



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

July 8, 2020

Action Requested

Please Review

To

Judicial Council Technology Committee
Hon. Hon. Kyle S. Brodie, Chair

Deadline

July 13, 2020

From

Andrea L. Jaramillo, Attorney
Legal Services, Judicial Council

Contact

Andrea L. Jaramillo
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Subject

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 met on July 6, 2020, to consider comments and make a recommendation to CSCAC, ITAC, and FJLAC. ITAC will meet on July 8, 2020 and FJLAC will meet on July 27, 2020. CSCAC's meeting date is to be decided.

A copy of the draft Judicial Council report, including proposal language and comment chart, is attached for reference. The report will be proofread by the Judicial Council Editing and Graphics Group before it is presented to the Legislation Committee and the council itself. The report may

also be updated, as appropriate, to reflect further advisory committee discussion following the CSCAC, ITAC, and FJLAC meetings.

Attachment

1. Draft Judicial Council Report, including attachments, for proposal to sponsor enactment of Code of Civil Procedure section 367.7.



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on: September 24-25, 2020

Title

Judicial Council–Sponsored Legislation:
Video Appearances in All Civil Actions and
Proceedings

Agenda Item Type

Action Required

Effective Date

January 1, 2022

Rules, Forms, Standards, or Statutes Affected

Sponsor Code Civ. Proc., § 367.7

Date of Report

July 8, 2020

Recommended by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair
Family and Juvenile Law Advisory
Committee
Hon. Jerilyn L. Borack, Co-chair
Hon. Mark A. Juhas, Co-chair
Information Technology Advisory
Committee
Hon. Sheila F. Hanson, Chair

Contact

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Executive Summary

The Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, and Information Technology Advisory Committee recommend the Judicial Council sponsor legislation to provide statutory authority for courts to permit video appearances in any civil actions or proceedings including trials and evidentiary hearings. The proposal originates with recommendations included in reports from the Commission on the Future of California's Court System and the Information Technology Advisory Committee's Remote Video Appearances Workstream.

Recommendation

The Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, and Information Technology Advisory Committee recommend the Judicial Council sponsor Code of Civil Procedure section 367.7 (section 367.7) effective January 1, 2022. Section 367.7 would provide statutory authority for courts to permit video appearances in any civil actions or proceedings including trials and evidentiary hearings.

The text of the proposed legislation is attached at page [X].

Commented [JA1]: Page number will be added to the final version.

Relevant Previous Council Action

In 2014, Chief Justice Tani G. Cantil-Sakauye established the Commission on the Future of California’s Court System (Futures Commission) to examine the work of the trial courts and consider how court operations could be improved and streamlined. The Futures Commission released its final report in 2017 and noted that, “the option to attend court proceedings remotely should ultimately be available for all noncriminal case types and appearances, and for all witnesses, parties, and attorneys in courts across the state.”¹

In 2018, the Information Technology Advisory Committee formed the Remote Video Appearances Workstream (the workstream), which analyzed the state of video and digital appearances in California courts, and made recommendations to “broaden the adoption of this emerging model for court appearances.”² The workstream made several recommendations that legislative and rule proposals be developed to facilitate the use of video appearances in most civil proceedings.

Following the workstream’s report, the Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, Probate and Mental Health Advisory Committee, and Information Technology Advisory Committee formed a joint ad hoc subcommittee to move forward with development of legislative and rule proposals.

Analysis/Rationale

The committees started with developing a legislative proposal and, if the Judicial Council votes to sponsor the legislation, the committees will turn to rule development. Proposed section 367.7 would provide statutory authority for courts to permit video appearances in any civil action or proceeding, including trials and evidentiary hearings. The scope is broad. Examples of actions and proceedings that would be included are civil and small claims, unlawful detainers, juvenile dependency, family law, petitions for gun violence restraining orders, and petitions for name

¹ Judicial Council of Cal., Futures Commission Rep. (2017), pp. 221–222. (Recommendation 5.1), available online at <https://www.courts.ca.gov/documents/futures-commission-final-report.pdf>.

² Remote Video Appearances Workstream, *Remote Video Appearances for Most Noncriminal Hearings 2018–2019: Workstream Phase 1 Report, Final* (Nov. 20, 2019), p. 3 (Workstream Report), available online at <https://www.courts.ca.gov/documents/jctc-20191125-materials.pdf>.

changes. The authority to permit video appearances would be subject to rules adopted by the Judicial Council.

Policy implications

Because the proposed legislation would provide clear statutory authority for the courts to give people the option of appearing in court by video instead of in person, it would advance the 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 the delivery of court services.³

Comments

Eighteen commenters responded to the invitation to comment including courts, legal services organizations, bar associations, and a state agency. Overall, the commenters were supportive of the proposal. Several commenters made suggestions for rules when they are developed, which the committees will take into consideration when developing rules in the future. In addition, some commenters recommended modifications to the proposal. The suggested modifications are addressed in more detail below. In addition to the formal public comments, the Criminal Law Advisory Committee suggested a modification to how the statute should relate to the rules of court, which is also discussed below.⁴

Several commenters made suggestions for modifications to the proposal that the committees considered but determined could be addressed in rulemaking. These included:

- Modify the proposal to state parties must consent to allow a witness to appear in sexually violent predator and juvenile dependency cases. Because the authority granted by the proposal would be subject to the rules of court, the committees decided against the modification. Rather, whether certain proceedings require consent of the parties for a court to allow a witness to appear by video is a subject that can be addressed in rulemaking.
- Eliminate fees, especially for parties with fee waivers. Elimination of all fees would require another proposal and statutory change as an existing statute, Government Code section 70630, authorizes courts to charge fees for videoconferencing. However, the Judicial Council has authority to address the applicability of fee waivers by rule.
- Specify real-time video. The proposal is intended to cover live, real-time video of proceedings. The committees do not recommend altering the proposal, but if necessary, may address the issue in rules.

³ Judicial Council of Cal., *Strategic Plan for Technology 2019–2022* (2019), pp. 8–9, 14–15, available online at <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>.

⁴ This comment was part of broader informal input from that advisory committee on the potential for legislation authorizing video appearances in criminal proceedings in a future proposal.

Commented [JA2]: The committee discussion in this section reflects discussion of the subcommittee at its July 6, 2020 meeting. This section will be updated as appropriate following full committee discussions as well.

- Avoid defaulting parties because of technical difficulties. The committees determined they could consider this issue in rulemaking.

In addition to the above, some commenters made suggestions to modify the proposal that would not be suitable for rulemaking and would require a change to the proposal itself. These included:

- Modify the proposal to strengthen the language in subdivision (c). The suggestion came from informal comments by the Criminal Law Advisory Committee. The proposal as-circulated stated in subdivision (c), “The Judicial Council may adopt rules effectuating this section.” The Criminal Law Advisory Committee suggested modifying the language to state, “The exercise of the authority granted the court in subdivision (b) shall be subject to rules of court adopted by the Judicial Council to effectuate this section.” The committees discussed this recommendation and agreed the suggested modification was preferable and incorporated it into the proposal.
- Change “practical” to “practicable” in subdivision (a). “Practical” means something that is “capable of or suitable to being used or put into effect; useful”⁵ and has a subtle distinction from “practicable,” which means “capable of being effected, done, or put into practice; feasible.”⁶ The committees discussed and determined the intent was to cover the use of video when it is both useful and feasible, and, accordingly modified the proposal to add “practicable” to subdivision (a).
- Ensure subdivisions (a) and (b) are consistent in their use of “party” and “person.” Subdivision (a) states the intent is to allow courts to “permit parties to appear in court by video” while subdivision (b) states a court may “permit a person to appear by video...” The committees discussed and intended the scope to be broad and apply to “persons” as expressed in subdivision (b). It was inadvertence that the wording in subdivision (a) was not made the same. For this reason, to ensure alignment between subdivisions (a) and (b), the committees modified the proposal to use “person” in subdivision (a) rather than “parties.”
- Add “Notwithstanding any provision of law to the contrary...” to the proposal. A commenter noted that there are statutes that require a person to appear in-person and recommended adding “notwithstanding” language in the proposal to override such statutes so they would not have to be individually amended. The committees discussed this issue, but determined the proposal was not the proper mechanism to override any existing statutes requiring an in-person appearance. The committees did not examine statutes requiring and in-person appearance and did not discuss overriding any as a part of the public comment process. The committees concluded that such statutes would need

⁵ American Heritage Dict. (5th ed. 2020), <https://ahdictionary.com/word/search.html?q=practical>, (as of July 7, 2020).

⁶ American Heritage Dict. (5th ed. 2020), <https://ahdictionary.com/word/search.html?q=practicable>, (as of July 7, 2020).

to be considered individually for full consideration why in-person has been required and why that should change. Accordingly, the committees decided against modifying the proposal to override other statutes.

The committees also sought specific comments on whether any type of civil action or proceeding should be excluded from the scope of the proposal. The committees received four suggestions for exclusions, but ultimately decided against recommending any exclusions. One commenter suggested excluding confidential proceedings but did not explain why. The committees agree on the importance of confidentiality, but that can be given consideration in rulemaking or implementation. Two commenters suggested excluding jury trials over concerns that it would be detrimental to juror morale, but the committees found this too speculative, and one of the goals was to allow video in trials. Because video is discretionary, courts would not be obligated to offer it in a jury trial if a court determined it was not appropriate to do so. Finally, a court suggested excluding judgment debtor exam hearings because of technical difficulties in doing so via video. The court also suggested excluding property abatement warrant proceedings, which the court believed should still be done in-person. Again, because of the discretionary nature of the authority granted under the proposal, a court would not be obligated to offer video for those proceedings. Accordingly, the committees did not recommend excluding these proceedings.

Alternatives considered

The committees considered the alternatives of recommending no action, recommending rules, or recommending something other than legislation or rules. The committees determined legislation providing statutory authority to courts to permit video appearances was an important first step to facilitate the use of video appearances in the courts. The proposal would ensure courts have clear authority to proceed with video appearances in all civil actions for all types of proceedings, including trials and evidentiary hearings. While the committees did not develop a rule proposal, they anticipate doing so if the Judicial Council decides to sponsor the legislation.

The committees considered amending existing Code of Civil Procedure section 367.5, which governs telephonic appearances, to include video, but determined that a separate code section would be clearer given that the overall scope of the case types and proceedings for video are generally broader than for telephone.

The committees considered excluding juvenile cases from the proposal. The workstream's report noted that juvenile cases may require special attention and different rules than other civil proceedings, made no juvenile-specific recommendations, and recognized that the use of video remote technology in juvenile cases would require further discussion. The members of the joint ad hoc subcommittee discussed the matter and learned that courts already have used or are using video capability in juvenile cases. For example, the Superior Court of Placer County allows juveniles to appear by video from a courtroom in one location to a courtroom in another location. The committees did not want the proposal to stand as a potential obstacle to existing video appearance efforts by the courts or create conflicts with other statutes on the subject. The committees determined it would be preferable to keep the proposed code section broad.

Fiscal and Operational Impacts

The committees sought specific comments from courts on fiscal and operation impacts. One court commented that high-speed internet for video may be a challenge for courts in remote areas. The court also noted indigent litigants may also be unable to access a video option due to lack of access to internet or proper equipment. Another court commented that the biggest challenges for courts are access to technology and connectivity as well as variability of litigant knowledge on using technology.

One court commenter 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.

Attachments and Links

1. Code of Civil Procedure section 367.7, at page X
2. Chart of comments, at pages XX-XX
3. Link A: Judicial Council of Cal., Futures Commission Report (2017), <https://www.courts.ca.gov/documents/futures-commission-final-report.pdf>
4. Link B: Remote Video Appearances Workstream, Remote Video Appearances for Most Noncriminal Hearings 2018–2019: Workstream Phase 1 Report, Final (Nov. 20, 2019), <https://www.courts.ca.gov/documents/jctc-20191125-materials.pdf>
5. Link C: Judicial Council of Cal., Strategic Plan for Technology 2019–2022 (2019), <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>
6. Link D: Gov. Code, § 70630, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70630

Commented [JA3]: Page numbers below will be updated in the final version.

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, practical, and practicable, permit a
5 person to appear in court by video in all civil actions and proceedings including trials and
6 evidentiary hearings.

7

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

9

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

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	DRAFT Committee Response
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</p>	The committees appreciate the comments and perspective of the commenter.

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	DRAFT Committee Response
			<p>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> <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</p>	<p>The proposal is written to be permissive, allowing courts to permit video appearances, but does not require them.</p> <p>There would need to be separate proposal to address existing Government Code section 70630, which authorizes courts to charge fees for video. However, the Judicial Council has authority to specify the applicability of fee waivers in rules of court. The committees will next develop rules for video appearances and will consider fee waivers as a part of that.</p> <p>The committees appreciate the suggestion on data collection and analysis and have referred the suggestion to Judicial Council staff.</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	DRAFT Committee Response
			<p>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>	<p>The committees agree confidentiality is an important consideration and will discuss the issue in future development of rules for video appearances.</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>The committees understand the concern, but the proposal does not impose and obligation on litigants to use video appearances.</p>

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LEG20-02

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	Commenter	Position	Comment	DRAFT Committee Response
			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.	
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 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>	The committees appreciate the comment and perspective offered by the commission.

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	Commenter	Position	Comment	DRAFT Committee Response
			<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</p>	<p>The committees agree video may be beneficial and improve access for many litigants. The committees also agree that video should not create obstacles to access.</p> <p>The committees appreciate the commission sharing the guide and it will be helpful for the committees to consider the guide during rule development.</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	DRAFT Committee Response
			<p>rules implementing Section 367.7, we will be happy to assist and comment on them.</p> <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.</p> <p>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</p>	<p>The committees agree with this point.</p>

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	Commenter	Position	Comment	DRAFT Committee Response
			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.	
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> <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</p>	<p>The committees appreciate the comment and agree video appearances may improve access to the courts.</p> <p>The committees appreciate the inclusion of proposed rule language and will consider it during rule development.</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	DRAFT Committee Response
			<p>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>Rule 5.324 falls within the purview of the Family and Juvenile Law Advisory Committee, which is one of the committees involved in developing the proposed legislation and will also be working on rule development.</p>

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

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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	DRAFT Committee Response
			<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> <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.	No response required.

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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	DRAFT Committee Response
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.	No response required.
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? <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</p>	The committees discussed TEXCOM’s suggestion to add “notwithstanding” language to the proposal, but does not recommend adding the language. The committees determined the proposal was not the proper mechanism to override any existing statutes requiring an in-person appearance. The committees did not examine statutes requiring an in-person appearance and did not discuss overriding any such statutes at meeting or as a part of the public comment process. The committees concluded that such statutes should be considered individually for full consideration why in-person has been required and why that should change.

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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	DRAFT Committee Response
			<p>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>	<p>The committees appreciate the suggestion and will consider this issue in rule development.</p>
8.	Child Support Directors Association by Terrie Hardy-Porter, Director	A	In order to ensure access to justice that is fair and safe, video and telephonic hearings for child support hearings should continue to be	The committees appreciate the comments.

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LEG20-02

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

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	Commenter	Position	Comment	DRAFT Committee Response
	Sacramento, CA		<p>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> <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</p>	

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			<p>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</p>	<p>There would need to be separate proposal to address existing Government Code section 70630, which authorizes courts to charge fees for video. However, the Judicial Council has authority to specify the applicability of fee waivers in rules of court. The committees will next develop rules for video appearances and will consider fee waivers as a part of that.</p>

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

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			<p>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 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.	Child Support Directors Association, Judicial Council Forms Committee by Ronal Ladage, Chair Sacramento, CA	A	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	

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LEG20-02

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			<p>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>	<p>The committees appreciate the suggestion and inclusion of proposed rule language and will consider it during rule development. Rule 5.324 falls within the purview of the Family and Juvenile Law Advisory Committee, which is one of the committees involved in developing the proposed legislation and will also be working on rule development.</p>

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			<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>	

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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 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>	The committees appreciate the perspective and suggestions on rules and implementation from the Legal Aid Association of California. The committees will consider the important issues raised in the comment when developing rules.

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			<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</p>	

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			<p>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 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>	

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			<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>	

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			<p><i>b. 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 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>	

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			<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</p>	

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			<p>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> <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>	

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			<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> <p>Apart from the form of notice, before the hearing the court should request information</p>	

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			<p>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</p> <p>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,</p>	

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			<p>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://laaconline.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). 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.”). ³ See, e.g., NATIONAL CONSUMER LAW CENTER, REMOTE COURT APPEARANCES IN THE COVID-19 ERA: PROTECTING CONSUMERS IN COLLECTION LAWSUITS (June 2020),</p>	

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			<p>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 legal services).</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>,</p>	

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			<p>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 <i>See, e.g., CALATJ, supra</i> note 1.</p> <p>¹² THE NATIONAL ASSOC. FOR COURT MANAGEMENT, 2019 PLAIN LANGUAGE GUIDE, 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-</p>	

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			<p>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_stds.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>	<p>The committees do not recommend excluding jury trials. The proposal will allow courts to exercise discretion in the use of video for proceedings and, accordingly, courts will be able to determine the appropriateness of using video in a jury trial.</p>

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12.	Orange County Public Defender by Sara Ross Assistant Public Defender Santa Ana, CA	AM	<p>Statement of Interest</p> <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</p>	<p>The committees appreciate the comments and suggested modification offered by the Orange County Public Defender’s Office. The committees discussed the suggestion, but do not recommend changing the proposed legislation. Rather, whether certain proceedings require consent of the parties for a court to allow a witness to appear by video is a subject that the committees can be address in rulemaking.</p>

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			<p>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. (People v. Superior Court (Cheek) (2001) 94 Cal.App.4th 980 [holding SVP cases are subject to certain provisions of the Civil Discovery Act]; see also People v. Dixon (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</p>	

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			<p>[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</p>	

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			<p>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 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</p>	

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			<p>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</p>	

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			<p>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-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 at the express</p>	

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			<p><u>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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(e) (d) The Judicial Council may adopt rules effectuating this section.</u></p> <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</p>	

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			<p>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.	<p>Public Law Center (PLC) By Leigh E. Ferrin, Director of Litigation and Pro Bono Santa Ana, CA</p>	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</p>	<p>The committees appreciate the comments and perspective from PLC.</p> <p>The proposed legislation is intended to be permissive for both the court and the person making the appearance. In this respect, the scope is different than current emergency rule 3 of the rules of court, which allows courts to require</p>

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			<p>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 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>video as an emergency measure during the COVID-19 pandemic. Nonetheless, even during normal times, there may still be technical difficulties for a person who wants to appear by video. The committees will consider the issue of technical difficulties and defaults in the rulemaking process.</p>

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			<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.	<p>Superior Court of Los Angeles County by Brian Borys</p>	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. 	<p>The committees discussed the issue and determined both “practical” and “practicable” are appropriate and have revised the proposal language accordingly</p> <p>The committees intended to use “civil” rather than “general civil” to be broadly inclusive consistent with rule 1.6’s use of “civil” as opposed to “general civil.”</p> <p>The committees agree the subdivisions should be consistent. The proposal was intended to be broadly inclusive of “persons” as reflected in subdivision (b). The committees have revised subdivision (a) to ensure consistency with subdivision (b).</p>

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			<p>- The rule should make clear that appearance by “video” means real-time as opposed to videotaped.</p> <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>	<p>The committees have noted in the Judicial Council report that live, real-time video is what the proposal contemplates. The committees will consider whether this point requires further clarification in rulemaking.</p> <p>The committees have noted there may be additional costs in the Judicial Council report. The proposal does not alter existing Government Code section 70630, which allows courts to charge fees to recover their actual costs.</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>The committees appreciate the comments from the court.</p>

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			<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 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>	

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			<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</p>	<p>The committees have noted there may be additional costs and operational impacts for technology and staff in the Judicial Council report. The committees have also noted that the public, litigants, and justice partners also may have cost savings.</p>

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			<p>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> <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</p>	

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			Interpreter devices, Reporter Technology, large screens to be able to view all participants, technology to receive documents, etc.	
16.	Superior Court of Orange County, Juvenile Law Division by Linda Contreras, Administrative Analyst 1	NI	<p>Comments 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> <p><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>	The committees appreciate the comments from the court.

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			<p>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><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>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</p>	<p>The committees have noted there may be additional costs and operational impacts for technology and staff in the Judicial Council report. The committees have also noted that the public, litigants, and justice partners also may have cost savings</p>

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			<p>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> <p>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> <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>	

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			<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>	The committees appreciate the comments from the court.

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			<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</p>	

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			<p>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> <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</p>	<p>The committees have noted there may be additional costs and operational impacts for technology and staff in the Judicial Council report. The committees have also noted that the public, litigants, and justice partners also may have cost savings</p>

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			<p>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>	<p>The committees have noted these challenges in the Judicial Council report.</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>The committees appreciate the comments from the court.</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)

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	Commenter	Position	Comment	DRAFT Committee Response
			<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>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>The proposed legislation is written to allow, but not require courts, to permit video appearances. For this reason, the court would not have to allow video in JDX hearings. The court would be discretion to decide whether a proceeding is suitable to conduct by video. Accordingly, the committees do not recommend excluding JDX hearings from the scope of the proposed legislation.</p> <p>The proposed legislation is written to allow, but not require courts, to permit video appearances. For this reason, the court would not have to allow video in abatement warrant proceedings. The court would be discretion to decide whether a proceeding is suitable to conduct by video. Accordingly, the committees do not recommend excluding abatement warrant</p>

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	Commenter	Position	Comment	DRAFT Committee Response
			<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.</p> <p>Would this proposal impact the court’s current efforts to allow video appearances? No.</p> <p>How well would this proposal work in courts of different sizes? 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? 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.</p>	<p>proceedings from the scope of the proposed legislation.</p> <p>The committee appreciates the comments and has noted these points in the Judicial Council report.</p>

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