand remote video appearances to civil proceedings including trials and evidentiary hearings. This legislation would provide child support case participants greater access to the courts. Proposed Code of Civil Procedure section 367.7 appropriately addresses the stated purpose of providing courts with statutory authority permitting remote video appearances without requiring every court to allow video court appearances.</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>In order for Title IV-D child support case participants to benefit from legislation expanding the court’s authority to permit remote video court appearances in contested hearings, the department requests the Judicial Council amend California Rule of Court, Rule 5.324 (recommended language is included below). The rule allows for the use of remote telephone, videoconferencing and other digital court appearances in select Title IV-D child support court hearings and conferences, but currently excludes contested trials. Permitting the use of remote video appearances in contested child support hearings would grant parents greater access to the courts by reducing the time and financial costs of travel, childcare, and missed workdays.</p> <p>Additionally, the Committee requested comments regarding civil actions or proceedings that should be excluded from the scope of the proposed section. In this regard, the department requests that contempt hearings continue to be excluded from the list of permissible remote video court appearances in Rule 5.324. While contempt hearings are used sparingly in child support cases, there are circumstances in which requiring a party to appear in person for a contempt hearing is necessary.</p> <p>The department requests California Rule of Court, Rule 5.324 be amended as follows:</p> <p>...</p> <p>(c) Permissibility of telephone appearances Upon request, the court, in its discretion, may permit a telephone appearance in any hearing, contested hearing, or conference related to an action for child support when the local child support agency is providing services under title IV-D of the Social Security Act.</p> <p>(d) Exceptions A telephone appearance is not permitted for any of the following except as permitted by Family Code section 5700.316:</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>(1) Contested trials, Contempt hearings, orders of examination, and any matters in which the party or witness has been subpoenaed to appear in person; and</p> <p>(2) Any hearing or conference for which the court, in its discretion on a case-by-case basis, decides that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case.</p>
5.	California Lawyers Association, Executive Committee of the Family Law Section (FLEXCOM) by Justin M. O’Connell, Legislation Chair Sacramento, CA	A	FLEXCOM agrees with this proposal.
6.	California Lawyers Association, Litigation Section, Committee on Administration of Justice by Christopher Fredrich Stroock Sacramento, CA	A	The Committee on Administration of Justice agrees with this proposal.
7.	California Lawyers Association, Executive Committee of the Trusts and Estates Section (TEXCOM) by Mark S. Poochigian, Chair Sacramento, CA	A	<p>The Executive Committee of the Trusts and Estates Section of the California Lawyers Association (TEXCOM) agrees with this proposal.</p> <p>TEXCOM responds as follows to the Request for Specific Comments:</p> <ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? TEXCOM’s view is that the proposed statute does appropriately address the stated purpose. • Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by rule?

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>TEXCOM’s view is that there are no proceedings arising under the Probate Code that should be automatically excluded from the proposed legislation. However, we note that there are several Probate Code statutes that require a physical appearance, such as Probate Code section 1825, which provides that a proposed conservatee “shall be produced at the hearing” except if out-of-state when served and not the petitioner or unable to attend for medical inability. There is a potential conflict between this and other similar statutes that could be resolved in the language of CCP 367.7, rather than having to amend potentially dozens of statues throughout the various California codes, including the Probate Code. In order to avoid ambiguity – and consistent with TEXCOM’s view that there are no proceedings arising under the Probate Code that should be automatically excluded – we recommend that the permissive language in the proposed statute be prefaced with the following: “Notwithstanding any provision of law to the contrary . . .”</p> <p>Although beyond the scope of the proposed legislation itself, if it is enacted, TEXCOM recommends that the Judicial Council consider, for due process reasons, promulgating specific rules for proceedings where deprivation of liberty is involved, including guardianships and conservatorships (particularly LPS conservatorships).</p>
8.	Child Support Directors Association by Terrie Hardy-Porter, Director Sacramento, CA	A	<p>In order to ensure access to justice that is fair and safe, video and telephonic hearings for child support hearings should continue to be encouraged so that all parties can participate without fear of compromising their health and welfare by attending in person. We also urge the courts to make information available about how to access video and telephonic court hearings to participants, the public, and stakeholders so that all parties can participate at the lowest cost possible in an effort to assure fair access to all. Judicial staff should also be trained and supported to conduct these hearings.</p> <p>Request for Specific Comments</p> <p>Does the proposal appropriately address the stated purpose?</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>The proposal is to increase the use of technology in the courtroom by authorizing courts to elect the option of video hearings in all civil actions, reserving the right to later create exceptions and specific procedures through rule making rather than statutory change. This proposal aligns perfectly with the Futures Commission’s recommendation to increase use of technology in creating greater efficiency and streamlining court proceedings.</p> <p>It is presumed that the Commission’s recommendation for increased use of video hearings intended improved efficiency for the court as well as improved access for the public. The proposal acknowledges that use of increased technology will result in additional expense to the court but addresses it only by citing CA Gov’t Code 70630, which permits the additional expense to be collected in the form of fees to the public. Additional fees would be contrary to the objective of using technology to increase access for the public. Consideration should be given to alternatives that would allow a greater percentage of civil litigants to benefit from the convenience and safety provided by video hearings without incurring additional fees. It is recommended that the proposal include a provision permitting fee waivers. Also, the use of video hearings in juvenile proceedings in Placer County could serve as a model. Allowing a litigant to appear by video without fee from a different court location or even a court partner location, such as a self-help center or legal aid, would provide those litigants without transportation or personal access to the necessary technology greater access. Lastly, telephone appearances should continue to be available to those members of the public who do not have access to the equipment required for video hearings.</p> <p>Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by rule?</p> <p>We agree that a necessary first step in achieving the stated purpose is to authorize the optional use of video hearings in all civil matters. This broad authority is required prior to each individual court utilizing the technology in the manner most appropriate for their</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>jurisdiction. We can think of no reason to exclude any type of civil action or proceeding initially. As each Court begins to expand their use of video hearings, regular reassessment will be required to ensure that the use remains in furtherance of the stated purpose. Where court access or service is found to be compromised by this process, limitations should be created in an expeditious manner. We believe allowing the Judicial Council to address any concerns as they arise by implementing specifically tailored rules is appropriate and necessary.</p>
9.	<p>Child Support Directors Association, Judicial Council Forms Committee by Ronal Ladage, Chair Sacramento, CA</p>	A	<p>The Committee has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, our judicial partner, and our case participants. The Committee is in support of the proposed Code of Civil Procedure section 367.7 as it appropriately addresses the goal of LEG20-02 by providing statutory authority for courts to permit, but not mandate, remote video appearances in any civil (family law included) action or proceeding, including trials and evidentiary hearings.</p> <p>In addition to supporting LEG20-02, the Committee recommends an amendment to California Rule of Court, Rule 5.324. Rule 5.324 currently allows video appearances participation in IV-D hearings except in contested trials and contempt matters. In order for the IV-D program to fully benefit from the proposed legislation, the Committee recommends Rule 5.324 be amended to expand the court’s authority to allow remote videoconferencing in contested hearings and trials (except when the court in its discretion, deems personal appearance would material assist in the resolution of the case). This amendment would benefit IV-D participants by granting them greater access to the courts. The amendment would allow easier access to the court for parties with mobility barriers and vulnerability barriers, as well as those who live or work far from the courthouse. It would save time, cost of travel, missed work, and decrease childcare arrangements. Potential barriers to the IV-D program of remote video appearances include reduced line items, as remote hearings take longer than in-person hearings, and any potential court cost for the video conferencing hardware and software.</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>The Committee recommends that contempt hearings continue to be excluded from the list of permissible remote video court appearances in Rule 5.324.</p> <p>The Committee recommends California Rule of Court, Rule 5.324 be amended as follows:</p> <p>(c) Permissibility of telephone appearances Upon request, the court, in its discretion, may permit a telephone appearance in any hearing, contested hearing, or conference related to an action for child support when the local child support agency is providing services under title IV-D of the Social Security Act.</p> <p>(d) Exceptions A telephone appearance is not permitted for any of the following except as permitted by Family Code section 5700.316:</p> <p>(1) Contested trials, Contempt hearings, orders of examination, and any matters in which the party or witness has been subpoenaed to appear in person; and</p> <p>(2) Any hearing or conference for which the court, in its discretion on a case-by-case basis, decides that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case.</p>
10.	Legal Aid Association of California by Salena Copeland, Executive Director Oakland, CA	A	<p>I am writing on behalf of the Legal Aid Association of California (LAAC) to express our support for LEG20-02 (Enact Code Civ. Proc., § 367.7). We support LEG20-02 because it would result in the expanded use of remote video appearances, which has the potential to increase access to justice.¹ There are, however, a number of critical access to justice and accessibility issues with remote video appearances. Acknowledging that the rule-making phase will take place later, we wanted to take this opportunity to highlight some of those issues here.</p> <p>LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>also serve a wide range of low-income and vulnerable populations. LAAC serves as California’s unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.</p> <p>We support the enactment of Code Civ. Proc., § 367.7, which would provide statutory authority for courts to permit remote video appearances in any civil action or proceeding, including trials and evidentiary hearings, and would also specify that the Judicial Council may adopt rules effectuating the new code section. These changes would help the court system build out a remote infrastructure that is critical for disasters, like the current pandemic, as well as for the administration of justice generally. Specifically, in terms of the advisory committee’s request, the proposal addresses the stated purpose; however, we note herein the aspects of rulemaking that ought to be considered to ensure enhanced access for low-income Californians and others who may be marginalized without conscious recognition of barriers.</p> <p>1. <u>Remote Hearings During COVID-19 (and Beyond)</u></p> <p>As we have seen with COVID-19, a robust remote hearings infrastructure is essential. The critical civil legal issues that low-income Californians, self-represented litigants (SRLs), and other court users face go on and, in many ways, are exacerbated in the midst of the pandemic. People facing unjust evictions, domestic violence, public benefits and unemployment insurance denials, and myriad other issues have needed the courts to assist them in reaching resolutions that can help them stay housed, reach safety from an abuser, and receive the benefits they need to get by. Consequently, we have seen how massively critical this remote hearing infrastructure is in this time of crisis.</p> <p>Moreover, increasing the use of remote hearings also has the potential to increase access beyond crisis moments to the everyday administration of justice for SRLs, low-income Californians, and rural communities who could benefit from a system that helps them avoid long trips to the court that otherwise can result in the disruption of</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>responsibilities like caring for children or parents or getting on the bus to reach multiple jobs. Further, it could allow for streamlined, efficient systems that offer cost- and time-saving potential for courts, lawyers, and other justice stakeholders.² Increasing the viability, sophistication, and—most critically—the accessibility of remote appearance technologies in courts is more than a stopgap measure during a crisis, and has the potential to offer much more in terms of access to justice, so long as that element is emphasized.³</p> <p>2. <u>Avoid Replicating Preexisting Barriers when Designing Remote Hearings Process</u></p> <p>a. <i>The Digital Divide</i></p> <p>While technology has the potential to increase access to justice, we must ensure we avoid replicating preexisting systemic barriers to low-income Californians and other disadvantaged groups when designing and implementing tech-based systems. First, in designing a statewide system of remote hearings, consciousness of the “digital divide” is imperative: There is an entrenched socioeconomic and geographic digital divide that will, until resolved, make it difficult or impossible for many Californians to participate.⁴ While this should not dissuade courts to increase the use of remote technologies, it is essential to note that there is inequitable access to technology and courts must be willing to work with litigants to allow them to participate. Specifically, where a litigant does not have access to the necessary videoconferencing platform, section 367.5 (telephonic hearings) can still function to ensure that the participant can utilize a telephone to participate.</p> <p>b. <i>Limited English Proficiency and Disability Access</i></p> <p>Access for limited English proficient (LEP) individuals and people with disabilities is paramount as well.⁵ Interpretation of court proceedings as well as documents and webpages is critical to ensure LEP participants can understand both processes and substance. Remote translation using video is generally preferred because it provides visual cues to the interpreter.⁶ In terms of disability access, remote technology can cause</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>dizziness, nausea, and other feelings of illness. Essential videoconferencing accessibility features are closed captioning, keyboard accessibility, automatic transcripts, and screen reader support, as a minimum.⁷ It is also vital for documents, presentations, and other materials to be compliant with the Web Content Accessibility Guidelines (WCAG) 2.1,⁸ and that the platform further comply with the 21st Century Communications and Video Accessibility Act (CVAA).⁹ Altogether, remote hearings have incredible potential to increase access to justice by allowing easier participation, but we must build a system cognizant of the accessibility issues that could arise.</p> <p>3. <u>Access and Accessibility Issues to be Considered When Promulgating Rules</u></p> <p>It will be paramount what rules the Judicial Council ultimately decides to adopt to effectuate this code section. During rule-making, we highly encourage special attention be paid to access to justice issues to uplift access to courts and legal protections while avoiding the abridgement of due process rights. As noted by the Judicial Council: “Potential areas for rule making include the notice to be given by a person requesting a video appearance, the manner in which video appearances are to be conducted, the conditions required for a person to be permitted to appear by video, and provisions relating to the courts’ use of private vendors to provide video appearance services.”¹⁰ These are all prime examples of the important details of such a system.¹¹ Elsewhere in the country where remote hearings are being utilized, there can be serious due process issues, including situations where a defendant might participate via telephone while the judge and lawyers videoconference; a lack of clear process for bringing in exhibits and evidence; and illegal judgments, along with the issues noted below. An additional issue is a concern around cost, such that some hearings that usually have no fees now require the filling out of a fee waiver that might only cover the client, and it might be unclear for a self-represented litigant to know to seek a fee waiver for such fees. While this rule-making process will be in the future, there are a few aspects of this that we would like to highlight now.</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p><i>a. Notice Should Be Clear and Thorough</i></p> <p>Notice is an important aspect of the remote hearings process. Having direct, thorough notices will help avoid unnecessary delays and miscommunications between courts and litigants. We advise always using plain language and avoiding legalese and technical terms to help ensure that litigants understand what they are being asked to do.¹² Some aspects of designing the remote hearings notification process should include consideration of: how hearings are scheduled¹³ (moving to individualized scheduling with time-certain proceedings); ensuring clear notification¹⁴ (plainly stating in the notice that the litigant will be using remote hearings software and how to go about doing so); the provision of extra notice of hearings¹⁵ (email, text, and/or calling the litigation to determine receipt); and displaying daily dockets on the court’s remote hearings webpage that includes notification of whether the hearing is virtual or in-person.¹⁶ It is essential to avoid punitive measures when addressing non-attendance or other matters.</p> <p><i>b. Complete, Helpful, and Accessible Webpages</i></p> <p>In addition to notice documents, webpages become ever-more important as places to provide litigants with the information they need. It will be essential to maintain clear, concise, and accessible¹⁷ remote hearings webpages that give litigants all of the information they need to participate,¹⁸ and do so meaningfully, including the basics of whichever platform is being used as well as how to best prepare for their hearing.¹⁹ These pages should presume that the user is navigating both these technological systems as well as the legal system for the first time. Therefore, they should provide the universe of information necessary for all, including those with less exposure to technology, to navigate these systems. This will increase accessibility, while also increasing court efficiency by avoiding delays and impediments to the hearing process.</p> <p><i>c. Support Ongoing Dialogue with Litigants and Advocates to Ensure Access, Produce a Verbatim Record, and Acknowledge Privacy Concerns</i></p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>Apart from the form of notice, before the hearing the court should request information from the litigant regarding their technological capacity to ensure they have Internet access and can download the videoconferencing platform. The court can also find out if there are any ADA accommodations or language access needs. The court can provide a list of legal aid organizations in the area for the relevant issue if the litigant is self-represented. There might be privacy concerns for sensitive matters—such as domestic violence cases—where a litigant may be unable to avoid using technology located in public areas of the home, and the court should recognize and address such concerns. The court should further determine how a record of the proceedings will be created for litigants to use to appeal, whether through the videoconferencing platform or an official court reporter, and notify the litigant of how to access such a record for this purpose.²⁰ During the hearing, while the judge must remain impartial, she can still make reasonable accommodations to ensure all participants can be heard.²¹</p> <p>In sum, we support LEG20-02 because it offers the potential to increase access, so long as viewed through an access and accessibility lens. Connecting self- and unrepresented litigants with legal aid and self-help centers; ensuring disability and language access and clear, thorough webpages and notices; and, overall, creating inclusive, accessibility-centered design throughout the remote hearings process—from notice to judgment to appeal—are some of the myriad essential aspects of respecting due process, protecting rights, and ensuring meaningful access to courts through virtual technologies. We must be sure not to replicate barriers that already impede low-income Californians, SRLs, and other disadvantaged court users and instead take this opportunity to optimize for access.</p> <p>Footnotes: ¹ See CALIFORNIA COMMISSION ON ACCESS TO JUSTICE (CALATJ), REMOTE HEARINGS AND ACCESS TO JUSTICE DURING COVID-19 AND BEYOND, https://laaonline.egnyte.com/fl/3prDsUYnuA#folder-link/ (CalATJ, in collaboration with LAAC, produced this guide recently to aid courts, judges, and court staff in ensuring their remote hearings systems were accessible).</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>² See generally SELF-REPRESENTED LITIGATION NETWORK (SRLN), SERVING SELF-REPRESENTED LITIGANTS REMOTELY: A RESOURCE GUIDE https://www.srln.org/system/files/attachments/Remote%20Guide%20Final%208-16-16_0.pdf (“Providing services in a way that does not require the public to visit a courthouse or office is advantageous in terms of time and cost savings both for self-represented litigants and for the organizations that serve them.”).</p> <p>³ See, e.g., NATIONAL CONSUMER LAW CENTER, REMOTE COURT APPEARANCES IN THE COVID-19 ERA: PROTECTING CONSUMERS IN COLLECTION LAWSUITS (June 2020), https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Remote_Court_Appearances.pdf (noting the importance of clear notice, detailed instructions, avoiding issuing civil arrest warrants, and coordination with legalservices).</p> <p>⁴ See, e.g., Monica Anderson & Madhumitha Kumar, <i>Digital divide persists even as lower-income Americans make gains in tech adoption</i>, PEW RESEARCH (May 7, 2019), https://www.pewresearch.org/facttank/2019/05/07/digitaldivide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/; Andrew Perrin, <i>Digital gap between rural and nonrural America persists</i>, PEW RESEARCH (May 31, 2019), https://www.pewresearch.org/facttank/2019/05/31/digital-gap-between-rural-and-nonrural-america-persists/; <i>The Digital Divide</i>, STANFORD CS, https://cs.stanford.edu/people/eroberts/cs181/projects/digital-divide/start.html.</p> <p>⁵ NATIONAL CENTER FOR STATE COURTS, REMOTE COURT OPERATIONS INCORPORATING A2J PRINCIPLES (Mar. 27, 2020), https://www.ncsc.org/_data/assets/pdf_file/0016/14470/remote-court.pdf.</p> <p>⁶ <i>Video Remote Interpreting (VRI)</i>, JUDICIAL COUNCIL, https://www.courts.ca.gov/VRI.htm. See, e.g., <i>Remote Interpreting Best Practices during the COVID-19 Emergency</i>, WASH. COURTS, https://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/Remote%20Interpreting%20Best%20Practices.pdf</p> <p>⁷ These four accessibility features are included with Zoom and serve as an example. See <i>Accessibility Features, Zoom</i>, https://zoom.us/accessibility. BlueJeans features similar accessibility features. See <i>Accessibility Features for Meetings and Events</i>, https://www.bluejeans.com/accessibility-video-conferencing-features.</p> <p>⁸ <i>Web Content Accessibility Guidelines (WCAG) 2.1</i> (2018), https://www.w3.org/TR/WCAG21/.</p> <p>⁹ THE 21ST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010, http://www.gpo.gov/fdsys/pkg/BILLS111hr3101pcs/pdf/BILLS-111hr3101pcs.pdf.</p> <p>¹⁰ JUDICIAL COUNCIL, <i>Proposal for Judicial Council–Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings</i>, https://www.courts.ca.gov/documents/leg20-02.pdf.</p> <p>¹¹ See, e.g., CALATJ, <i>supra</i> note 1.</p> <p>¹² THE NATIONAL ASSOC. FOR COURT MANAGEMENT, 2019 PLAIN LANGUAGE GUIDE,</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>https://nacmnet.org/wpcontent/uploads/NACM-Plain-Language-Guide-20190107.pdf. <i>See also</i> NATIONAL CENTER FOR STATE COURTS, PLAIN LANGUAGE RESOURCE GUIDE, https://www.ncsc.org/Topics/Access-and-Fairness/Plain-Language/Resource-Guide.aspx.</p> <p>¹³ CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES (2020), https://www.americanbar.org/content/dam/aba/administrative/child_law/conducting-remotehearings.pdf. Additionally, this is especially important to SRLs and other court users who have issues spending half a day in court, such as those supporting the healthcare needs of parents or who cannot afford childcare. A discrete time to call-in helps with this.</p> <p>¹⁴ TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF-REPRESENTED LITIGANTS, https://gato-docs.its.txstate.edu/jcr:27c725a8-4dbc-44f0-a58a96a8b121e3d0/Best%20Practices%20for%20Courts%20in%20Zoom%20hearings%20Involving%20Self%20represented%20Litigants.pdf.</p> <p>¹⁵ <i>Id.</i></p> <p>¹⁶ STATE COURT ADMINISTRATIVE OFFICE, <i>Michigan Trial Court Standards for Courtroom Technology</i> (2020), https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/VCR_std.pdf.</p> <p>¹⁷ NATIONAL CENTER FOR STATE COURTS, <i>supra</i> note 5.</p> <p>¹⁸ <i>See, e.g.</i>, THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER, http://www.placer.courts.ca.gov/RAS.shtml.</p> <p>¹⁹ <i>See, e.g.</i>, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, <i>Preparing to Participate in a Zoom Video Conference</i>, https://www.cand.uscourts.gov/zoom/.</p> <p>²⁰ <i>See, e.g.</i>, Emergency Rule 3(a)(3) (2020) of the Judicial Council’s California COVID-19 Emergency Order permits “the use of remote reporting and electronic recording to make the official record of an action or proceeding.”</p> <p>²¹ TEXAS ACCESS TO JUSTICE COMMISSION, <i>supra</i> note 14.</p>
11.	Orange County Bar Association by Scott B. Garner, President	A	<p>The proposal appropriately addresses the stated purpose of increasing availability of video appearances</p> <p>We recommend excluding jury trials in civil cases from the proposed code section.</p> <p>Requiring the public at large to travel to and from the courts to appear in person but allowing the attorneys to appear remotely will reduce jury morale and possibly erode confidence of, and opinions regarding, the courts and the practice of law.</p>
12.	Orange County Public Defender	AM	Statement of Interest

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
	by Sara Ross Assistant Public Defender Santa Ana, CA		<p>The Orange County Public Defender’s Office is a public agency charged with representing the indigent in California’s third most populous county. The Public Defender’s Office consists of approximately 200 attorneys dedicated to the vigorous representation of criminal defendants in the Superior Court, Court of Appeal, and California Supreme Court. The Orange County Public Defender has been a statewide leader in litigating important issues in both Sexually Violent Predator and juvenile dependency cases, including <i>Orey v. Superior Court</i> (2013) 213 Cal.App.4th 1241 and <i>People v. Superior Court (Smith)</i> (2018) 6 Cal.5th 457; as well as <i>Renee J. v. Superior Court</i> (2001) 26 Cal.4th 735; <i>M.V. v. Superior Court</i> (2008) 167 Cal.App.4th 166; <i>In re Mark A.</i> (2007) 156 Cal.App.4th 1124; and <i>Jennifer A. v. Superior Court</i> (2004) 117 Cal.App.4th 1322.</p> <p>Comments</p> <p>As it is currently drafted, Section 367.7 applies to “any civil action or proceeding.” (Code Civ. Proc., § 367.7, subdivision (b).) As the Judicial Council noted, the scope of this section is broad and would apply to juvenile dependency matters and Sexually Violent Predator proceedings. While the language of the Judicial Council’s proposal suggests that video may be utilized in evidentiary hearings and trial, the statute as currently written is vague as to whether a court can require a party or witness to appear via video. In other words, proposed Section 367.7 is silent as to whether this statute gives a court authority to <i>force</i> a party to appear via video or accept the appearance of a witness via video. Because parents in juvenile dependency and respondents in Sexually Violent Predator cases are uniquely situated and entitled to a variety of constitutional protections, the Judicial Council should revise this proposed legislation to reflect that courts cannot require parties and/or witnesses to appear by video in juvenile dependency and Sexually Violent Predator cases.</p> <p><u>Sexually Violent Predator Cases:</u> Sexually Violent Predator, or “SVP” cases, are considered special proceedings of a civil nature. (<i>People v. Superior Court (Cheek)</i> (2001) 94 Cal.App.4th 980 [holding SVP cases are subject to certain provisions of the Civil Discovery Act]; see also <i>People v. Dixon</i></p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>(2007) 148 Cal.App.4th 412, 414.) Nevertheless, individuals prosecuted under the SVP law are entitled to constitutional rights largely consistent with those of criminal defendants. For instance, at trial, the alleged SVP is entitled to “the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and [to] have access to all relevant medical and psychological records and reports.” (Welf. & Instit. Code, § 6603, subdivision (a).) Moreover, any party may demand and receive trial by jury. (Welf. & Instit. Code, § 6603.) The prosecution has the burden of proving the case beyond a reasonable doubt, and any jury verdict must be unanimous. (Welf. & Instit. Code, §§ 6604; 6603, subdivision (d).)</p> <p>The constitutional protections guaranteed to alleged SVPs are rooted in Due Process guarantees of liberty. Of course, “for the ordinary citizen, commitment to a mental hospital produces a massive curtailment of liberty, and in consequence requires due process protection... The loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement.” (People v. Litmon (2008) 162 Cal.App.4th 383, 400.)</p> <p><u>Dependency Proceedings:</u> Juvenile dependency proceedings are also civil proceedings, but courts have historically recognized that the consequences of these proceedings are more severe than many other civil proceedings. Certainly, “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” (M.L.B. v. S.L.J. (1996) 519 U.S. 102, 119.) Such decisions “involve the awesome authority of the State to destroy permanently all legal recognition of the parental relationship” and “are among the most severe forms of state action.” (M.L.B. v. S.L.J., supra, 519 U.S. at pp. 127–128, internal citations omitted.)</p> <p>Dependency cases also necessarily involve consideration of fundamental liberty interests. Indeed, the “freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.” (Santosky v. Kramer, (1982) 455 U.S. 745, 753.) “This Court’s decisions have by now made plain beyond the need for multiple</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>citation that a parent’s desire for and right to ‘the companionship, care, custody and management of his or her children’ is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection. (Lassiter v. Department of Social Services (1981) 452 U.S. 18, 27, internal citations omitted.)</p> <p><i>The Right to Confrontation: SVP and Dependency Cases</i></p> <p>The right to confront and cross-examine accusers is a constitutional right belonging to criminal defendants. However, due process protections afford the right to confrontation to alleged SVPs and to parents in dependency matters.</p> <p>First, “[t]he simple truth is that confrontation through a video monitor is not the same as physical face-to-face confrontation.” (United States v. Yates (11th Cir. 2006) 438 F.3d 1307, 1315.) There are a number of reasons to approach the use of video in trials and evidentiary hearings with caution. For instance, some counties are not as technologically advanced as others, which could cause problems with the quality of the testimony or evidence presented. Further, practical problems could occur with respect to the angle and quality of the video screen used in courtrooms and the position of witnesses, parties, or jurors. (Carter, supra, 907 F.3d 1199.) Moreover, it would be nearly impossible to monitor the behavior of witnesses testifying remotely, which could result in witnesses surreptitiously reviewing documents, being coached off camera, or otherwise being improperly influenced. (Ibid.)</p> <p>Furthermore, “[t]he right of cross-examination reinforces the importance of physical confrontation. Most believe that in some undefined but real way, recollection, veracity, and communication are influenced by face-to-face challenge. This feature is part of the sixth amendment right additional to the right of cold, logical cross-examination by one’s counsel.” (Herbert v. Superior Court (1981) 117 Cal.App.3d 661, 670, quoting United States v. Benfield (8th Cir. 1979) 593 F.2d 815.) Moreover, “[a]ny procedure that allows an adverse witness to testify remotely necessarily diminishes ‘the profound [truth-</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>inducing] effect upon a witness of standing in the presence of the person the witness accuses.” (United States v. Carter (9th Cir. 2018) 907 F.3d 1199, 1207 (Carter), quoting Coy v. Iowa (1988) 487 U.S. 1012, 1020.)</p> <p>For dependency matters, the right of confrontation ranks “among the essential ingredients of due process” in dependency proceedings. (In re Patricia T. (2001) 91 Cal.App.4th 400, 404.) Similarly, in SVP civil proceedings, “such a right does exist under the due process clause.” (People v. Otto (2001) 26 Cal.4th 200, 214; see also People v. Roa (2017) 11 Cal.App.5th 428, 455.)</p> <p>Proposed Revision:</p> <p>(a) It is the intent of this section to improve access to the courts and reduce litigation costs by providing that a court may, as appropriate and practical, and <u>at the express request of either party in a Sexually Violent Predator case and any party in a juvenile dependency case</u>, permit <u>any party</u> to appear in court by video in all civil actions and proceedings including trials and evidentiary hearings.</p> <p>(b) <u>With the agreement of all parties in a Sexually Violent Predator proceeding and in a juvenile dependency proceeding</u>, a A court may permit a person <u>witness</u> to appear by video in any civil action or proceeding.</p> <p>(c) <u>The court may not permit a witness to appear by video for any trial or evidentiary hearing in a Sexually Violent Predator case or juvenile dependency case unless all parties consent to the witness appearing via video.</u></p> <p>(e) (d) The Judicial Council may adopt rules effectuating this section.</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>Conclusion</p> <p>By submitting this letter to the Judicial Council, the Public Defender’s Office does not mean to suggest that there will never be appropriate situations wherein the parties will seek to use video testimony or video appearances in an SVP or dependency trial or evidentiary hearing. However, as expressed above, the proposed legislation is vague and ambiguous with respect to whether the court may be permitted to order that this rule be imposed upon the parties, even in situations where the parties object or disagree. As such, the proposed legislation should be amended as provided above.</p>
13.	Public Law Center (PLC) By Leigh E. Ferrin, Director of Litigation and Pro Bono Santa Ana, CA	AM	<p>PLC is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. Our services are provided across a range of substantive areas of law, including consumer, family, immigration, housing, veterans and health law. Additionally, PLC provides legal assistance to non-profits and low-income entrepreneurs. PLC works with hundreds of self-represented litigants and thousands of low-income clients every year. Through this work, PLC has seen the limited access to technology that is available, as well as the accessibility challenges even if the technology is technically available.</p> <p>The last few weeks have been a perfect example. As the courts begin to reopen, hearings are being set via video conference. However, a number of our clients do not have access to reliable internet where they could engage in a video call for any length of time. And, even if a client does have access, many of our clients who are older adults, who are Limited English Proficient or who have limited education, are not capable of navigating even a relatively simple conference call-system. Even during the stay-at-home orders, while our offices are closed to the public, PLC has had to make accommodations with clients to bring them in to our office so that they can attend their court hearing. We can make those accommodations for our clients, but particularly in fields like family law, such a significant number of litigants are self-represented that it raises concerns.</p> <p>The additional complicating factor is that many of the resources that our client might typically use (libraries, community centers, etc.) are also closed right now. These</p>

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

LEG20-02**Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)**

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

	Commenter	Position	Comment
			<p>resources might reopen, but we really do not know what the "new normal" will be, and whether or not access will be readily available. We are particularly concerned about what will happen if there are connectivity issues. We would encourage the court to not automatically default a party, particularly a self-represented party, based on their inability to connect due to technical difficulties, and at times allow exceptions so that litigants may be able to appear in person if needed (as well as a simple process to request the in-person appearance).</p> <p>We appreciate the opportunity to comment. PLC recognizes that much of what we have learned in the last three months during the stay-at-home orders is that our world is moving in the direction of technological advancement, and for the most part, we support it. But we have seen very clearly the way that technology does not level the playing field and we believe the Judicial Council should take that into consideration when implementing these new rules.</p>
14.	Superior Court of Los Angeles County by Brian Borys	AM	<ul style="list-style-type: none"> - In proposed CCP 367.7, the word “practical” should be “practicable.” - The scope could be better defined. There are instances where “civil” does not include family law. See, e.g., CRC 1.6 that defines a “general civil case” to exclude family law and probate (and other) proceedings. Consider: “in all actions and proceedings brought under the Code of Civil Procedure, the Civil Code, the Family Code and the Probate Code”. - Section (a) refers to permitting “parties” to appear and section (b) refers to permitting a “person” to appear. They should be consistent unless it is intended for section (b) to include people such as witnesses and others. - The rule should make clear that appearance by “video” means real-time as opposed to videotaped.

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>1. Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by rule? Answer: No.</p> <p>2. Would the proposal result in costs or savings to the court? If so, what costs or savings would be associated with implementing the proposal? Answer: There may be additional costs incurred by courts. This legislation must preserve the ability of courts and/or vendors to recover costs.</p> <p>3. Would this proposal impact the court’s current efforts to allow video appearances? Answer: We support the proposal as it would enhance our current efforts to provide for remote appearances.</p>
15.	Superior Court of Orange County, Family Law Division by Vivian Tran, Administrative Analyst	NI	<p>No comments on the proposal as a whole.</p> <p>Request for Specific Comments</p> <p><input type="checkbox"/> Does the proposal appropriately address the stated purpose?</p> <p>•Yes, it provides statutory authority for courts to permit remote video appearances in any civil action or proceeding including trials and evidentiary hearings. It also advances judicial branch’s technology goals of (1) promoting the digital court to improve access to the courts, and (2) promoting legislative changes to facilitate the use of technology in court operations and delivery of court services.</p> <p><input type="checkbox"/> Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by rule?</p> <p>•For the civil case type there may be challenges with Mandatory Settlement Conferences as outlined in OCSC Civil Invitation to Comment response. However, Family Law sees no</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>other exclusions at this time. No, the committee did not want the proposal to stand as a potential obstacle to existing video appearance efforts by the courts or create conflict with other statues on the subject. The committee kept the proposed code section broad. The legislation provided courts with statutory authority to permit video appearances, but it would not require permitting video appearances.</p> <p><input type="checkbox"/>The advisory committees also seek comments from courts on the following cost and implementation matters: Would the proposal result in costs or savings to the court? If so, what costs or savings would be associated with implementing the proposal?</p> <p>•Courts that choose to proceed with permitting video appearances would have fiscal and operational impacts because they would need resources to run video appearances such as staff, training, equipment, and software. Government Code section 70630 authorizes courts to charge fees to recover costs of permitting parties to appear by video. Overall investment would become a cost savings to parties, stake holders, the Court, Justice Partners, etc.</p> <p><input type="checkbox"/>Would this proposal impact the court’s current efforts to allow video appearances?</p> <p>•No, the Court had been developing digital evidence presentation pilots with Criminal and is hoping to expand into Juvenile and Civil. This proposal is in line with Orange County Superior Court’s Strategic Plan FY 2018-2019 Through 2023-2024; Enhance access and improve delivery of services, Expand the Court’s operational, technological, and administrative support, and Improve relationships within the community through outreach and transparency.</p> <p><input type="checkbox"/>How well would this proposal work in courts of different sizes?</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>•According to the CCJ/ COSCA Pandemic Rapid Response Team, “Lights, Camera, Motion!” series, different Courts across the state and county of different sizes are operating with remote hearings. https://www.ncsc.org/</p> <p><input type="checkbox"/> What challenges, if any, does the court anticipate facing to allow video appearances?</p> <p>•Orange County Superior Court will have fiscal and operational impacts because we would need resources to run video appearances such as staff, training, equipment, and software. We are currently doing this in all Family Law Proceedings due to COVID-19. Such legislation, absent an Emergency Order, will require significant changes to the Evidence Code, Code of Civil Procedure, Family Code, California Rules of Court, and all Local Rules; i.e.: re receipt and authentication of documents, protocols re Subpoenas for Appearance at Trial, etc. It will additionally require expenditures for Courts to acquire the technology necessary to enable Remote Hearings, i.e.: technology for Interpreter devices, Reporter Technology, large screens to be able to view all participants, technology to receive documents, etc.</p>
16.	Superior Court of Orange County, Juvenile Law Division by Linda Contreras, Administrative Analyst I	NI	<p>Comments</p> <p>With recent COVID-19 closures, the need for remote video appearances is needed now more than ever, so this proposal is much needed. It should be implemented with an urgency clause for courts to implement as soon as practicable</p> <p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Yes, it provides statutory authority for courts to permit remote video appearances in any civil action or proceeding including trials and evidentiary hearings. It also advances judicial branch’s technology goals of (1) promoting the digital court to improve access to the courts, and (2) promoting legislative changes to facilitate the use of technology in court operations and delivery of court services.</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p data-bbox="814 337 1955 443"> <input type="checkbox"/> <i>Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by rule?</i> </p> <p data-bbox="814 483 1955 662"> For the Civil case type there may be challenges with Mandatory Settlement Conferences as outlined in OCSC Civil Invitation to Comment response, however Juvenile sees no other exclusions identified at this time. The committee kept the proposed code section broad. The legislation provided courts with statutory authority to permit video appearances, but it would not require to permit video appearances. </p> <p data-bbox="814 703 1955 808"> <input type="checkbox"/> <i>The advisory committees also seek comments from courts on the following cost and implementation matters: Would the proposal result in costs or savings to the court? If so, what costs or savings would be associated with implementing the proposal?</i> </p> <p data-bbox="814 849 1955 1206"> Orange County Superior Court will have fiscal and operational impacts because we would need resources to run video appearances such as staff, training, equipment, and software. We are currently doing this in all Family Law Proceedings due to COVID-19. Such legislation, absent an Emergency Order, will require significant changes to the Evidence Code, Code of Civil Procedure, Family Code, California Rules of Court, and all Local Rules; i.e.: re receipt and authentication of documents, protocols re Subpoenas for Appearance at Trial, etc. It will additionally require expenditures for Courts to acquire the technology necessary to enable Remote Hearings, i.e.: technology for Interpreter devices, Reporter Technology, large screens to be able to view allparticipants, technology to receive documents, etc. </p> <p data-bbox="814 1247 1955 1393"> Government Code section 70630 authorizes courts to charge fees to recover costs of permitting parties to appear by video. Overall investment would become a cost savings to parties, stake holders, the Court, Justice Partners, etc. by reducing the number of in-person hearings. </p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p><input type="checkbox"/> <i>Would this proposal impact the court’s current efforts to allow video appearances?</i></p> <p>No, the Court had been developing digital evidence presentation pilots with Criminal and is hoping to expand into Juvenile and Civil. This proposal is in line with Orange County Superior Court’s Strategic Plan FY 2018-2019 Through 2023-2024; Enhance access and improve delivery of services, Expand the Court’s operational, technological, and administrative support, and Improve relationships within the community through outreach and transparency.</p> <p><input type="checkbox"/> <i>How well would this proposal work in courts of different sizes?</i></p> <p>According to the CCJ/ COSCA Pandemic Rapid Response Team, “Lights, Camera, Motion!” series, different Courts across the state and county of different sizes are operating with remote hearings. https://www.ncsc.org/</p> <p><input type="checkbox"/> <i>What challenges, if any, does the court anticipate facing to allow video appearances?</i></p> <p>Orange County Superior Court will have fiscal and operational impacts because of need for resources to run video appearances such as staff, training, equipment, and software. Some of it has already been completed due to COVID 19.</p> <p>Some potential challenges are connectivity issues, sound quality, public access to remote hearings, changes to processes, and training on additional tasks with current t workload (like managing and monitoring the remote hearings), which may involve labor engagement with represented units in regarding job duties and classifications.</p>
17.	Superior Court of Orange County, Training and Analyst Group	NI	<p>General Comments</p> <p>With recent COVID-19 closures, the need for remote video appearances is needed now more than ever, so this proposal is much needed. It should be implemented with an urgency clause for courts to implement as soon as practicable.</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>Request for Specific Comments</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes</p> <p>2. Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by the rule?</p> <p>Yes, video remote appearances should be permitted as proposed. Mandatory settlement conferences may prove challenging as attorney client consultation would be offline prior to going online with opposing counsel to reach agreement, which may continue repeatedly throughout the process. This may provide more opportunity for discussions to fall apart, or technology issues to arise, or calendar management to become backed up. Also, consider excluding cases involving confidentiality, which should be heard in person or by remote teleconferencing, as appropriate.</p> <p>3. Would the proposal result in costs or savings to the court? If so, please what costs or savings would be associated with implementing the proposal?</p> <p>Implementing video remote appearances would result in higher short term costs such as purchasing, installing and connecting the necessary equipment and desired applications as well as training staff on new protocols and tasks required to operate and monitor the appearances. In the long term, the number of in-person hearings may decrease, providing the potential for cost savings to the public in time and travel. However, there may be an increase in ongoing costs to the court as a result of changing the scope of work for the classification that will be in charge of monitoring remote hearings.</p> <p>4. Would this proposal impact the court’s current effort to allow video appearances?</p>

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

LEG20-02**Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)**

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

	Commenter	Position	Comment
			<p>This proposal would align the court’s current efforts with statute.</p> <p>5. How well would this proposal work in courts of different sizes?</p> <p>This proposal should work well courts of all sizes. There are now many different solutions with an array of support options to accommodate courts with and without significant in-house technology resources.</p> <p>6. What challenges, if any, does the court anticipate facing to allow video appearances?</p> <p>Access to technology and connectivity are the biggest challenge courts face. Additionally, user knowledge of the different solutions available varies considerably from expert user to novice. Of course, some court users do not have access to the internet either by choice or socioeconomic circumstances. Nevertheless, permitting remote video appearances in all civil cases, as specified, is not a mandate and courts must be agile enough to serve the public regardless of their experience, knowledge of or access to remote video technology. Finally, the same challenges described above are also present among the court staff who will be charged with this new duty to implement, manage and monitor on going video remote appearances. This will likely involve labor engagement with represented units regarding job duties and classification.</p>
18.	Superior Court of San Diego County by Mike Roddy, Executive Officer	NI	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, especially in light of the COVID-19 pandemic.</p> <p>Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by rule?</p>

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

LEG20-02

Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)

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

	Commenter	Position	Comment
			<p>Judgment Debtor Exam (JDX) Hearings and Abatement Warrant Hearings. In JDX Hearings, after the judgment debtor is sworn, the judgment creditor and judgment debtor usually go to another location for the actual exam to take place and they only come back into court if a problem arises. It would be too cumbersome and difficult to somehow develop a system that can split off the parties to have their own question and answer session, but leave the ability for the parties to come back to the court to attempt to resolve any disputes that arise during the exam.</p> <p>Abatement warrants are obtained by municipalities to stop improper conduct from occurring at a property, i.e., stagnant water in swimming pools, trash on property, drug activity, etc.... All of these require the party to bring the warrant to the court for the judge’s signature, similar to a criminal search warrant. Those proceedings should still be done in person due to the need to swear the officer and sign the warrant.</p> <p>*Any hearing in which evidence will be required to be identified by a witness would require thorough and detailed rules regarding the presentation of evidence.</p> <p>Would the proposal result in costs or savings to the court? If so, what costs or savings would be associated with implementing the proposal? No. Would this proposal impact the court’s current efforts to allow video appearances?</p> <p>No.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>It appears that the proposal will work for courts of various size.</p> <p>What challenges, if any, does the court anticipate facing to allow video appearances?</p>

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

LEG20-02**Proposal for Judicial Council-Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings (Enact Code Civ. Proc. § 367.7)**

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

	Commenter	Position	Comment	
			Indigent litigants may be unable to appear via video due to lack of access to a computer, smartphone, or the internet. Remote areas of the state may not have access to high-speed internet required for video conferencing.	

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



JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

[DRAFT] REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on: September 24-25, 2020

Title

Judicial Branch Technology: Electronic Filer
Need Not Consent to Electronic Service

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 2.255

Date of Report

July 2, 2020

Recommended by

Information Technology Advisory
Committee

Hon. Sheila F. Hanson, Chair

Contact

Andrea L. Jaramillo, 916-263-0991

andrea.jaramillo@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend rule 2.255 of the California Rules of Court. The proposed amendment would require an electronic filing service provider to allow an electronic filer to proceed with an electronic filing even if the electronic filer does not consent to receive electronic service. The proposal further clarifies procedures for consent to electronic service as permitted by Code of Civil Procedure section 1010.6.

Recommendation

The Information Technology Advisory Committee (ITAC) recommends the Judicial Council amend rule 2.255 of the California Rules of Court¹ effective January 1, 2021. The proposed amendment would add a new subdivision (g) to rule 2.255 to require an electronic filing service provider to allow an electronic filer to proceed with an electronic filing even if the electronic

¹ All further references to rules are to the California Rules of Court.

Commented [JA1]: This draft report will be updated following the ITAC meeting to reflect direction and comments from ITAC. The draft report will also be proofread by the Judicial Council Editing and Graphics Group before being submitted to the Rules Committee.

filer does not consent to electronic service. The proposed amendment applies only to permissive electronic service, which requires consent, and not to electronic service required by court order or local rule, which do not require consent. The text of the amended rule is attached at page 5.

Relevant Previous Council Action

In response to a legislative amendment to Code of Civil Procedure section 1010.6 (section 1010.6) requiring parties to expressly consent to electronic service, the Judicial Council amended rules 2.251 and 2.255 effective January 1, 2019 and January 1, 2020 to provide procedures for express consent that comply with statute.

Analysis/Rationale

In 2017, the Legislature amended section 1010.6 to state that for cases filed on or after January 1, 2019, electronic service was “not authorized unless a party or other person has expressly consented to receive electronic service in that specific action” unless electronic service was required by local rule or court order. Rule 2.251(b) had previously allowed the act of electronic filing alone to be evidence of consent to receive electronic service for represented persons, but the amendment to section 1010.6 eliminated this option. Section 1010.6 does, however, allow a person to provide express consent electronically by “manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing the party’s electronic address with that consent for the purpose of receiving electronic service.” (§ 1010.6(a)(2)(A)(ii).)

The Legislature did not provide a definition or meaning for “manifesting affirmative consent through electronic means.” To fill this gap, the Judicial Council amended rule 2.251(b) to allow an electronic filer to consent by agreeing to a term with an electronic filing service provider (EFSP) that “clearly states that agreement constitutes consent” to receive electronic service. (Rule 2.251(b)(1)(B)(i).) The rules allow, but do not require, an EFSP to include such a term.

The proposed amendment to rule 2.255 would require an EFSP that includes a term for the electronic filer’s consent to electronic service to allow an electronic filer to proceed with an electronic filing even if the electronic filer does not agree to that term. For example, if an EFSP had a check box that an electronic filer could click to agree to electronic service, the proposed rule would require the EFSP to allow the electronic filer to proceed with the electronic filing even if the electronic filer did not click on the check box.

The proposed amendment would apply only to electronic service by express consent. Accordingly, it would not apply to electronic service required by local rule or court order.

Policy implications

The proposal advances the judicial branch goal of promoting rule changes that facilitate the use of technology. (*Strategic Plan for Technology 2019–2022*, pp. 14–15.) It advances objectives of ensuring rules promote equal access to justice and do not inhibit use of technology. (*Id.* at p. 15.)

Comments

Nine commenters responded to the invitation to comment including:

1. California Department of Child Support Services
2. California Lawyers Association, Executive Committee of the Family Law Section
3. Child Support Directors Association, Judicial Council Forms Committee
4. Orange County Bar Association
5. Public Law Center
6. Superior Court of Orange County, Family Law Division
7. Superior Court of Orange County, Juvenile Court Division
8. Superior Court of Orange County, Training and Analyst Group
9. Superior Court of San Diego County

Most of the comments supported the proposed amendment, but one court raised concerns about workload and its case management system. ITAC sought specific comments on whether electronic filers should be able to “opt out” of electronic service and this topic generated the most comments. Most commenters agreed that they should, but one court commenter stated they should not. Comments in support included the following reasons for their support:

- Opt-out reduces barriers to using electronic filing.
- Opt-out improves access to courts.
- Electronic filers should be able to use any means legislatively permitted and it should not be up to a service provider that is not a party to the action.
- Electronic filers should be able to select whatever services benefit them.
- Some people may be able to submit an electronic filing, but not have regular access to technology in order to receive electronic service.

The committee members agreed with these points and were particularly concerned about ensuring access to justice for litigants who have limited access to technology or limited knowledge of using technology for court matters.

One court commenter opposed opt out and stated “courts need to have the ability to electronically serve the parties with orders, notices, etc. . . . in [electronically filed] cases. If the parties were allowed to [electronically file] and choose not to be electronically served, it would result in courts having to devise systems to serve in two forms, which is costly and difficult for staff.” The committee acknowledged the court’s concerns, but ultimately determined that it should recommend the proposed amendment for adoption by the Judicial Council because facilitating electronic filing should improve access to justice. In addition, one of the committee members investigated at his court how often litigants who electronically file then choose not to receive electronic service. The committee member noted that it was a small minority comprised

Commented [JA2]: The committee member comments reflect comments made at the ITAC Rules and Policy Subcommittee meeting on July 1. This section may be revised following the ITAC meeting to add points of discussion.

mostly of self-represented litigants. While there may be some variation in the courts, overall, the committee member expect those electronic filers who opt-out of electronic service will be a minority.

Alternatives considered

The committee considered the alternative of making no change but found the proposal preferable as it may reduce barriers to electronic filing by ensuring electronic filers are able to opt out of electronic service when electronic service is not otherwise required by the court.

Fiscal and Operational Impacts

Two courts commented that the proposal would require staff training and updates to case management systems, which would result in increased costs for the training and updates. One of the courts commented there might be minimal savings associated with not having to process paper such as “the costs of stamping conformed copies and the postage required to return them by mail if the postage was not provided by the filing party.”

Attachments and Links

1. Proposed amendment, Cal. Rules of Court, rule 2.255, at page 5.
2. Chart of comments, at pages 6–18.
3. Link A: Code Civ. Proc., § 1010.6,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6
4. Link B: *Strategic Plan for Technology 2019–2022*,
<https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>

Rule 2.255 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Rule 2.255. Contracts with and responsibilities of electronic filing service providers**
2 **and electronic filing managers**

3
4 **(a)–(f) * * ***

5
6 **(g) Electronic filer not required to consent to electronic service**

7
8 (1) An electronic filing service provider must allow an electronic filer to proceed
9 with an electronic filing even if the electronic filer does not consent to
10 receive electronic service.

11
12 (2) This provision applies only to electronic service by express consent under
13 rule 2.251(b).
14

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	California Department of Child Support Services by Lara Racine, Attorney III Rancho Cordova, CA	A	<p>The California Department of Child Support Services (DCSS) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposal made in this invitation.</p> <p>REQUEST FOR SPECIFIC COMMENTS:</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal is clear as to intent and purpose. The background section was well stated, especially as to the many iterations of Code of Civil Procedure (CCP) Section 1010.6, the applicable California Rules of Court (CRC), and the proposed amendment to CRC 2.255 as it pertains to electronic filing and electronic service requirements.</p> <p>2. Should electronic filers be able to opt out of electronic service? Why or why not?</p> <p>Yes. Where not required or otherwise ordered, an electronic filer should have the option to decline electronic service. An individual that is filing a document via the electronic process may not know what rules apply to their particular circumstance. If</p>	The committee appreciates the comment and perspective DCSS offers as a regular electronic filer.

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>they fall in the permissive category of e-filing and simply want to submit a document to the court on their case, they should be allowed to do that without also having to serve or accept documents electronically. Allowing a party to opt out of electronic service improves access to the court if that person is not interested in the electronic service process.</p> <p>GENERAL COMMENTS:</p> <p>DCSS agrees that this proposal may reduce barriers to electronic filing by ensuring electronic filers are able to opt out of electronic service when electronic service is not otherwise required by the court. The proposal will ensure litigants always have the option to electronically file at courts where electronic filing is permitted and thus increase access to the court. The proposal also provides clarification as to when the rule applies and to whom.</p> <p>DCSS is a current e-filer with several Superior Courts statewide. When our LCSAs e-file legal documents today, they do so via an established e-filing process vetted and approved by the Judicial Council. However, DCSS also files documents electronically using the</p>	<p>The committee appreciates this point and agrees reducing barriers to electronic filing is an important consideration.</p>

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>electronic filing service providers on the court’s public facing e-filing portals. DCSS works with many e-filing vendors including but not limited to, Tyler, JTI, and in-house information technology staff. While some of our counties are able to accept and process electronic service requests, others do not have a fully established process. Emergency Rule 12 will likely expand the ability of the local counties to accept and serve legal filings electronically, but eventually that rule may expire and the opt in mechanism for electronic service will once again apply.</p> <p>This proposal is more important from an access perspective for those filers that are not represented by an attorney and who are permitted to e-file, although are not required to participate in the process. Allowing this population of users to avail themselves to e-filing but not e-service, and making the rule clear as to intent, encourages the use of technology while not requiring participation in all aspects, which may otherwise deter some users. Further definition regarding the procedures required in CCP 1010.6 is always welcome, and explicit rules of court help facilitate the understanding of the entire electronic process.</p>	<p>The committee appreciates DCSS making this point and agrees that improving access to the courts through electronic filing is an important consideration.</p>

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

SPR20-28**Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service** (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
2.	California Lawyers Association, Executive Committee of the Family Law Section (FLEXCOM) by Justin M. O’Connell, FLEXCOM Legislation Chair Sacramento, CA	A	FLEXCOM agrees with this proposal.	No response required.
3.	Child Support Directors Association, Judicial Council Forms Committee Ronald Ladage, Chair Sacramento, CA	A	<p>The Committee agrees with the proposed revisions to Rule of Court 2.255. The proposed revision to California Rule of Court 2.255 accomplishes the stated purpose in that it allows electronic filers to utilize only the services of the EFSP that they wish to utilize, except when either a local rule of court directs that electronic service is mandatory when filing electronically or is specifically ordered by the court.</p> <p>The Committee believes that the proposal is feasible for the electronic filing service provider to offer a menu of services. Within the menu, the electronic filer should be able to select which services are of benefits to the electronic filed document and should not be mandated to receive services that are of no or limited benefit to the electronic filer.</p>	The committee appreciates the comment.
4.	Orange County Bar Association by Scott B. Garner, President	A	Does the proposal appropriately address the stated purpose?	The committee appreciates the comment.

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>Yes, the proposal will require electronic filing services to update their forms to comply with the statutory changes to Code of Civil Procedure Section 1010.6.</p> <p>Should electronic filers be able to opt out of electronic service? Why, or why not?</p> <p>Yes. Conceivably some persons who are required to utilize electronic filing services may not have regular access to a reliable electronic means to receive service. Also, cyberspace does not always deliver documents properly, and mistakes can be made in attempts to effect electronic service. A party should have the option to avoid these types of problems by withholding consent.</p> <p>For Electronic Filing Service Providers, is the proposal feasible?</p> <p>Yes. It appears all that would be required is for EFSPs to add an additional check box to their forms as to whether or not a party consents to electronic service in those proceedings wherein that option is available.</p>	<p>The committee appreciates these point and agrees ensuring access to electronic filing and allowing a choice are important considerations.</p>
5.	Public Law Center by Leigh E. Ferrin, Director of Litigation and Pro Bono	A	On a regular basis, but particularly over the last three months, PLC has worked with many self-represented litigants who may be	The committee appreciates PLC’s perspective on the impact for self-represented litigants, particularly those without regular access to

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
	Santa Ana, CA		<p>able to file electronically, either through a legal services organization like PLC, or, once the stay-at-home orders are lifted, at a community center or local library.</p> <p>However, these same litigants often do not have regular access to an email address. Some litigants have no email address at all, others may only be able to check their email once a week or less frequently. This is particularly true now, during the stay-at-home orders, as people are more isolated now than ever and legal services is providing more services remotely as well. For instance, PLC currently assists individuals with drafting declarations to support their domestic violence restraining orders. PLC also assists these litigants with filing, in pro per, when the litigant is unable to file on their own. In these instances, it would be particularly valuable for those litigants to still receive service by mail, rather than being required to consent to electronic service.</p> <p>PLC has one additional suggestion, which is to find a way for the filing services to verify the address, maybe through USPS as many online retailers do, to ensure that the address entered in the electronic filing system is a correct address.</p>	technology required in order to receive electronic service.

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
6.	Superior Court of Orange County, Family Law Division by Vivian Tran, Administrative Analyst	NI	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes</p> <p>Should electronic filers be able to opt out of electronic service? Why or why not?</p> <p>Yes, electronic filers should be able to opt out of electric service. They are entitled to effectuate service by any means as described by the legislature. If there is no requirement per code or by rules of court that mandate electronic service of a document, then the EFSP should not be able to impose this restriction. Some courts have requirements regarding electronic filing. A filer would not be able to comply with the requirements if they were denied the opportunity to file electronically due to their choice not to accept electronic service of documents. The way a party receives service should not be determined by a service provider who is not a party to the action.</p> <p>For EFSPs, is the proposal feasible?</p> <p>Yes, the providers who are impacted by this change can remove the check box that identifies consent to electronic service, or</p>	<p>The committee appreciates these points and agrees with them.</p>

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>they can change the functionality of the box so that it does not preclude the processing of documents if the box remains unchecked.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>No, any potential cost savings is likely minimal. It is a possibility that the proposed change would increase the number of electronic filings received by the court and reduce the number of paper filings received by mail. This could save on the costs of stamping conformed copies and the postage required to return them by mail if the postage was not provided by the filing party.</p> <p>Would there be implementation requirements for courts? If so, what would they be— for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems?</p> <p>Case management system may need updates to capture or record who is opting out of e-service. Additionally, as a result of any system updates staff training will be needed.</p>	<p>The committee appreciates the comments on costs and implementation requirements and will report the information to the Judicial Council.</p>

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
7.	Superior Court of Orange County, Juvenile Court Division by Linda Contreras, Administrative Analyst I	NI	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Should electronic filers be able to opt out of electronic service? Why or why not?</p> <p>Yes, electronic filers should be able to opt out of electric service. It may reduce the barriers to electronic filing.</p> <p>For EFSPs, is the proposal feasible?</p> <p>Yes, the providers who are impacted by this change can remove the check box that identifies consent to electronic service, or they can change the functionality of the box so that it does not preclude the processing of documents if the box remains unchecked.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>None identified at this time.</p> <p>Would there be implementation requirements for courts? If so, what would they be— for example, training staff (please identify position and expected hours of training), revising processes and procedures</p>	<p>The committee agrees with the comment that reducing barriers to electronic filing is an important consideration.</p> <p>The committee appreciates the comments implementation requirements and will report the information to the Judicial Council.</p>

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>(please describe), or modifying case management systems?</p> <p>Case management system may need updates to capture or record who is opting out of e-service. Additionally, as a result of any system updates staff training will be needed.</p>	
8.	Superior Court of Orange County, Training and Analyst Group	NI	<p>General Comments</p> <p>This ITC proposal was requested in part by OCSC.</p> <p>Request for Specific Comments</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes</p> <p>2. Should the electronic filers be able to opt out of electronic service? Why or why not?</p> <p>We defer to the Information and Technology Advisory Committee</p> <p>3. For EFSPs, is the proposal feasible?</p> <p>Yes, it is feasible as it would only require minimal system updates.</p>	

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>4. Would the proposal result in costs or savings to the court? If so, please quantify.</p> <p>The court would have to implement a mechanism for monitoring parties who opt out of e-service. This would result in additional costs to update the case management system and to train staff accordingly.</p> <p>5. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>This would require staff training and system updates to ensure notice is provided according to preference.</p>	<p>The committee appreciates the comments on costs and implementation requirements and will report the information to the Judicial Council.</p>
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	NI	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Should electronic filers be able to opt out of electronic service? Why or why not?</p>	

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>No. The courts need to have the ability to electronically serve the parties with orders, notices, etc..., in efile cases. If the parties were allowed to efile and choose not to be electronically served, it would result in courts having to devise systems to serve in two forms, which is costly and difficult for staff.</p> <p>For EFSPs, is the proposal feasible?</p> <p>Defer to EFSPs.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>No, as set forth above, if parties were able to choose manner of service, it would increase costs to the court and defeat the savings from efilng.</p> <p>Would there be implementation requirements for courts? If so, what would they be—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems?</p> <p>Would the consent to service only apply to the parties or the court communication as</p>	<p>The acknowledges the concerns raised by the court about impact to its workload and case management system updates. The committee discussed the matter, but decided to recommend the proposal for adoption by the Judicial Council because facilitating electronic filing improves access to justice. The committee expects that parties choosing to electronically file, but opting not to receive electronic service will be a minority.</p> <p>The committee appreciates the comments on costs and implementation requirements and will report the information to the Judicial Council.</p> <p>The provision would apply to service, but not other forms of communication. This is a</p>

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

SPR20-28

Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	DRAFT Committee Response
			well? If it applies to service between the parties, minimal impact. However, if it applies to court communication, we would need to have development added to CCMS V-3 that would allow the recording of expressed consent somewhere on the participants' tab, which would result in a significant impact. It would also increase costs in cases because staff would have to serve in potentially two forms, which will take training, time, and significantly add to the costs incurred by the court to provide notice.	statutory requirement. Under Code of Civil Procedure section 1010.6(a)(3), if the court is required to serve a party with a document and electronic service is not mandated by court order or local rule, then the party must have consented to receive electronic service in the case before the court can electronically serve them. To ensure courts would have a way of knowing an electronic filer had consented to electronic service through electronic filing service provider rather than through filing a form, the Judicial Council amended rule 2.255 last year to require the electronic filing service providers to transmit that information to the court.

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