

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee action requested** [Choose from drop down menu below]:  
**Recommend JC approval (has circulated for comment)**

**Rules Committee Meeting Date:** December 20, 2021

**Title of proposal:** Civil Practice and Procedure: Remote Appearances

**Proposed rules, forms, or standards** (*include amend/revise/adopt/approve*):

Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, 5.482, 5.531, and 5.900; adopt forms RA-010 and RA-015; approve forms RA-020, RA-025, and RA-030; revoke forms CIV 020, FL 679, and FL-679-INFO.

*Committee or other entity submitting the proposal:*

Ad Hoc Committee on Civil Remote Appearance Rules

*Staff contact (name, phone and e-mail):* Anne M. Ronan, 415-865-8933, [anne.ronan@jud.ca.gov](mailto:anne.ronan@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by Rules Committee date: N/A

Project description from annual agenda: Ad hoc committee was directed by Chief Justice to develop recommendation for rules to implement new remote appearance statute.

*If requesting July 1 or out of cycle, explain:*

Statute was enacted in late September, and goes into effect in January 1, 2022.

**Additional Information:** (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Recommendation is presented as a Circulating Order Memorandum to the council, so it may be acted on between regularly scheduled meetings.

**Information for JC Staff regarding form translations:**

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:* will request translation of RA-010, RA-015, RA-020, RA-025, and RA-030



## JUDICIAL COUNCIL OF CALIFORNIA

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# CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-21-05

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**Title**

Civil Practice and Procedure: Remote  
Appearances

**Action Requested**

VOTING MEMBERS ONLY: Submit votes  
by responding to the transmittal e-mail.

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

Adopt Cal. Rules of Court, rule 3.672; amend  
rules 3.670, 5.9, 5.324, 5.482, 5.531, and  
5.900; adopt forms RA-010 and RA-015;  
approve forms RA-020, RA-025, and RA-030;  
revoke forms CIV-020, FL-679, and FL-679-  
INFO.

**Please Respond By**

December 28, 2021

**Date of Report**

December 17, 2021

**Contact**

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**Recommended by**

Ad Hoc Committee on Civil Remote  
Appearance Rules  
Hon. Marsha G. Slough, Chair

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*California Rules of Court, rules 10.5(h) and 10.13(d) allow the Judicial Council to act on business between meetings, including urgent matters, by circulating order. This memorandum is not a Judicial Council meeting, circulating orders are conducted via electronic communications. Prior public notice of a proposed circulating order is not required.*

**Executive Summary**

The Ad Hoc Committee on Civil Remote Appearance Rules recommends that the Judicial Council adopt rules of court and forms to implement new Code of Civil Procedure section 367.75, enacted in Senate Bill 241 (Stats. 2021, ch. 214). The new statute, which will be in effect from January 1, 2022, until July 1, 2023, authorizes remote proceedings in all civil cases. The statute also mandates that the council adopt rules regarding certain deadlines and procedures,

which are reflected in this proposal. The proposal also includes forms to facilitate parties' and courts' compliance with the new statutory provisions. In addition, the committee recommends amending the various current telephone appearance rules, to suspend them in part while this new rule is in place, and revoking the current telephone appearance forms, which will be replaced by some of the new forms proposed here.

### **Recommendation**

The Ad Hoc Committee on Civil Remote Appearance Rules recommends that the Judicial Council, effective January 1, 2022:

1. Adopt California Rules of Court, rule 3.672;
2. Amend California Rules of Court, rules 3.670, 5.9, 5.324, 5.482, 5.531, and 5.900;
3. Adopt *Notice of Remote Appearance* (form RA-010) and *Opposition to Remote Proceeding at Evidentiary Hearing or Trial* (form RA-015);
4. Approve *Order Regarding Remote Appearance* (form RA-020), *Request to Appear Remotely—Juvenile Dependency* (form RA-025), and *Request to Compel Physical Presence—Juvenile Dependency* (form RA-030); and
5. Revoke *Notice of Intent to Appear by Telephone* (form CIV-020), *Request for Telephone Appearance (Governmental)* (form FL-679), and *Information Sheet—Request for Telephone Appearance (Governmental)* (form FL-679-INFO).

The proposed new and amended rules and new and revoked forms are attached at pages 30–58.

### **Relevant Previous Council Action**

The Judicial Council and courts have long had the goal of improving access to the courts, including increasing ease of access through the use of remote technology where appropriate and authorized by statute. The Legislature first authorized telephone appearances by attorneys at certain types of proceedings in civil cases in 1982, and the council adopted a standard of judicial administration governing such appearances shortly thereafter. Over the years, the types of proceedings that may be conducted by telephone and the participants (including self-represented parties) authorized to appear telephonically have been expanded, by legislation and rules of court. Effective March 1988, the council adopted rule 298, to govern telephonic appearances in general civil cases. Effective July 2005, the council adopted rule 5.324 to govern appearances by telephone in cases concerning child support under Title IV-D of the Social Security Act.

Code of Civil Procedure section 367.5 was enacted effective January 2008 to provide expanded authority for telephonic appearances in civil cases, superseding all previous statutes on this

topic.<sup>1</sup> The council amended its rule on telephone appearances, which had been renumbered as rule 3.670 a year earlier, to implement the new law. A few years later, the council adopted rule 5.9 addressing telephone appearances in family law matters, and rules 5.530(f), 5.531, and 5.900(e) to address telephone appearances in juvenile proceedings. Rule 5.482 was amended that same year to allow telephone appearances by tribal representatives. The telephone appearance rules have been amended in various minor ways by the council over the years since initially adopted, generally to expand the amount or type of remote participation.

The arrival of the COVID-19 pandemic made access to the courts through the use of remote technology even more important. During the early weeks of the pandemic, trial courts across the state had to shutter doors to keep parties, the public, employees, and judicial officers safe. The ability to have disputed matters timely addressed was coming to a halt. To allow cases to move forward the council adopted several emergency rules including emergency rule 3, effective April 6, 2020, which authorized courts to conduct proceedings remotely, with parties appearing by videoconference or expanded use of telephone appearances.<sup>2</sup> For many months, remote proceedings authorized by that rule have been an important means of balancing access to justice and the public health needs of parties, court staff and judicial officers, and the public generally.

In September 2021, the Legislature, at the urging of stakeholders including the council, enacted Senate Bill 241,<sup>3</sup> authorizing, among other things, courts to conduct proceedings through the use of remote technology (not limited to telephone alone) in all civil cases, under new section 367.75 of the Code of Civil Procedure.<sup>4</sup> The statute, which is effective as of January 1, 2022, requires the Judicial Council to adopt rules of court around the use of remote technology in civil cases. Section 367.75 will apply to remote proceedings in all civil cases, which preempts emergency rule 3's application in those cases. To avoid any conflict with the new rules or any ambiguity, the council recently amended emergency rule 3 to exclude civil proceedings from the scope of the rule effective January 1, 2022.<sup>5</sup>

## **Analysis/Rationale**

### **The new law**

Prior to April 2020, there was no express statutory authority authorizing courts to conduct proceedings via videoconference. At that time, in light of the public health issues caused by the

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<sup>1</sup>A detailed history of the changing laws on telephone appearances through 2007 is provided in Judicial Council of California, Advisory Committee Report, Telephone Appearances in Civil Cases (Oct. 9, 2007).

<sup>2</sup> On March 27, 2020, the Governor issued an order giving the Judicial Council authority to take necessary action to respond to this crisis, including by adopting emergency rules that otherwise would be inconsistent with statutes concerning civil practice or procedures. Executive Order N-38-20: [www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf](http://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf).

<sup>3</sup> SB 241 is available at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB241](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB241).

<sup>4</sup> All further statutory references are to the Code of Civil Procedure unless otherwise noted.

<sup>5</sup> Amended emergency rule 3 still applies to criminal proceedings, as there has been no more recent legislative enactment that applies in criminal proceedings.

COVID-19 pandemic, the Judicial Council adopted emergency rule 3, which provided that courts could require that judicial proceedings and court operations be conducted remotely. The remote technology to be used was not, unlike in section 367.5, limited to telephone. Under emergency rule 3, many courts began to regularly require that proceedings be held remotely by videoconference, setting that technology as the default for many calendars, with some only allowing in-person appearances on a showing of good cause.

After 18 months of courts conducting proceedings under the authority of emergency rule 3, Senate Bill 241 was enacted, including new section 367.75, to provide statutory authorization for proceedings to be held via remote technology generally in civil cases. This bill reflects input from many stakeholders and, while providing courts with significantly broader statutory authority to conduct remote proceedings than existed pre-pandemic, provides more narrow authority than was provided to courts under the emergency rule.<sup>6</sup> Among other things, it removes a court's ability to *require* remote appearances, and removes its authority to initiate them for proceedings other than trials and evidentiary hearings and all juvenile dependency proceedings. For other types of proceedings, including regularly noticed law and motion hearings, a remote appearance must be initiated by the party who wishes to appear remotely informing the court and all other parties of their intent to do so.<sup>7</sup>

Section 367.75(k) provides that the council adopt rules “to promote statewide consistency,” addressing the following points:

- Deadlines by which a party must notify the court and the other parties of their desire to appear remotely.
- Procedures and standards for a judicial officer to determine when a conference, hearing, or proceeding may be conducted through the use of remote technology. The procedures and standards must require that a judicial officer give consideration to the limited access to technology or transportation that a party or witness might have.

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<sup>6</sup> In light of this new statute, the council has amended emergency rule 3, effective January 1, 2022, to remove civil proceedings from its scope.

<sup>7</sup> The new law provides:

- Other than in evidentiary hearings and trials, and in juvenile dependency cases, a party (or witness) in any civil case may appear through the use of remote technology after providing notice to the court and all other parties (§ 367.75(a)). (A court has the discretion to require an in-person appearance after receiving such notice, subject to the limitations in the statute. (§ 367.75(b).))
- A court may, on its own motion or on the motion of a party, conduct a trial or evidentiary hearing in whole or in part through electronic means, absent a showing as to why the remote testimony or appearance should not be allowed. (§ 367.75(d).)
- A court may, subject to certain conditions, conduct all proceedings in juvenile dependency cases as remote proceedings. (§ 367.75(h).)

The Chief Justice formed the Ad Hoc Committee on Civil Remote Appearance Rules<sup>8</sup> to develop a recommendation for rules to comply with that mandate and to facilitate courts and parties in initiating and conducting remote proceedings under new section 367.75.

## The Proposal

As mandated by statute, proposed new rule 3.672<sup>9</sup> addresses deadlines and procedures for parties to provide notice (or a request in juvenile dependency proceedings, which are addressed separately in section 367.75(h)) to the court and to other parties of their intent to appear remotely, including deadlines for opposing remote testimony if appropriate, and the procedures and standards to be applied by courts. The proposed forms will be used to provide such notice to the court where appropriate, to provide notice or proof of notice to other parties, and, where appropriate, to oppose remote appearance or testimony. The provisions of the proposed new rule, amended rules, and new forms are summarized below.

### New rule 3.672

#### *Remote appearances authorized in all civil cases*

Subdivision (b) (Application) echoes the statute: the rule applies in all civil cases.<sup>10</sup> It is not intended, however, to change existing statutory or case law that provides a right or requirement to appear exclusively in person (as, for example, in juvenile justice proceedings) or remotely.<sup>11</sup> Nor does it in any way modify the confidentiality requirements of those proceedings. If a proceeding is confidential when conducted in person, it remains confidential when conducted remotely.<sup>12</sup>

#### *Court's discretion*

The statute is very broad in its application—providing that in all civil cases (except juvenile dependency) when a party gives notice to the court and other parties of the intent to appear remotely, the party may appear remotely.<sup>13</sup> At the same time, the statute allows a court to require an in-person appearance after that notice has been provided if the court's technology does not support a remote appearance or does not support it well enough for the court, court reporter, interpreter, or counsel to be effective.<sup>14</sup> It also provides broad discretion for a court to determine

<sup>8</sup> Members include representatives from the Advisory Committee on Providing Access and Fairness, Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, Probate and Mental Health Advisory Committee, Criminal Law Advisory Committee, Trial Court Presiding Judges Advisory Committee, Court Executives Advisory Committee, and the council's Technology Committee.

<sup>9</sup> All rule references hereafter are to the California Rules of Court unless otherwise noted.

<sup>10</sup> § 367.75(a) & (d); proposed rule 3.672(b)(1) & (c)(1) (definition of "civil case" for purpose of the rule).

<sup>11</sup> Proposed rule 3.672(b)(2).

<sup>12</sup> Proposed rule 3.672(b)(3) & (i)(2)(B). The concern regarding confidentiality is also addressed in the new forms (proposed forms RA-010 at item 5, and RA-025 at item 4 (agreement to preserve the confidentiality of the remote proceeding to the same extent as required for an in-person appearance.)).

<sup>13</sup> § 367.75(a).

<sup>14</sup> § 367.75(b)(1), (2) & (4)–(6).

that “an in-person appearance would materially assist” either in determining the outcome of a particular proceeding or in the effective management and resolution of the case as a whole, either on the court’s own initiative<sup>15</sup> or on a showing by a party opposing remote appearances in an evidentiary hearing or trial.<sup>16</sup> This authorization for a court to require an appearance in person is reflected in the rule.<sup>17</sup>

***Local court procedures for giving notice of remote appearance***

As noted above, many courts have been conducting remote proceedings and allowing remote appearances by parties under emergency rule 3 since early in the COVID-19 pandemic. The 58 trial courts are not similarly situated when it comes to the technology available for remote proceedings and staffing to accommodate them. On the issue of notice, some technologically advanced courts have been able to provide for remote appearances with only a short amount of advance notice from the parties, sometimes as short as a few hours. Many are able to accept such notice online, with links on their websites to allow parties to indicate the desire for a remote appearance. On the other hand, other courts need additional notice to accommodate remote appearances, for example, to provide sufficient time for staff to get the required information to the courtroom.

The committee believes the rule should promote remote appearances, making them easier rather than harder for the parties to request and for the court to accommodate. Appearing remotely should be encouraged.

Considering the expressed concerns around notice, as well as the desire for increased consistency across the state, the committee recommends that the new rule provide default deadlines and procedures, but also allow courts, by local rule, to put in place their own procedures, so long as the local procedures are published on the court’s website and comply with the statutory requirements.<sup>18</sup> That means that (for civil cases other than juvenile dependency), the local rules must require, for example, that other parties in the case must also be given notice of the remote appearance; that, for evidentiary hearings or trials, there is a process for opposing remote testimony or remote appearances; and that there is a process for self-represented parties to agree to appear remotely.<sup>19</sup> In addition, if the local procedures include written notice rather than an online notice process to tell the court the party will appear remotely, the local procedures must

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<sup>15</sup> § 367.75(b)(3).

<sup>16</sup> § 367.75(d)(1).

<sup>17</sup> Proposed rule 3.672(d).

<sup>18</sup> The committee acknowledges that because the statute, and this rule, will go into effect January 1, 2022, many courts may not yet have local rules in place on remote appearance, or may need to amend them to meet the statutory requirements. To provide time for that to occur, the proposed rule would allow existing procedures to remain in place for 90 days if compliant with the new statute, and also exempts the local remote rules from the requirements of rule 10.613 requiring 45 days’ advance notice of new rules. (Proposed rule 3.672(e)(4) & (5).)

<sup>19</sup> Proposed rule 3.672(e)(1); see § 367.75(a), (d)(1) & (g). See proposed rule 3.672(e)(3) & (i)(1)(A) for local rules regarding juvenile dependency cases.

incorporate the new mandatory council forms for the written notice, in order to further statewide consistency.<sup>20</sup>

The statewide rule will increase consistency in the process by providing a default process for the time and manner of notice required for remote appearances, while the exceptions for local rules will allow some courts, at least for the next 18 months while this statute is in place, the opportunity to implement alternative procedures, which may prove to be more effective and efficient.

***Statewide procedures for giving notice of or requesting remote appearance***

The proposed rule sets deadlines and procedures for providing notice of intent (or, in juvenile dependency cases, requesting permission when appropriate) to appear remotely in courts where there are not local rules with different timelines. The procedures in the proposed rule, following the statute, distinguish between nonevidentiary hearings;<sup>21</sup> evidentiary hearings and trials, for which courts may also provide notice of remote proceedings;<sup>22</sup> and juvenile dependency proceedings, which are treated separately in the statute.<sup>23</sup> In addition, it provides a procedure for providing a single notice for the duration of a case or for all parties to waive notice from each other.

*Notice for the duration of the case—subdivision (f)*

In light of comments received expressing concerns about the need to provide multiple notices, one for each proceeding at which a party intended to appear remotely, the committee modified the proposed rule that was posted for comment to allow a party to provide a single notice to the court and all parties if the noticing party intends to appear remotely for the duration of the case.<sup>24</sup> The notice may be given either on form RA-010 (item 2a has been added for this purpose) or during a court appearance (such as a case management conference). This will eliminate the need for any further notices to either the court or other parties, although should the court have a local procedure that requires specific notice, such as an online notice of appearing remotely, that must still be followed.

In civil cases other than juvenile dependency, where there are no local procedures or where case-long notice has not been given, the rule provides the following timelines.

*Nonevidentiary proceedings—subdivision (g)*

For nonevidentiary proceedings—proceedings in which no oral testimony under oath may be provided—including law and motion hearings and status conferences, the rule requires notice of intent to appear remotely two court days before the proceeding (this parallels the time of notice

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<sup>20</sup> Proposed rule 3.672(e)(2).

<sup>21</sup> Proposed rule 3.672(g).

<sup>22</sup> Proposed rule 3.672(h).

<sup>23</sup> Proposed rule 3.672(i).

<sup>24</sup> Proposed rule 3.672(f)(1).



in current rule 3.670 for appearance by telephone).<sup>25</sup> A party choosing to appear remotely is required to provide notice to the court and other parties<sup>26</sup> by filing a *Notice of Remote Appearance* (form RA-010) and giving notice of its intent to the other parties either in writing, electronically, or orally. (A declaration of such notice is included on the notice form.) For a proceeding set on less than three court days' notice (including most ex parte applications), the moving party must give notice with the initiating papers, and the opposing party has until 2 p.m. the day before the hearing to give notice of their own intent to appear remotely.<sup>27</sup> If a party misses these deadlines, the party may still ask the court for permission to appear remotely.<sup>28</sup>

*Evidentiary hearings and trials—subdivision (h)*

There are some provisions in the statute that apply only to remote proceedings at trials and evidentiary hearings (which are defined in the rule as hearings in which oral testimony—a spoken statement under oath and subject to examination—may be given<sup>29</sup>).

First, for evidentiary hearings and trials, a court may on its own motion decide to conduct proceedings remotely.<sup>30</sup> The new rule provides that the court may do that either by directly notifying the parties in a particular action, or by local rule that is compliant with the statute.<sup>31</sup>

Second, for those types of proceedings, whether a party gives notice of an intent to appear remotely or the court has chosen on its own to conduct the proceeding remotely, any party may oppose remote proceedings by making a showing as to why a remote appearance or testimony should not be allowed.<sup>32</sup> Because of this, and because such proceedings may involve operational details that will need to be worked out relating to exhibits and testimony, the rule provides a longer notice period—10 court days—for appearing remotely at an evidentiary hearing or trial for which a party gives or receives at least 15 court days' notice of the trial or hearing date, and in small claims cases (for which at least 15 calendar days' notice is required).<sup>33</sup> For proceedings held with less notice, including, for example, hearings on requests for protective orders, the time frame for notice of appearing remotely is shorter—to be served either with the petition or at least

<sup>25</sup> Proposed rule 3.672(g)(2)(A). The committee initially recommended a second, later deadline for parties who only decide to appear remotely after another party had provided notice that they intended to do so. A council advisory committee provided feedback that this later deadline needlessly complicated the rule and was not necessary, especially in light of the ability to request a remote appearance based on good cause in rule 3.672(j)(2). The committee agrees and has modified the rule accordingly.

<sup>26</sup> Section 367.75(a) requires that a party provide notice to the court and all other parties that it intends to appear remotely.

<sup>27</sup> Proposed rule 3.672(g)(2)(B).

<sup>28</sup> Proposed rule 3.672(j)(2).

<sup>29</sup> Proposed rule 3.672(c)(2) & (3).

<sup>30</sup> § 367.75(d)(1).

<sup>31</sup> Proposed rule 3.672(h)(1).

<sup>32</sup> § 367.75(d)(1).

<sup>33</sup> Proposed rule 3.672(h)(2)(C).

five court days before the hearing or trial.<sup>34</sup> The rule also provides deadlines for opposing the remote appearance or testimony by serving and filing the proposed new *Opposition to Remote Proceeding at Evidentiary Hearing or Trial* (form RA-015).<sup>35</sup>

As with nonevidentiary proceedings, if a party misses these notice deadlines, the party may still ask the court for permission to appear remotely.<sup>36</sup>

The proposed rule also states what the court must consider in determining whether to conduct the proceeding remotely if opposition has been raised, including the factors in section 367.75(b) and (f), and those factors that section 367.75(k) mandates be included in the rule (lack of access to technology or transportation).<sup>37</sup>

*Juvenile dependency proceedings—subdivision (i)*

Code of Civil Procedure section 367.75(h) applies separate requirements only to juvenile dependency proceedings.<sup>38</sup> The statute authorizes the juvenile court to conduct any dependency proceeding, in whole or in part, through the use of remote technology, subject to specific conditions.<sup>39</sup> First, the court must provide an opportunity for any *person* authorized to be present, not only a party, to *request* to appear remotely instead of giving notice of intent.<sup>40</sup> Second, a party must have the opportunity to ask the court to compel the physical presence of a witness or a party at a proceeding.<sup>41</sup> The court may allow a witness, including a party who will testify, to appear remotely *only if* all parties have given their consent.<sup>42</sup> Third, and consistent with the treatment of all other case types under the statute, the court may not require a party to appear remotely.<sup>43</sup> Finally, the court must apply the same confidentiality requirements to a remote dependency proceeding as apply to a dependency proceeding conducted in person.<sup>44</sup>

Subdivision (i) of the rule applies these statutory requirements to remote dependency proceedings. The subdivision begins with general provisions: it authorizes courts to adopt local

<sup>34</sup> Proposed rule 3.672(h)(2)(D).

<sup>35</sup> Proposed rule 3.672(h)(3)(A).

<sup>36</sup> Proposed rule 3.672(j)(2).

<sup>37</sup> Proposed rule 3.672(h)(3)(B).

<sup>38</sup> § 367.75(h) (“Any juvenile dependency proceeding may be conducted in whole or in part through the use of remote technology subject to the following [conditions]”).

<sup>39</sup> Section 367.75(h) does not expressly distinguish evidentiary hearings and trials from nonevidentiary proceedings in dependency cases.

<sup>40</sup> § 367.75(h)(1) (“Any person authorized to be present *may* request to appear remotely” (emphasis added).)

<sup>41</sup> § 367.75(h)(2) (“Any party to the proceeding *may* request that the court compel the physical presence of a witness or party” (emphasis added).)

<sup>42</sup> *Ibid.* (“A witness, including a party providing testimony, *may* appear through remote technology *only* with the consent of all parties and if the witness has access to the appropriate technology”) (emphasis added).)

<sup>43</sup> § 367.75(h)(3).

<sup>44</sup> § 367.75(h)(4).

rules on an expedited basis, consistent with subdivision (e); defines “party” specifically for purposes of juvenile dependency cases; and clarifies that this subdivision applies only to dependency proceedings, not juvenile justice (delinquency) proceedings.<sup>45</sup> It then gives the authority for the court to conduct remote dependency proceedings, paraphrasing three of the four statutory conditions.<sup>46</sup> Except for the definition of party and the notice procedures in subdivisions (g) and (h),<sup>47</sup> the rule’s general provisions apply to juvenile dependency proceedings.

Subdivision (i)(3) describes the procedural options for a remote dependency proceeding. First, it clarifies that, if the court is conducting a dependency proceeding remotely, in whole or in part, any party or other person entitled to be present may appear remotely without a request.<sup>48</sup> Next, it authorizes any person authorized to be present to request to appear remotely at a dependency proceeding, regardless of whether the court is conducting the proceeding remotely. The request may be submitted by any means, oral or written, reasonably calculated to ensure that the court receives it no later than the time the case is called for hearing.<sup>49</sup> This provision makes an exception for requests for a witness’s remote appearance. Because the authority to permit a witness to appear remotely is contingent on the consent of all parties, the rule requires a request to appear remotely on behalf of a witness to be made in writing and filed with the court and served on all the parties no later than three court days before the proceeding.<sup>50</sup>

Next, the rule provides a procedure for a party to request that the court compel the physical presence of a witness or party at a proceeding. This request must be made in writing and filed with the court and served on all the parties no later than two court days before the proceeding.<sup>51</sup> Finally, subdivision (i) provides standards for the court to use to determine a request to appear remotely or a request to compel physical presence. First, the court must grant a request to compel a witness’s physical presence if the witness has not obtained each party’s consent. Under typical

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<sup>45</sup> Proposed rule 3.672(i)(1)(A)–(C). Because section 367.75(h) applies *only* to juvenile dependency proceedings, leaving juvenile justice proceedings subject to the rest of section 367.75, the rule draws that same distinction.

<sup>46</sup> Proposed rule 3.672(i)(2).

<sup>47</sup> See proposed rule 3.672(g)(1)(B), (h)(2)(A)(ii). Section 367.75(h) provides dependency-specific alternatives to the requirements in section 367.75(a) & (d). The general requirements in section 367.75(a) & (d) do not apply in dependency cases, in part because their concurrent application with 367.75(h) would produce irresolvable logical and practical tensions.

<sup>48</sup> Proposed rule 3.672(i)(3)(A). Rule 5.530(b) specifies the persons entitled to be present at a dependency proceeding.

<sup>49</sup> Proposed rule 3.672(i)(3)(B). These requirements were simplified in response to comments received. Persons authorized to be present include not only the persons specified in rule 5.530(b), but other persons who may have a direct and legitimate interest in the case who are authorized by the court to be present. (See Welf. & Inst. Code, § 346.)

<sup>50</sup> Proposed rule 3.672(i)(3)(B)(ii).

<sup>51</sup> Proposed rule 3.672(i)(4). Although a request to compel physical presence may be filed without a previous request to appear remotely, the deadline for filing a request to compel physical presence is set at two court days before the proceeding to ensure that any request to appear remotely on behalf of a witness would be received before the request to compel is due.

circumstances, a party's request to compel a witness's physical presence would indicate that party's refusal to consent and, therefore, be sufficient basis to grant the request to compel. Second, the court may deny a request to appear remotely or grant a request to compel physical presence if (1) one or more of the factors listed in Code of Civil Procedure section 367.75(b) or (f) or in rule 3.672, including the person's limited access to technology, requires the person's physical presence; (2) the court cannot ensure that the person's remote appearance will have the privacy and security necessary to preserve the confidentiality of the proceeding; or (3) a remote appearance by the person is likely to cause undue prejudice to a party.<sup>52</sup> Before ordering a person to appear in person, the court must consider the person's ability to appear at the courthouse, including any limits to the person's access to transportation.<sup>53</sup>

### ***Other rule provisions***

Subdivision (j)(1) allows persons who gave notice of their intent to appear remotely to change their minds and show up in person. Subdivision (j)(2) allows persons who did not meet the notice requirements to still ask to appear remotely, if they have good cause or unforeseen circumstances, or if it is in the interest of promoting access to justice. (Similar provisions are in the current telephone appearance rule.)

Subdivision (k) addresses fees, and specifies when they should not be charged.

Subdivision (l) allows courts to designate vendors and platforms for remote appearances; subdivision (m) requires courts to publish information about them, with the information parties and counsel need to know in order to appear remotely (and to know what types of platforms they can appear remotely on).

### **Amended rules**

As discussed above, new section 367.75 authorizes remote appearances in all civil cases from January 1, 2022, through June 30, 2023; applies to all types of proceedings within those cases; and allows remote appearances generally, not distinguishing between telephonic (audio alone) and videoconference (both audio and video, or either) platforms.

The current telephone appearance rule, on the other hand (rule 3.670, which implements section 367.5), is limited to general civil actions plus unlawful detainer and probate cases, focuses on remote appearances in nonevidentiary hearings, and addresses appearances by telephone only. Because this rule under section 367.5 is more narrowly prescribed than what is authorized under the new statute, the proposal would suspend the provisions in the current telephone appearance rule that limit remote hearings and provide specific rules regarding notice of such hearings,

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<sup>52</sup> Proposed rule 3.672(i)(3)(B).

<sup>53</sup> Proposed rule 3.672(i)(3)(C); see § 367.75(k)(2).

noting that they will be replaced with the provisions in the new rule for the period in which new section 367.75 is in effect (from January 1, 2022, to July 1, 2023).<sup>54</sup>

Similar amendments are being recommended to the current family and juvenile law rules relating to telephone appearances (rules 5.9, 5.324, 5.482, 5.531, and 5.900), because remote appearances in those cases also are covered by the provisions of new section 367.75.

### Forms

The committee is recommending five new Remote Appearance (RA) forms,<sup>55</sup> the first two as mandatory forms and the others as optional:

- *Notice of Remote Appearance* (form RA-010)
- *Opposition to Remote Proceeding at Evidentiary Hearing or Trial* (form RA-015)
- *Order Regarding Remote Appearance* (form RA-020)
- *Request to Appear Remotely—Juvenile Dependency* (form RA-025)
- *Request to Compel Physical Presence—Juvenile Dependency* (form RA-030)

As noted above, the recommended rule requires that these forms be used to provide notice of a remote appearance in civil cases generally as well as to oppose remote appearance or testimony as appropriate and may be used to request a particular type of appearance in juvenile dependency proceedings.

*Notice of Remote Appearance* (form RA-010) identifies who intends to appear remotely in a civil matter (other than a juvenile dependency case), whether for the whole case or for a specific proceeding, by what method (audio only or videoconference), and, for evidentiary hearings and trials, what other portions, if any, a party wants conducted remotely.<sup>56</sup> It includes a statement that the party agrees to preserve the confidentiality of the proceeding to the same extent as would be required for an in-person appearance.

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<sup>54</sup> Those provisions in rule 3.670 that address procedures relating to telephone appearances not limited by the new statute have been left in place. The provisions that would remain in effect, in addition to (a), Policy favoring telephone appearances, and (b), Application, are the following:

- (j) Provision of telephone appearance services
- (k) Telephone appearance fee amounts; time for making requests [late fees]
- (l) Fee waivers
- (m) Title IV-D proceedings
- (n) Audibility and procedure
- (o) Reporting
- (p) Conference call vendor or vendors
- (q) Information on telephone appearances

<sup>55</sup> The four forms in the Invitation to Comment were numbered differently, two in the CIV form category and two in the JV form category. In light of comments received that the CIV forms, in particular, might be hard for litigants in family law, probate, and juvenile justice cases to find, the committee concluded that a new form category for remote appearance forms was appropriate. These will be the first forms in this category.

<sup>56</sup> Such a request is permitted under section 367.75(d)(1).

In light of comments received, and the committee’s recommendation that the rule allow for informal provision of notice to other parties (rather than formal service by a third party), the notice form also includes a “declaration of notice,” which a party may use to indicate to whom the party gave notice and how. (A formal proof of service may be used if desired.) There are also instructions and deadlines included on the last page of the form.

The notice form is not required in juvenile dependency cases, which, as discussed above, are subject to different rules. In those cases, in circumstances in which a written request to appear remotely is required, the *Request to Appear Remotely—Juvenile Dependency* (form RA-025) may be used.<sup>57</sup>

*Opposition to Remote Proceeding at Evidentiary Hearing or Trial* (form RA-015) is the form for opposing a remote appearance or testimony in most case types<sup>58</sup> and *Request to Compel Physical Presence—Juvenile Dependency* (form RA-030) is the form for asking the court to compel a physical appearance in juvenile dependency cases.<sup>59</sup> Both are similarly brief and straightforward, identifying who is opposing the remote testimony or appearance, at what proceeding, and why. Each form also contains instructions.

At the request of commenters, the committee is also recommending that the council approve an optional *Order Regarding Remote Appearance* (form RA-020). A court may use this form to order that a participant in a case, including a juvenile dependency proceeding, must appear in person, may appear remotely, or may appear remotely with certain technology restrictions (e.g., videoconference only for a hearing where credibility is in issue and a court does not believe it can be resolved effectively with an appearance by audio technology alone). It may be issued on the court’s own initiative upon reviewing *Notice of Remote Appearance* (form RA-010), or in response to one of the opposition forms.

In addition to recommending adoption of the new forms, the committee is recommending that the council revoke the following civil and family law telephone appearance forms because, as of January 1, 2022, these forms will no longer conform to the law and rules:

- *Notice of Intent to Appear by Telephone* (form CIV-020);
- *Request for Telephone Appearance* (form FL-679); and
- *Information Sheet—Request for Telephone Appearance* (form FL-679-INFO).

### **Policy implications**

The recommended rule will, with the new statute, further the policy of improving access to the courts while reducing litigation costs for parties. Providing a default process for remote appearances and proceedings is useful, promotes statewide consistency, and provides a roadmap

<sup>57</sup> See proposed rule 3.672(i)(3)(B)(i).

<sup>58</sup> Proposed rule 3.672(h)(3).

<sup>59</sup> Proposed rule 3.672(i)(4).

that courts can follow in order to clearly be in compliance with the statutory authority for remote proceedings. At the same time, by allowing courts to develop other procedures—while still in compliance with the statute—as available technology allows, the rule will essentially provide a series of incubators over the 18 months that the current statute is in effect, and some of the results may serve as models for best practices and procedures for remote proceedings in the future.

### Comments

Eighty-one separate comments were received, from the following commenters:

- *Courts.* Thirteen courts; many individual judicial officers and court staff, including self-help center staff; and the Juvenile Court Judges of California.
- *Civil attorneys.* A joint comment from 13 attorney groups, including California Chapter of the American Board of Trial Lawyers (Cal-ABOTA), Consumer Attorneys of California, California Defense Counsel, California Employment Lawyers Association, and 9 local attorney groups. In addition, separately, the Committee on Administration of Justice of the Litigation Section of the California Lawyers Association (CLA committee), Los Angeles County Bar Association, and many individual attorneys.
- *Juvenile law attorneys.* Children’s Law Center of California; California Public Defenders Association; Los Angeles County Public Defenders and Alternate Public Defenders, Pacific Juvenile Defenders Center, City Attorney of San Francisco, and many individual practitioners.
- *Legal aid and public interest groups.* A joint comment from Legal Aid Association of California and 7 other groups from across the state. Seven additional groups provided separate comments, including the California Tribal Families Coalition and a national organization, the Self-Represented Litigation Network (SRLN).
- *Others.* Two unions, SEIU California and California Federation of Interpreters; 2 legal publishers; CourtCall; and California Department of Child Support Services.

Sixteen of the comments expressly noted agreement with the proposal, 7 noted disagreement, 24 noted agreement if modified. The remaining 31 did not indicate either agreement or disagreement, but all suggested modifications.

A chart of comments containing all the public comments is attached to this memorandum. The chart starts with a section listing all commenters, the position they took if expressly noted in the comment, and any general comments (see the section labelled “Chart 1”). The remaining comments are organized under the following common issues:<sup>60</sup>

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<sup>60</sup> The longer comments are broken out into separate sections, so that all comments on a particular issue are grouped together.

1. Authority for Local Rules
2. Time and Form of Notice to Courts and Other Parties
3. Trials and Evidentiary Hearings
4. Court's Discretion to Require In-Person Appearance
5. Proposed Forms (other than for juvenile dependency cases)
6. Juvenile Dependency
7. Juvenile Justice (Delinquency)
8. Technical Requirements
9. Other (including information on website, language access, court reporters, fees (from CourtCall and others), definition of party, and decorum)
10. Questions Seeking Specific Comments from Courts

The most common of the requested modifications and issues raised in the comments are summarized below, along with the committee's responses.<sup>61</sup> The committee has responded in the attached chart to all comments received.

***Authority for local court rules (Issue 1)***

As the statute notes, the goal of the mandated rules is promoting consistency across the courts. In light of that, some commenters (including a union and a CLA committee) disagree with the recommendation that the rule allow for local rules and procedures, so long as consistent with statute and posted on the court's website.<sup>62</sup> The commenters urge that local rules in this area be prohibited, on the grounds that their existence will defeat the desired statewide consistency. On the other hand, courts who commented on this provision approved of it, as did many of the other commenters, including several of the legal aid commenters.<sup>63</sup>

The committee has concluded that, while improving and promoting consistency is appropriate and will be furthered by the default notice provisions in this rule and the mandatory notice forms, the new rule should not prevent courts that have been successful in developing ways for parties to appear remotely by giving notice electronically on very short time frames, such as the two-hour notice the Superior Court of Los Angeles County allows for some non-evidentiary proceedings, from continuing to do so. Nor should it prevent remote appearances altogether in courts that raise concerns that, with very short notice, they will not be able to adequately communicate a party's intent to appear remotely to the courtroom in time to prepare that courtroom for a hybrid hearing, although they may be able provide for such appearances with longer notice. Recognizing that the new statute is only in effect for 18 months, the committee

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<sup>61</sup> In addition to the comments, internal feedback on the proposed rule was also received from several Judicial Council advisory bodies, including the Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, Probate and Mental Health Advisory Committee, and the Tribal Court-State Court Forum; and a member of the council. The substantial points raised in that feedback, to the extent not also reflected in other comments, are also discussed below.

<sup>62</sup> Proposed rule 3.672(e).

<sup>63</sup> Many of these comments appear in the chart in the longer comments in the section "Issue 2, Time and Form of Notice to Courts and Other Parties."



wants to ensure that courts can offer remote services throughout that time. To address the varying issues, the rule sets a default process but also authorizes local rules so long as in compliance with the statutory requirements and, if requiring written notice, incorporating the mandatory council forms.

***Time and form of notice (for civil cases other than juvenile dependency) (Issue 2)***

*Need for advance notice by parties*

Many commenters object to the rule providing a process and deadlines for parties giving notice for nonevidentiary hearings, or for requiring such notice by parties for evidentiary hearings or trials if not noticed by the court as remote. Some courts, some legal aid groups, and the executive branch commenter (Department of Child Support Services) want the rules to allow proceedings to continue as they have been in many courts during the COVID-19 emergency, with the court setting hearings and calendars as fully remote and a party wishing to appear in person required to show cause to the court for doing so. However, while those procedures were appropriate under emergency rule 3, they are not all authorized under the new law and so cannot be reflected in the recommended rule.

Subdivision (g) provides notice provisions for remote appearances in non-evidentiary hearings, conferences, and the like, that closely reflect those already in effect for telephone appearances.<sup>64</sup> Many commenters may not have realized that such rules are currently in effect, and object that, even if notice is required for video appearances, no notice at all should be required for telephone appearances. For many commenters, the concern is not so much the amount of notice required, but the fact that any notice is required at all, let alone in writing. Several commenters want the notice that a party intends to appear remotely effectuated by the party showing up remotely. The committee considered these comments, but concluded that, under the statute, while such appearances may work for evidentiary hearings if the court has set them up as remote to begin with,<sup>65</sup> they would not be in compliance with the statute's requirement that, other than evidentiary hearings and trials, a court may only conduct remote proceedings following notice given to the court and all other parties of a party's intent to appear remotely.<sup>66</sup>

*Form of notice*

Some legal aid commenters suggested that the notice could be provided orally, although several courts and other legal aid groups said that if notice is required, it should be in writing on a mandatory form for the sake of clarity and to place attorneys and self-represented litigants on a more even playing field. One commenter opposes any oral notice, stating that allowing oral notice to the court begs the question of who one gives it to, and at what telephone number. A few commenters suggest that email notice to the court should be sufficient, but that raises the issue of

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<sup>64</sup> Rule 3.670(h).

<sup>65</sup> See § 367.75(d)(1) allowing a court to conduct proceedings remotely on its own motion and proposed rule 3.672(h)(1) providing that a court can indicate such intent either through local rule or by direct notice to the parties.

<sup>66</sup> § 367.75(a).

requiring courts to allow email communications from parties, rather than formal filings, and the potential for inappropriate ex parte communications from self-represented parties.<sup>67</sup>

Some commenters suggest that even if the notice to the court needs to be in writing, the notice to the other parties should not have to be but could be provided instead by telephone, voice mail, or text in all cases (the rule as originally circulated allowed such informal notice for very short notice periods only). This type of notice is currently allowed on ex parte petitions and, in part because of the short time frame, a declaration by the party who states such notice was provided is included with the declaration supporting the application in such proceedings.<sup>68</sup>

After considering the comments, the committee concludes that written notice to the court, on the *Notice of Remote Appearance* form,<sup>69</sup> should be required, unless the court has developed an online method for providing notice instead. The committee also concludes, though, that notice to other parties may be in writing, electronic, or oral, because there is no requirement that such notice be “served” on the other parties.<sup>70</sup> The committee notes that the statute authorizes courts to initiate evidentiary hearings or trials as remote proceedings, and the rule allows courts to do so by local rule or notice to the parties. If the court has not done so, a party may file a notice form for those hearings or trials, too.<sup>71</sup>

Because several commenters, including several courts, focused on the number of notices—potentially one or more per side for each hearing or trial—and the burden that would place on the court and on self-represented parties, the committee is recommending that a single notice may be provided. The committee has added subdivision (f)(1) to the rule, which will allow a party to provide a single notice that provides notice of intent to appear remotely for the duration of the

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<sup>67</sup> Commenter Self Represented Litigation Network suggested that the committee rethink this process entirely, and have notice be required on all pleadings initiating a party’s appearance in a case. The commenter proposes that at that time the court should provide detailed information about the pros and cons of such appearance and allow for parties to have one default for evidentiary hearings and another for non-evidentiary. Once a party has given notice of the desire to appear remotely, the commenter proposed that the court should investigate whether the party has the ability to do so. While the comment contains some interesting long-term ideas, the committee concluded that the comment goes far beyond what can be included in this rule.

<sup>68</sup> See for example, *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303) and *Declaration Regarding Notice and Service for Ex Parte Application for Order on Deposit Account Exemption* (form EJ-158).

<sup>69</sup> The committee has deleted the rule provision originally circulated that would allow parties in certain instances to provide the notice written on the first page of a pleading, in light of comments from courts and others that such information would be easily missed by a court and so could lead to confusion.

<sup>70</sup> § 367.75(a).

<sup>71</sup> One commenter suggested that the notice form is not sufficient to initiate a remote proceeding for evidentiary hearings or trials because parties who want to appear at such proceedings remotely may do so “on the party’s motion,” and that a motion requires a notice, a scheduled hearing, points and authorities, etc. The committee disagrees. The statutes regarding notice and hearings (see, e.g., Code Civ. Proc., § 1005) apply only to motions listed in that statute or where other law does not apply. Here, the new rule is the law that applies as to what notice is to be given and the format of the motion (i.e., the notice form or the format required by a court). In order to clarify this, the rule now states that the notice serves as the motion referenced in the statute. (See rule 3.672(h)(2)(B).)

case. The notice may be given orally during a court proceeding (for example, at a case management conference) or by providing the *Notice of Remote Appearance* (form RA-010), which was revised to allow for such a notice.<sup>72</sup>

#### *Time of notice*

As to the time of notice, for non-evidentiary hearings, the comments go both ways: the proposed time frame (generally, two court days) is too long for some (a legal aid provider asks why not 2-hours' notice as they can do for some Superior Court of Los Angeles County hearings) and not long enough for others (one court notes that it will not be able to get a notice to the specific department within two court days, another that the review of the notices will have to be done on an expedited basis, which might not be feasible at this time with COVID-19 backlogs.) There are also concerns that the proposed timeframes were too complicated, in part due to providing different deadlines for the first person to give notice of appearing remotely and anyone giving notice after that.

The committee notes that the timelines for nonevidentiary hearings are very similar to those currently in effect for telephone appearances, and concludes that, as the default timelines, the circulated rules are appropriate, although it has eliminated the second set of deadlines for parties who did not make the initial notice.<sup>73</sup> Courts that can provide hearings by remote technology on shorter timeframes, as well as those that need additional time, can provide for that by local rules.<sup>74</sup>

As to the notices for evidentiary hearings and trials, many commenters raise concerns with the proposed timeline for those as well.

For evidentiary hearings held on short notice, some question why the notice should be required with the moving papers, particularly in restraining order proceedings, where the victim may not know when filing for a temporary restraining order whether they will have the ability to appear remotely at a hearing in a few weeks' time. The committee agrees with these comments and has modified the time frame for evidentiary hearings and trials which may be held with less than 15 days' notice, to allow notice by the petitioner to be provided either with the moving papers or at least 5 court days before the hearing.<sup>75</sup>

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<sup>72</sup> The committee also considered input from a Judicial Council advisory committee suggesting that the number of notices would be limited if the committee interpreted section 367.75(a) to mean that once any party gives the court and other parties notice that the party intends to appear remotely, from that point on the court may conduct the proceedings remotely, with the only further notice required be from a party who wants to attend a hearing in person. The committee disagrees with this interpretation, which would require adding further rules to subdivision (g), to provide how a court is to inform the other parties in the case whether all proceedings are to be held remotely once an initial notice was received and whether, how, and when the other parties were to provide notice if they intend to participate in person.

<sup>73</sup> Renumbered here as proposed rule 3.672(g).

<sup>74</sup> Proposed rule 3.672(e).

<sup>75</sup> Proposed rule 3.672(h)(2)(D).

For longer evidentiary hearings and trials held with longer notice, some commenters believe less notice should be required even for trials (e.g., allow a party in an unlawful detainer trial to give notice on the day of hearing—although no mention is made in the comment of how exhibits would be handled or how the other side would have time to oppose without requiring a continuance). Others, including the CLA committee and the Los Angeles County Bar Association, argue that the 10-day notice period before a trial is insufficient to properly prepare and implement a remote proceeding or to adjust should a previously noticed remote hearing or trial proceed as an in-person proceeding. They request that a longer notice period be required, at least for trials. The committee has considered these comments and decided to leave the default deadlines as proposed in the circulated rule, although the rule now clarifies that court days are intended.<sup>76</sup> The committee notes that parties and courts may raise the question of remote appearances and testimony at any time during a case if they are concerned that more time is needed to address issues that might arise.

*Other rules regarding notice—subdivision (j)*

Subdivision (j)(1) allows persons who gave notice of their intent to appear remotely to change their minds and show up in person. As originally circulated, the rule required that a person changing how they would appear had to provide reasonable notice to all other parties and the court, but the committee has deleted that provision in light of comments that the provisions was (1) unclear as to what reasonable notice would be and (2) was not required by statute and unnecessary.

***Other provisions relating to trials and evidentiary hearings (Issue 3)***

Some commenters addressed issues relating solely to trials and evidentiary hearings, beyond issues relating to the timing of notice.

*Remote proceedings for trials*

Several commenters objected to a rule that allows remote appearances at a trial other than in very limited circumstances. The committee notes that the new statute expressly authorizes courts to conduct a trial or evidentiary hearing, in whole or in part through the use of remote technology, absent a showing why the remote proceedings should not be allowed. Eliminating or limiting that authority would be inconsistent with statute and therefore outside the purview of the council's rule-making authority.

Others object that the rule places the burden of persuasion on the party who wants the proceeding to be in person rather than the one who wants to appear remotely. Again, the rule reflects the statute, which provides that the trial or evidentiary hearing may be conducted remotely “absent a showing by the opposing party as to why a remote appearance or testimony should not be

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<sup>76</sup> Proposed rule 3.672(h)(2)(C)

allowed.”<sup>77</sup> To the extent this places the burden on the party objecting, it is the result of legislative action, and not something that can be changed by rule of court.

The comment by Cal-ABOTA jointly with several other attorney groups objects that the rule does not properly take into consideration the rights of a party to “not agree” to a remote appearance by someone else at a trial. They look to section 367.75(f), which precludes a court from requiring any party to appear through remote technology, and state that it was enacted “to uphold a core principle of the discussions in the legislature over remote appearances, that no party should be forced into a remote proceeding, particularly trials.” They state that should a party not agree to a remote appearance, the limitation in subdivision (f) effectively requires in-person proceedings, unless the party agrees otherwise.

The committee agrees that section 367.75(f) prohibits a court from mandating any party to appear through the use of remote technology. That statutory provision is so clear that the committee did not initially see a need to repeat it in the rule. In light of this and other comments, however, the statutory provision has now been expressly added to the rule as one of the factors a court should consider in determining whether to conduct an evidentiary hearing or trial remotely in full or in part.<sup>78</sup>

However, the committee disagrees with the commenters that one party asserting that party’s right to appear in person under (f) *automatically* results in an evidentiary hearing or proceeding being held completely in person, with no other party allowed to appear remotely. The statute expressly provides that parties may appear and testify remotely, or the court may conduct the proceedings remotely, “absent a showing by the opposing party as to why a remote appearance or testimony should not be allowed.”<sup>79</sup> The rule as circulated mirrors that provision. Any rule that does not provide for a court to determine whether such a showing had been made would be inconsistent with statute. A change in the terms of the statute would require legislative action.

#### *Good cause rule for experts*

The other point raised by the Cal-ABOTA group comment is regarding expert witnesses. Section 367.75(c) permits an expert witness to appear remotely absent good cause to compel in person testimony. The commenters note that they are not happy with this provision of the statute, and suggest that the rule include a new subdivision “clearly articulating criteria for courts in determining when good cause exists to require in-person testimony.”

The committee declines the suggestion to add a definition of the “good cause” standard to be applied under section 367.75(c) to the rule. The potential bases for good cause for requiring an expert witness to appear in person are numerous and will vary from case to case. Moreover, at least one of the reasons proposed by the commenters (credibility of the expert) will be present in

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<sup>77</sup> § 367.75(d)(1).

<sup>78</sup> Proposed rule 3.672(h)(3)(B).

<sup>79</sup> § 367.75(d)(1).

every case, so including it in a rule as to what constitutes good cause would not clarify the statutory provision, which provides discretion to the court, but rather mandate in-person appearance of an expert in all situations in which that objection is raised. The statute is clear in requiring a showing of good cause to compel in-person testimony by the expert, and determining what constitutes good cause in a given case is best left to parties to present to the court for decision.

***Court discretion to require in-person appearance (Issue 4)***

Subdivision (d) describes the factors the court is to consider in requiring an in-person appearance after a party has indicated the desire to appear by remote technology. A few commenters requested changes to this subdivision of the rule.

The attorney group asked for an exhortation to be put at the front of this subdivision, noting that the court is to use its best efforts in accommodating remote appearances where possible. Because subdivision (a) of the rule includes similar language (“to the extent feasible courts should permit parties to appear remotely”), the committee concludes that it is not necessary to add the language in this subdivision as well.

A union commenter asked that an additional technology factor that is contained in the statute as a basis for requiring an in-person appearance be expressly added to the subdivision: one speaking to the quality of the technology available to the court. The committee has added that factor to the rule.<sup>80</sup>

One judicial officer suggested an additional provision to the rule stating that the court may by local rule require an in-person appearance, leaving it to the party to request permission to appear remotely and the court to consider the request. The committee declines this suggestion, noting that it would reverse the presumption in the new statute that allows parties to provide notice to the court of intent to appear remotely and provides specific bases for the court to require in-person appearances in light of such notice. (§ 367.75(a), (b) & (d).)

***Forms (for civil cases other than juvenile dependency) (Issue 5)***

- *Notice of Remote Appearance* (form RA-010)
- *Opposition to Remote Proceeding at Evidentiary Hearing or Trial* (form RA-015)
- *Order Regarding Remote Appearance* (form RA-020)

As noted above, in light of several comments, the forms have been renumbered from when they were circulated for comment, and placed in a new category, Remote Appearances (RA), so that they can more easily be used in different case types. For that same reason, other changes to the forms include adding “Other Case Name” to the caption (to allow for options other than plaintiff and defendant or petitioner and respondent) and increasing the space for identifying “other” parties or persons giving notice. The text in both the notice form and the opposition form has

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<sup>80</sup> Proposed rule 3.672(d)(2).

also been revised where possible in light of specific suggestions for plainer and simpler language.

#### *Optional versus mandatory*

The Invitation to Comment asked for comments on the issue of whether the notice and opposition forms should be mandatory or optional. Two courts (the Superior Courts of San Bernardino and San Diego Counties), several legal aid organizations, and the CLA committee commented that the forms should be mandatory.

- The courts opine that with mandatory forms it would be easier for courts to recognize the notice and the opposition, which is important in light of the short time frames involved.
- The legal aid organizations and CLA commenter want the forms to be mandatory so that the forms are the same across the state, rather than having varying local court forms. A legal publisher commenter makes the same point.

Two other courts (the Superior Courts of Merced and Alameda Counties) also addressed this point, along with some other individuals. They want the forms to be optional to allow for changing circumstances and to enable each court to establish forms to match their local protocols and court operations. A judicial officer from Placer County wants them to be optional for the same reason: so local court forms could be developed.

The committee concludes that notice and opposition forms should be mandatory, except where courts are providing an online process instead<sup>81</sup> and in juvenile dependency cases (which are subject to different statutory and rule provisions). This will provide consistency across the state and ensure that all parties have access to a form that includes instructions regarding notice and a means of providing proof to the court that such notice was given.<sup>82</sup> In addition, having a single notice form, rather than allowing parties to create their own pleading for that purpose, will make it easier for courts that do not have an online process to immediately recognize when a party is notifying the court that the party intends to appear remotely.

#### *Additional items on notice form*

A few commenters, including a judicial officer from Placer County and a member of the Judicial Council who is a court commissioner, requested that the forms contain an item whereby the parties intending to appear remotely be required to sign “agreements” that the party will conduct themselves in the same manner as if they appeared in person in court. The committee has decided that it is not appropriate to condition a remote appearance on a pre-hearing agreement, but to address the concerns raised, the committee has added notice about the need for proper

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<sup>81</sup> Proposed rule 3.672(e)(1) & (2).

<sup>82</sup> Several commenters requested that the notice form, in particular, should include a way for self-represented parties to provide the proof that notice had been provided as part of the form. The committee has added that to the *Notice of Remote Appearance* (form RA-010, at page 2).

conduct to the beginning of the notice form (form RA-010) and the request form for use in juvenile dependency cases (form RA-025.)

Because several legal aid organizations suggested that the forms contain information as to how a party can request reasonable accommodations for disabilities or request interpreters, that information has been added to the instructions on *Notice of Remote Appearance*.

Some commenters also suggested that the notice form include an item by which a party with a fee waiver could request a court reporter, and information about how court reporters or a record of the proceedings would be provided for a remote hearing. The committee declines to accept those suggestions. The law allows electronic recording in certain case types but requires court reporters in others. (See Gov. Code, § 69957.) Those provisions are not changed for remote appearances, except for the requirement that the court reporter be present in the courtroom for trials conducted with the use of remote technology. Similarly, the rules for parties providing court reporters or, for parties with fee waivers, for requesting court reporters, remain the same whether the party is appearing in person or remotely. (See rule 2.956 and *Request for Court Reporter by Party with Fee Waiver* (form FW-020).) The committee concludes that the current rule and form on this issue are sufficient to cover remote appearances as well as in-person appearances.

#### *New order form*

The Invitation to Comment included a question as to whether an order form would be helpful. All the commenters who replied said it would be, so long as it was simple and (per the court commenters) optional. As noted above, the committee is therefore recommending that the council approve *Order Regarding Remote Appearance* (form RA-020) as part of this proposal. The order form is optional.

#### ***Juvenile dependency rules and forms (Issue 6)***

Eighteen commenters, including five superior courts and one judge, submitted comments about the rule's implementation of the statutory requirements for remote proceedings in juvenile dependency cases and the proposed forms for those cases. One court agreed with the proposal, eight commenters agreed subject to suggested modifications, and nine commenters did not expressly indicate a position.

#### *Requirement of request to appear remotely*

Several commenters suggested that the rule should not require a person to submit a request to appear remotely at a dependency proceeding. In light of the comments and recognizing that this requirement would place a heavy burden on both parties and courts, the committee reviewed the language and structure of the statute. Recognizing that section 367.75(h)(1) conditions a remote dependency proceeding only on providing an opportunity for any person authorized to be present to appear remotely, the committee revised proposed rule 3.672(i) to allow a court to conduct a dependency proceeding remotely as long as it provided such an opportunity. The rule also allows



persons entitled to be present under rule 5.530(b) to appear remotely at a remote proceeding without submitting a request to do so.<sup>83</sup>

*Time and manner of request*

The limits on the request requirement as a condition of conducting a remote proceeding do not, however, eliminate all circumstances in which a request might be necessary or appropriate or the statutory requirement that an opportunity to submit one be available. The rule therefore provides a framework for making a request to appear remotely, but one substantially more flexible than was circulated for comment. In response to comments suggesting that a written request to appear remotely was too burdensome and a five-day deadline for filing too early, the recommended rule allows most requests to appear remotely to be submitted to the court by any person authorized to be present, including a person authorized by court order, orally or in writing no later than the time the case is called for hearing.<sup>84</sup>

The requirement for a written request to appear remotely is appropriate, however, when the request is made on behalf of a witness, including a party who will testify. In those circumstances, the statute requires the consent of all parties to the witness's remote appearance.<sup>85</sup> The rule therefore requires a request for a witness's remote appearance to be filed in writing and served on the other parties no later than close of business three court days before the proceeding for which the request is made. These requirements ensure that a party who does not consent to the witness's remote appearance will have an opportunity to file a request to compel the witness's physical presence at the proceeding, as the statute authorizes.<sup>86</sup>

*Suggested exceptions to requirements*

Several commenters asserted statutory or rule-based rights on behalf of specified persons to appear remotely at dependency proceedings, and suggested that these persons be exempt from the requirements of proposed rule 3.672.<sup>87</sup> Several of these may appear as parties to dependency proceedings, though some of the statutes and rules also apply to additional case types.<sup>88</sup> Having

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<sup>83</sup> Proposed rule 3.672(i)(3)(A).

<sup>84</sup> Proposed rule 3.672(i)(3)(B)

<sup>85</sup> § 367.75(h)(2).

<sup>86</sup> *Ibid.* Proposed rule 3.672 does not require that a request to appear remotely be filed on behalf of a witness before a party files a request to compel the witness's physical presence at a proceeding. Under the rule, a party may file a request to compel preemptively. The better practice, of course, is for the parties to stipulate in advance to the manner of witnesses' appearances, as authorized by section 367.75(i).

<sup>87</sup> See, e.g., Fam. Code, § 6308 (authorizing a petitioner for a domestic violence restraining order to appear remotely in a proceeding under the Domestic Violence Prevention Act); Welf. & Inst. Code, § 224.2(k) (requiring the Judicial Council to adopt rules to allow for telephonic or other remote appearance options by an Indian child's tribe in cases governed by the Indian Child Welfare Act); Welf. & Inst. Code, § 388(e)(3) (requiring the Judicial Council to adopt rules to allow for telephonic appearances by nonminors in reentry hearings and any other proceeding in which a nonminor dependent is a party and elects a telephonic appearance).

<sup>88</sup> For example, the Indian Child Welfare Act applies to any "Indian child custody proceeding," including a probate guardianship and a family law child custody proceeding in which the subject of the proceeding is an Indian child.

reviewed many of the relevant statutes, the committee has determined that the extent of the rights conferred by at least several of them is unclear. To the extent that the asserted rights are established by rule of court, they must give way to the applicable requirements of section 367.75, as implemented by rule 3.672.<sup>89</sup> However, because the review and determination of these rights is beyond the scope of this proposal, the committee has revised proposed rule 3.672(b) to add a separate paragraph making clear that nothing in the rule limits a requirement or right established by statute or case law to an appearance in one manner, either remote or in person, to the exclusion of the other.

#### *Mandatory or optional forms*

Almost all commenters, with the exception of one court, suggested that the forms for requesting to appear remotely and requesting that the court compel physical presence be made optional. In line with these suggestions, as well as the simplification of the request requirements and procedures, the committee recommends that forms RA-025 and RA-030 be approved for optional use.

#### *Authorization for local rules*

Many commenters also suggested that the rule clarify and expand the authorized scope of local rules for remote dependency proceedings. In response, the committee added paragraph (3) to proposed rule 3.672(e) to authorize local rules prescribing procedures for remote proceedings in dependency cases as long as the procedures are posted on the court's website and consistent with both section 367.75 and subdivision (i) of the rule.

#### ***Juvenile Justice (Delinquency) (Issue 7)***

Eleven commenters, including two superior courts, submitted comments about the application of the statute and the rule to juvenile justice proceedings. Two commenters, including one court, agreed that the statute and proposed rule applied to juvenile justice proceedings, but needed changes. All other commenters thought that section 367.75 either did not apply to juvenile justice proceedings or that it should not. Several of those commenters also suggested changes.

#### *Scope of section 367.75 and proposed rule 3.672*

Several commenters suggested that section 367.75 did not apply to juvenile justice cases because it used the term "civil cases." Some argued that the Legislature intended that the law apply to "general civil cases," as that term is used in Code of Civil Procedure section 367.5, which

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<sup>89</sup> See proposed amendments to rules 5.482 and 5.900. The committee notes, however, that many of the concerns raised by commenters on this issue, including feedback received from the Tribal Court-State Court Forum, do relate to juvenile dependency cases. Under the modifications to proposed rule 3.672(i), those cases will not be subject to most of the requirements that the commenters object to. In addition, in cases governed by the remainder of the rule, tribal representatives can ask to appear remotely on no notice with a showing of good cause. (Proposed rule 3.672(j)(2).) If opposition is raised, the court is to consider access to transportation among other factors, which will usually weigh in favor of remote appearances by tribes located far from the court. (See proposed rule 3.672(h)(3)(B) & (i)(5)(C).) In addition, to the extent tribes and tribal representatives seek a legislative mandate addressing this issue, the council's Ad Hoc Workgroup on Post-Pandemic Initiatives, which has heard concerns from tribal representatives during the group's work over the past several months, has indicated a willingness to help address this issue.

addresses telephonic appearances. Others argued that juvenile justice cases were not civil cases. Still others argued that the term was ambiguous, and that legislative history or the separate treatment of juvenile dependency cases indicated that the statute was not intended to apply to juvenile justice cases. The committee finds these arguments unpersuasive.

California law establishes that juvenile justice cases are fundamentally civil cases, not criminal. Welfare and Institutions Code section 203 reads, in its entirety, “An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.” The characterization of juvenile justice cases as civil is itself for the protection of the accused minor. The labeling of juvenile justice cases as “quasi-criminal” and the accused minor’s entitlement to most of the same constitutional protections as an adult criminal defendant does not change their fundamentally civil nature.

Section 367.75 applies to civil cases for purposes of remote proceedings and appearances. It applies the same requirements to all civil cases except for juvenile dependency. The separate treatment of dependency cases or the failure to treat juvenile justice cases separately, however, does not indicate that the Legislature did not intend the statute to apply to juvenile justice. It indicates only that the statute treats juvenile justice proceedings the same as it treats all other civil cases. And, as explained below, neither the statute nor the rule deprives an accused minor of the statutory or constitutional protections to which they are entitled.

The absence of a statutory definition of civil cases does not render the term ambiguous. Context, and the usage of terms in similar statutes, can help determine what a term signifies. For example, Code of Civil Procedure section 367.5, which addresses telephone appearances, refers to both “civil cases” and “general civil cases.” Section 367.75, unlike section 367.5, never mentions “general civil cases.”<sup>90</sup> In section 367.5, “civil cases” necessarily refers to a broader range of cases than does “general civil cases” because courts have discretion to permit remote appearances in the former, and must permit them, on notice, in the latter. If “general civil cases” referred to a broader range of cases, then encouraging the courts to permit remote appearances in “civil cases” would be empty rhetoric, because courts would already be required to permit such appearances. From the change in the statutory language—from “general civil cases” in section 367.5 to “civil cases” in section 367.75—it is therefore appropriate to impute a legislative intent to expand the range of proceedings in which remote appearances are authorized to all civil cases and not to limit that authority to general civil cases.<sup>91</sup> The use of “civil cases” to mean all cases

<sup>90</sup> Compare § 367.75(a) (in *civil cases*, a party may appear remotely and the court may conduct proceedings wholly or partly remotely) with § 367.5(a) (in *civil cases*, courts *should* permit parties to appear by telephone at appropriate proceedings) and § 367.5(b) (in all *general civil cases*, a party that has provided notice *may* appear by telephone at specified proceedings).

<sup>91</sup> A broad definition of “civil case” is also consistent with the limited indication of section 367.75’s purpose in the relevant legislative history. The Senate Floor Analysis from September 9, 2021, the day before the final vote on SB 241, reflects the proponents’ position that “remote hearings and trials are essential to allow the wheels of justice to continue to turn,” and “the benefits [of remote proceedings] are widespread.” Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 241 (2021–2022 Reg. Sess.) Sept. 9, 2021, p. 11.

other than criminal cases or criminal-related habeas corpus proceedings is consistent with the Legislature's intent.

*Effect of section 367.75 on an accused minor's rights*

Other commenters argued that the statute and the proposed rule should not be applied to juvenile justice cases because they would lead to the restriction of the rights of accused minors to appear in person, to confront and cross-examine witnesses, or to consult confidentially with counsel. These arguments, too, are unpersuasive.

First, nothing in section 367.75 or proposed rule 3.672 authorizes a court to require a party or a witness to appear remotely. Section 367.75(f) expressly *prohibits* a court from requiring a party to appear remotely. And because section 367.75(i) defines a party to include a nonparty subject to discovery, the prohibition extends to witnesses. In addition, section 367.75(e)(2) requires the court to "require that a remote appearance by a party or witness have the necessary privacy and security appropriate" for the proceeding. The rule does not change any of these provisions.<sup>92</sup>

Even if these protections did not exist, the rights of an accused minor to appear in person, to confront and cross-examine witnesses, and to consult with counsel are well-established. To the extent they are established by the federal or state constitution, a statute cannot operate to deprive an accused minor of the opportunity to exercise them. As several commenters note, Welfare and Institutions Code section 679, which entitles an accused minor to be present at a juvenile justice hearing, may be satisfied only by the minor's physical presence.<sup>93</sup> The exercise of many constitutional rights also requires the physical presence of the accused minor or the witnesses.<sup>94</sup> As noted above, section 367.75 and rule proposed 3.672 do not, expressly or implicitly, restrict the exercise of these rights. To be cautious, however, in light of these comments, the committee has added paragraph (2) to proposed rule 3.672(b), indicating expressly that nothing in the rule limits a requirement or right established by statute or case law to an appearance in one manner, either remote or in person, to the exclusion of the other.<sup>95</sup>

***Technical requirements (Issue 8)***

Several commenters, including both union commenters and two of the legal aid groups, ask that the rule include specificity as to the technical requirements courts must meet. Two commenters also want the rule to mandate the specific platforms to be used throughout the state. The committee notes that the many trial courts in this state use different platforms for remote appearances, some telephonic only, others with a mixture of telephonic platforms and

<sup>92</sup> Section 367.75(b)(5) also authorizes the court to require an in-person appearance if the quality of the technology or audibility prevents an attorney for providing effective representation.

<sup>93</sup> *E.P. v. Superior Court* (2020) 59 Cal.App.5th 52. The court ruled that a minor's consent was required as a condition of a remote appearance. As noted, nothing in the statute or rule authorizes a party or a court to require a minor to appear remotely without the minor's consent.

<sup>94</sup> *In re Gault* (1967) 387 U.S. 1; see *Maryland v. Craig* (1990) 497 U.S. 836.

<sup>95</sup> Proposed rule 3.672(b)(2) is intended to apply to an appearance by a party or a witness, to the extent that an appearance in one manner is necessary to allow the exercise of a right established by statute or case law.

videoconferencing (including audio) platforms. A determination of what single platform is best and should be in effect as of January 1, 2022, is outside the scope of this rules proposal. Defining technical requirements for all the courts across California to be in effect by January 1, 2022, is similarly outside the scope of this rule, and of the expertise of this committee.

### ***Other comments (Issue 9)***

The remaining issues raised by various commenters are grouped in the chart of comments labeled “Issue 9: Other.” They include the following issues, among others.

#### ***Remote appearance fees (subdivision (k))***

In light of the comments received, the committee has clarified the provisions in subdivision (k)(1) to ensure that parties who by statute are not to be charged fees for court services (such as tribal representatives in cases covered under ICWA) will not be charged videoconference fees. (The Advisory Committee Comment on this point has also been revised to address this as well.) The committee declines to make some suggested changes to subdivision (k)(2) (regarding parties with fee waivers), because those provisions are intended to mirror the provisions in rule 3.670 regarding telephonic appearances, so that there will not be conflict between the two rules.

#### ***Information on court websites (subdivision (m))***

Some commenters requested that additional provisions be added to the rule provisions mandating certain information be provided on the court’s websites regarding remote appearances. The committee notes that the rule requires that courts, in addition to posting any local rules relating to remote appearances (proposed rule 3.672(e)), must publish notice online providing parties with the information necessary to appear remotely at proceedings in that court. (Proposed rule 3.672(m).) The committee declines to micromanage exactly what that information should be for each court.

### **Alternatives considered**

Because new section 367.75(k) mandates that the council adopt rules of court on certain topics under the statute, the committee did not consider the alternative of taking no action.

The committee also considered not creating any forms, but concluded that, without forms for notice of or a request for remote appearance, it would be more difficult for parties, especially self-represented litigants, to know how to give notice to other parties and the court. And it would be difficult for them to draft their own pleading to oppose such appearance in the short time frame provided.

The committee also considered all the alternatives suggested by the commenters, as discussed above and in the chart of comments attached.

### **Fiscal and Operational Impacts**

The new statute will have significant operational impacts on the courts, with new statutory provisions that remote appearances, other than at evidentiary hearings and trials, must be triggered by the notice of a party intending to appear, rather than at the direction of the court;

that parties in evidentiary hearings and trials have the opportunity to oppose remote appearances; and parties in juvenile dependency proceedings must make a request that the court must rule on before they appear remotely; and that self-represented parties must agree to any remote appearance.

Those are impacts of the statute. The intent of the rule is to help promote consistency for stakeholders and justice partners, to support understanding and compliance with the rules by creating standard forms for the notice that must now be provided, and to provide courts with the flexibility for local procedures that meet the statutory requirements. Court commenters noted that significant training will be required of judicial officers and other staff as a result of the rule and the statute.

### **Attachments and Links**

1. Cal. Rules of Court, rules 3.670, 3.672, 5.9, 5.324, 5.482, 5.531, and 5.900, at pages 30–44
2. Proposed new forms RA-010, RA-015, RA-020, RA-025, and RA-030, at pages 45–53
3. Proposed revoked forms CIV-020, FL-679, and FL-679-INFO, at pages 54–58
4. Chart of Comments, at pages 59–338
5. Link A: Senate Bill 241 (Stats. 2021, ch. 214)  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB241](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB241)
6. Voting instructions
7. Vote and signature pages

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Rule 3.672 of the California Rules of Court is adopted, and rules 3.670, 5.9, 5.324, 5.482, 5.531, and 5.900 are amended, effective January 1, 2022, to read:

1 Title 3. Civil Rules

2  
3 **Rule 3.670. Telephone appearance**

4  
5 **(a) Policy favoring telephone appearances**

6  
7 The intent of this rule is to promote uniformity in the practices and procedures  
8 relating to telephone appearances in civil cases. To improve access to the courts  
9 and reduce litigation costs, courts should permit parties, to the extent feasible, to  
10 appear by telephone at appropriate conferences, hearings, and proceedings in civil  
11 cases.

12  
13 **(b) Application**

14  
15 Subdivisions (c) through (i) of this rule are suspended from January 1, 2022, to July  
16 1, 2023, during which time the provisions in rule 3.672 apply in their place. This  
17 rule applies to all general civil cases as defined in rule 1.6 and to unlawful detainer  
18 and probate proceedings.

19  
20 **(c)–(q) \*\*\***

21  
22  
23 **Rule 3.672. Remote proceedings**

24  
25 **(a) Purpose**

26  
27 The intent of this rule is to promote greater consistency in the practices and  
28 procedures relating to remote appearances and proceedings in civil cases. To  
29 improve access to the courts and reduce litigation costs, to the extent feasible courts  
30 should permit parties to appear remotely at conferences, hearings, and proceedings  
31 in civil cases consistent with Code of Civil Procedure section 367.75.

32  
33 **(b) Application**

- 34  
35 (1) This rule applies to all civil cases. Provisions that apply specifically to  
36 juvenile dependency proceedings are set out in subdivision (i).  
37  
38 (2) Nothing in this rule limits a requirement or right established by statute or case  
39 law to an appearance in one manner, either remote or in person, to the  
40 exclusion of the other.  
41  
42 (3) Nothing in this rule modifies current rules, statutes, or case law regarding  
43 confidentiality or access to confidential proceedings.

1  
2 **(c) Definitions**

3  
4 As used in this rule:

- 5  
6 (1) “Civil case” is as defined in rule 1.6(3), including all cases except criminal  
7 cases and petitions for habeas corpus, other than petitions for habeas corpus  
8 under Welfare and Institutions Code section 5000 et seq., which are governed  
9 by this rule.
- 10  
11 (2) “Evidentiary hearing or trial” is any proceeding at which oral testimony may  
12 be provided.
- 13  
14 (3) “Oral testimony” is a spoken statement provided under oath and subject to  
15 examination.
- 16  
17 (4) “Party” is, except in (i), as defined in rule 1.6(15), meaning any person  
18 appearing in an action and that person’s counsel, as well as any nonparty who  
19 is subject to discovery in the action.
- 20  
21 (5) “Proceeding” means a conference, hearing, or any other matter before the  
22 court, including an evidentiary hearing or trial.
- 23  
24 (6) “Remote appearance” or “appear remotely” means the appearance of a party  
25 at a proceeding through the use of remote technology.
- 26  
27 (7) “Remote proceeding” means a proceeding conducted in whole or in part  
28 through the use of remote technology.
- 29  
30 (8) “Remote technology” means technology that provides for the transmission of  
31 video and audio signals or audio signals alone. This phrase is meant to be  
32 interpreted broadly and includes a computer, tablet, telephone, cellphone, or  
33 other electronic or communications device.

34  
35 **(d) Court discretion to require in-person appearance**

36  
37 Notwithstanding the other provisions of this rule and except as otherwise required  
38 by law, the court may require a party to appear in person at a proceeding in any of  
39 the following circumstances:

- 40  
41 (1) If the court determines on a hearing-by-hearing basis that an in-person  
42 appearance would materially assist in the determination of the proceeding or  
43 in the effective management or resolution of the case.



1  
2 (2) If the court does not have the technology to conduct the proceeding remotely,  
3 or if the quality of the technology prevents the effective management or  
4 resolution of the proceeding.

5  
6 (3) If, at any time during a remote proceeding, the court determines that an in-  
7 person appearance is necessary, the court may continue the matter and  
8 require such an appearance. Such determination may be based on the factors  
9 listed in Code of Civil Procedure section 367.75(b).

10  
11 **(e) Local court rules for remote proceedings**

12  
13 (1) Except for juvenile dependency cases, a court may by local rule prescribe  
14 procedures for remote proceedings, so long as the procedures are consistent  
15 with the requirements of Code of Civil Procedure section 367.75, posted on  
16 the court's website, and include the following provisions:

17  
18 (A) A requirement that notice of intent to appear remotely be given to the  
19 court and to all parties or persons entitled to receive notice of the  
20 proceedings;

21  
22 (B) A clear description of the amount of notice required; and

23  
24 (C) For evidentiary hearing and trials, an opportunity for parties to oppose  
25 the remote proceedings.

26  
27 (2) If local procedures include written notice, any mandatory Judicial Council  
28 forms must be used.

29  
30 (3) For juvenile dependency cases, a court may by local rule prescribe  
31 procedures for remote proceedings as long as the procedures are posted on  
32 the court's website and consistent with Code of Civil Procedure section  
33 367.75 and subdivision (i).

34  
35 (4) Notwithstanding the requirements of rule 10.613, courts may adopt or amend  
36 a local rule under this subdivision for an effective date other than January 1  
37 or July 1 and without a 45-day comment period if the court:

38  
39 (A) Posts notice of the adoption of the new or amended rule prominently on  
40 the court's website, along with a copy of the rule and the effective date  
41 of the new or amended rule;

1 (B) Distributes the rule to the organizations identified in rule 10.613(g)(2)  
2 on or before the effective date of the new rule or amendment; and

3  
4 (C) Provides a copy of the rule to the Judicial Council.

5  
6 No litigant's substantive rights may be prejudiced for failing to comply with  
7 a rule adopted or amended under this paragraph until at least 20 days after the  
8 rule change has been posted and distributed.

9  
10 (5) Notwithstanding (1) and rule 10.613, any local court procedures consistent  
11 with Code of Civil Procedure section 367.75 and posted on the court's  
12 website may continue in effect until March 31, 2022, or until such earlier date  
13 by which a court has adopted a local rule under (1)–(3).

14  
15 (f) **Notice and waiver for duration of case**

16  
17 (1) Notice for remote appearances for duration of case

18  
19 At any time during a case, a party may provide notice to the court and all  
20 other parties or persons who are entitled to receive notice of the proceedings  
21 that the party intends to appear remotely for the duration of a case. Such  
22 notice must be provided with at least as much advance notice as required in  
23 (g), (h), or (i), or by local court rules or procedures.

24  
25 (A) Notice process

26  
27 Notice must be given either orally during a court proceeding or by  
28 service on all other parties or persons who are entitled to receive notice  
29 of the proceedings and filing with the court a *Notice of Remote*  
30 *Appearance* (form RA-010). If any party appears in the case after this  
31 notice has been given, form RA-010 must be served on that party.  
32 Service may be by any means authorized by law.

33  
34 (B) Court's local procedures

35  
36 This notice does not exempt a party from following a court's local  
37 procedures, as posted on its website, for providing notice of intent to  
38 appear remotely at a particular proceeding, if the court has such a  
39 procedure.

40  
41 (2) Waiver of Notice  
42

1                    At any time during a case, all parties to an action may stipulate to waive  
2                    notice of any other participants' remote appearance. This stipulation may be  
3                    made orally during a court proceeding or in writing filed with the court.  
4

5    **(g) Remote proceedings other than an evidentiary hearing or trial**

6  
7                    (1) Applicable rules  
8

9                    This subdivision applies to any proceeding other than an evidentiary hearing  
10                   or trial, unless one of the following applies:

11  
12                   (A) The court has applicable local procedures or local rules under (e);

13  
14                   (B) The proceeding is a juvenile dependency proceeding governed by (i);

15  
16                   (C) The person intending to appear remotely has provided a notice for  
17                   remote appearances for the duration of the case or all parties have  
18                   stipulated to a waiver of notice under (f);

19  
20                   (D) The court permits a party to appear remotely under (j)(2).  
21

22                   (2) Required notice

23  
24                   (A) Hearing with at least three court days' notice

25  
26                   (i) Notice to appear remotely  
27

28                   A party choosing to appear remotely in a proceeding under this  
29                   subdivision for which a party gives or receives notice of the  
30                   proceeding at least three court days before the hearing date, must  
31                   provide notice of the party's intent to appear remotely at least  
32                   two court days before the proceeding.

33  
34                   (ii) Notice process  
35

36                   Notice to the court must be given by filing a *Notice of Remote*  
37                   *Appearance* (form RA-010). Notice to the other parties may be  
38                   provided in writing, electronically, or orally in a way reasonably  
39                   calculated to ensure notice is received no later than two court  
40                   days before the proceeding.

41  
42                   (B) Hearing with less than three court days' notice  
43

1 (i) Notice by moving party

2  
3 a. Notice to appear remotely

4  
5 A moving party or applicant choosing to appear remotely in  
6 a proceeding under this subdivision for which a party gives  
7 or receives notice of less than three court days must provide  
8 notice of the party's intent to appear remotely at the same  
9 time as providing notice of the application or other moving  
10 papers.

11  
12 b. Notice process

13  
14 Notice to the court must be given by filing a Notice of  
15 Remote Appearance (form RA-010). Notice to the other  
16 parties may be provided in writing, electronically, or orally  
17 in a way reasonably calculated to ensure notice is received  
18 with notice of the moving papers.

19  
20 (ii) Notice by other parties

21  
22 a. Notice to appear remotely

23  
24 Any party choosing to appear remotely at a hearing  
25 governed by (B), other than an applicant or moving party,  
26 must provide notice of their intent to appear remotely to the  
27 court and all other parties that have appeared in the action,  
28 no later than 2:00 p.m. on the court day before the  
29 proceeding.

30  
31 b. Notice process

32  
33 The notice to the court may be given orally or in writing by  
34 filing Notice of Remote Appearance (form RA-010). Notice  
35 to the other parties may be in writing, electronically, or  
36 orally in a way reasonably calculated to ensure notice is  
37 received no later than 2:00 p.m. on the court day before the  
38 proceeding.

39  
40 (C) Proof of notice

41  
42 A party may use Notice of Remote Appearance (form RA-010) to  
43 provide proof to the court that notice to other parties was given.

1  
2 (D) Delivery to courtroom

3  
4 If required by local rule, a party must ensure a copy of any written  
5 notice filed under (A) or (B) is received in the department in which the  
6 proceeding is to be held.

7  
8 (h) **Remote proceedings for an evidentiary hearing or trial**

9  
10 (1) Court notice of remote proceeding

11  
12 A court intending to conduct an evidentiary hearing or trial remotely must  
13 provide notice by one of the following means:

14  
15 (A) By providing notice to all parties who have appeared in the action or  
16 who are entitled to receive notice of the proceedings, at least 10 court  
17 days before the hearing or trial date, unless the hearing or trial is on less  
18 than 10 court days' notice, in which case at least two court days' notice  
19 of remote proceedings is required; or,

20  
21 (B) By local rule providing that certain evidentiary hearings or trials are to  
22 be held remotely, so long as the court procedure includes a process for  
23 self-represented parties to agree to their remote appearance and for  
24 parties to show why remote appearances or testimony should not be  
25 allowed.

26  
27 (2) Party notice of remote proceeding

28  
29 (A) Applicable rules

30  
31 This subdivision applies to all evidentiary hearings and trials unless one  
32 of the following applies:

33  
34 (i) The court has applicable local procedures or local rules under (e);

35  
36 (ii) The proceeding is a juvenile dependency proceeding governed by  
37 (i);

38  
39 (iii) The person intending to appear remotely has provided a notice  
40 for remote appearances for the duration of the case or all parties  
41 have stipulated to a waiver of notice under (f);

42  
43 (iv) The court permits a party to appear remotely under (j)(2).

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38  
39  
40  
41  
42  
43

(B) Motion

The notice described in this subdivision serves as the motion by a party under Code of Civil Procedure section 367.75(d).

(C) Hearings or trials with at least 15 court days' notice and small claims trials

(i) Time of notice

A party choosing to appear remotely at a small claims trial or an evidentiary hearing or trial for which a party gives or receives notice of the proceeding at least 15 court days before the hearing or trial date must provide notice of the party's intent to appear remotely at least 10 court days before the hearing or trial.

(ii) Notice process

Notice to the court must be given by filing a Notice of Remote Appearance (form RA-010). Notice to the other parties may be in writing, electronically, or orally in a way reasonably calculated to ensure notice is received at least 10 court days before the proceeding. A party may use Notice of Remote Appearance (form RA-010) to provide proof to the court that notice to other parties was given.

(D) Hearings or trials held on less than 15 court days' notice.

A party choosing to appear remotely in an evidentiary hearing or trial for which a party gives or receives notice of the proceeding less than 15 court days before the hearing or trial date, including hearings on restraining orders or protective orders, must provide notice of the party's intent to appear remotely in one of the following ways:

(i) As provided in (g)(2)(B); or

(ii) By filing a Notice of Remote Appearance (form RA-010) and providing notice to the other parties in writing, electronically, or orally in a way reasonably calculated to ensure notice is received at least five court days before the proceeding.

(3) Opposition to remote proceedings

1  
2 (A) Filing and serving opposition  
3

4 In response to notice of a remote proceeding for an evidentiary hearing  
5 or trial, whether set by local rule or otherwise noticed under (h)(1) or  
6 (2), or to obtain a court order for in-person appearance, a party may  
7 make a showing to the court as to why a remote appearance or remote  
8 testimony should not be allowed, by serving and filing an *Opposition to*  
9 *Remote Proceedings at Evidentiary Hearing or Trial* (form RA-015)  
10 by:

11  
12 (i) At least five court days before the proceeding if for an  
13 evidentiary hearing or trial for which a party gives or receives at  
14 least 15 court days' notice; or

15  
16 (ii) At least noon the court day before the proceeding if for an  
17 evidentiary hearing or trial for which a party gives or receives  
18 less than 15 court days' notice.

19  
20 (iii) If required by local rule, a party must ensure a copy of any  
21 opposition is received in the department in which the proceeding  
22 is to be held.

23  
24 (B) Court determination on opposition  
25

26 In determining whether to conduct an evidentiary hearing or trial in  
27 whole or in part through the use of remote technology over opposition,  
28 the court must consider the factors in section 367.75(b) and (f), and any  
29 limited access to technology or transportation asserted by a party.  
30

31 (i) **Remote proceedings in juvenile dependency**  
32

33 (1) General provisions  
34

35 (A) This subdivision applies to any juvenile dependency proceeding. A  
36 court may adopt local rules as provided in (e) to prescribe procedures  
37 for remote juvenile dependency proceedings.

38  
39 (B) The definitions in (c) apply, except that, for purposes of this  
40 subdivision, a "party" is any of the following persons and that person's  
41 counsel:

42  
43 (i) A child or nonminor dependent subject to the proceeding;

1  
2 (ii) Any parent, Indian custodian, or guardian of a child subject to the  
3 proceeding;

4  
5 (iii) The social worker who filed the petition to commence the  
6 juvenile dependency proceedings on behalf of the county child  
7 welfare department;

8  
9 (iv) The tribe of an Indian child subject to the proceeding if the tribe  
10 has intervened; and

11  
12 (v) A de facto parent of a child subject to the proceeding to whom  
13 the court has granted party status.

14  
15 (C) This subdivision does not apply to a juvenile justice proceeding. The  
16 provisions in (a)–(h) and (j)–(m) govern a remote appearance in a  
17 juvenile justice proceeding.

18  
19 (2) Conducting a remote proceeding

20  
21 Any juvenile dependency proceeding may be conducted as a remote  
22 proceeding, as long as the following conditions are met:

23  
24 (A) The court provides an opportunity for any person authorized to be  
25 present to request to appear remotely;

26  
27 (B) All statutory confidentiality requirements applicable to a juvenile  
28 dependency proceeding held in person apply equally to a remote  
29 proceeding.

30  
31 (C) The court does not require any party to appear remotely.

32  
33 (3) Option to appear remotely

34  
35 (A) If a proceeding is conducted as a remote proceeding, any person  
36 entitled to be present under rule 5.530(b) may appear remotely without  
37 submitting a request.

38  
39 (B) Except as provided in (ii), any person entitled under rule 5.530(b) or  
40 authorized by court order to be present at a proceeding may request to  
41 appear remotely using any means, oral or written, that is reasonably  
42 calculated to ensure receipt by the court no later than the time the case  
43 is called for hearing.



- 1  
2 (i) If the request is in writing, *Request to Appear Remotely—*  
3 *Juvenile Dependency* (form RA-025) may be used.  
4  
5 (ii) A request for a remote appearance by a witness must be made in  
6 writing by counsel for the party calling the witness or, if the party  
7 does not have counsel, by the party, by filing the request with the  
8 court and serving a copy of the request on counsel for all other  
9 parties or, if a party does not have counsel, on the party, by any  
10 means authorized by law reasonably calculated to ensure receipt  
11 no later than close of business three court days before the  
12 proceeding.

13  
14 (4) *Request to compel physical presence*

15  
16 Any party may ask the court to compel the physical presence of a witness or a  
17 party by filing the request in writing with the court and serving a copy of the  
18 request on counsel for each party by any means authorized by law reasonably  
19 calculated to ensure receipt no later than close of business two court days  
20 before the proceeding. *Request to Compel Physical Presence—Juvenile*  
21 *Dependency* (form RA-030) may be used for this purpose.

22  
23 (5) *Determination of request*

24  
25 (A) The court must require a witness to appear in person unless all parties  
26 to the proceeding have consented to the witness's remote appearance.

27  
28 (B) The court may require any person to appear in person if the court  
29 determines that:

30  
31 (i) One or more of the factors listed in Code of Civil Procedure  
32 section 367.75(b) or (f) or in this rule, including the person's  
33 limited access to technology, requires the person's physical  
34 presence;

35  
36 (ii) The court cannot ensure that the person's remote appearance will  
37 have the privacy and security necessary to preserve the  
38 confidentiality of the proceeding; or

39  
40 (iii) A remote appearance by the person is likely to cause undue  
41 prejudice to a party.  
42

1 (C) The court must consider a person’s ability to appear in person at a  
2 proceeding, including any limits to the person’s access to  
3 transportation, before ordering the person to appear in person.

4  
5 **(i) Other rules regarding notice**

6  
7 (1) Any party, including a party that has given notice that it intends to appear  
8 remotely under (f)–(h) or a person authorized to appear remotely under (i),  
9 may choose to appear in person.

10  
11 (2) Notwithstanding the other provisions of this rule, a party may ask the court  
12 for leave to appear remotely without the notice provided for under (f)–(h).  
13 The court may permit the party to appear remotely upon a finding of good  
14 cause, unforeseen circumstances, or that the remote appearance would  
15 promote access to justice.

16  
17 **(k) Remote appearance fees**

18  
19 (1) Parties not charged fees

20  
21 Parties who, by statute, are not charged filing fees or fees for court services  
22 may not be charged a videoconference fee under Government Code section  
23 70630.

24  
25 (2) Parties with fee waiver

26  
27 (A) When a party has received a fee waiver, that party may not be charged  
28 fees for remote appearances.

29  
30 (B) To obtain remote appearance services without payment of a fee from a  
31 vendor or a court that provides such services, a party must advise the  
32 vendor or the court that they have received a fee waiver from the court.  
33 If a vendor requests, the party must transmit a copy of the order  
34 granting the fee waiver to the vendor.

35  
36 (C) If a party, based on a fee waiver, receives remote appearance services  
37 under this rule without payment of a fee, the vendor or court that  
38 provides the remote appearance services has a lien on any judgment,  
39 including a judgment for costs, that the party may receive, in the  
40 amount of the fee that the party would have paid for the remote  
41 appearance. There is no charge for filing the lien.  
42

1 **(l) Vendor or platform**

2  
3 A court, by local rule, may designate the vendors or platforms that must be used for  
4 remote appearances or the location on its website where such information may be  
5 found.

6  
7 **(m) Court information on remote appearances**

8  
9 The court must publish notice online providing parties with the information  
10 necessary to appear remotely at proceedings in that court under this rule. The notice  
11 should include information regarding in which departments, types of proceedings,  
12 or types of cases the court has the technological capability to allow remote  
13 appearances, and the vendors or platforms that must be used, including whether  
14 there are limitations to using them concurrently.

15  
16 **Advisory Committee Comment**

17  
18 **Subdivision (h).** Nothing in this rule, including time frames provided in subdivision (h), is  
19 intended to preclude a court or party from discussing the use of remote appearances and  
20 testimony at any time during an action, including at case management conferences and status  
21 conferences.

22  
23 **Subdivision (k).** Statutes currently provide that courts are not to charge fees to certain types of  
24 parties, such as governmental entities; representatives of tribes in cases covered by the Indian  
25 Child Welfare Act; and parties in certain types of cases, such as juvenile cases or actions to  
26 prevent domestic violence. This rule would preclude courts from charging videoconference fees  
27 to such parties as well.

28  
29  
30 **Title 5. Family and Juvenile Rules**

31  
32 **Rule 5.9. Appearance by telephone**

33  
34 **(a) Application**

35  
36 Subdivisions (b) through (d) of this rule are suspended from January 1, 2022, to  
37 July 1, 2023. During that time, the provisions in rule 3.672 apply in their place.  
38 This rule applies to all family law cases, except for actions for child support  
39 involving a local child support agency and cases governed by the Indian Child  
40 Welfare Act. Rule 5.324 governs telephone appearances in governmental child  
41 support cases. Rule 5.482(g) governs telephone appearances in cases governed by  
42 the Indian Child Welfare Act.

1 (b)–(d) \* \* \*

2  
3 **Rule 5.324. Telephone appearance in title IV-D hearings and conferences**

4  
5 (a) **Purpose**

6  
7 This rule is suspended from January 1, 2022, to July 1, 2023. During that time, the  
8 provisions in rule 3.672 apply in its place. This rule is intended to improve the  
9 administration of the high volume of title IV-D child support hearings and  
10 conferences. Participation by both parents is needed for fair and accurate child  
11 support orders. The opportunity to appear by telephone fosters parental  
12 participation.

13  
14 (b)–(k) \* \* \*

15  
16  
17 **Rule 5.482. Proceedings after notice**

18  
19 (a)–(f) \* \* \*

20  
21 (g) **Tribal appearance by telephone or other remote means**

22  
23 (1) In any proceeding governed by the Indian Child Welfare Act involving an  
24 Indian child held between January 1, 2022, and June 30, 2023, the child’s  
25 tribe may appear by remote means at any proceeding as provided by the  
26 applicable provisions of rule 3.672, and during that time, paragraph (2) is  
27 suspended.

28  
29 (2) In any proceeding governed by the Indian Child Welfare Act involving an  
30 Indian child, the child’s tribe may, on notification to the court, appear at any  
31 hearing, including the detention hearing, by telephone or other computerized  
32 remote means. The method of appearance may be determined by the court  
33 consistent with court capacity and contractual obligations, and taking into  
34 account the capacity of the tribe, as long as a method of effective remote  
35 appearance and participation sufficient to allow the tribe to fully exercise its  
36 rights is provided.

37  
38 (3) No fee may be charged to ~~the~~a tribe for ~~such~~ a telephonic or other remote  
39 appearance.

40  
41  
42 **Rule 5.531. Appearance by telephone (§ 388; Pen. Code, § 2625)**

1 **(a) Application**

2  
3 Subdivisions (b) and (c) of this rule are suspended from January 1, 2022, to July 1,  
4 2023. During that time, the applicable provisions in rule 3.672 govern remote  
5 appearances and proceedings in juvenile court. The standards in (b) apply to any  
6 appearance or participation in court by telephone, videoconference, or other digital  
7 or electronic means authorized by law.

8  
9 **(b)–(c) \* \* \***

10  
11  
12 **Rule 5.900. Nonminor dependent—preliminary provisions (§§ 224.1(b), 295, 303,**  
13 **366, 366.3, 388, 391, 607(a))**

14  
15 **(a)–(d) \* \* \***

16  
17 **(e) Telephone appearance**

18  
19 Paragraph (1) below is suspended from January 1, 2022, to July 1, 2023. During  
20 that period, the juvenile dependency provisions in rule 3.672 apply in its place.

- 21  
22 (1) The person who is the subject of the hearing may appear, at his or her  
23 request, by telephone at a hearing to terminate juvenile court jurisdiction held  
24 under rule 5.555, a status review hearing under rule 5.903, or a hearing on a  
25 request to have juvenile court jurisdiction resumed held under rule 5.906.  
26 Rule 5.531 applies to telephone appearances under this paragraph.

27  
28 **(2)–(3) \* \* \***

29  
30 **(f) \* \* \***

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	<h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 10px 0 0 0;">12/17/21</h2> <h1 style="margin: 20px 0 0 0;">NOT APPROVED BY JUDICIAL COUNCIL</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER CASE NAME:	
<b>NOTICE OF REMOTE APPEARANCE</b>	CASE NUMBER:

You must use this form to tell the court you intend to appear remotely in a civil case, unless the court's website describes an online process for giving notice. You may also use it to give the required notice to all other parties in the case. (Do not use this form in a juvenile dependency proceeding.)

Check the court's website for information about how to appear remotely, including the departments and types of cases or proceedings that allow remote appearances and ways to appear remotely in their departments for such appearances.

See page 3 of this form for more information, including deadlines for giving notice and for opposing a remote appearance if this notice is for an evidentiary hearing or trial.

**A person appearing remotely should conduct themselves as though appearing in court in person.**

1. The person who intends to appear remotely is *(check and complete all that apply)*:
  - Plaintiff/Petitioner *(name)*:
  - Attorney for Plaintiff/Petitioner *(name)*:
  - Defendant/Respondent *(name)*:
  - Attorney for Defendant/Respondent *(name)*:
  - Other *(name and role in case)*:
  
2. The person or persons in 1 intends to appear remotely *(check one)*:
  - a.  Throughout the case.
  - b.  At the proceeding described below, including on any later dates if the proceeding is continued *(describe)*:  
 Type of proceeding:  
 Set on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_ in *(department)*: \_\_\_\_\_  
 Before *(name of judicial officer, if known)*: \_\_\_\_\_
  
3. The person intends to appear by *(check court's website for method that may be used)*:
  - Videoconference     Audio only (including telephone)
  
4.  For evidentiary hearing or trial only (where testimony may be given): the party requests the following additional aspects of the proceeding be conducted remotely *(describe what the party wants to be done remotely and why; attach form MC-25 if more space is needed)*:

PLAINTIFF: DEFENDANT:	CASE NUMBER:
--------------------------	--------------

5.  I agree to keep the proceeding confidential to the same extent as would be required if I were appearing in person.

Date: \_\_\_\_\_

---

(TYPE OR PRINT NAME)
(SIGNATURE)

**Notice to Other Parties**

Anyone intending to appear remotely must provide notice to all other parties by the deadlines stated in Cal. Rules of Court, rule 3.672, and described on the next page. Notice may be provided orally, electronically, or by giving the other parties this form in a way to ensure it is received by the applicable deadline. The party must tell the court this was done either by filing a proof of service (this may be done on forms POS-040 or POS-050 for electronic service) or by completing and signing the declaration below.

**Declaration of Notice**

I gave notice that I intend to appear remotely to the other parties or persons entitled to receive notice in this case as stated below.  
 Complete one item below for each person notice was given to, and enter one of the following options for "Method of notice" in c.

- **Mail:** By mailing them a copy of this form (write the mailing address in d.)
- **Overnight delivery:** By having a copy of this form delivered overnight (write the delivery address in d.)
- **Electronic notice:** By e-mail or text message (write the e-mail or phone number in d.)
- **Phone:** By telling them over the telephone or leaving them voice mail (write the phone number in d.), or
- **In person:** By giving them a copy of this form in person, or by telling them orally in person (write the address in d.)

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Plaintiff/Petitioner<br>a. Name:<br>b. Date of notice:<br>c. Method of notice:<br>d. Address (mailing, in-person, or email) or phone number: | 2. <input type="checkbox"/> Attorney for:<br>a. Name:<br>b. Date of notice:<br>c. Method of notice:<br>d. Address (mailing, in-person, or email) or phone number:    |
| 3. <input type="checkbox"/> Defendant/Respondent<br>a. Name:<br>b. Date of notice:<br>c. Method of notice:<br>d. Address (mailing, in-person, or email) or phone number: | 4. <input type="checkbox"/> Attorney for:<br>a. Name:<br>b. Date of notice:<br>c. Method of notice:<br>d. Address (mailing, in-person, or email) phone number:       |
| 5. <input type="checkbox"/> Other (specify):<br>a. Name:<br>b. Date of notice:<br>c. Method of notice:<br>d. Address (mailing, in-person, or email) or phone number:     | 6. <input type="checkbox"/> Attorney for:<br>a. Name:<br>b. Date of notice:<br>c. Method of notice:<br>d. Address (mailing, in-person, or email) or phone number:    |
| 7. <input type="checkbox"/> Other (specify):<br>a. Name:<br>b. Date of notice:<br>c. Method of notice:<br>d. Address (mailing, in-person, or email , or phone number:    | 8. <input type="checkbox"/> Other (specify):<br>a. Name:<br>b. Date of notice:<br>c. Method of notice:<br>d. Address (mailing, in-person, or email) or phone number: |

If more people were given notice, check here, attach form MC-025, titled as Attachment Notice, and add the information about how and when notice was given to each person.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

---

(TYPE OR PRINT NAME)
(SIGNATURE)

## Instructions for Giving Notice of Remote Appearance

(This page does not need to be filed.)

**1. Court online procedures.** Before using this form, check the court's website to see if that court has an online procedure for providing notice to the court of your intent to appear remotely instead. You can find a link to the website for each court at: <https://www.courts.ca.gov/find-my-court.htm>.

**2. How to use this form.** This form is intended for use in civil cases only (any cases not criminal or petitions for habeas corpus, other than petitions under Welf. & Inst. Code, § 5000 et seq.), to provide written notice of intent to appear remotely, to a court and the parties, as described in Code of Civil Procedure section 367.75. It is not needed in juvenile dependency hearings.

**Check the court's website to determine how remote appearances work in that court before completing this form.** If the court does not have an online procedure for giving notice to the court of intent to appear remotely, complete and file this form to give the court notice. If you intend to appear remotely throughout the case, you only need to file it once (check item 2a).

**3. Notice to others.** You may also use this form to show that you gave notice to other parties. You must give notice of your intent to appear remotely to all parties and other persons who are entitled to notice of the proceeding. (If you checked item 2a, you only need to give notice once. Otherwise, give notice to the court and others before each proceeding you intend to appear at remotely.) You can describe how and when you gave notice in the Declaration of Notice on page 2, or by filing a proof of service with the court.

### 4. When to file and give notice to others.

California Rules of Court, rule 3.672(g) and (h) state the deadlines by which you have to give notice of intent to appear remotely to the other parties and the court. (You can give notice earlier.) There are different deadlines :

#### ***For motions and proceedings in which people cannot testify***

If a party gives or receives *at least 3 court days' notice* of the proceeding (including all regularly noticed motions):

- At least 2 court days before the proceeding.

If a party gives or receives *less than 3 court days' notice* of the proceeding (including ex parte applications):

- With the moving papers, if the notice to appear remotely is by the party that is asking for the hearing; or
- By 2 p.m. the court day before the hearing if the notice to appear remotely is by any other party.

*Note:* If a party misses these deadlines, they may still ask the court for permission to appear remotely.

#### ***For trials, including small claims trials, and hearings in which people may testify (evidentiary hearings)***

If a party gives or receives *at least 15 court days' notice* of a trial or hearing date, and for all small claims trials:

- At least 10 court days before the trial or hearing date.

If a party gives or receives *less than 15 days' notice* of the trial or hearing (including hearings on protective orders):

- With the moving papers or at least 5 court days before the hearing, if the notice to appear remotely is by the party that is asking for the hearing; or
- By noon the court day before the hearing if the notice to appear remotely is by any other party.

*Note:* If a party misses these deadlines, they may still ask the court for permission to appear remotely.

**5. Opposition to remote appearances at trial or evidentiary hearing.** If a party or witness has given notice of intent to appear remotely at a trial or evidentiary hearing (hearing at which people may testify), other parties in the action may oppose the remote appearance by filing *Opposition to Remote Proceedings at Evidentiary Hearing or Trial* (form CIV-022). The opposition must be served on parties and other persons entitled to receive notice of the proceedings, by the deadlines summarized on that form. (Cal. Rules of Court, rule 3.672(g)(3).)

**6. In-person appearance.** A court may require any person to appear in person instead of remotely. (Code Civ. Proc., § 367.75(b).)

**7. Recordings.** No person may record a proceeding without first getting approval from the judge. (Cal. Rules of Court, rule 1.150(c).)

**8. Accommodations for disability.** If a party needs an accommodation for a disability, use form MC-410, *Disability Accommodations Request*, to tell the court about their needs. See form MC-410-INFO for more information.

**9. Request for interpreter.** If a party does not speak English well, ask the court clerk as soon as possible for a court-provided interpreter. Form INT-300, *Request for an Interpreter*, or a local court form may be used to request an interpreter. If no court interpreter is available, it may be necessary to reschedule the hearing or trial.



ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO. _____ EMAIL ADDRESS: ATTORNEY FOR (name): _____	<h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 10px 0 10px 0;">12/17/21</h2> <h1 style="margin: 20px 0 20px 0;">NOT APPROVED BY JUDICIAL COUNCIL</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<p>CASE NUMBER: _____</p>
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER CASE NAME:	
<b>OPPOSITION TO REMOTE PROCEEDING AT EVIDENTIARY HEARING OR TRIAL</b>	

Unless the court has an online process for opposing a remote appearance, this form must be used to show the court why a remote appearance or testimony should not be allowed at a trial or an evidentiary hearing, which is a hearing in which a person may testify under oath. (For opposing a remote appearance in a juvenile dependency action, use form RA-030.)  
 See page 2 of this form for more information, including deadlines for filing or serving an opposition.

1. Person opposing remote appearance or testimony is *(check and complete all that apply)*:
  - Plaintiff/Petitioner *(name)*:
  - Defendant/Respondent *(name)*:
  - Other *(name and role in case)*:
  
2. The trial or evidentiary proceeding with a remote appearance or testimony set is for *(describe)*:
 

set on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_ in *(department)*: \_\_\_\_\_

before *(name of judicial officer, if known)*: \_\_\_\_\_
  
3. The reasons why remote appearance or testimony should not be allowed are *(describe the reasons here, including who would be appearing, or, if more space is required, attach form MC-25)*:
 

Explanation is on form MC-025, titled as Attachment 3.

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

**Instructions**

1. **Opposition to remote proceedings.** If a court has set a trial or evidentiary hearing (a hearing at which a party may testify under oath) to be conducted remotely, or if another party or a witness has given notice of their intent to appear remotely at a trial or an evidentiary hearing, parties may oppose the remote appearance or remote testimony. Parties may also use it if they want a court ruling in advance that a party or witness must appear in person. (Code Civ. Proc., § 367.75; Cal. Rules of Court, rule 3.672(g)(3).)

2. **How to use this form.** This form is to explain to the court and the other parties the reasons for opposing a remote appearance or remote testimony at a trial or evidentiary hearing. If the opposition is to the testimony of certain individuals, item 3 should include their names and an explanation of why the opposing party believes their remote testimony or remote appearance should not be allowed. This form may **not** be used in juvenile dependency cases. (A party may file form RA-030 for those cases.)

3. **Service and filing.** The opposition must be filed with the court and served on all parties and other persons entitled to receive notice of the proceedings. California Rules of Court, rule 3.672(g)(3) states when the opposition must be served and filed. There are different deadlines based on how much notice parties have of the trial or evidentiary hearing:

- At least 5 court days before the trial or hearing date if a party gave or received at least 15 court days' notice of the trial or hearing date; or
- By at least noon the court day before the hearing or trial date if a party gave or received less than 15 court days' notice of the trial or hearing date.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>12/17/21</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF: _____ DEFENDANT: _____ OTHER CASE NAME: _____	
<b>ORDER REGARDING REMOTE APPEARANCE</b>	CASE NUMBER: _____

**The court makes the following orders regarding remote appearances:**

1. This order applies to the proceeding described below, including on any later dates if the proceeding is continued:

Type of proceeding: \_\_\_\_\_

Set on (date): \_\_\_\_\_ at (time): \_\_\_\_\_ in (department): \_\_\_\_\_

2.  **Participant to appear in person.**

The following persons are required to appear or testify in person:

Name	Role in Case
------	--------------

3.  **Participant may appear through remote technology.**

a. The following persons may appear or testify through remote technology, subject to any requirement in b:

Name	Role in Case
------	--------------

b. If the following technology is not used, an in-person appearance is required. (See the court's website for specific information about the platforms used and how to appear remotely.)

- i.  videoconference only
- ii.  audio only (including telephone)
- iii.  videoconference or audio

4.  **Other Orders.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OR JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>REQUEST TO APPEAR REMOTELY—JUVENILE DEPENDENCY</b>	CASE NUMBER:

**INSTRUCTIONS**

For any juvenile dependency proceeding except as provided in the next paragraph, a person entitled to be present under rule 5.530(b) of the California Rules of Court or authorized to be present by court order may request, orally or in writing, to appear remotely. To submit a written request on this form, complete and send it to the juvenile court using any means authorized by law that is reasonably calculated to ensure that the court receives it no later than the time the case is called.

A request for a witness's remote appearance must be made in writing. The attorney for the party calling the witness may make a request on a witness's behalf by filing this form with the court and serving a copy of the completed form on all parties by any means authorized by law that is reasonably calculated to ensure receipt no later than close of business three court days before the proceeding.

Check the court's website for information about how to appear remotely, including whether the court conducts remote proceedings in dependency cases in the department your case is assigned to, and ways to appear remotely in that department.

**NOTICE**

**A person appearing remotely should conduct themselves as if they were appearing in court in person.**

The court may order a witness or party to appear in person at any time if the court determines that an in-person appearance is required for any of the reasons given in Code of Civil Procedure section 367.75 or to provide for the orderly conduct of the proceedings.

1. The proceeding is a (*type of hearing, if known*):

on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_ in (*department*): \_\_\_\_\_  
 before (*name of judicial officer, if known*): \_\_\_\_\_

2. Person for whom permission to appear remotely is requested (*check one*):

- a.  Child or nonminor dependent
- b.  Attorney for child or nonminor dependent
- c.  Parent, legal guardian, or Indian custodian
- d.  Attorney for parent, legal guardian, or Indian custodian
- e.  Social worker
- f.  County counsel
- g.  Indian child's tribe or tribal representative
- h.  Court Appointed Special Advocate (CASA) volunteer
- i.  De facto parent
- j.  Foster parent
- k.  Adult relative
- l.  Witness (*capacity in which testifying*):
- m.  Other (*role in the proceeding*):

CHILD'S NAME:	CASE NUMBER:
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3. If this request is granted, the person in item 1 plans to appear by *(check preferred method, based on information on the court's website about technology appropriate for remote appearance)*:  Videoconference  Audio only (including telephone)
4. I request permission for the person identified in item 2 to appear remotely at the proceeding identified in item 1. I understand that any party, witness, or other person who appears remotely must preserve the confidentiality of the proceeding to the same extent as would be required if they were appearing in person.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

 \_\_\_\_\_  
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	FOR COURT USE ONLY   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>REQUEST TO COMPEL PHYSICAL                  PRESENCE—JUVENILE DEPENDENCY</b>	CASE NUMBER:

**INSTRUCTIONS**

Any party to a juvenile dependency case or the party's attorney may ask the court in writing to compel the physical presence of a witness or party at a proceeding in the case, including by (1) completing this form, (2) filing the completed form with the juvenile court, and (3) serving a copy of the completed form on all other parties in any manner authorized by law that is reasonably calculated to ensure they all receive it no later than two court days before the proceeding.

The court *must* require a witness to be physically present if it determines that one or more parties have not given, or have withdrawn, consent to the witness's remote appearance. The court *may* require a witness or a party to be physically present if it finds that the available technology is inadequate to allow the effective management or resolution of the proceeding, that an in-person appearance will materially assist in the determination of the proceeding or the effective management or resolution of the case, or that the confidentiality of the proceeding cannot be preserved using available remote technology.

1. The proceeding is a (*type of hearing, if known*):

on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_ in (*department*): \_\_\_\_\_  
 before (*name of judicial officer, if known*): \_\_\_\_\_

2. Party filing this request:

- a.  Child or nonminor dependent
- b.  Parent, legal guardian, or Indian custodian
- c.  Social worker/child welfare agency

3. Party or witness whose appearance in person is requested:

- a.  Child or nonminor dependent (*name*): \_\_\_\_\_
- b.  Parent, legal guardian, or Indian custodian (*name*): \_\_\_\_\_
- c.  Social worker (*name*): \_\_\_\_\_
- d.  Nonparty witness (*name*): \_\_\_\_\_

4.  The person named in item 3 has been called as a witness in the proceeding. I do not consent to their remote appearance.

5. I request that the court compel the party or witness indicated in item 3 to be physically present for the following reasons (*explain*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME)



\_\_\_\_\_  
 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. (if available): E-MAIL ADDRESS (if available): ATTORNEY FOR (name):	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>NOTICE OF INTENT TO APPEAR BY TELEPHONE</b>	CASE NUMBER:

1. Party intending to appear by telephone is

- Plaintiff/Petitioner (name):
- Defendant/Respondent (name):
- Other (name):

2. The conference, hearing, or proceeding is for (describe):

set on (date): at (time): in (department):  
 before (name of judicial officer, if known):

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

See Code of Civil Procedure section 367.5 and California Rules of Court, rule 3.670 to determine if a conference, hearing, or proceeding is one generally considered appropriate for telephone appearance. Note that a court may determine on a hearing-by-hearing basis that a personal appearance is required. (Code Civ. Proc., § 367.5(c).)

This form is intended only to provide written notice to a court and parties as provided in rule 3.670(h) of the California Rules of Court. **Check with the court to determine how to make arrangements for telephone services for an appearance either directly with the court or through a court-appointed vendor.**

Read California Rules of Court, rule 3.670(h) to determine when you have to file and serve notice of the intent to appear by telephone. There are different deadlines depending upon the circumstances:

- (1) On a regularly noticed hearing, notice must be given at least two court days before the appearance (Cal. Rules of Court, rule 3.670(h)(1)(B)) or, after receiving notice that another party will be appearing telephonically, by noon on the court day before the appearance (Cal. Rules of Court, rule 3.670(h)(2)).
- (2) On an ex parte application, notice must be given by an applicant by 10:00 a.m. two court days before the hearing (Cal. Rules of Court, rule 3.670(h)(3)(B)). Any party other than an applicant may give notice by 2:00 p.m. or the "close of business" (as that term is defined in rule 2.251) whichever is earlier, on the court day before an ex parte appearance. (Cal. Rules of Court, rule 3.670(h)(4).)

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) OR ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):    TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS ( <i>Optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b>  STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT: _____ OTHER PARENT: _____	
<b>REQUEST FOR TELEPHONE APPEARANCE</b>	CASE NUMBER: _____
HEARING DATE: _____ TIME: _____ DEPT., ROOM, OR DIVISION: _____	

**See Information Sheet—Request for Telephone Appearance (form FL-679-INFO) for deadlines for filing this request, filing any opposition, and service.**

1. I, (*name*): \_\_\_\_\_, am the  petitioner/plaintiff  
 respondent/defendant  other parent  attorney for (*name*): \_\_\_\_\_  
 local child support agency (LCSA) representative  other (*specify*): \_\_\_\_\_ in this case.

**If there are domestic violence or other confidentiality issues in this case and you do not want your home or work phone number made publicly available, provide another phone number in item 2 below. You will need to participate from this phone number, unless other options are available under local rules or procedures. Check with your court clerk.**

2. I ask the court to allow  me  \_\_\_\_\_ to appear from telephone number ( ) \_\_\_\_\_ set on (*date*) \_\_\_\_\_ (*time*) \_\_\_\_\_ in Department \_\_\_\_\_ of the above-named court.
3. I would like the court to consider the following information in making its decision whether to allow a telephone appearance (*check all that apply*). (*Note: The court can still deny your request, even though boxes are checked.*)
- a.  I live or work outside the state of California in (*specify location*): \_\_\_\_\_
  - b.  I live in \_\_\_\_\_ County in California, which is \_\_\_\_\_ miles from the above courthouse where the hearing is set.
  - c.  I am disabled.
  - d.  I am asking not to appear personally because of domestic violence.
  - e.  I will be incarcerated or confined in (*specify*): \_\_\_\_\_ prison, jail, or other institution at the time of the hearing.
  - f.  The LCSA makes this request on behalf of \_\_\_\_\_ (*insert reason for request at g*)
  - g.  Other (*specify*): \_\_\_\_\_
4. a.  I have filed this request at least **12 court days** before the hearing and have served or will serve all parties (the local child support agency and other parent) and attorneys, if any, with this form by personal delivery, fax, express mail, or other reasonable means to ensure delivery by the close of the **next court day** after filing this form.
- b.  If there are financial issues to be decided, a current *Income and Expense Declaration* (form FL-150) or a *Financial Statement (Simplified)* (form FL-155) has been filed and served on all parties along with the request or response to the hearing. (*Read page 2 of form FL-155 to determine which form to use.*)
- c.  I have complied with all requirements of the local rules of court for other supporting proof.
5. I agree to be responsible for the costs and arrangements of this telephone appearance if required by the court. If this telephone appearance request is made by a LCSA on behalf of a party, parent, or witness, that person may be responsible for costs of the telephone appearance as may be required by the court.
6.  Number of pages attached: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_



PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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**ADVISEMENT REGARDING TELEPHONE APPEARANCE**

1. I know that I can personally appear at this hearing, and I give up that right. I agree to be duly sworn upon request by the court clerk, holding up my right hand and agreeing under penalty of perjury under the laws of the State of California to tell the truth and nothing but the truth.
2. I will provide my driver’s license number, social security number, or other information to verify my identity when asked by the court staff or conference call provider.
3. I understand that the court may not have videoconferencing capabilities. I understand and assume the risk that I may not be able to personally see or inspect the pleadings, documents, or evidence; the witnesses’ facial reactions, demeanors, or hand gestures; or other visual or nonverbal aspects of the hearing.
4. I understand that if I do not make the proper arrangements for a telephone appearance as set out in local rules or in directions provided by the court, the matter may proceed without my personal or telephone appearance and the court may decide my case based on the documents I filed for this hearing.
5. I understand that the court, in its discretion, may decide to terminate the telephone appearance if it determines during the hearing that a personal appearance would materially assist in the determination of the proceedings. Other reasons for terminating the telephone appearance could include my not being available at the calendar call, delay, questions about credibility, disruption, noise, misconduct, a communication problem, a technical problem, and other problems.
6. I understand that the court may decide at any time to require my personal appearance and continue my hearing.
7. I assume the risks of cost, time, delay, repeated telephone calls, technical failure, a wrong number, and other problems that could arise out of this telephone appearance. I understand that if problems occur, the matter may proceed without my personal or telephone appearance and the court may decide my case based on the documents I filed for this hearing.
8. I understand that if I need to present documents, present witnesses, cross-examine witnesses, or provide information that is not available at the hearing, it is my responsibility to ask the court to continue the hearing. The court may decide to grant or deny my request. I understand that any arguments or supporting proof should be served and filed on time before the hearing so that the court, the local child support agency, and the other parent have an opportunity to know about my case.
9. I understand that the court may require me to make all arrangements for the telephone appearance at my own expense.
10. I understand that if I have low income or no income, I may apply for a waiver of any filing fees and a possible waiver of conference call vendor fees. If the court makes collect calls for telephone appearances and so orders me, I will be available to receive a collect call from the court at the date and time specified. The telephone number will not be one that is blocked from receiving collect calls. If there are domestic violence or other confidentiality issues in the case and I do not wish my home or work phone number to be made publicly available, I may provide a number other than my home and work numbers at which the court can call me collect. I understand that I can check with the local court clerk or local rules of court regarding any additional local procedures that may be available to protect my confidentiality.
11. If there are financial issues to be decided, I understand that it is my responsibility to timely file with the court and serve on the local child support agency and the other parent all necessary and appropriate pleadings and documents, including:
  - a. *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155), whichever is appropriate.
  - b. My pay stubs from the last two months or other proof of income.
  - c. The proposed guideline support calculation (optional unless required by local court rule).

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party objects to the commissioner’s acting as a temporary judge. If you or the other party objects, the court commissioner may still hear your case to make findings and a recommended order to a judge. If you do not like the recommended order, you must object to it within **10 court days** in writing (use *Notice of Objection (Governmental)* (form FL-666)); otherwise, the recommended order will become a final order of the court. If you object to the recommended order, a judge will make a temporary order and set a new hearing.

**I have read the Advisement Regarding Telephone Appearance section of this form and I understand that the terms apply to me. If the LCSA is making this request, it verifies this advisement was provided to the party, parent, or witness, and that person indicated that he or she understands that the terms apply to him or her.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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**PROOF OF SERVICE**

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. My residence or business address is *(specify)*:
3. I served a copy of the foregoing *Request for Telephone Appearance (Governmental)* and all attachments as follows *(check a, b, or c for each person served)*:
  - a.  **Personal delivery.** I personally delivered a copy and all attachments as follows:
 

(1) <input type="checkbox"/> Name of party or attorney served:	(2) <input type="checkbox"/> Name of local child support agency served:
(a) Address where delivered:	(a) Address where delivered:
(b) Date delivered:	(b) Date delivered:
(c) Time delivered:	(c) Time delivered:
  - b.  **Mail.** I am a resident of or employed in the county where the mailing occurred.
    - (1) I enclosed a copy in an envelope and
      - (a)  **deposited** the sealed envelope with the U.S. Postal Service with the postage fully prepaid.
      - (b)  **placed** the envelope for collection and mailing on the date and at the place shown below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid.
    - (2)  Name of party or attorney served:
    - (3)  Name of local child support agency served:

(a) Address:	(a) Address:
(b) Date mailed:	(b) Date mailed:
(c) Place of mailing <i>(city and state)</i> :	(c) Place of mailing <i>(city and state)</i> :
  - (3) **Address Verification** *(please specify)*:
    - (a)  I served a request to modify a child custody, visitation, or child support judgment or permanent order, which included an address verification declaration *(Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order (form FL-334) may be used for this purpose)*.
    - (b)  The address for each individual identified in items 3a and 3b was
      - (i)  verified by the California Child Support Enforcement System (CSE) as the current primary mailing address on file.
      - (ii)  other *(specify)*:
- c.  **Other** *(specify)*:
 

Additional page is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
 (SIGNATURE OF PERSON WHO SERVED REQUEST)

## INFORMATION SHEET—REQUEST FOR TELEPHONE APPEARANCE

**ATTENTION:** Read the **Advisement Regarding Telephone Appearance** on page 2 of FL-679, *Request for Telephone Appearance* to understand your rights.

You can get more information about the telephone appearance process, including any costs or fees for the provider of telephone services, from your local court clerk.

Ask a family law facilitator, the local child support agency, or a lawyer if you have any questions about this process.

For more information on finding a lawyer or family law facilitator, see the California Courts Online Self-Help Center at [www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp).

### Asking for a Telephone Appearance

1. You must use form FL-679 to request a telephone appearance. You may have to pay a filing fee. If you cannot afford to pay the filing fee, the court may waive it, but you will have to fill out some forms first. For more information about the filing fee, contact the court clerk or the family law facilitator in your county.
2. If you do not want to personally appear because of domestic violence and do not want your home phone number or work phone number listed at item 2 of form FL-679 or other potentially identifying information to be part of the public court record, check with your court clerk or local rules of court regarding any additional local procedures that may be available to protect your confidentiality. For example, some courts may allow you to provide your home phone number or work phone number directly to the court clerk and not disclose it on form FL-679.
3. For local information about telephone appearances, check with the local court clerk, family law facilitator, or local child support agency.

### Instructions for Completing the *Request for Telephone Appearance (Governmental)* (form FL-679)

1. The court needs to know why you are requesting to appear by telephone. At item 3 of form FL-679, provide the information you would like the court to consider when making its decision. You can attach additional paper if you need more room to explain the circumstances that you want the court to consider in making its decision. If you submit an attachment, check the box at item 6 and indicate the number of pages that you are attaching. The court can still deny your request even if you have checked boxes and/or submitted an attachment.
2. File your request with the court clerk's office using form FL-679 no later than **12 court days** before the hearing. **(PLEASE NOTE:** You must still file your moving or opposing papers within the time limits required by Code of Civil Procedure section 1005.)
3. Serve all parties (the local child support agency and other parent) and attorneys, if any, by personal delivery, fax, express mail, or other reasonable means to make sure that form FL-679 is delivered by the close of the **next court day** after you file it.

### Opposing a Telephone Appearance

1. At least **8 court days** before the hearing, you must file and serve a declaration under penalty of perjury under the laws of the State of California explaining why you oppose a telephone appearance by the other party or a witness. Your declaration must state "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." You may use *Declaration* (form MC-030), which you can get from the court clerk or the California Courts Web site at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms). If you do not file a declaration under penalty of perjury opposing a telephone appearance, you give up your chance to object.
2. Serve the person or agency requesting the telephone appearance, all parties (the local child support agency and other parent) and attorneys, if any, by personal delivery, fax, express mail, or other reasonable means to make sure your declaration is delivered by the close of the **next court day** after you file the form.

### The Court's Decision on the Telephone Appearance

At least **5 court days** before the hearing, the court will notify or direct that notice of its decision on the request for a telephone appearance be given to the person or agency requesting the telephone appearance, the parties, a parent who has not been joined to the action, and attorneys, if any. This notice may be given by telephone, in person, or by fax, express mail, e-mail, or other reasonable means to ensure notification no later than **5 court days** before the hearing date.

**SP21-08**

**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

**Chart 1: List of All Commenters, Overall Positions on the Proposal, and General Comments**

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Alliance for Children’s Rights by Kristin Power Vice President, Policy & Advocacy	NI	<p>We share the goal of expanding and maximizing remote access on a permanent basis for most proceedings to provide increased access for all court users. Remote appearances aid in limiting time missed from work or increased costs associated with arranging child care and transportation. We also note improved court efficiencies when using available technologies for remote appearances.</p> <p>However, we have technical concerns with the proposed rule, notably in areas requiring greater clarity to ensure remote appearances are equitable and accessible by all and to ensure the process provides transparency for all parties.</p> <p>[See comments on specific issues below.]</p>	The committee appreciates the comments. See responses to comments on specific issues below.
2.	Debra K. Barriger Deputy County Counsel County of San Luis Obispo	NI	<p>I am writing to express concern about the proposed Rule 3.672 as it relates to juvenile dependency proceedings, specifically as it relates to having to file a request to appear remotely</p> <p>[See comments on specific issues below.]</p>	The committee appreciates the comments. See responses to comments on specific issues below.
3.	Debra L. Braasch Partner Macdonald & Cody, LLP	NI	<p>Good afternoon – I am a civil personal injury/construction defense attorney. I have read the draft rules and am very concerned that the option to appear in person, particularly at depositions, is at the discretion of the person being deposed, putting the burden on the noticing party to make a motion to the Court to force them to appear in person. In my practice, much is gained by deposing a party and/or witness in person:</p> <ol style="list-style-type: none"> <li>1. I can better judge their demeanor and appearance;</li> <li>2. I have them look me in the eye;</li> </ol>	The committee appreciates the comment but notes that the proposed rules will not apply to depositions, but only to in-court proceedings.

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

**SP21-08**

**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

			<p>3. I am sure that there is no one in the room who is not showing up on camera, feeding them information or telling them how to answer questions;</p> <p>4. I can see how they move when they think no one is watching (especially important for personal injury cases), etc.</p> <p>If these rules are going to apply to depositions in civil proceedings, I believe that the in person vs. remote status of the deposition should remain at the discretion of the noticing party with the burden on the party/witness to make a motion to the court and to show good cause as to why the deposition should be conducted remotely. It is the right of the parties to be able to evaluate and confront the other parties and witnesses in person.</p> <p>Thank you for your consideration.</p>	
4.	<p>California American Board of Trial Advocates (CAL-ABOTA)</p> <p>Jointly with:            California Defense Counsel (CDC)            California Employment Lawyers Association (CELA)            Consumer Attorneys of California (CAOC)            Consumer Attorneys Association of Los Angeles (CAALA)            Alameda-Contra Costa Trial Lawyers' Association (ACCTLA)</p>	AM	<p>The above signed organizations respectfully submit these comments in response to the Judicial Council's Invitation to Comment SP21-08, relating to remote appearances. At the outset, we should re-affirm that we are fully supportive of the appropriate use of remote technology in trials, evidentiary hearings, and other court proceedings. In fact, the Consumer Attorneys of California (CAOC) and the California Defense Counsel (CDC) were co-sponsors of SB 241 (Umberg), which as early as March 4, 2021, proposed enhancements in the ability to conduct court proceedings remotely. We also participated in the working group established by representatives of the Governor's Office, President pro Tem of the Senate, and Speaker of the Assembly, which crafted the language ultimately incorporated into SB 241 as enacted. It is in the spirit of collaboration in implementing the intent of SB 241 that we offer these comments.</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>

**SP21-08**

**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

	<p>San Mateo County Trial Lawyers Association (SMCTLA)          Capitol City Trial Lawyers Association (CCTLA)          San Joaquin Trial Lawyers Association (SJTLA)          Santa Clara County Trial Lawyers Association (SCCTLA)          Consumer Attorneys of San Diego (CASD)          Marin Trial Lawyers Association (MTLA)          San Francisco Trial Lawyers Association (SFTLA)          Orange County Trial Lawyers Association (OCTLA)          Association of Defense Counsel of Northern California and Nevada (ADC)          Association of Southern California Defense Counsel (ASCDC)          Orange County Chapter of the American Board of Trial Advocates</p>		<p>[See comments on specific issues below.]</p>	
<p>5.</p>	<p>California Department of Child Support Services by David Kilgore Director</p>	<p>NI</p>	<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 provisions of the rules</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>

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

**SP21-08**

**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

	<p>Selis Koker Chief Counsel</p>	<p>and forms with potential impacts to the department and its stakeholders follows.</p> <p><b>1) Does the proposal appropriately address the stated purpose?</b> The purpose of the proposal is to implement new rules allowing for remote access to civil hearings for all parties as mandated by statute. The proposal addresses the stated purpose by introducing new forms for civil and juvenile dependency hearings, as well as introducing new rules which address deadlines and procedures for parties to provide notice to the court and other parties of their intent to appear remotely. The proposal details the procedures and timeframes for filing notice or opposition to remote appearance and also addresses scenarios when the suggested timeframes are not complied with. The proposal however does not address the process for the court to approve or deny a request of a party to appear remotely.</p> <p>[See comments on specific issues below.]</p> <p><u>GENERAL COMMENTS:</u> The California Department of Child Support Services supports any proposal that will improve access to the court for child support case participants, make hearings more efficient, reduce the time away from work a parent must take to come in-person to a court hearing, and increase attendance at child support hearings. We have overwhelmingly heard from our LCSAs that attendance at hearings improved over the course of the pandemic, where remote appearance was encouraged and operated as a standard practice via local rule. Platforms like Zoom provide a user-friendly way for litigants to appears in court, free of charge, and reach resolution on their child support issues.</p>	
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			<p>The Judicial Council of California (JCC) conducted a survey of the 58 county courts regarding their IV-D court hearings in March 2021. When asked how they had been conducting their hearings for the past year, 57 courts responded. 54 courts indicated that they were conducting hearings via remote technology while 3 courts indicated that they were having in-person hearings only. Remote hearings were defined as phone or videoconferencing. Of the 54 responses received, 42 courts indicated that they were conducting remote hearings via videoconferencing while 12 stated that remote access was achieved via phone hearings only. Finally, the courts were asked how they achieved access via videoconferencing. 36 courts indicated that they used Zoom while the remaining videoconferencing courts used BlueJeans, WebEx, Microsoft Teams, GoToMeeting, or other videoconferencing platforms. Anecdotally speaking, the commissioners in courts that reported hearings via videoconferencing stated that it was user-friendly and widely used by child support case participants. Not only were the case participants able to appear remotely, but language interpreters could dial in and assist where appropriate.</p> <p>[See additional comments on specific issues below.]</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences, and concerns with respect to the proposed rule changes. If you have any questions or concerns regarding this matter, please contact Lara Racine, Attorney III, Department of Child Support Services.</p>	
6.	California Federation of Interpreters Local 39000	NI	Our organization is thankful for the opportunity to submit comments concerning the proposed Rule of Court 3.672	The committee appreciates the comments. See responses to comments on general issues



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		<p>and related forms. The California Federation of Interpreters (CFI) Local 39000 TNG-CWA is a statewide union representing all employee interpreters rendering spoken-language interpretation services in and for Superior Courts throughout the state. These services are a necessary bridge enabling access to our judicial system for individuals whose primary language is other than English.</p> <p>As a labor union, it is our fiduciary duty to protect our members’ interest, as well as promote court interpreting’s best professional practices and ethics with respect to any programs that provide language access in the state courts. At the same time, our organization and the court interpreting profession plays an instrumental role in safeguarding due process for limited English proficient (LEP) court users.</p> <p>We are concerned that the proposed Rule of Court and related forms undermine the advancements achieved through the Language Access Plan. Additionally, it fails to address and provide a solution for the disjointed and haphazard forms of remote interpreting presently in use that grew out of a response to the pandemic. Likewise, the proposed Rule together with inappropriate forms and utilization of remote interpreting places language conduits and LEP court users on a path rife with injustice and error prone services.</p> <p>[See comments on specific issues below.]</p> <ul style="list-style-type: none"> <li>▪ The rule fails to mirror the intent of SB 241. The intent of SB 241 is to make remote hearings a choice, not the norm. The amended §367.75 of Civil Procedures specifically states in (a) “...when a party has provided</li> </ul>	<p>immediately below, and to specific issues in the charts below.</p> <p>The committee disagrees that the proposed rule mandates remote hearings. The language quoted here addresses what cases the procedures in the</p>
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		<p><i>notice to the court and all other parties that it intends to appear remotely, a party <b>may</b> appear remotely and the court <b>may</b> conduct conferences, hearings, and proceedings, in whole or in part through the use of remote technology.”</i> The rule as proposed specifically mandates that “all civil cases, <b>except when an in-person appearance is otherwise required by law</b>” be conducted remotely. This is in clear contravention of the statute’s clear intent that remote appearances be a choice decided upon by the parties and not the court. Indeed, this conflict only adds to the “digital divide” that is so very prevalent in the LEP community, instead of making court proceedings more accessible to all.</p> <ul style="list-style-type: none"> <li>▪ Remote hearings should only be used with the knowing and voluntary consent of all case participants. The rule fails to address voluntary consent of all remote participants.</li> <li>▪ Remote hearings should only be used for low stakes hearings under unique and unusual circumstances, such as health concerns or onerous travel distance, such that it causes a court user unfair hardship.</li> <li>▪ In listening to the experiences and observations of our members and other frontline court staff, using the present hodgepodge of audiovisual platforms during the pandemic has demonstrated that remote is only for those socioeconomically privileged with resources. The majority of court users who appeared in person were either indigent or those with limited English proficient language skills. Often, these court users expressed frustration at not having their attorney present to confer and assist at their side in the hearing. For the limited English proficient, the language barrier became even more</li> </ul>	<p>rule apply to, not what cases must be heard remotely.</p> <p>Because the new statute does not require the consent of all case participants before a remote appearance by one or more parties, this suggestion is outside the scope of these rules.</p> <p>Because the new statute authorizes remote appearances in all civil cases, this suggestion is outside the scope of these rules.</p> <p>Because the statute does not allow a court to require a party, or their counsel, to appear remotely, there is nothing in these rules which would compel a party to appear remotely without their counsel should the party not want to.</p>
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			<p>of an impediment when they could not distinguish who on the screen was their appointed attorney; justice became less attainable when courts lacked the mechanism to confidentially connect attorneys and clients prior to hearings, as is customarily done in hearings such as dependency proceedings when all parties are in-person. The rule as proposed does not provide a solution for the disconnect that is currently occurring in remote cases.</p> <p>[See additional comments on specific issues below.]</p> <p>The proposed rule is not in line with the rights and needs of the LEP community, nor the state’s constitutional requirements. Lives depend on the ability to get meaningful access to the judicial system and the outcomes that may come from that interaction. More importantly, equal access to justice before the law depends on getting this right. This Rule of Court, as it is presently written, is the proverbial train wreck waiting to happen.</p> <p>Thank you always for your attention to this comment; we pray it has not been in vain.</p>	
7.	<p>California Public Defenders Association by Laura Arnold President</p> <p>Stephanie Regular Chair, Mental Health</p> <p>Maureen Pacheco Chair, Juvenile Defense Committee</p>	NI	<p>The California Public Defenders Association, a statewide organization of public defenders and criminal defense attorneys, including those who defend minors alleged to come under the jurisdiction of the juvenile court due to criminal acts in delinquency proceedings, and respondents in civil commitment, conservatorship, contempt, and competency proceedings, write to express our collective concerns with ITC SP21-08.</p> <p>[See comments on specific issue below.]</p>	The committee appreciates the comments. See responses to comments on specific issues below.

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8.	California Tribal Families Coalition by Michael Castagne Legal Fellow	AM	The California Tribal Families Coalition (CTFC) is a nonprofit social welfare membership organization that is led by a Board of Directors comprised of elected tribal leaders. The mission of CTFC is to promote and protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance. Many CTFC member tribes appear remotely in cases governed by the Indian Child Welfare Act (ICWA) so this proposed rule is of great importance to CTFC and the work we do to support tribes, tribal children and families in the courtroom. CTFC has reviewed the proposed Civil Remote Appearance Rules and recommends the Judicial Council of California consider the following comments on behalf of the organization and our membership tribes.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
9.	David R. Casady Attorney Berman, Berman, Berman, Schneider & Lowary LLP	N	The rules proposed by the Ad Hoc Committee allow a court, on its own motion, to decide to conduct a trial or evidentiary hearing remotely.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
10.	Kerri L. Cavish Attorney Brea	A	No specific comment.	No response required.
11.	Center for Domestic Peace by Donna Garske Executive Director	A	Center for Domestic Peace in Marin County has helped over 500 survivors navigate the court system since on the onset of COVID. Remote access to the court system has increased victim-safety and decreased opportunities for the abuser to intimidate the survivor. Remote access as an option for a domestic violence survivor reflects a trauma-informed understanding of how engagement within systems can re-traumatize individuals.	The committee appreciates the comments.

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12.	Children’s Law Center of California by Lesli Starr Heimov Executive Director	NI	<p>Children’s Law Center (CLC) is a nonprofit legal services organization that serves as the voice in the foster care system for dependent children and youth. Our committed attorneys and staff represent over 33,000 abused and neglected children in the Los Angeles, Sacramento, and Placer County foster care systems. CLC is proud to have worked with the Legislature on SB 241 and its important provisions enabling remote proceedings in dependency cases in response to the challenges created by the Covid pandemic.</p> <p>We recognize that a great deal of work was undertaken to craft the proposed rules as drafted, and we appreciate the complexity of creating rules to most effectively implement the new statutory requirements. However, in light of the legislation’s focus on increased access to the courts and a broader availability of channels with which to do so, we are concerned that the proposal does not reflect these important intentions. After careful review of the language, our feedback for the Committee’s consideration is below.</p> <p>[See comments on specific issues below.]</p>	The committee appreciates the comments. See responses to comments on specific issues below.
13.	Hon. Christine Copeland Commissioner Superior Court of Santa Clara County	AM	[See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
14.	City and County of San Francisco Office of the City Attorney by David Chiu City Attorney  Kimiko Burton	NI	The proposed rule as it pertains to dependency cases eliminates the possibility of remote appearances for petitioners in dependency cases at detention hearings which would be counter to the plain language and legislative intent of Senate Bill 241 and enacted Code of Civil Procedure section 367.75, unnecessarily and	The committee appreciates the comments. See responses to comments on specific issues below.

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	Lead Attorney Elizabeth McDonald Muniz Deputy City Attorney		inexplicably singles out dependency cases, and provides litigants in dependency less access to our courts.  [See comments on specific issue below.]	
15.	Candice Saadian Costa Attorney Law Office of Candice S. Costa	A	No specific comment.	No response required.
16.	Committee on Administration of Justice, Litigation Section by Christopher Fredrich Stroock  Saul Bercovitch Director of Governmental Affairs California Lawyers Association	NI	The Committee on Administration of Justice (CAJ) of the Litigation Section of the California Lawyers Association submits the following in response to the Invitation to Comment. CAJ's comments are limited to the general civil rules and CIV forms and are not intended to express any views on the juvenile dependency rules or JV forms.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
17.	CourtCall by Robert V. Alvarado, Jr. Chief Executive Officer	NI	CourtCall respectfully submits the following comments and requests for clarification in an effort to minimize confusion relating to changes required by CCP 367.75 and to determine how vendors can most effectively assist courts in providing the expanded access required by CCP 367.75 and Propose Rule 3.672.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
18.	Kasey M. Dunton Attorney Dubroff Family Law	AM	[See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
19.	Encore Capital Group by Tamar Tudenfreund	A	Encore Capital Group is writing in support of the proposed rules to implement the CA Code of Civil	The committee appreciates the comments. See responses to comments on specific issues below.

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	Senior Director, Public Policy		<p>Procedure section 367.75, enacted in Senate Bill 241 (Stats. 2021, ch. 214). We believe the implementation will benefit parties to litigation by allowing witnesses in a litigation matter to appear by remote electronic means.</p> <p>[See comment on specific issues below.]</p>	
20.	Family Violence Appellate Project by Cory Hernandez Staff Attorney	NI	<p>FVAP is a California and Washington state nonprofit legal organization whose mission is to ensure the safety and well-being of survivors of domestic violence and other forms of intimate partner, family, and gender-based abuse by helping them obtain effective appellate representation. FVAP provides legal assistance to survivors of abuse at the appellate level through direct representation, collaborating with pro bono attorneys, advocating for survivors on important legal issues, and offering training and legal support for legal services providers and domestic violence, sexual assault, and human trafficking counselors. FVAP’s work contributes to a growing body of case law that provides the safeguards necessary for survivors of abuse and their children to obtain relief from abuse through the courts. Because of FVAP’s connections to survivors of abuse who have engaged with the courts, it is uniquely positioned to assess the impact on survivors of the Council’s proposed changes to court forms and rules of court.</p> <p>While there have been issues and concerns persist, on balance remote appearances have improved access to justice for most litigants, and should continue. Notwithstanding concerns and suggested amendments discussed below, FVAP supports much of this proposal. For instance, it is useful to expressly name proceedings under the Domestic Violence Prevention Act (DVPA; Fam. Code, § 6200 et seq.) in subd. (j) of proposed rule</p>	The committee appreciates the comments. See responses to comments on specific issues below.

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			<p>3.672 as those not requiring filing fees, and thus not videoconferencing fees. It is useful as well to expressly state this in the advisory committee comments. Still, there is room and need for improvement on the proposal, as detailed below.</p> <p><b>Proposed Rule 3.675</b>          In general, the rule must ensure litigant choice. We encourage the Council to maintain records of how this proposal works, and ensure the rule and forms are updated as needed to improve court access. While the implementing legislation has a sunset date, it seems unlikely the Legislature would choose not to allow remote appearances in civil proceedings in some way. For instance, the deadlines currently set seem rather far out, particularly for self-represented litigants, and may prove to be insurmountable hurdles that require shortening notice deadlines in the future.</p> <p>[See comment on specific issues below.]</p> <p>In short, FVAP supports the spirit and many provisions of this proposal, but as outlined above, more and revised provisions are needed to improve litigants’ access to justice.</p>	<p>The committee agrees that the impact of the rule will need to be considered and future amendments may be needed.</p>
21.	<p>Hon. Janet M. Frangie          Department S-29          (Unlimited Civil)          Superior Court of San Bernardino County</p>	<p>NI</p>	<p>1. <u>Does the proposal appropriately address the stated purpose?</u> [FN 1. These comments are my own and not on behalf of the Court. They are also limited to civil filings.]</p> <p>Yes</p> <p>[See comment on specific issues below.]</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>



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22.	Katy Flores Irvine	A	<p>I absolutely agree that remote hearings should be available in all civil cases.</p> <p>This is an opportunity to increase efficiencies for clients, the Court, and attorneys.</p> <p>Less traffic through the courthouse is great and will help slow the spread of COVID and will keep security threats down.</p>	The committee appreciates the comment.
23.	Hon. Marian Gaston Assistant Presiding Judge Superior Court of San Diego County	NI	<p>As a juvenile court judge, I fully support the rule allowing remote hearings when appropriate. During the pandemic this has been invaluable to the youth and families who appear before us, sometimes from tens of miles away from the courthouse. The system allows parents to participate from work and youth to participate from school or from group homes that are located outside our county. While in-person hearings bring certain benefits, in the future I will strongly support using technology to make court proceedings more accessible to our families.</p> <p>I also believe we could go further. The pandemic has made clear that we do not need in-person interpreting or in-person court reporting. I am hopeful that these areas are being explored. In the twenty-first century, insisting on in-person interpretation and in-person court reporting is unnecessary, expensive, and anachronistic.</p>	The committee appreciates the comment regarding remote appearances. The comment regarding court reporting and interpreting is beyond the scope of this proposal.
24.	Jennifer Ana Hilton Attorney Oakland	A	No specific comment.	No response required.
25.	J. Michael Hughes Attorney at Law Newport Beach	A	Remote appearances for juvenile dependency parents and minors is very efficient because parents did not have to take all day off from work and minors from school. It also allowed attorneys to from outside the jurisdiction to appear remotely, therefore, saving court time because the	The committee appreciates the comment.

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			court did not have to wait for counsel to appear. Also, all these remote appearances were good for the environment reducing pollution, congestion on the roads and parking fees that parents who are already stretched thin financially did not have to pay.	
26.	Hon. Linda Hurst Superior Court of San Luis Obispo County	AM	My name is Linda Hurst and I have recently been assigned to the Juvenile Calendars in San Luis Obispo. I was out when the Invitation to Comment was received and am just seeing it today. Thank you for the opportunity to write and express concern about the proposed Rule 3.672 as it relates to juvenile dependency proceedings, specifically as it requires a filing to request a remote appearance. From my experience, this proposed rule would create unnecessary barriers, increases costs to the Court as well as to DSS and to minor's and parents' counsel and creates additional barriers to access to court.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
27.	Mark Irwin Attorney/Partner Irwin & Irwin, LLP	N	This is completely unnecessary and no longer supported by present circumstances. While convenient, remote appearances are highly ineffective (in most situations) and significantly undermine the judicial system.	The committee appreciates the comment.
28.	Jones Lester Schuck Becker & Dehesa by Rennee R. Dehesa Managing Attorney	A	The COVID-19 pandemic forced courts to do what should have been done years ago - implement the use of technology for court appearances and filings. As an attorney representing private parties in probate proceedings it is extremely cost effective for me to appear remotely on behalf of my client. This is not only less costly for the client, but it also helps facilitate access to the courts of those who are unrepresented by limiting the number of people that are in the courtroom and making it less crowded and allowing greater judicial economy in courtroom management. Currently there are civil judges in Ventura County who do not permit video calls. This	The committee appreciates the comments.

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			must change. Uniformity is necessary to ensure equal and fair access to justice and the administration of the judicial process. I support the changes fully.	
29.	Juvenile Court Judges of California by Hon. Roger Chan Judge of the Superior Court, County of San Francisco Co-Chair, JCJC Legislative Committee	NI	This comment is submitted on behalf of the Juvenile Court Judges of California (JCJC) Legislative Committee. JCJC is a section of the California Judges Association. Our comment is limited to the application of the proposed rules and forms to dependency and juvenile justice proceedings.  [See comments on specific issues below.]  As mentioned above, we hope that there will be legislation that specifically addresses remote appearances at juvenile justice proceedings. Thank you for developing these rules and forms and for your consideration of our comments.	The committee appreciates the comments. See responses to comments on specific issues below.
30.	Theresa Klein Dependency Attorney Panel San Luis Obispo County	NI	Hello, I administer the Dependency Attorney Panel in San Luis Obispo. I have reviewed the below comments that will be submitted by Debra Barriger, Deputy County Counsel in San Luis Obispo, and concur with all of her remarks, which are stated below.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
31.	Chelsea Kuhns San Luis Obispo	N	The proposed rules are complicated and seem to make it more difficult to appear remotely. It seems it would be easier for the default to be remote proceedings for non-evidentiary hearings and then use these notice procedures for evidentiary hearings.	The committee appreciates the comment but notes that the new statute authorizes a court to set that default only in evidentiary hearings and trials.
32.	Jonathan Laba Assistant Public Defender Contra Costa County	NI	As a newly-appointed member of the Family and Juvenile Law Advisory Committee, I wish to submit comment on Proposed Rule 3.672 governing remote appearances in civil cases. It is proposed that the Judicial Council adopt rules of court and forms to implement new Code of Civil	The committee appreciates the comments. See responses to comments on specific issues below.

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			<p>Procedure section 367.75, enacted in Senate Bill 241 (Stats 2021, ch. 214.) My comments herein do not seek to address the efficacy of the proposed processes and forms governing the remote appearance process in civil cases. Rather, I write to urge the Judicial Council and the Ad Hoc Committee to make clear that rule 3.672 does not apply to juvenile delinquency cases proceeding under section 602 of the Welfare and Institutions Code.</p> <p>[See comments on specific issues below.]</p>	
33.	<p>Lawdable Press by Julie A. Goren Author/Publisher</p>	AM	<p>I have separately submitted comments re the proposed rule and forms along with marked up pages and inserts. This comment: (A) relates to the request for specific comments (re: form of notice of intent to appear and whether the proposed forms should be mandatory), and (B) highlights/clarifies a couple of my separately submitted comments.</p> <p>[See comments on specific issues below.]</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>
34.	<p>Law Foundation of Silicon Valley by Andrew Cain Directing Attorney</p>	AM	<p>The Law Foundation joins in the letter submitted by the Legal Aid Association of California in response to Proposal SP21-08. We write separately to provide further comments on the aspects of this proposal that would govern juvenile dependency practice. We represent, through our Legal Advocates for Children and Youth program, most of the minors and nonminor dependents appearing in Santa Clara County’s juvenile dependency division. We are uniquely situated to offer insights as to how this proposal would impact the operation of dependency matters.</p> <p>The Law Foundation agrees with the proposed changes, if modified. Our specific requests for changes are as follows:</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>

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			[See comments on specific issues below.]	
35.	Law Office of Lauren Mullee by Lauren Mullee President	A	<p>It is crucial that the court continue to provide accessibility to all attorneys and litigants, with the use of telephonic and video appearances. This saves costs for all clients, which is particularly important for lower income clients. This is because, among other reasons, they do not have to pay their attorneys for travel time, parking costs, and mileage, thus promoting greater access to legal representation for all people, and more cost-effective legal representation. This saves time for attorneys and allows them to pass that savings along to their clients, which is a win-win. Self-represented litigants also save these costs for themselves, which is important for their ability to afford litigation.</p> <p>Remote proceedings promote safety and health for attorneys and parties, and help to decrease stress and fear for everyone. Not having to be in the same room with a potentially hostile opposing party is so vital for people who have been victimized, or perceive that they have, even if the events do not arise to actual domestic violence under the DVPA. Remote hearings reduce threats of violence or at least, unnecessary acrimony and stress of being around a potentially violent person. People can participate in hearings with less worry about a hostile person being around them, watching them drive away after the hearing, etc. It's all around much safer to empower remote appearances. Robust access to remote hearings must continue.</p>	The committee appreciates the comments.
36.	Legal Aid Association of California by Zach Newman Senior Attorney	AM	We are writing on behalf of the Legal Aid Association of California (LAAC) about the recommendations of the Ad Hoc Committee on Civil Remote Appearance Rules pertaining to the rules of court and forms to implement	The committee appreciates the comments. See responses to portions of the general comments immediately below, and responses to comments on specific issues in the charts below.

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<p>Alison Corn Legal Design Attorney</p> <p>Jointly with:</p> <p>Worksafe Stephen Knight, Executive Director Los Angeles Center for Law and Justice Carmen McDonald, Director of Legal Services</p> <p>Public Law Center Leigh Ferrin, Director of Litigation and Pro Bono</p> <p>Neighborhood Legal Services of Los Angeles County Charlie Gillig, Vice President of Operations and Legal Technology</p> <p>California Indian Legal Services Dorothy Alther, Legal Director</p> <p>Family Violence Appellate Project Erin Smith, Executive Director</p>	<p>new Code of Civil Procedure section 367.75, enacted in Senate Bill 241 (Stats. 2021, ch. 214), via the proposals in SP21-08. While we generally support this proposal, there are a few issues we wish to flag prior to approval, with special attention to access-to-justice issues.</p> <p>We understand that these recommendations were created with the goal of conforming with the new Code of Civil Procedure section 367.75, enacted in Senate Bill 241 (Stats. 2021, ch. 214), which authorizes remote proceedings in all civil cases. Generally, LAAC believes that the use of remote proceedings can expand access to justice, [FN 1 <i>See, e.g.</i>, STATE BAR OF CALIFORNIA, JUSTICE GAP REPORT (2019), <a href="https://www.calbar.ca.gov/Portals/0/documents/accessJustice/California-Justice-Gap-Report.pdf">https://www.calbar.ca.gov/Portals/0/documents/accessJustice/California-Justice-Gap-Report.pdf</a> regarding access-to-justice data. ] so long as they do not further exacerbate access issues for self-represented litigants (SRLs), people with disabilities, limited English proficient (LEP) court users, and other disadvantaged individuals in the legal system. [FN 2 <i>See</i> CALIFORNIA COMMISSION ON ACCESS TO JUSTICE (CALATJ), REMOTE HEARINGS AND ACCESS TO JUSTICE DURING COVID-19 AND BEYOND, <a href="https://laaconline.egnyte.com/fl/3prDsUYnuA#folder-link/">https://laaconline.egnyte.com/fl/3prDsUYnuA#folder-link/</a> (CalATJ, in collaboration with LAAC, produced this guide recently to aid courts, judges, and court staff in ensuring their remote hearings systems were accessible).] As will be discussed here, we believe that implementation by the Judicial Council of its statutory mandate can both hinder and help access issues. [FN 3 <i>See generally</i> SELF-REPRESENTED LITIGATION NETWORK (SRLN), SERVING SELF-REPRESENTED LITIGANTS REMOTELY: A RESOURCE GUIDE,</p>	
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<p>Bay Area Legal Aid Ariella Hyman, Director of Program and Advocacy</p> <p>Family Violence Law Center Stephanie Penrod, Managing Attorney</p>	<p><a href="https://www.srln.org/system/files/attachments/RRemot%20Guide%20Final%208-16-16_0.pdf">https://www.srln.org/system/files/attachments/RRemot%20Guide%20Final%208-16-16_0.pdf</a>. ]</p> <p><b><u>Past Comments on Code Civ. Proc., § 367.7 and General Concerns</u></b></p> <p>In June of 2020, we generally supported the Judicial Council-sponsored enactment of Code Civ. Proc., § 367.7. We found that providing statutory authority to courts to permit remote video appearances in any civil action, and for the Judicial Council to adopt rules to effectuate the code section, was a positive move forward. At that time and now, we noted, and will continue to note, the interests of legal aid organizations, the clients they serve, and the unrepresented litigants that use the court system. <b>As then, we will describe in this letter the aspects of rulemaking that ought to be considered to ensure enhanced access for low- and moderate-income Californians and others who are marginalized.</b></p> <p>As COVID-19 exposed, a remote hearings infrastructure is critical. Legal aid clients and self-represented litigants have needed the courts to rectify legal wrongs, such as people facing unjust evictions or public benefits and unemployment insurance denials, domestic violence survivors, those subjected to wage theft by an employer, and people facing the myriad other issues that low- and moderate-income Californians deal with. This means that the remote hearings system, much of which was created during the pandemic, proved itself to be of massive importance for access-to-justice reasons. Of note, we have discussed previously, and still firmly believe, that <b>remote hearings should in no way be used to expedite evictions or permit defaults for non-appearance via remote technologies due to inequitable distribution of</b></p>	
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		<p><b>technology as well as technological literacy, among other reasons.</b></p> <p>Furthermore, the efficacy of remote hearings, especially in terms of upholding due process rights as well as not inadvertently disadvantaging either party, is not dispositive, as there is not enough empirical evidence, with some findings showing that remote hearings can be detrimental, [FN 4 <i>See, e.g.</i>, UK Admin. Justice Initiative, “<i>Hello Dungavel!</i>”: <i>observations on the use of video link technology in immigration bail hearings</i>, UKAJI (May 6, 2019), <a href="https://ukaji.org/2019/05/06/hello-dungavel-observations-on-the-use-of-video-link-technology-in-immigration-bail-hearings/">https://ukaji.org/2019/05/06/hello-dungavel-observations-on-the-use-of-video-link-technology-in-immigration-bail-hearings/</a>; <i>Ingrid v. Eagly, Remote Adjudication in Immigration</i>, 109 NORTHWESTERN L. REV. 933 (2015), <a href="https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1217&amp;context=nulr">https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1217&amp;context=nulr</a> (“[D]etained televideo litigants were more likely than detained in-person litigants to be deported”); Camille Gourdet <i>et al.</i>, <i>Court Appearances in Criminal Proceedings Through Telepresence</i>, RAND (2020), <a href="https://www.rand.org/pubs/research_reports/RR3222.html">https://www.rand.org/pubs/research_reports/RR3222.html</a> (“Telepresence might have an appreciable negative impact on the outcomes of cases in which it is used: It might inadvertently encourage harsher responses on the part of the court.”).] or at least that there is insufficient evidence to the contrary. [FN 5 <i>See, e.g.</i>, Brennan Center for Justice, <i>The Impact of Video Proceedings on Fairness and Access to Justice in Court</i> (Sept. 10, 2020), <a href="https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court">https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court</a> (“Though video conferencing technology has been a valuable tool during the Covid-19 pandemic, existing scholarship suggests reasons to be cautious about</p>	
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		<p>the expansion or long-term adoption of remote court proceedings.”)] That said, increasing the use of remote hearings shows promise in potentially increasing access beyond times of crisis to the everyday administration of justice for SRLs, low- and moderate-income Californians, and rural communities, if we apply an access lens. [FN 6 <i>See, e.g.,</i> CAPACITY BUILDING CENTER FOR COURTS, CONDUCTING EFFECTIVE REMOTE HEARINGS IN CHILD WELFARE CASES (2020), <a href="https://www.americanbar.org/content/dam/aba/administrative/child_law/conducting-remote-hearings.pdf">https://www.americanbar.org/content/dam/aba/administrative/child_law/conducting-remote-hearings.pdf</a> ; TEXAS ACCESS TO JUSTICE COMMISSION, BEST PRACTICES FOR COURTS IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS, <a href="https://gato-docs.its.txstate.edu/jcr:27c725a8-4dbc-44f0-a58a96a8b121e3d0/Best%20Practices%20for%20Courts%20in%20Zoom%20hearings%20Involving%20Self%20Represented%20Litigants.pdf">https://gato-docs.its.txstate.edu/jcr:27c725a8-4dbc-44f0-a58a96a8b121e3d0/Best%20Practices%20for%20Courts%20in%20Zoom%20hearings%20Involving%20Self%20Represented%20Litigants.pdf</a> ; State Court Administrative Office, <i>Michigan Trial Court Standards for Courtroom Technology</i> (2020), <a href="https://courts.michigan.gov/Administration/SCSC/Resources/Documents/standards/VCR_stds.pdf">https://courts.michigan.gov/Administration/SCSC/Resources/Documents/standards/VCR_stds.pdf</a> .] For instance, these justice-impacted communities would benefit from a system that does not require disruption of daily responsibilities. Finding childcare, taking time off work, navigating public transit systems to downtown courthouses or paying for parking—these can be acutely determinative in accessing justice. In sum, increasing the viability, sophistication, and—most critically—the accessibility of remote appearance technologies in courts can increase access to justice through predictability, flexibility, and convenience, so long as access and equity are emphasized.</p>	
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**The Overarching Goal Must Be to Avoid Replicating Pre-existing Barriers when Designing Remote Hearings Processes: The Digital Divide, Disability, and Limited English Proficiency**

Arising from the impacts of the pandemic, SB 241 sought to codify and create a statutory framework for civil court proceedings using remote technology. The statute gives the Judicial Council the ability to ensure that we do not return to the status quo of a pre-pandemic court system in regard to remote hearings. **We believe that SP21-08 does comply with and effectuate SB 241 and is in alignment with Code Civ. Proc., § 367.7, but does feature some disconcerting elements that we lay out below.** As described above, we support expanded remote hearings, but, still, there are a number of access-to-justice concerns with such hearings that we will now outline, highlighting in particular the “digital divide” and accessibility for court users with disabilities and those with limited English proficiency. [FN 7 NATIONAL CENTER FOR STATE COURTS, REMOTE COURT OPERATIONS INCORPORATING A2J PRINCIPLES (Mar. 27, 2020), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0016/14470/r-remote-court.pdf](https://www.ncsc.org/_data/assets/pdf_file/0016/14470/r-remote-court.pdf) .]

**First, it is critical to acknowledge the digital divide,** [FN 8 See, e.g., Mark Lloyd, *The Digital Divide and Equal Access to Justice*, 24 HASTINGS COMM. & ENT. L.J. 5 505 (2002), [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1588&context=hastings\\_comm\\_entLawJournal](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1588&context=hastings_comm_entLawJournal); Monica Anderson & Madhumitha Kumar, *Digital divide persists even as lower-income Americans make gains in tech adoption*, PEW (May 7, 2019), [Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated](https://www.pewresearch.org/fact-</a></p></div><div data-bbox=)

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		<p>tank/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 (May 31, 2019), <a href="https://www.pewresearch.org/facttank/2019/05/31/digital-gap-between-rural-and-nonrural-america-persists/">https://www.pewresearch.org/facttank/2019/05/31/digital-gap-between-rural-and-nonrural-america-persists/</a>; <i>The Digital Divide</i>, Stanford CS, <a href="https://cs.stanford.edu/people/eroberts/cs181/projects/digital-divide/start.html">https://cs.stanford.edu/people/eroberts/cs181/projects/digital-divide/start.html</a>.] which has both socioeconomic as well as geographic dimensions that impede the equitable participation of those without access to the requisite technologies to meaningfully engage in remote hearings. [FN 9 See also CALATJ, THE ROLE OF TECHNOLOGY IN ENHANCING RURAL ACCESS TO JUSTICE (June 2020), <a href="https://www.calatj.org/wp-content/uploads/2021/01/2020-Role-of-Technology-in-Enhancing-Rural-Access-to-Justice.pdf">https://www.calatj.org/wp-content/uploads/2021/01/2020-Role-of-Technology-in-Enhancing-Rural-Access-to-Justice.pdf</a>. ]</p> <p>Neither SB 241 nor the current proposal do anything to remediate this issue. The fact that the statutory framework mandates that the court require in-person proceedings if the technology is not present, or if there are other technology-related issues, makes sense, but also could result in those without access having to always just go into court. Put differently, while it does give the court a way to level the playing field if someone has access to the appropriate technology, it does not attempt to do anything more than revert the proceedings back to in-person if that is not the case.</p> <p>The issue here is that this basically negates the positives of remote hearings in every instance where someone, whether due to income or geography, cannot take advantage of the convenience of technology. While we can support this way out for the courts as per their</p>	<p>As noted, the statute provides that for persons without adequate technology, in-person appearances at the courthouse always be available. The commenter’s suggestion to provide additional options for such individuals is outside the scope of</p>
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		<p>conformity to the statutory framework to require parties to simply attend in-person, <b>we find this to be a limited approach to ensuring equitable participation.</b> The Judicial Council should take this opportunity to explicitly provide enumerated options for those constrained by the digital divide beyond mere regression to the in-person norm.</p> <p>[]</p> <p>[See comments on specific issues below.]</p> <p><b><u>Conclusion</u></b></p> <p>We recognize that the passage of SB 241 affords our state an amazing opportunity to reconsider how litigants must access court services. Prior to the pandemic, thousands of people were forced to take an entire day, if not days, off of work for their cases, risking losing their jobs and certainly losing wages. The stress of passing through court security and navigating unfamiliar hallways to find the appropriate court room also puts litigants in a position of stress and anxiety, long before their case is called. Allowing a litigant to appear remotely, from the safety of their own home, job site, or secure public area, will result in reclaimed wages, public safety, and more trust in the California court system. That said, we look at this as an opportunity to correct some of the challenges we saw in the pandemic, with an eye to potentially permanent court rules to allow remote access.</p> <p>We have taken this opportunity to outline a number of critical access-to-justice considerations that are met by or not met by the current proposal. We recognize the</p>	<p>this proposal, which is to implement new Code of Civil Procedure section 367.75 by the time it goes into effect on January 1, 2022.</p> <p>See responses to specific comments below.</p>
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		<p>constraints of the statutory framework passed to the Judicial Council by the legislature. Nonetheless, we have noted instances where we believe the proposal does less than what we believe the legislature described in the statutory framework or could, in compliance with the framework, still do more to ensure equitable, meaningful access. We know how remote hearings can go wrong and cause critical due process concerns, such as in eviction proceedings for unrepresented litigants during the pandemic. [FN 15 Carey L. Biron, <i>Tech issues hobble U.S. tenants fighting eviction in remote hearings</i>, Reuters (Mar. 30, 2021), <a href="https://www.reuters.com/article/us-usa-evictions-tech-feature-trfn/tech-issues-hobble-u-s-tenants-fighting- eviction-in-remote-hearings-idUSKBN2BM15I">https://www.reuters.com/article/us-usa-evictions-tech-feature-trfn/tech-issues-hobble-u-s-tenants-fighting- eviction-in-remote-hearings-idUSKBN2BM15I</a>.] In addition to issues around access to justice, remote hearings play a role in public trust in the court system, too. [FN 16 INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, PUBLIC PERSPECTIVES ON TRUST &amp; CONFIDENCE IN THE COURTS (2020), <a href="https://iaals.du.edu/sites/default/files/documents/publications/public_perspectives_on_trust_and_confidence_in_the_courts.pdf">https://iaals.du.edu/sites/default/files/documents/publications/public_perspectives_on_trust_and_confidence_in_the_courts.pdf</a>.] Our concerns laid out above seek to illuminate what we see as potential ways that increased use of remote hearings, while overall positive, can make it harder for already-disadvantaged court users.</p> <p>In sum, <b>we support SP21-08 because there is potential to increase access through remote hearings, as long they are accessible and user-centric.</b> [FN 17 <i>See, e.g.,</i> Heather Kulp &amp; Amy Schmitz, <i>Real Feedback from Real People: Emphasizing User-Centric Designs for Court ODR</i>, DISPUTE RESOLUTION MAG., Vol. 26 (June 1, 2020).] Connecting self- and unrepresented litigants with legal aid and self-help centers; ensuring disability and</p>	
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			<p>language access and clear, thorough notices and webpages; and, overall, creating inclusive, accessibility-centered design throughout the remote hearings process—from notice to judgment to appeal—are some of the myriad essential aspects of respecting due process, protecting rights, and ensuring meaningful access to courts through virtual technologies. SB 241, in fact, does only provide temporary authorization for this remote hearings system, and our community looks forward to continued conversations about making sure this system works for everyone. Altogether, 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>Please do not hesitate to contact us with questions. Thank you for your leadership on this issue.</p>	
37.	<p>Legal Aid Foundation of Los Angeles by Julianna Lee Supervising Attorney</p> <p>Silvia Argueta Executive Director</p>	NI	<p>We appreciate the Judicial Council’s continued focus on court access and its ongoing efforts to reduce barriers that impede access for the most vulnerable litigants. We address the Committee’s questions below.</p> <p>1. <u>Does the proposal appropriately address the stated purpose?</u> The intent of this Rule is “to promote uniformity in the practices and procedures relating to remote appearances and proceedings in civil cases [and] [t]o improve access to the courts and reduce litigation costs.” Providing litigants in civil cases with a structured way to make remote court appearances advances access to justice in several ways. Because videoconference fees would be a substantial impediment to access in domestic violence prevention cases, the Advisory Comment precluding such fees in such cases is a critical policy. So is the requirement that courts provide parties with information necessary to make</p>	The committee appreciates the comments. See responses to comments on specific issues below.

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		<p>remote appearances, including notice regarding which departments, types of proceedings, or types of cases the court has the technological capability to allow remote appearances. In a large court system such as that here in Los Angeles, it has been difficult to navigate and plan for the varying levels of technological capability and tolerance by various departments across all the branch courts.</p> <p>[See comments on specific issues below.]</p> <p>A final overarching point. We appreciate the challenges of creating a rule and recommendations for a state that’s as large and diverse as California. While the situation doesn’t lend itself to a universal solution, low-income litigants must be a priority. Technological advancements have accelerated during the public health crisis. These developments are often the product of significant effort, dedication and investment. But they also often work to exclude self-represented and linguistically marginalized litigants. When designers of technology and court processes exacerbate the digital divide by implementing changes that the state’s substantial self-represented litigant population cannot easily use, their innovations work to entrench and expand what is already California’s two-tiered system of justice.</p> <p>With the institution of new remote hearings, courts must include guidance and safeguards to ensure that our most vulnerable communities and litigants are not left behind. True progress requires placing low income litigants front and center. The norm should be that changes are made when they will benefit everyone, not just the most resourced.</p>	
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38.	Ernest Long Mediator Ernest A Long ADR	AM	[See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
39.	Los Angeles County Alternate Public Defender by Megan N. Gallow Deputy Public Defender III	AM	[See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
40.	Los Angeles County Bar Association Executive Committee of the Litigation Section by Eric Kizirian LACBA Litigation Section	AM	<p>In September 2021, the state legislature adopted SB 241, known as the “2021 California Court Efficiency Act”. The Act enacted new Code of Civil Procedure section 367.75, authorizing remote proceedings in all civil cases and directs the Judicial Council to adopt rules “to implement the policies and provisions in this section to promote statewide consistency,” including notification deadlines and procedures and standards to be considered “when determining when a conference, hearing, or proceeding may be conducted through the use of remote technology.” CCP 367.75(k).</p> <p>The LACBA Litigation Section submits the following comments:</p> <p>[See comments on specific issues below.]</p> <p>The LACBA Litigation Section appreciates the opportunity to submit its views on this important topic and urges the Council to consider these comments in its endeavor to improve access to the courts through the use of remote technology.</p>	The committee appreciates the comments. See responses to comments on specific issues below.
41.	Los Angeles County Public Defender by Ricardo D. Garcia Public Defender	NI	This letter is in response to the Invitation to Comment on Civil Practices and Procedures: Remote Appearances.	The committee appreciates the comments. See responses to comments on specific issues below.

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	Albert J. Menaster Head Deputy Appellate		[See comments on specific issues below.]	
42.	John M. [no further name provided] Mission Viejo	A	<p>Please continue to allow remote appearances in court. Not only does this save my money as a client, it also allows for a much more efficient and effective use of the Court’s time, the parties’ time, and the attorneys’ time.</p> <p>Many of us that have family law issues cannot afford to take multiple days off of work in hopes that our case will be heard, only for it to be extended time and time again. In person appearances place a significant and unnecessary financial burden anyone needing to use the courts. The current court systems favor people that have money, and create a very large and sometimes insurmountable barrier based on socioeconomic structures. A remote appearance will allow me to appear in court without having to take a full day off of work. Taking days off of work I only puts my employment in jeopardy, but makes it extremely difficult to make a living and feed my family.</p> <p>Please think of the citizens that are in need of your help, not the attorneys that make tons of money off of in person appearances. Time is money.</p> <p>This is 2021, please embrace technology and improve our system.</p>	The committee appreciates the comments.
43.	Steven McKinley Partner Low McKinley & Salenko	N	<p>As a litigation attorney, remote proceedings were adequate at best during the pandemic. Not only were there constant technological glitches in the platforms that were utilized but, more importantly, it was impossible to properly assess a party, expert, or percipient witness in cases where there are millions of dollars at stake. Requiring remote appearances will impede a parties ability to properly evaluate a case, directly impacting any</p>	The committee appreciates the comments, but notes that the legislation has already been enacted so the suggestion to oppose it is outside the scope of this rules proposal. In addition, the statute prohibits a court from requiring any remote appearances and the proposed rule is consistent with the statute on this point.

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			potential settlements, and thus flooding the civil courts with unnecessary remote trials. in addition, this proposed legislation violates several provisions of the Constitution, including the 7th and 14th amendments. I am vehemently opposed to this proposed legislation.	
44.	Hon. James Mize Superior Court of Sacramento County	NI	<p>Thank you for taking comments on this very important matter.</p> <p>I wish to express my strong opposition to making remote hearings the default judicial procedure rather than “in-person” hearings. As such, I would recommend that the rules committees, to the extent possible, recognize that the ideal of remote hearings is not commonly available and that the ideal is an aspiration. It would be highly inappropriate and contrary to good judicial decisions, at this time, to make remote hearings the default requirement of court processes.</p> <p>What I mean can be summarized by: These provisions promote ACCESS to justice but to the diminution of the QUALITY of justice.</p> <p>In other words, there is no question that zoom hearings and/or trials can make it substantially more convenient for litigants to attend hearing, to engage expensive experts and to feel protected and all while enabling litigants to maintain daily jobs and enabling attorneys to pass on cost savings to their clients. These are all very important improvements in “access” to the justice system and in a post-COVID world. As such, I will implement many of these provisions to a far greater degree than I did before COVID.</p> <p>On the other hand, implementation of these provisions will affect the “quality” of the work that we do as judges.</p>	The committee appreciates the comments, but notes that the statute authorizing parties to appear remotely has already been enacted. The committee agrees, as the commenter notes, that courts retain the discretion to require in person appearances when they conclude that such appearance would materially assist in the proceeding or in the management and effective resolution of the case. (See Code Civ. Proc., § 367.75(b).) The rule reflects that statutory language in providing that the discretion be applied on a hearing-by-hearing basis.

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		<p>Courthouses are often built as imposing edifices – not because of the egos of the county authorities but because over thousands of years we have learned that the more significance, the more gravitas, the more esteem litigants have for the process, the more they will respect the decisions we make. I have a shorthand way of making this point by an example that is not too far from the experience of many judges. When I make an order to a gentleman who is driving his car in his pajamas while munching a sandwich with his WiFi cutting in and out, he is not as likely to appreciate the significance of what has just occurred much less be encouraged to obey whatever orders I make.</p> <p>In addition, while zoom meetings and WiFi connections may improve over the next decade or two, any judge zooming with any frequency will admit that breaks in coverage are at least a daily occurrence in a busy morning calendar. Even when the WiFi is transmitting, there are countless times when the screen pixilates along with the audio so that testimony has to be repeated all at the cost the understanding of the litigants and of valuable court time.</p> <p>In addition, when the witnesses are present in court, it is a serious offense to have someone in the audience signaling to the witness during the court proceedings. However, in a zoom hearing, there is no way of determining whether anyone else is in the room with the witness and whether that person is signaling to the witness or simply telling the witness how any particular question should be answered.</p> <p>In the area of family law, children are not permitted to be in court hearing their parents battle but on zoom hearings, children often are in the room outside of the view of the</p>	
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		<p>camera and if they are not in the room throughout the hearing, they stroll in and out of the parents' zoom room and/or are listening in to the proceedings just outside of the room.</p> <p>Someday, the technology will advance far enough where the court can pan a room constantly for presence of skills and/or children and where somehow the camera can detect even if another person is eavesdropping; however, we may be a decade or two away from that necessary improvement in technology.</p> <p>Finally, when we speak about zoom hearings, it implies not only that there is a good WiFi connection but there is video as well as audio. In fact, in this court's experience, anywhere from 10-30% of all self-represented litigants can only manage audio conferencing. When that happens, the skill of the judge in determining and deciding credibility is greatly diminished and, concomitantly, the validity, the quality, of our decisions suffers.</p> <p>I would be pleased to meet to discuss these problems at greater length to the extent that it is determined to be helpful.</p> <p>Having related just a few of the many problems with remote hearings, I believe, to the extent possible, the Rules Committees should adopt language that supports the bill but emphasizes to a much greater extent the discretion that judges need to assure that courts will not feel compelled to adopt remote hearings while we recognize that the quality of our rulings is being diminished.</p>	
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			<p>Section 365.75(b)(3) does give the court discretion but that is being discouraged by requiring it to be on a hearing-by-hearing basis. Judges are in the best position to determine whether a particular witness could or should be permitted to testify remotely. However, for the majority of significant witnesses and for virtually all parties, the default should be “in-person” unless the court is convinced that remote testimony will not significantly diminish the quality of justice in that case.</p> <p>When this statute expires in July 1, 2023, the Judicial Council should oppose extension of the law unless the default position becomes “in-person” hearings unless the court is convinced that substantial justice will result in taking one or more witnesses remotely. This bill can be resurrected in 2033 when the technology has caught up with our aspirations.</p>	
45.	<p>Maralee Nelder Family Law Facilitator, Director Self-Help Center, Small Claims Advisor Superior Court of Nevada County</p>	AM	<p>Thank you for the invitation to comment on this important and evolving area.</p> <p>As a Self-Help Center/Family Law Facilitator’s Office that deals with self-represented litigants in a rural area, the availability of remote court appearances increases actual access to the Court for many of our patrons. We have a strong interest in having clear rules and procedures for our population which will also allow the Court staff to set up and manage the technical features, preserve notice and due process and not require additional time and Court appearances for the parties or for judges and Court employees.</p> <p>I have not addressed the forms specific to Juvenile Dependency matters.</p> <p>[See comments on specific issues below.]</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>

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46.	Robert Newman Attorney Santa Ana	A	Remote hearings have become more productive and easier to manage than in-person hearings. They should continue.	The committee appreciates the comments.
47.	Elisabeth Nigro Attorney Elisabeth Nigro & Associates, APLC	A	This is a good move. The family law and civil court system are badly backed up after the court closures in 2020. Justice delayed is justice denied. Anything that expands the parties' ability to be heard is a positive development for the community.	The committee appreciates the comments.
48.	Patrick OKennedy Attorney Orange	A	I agree with the proposed changes to allow remote appearances upon request by attorneys. The majority of cases can be efficiently adjudicated using remote appearances. In the case of matters that do not require a hearing, there is absolutely no reason why remote appearances cannot be made.	The committee appreciates the comments.
49.	Peggy Oppedahl [no location provided]	NI	The success or failure in reunifying families is in huge part related to the parents interaction with the judge and their attorneys in face to face meetings. The lack of face to face interaction with the social workers, court, attys and their children have had devastating effects on parents reunification over the past year and a half, in my opinion. In 26 years of Dependency practice, I have never had so many parents fail to reunify. Granted, the lack of access to reasonable services has also been an impediment. Telehealth therapy and drug treatment to name a few services that are almost worthless in the Dependency scheme. The expectation of a parent to come to court and face the judge is a powerful motivator for many parents. The ability to see and speak to the judge is a powerful mediation tool for workers and lawyers dealing with unhappy parents. There are proceedings that lend themselves to remote hearings where a parent's presence/input is rarely needed or helpful, i.e., Notice Rev, 15 DR, Warrant Rev, Court Return etc. But when it	The committee appreciates the comments but notes that the statutory authority for remote appearances by parties has already been enacted. In addition, the statute prohibits a court from requiring any remote appearances and the proposed rule is consistent with the statute on this point.

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			comes to Statutory Hearings, unless a party resides out of state or more than 200 miles away, remote appearances are not beneficial to the goal of reunification.	
50.	Hon. Annemarie G. Pace Superior Court of San Bernardino County	NI	I am writing to comment on the proposed rules for remote appearances as they relate to juvenile dependency cases.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
51.	Pacific Juvenile Defender Center (PJDC) by Marketa Sims Advisory Board Member	NI	PJDC is concerned that the Proposed Rule may be interpreted to include juvenile delinquency proceedings under Welfare & Institutions Code section 602 within the scope of new Code of Civil Procedure 367.75, enacted in Senate Bill 241 (Stats. 2021, ch. 214.), but the statute does not, in fact, include juvenile delinquency proceedings within its ambit.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
52.	Bruce Salenko Partner Low McKinley & Salenko	N	While I understand the need for remote proceedings during Covid, this proposal is an unwarranted, unnecessary and probably unconstitutional intrusion into the rights of all civil litigants. My experience with remote depositions over the last 20 months is that while they are convenient, they are far from satisfactory in terms of getting the feel for a witness, insuring the integrity of the litigation process, and the fluidity of testimony. Asking jurors to follow percipient and expert testimony from a witness testifying remotely while the jurors themselves may be remote from the courtroom is a fool's errand. Furthermore, the judge's job is difficult enough in monitoring the jurors in a live courtroom while also keeping track of testimony, objections, legal processes, etc.; asking a judge to do so when the witnesses, litigants, and jurors are all remote is asking the impossible.	The committee appreciates the comments, but notes that the statutory authority for remote appearances by parties has already been enacted.

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			Under these circumstances, I maintain that the proposed legislation violates the Seventh Amendment and fundamental Due Process. I therefore adamantly oppose this legislation.	
53.	Todd Schaffer Partner Donahue Davies, LLP	N	I am concerned about these proposed changes potentially abrogating my clients' rights to a jury trial and due process.	The committee appreciates the comments but notes that the statutory authority for remote appearances by parties has already been enacted.
54.	Hon. Nathan Scott Judge Superior Court of Orange County	AM	[See comments on specific issues below.]	The committee appreciates the comment. See responses to comment on specific issues below.
55.	SEIU California by Libby Sanchez Government Relations Advocate	NI	<p>On behalf of SEIU California, representing court reporters and clerks throughout the state of California, we thank you for the opportunity to submit comments in response to the proposed rules of court and forms pertaining to civil practice and procedure and remote appearances.</p> <p>We are concerned that several important protections and requirements provided under SB 241 were not included under the proposed rules. These protections and requirements were carefully crafted and specifically included to ensure that neither the sanctity of proceedings nor the rights of parties would in any way be diminished due to proceedings being conducted remotely or parties/witnesses appearing remotely. Regardless of the clarity of the underlying statute, we are concerned that without inclusion in the rules, ambiguous interpretations may arise in the courts, which will in turn lead to disparate outcomes for parties participating in remote proceedings.</p> <p>[See comments on specific issues below.]</p>	The committee appreciates the comments. See responses to comments on specific issues below.

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<p>56.</p>	<p>Self-Represented Litigation Network by Katherine Altener Consulting Senior Strategic Advisor</p>	<p>NI</p>	<p>SRLN respectfully submits these comments to offer valuable guidance for the court as it develops a framework for safe, accessible, effective, supported, and secure integration of technology in court proceedings. These comments do not represent the opinion of any one participant within the network, rather they reflect the current best practices and principles in access to justice throughout the United States.</p> <p><b>Introduction</b> Courts were designed by and for lawyers, yet throughout the country today, depending on case type and location in civil matters, it is estimated that 65%–100% of the parties are representing themselves, and the California courts are no different. The robust network of self-help centers throughout the state is a testament to the commitment of serving the public, but the integration of technology into appearances, submission of evidence, and service requires a renewed commitment to innovation to provide a neutral and impartial playing field for all parties. No longer a forum dominated only by the expert users of judges, clerks, administrators, and lawyers (as the intermediary for the public), today’s courts serve the public directly, and they must rise to the challenge of how to integrate and optimize technology just as the other branches of government and commerce have done.</p> <p>Integrating technology into court operations presents a once in a generation opportunity to streamline, simplify, and modernize the justice system, yet re-aligning a centuries old system designed by and for lawyers working in an analog environment is a complex and challenging undertaking that, to be successful, calls for a multi-stakeholder, iterative, and evidence based approach. Fortunately models and best practices are available to</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>
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		<p>guide these activities, which admittedly are new to the justice system. But new challenges require new approaches, and SRLN believes the courts in California are in a good position to take full advantage of the approaches available today. See Appendix A. [Copy attached to comments chart]</p> <p><i>The Court's Legitimacy from the Perspective of the Public</i></p> <p>Before turning to specific issues around the integration of technology, SRLN voices its full support for the court continuing on its path towards full integration of technology. Our concerns lay in implementation, not whether or not the public should have access to a tech enabled court that includes remote services. Technology enables a court to better serve the public and improve its own operations. Safe, accessible, effective, supported, and secure integration of technology also improves the legitimacy of the court in the eyes of the public.</p> <p>If the court is the only governmental institution not using technology effectively, the court risks looking outdated, irrelevant, and incompetent. If the court demands people's physical presence for what the public believes can be more than adequately addressed via a remote means, the court could appear to be oppressing rather than serving the public as it imposes demands on people for in-person appearances that seem nonsensical in the eyes of the public. Why should someone suffer a disciplinary action at work or lose wages because they had to appear for a scheduling hearing? Or perhaps an individual concludes that if they are not permitted to appear by remote means, taking a default on a \$500 debt case is an acceptable tradeoff when the alternative would mean losing their job or leaving a child or medically needy parent alone without</p>	
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		<p>adequate care. By not offering a remote option, the court in these examples has deprived the person of their day in court. Civil actions are cases between two private parties and how they manage their case is ultimately their choice. The court is providing a neutral forum and the judge is taking evidence to render a decision on the merits.</p> <p>Technology also offers an opportunity for standardization that makes the system more transparent and predictable, which from the perspective of the public appears more fair. While there is always a strong pull to support local court autonomy, respectfully, we offer that the integration of technology into court operations is an administrative function of the court as a branch of government, not the independent adjudicative responsibility of judges. From the perspective of the public, if each judge or court becomes its own gateway, the system as a whole looks disorganized, chaotic, lacking in predictability, and subject to the bias of individual judges. For the public, this becomes a role of the dice of whether things like losing a job or taking a default occur because it will all turn on the rules of court A versus court B. This looks arbitrary and unfair in the eyes of the public and the type of thing that undermines the public’s trust and confidence in the institution, as well as the rule of law.</p> <p>Finally, the public is accustomed to improving customer service in all other aspects of their lives: banking, grocery shopping, entertainment, social media communications, and healthcare. They understand that through data, an institution can improve its services. If they do not see the court using the objective data it has available to it to improve operations, it could appear to the public that a branch of government is wasting public money and</p>	
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		<p>undermines their willingness to support the institution as taxpayers.</p> <p>Public trust and confidence, as well as the exceptional administration of justice are clearly the priorities of the leaders of California’s judicial branch, and SRLN strongly supports the court’s commitment to committing to the full integration of technology in a safe, secure, and supported manner. To aid the court and its partners in its ongoing work, these comments offer resources, strategies, and data that, when taken into consideration, can help support the court in its efforts to ensure all Californians have access to neutral and impartial courts, due process, and equal protection.</p> <p>These comments will highlight three significant areas of concern for self-represented litigants as technology is integrated into court operations: 1) digital divide; 2) due process, equal protection, and neutrality; 3) and application of these concepts to this proposal.</p> <p><b>Digital Divide</b> Successful integration of technology requires attention to ensuring that those without technology - for whatever reason [FN 2 Technology access is an issue for everyone on some level. As anyone who has used technology to work over the past eighteen months is painfully aware, even if one has top notch equipment and blazing fast broadband speeds, networks go out, software has glitches, power grids go down, extreme weather events happen, computers get viruses, or the buttons have simply moved around as navigation changes with updates. Good technology integration has redundancies and operational processes built in to accommodate all of those issues, which, when they happen, leave the user without reliable</p>	
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		<p>technology.] - are not shut-out or defaulted as a result of a failure or lack of technology, and that when technology is used, it does not unfairly prejudice a party.</p> <p>In our opinion, the proposed changes do not provide sufficiently explicit redundancies or options protecting the public should they not have access to technology (or when their technology fails), or they fail to navigate the procedures around remote notice properly. Given concerns around local court variation, SRLN is also deeply concerned that without explicit protections within the rules, the public will not enjoy equal access throughout the state.</p> <p>The last 20 months have shown us that the digital divide is far more nuanced than simply the question of whether an individual has a device, rather it includes:</p> <ul style="list-style-type: none"><li>● lack of access to the internet entirely;</li><li>● lack of a device that connects to the internet;</li><li>● lack of necessary connectivity speeds to make the internet functional;</li><li>● lack of the financial means to afford a device;</li><li>● lack of the financial means to afford sufficient data plans;</li><li>● lack of familiarity with the platform;</li><li>● lack of the language skills or physical or cognitive abilities necessary to interface with the court's technology without human support and/or other accommodations.</li></ul> <p>Fortunately, from a planning perspective, there are a number of solid data sources to help the court understand where the most technologically vulnerable people live. [FN3 These include the Federal Communications Commission (FCC) at <a href="https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477">https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477</a> yearly report on broadband availability and</p>	
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speed, the American Community Survey (ACS) at <https://www.arcgis.com/home/item.html?id=4f43b3bb1e274795b14e5da42dea95d5>, which provides data on “computer” ownership and type of internet subscription access, and the National Telecommunications and Information Administration (NTIA) at <https://broadbandusa.maps.arcgis.com/apps/webappviewer/index.html?id=ba2dcd585f5e43cba41b7c1ebf2a43d0>, which uses several different public and private data sources to show information on broadband availability within the United States. Layers in the NTIA map were created using data sourced from the American Community Survey collected by the U.S. Census, Ookla, Measurement Lab (M-Lab), Microsoft and the Federal Communications Commission (FCC). SRLN is seeking funding to create an easy to navigate dashboard for California with these datasets and will supplement the comments if that becomes available.] However, upon examination of the data, it becomes clear that no region in California is free of the digital divide.

In the following screenshot from National Telecommunications and Information Administration application at <https://broadbandusa.maps.arcgis.com/apps/webappviewer/index.html?id=ba2dcd585f5e43cba41b7c1ebf2a43d0> , we see much of the state bathed in red, indicating insufficient bandwidth. While the green areas appear to be sufficient, zooming in via the interactive link above to the tract and block level will highlight specific neighborhoods that do not have access.

[image]

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		<p>To retain its neutrality, the court must find specific ways to support those who face digital obstacles without resulting in further prejudice to them. SRLN believes courts can ensure access for every person despite the digital divide by creating rules that allow for and seamlessly integrate necessary offramps, without prejudice, for those who are digitally excluded.</p> <p><b>Due Process, Equal Protection, and Neutrality</b>          Due process, equal protection, and neutrality are cornerstones of justice. As technology is integrated into the courts, special attention must be given to these questions. Indeed, the first principle of the CCJ/COSCA Guiding Principles for Post Pandemic Technology is “[E]nsure principles of due process, procedural fairness, transparency, and equal access are satisfied when adopting new technologies.”<sup>4</sup> In <i>Turner v. Rogers</i><sup>5</sup>, the U.S. Supreme Court found that, in the absence of counsel, due process for self-represented litigants requires courts to provide “alternative procedural safeguards.” Applying the <i>Turner</i> notion of “alternative procedural safeguards” to technology integration calls on courts to recognize that self-represented litigants may need alternative procedures and not simply the default procedures for lawyers. Great care must be taken to ensure that new procedures created to support technology do not disenfranchise those without technology.</p> <p>Integrating technology creates new disparities between parties. In addition to access to a device connected to the internet, access includes a number of additional considerations such as speed and stability of the connection, the cost of the data being consumed, skill and experience in using a platform, access to a suitable location to participate, and the aesthetics of appearance on</p>	
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		<p>a screen<sup>6</sup>; Judges often indicate that “how someone looks and speaks” are important aspects of their credibility determination when assessing testimony. A self-represented litigant with an unstable connection, bad lighting, worrying their data plan is running out, and children roaming about will simply not present as well as the individual who can be in court or broadcasting from a lawyer’s office. In addition, the research is mounting that in certain proceedings, particularly criminal, parties are significantly prejudiced by remote hearings, receiving longer sentences, higher bail amounts and the like.<sup>7</sup> Research on the impact of remote in civil proceedings is underway but not yet available. However, given the early results from the criminal side, it is fair to expect that in certain evidentiary matters, compulsory remote can impose a disadvantage on a party.</p> <p>Similarly, mandatory email service (should a court order service by email) gives those with constant immediate access to their email an unfair advantage over those who must borrow another person’s or organization’s computer to check their email. Access to the borrowed computer may only be possible once a week, by appointment, or turn on whether the party can find transportation to the borrowed device. This can be especially prejudicial if the response clock begins at the time the email is sent, which means the technologically advantaged will have more time to respond, and the technologically disadvantaged may not even be able to access the filing until after the response time has run. Email over unencrypted networks also exposes the parties to significant cyber security issues.</p> <p>The court cannot correct this disparity, but it can avoid inappropriately and unjustly forcing this disparity upon</p>	
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		<p>people. Compulsory use of technology favors the technologically advantaged (whether individuals or institutional actors such as prosecutors, credit card companies, hospitals, and landlords); from the perspective of the technologically disadvantaged self-represented litigant, such a court is no longer a neutral forum. Court rules ought not undermine the courts neutrality, nor should rules erode public trust and confidence in the institution and the rule of law. Court rules ought to, among other things, ensure a fair playing field so each party has a full hearing of the merits of their case.</p> <p>The American justice system is an adversarial one in which the parties have the right and responsibility to advocate for their positions, whether a legal strategy around which facts and witnesses to put before the judge, certain motions to change venue, or making a demand for a jury trial. A court rule ought not strip or undermine a party’s full authority to pursue their case as they see fit.</p> <p>A growing body of research and experience during the pandemic is establishing that remote appearances can and do have a substantive impact, and can create an advantage for one party over another. This evidence suggests that remote appearances in substantive hearings or a trial can be used as a strategic choice by the parties. The court is arguably overstepping its role and undermining its position of neutrality when it automatically compels one type of appearance over another. A judge would not review discovery and tell parties which evidence or witnesses to bring to trial or order a jury on behalf of parties.</p> <p>Rather, a judge considers evidence brought by the parties, rules on appropriate objections, and issues decisions.</p>	
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		<p>Arguably from the perspective of the self-represented litigant, the court becomes an active participant in the proceeding if it 1) makes a strategic choice on behalf of the parties, and 2) assists and favors the technologically advantaged.</p> <p>However, this caution regarding neutrality does not mean technology cannot be integrated into operations and that there can be no remote hearings or e-filing; what it means is that the rules need to ensure the parties can drive the decision of how technology is used in their case and ensure for secure communications. It is after all, their case, not the court’s case.</p> <p>Voicing similar concerns in August 2020, the American Bar Association adopted a resolution to limit compulsory use of virtual and remote procedures to essential proceedings, while permitting the use of such procedures whenever litigants provided <b>informed consent</b> and were further provided the option of an in-person hearing whenever such a hearing was safely possible. The Resolution further encouraged each jurisdiction employing virtual or remote court: (1) to establish committees to conduct evidence-based reviews of virtual and remote court procedures; (2) to guarantee equal access, due process and fundamental fairness; (3) to provide additional funding to improve access to virtual or remote court proceedings; (4) to ensure that the public, including the media, is provided access to court proceedings unless an appropriate exception applies, in which case the privacy of the proceeding should be protected; (5) to provide training on virtual and remote procedures; and (6) to study the impacts of these procedures for possible prejudicial effect or disparate</p>	
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		<p>impact on outcomes. The full Resolution is attached in Appendix B. [Copy attached to comment chart.]</p> <p><b>Application of These Concepts to this Proposal</b> [See comments on specific issues below.]</p> <p><b>Conclusion</b> We support California’s efforts to integrate technology into court proceedings, how we urge more detail in implementation, including an analysis of available digital divide data, the creation of a robust front-end opt-in/informed consent process, and an explicit adoption the ABA recommendations: (1) to establish committees to conduct evidence-based reviews of virtual and remote court procedures; (2) to guarantee equal access, due process and fundamental fairness; (3) to provide additional funding to improve access to virtual or remote court proceedings; (4) to ensure that the public, including the media, is provided access to court proceedings unless an appropriate exception applies, in which case the privacy of the proceeding should be protected; (5) to provide training on virtual and remote procedures; and (6) to study the impacts of these procedures for possible prejudicial effect or disparate impact on outcomes.</p> <p>We also join in supporting the comments of the Legal Aid Association of California.</p>	<p>See responses to comments on specific issues below.</p>
57.	David Shuey Shareholder Rankin, Shuey, et al.	AM  This rule change should not apply to civil trials. [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.

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58.	Cheryl Siler Director CompuLaw Operations	NI	I am writing to comment on the proposed revisions set forth in the Invitation to Comment - Civil Practice and Procedure: Remote Appearances. Set forth below are the various issues I believe need resolution before adoption of these amendments. [See comments on specific issues below.]  Thank you for your time and consideration of the issues.	The committee appreciates the comments. See responses to comments on specific issues below.
59.	Audrey Smith Attorney Howie & Smith, LLP	N	I write to object to the rules proposed by the Ad Hoc Committee regarding new Code of Civil Procedure section 367.75 and Remote Appearances that allow a court, on its own motion, to decide to conduct a trial or evidentiary hearing remotely.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
60.	John H. Smith Law Offices of John H. Smith, III Anaheim	NI	I am not in favor of continued remote hearings except for status conferences. It is near impossible to cross examine a witness or use impeachment documents. It is also very difficult to determine credibility of witnesses. We should be back to in-person contested hearings if not now, very soon.	The committee appreciates the comments but notes that the new statute authorizes parties to choose remote appearances, with certain caveats as set forth in the statute.
61.	Terrence T. Snook Attorney III CSAA Law Department	AM	As a trial attorney for more than 30 years with 35 jury trials criminal and civil and dozens of court trials, I am troubled by the change in rules.  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
62.	Lynne G. Stocker Attorney Oakland	N	[See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
63.	Superior Court of Alameda County by Chad Finke Court Executive Officer	AM	<b><u>Remote appearances improve access to justice and benefit the public, counsel, justice partners, and court staff</u></b>	The committee appreciates the comments. See responses to comments on specific issues below.

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		<p>As an initial matter, the Court would like to express its deep gratitude to the Legislature and the Judicial Council for recognizing the significant benefits remote appearances can have for all involved in the justice system. Alameda was an early and enthusiastic adopter of remote proceedings and court operations under the authority conferred by Judicial Council Emergency Rule 3, and in our experience, they have been an unmitigated success.</p> <p>Foremost, the ability to participate in a court proceeding remotely expands the public’s access to justice exponentially. No longer are litigants required to take time off from work, find child care, or travel in order to have their disputes adjudicated. With the near-ubiquity of cellular phones and tablets, access is literally at their fingertips. This ease of access removes many of the socioeconomic and physical barriers to justice that some communities have historically faced.</p> <p>Likewise, both attorneys and Court partners also have enthusiastically embraced remote opportunities. And Court staff across all of our labor unions welcomed the job flexibility, particularly in the form of expanded telework opportunities, that remote proceedings afforded.</p> <p>In light of the above, we wholeheartedly support SB 241 and the ongoing efforts of the Legislature and Judicial Council to codify, study, and hopefully expand further remote proceedings for the benefit of all Californians.</p> <p><b><u>Request for specific comments</u></b> In response to the Committee’s Request for Specific Comments, the Court offers a few additional considerations.</p>	
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			<p>[See comments on specific issues below.]</p> <p><b>Conclusion</b> We thank the Legislature and the JCC for continuing to support the remote proceedings necessary to offer increased access to our courts and appreciate this public comment opportunity in the related rule-making process.</p>	
64.	Superior Court of Butte County by Sharif Elmallah Court Executive Officer	AM	<p>The court is concerned that the current proposal would place additional burdens on courts and litigants appearing telephonically in civil matters that do not currently exist.</p> <p>[See comments on specific issues below.]</p>	The committee appreciates the comments. See responses to comments on specific issues below.
65.	Superior Court of Los Angeles County by Bryan Borys Director of Research and Data Management	AM	<p>The Superior Court of California, County of Los Angeles (Court) strongly supports the approach outlined in Invitation to Comment SP21-08 in implementing SB 241, with one suggested amendment discussed below. The overwhelmingly positive response of court users to the Court’s remote appearance offerings, with thousands of litigants and attorneys attending hearings remotely every day, is a testament to the significance of this new technology in extending access to justice. Indeed, on November 10, 2021, the National Center for State Courts (NCSC) said in a nationwide email, “NCSC’s latest survey of public opinion, conducted last month, finds that a majority of respondents believe that courts should continue to hold hearings by video because it allows them to hear more cases and resolve cases more quickly, and it makes it easier for people to participate without traveling to a courthouse, taking time off work and finding childcare.”</p> <p>The benefits of CCP 367.75 will be greatly enhanced by the provisions of proposed rule 3.672 that support</p>	The committee appreciates the comments. See responses to comments on specific issues below.

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			<p>implementation through local rule. This will allow all courts the flexibility to respond to the specific needs, challenges and opportunities they face.</p> <p>Specifically as to remote appearances in trials and evidentiary hearings: Such practices are indisputably convenient and will offer increased access to justice. We strongly support the adoption of these rules for the use of judges. At the same time, we recognize that there remain important questions regarding how to conduct these hearings to ensure that they are used in the interests of justice, they assist judges and/or jurors with deciding factual issues, and they are consistent with other constitutional or statutory provisions. We look forward to continued statewide discussion about the use of these rules as more and more courts gain experience in using them.</p> <p>[See comments on specific issues below.]</p> <p>Please note that these are comments are made on behalf of the Los Angeles Superior Court as a whole and not on the part of any individual judicial officer.</p>	
66.	Superior Court of Merced County by Hon Donald Proietti Presiding Judge	AM	<p>As long as emergency rule 3, effective April 6, 2020, remains relevant, it is ill advised to exclude civil proceedings from Judicial discretion to conduct remote proceedings for the sake of uniformity. The substantial public health and safety challenges faced in each county should always prevail over form. This should remain a Court by Court decision until the ER is lifted.</p> <p>[See comments on specific issues below.]</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p> <p>As to the general comments here, the committee notes that the new statute relating to remote appearances becomes effective January 1, 2022, and these rules are to implement that statute and its mandated rules (see § 367.75(k)<sup>1</sup> mandating rules re deadlines for notice, etc.) In light of this legislative action, the council has amended</p>

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

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			<p>If the new legislation eliminates Judicial authorization to conduct remote proceedings without consent, and this change is implemented during the pandemic, increased backlogs, reduced access to justice, and increased Covid outbreaks in the Court are certainties. That said, I support the changes post pandemic.</p> <p>[See comments on specific issues below.]</p>	<p>emergency rule 3 effective that same date because, to the extent it applies to civil proceedings, it will be preempted by the statute.</p>
67.	<p>Superior Court of Monterey County by Thomas W. Wills Supervising Civil Judge</p>	AM	<p>Monterey’s bench and staff appreciate the significance of the undertaking to formulate the new rule and the constraints which new CCP section 367.75 have imposed on formulating a new rule. Our experience with remote appearance causes some concerns over the proposed rule. Generally, they can be categorized as:</p> <p>(1.) the significant amount of burden to the clerk’s office and to self-represented litigants by requiring that the ability to appear be triggered by a party’s request. A provision allowing a local rule to provide for remote appearances by default (without the need for a request in every instance)—with, of course, a provision that the court can still make a case by case determination that personal appearance is necessary—would greatly simplify the process and make it easier for all involved to comply;</p> <p>(2.) the practical need to have video – rather than simply audio – appearances for evidentiary hearings, where assessing witness credibility is often critical;</p> <p>(3.) clarification regarding the prohibition against mandating in-person appearances; and</p> <p>(4.) we have noticed that frequently the demeanor and attire of counsel making remote appearances is lacking in the decorum which should be observed in a court proceeding.</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>



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			<p>[See comments on specific issues below.]</p> <p><u>Prohibition on Mandating In-Person Appearances</u>  Monterey interprets this proposed rule as prohibiting the court from mandating in-person appearances across the board, but permitting the court to require an in-person appearance on a hearing-by-hearing basis.</p>	<p>The new statute, as reflected in the rule, permits a court to require any person who has indicated an intent to appear remotely to appear in-person for the reasons set out in § 367.75(b).</p>
68.	<p>Superior Court of Nevada County  by Jason B. Galkin  Court Executive Officer</p>	NI	<p>Our court’s primary comment is that the proposed rules, particularly those surrounding the handling of oppositions to remote appearances, lack sufficient flexibility for an efficient and workable solution.</p> <p>[See comments on specific issues below.]</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>
69.	<p>Superior Court of Orange County, Juvenile Division  by Vivian Tran  Operations Analyst</p>	NI	<p>[See comments on specific issues below.]</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>
70.	<p>Superior Court of Placer County  by Jake Chatters  Court Executive Officer</p>	AM	<p>The court supports the proposed rules and forms, if amended.</p> <p>[See comments on specific issues below.]</p> <p>Attached please find additional comments by one of our judicial officers on the following page.</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p> <p>The committee appreciates the comments. See responses to comments on specific issues below.</p>
71.	<p>Superior Court of Riverside County  by Susan Ryan  Chief Deputy of Legal Services</p>	AM	<p>[See comments on specific issues below.]</p>	<p>The committee appreciates the comments. See responses to comments on specific issues below.</p>

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72.	Superior Court of San Bernardino County by Court Executive Office/Office of Presiding Judge	AM	We join in Judge Janet Frangie’s comments and add the following re court and staffing impacts:  [See Judge Frangie’s general comments above, and see comments by this commenter and Judge Frangie on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
73.	Superior Court of San Bernardino County, Civil Committee by Melissa Williams District Manager I	NI	<u>Does the proposal appropriately address the stated purpose?</u> Yes  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
74.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	<u>Does the proposal appropriately address the stated purpose?</u>  Yes, for civil. No, for juvenile (see General Comments below).  [See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.
75.	Anh Tran IT Manager Superior Court of San Joaquin County	NI	Below are comments for SB 241 notification and implementation.  1. <u>Does the proposal appropriately address the stated purpose?</u>  - Does the process require the requesting party to provide a copy of the notice confirmation to the court?  - For Juvenile Dependency, when requesting consent from all parties to attend remotely, does the process require formal consent by all parties to be recorded by the court?	The committee appreciates the comments. See responses to questions here and responses to comments on specific issues below.  -The statute requires notice of intent to appear remotely be provided to all parties; proposed form RA-010 includes an optional declaration a party may use to provide proof of notice.  -The proposed form requires the participant seeking to testify remotely (or the attorney

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			- Are there any requirements for the court to aid users to remotely attend if they do not have capabilities - such as equipment? We are assuming no, but we wanted to make sure.	representing the witness) to have consent, and that form is part of the record. -The committee notes that the rule does not contain any such requirements.
76.	Vigil Defense Law Firm PC by Martina Teinert Attorney	A	No specific comment.	The committee appreciates the response.
77.	Hon. Adam Wertheimer Commissioner Superior Court of San Diego County	AM	[See comment on specific issue below.]	The committee appreciates the comment. See responses to comment on specific issues below.
78.	Hon. Rebecca L. Wightman Commissioner Superior Court of San Francisco County	AM	First, I commend the Ad Hoc Committee for putting together on such short notice a comprehensive set of rules that are not quite as cumbersome as the Telephone Appearance rules (that are going to be suspended).  [See comments on specific issues below.]  Thank you for your consideration. These comments are being made as an individual and not on behalf of any entity or organization.	The committee appreciates the comments. See responses to comments on specific issues below.
79.	Julia Wu Associate Baker Botts LLP San Francisco	NI	Specifically, I have two concerns regarding the proposed rules of court and the forms.  [See comments on specific issues below.]  Please let me know if there are any questions. Thank you and the Ad Hoc Committee for your consideration.	The committee appreciates the comments. See responses to comments on specific issues below.
80.	Mitchell K. Wunsh Assistant Family Law Facilitator	NI	[See comments on specific issues below.]	The committee appreciates the comments. See responses to comments on specific issues below.

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	Superior Court of Marin County			
81.	Bettina L. Yanez Attorney Yanez & Associates Divorce & Family Law Attorneys Orange County	A	<p>I find that remote hearings and even trials can provide access to the underprivileged to courts and aids them in having their matters heard while saving money. In a remote hearing a client is not charged for travel time or parking. Further an attorney does not need to charge for sitting in a courtroom while waiting for the case to be called.</p> <p>Remotely an attorney is placed in a waiting room and thus can tend to other matters and only bills the client the actual time for preparation and hearing time. This saves the clients a lot of money and that is good for the public.</p>	The committee appreciates the comment.

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<b>Issue 1: Authority for Local Rules (Rule 3.672(e))</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
California Federation of Interpreters, Local 39000	<ul style="list-style-type: none"> <li>▪ The proposed rule censors court-users at the local level by removing the 45-day comment requirement. Each court has experienced their own particular set of issues with remote proceedings and platforms beyond the statewide problems shared in common. The comment period’s purpose is to foster community participation in government and allow for freedom of speech in an orderly, organized fashion. To eliminate the local community’s ability to voice concerns abolishes democracy and further alienates the citizenry from the courts.</li> </ul> <p>Any local rule should mirror the new amended law and rule of court, as well as conform to each local court’s rules. The intent of this rule of court is to promote uniformity. To provide a deviation from the intent of the rule of court as stated in (f)(1)(A) is contrary to the goal and spirit of uniformity.</p>	<p>The committee concluded that, to meet the short time frame for putting new rules into effect, and the quickly changing options for using remote technology in each court, it was appropriate to eliminate the advance circulation of local rules on this topic. The rule does not preclude court users from making comments on local rules nor courts from making changes to the local rules as appropriate.</p> <p>The committee is attempting to further greater consistency through these rules, providing a default time frame and notice process, while at the same time recognizing that different courts have different technological capabilities. For example, some courts have been successful in employing more advanced technology and can allow participants to appear remotely on shorter notice than in the default time frame provided in this rule. Other courts are concerned that, with very short notice, they will not be able to adequately communicate a party’s intent to appear remotely to the courtroom in which they wish to appear in time to prepare that courtroom for a hybrid hearing but may be able to do so with longer notice. Recognizing that the new statute is only in effect for 18 months, the committee wants to ensure that courts can offer remote services throughout that time. To address the varying issues, the rule sets a default process but also authorizes local rules so long as in compliance with the statutory requirements and, if requiring written notice,</p>

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**Issue 1: Authority for Local Rules (Rule 3.672(e))**

<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
		incorporating the mandatory council forms.
Committee on Administration of Justice, Litigation Section California Lawyers Association	<p>Under proposed rule 367.2(e) and related rules, a court may by local rule prescribe the time and method of providing notice of intent to appear remotely at a proceeding other than a jury trial, so long as the procedures are posted on the court’s website and include certain provisions, including that the amount of notice required is the same or less than the amount required by the rule. CAJ does not favor the ability of courts to adopt local rules prescribing the time and method of providing notice, particularly as it relates to an evidentiary hearing or trial.</p> <p>As noted above, CAJ believes the proposed timelines for providing notice of remote appearance for an evidentiary hearing or trial are already too short, so shortening those timelines even further would create additional issues. But, more importantly, CAJ believes this is an area where local variation is not warranted.</p> <p>CAJ recognizes, as discussed in the Invitation to Comment, that many courts have been conducting remote proceedings and allowing remote appearances by parties under emergency rule 3, sometimes with only a short amount of advance notice from the parties. CAJ agrees that easier procedures for appearing remotely should be encouraged. To further this goal, CAJ recommends creation of an additional rule and form to account for notice of remote appearance and a stipulation by all parties in circumstances where that would apply and the rules would otherwise provide an opportunity to oppose a remote appearance. At the same time, CAJ does not believe there should be an allowance for local variation on issues as important as notice and an opportunity to oppose a remote</p>	<p>See response on this issue to California Federation of Interpreters, Local 39000, above.</p> <p>The committee notes that parties may at any time stipulate to remote appearances, subject to approval of the court. The statute expressly states this. (§ 367.75(j).)</p>

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<b>Issue 1: Authority for Local Rules (Rule 3.672(e))</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>appearance.</p> <p>New Code of Civil Procedure section 367.75(k) provides that the Judicial Council shall adopt rules to implement the policies and provisions in section 367.75 to promote statewide consistency. Similarly, proposed rule 3.672(a) provides that the “intent of this rule is to promote uniformity in the practices and procedures relating to remote appearances and proceedings in civil cases” using language parallel to rule 3.670(a) governing telephone appearances. Local rules would not promote statewide consistency or uniformity and would simply add unnecessary complexity for both parties who are unrepresented by counsel and parties who are represented by counsel (many of whom have expanded their counties of operation in light of remote appearances), adding the need to check the local rules on each and every occasion for any variation before providing notice of a remote appearance and – presumably – providing any opposition that might follow.</p>	
Cheryl Siler	<p><u>LOCAL COURT PROCEDURES</u></p> <p>In the information on local court procedures provided in the proposal, the committee indicates that “easier procedures for remotely should be encouraged and does not intend this rule to make it harder for parties to provide notice of intent to appear remotely.”</p> <p>However, Section 367.75 added to the Code of Civil Procedure effective 1/1/22 states in section (k), “Consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules to implement the policies and provisions in this section to promote statewide consistency...”</p>	<p>See response on this issue to California Federation of Interpreters, Local 39000, above.</p>

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**Issue 1: Authority for Local Rules (Rule 3.672(e))**

Commenter	Comment	Committee Response
	<p>By allowing the Superior Courts to adopt local rules that provide procedures and deadlines that differ from those set forth in proposed Rule 3.672, the committee is promoting inconsistency rather than consistency as directed by the statute. If Superior Courts are permitted to set shorter notice deadlines, practitioners will not have a reliable and uniform deadline for giving notice. I would recommend that the committee consider making Rule 3.672 timeframes the uniform standard to be applied in all courts.</p> <p>If courts are permitted to set their own procedures for remote appearances, requiring these deadlines to be set forth by local rule is critical. I note that section (e)(1) of Rule 3.672 allows the court by local rule to “prescribe the time and method of providing notice of intent to appear remotely at a proceeding other than a jury trial, so long as the procedures are posted on the court’s website...” Currently, there are several courts that have procedures for remote appearances that are not set by local rule. They instead [] merely post guidelines or information pages buried on the court’s website. Mandating that any remote procedures be included in a court’s local rules is critical so that practitioners are not required to search for the information on the court’s website.</p>	<p>Subdivision (e) requires that any local procedures that differ from the proposed rule be implemented “by local rule.” Courts are currently providing for remote procedures under emergency rule 3, which has no such provision.</p>
<p>Superior Court of San Diego County, Juvenile Division</p>	<p>The San Diego Juvenile Court is in favor of the subdivision of rule 3.672 that allows a court to adopt a local rule and would want that same provision in a juvenile rule, if one is drafted. We recommend even broader discretion be given to courts to adopt local rules that do not comply with CRC 3.672(e)(1). We have found that for non-evidentiary hearings, remote appearances have been a huge benefit to children, youth, and</p>	<p>The committee notes the commenter’s agreement with the proposed rule authorizing certain local court rules. The committee further notes that the requirements placed on such local rules in rule 3.672(e)(1) are requirements included in the §367.75. The council does not have the authority to adopt a rule inconsistent with statute. (Comments relating solely to juvenile</p>



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<b>Issue 1: Authority for Local Rules (Rule 3.672(e))</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	families, solving problems like lack of transportation and missed school and work. For evidentiary hearings, issues around who will appear remotely and who must appear in person are often worked out on a case-by-case basis at the settlement conference. The process proposed by the new rule would not work well in juvenile proceedings (dependency <u>and</u> juvenile justice).	proceedings are addressed elsewhere.)
Hon. Rebecca L. Wightman	<p>While I appreciate that the courts are given latitude to issue a local rule that complies with the statute, <i>as written</i> the provision on Local Court rules for remote proceedings are not as clear as I would hope. It would be helpful to actually spell out the authority of the court, if it is deemed appropriate by the court and technologically possible, to by local rule, authorize in advance the option of its proceedings to be conducted remotely (alleviating the need for a litigant to file a notice), unless there is an objection. To that end, I would suggest that Rule 3.672 be modified to state:</p> <p><u>(e) Local court rules for remote proceedings</u></p> <p>(1) A court may be local rule <i>may authorize remote appearances for all proceedings as allowed under the law and/or</i> prescribe the time and method of providing notice of intent to appear remotely at a proceeding other than a jury trial, so long as the procedures are posted on the court’s website and include the following provisions:</p> <p>(A) <i>Authorization by the court to appear remotely and/or</i> Notice of the intent to appear remotely is required to be provided to all parties or persons</p>	The committee appreciates the comment, but notes that under the new statute, after January 1, 2022, courts will not have the authority to make remote appearances the default other than for evidentiary hearings and trials (and the authority to do that by local rule is stated in rule 3.672(g)(1).)

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**Issue 1: Authority for Local Rules (Rule 3.672(e))**

Commenter	Comment	Committee Response
	<p>entitled to receive notice of the proceedings;</p> <p>(B) The amount of notice required is the same or less than the amount required by this rule; and</p> <p>(C) For evidentiary hearings and trials, an opportunity for parties to oppose the remote proceedings.</p> <p>Without a change in the framework as noted in my initial comment [to make remote appearances the default], at a minimum, the court’s discretion and authority should be made more clear.</p>	
Julia Wu	<p>[ ] I recommend that the proposed rules should permit local court rules to (i) provide the same or <i>more</i> than the notice period required by the proposed rules, instead of less, and (ii) to extend notice period longer than the current proposal.</p>	<p>The committee considered this comment but has concluded that the rule should authorize local rules for either more or less notice, so long as clearly stated in the local rule. See response on this issue to California Federation of Interpreters, Local 39000, above.</p>

## SP21-08

**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
Alliance for Children’s Rights	<p>2. We think that the time constraints on when notice must be provided to other parties or else permission from the court must be sought before a remote appearance may proceed are too limiting. Los Angeles County provides that a remote appearance may be scheduled through LA Court Connect up to two hours before a hearing. This has been a tremendous asset in access to justice for both attorneys and their clients and pro pers. Currently, if a person feels they are too ill to attend court, they may sign up to appear remotely the night before the hearing without issue. If a party’s child is sent home from school due to illness the day before a hearing, that party may easily sign up to make a remote appearance the night before the hearing and can remain home to care for the child. Under these new rules, if someone is feeling too ill to come safely to court (and to protect all those who are working at or utilizing the court) or if there is a family emergency that keeps them home while still allowing for a remote appearance to be made, that person may only request that the court allow for the remote appearance and risks adverse effects if that request is not granted. Remote appearances are such a tremendous step toward access to justice for all that we believe that they should be as easy and simple to access with as few time constraints as possible. Anything else is a step backward from this goal.</p> <p>3. We request additional guidance on how a party may “ask the court for leave to appear remotely without the notice [...]”. Is this done orally prior to the start of the hearing (i.e., the party calls in to make the remote appearance and asks for permission)? Or must this be done in writing as</p>	<p>The committee notes that courts that have the ability to have remote appearances on such a short time frame may continue to do so under the provision in the rule that allows courts to adopt local rules of courts so long as they comply with the new statute.</p> <p>Subdivision (j) provides the court with discretion to allow remote appearances even when parties have not been able to comply with the applicable statewide or local rules. The committee has not included more specific requirements in the rule, and how it applies will</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>well, presumably requiring the correct form?</p> <p>4. We request additional guidance on what courts may consider to be notice to all parties when parties elect to participate remotely. For example, in Los Angeles County, when parties sign up to participate remotely it is reflected on the “Case Access” page so other parties can access information on which parties are signed up to appear remotely. Does that qualify as notice?</p>	<p>vary depending on proceeding type and court.</p> <p>This question is seeking a legal opinion and is outside the scope of this rule proposal. The committee notes that recommended form RA-010 can be used to provide notice to other parties.</p>
<p>California Department of Child Support Services</p>	<p>Remote appearances via phone have been historically problematic because the litigants, most often pro per, must file a request to appear telephonically at least 15 days before the hearing and then pay a substantial fee via vendors like Court Call. Further complicating the court call process are restrictions the court may determine based on how far away the litigant is from the court or their ability to pay the fee. In large part, the option of remote appearance via telephone is too cumbersome, complicated, and/or expensive for many child support litigants whereas remote appearance by a no-cost service such as Zoom achieves the same or better results than a phone appearance.</p> <p>Generally speaking, any process that requires specific forms use or restrictive procedural timeframes without any discretion of the court presents a problem to pro per child support litigants. If promoting and expanding access to the court is the primary goal, the simplest and most cost-effective means to achieve that goal to promote active participation by litigants are requested.</p>	<p>The committee notes that the new statute requires notice to the court and all parties, and also mandates that the council adopt rules regarding deadlines for such notice. (§ 367.75(k).) However, the rule does allow the discretion of the court to allow for remote appearances for a party has not been able to comply with the rules. See rule 3.672(j).</p>

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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
	<p>2) <b>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants?</b> Filing documents timely with the court is always a challenge for pro-per litigants, especially in child support cases. However, because the court, by rule, may still allow a party to appear remotely even if they didn't follow the proper protocol of filing and serving notice of intent to appear remotely, the application may be broad enough to work.</p> <p><b>Work for the courts?</b> Typically filing of documents with the court happens no later than 10 days before the hearing as found in CCP § 1005(b). These timelines for filing notice are significantly less than that (3 days, 2 days, and same day requests) which could present some issues not only for court clerks processing filings but also for the bench officers. Should filed requests not be processed timely, the form may not make it to the court file in time for the hearing which could cause confusion.</p> <p>Additionally, Rule 3.672(g)(2)(b) Time of notice for hearings or trials with at least 15 days' notice; cites the time of notice for hearings as 15 "court days" which is inconsistent with the other language in the rule simply stating "days" and not court days. The timeframe should be clarified to avoid confusion.</p> <p>3) <b>Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient?</b></p> <p>Written notice of intent should not be required in all circumstances. In Title IV-D child support matters (IV-D), evidentiary or non-evidentiary, oral or other unwritten notice is preferred. Prior to the pandemic, parties were noticed of an upcoming hearing, and they could either attend, or not. There</p>	<p>The committee appreciates the comment.</p> <p>The rule has been revised in light of this and similar comments.</p> <p>As noted above, the new statute requires notice to the court and all parties to initiate a remote hearing. (§ 367.75(a).) Note that for evidentiary matters, however, the statute authorizes courts to initiate remote hearings, and the rule allows courts to do so by local rule or notice</p>

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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
	<p>was and is no current rule that requires an individual to provide notice of intent to appear physically and remote appearances should be no different so long as remote appearance technology is available in the court and remote appearances are standard practice. For IV-D hearings in county courts with local rules, the parties appearing remotely are provided information as to how to log in to the remote technology platform and simply by logging in and appearing at the hearing, they have noticed the court and other parties of their intent to do so remotely. IV-D calendars can have upwards of 40 cases on calendar with a minimum of two parties appearing on each case plus the LCSA attorney. To mandate written or oral notice of intent to appear remotely when there has been no requirement for the last two years will be a detriment to the process and ultimate end result. Requiring oral notice from a party raises the question of who they are to provide notice to and how that can be proven or tracked.</p> <p><b>If so, how should proof of such notice – which is required by statute – be provided to the court?</b></p> <p>If notice is required, it could be accomplished by the party simply logging into the remote hearing platform (Zoom, Teams, WebEx, etc.). At this time, the party would be giving notice to the court and the other parties of their remote attendance. If there is an objection to the remote appearance from the other parties or the court, the court can consider that objection and continue the matter for personal appearance as necessary. For Local Child Support Agencies (LCSAs) who manage IV-D litigation and have several cases on calendar with multiple parties on each case, simplified notice of intent to appear is preferred.</p>	<p>to the parties. The committee has considered this and other comments, and concluded that written notice to the court is needed, unless the court has developed an online method for providing notice instead, but that notice to other parties may be in writing, electronic, or oral.</p> <p>The committee recognizes that there may not have been a requirement of notice to appear remotely in proceedings held under emergency rule 3, but the new statute will require such notice as of January 1, 2022.</p> <p>See response above.</p>

**SP21-08**

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**Issue 2: Time and Form of Notice to Court and Other Parties**

<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p data-bbox="541 368 1293 699">[] Courts with local rules regarding remote appearances will continue to operate under those rules as allowed by statute. Those county courts without a local rule however will be required to follow the procedures set forth in the new statute and this proposed rule. For that reason, and to provide the simplest and most efficient path forward for pro per child support case participants that have been appearing remotely in court for the last 2 years without notice requirements or the use of mandatory forms, the department has the following requests:</p> <p data-bbox="638 735 1293 1333">1) The department respectfully requests that the Rule adds a provision that allows local child support agencies (LCSAs) responsible under Title IV-D of the Social Security Act for establishing and enforcing child support cases, to notice all parties to the case, at the time of filing of the motion, that the hearing will happen via remote technology and that all parties have an ability to appear remotely unless an individual opposes a remote appearance by any party by filing the appropriate form and the court issues an order requiring in-person appearances. Parties may always appear in-person at their election. The motion of the LCSA is granted unless, under Rule 3.672(d) opposes. Further, the department requests that language be included stating if an initial appearance of a party is via remote technology, all subsequent appearances by that party on that motion may be made remotely unless the court makes a contrary order.</p> <p data-bbox="541 1372 890 1398">Suggested language for Rule:</p>	<p data-bbox="1318 670 1974 829">The new statute does not allow one party to unilaterally provide that all the parties in a case must appear remotely. For evidentiary hearings, however, a court may make remote proceedings the default, eliminating the need of parties to provide notice.</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><i>Local child support agencies (LCSAs) responsible under Title IV-D of the Social Security Act for establishing and enforcing child support cases, are authorized to notice all parties to the case, at the time of filing of the motion, that the hearing will happen via remote technology and that all parties have an ability to appear remotely unless an individual opposes a remote appearance by any party by filing the form CIV-022 at least 15 days prior to the hearing and the court issues an order at least 10 days prior to the date of hearing requiring in-person appearances. Parties may always appear in-person at their election. The remote hearing request of the LCSA is deemed granted unless the court denies the request under Rule 3.672(d).</i></p> <p><i>If the remote hearing request by the LCSA per this Rule is made for an ex parte proceeding, oral notice of the request to conduct a hearing remotely shall be sufficient. Parties may always appear in-person at their election. The remote hearing request of the LCSA is deemed granted unless the court denies the request under Rule 3.672(d).</i></p> <p>In instances where the LCSA is not the moving party filing the motion but is a party to the case, the department respectfully requests that a provision be added to the Rule to allow the LCSA to request a remote appearance for a child support case participant consistent with the process found in Rule 5.324(e)(1).</p> <p>Suggested language: <i>The local child support agency may request a remote</i></p>	<p>If the agency has the authority to act on behalf of those parties or participants, the proposed notice form (RA-010) will allow the agency to provide notice that they intend to appear remotely.</p>



## SP21-08

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<b>Issue 2: Time and Form of Notice to Court and Other Parties</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<i>appearance on behalf of a party, a parent, or a witness when the local child support agency is appearing in the title IV-D support action, as defined by rule 5.300(c).</i>	
Committee on Administration of Justice, Litigation Section California Lawyers Association	<p><b>1. CAJ's response to the Request for Specific Comments</b></p> <ul style="list-style-type: none"><li>• <b>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</b></li></ul> <p>[Committee on Administration of Justice (CAJ)] believes the timelines for providing notice of remote appearance for an evidentiary hearing or trial are too short and potentially problematic. CAJ's main concern is that the proposed procedure does not appear to provide adequate time before the hearing or trial for any opposition to be considered and for the court to determine whether to conduct the hearing or trial in whole or in part through the use of remote technology, notwithstanding an opposition, and issue an order following that determination.</p> <p>Under proposed rule 3.672(g), in response to notice of a remote proceeding, a party may make a showing to the court as to why a remote appearance or remote testimony should not be allowed by serving and filing an opposition 1) at least five days before the proceeding if for an evidentiary hearing or trial for which a party gives or receives at least 15 days' notice; or 2) at least noon the court day before the proceeding if for an evidentiary hearing or trial for which a party gives or receives less than 15 days' notice. The first provides very little time for court consideration and a court ruling before the hearing or trial and the second provides almost none. It is not clear how far in</p>	<p>The committee has considered this and other comments, and decided to leave the default deadlines as proposed in the circulated rule. The committee notes that parties and courts may raise the question of remote appearances and testimony at any time during a case if they are concerned that more time is needed to address issues that might arise. Subdivision (e), however, allows a superior court to adopt a shorter or longer deadline by local rule.</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>advance of the hearing or trial those rulings will actually be issued. Because the differences between a remote appearance and an in-person appearance can be significant, there needs to be adequate time to make arrangements if an in-person appearance is required, including for travel, time off of work, potential child-care, and other related factors tied to an in-person appearance by any individual.</p> <p>To provide more time between any opposition and the evidentiary hearing or trial, and to provide adequate time before the hearing or trial for issuance of the court’s order, CAJ suggests requiring notice and any opposition further in advance of the hearing or trial. Although CAJ is not set on a specific number of days, and absent a requirement that the court rule within a specified number of days before the hearing or trial, CAJ believes more time is needed to accommodate a notice and opposition process. CAJ also recommends that consideration be given to an additional and <i>optional</i> procedure, whereby a party who knows in advance that they will want in-person testimony by a particular witness could preemptively raise the issue and provide the parties and the court with a clear option for case and witness management, and an opportunity to obtain at least a conditional ruling further in advance of the hearing or trial so everyone can plan accordingly.</p> <p>As a separate issue, proposed rule 3.672(f)(2)(B)(ii) sets forth a timeline that applies to notice for a hearing with less than three days’ notice by any party other than an applicant or moving party choosing to appear remotely. Under the proposed rule, that notice must be provided no later than noon on the court day before the proceeding. Notice of an ex parte appearance is often</p>	<p>In light of this and other comments, the committee is changing the time for notice under these circumstances to 2:00, rather than noon. (See rule 3.672(g)(2)(B).)</p>

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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
	<p>not provided until 10:00 a.m. on the court day before the ex parte appearance. In that circumstance, the party other than the applicant or moving party would only be given two hours to provide notice to appear remotely. CAJ recommends that this rule be revised to provide that notice must be provided no later than the “close of business” on the court day before the proceeding.</p> <p><b>• Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice—which is required by statute—be provided to the court?</b></p> <p>CAJ believes written notice should be required in all cases. The proposed forms make it easy to provide that notice. Proof of oral notice (and the date of such notice) will potentially open up unnecessary issues and disputes.</p>	<p>After considering this and other comments on this issue, the committee has concluded that rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice.</p>
Family Violence Appellate Project	<p>In subd. (f)(2)(A)(ii), the ultimate phrase “no later than noon one court day before the proceeding” is ambiguous because it could mean noon on the court day immediately before, or noon at least one court day before the proceeding. The intent seems to be the former and so the phrase should be rewritten as “no later than noon on the court day before the proceeding.”</p> <p>In subd. (f)(2)(B)(ii), the phrase “by telephone” should be clarified to allow notice by voicemail, which is the standard for providing phone notice for most ex parte motions.</p>	<p>The rule has been amended in light of this and other comments.</p> <p>The rule has been amended to allow notice to be provided in writing, electronically, or orally, and the form that may be used to provide proof that such notice</p>

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Commenter	Comment	Committee Response
	<p>In subd. (g)(3)(A)(ii), for consistency and clarity, there should be added the sentence used elsewhere in the rule, “Service must be by any means authorized by law and reasonably . . . .”</p> <p>[ ]</p> <p>FVAP does not have a position as to whether these and the other forms should be mandatory or optional, seeing advantages and disadvantages to both approaches. If the forms are mandatory, rule 3.672 should clarify what courts can and should do when the form is not used or is not used correctly. For instance, if a self-represented litigant fails to file the form but sends the department clerk an email timely requesting a remote appearance because that is that county’s current informal practice—or if a self-represented litigant files the form but writes in the incorrect hearing date or fails to fill in the party names—they should not be penalized. In such cases the rule needs to be clear courts cannot enter a default or default judgment against such a party, but rather advise them of the correct procedures. Of course, discretion should be maintained for situations where a litigant is playing fast and loose with the rules and is clearly delaying a proceeding by intentionally or recklessly refusing to follow the proper procedures.</p>	<p>was given sets out the various methods. (See rule 3.672(g)(2)(B) and form RA-010 (Declaration of Notice).)</p> <p>See response above.</p> <p>The rule allows a party to request to appear remotely without the required notice on a showing of good cause. Rule 3.675(j).</p>
<p>Hon. Janet Frangie</p>	<p>1. <u>Will the proposed timelines work for the courts?</u></p> <p>My concern here is that, due to the COVID Pandemic, many courts, my court included is backlogged in the filing of pleadings and has to prioritize their filing. It is very likely that</p>	<p>In light of these and other comments, the committee has revised the rule to allow local rules on this point. (Rule 3.675(e)(1). See also subd. (h)(3)(A)(iii).)</p>

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	<p>these forms will not make it to the actual department prior to the actual hearings. Our courts also do not have the resources as of yet to handle regular email correspondence and pleadings filed through that route. I would suggest that, <u>at the very least</u>, any Opposition Forms be required to be filed <i>directly in the department</i>.</p> <p><u>Specific Comments on the Rule:</u></p> <p>A. <u>Rule 3.670 (f) (2) (i) – page 15:</u></p> <p>(1) “* * * ensuring delivery at least two court days before the proceeding” – under current conditions, these will never get to our department unless they are filed directly in the respective department.</p> <p>(2) I read the last sentence as only requiring the self-represented person to consent to service and otherwise email service on counsel is okay without consent. I think, however, this sentence could be read another way to require consent of represented parties as well. Can this be clarified? [FN 3 If changed, similar provisions in the Rule would need to be changed as well.]</p> <p>B. <u>Rule 3.670 (f) (2) (B) (iii) – page 16:</u></p> <p>I suggest you not <i>require</i> a local rule to have it received [FN 4 Is this the same as “delivered”?] in the department. Will a general Order suffice? I would request that all requests and notices on less than three court days be delivered directly to the</p>	<p>The quoted provision addresses service only. See however the response above regarding local rules.</p> <p>In light of comments that have been received, the rule now provides that notice may be provided less formally and this language is no longer in the rule.</p> <p>The committee notes that general orders fall within the definition of local rule within rule 10.613 and must meet the requirements of that rule.</p>

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	<p>department at least with respect to evidentiary hearings and trials and especially when there are objections. (See Rule 3.670(g) (3) (ii) – page 19.)</p> <p>C. <u>Rule 3.670 (g) (2) (B) (ii) – page 18:</u></p> <p>Should you include “appear and <u>conduct</u>” the evidentiary hearing or trial here as well? Subsection (g) (1) talks about “conducting” but the other subsections only talk about “appearing”. I think the language should be consistent.</p> <p>D. <u>Rule 3.670 (g) (3) (A) (ii) – page 19:</u></p> <p>I suggest having this Opposition be required to be filed directly in the department.</p>	<p>The committee notes that the sections that reference “conducting” proceeding are referring to the court doing so, and the sections that reference “appearing at” proceedings are referring to a party or counsel doing so.</p> <p>Many courts require filing to be done electronically or at the clerk’s window, so a statewide rule requiring filing in a department would not work.</p>
Lawdable Press	<p>(1) Written notice of intent to appear remotely should be in writing. It is more efficient, more clear and concise, and provides its own proof.</p> <p>Anyone appearing remotely presumably has the technology to file and serve (most likely eFile and eServe) the proposed JC form for notice in a matter of minutes.</p> <p>The proposed language re “notifying the court and all others” is taken from the current rule re telephonic notice. It has always been vague and made little sense, e.g., why would that rule (and the proposed rule as drafted) require the filing and service of a specific JC form if one opts for written notice, yet have zero guidance/requirements for oral notice?</p>	<p>After considering this and other comments on this issue, the committee has concluded that the rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice.</p>

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	<p>Telephonic notice is far more cumbersome than written notice. Oral notice would require separate calls to the court and to counsel. How long would it take someone to find the phone number to call the court? How long would they be on hold? Then they would have to separately call interested parties. Any required proof would have to be filed with the court -- making filing the JC form in the first place the most expeditious and foolproof method.</p> <p>There is nothing onerous about requiring the service and filing of the JC form, particularly given the good cause provision in para (i) allowing a party to ask for leave to appear remotely without providing the requisite notice.</p> <p>[ ]</p> <p>(3) The following comments are mentioned in more detail in my separately submitted mark up.</p> <p>A. There are several references in (f)(2)(a) and (B) to “three days,” when it appears the intent is “three court days.” That should be fixed in the text and headings.</p> <p>B. Opposition to a notice of remote proceedings or a remote appearance is required “at least five days before the proceeding” under (g)(3)(A)(i). But (g)(2)(B)(ii) allows “other parties” to give at least five days’ notice before the proceeding. If a party wants to object to the remote appearance of an “other party,” the deadline for opposition should be pegged to the receipt of that notice. Otherwise, the deadline for the opposition could be the same day the notice of remote appearance is</p>	<p>In light of these and other comments, the rules have been revised to refer only to court days.</p> <p>The committee has considered this suggestion but concluded that the default time frames should remain as proposed. Subdivision (e), however, allows a superior court to adopt a shorter or longer deadline by local rule.</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	received.	
<p>Legal Aid Associations of California</p>	<p><b><u>Notice and Access</u></b>            As with in-person hearings, <b>notice is a crucial issue for remote hearings</b>, with particular necessities related to the remote nature. Notice should be clear, direct, and thoroughly admonish the recipient of options and requirements. 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. [FN 11 THE NATIONAL ASSOC. FOR COURT MANAGEMENT, 2019 PLAIN LANGUAGE GUIDE, <a href="https://nacmnet.org/wpcontent/uploads/NACM-Plain-Language-Guide-20190107.pdf">https://nacmnet.org/wpcontent/uploads/NACM-Plain-Language-Guide-20190107.pdf</a>. See also NATIONAL CENTER FOR STATE COURTS, PLAIN LANGUAGE RESOURCE GUIDE, <a href="https://www.ncsc.org/Topics/Access-and-Fairness/Plain-Language/Resource-Guide.aspx">https://www.ncsc.org/Topics/Access-and-Fairness/Plain-Language/Resource-Guide.aspx</a>.] This will help avoid unnecessary delays and miscommunications between the courts and litigants.</p> <p>Above all, it is essential to avoid punitive measures when addressing non-attendance or other matters in relation to notice and participation in a remote hearing. This is particularly important in cases like unlawful detainers where an individual may be constrained by the time period [FN 12 AIMEE INGLIS &amp; DEAN PRESTON, CALIFORNIA EVICTIONS ARE FAST AND FREQUENT, TENANTS TOGETHER (2018), <a href="https://static1.squarespace.com/static/52b7d7a6e4b0b3e376ac8ea2/t/5b1273ca0e2e72ec53ab0655/1527935949227/CA_Evictions_are_Fast_and_Frequent.pdf">https://static1.squarespace.com/static/52b7d7a6e4b0b3e376ac8ea2/t/5b1273ca0e2e72ec53ab0655/1527935949227/CA_Evictions_are_Fast_and_Frequent.pdf</a>.] and other issues with remote hearings, resulting in due process concerns. [FN 13 See, e.g., <i>Procedural Due Process Challenges to Evictions during the Covid-19 Pandemic</i>, NATIONAL HOUSING LAW PROJECT</p>	<p>The Notice of Remote Appearance (form RA-010) has been revised to provide plainer language in the instructions regarding notice, and now includes a declaration of notice to make it easy for a self-represented party to provide proof to the court that notice was provided.</p> <p>A party may ask the court to appear remotely even if the notice requirements have not been met. (Rule 3.672(j)(ii).</p>



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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>(2020), <a href="https://www.nhlp.org/wp-content/uploads/procedural-due-process-covid-evictions.pdf">https://www.nhlp.org/wp-content/uploads/procedural-due-process-covid-evictions.pdf</a>. ] Likewise, it is important in family law and domestic violence restraining order matters where litigants may lose custody of their children or be denied a protective order ensuring their safety and the safety of their children. [ ]</p> <p>Generally, members of our legal aid community had some concerns around the notice form, including uncertainty around the purpose of the notice form; how and when it is granted or denied; whether there is any appeal or challenge to the denial by the court; and confusion around the timeline of this process. Increased clarity on these issues would be helpful. We also believe that there should be a tracking mechanism for courts that continuously require in-person hearings, and which of the rationales outlined in the proposal they choose. We are concerned that some communities or individuals may be routinely denied access to remote hearings, if they want them, via this system, and tracking when and why courts require in-person hearings would be helpful to ensuring transparency and accountability. This could be accomplished by requiring courts to implement and maintain a data collection and retention system specific to remote hearing practices. This will help inform current and future remote hearing practices, especially as it relates to increasing access to the courts for SRLs.</p> <p>Furthermore, while we understand that this proposal does not currently admonish courts to establish the following values or protocols pertaining to notice, we nonetheless believe that the Judicial Council could do so to increase access, efficiency, and ease, especially for marginalized court users.</p>	<p>The statute provides that a party may appear remotely after providing notice to the court and all other parties (§ 367.75(a)), unless a court requires an in-person appearance (§ 367.75(b) for non-evidentiary proceedings and § 367.75(d)(1) for evidentiary proceedings). The rule reflects that new law.</p> <p>The issue of court tracking of requests is outside the scope of this proposal.</p>

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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
	<ul style="list-style-type: none"><li>● <b>All proposed forms should be mandatory forms. That said, recognizing the myriad access issues associated with mandatory forms and SRLs in particular, alternative forms of notice should be permitted at the court’s discretion.</b> These alternative forms of notice should not include local, court- and/or county-specific forms, as these local forms have proven to impede SRLs in completing and filing forms correctly on the first try as well as vary case type processes statewide. For example, a SRL may have one experience in X County only to have a different experience for the same case type in Y County. Alternative forms of notice could include, but should not be limited to, oral, email, or text message so long as courts have specific procedures in place for accepting and documenting such forms of notice. In no case should alternative forms of notice replace the mandatory forms.</li><li>● <b>As referenced above regarding non-punitive remedies, if a SRL fails to use the mandatory form or fails to file it within the correct number of days before the hearing, and then does not appear for in-person court, the matter should not be defaulted.</b> If there is any evidence of the party’s intent to appear in the matter, including through an oral or written request, even if untimely, the court should not default the party but should advise the party of the way to correctly request remote appearance.</li></ul> <p>[ ]</p> <ul style="list-style-type: none"><li>● For civil cases, courts should allow shorter notice periods than two court days for non-evidentiary hearings and ten court</li></ul>	<p>In light of this and other comments, the committee is recommending that any forms required (other than in juvenile dependency cases governed under section 367.75(h)) must be the mandatory Judicial Council forms. (See rule 3.672(e) and form RA-010.) In addition, after considering this and other comments on this issue, the committee has concluded that the rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice.</p> <p>This issue is outside the scope of this rule, but the committee notes that a party make ask to appear through remote technology even if the party has not met all the notice requirements. See rule 3.672(j)(ii).</p> <p>After considering this and other comments, the committee has decided to leave the default timeframes</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>days for evidentiary hearings (for the same reason as above). We commend the Judicial Council on its proposed good cause language in subdivision (i)(2), as this is definitely needed (and we hope broadly applied).</p> <ul style="list-style-type: none"> <li>● For summary proceedings, like unlawful detainers, notice of remote appearance should be allowed on the day of the hearing, like the current system in place.</li> <li>● The clear notice should plainly state whether the litigant will be using remote hearings software and include a description of how to get more information about doing so as well as how to opt out. The court could, such as through Form CIV-021 (Notice of Remote Appearances), obtain or convey information regarding technological capacity in order to ensure the court user has Internet access and can download and use the videoconferencing platform. Before the hearing, the court could also determine if there are ADA accommodations or language access needs too at this early juncture, as discussed above. [ ] [ ]</li> </ul> <p><b>This issue of notice also intersects with the role of court webpages.</b> We believe each court should have user-friendly, accessible, and complete webpages, which are even more important as other moving parts of the legal system become remote. If the notice is not received for whatever reason, litigants should be able to check daily dockets on the court’s remote hearings webpages, with the information regarding whether the hearing is virtual or in-person. Websites become ever-more critical as places that can be barriers as litigants look for the information they need. It is essential to maintain clear,</p>	<p>as proposed. Subdivision (e), however, allows a superior court to adopt a shorter or longer deadline by local rule.</p> <p>After considering this and other comments, the committee has decided to leave the timeframes as proposed.</p> <p>The rule requires courts to provide on their websites information necessary to appear remotely. (See rule 3.672(m).) Because this will differ from court to court, and potentially among courthouses within a court, it is impossible to include this information on the mandatory statewide form.</p> <p>See response above.</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>concise, and accessible remote hearings webpages that give litigants all of the information they need to participate, and do so meaningfully, including the basics of whichever platform is being used as well as how to best prepare for their hearing. Further, these pages should presume that the user is navigating both these technological systems as well as the legal system for the first time. This will increase accessibility, while also increasing court efficiency by avoiding delays and impediments to the hearing process.</p>	
<p>Legal Aid Foundation of Los Angeles</p>	<p><u>Will the proposed timeline for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</u></p> <p>The context in which notice requirements and the option to file an opposition is unclear. The timeline lays out when parties need to file the Notice of Remote Appearance form and the Opposition to Remote Proceedings at Evidentiary Hearing or Trial form. It does not, however, explain whether the Notice form functions as a one-way communication or as a request to the court with the mode of appearance pending until a decision is made and conveyed. For cases where the deadline to submit an Opposition is not due until noon the court day before the proceeding, the parties who have filed a Notice to appear remotely at the outset of the case will not know what to make of the other party's Opposition. One possibility is that the Opposition will function to veto the plan to appear remotely, in which case a party planning for a remote evidentiary hearing may need to pivot to an in-person appearance the day before. Alternately, the Opposition could trigger a hearing on the issue. A litigant could then well appear remotely expecting a hearing on the substance of the case only to learn that that matter had been continued so that the court could resolve the parties'</p>	<p>The statute provides that a party may appear remotely after providing notice to the court and all other parties (§ 367.75(a)), unless a court requires an in-person appearance (§ 367.75(b) for non-evidentiary proceedings and § 367.75(d)(1) for evidentiary proceedings). The rule reflects that new law.</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>disagreement about the mode of their appearances. Without clarification, this ambiguity is likely to lead to misunderstandings, hearing delays and additional court appearances.</p> <p>In the area of domestic violence restraining order cases, the proposed timeline is unworkable and inattentive to the urgent needs that are addressed at the outset of restraining order cases. The proposal explicitly addresses notice requirements in restraining order cases under (g)(2)(C) when a party chooses to appear remotely and the notice of the proceeding is given or received less than 15 days before the evidentiary hearing or trial date. In such cases, notice of intent to appear must be provided either by (a) serving and filing a Notice of Remote Appearance with the application [for a restraining order]; or (b) include on the first page of the application the phrase “Remote Appearance.” (f)(2)(B)(i) and (ii). LAFLA drafts and prepares restraining order applications for self-represented domestic violence survivors daily through our domestic violence hotlines and clinics. In the vast majority of restraining order cases, the urgency of completing and filing the application precludes first discussing and making a binding choice among remote appearance options. Survivors often file for restraining orders DRAFT immediately following abusive incidents that put themselves and their children at risk of further harm. Many survivors in our client community are rendered homeless, struggle with securing basic financial and emotional stability and are unlikely to assess whether they’ll have the technology or capacity to make a remote appearance at the moment they’re seeking a Temporary Restraining Order through the restraining order process. [FN1 In Los Angeles the court has largely</p>	<p>In light of these and other comments, the rule has been revised to allow notice either with the moving papers, or up to five court days before the hearing. (See rule 3.672(h)(2)(D).) In addition, a party may request to appear remotely with good cause even if they have not complied with the notice requirements. (Rule 3.672(j).)</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>ignored the Judicial Council’s Emergency Rule 8(b)(1), issued April 6, 2020, which allowed for the issuance of Emergency Protective Orders (EPO) for up to 30 days. Instead, they continue to be issued, when granted at all, for the regular 5-7 day period. Restraining order filings are inherently urgent, and as a result, often ex parte, in their initial application. Given the short duration of EPOs in Los Angeles, we often need to work quickly to timely file a restraining order application to avoid a gap in protection for our clients. In order to meet the court’s filing deadline to have the restraining order processed the same day, there is insufficient time for petitioners to make an informed decision on whether to make a remote appearance for their hearing.] Making an informed decision at this early stage of a restraining order case is difficult. Any proposed timeline that applies to restraining order cases should contemplate an option where survivors can submit the Notice form closer to the hearing date rather than requiring it at the outset of a case.</p> <p>The provision that allows litigants to appear in person even if the court granted the remote appearance doesn’t resolve this problem for three reasons. (i)(1) First, it’s unclear what would constitute reasonable notice. Second, it doesn’t provide sufficient assurance for parties to opt for a remote appearance as the default at the outset of a DVRO case. Lastly, it would lead to unnecessary filings by incentivizing petitioners to file the Notice form to preserve a remote appearance option.</p> <p><u>3. Is written notice of intent to appear needed in all circumstances, or would a role requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice – which is required by statute – be provided to the court?</u></p>	<p>Comments regarding issuance of TROs are outside the scope of this proposal.</p> <p>In light of this and other comments, rule 3.672(j) has been revised to remove any requirement that a party who has provided notice of intent to appear remotely and later decides to appear in person provide any notice of that change.</p> <p>The committee is not aware of any problem with persons filing the notice to preserve the option to appear remotely if that is what they want to do.</p> <p>After considering this and other comments on this issue,</p>

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Commenter	Comment	Committee Response
	<p>For domestic violence restraining order cases, the first opportunity to provide oral notice to the court is the hearing to obtain the more permanent restraining order, the Restraining Order After Hearing. Notice to the other party in these cases should be in writing to the court. Domestic violence restraining order cases are ex –parte filings with Temporary Restraining Orders (TROs) that frequently include no-contact provisions. Safety concerns and compliance with TROs makes inappropriate any option that requires direct communication between the parties.</p> <p>[ ]</p>	<p>the committee has concluded that the rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice. The committee also notes that written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate a restraining order.</p>
<p>Los Angeles County Bar Association</p>	<p>Proposed rule 3.672(g)(1)(A) allows a court to give 10 days’ notice prior to the evidentiary hearing or trial date of its intention to conduct the evidentiary hearing or trial remotely. Likewise, 3.672(g)(2)(B) allows a party who chooses to appear remotely to provide notice 10 days before the evidentiary hearing or trial.</p> <p>According to the draft rule, opposition to the court’s order or the party’s notice could be filed and served on a minimum of five days before the proceeding under proposed rule 3.672(g)(3)(A)(i). The proposed rule is silent as to the timing for the court’s ruling on the opposition. The strong view of the LACBA Litigation Section is that the timing for such notice is insufficient to allow affected parties to meaningfully prepare for a remote trial or evidentiary proceeding, to oppose notice of such a proceeding or to prepare for an in-person proceeding when a remote hearing was previously anticipated, or vice versa. We suggest that a longer, two-tier notice period apply, for example, 30 days for evidentiary hearings and up to 60 days</p>	<p>The committee has considered this and other comments, and decided to leave the deadlines as proposed in the circulated rule. The committee notes that parties and courts may raise the question of remote appearances and testimony at any time during a case if they are concerned that more time is needed to address issues that might arise.</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>for trials.</p> <p><b>Inadequate notice to oppose a remote trial or evidentiary hearing.</b></p> <p>The proposed Rule allows a court or party to announce an intention to proceed with an evidentiary hearing or trial remotely as late as 10 days prior to the proceeding. An opposition could be filed five days before the trial or evidentiary hearing. The LACBA Litigation Section feels strongly that the notice and opposition periods provide insufficient time to properly prepare and implement a remote proceeding or to adjust should a previously noticed remote hearing or trial proceed as an in-person proceeding. Moreover, the proposed rule does not address the timing for a court’s ruling on any opposition submitted. Because of the wide variance and inherent difficulties in scheduling witnesses, handling of exhibits, other logistics and technical support that may be needed when proceeding remotely or in-person, the LACBA Litigation Section recommends that the Judicial Council adopt a notice and opposition schedule that would resolve whether a trial or evidentiary hearing will proceed remotely or in-person no later than 30 days prior to evidentiary hearings and no later than 60 days prior to trials.</p>	
Marlee Nelder	<p>1) Times for notice/opposition are too short for practical administration and realistic notice in many cases and will lead to continuances and delays. Some of this could be ameliorated by having consistent timing in Court days rather than calendar days.</p> <p>2) Consistently specify that times are measured in Court days rather than calendar days. [ex: 3.672(f)(2)(A) title line</p>	<p>In light of these and other comments, the rule has been modified to clarify that all days in the rule are “court” days.</p> <p>See response above.</p>



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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
	<p>says “three days” but body says “three court days”] under rule 3.672.</p> <p>3) Adding “REMOTE APPEARANCE” to the first page of a pleading on an ex parte application under Rule 3.672(f) is likely to create confusion and delays. This is not going to give adequate notice, will not stand out enough, will be subject to being easily missed by bench, court staff and parties, and does not commit the noticing party to following the court conduct rules.</p>	<p>In light of this and other comments, the committee has eliminated this provision.</p>
Hon. Nathann Scott	<p>Should proposed Rule 3.672 include a new provision—Rule 3.672(f)(2)(C)—allowing the parties to stipulate they will appear remotely at all future non-evidentiary hearings?</p>	<p>In light of this and other comments, the rule has been modified and a new item added to form RA-010 to allow for parties to indicate they intend to appear remotely throughout the case. In addition, the rule has been modified to allow the parties to stipulate to that, and to waive notice from other parties, during a court proceeding. (See rule 3.672(f).)</p>
Self Represented Litigants Network (SRLN)	<p>The current proposal has strengths in that it permits a party to notice the court of a remote appearance via a standardized form allowing for telephonic and/or audio, and a selection option for evidentiary matters. However, as expressed in the comments of the Legal Aid Association of California, this could become muddled in practice.</p> <p>SRLN is urging courts around the country to consider building an opt-in and informed consent process upon filing rather than allowing remote issues to percolate throughout the case. We believe a structured opt-in process would not only be in the best interest of the parties, but also reduce the administrative burden</p>	<p>The committee appreciates the comment, but the committee has concluded that requiring parties to determine at the beginning of a case whether they are going to appear remotely in all proceedings goes beyond the parameters of the current statute and so is outside the</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>on Clerks and Judges.</p> <p>At filing, parties are a captive audience, and a process can be built to inform them of the pros and cons of remote, what kind of digital capacity is necessary to be successful, an assessment of their digital capacity, training on platforms used by the courts, information about how to select a default option for evidentiary matters separate from non-evidentiary matters and implications, and how to change the default option should their technology access change, fail, or simply because they choose to withdraw their consent to remote. A front-end process would also allow the court to more effectively identify and triage those individuals who lack technology and automatically place them in a more supported track through court services or community partners. A party’s selection would be noted on the initiating paperwork and there would be no need for separate service, unless a party sought to change the modality.<sup>8</sup>In the interest of efficiency, it may be worth including a box on all forms that ask the party to confirm their consent to their initial selection or indicate a change, and if so what change they seek. In the interest of simplification and streamlining data collection for subsequent analysis, it seems most prudent to create an early, standardized, and integrated approach that allows for segmentation and support of the most vulnerable rather than the creation of an entirely new set of procedures that puts the burden on the shoulders of the most vulnerable to speak up. There will of course still need to be a “last minute” exception lane, but if the question of remote is approached in an integrated way from the start, there will be less of a need to manage it as a separate matter.</p>	<p>scope of this proposal.</p>

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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
Cheryl Siler	<p>The main concern is with the inconsistency in the terminology used when referring to time periods, switching back and forth from “days” to “court days” as if they were interchangeable. Calculating a deadline in days (i.e. calendar days) vs court days can lead to very different results.</p> <p><b><u>PROPOSED NEW RULE 3.672</u></b></p> <p><u>Section (f)</u></p> <p>The title of section (f)(2)(A) is “Time of notice for hearing with at least <u>three days</u>’ notice.” [Emphasis added.] In contrast, in the body of the rule, it states “A party choosing to appear remotely in a proceeding under this subdivision for which a party gives or receives notice of the proceeding at least <u>three court days</u> before the hearing date, must provide notice of the party’s intent to appear remotely at least two court days before the proceeding.” [Emphasis added].</p> <p>These two timeframes should be stated identically so as not to cause any confusion. I suggest the title of section (f)(2)(A) be revised to state, “Time of notice for hearing with at least <u>three court days</u>’ notice.”</p> <p>Similarly, section (f)(2)(B) needs reconciliation with (f)(2)(A). As proposed section (f)(2)(B) references <u>three days</u>’ notice in both the title and in the body of the section. If the provisions of section (f)(2)(A) referring to notice of proceeding at least <u>three court days</u> before the hearing date are correct, then section (f)(2)(B) should be revised to state three court days as well.</p>	<p>In light of this and other comments, the rule has been modified to consistently refer to court days.</p> <p>See response above.</p>

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	<p>In addition, section (f)(2)(A)(ii) states, “If, after receiving notice of remote proceedings from a party as provided under (B)...” I believe the reference to “(B)” is incorrect and should be changed to “(A).” Section (B) relates to giving notice for hearing with less than three days’ notice. To make the rule absolutely clear, perhaps it could be revised to read, “If, after receiving notice of remote proceedings from a party as provided under (A)(i)...”</p> <p><u>Section (g)</u></p> <p>The title of section (g)(2)(B) is “Time of notice for hearings or trials with at least <u>15 days</u>’ notice.” [Emphasis added]. However, the body of that section states, “A party choosing to appear remotely at an evidentiary hearing or trial for which a party gives or receives notice of the proceeding at least <u>15 court days</u> before the hearing or trial ...”[Emphasis added].</p> <p>Furthermore, section (g)(2)(C) refers to 15 days both in the title and in the body of that section.</p> <p>(C) Time of notice for proceedings held on notice of less than <u>15 days</u></p> <p>A party choosing to appear remotely in an evidentiary hearing or trial for which a party gives or receives notice of the proceeding less than <u>15 days</u> before the hearing or trial date...” [Emphasis added.]</p> <p>The titles of sections (g)(2)(B) and (g)(2)(C) as well as the</p>	<p>The committee appreciates the commenter’s edit but notes that, in light of other comments received, that subdivision has now been eliminated.</p> <p>See response above.</p>

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Commenter	Comment	Committee Response
	<p>language in the bodies of both these sections should be reconciled to either all refer to 15 court days or to 15 days. Using two different periods of time makes it very confusing.</p>	
Superior Court of Alameda County	<ul style="list-style-type: none"><li>• <u>Will the proposed timelines for providing notice of remote appearances to courts and other parties work for specific litigants? And for the courts?</u></li></ul> <p>In order to promote clarity for court users, all conferences, hearings, and proceedings ideally would be treated the same as evidentiary hearings and trials, i.e., the court could establish, via local rule, timelines and notice procedures applicable to all. The Court would appreciate clarification as whether courts can adopt local rules establishing remote-related timing and notice procedures that are intended to apply for the duration of a case, rather than requiring separate notice and service for each “proceeding” within a case.</p> <p>Similarly, in order to reduce confusion and the work burden associated with multiple notice requirements, the Court would also like to know whether courts may create local rules establishing that such conferences, hearings, and proceedings are presumptively remote unless objection is properly noticed (in order to render such a local rule consistent with Code of Civil Procedure section 367.75)?</p> <p>If neither of the above proposals are possible, we are concerned that the proposed timelines are insufficient. In particular, they may not afford adequate notice for unrepresented parties. Further, the shortened time frames will require court staff to process, and judges to review, requests on an expedited basis</p>	<p>The committee notes that the statute treats evidentiary hearings and trials differently than non-evidentiary hearings, requiring that parties initiate remote proceedings in the latter via notice to the court and other parties. (Cf. §367.75(a) and (d).) However, in light of these and other comments, the rule has been modified (see subd. (f)) and proposed form RA-010 revised to allow parties to provide a single notice that applies for the duration of the case rather than providing one for each proceeding.</p> <p>The committee notes that the new statute requires that remote appearances be initiated by notice of the parties, not the court, except in evidentiary hearings and trials. (§ 367.75(a).)</p> <p>In light of these and other comments, the provisions regarding local rules have been modified. (See rule 3.672(e)(1).)</p>

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**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>that may not be feasible for all courts, particularly those with significant staff shortages.</p> <ul style="list-style-type: none"><li>• Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice-which is required by statute-be provided to the court?</li></ul> <p>The Court’s preference would be for courts to have the authority to establish, as a default, that certain non-evidentiary and non-trial proceedings would be presumptively remote, which would render the notice issue largely moot. Barring that possibility, we believe that notice should be in writing so that there is a clear and accurate record.</p> <p>[ ]</p> <ul style="list-style-type: none"><li>• <b>Rule 3.672, subsection (g)(l)</b> Subsection (g)(l) of proposed rule 3.672 addresses the notice that a court must provide if it intends to conduct an evidentiary hearing or trial remotely. The proposed language provides the following two options:</li></ul> <ul style="list-style-type: none"><li>(A) Providing notice to all parties in advance of the trial or hearing.</li><li>(B) Providing by local rule that certain evidentiary trials or hearings are to be conducted remotely.</li></ul>	<p>The committee notes that the new statute requires that remote appearances be initiated by the parties, not the court, except in evidentiary hearings and trials. § 367.75(a). After considering this and other comments on this issue, the committee has concluded that the rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice</p> <p>The commenter is correct that the intent was to provide alternative means of notice by the court, and the rule has now been modified to reflect that. (See rule 3.672(h)(1).)</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

Commenter	Comment	Committee Response
	<p>From the context, we believe that the intent is that courts may choose either (A) or (B). However, in the proposed rule the two options are not separated by the word “or,” which could potentially give rise to an argument that the courts must both provide advance notice and adopt local rules. We ask that the word “or” be added to the rule to clarify the intent beyond any doubt.</p>	
<p>Superior Court of Butte County</p>	<p>The court is concerned that the current proposal would place additional burdens on courts and litigants appearing telephonically in civil matters that do not currently exist. Such appearances have occurred since well before the pandemic, and the codification of authority to conduct remote appearances in civil matters need not make telephonic appearances more burdensome. The suspension of Rule 3.670 (Telephone Appearances in Civil Matters), Rule 5.9 (Telephone Appearances in Family and Juvenile Matters), and Rule 5.324 (Telephone Appearances in Title IV-D hearings and conferences) in order to provide a single process under proposed Rule 3.672 appears to do so. The goal of adopting one rule for clarity and consistency is appreciated, but proposed Rule 3.672 contains noticing requirements that do not exist under the aforementioned existing rules. The court requests that the committee reconsider the proposal by either amending proposed Rule 3.672 to maintain the less burdensome requirements for telephonic appearances under existing rules or by maintaining existing telephonic appearance rules and amending proposed Rule 3.672 to only apply to video appearances.</p>	<p>The committee notes that current rule 3.670 requires notice to courts and all other parties for telephonic appearances in general civil, probate, and unlawful detainer proceedings that are almost identical to the notice required for non-evidentiary proceedings in the rule circulated for comment. (See current rule 3.670(h).) The other two rules require express permission from the court before telephonic appearances in the cases they apply to, and so are <u>more</u> burdensome than the rules circulated for comment, except as applied to juvenile dependency, which the new statute requires that a request be made to the court before such an appearance may be made.</p> <p>Because the new statute authorizes courts to conduct remote proceedings only after notice from a party (see § 367.75(a)), the requirements for notice that have been in rule 3.670 have been duplicated here.</p>
<p>Superior Court of Los Angeles</p>	<ul style="list-style-type: none"> <li>• <i>Does the proposal appropriately address the stated purpose?</i></li> </ul>	

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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
County	<p>Yes, with the exception of section 3.672(i), which unnecessarily goes beyond statutory requirements.</p> <ul style="list-style-type: none"><li><i>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</i></li></ul> <p>The provision of the rule allowing courts to address this issue with a local rule means that courts can provide appropriate timelines in compliance with applicable statute and rule.</p> <ul style="list-style-type: none"><li><i>Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice—which is required by statute—be provided to the court?</i></li></ul> <p>No. Written notice of intent to appear is not needed in all circumstances; a rule requiring oral notice would be sufficient. The provision of the rule allowing courts to address this issue with a local rule allows courts to tailor the use of oral and written notice as needed.</p> <p><b>[]</b> <b>The Court objects to proposed Rule 3.672(i): Other rules regarding notice.</b> This section requires a party who has given notice to appear remotely, and instead decides to appear in person, to notice other parties. This requirement is not found in the statute and is unnecessary. Intent to attend remotely is not a promise; parties and attorneys recognize that fact. Existing rules regarding telephonic appearance do not include such a provision and after hundreds of thousands of uses of those rules, no serious problems have arisen.</p>	<p>See response below.</p> <p>The committee agrees.</p> <p>After considering this and other comments on this issue, the committee has concluded that the rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice.</p> <p>In light of this and other comments, the committee has modified this subdivision to remove the notice requirement. See rule 3.672(j)(i).</p>



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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
Superior Court of Monterey County	<p><u>Operational Impact</u></p> <p>Parties currently may appear remotely without requesting permission or providing notice of their intent to appear remotely. The proposed rule will require a party provide such notice, as mandated by CCP 367.75(a).</p> <p>The proposed rule will significantly increase paperwork required to be filed and served by the parties and processed by the court, by requiring a notice to be filed and served for every hearing. The proposed forms likewise require the filing party to specify the date, time, and location of the hearing for which the party wishes to appear remotely. The forms do not provide for a party to give notice that they intend to appear remotely in all proceedings in a matter.</p> <p>The amount of time that will be added to clerk’s office duties in processing the notices is unclear at this time, but is estimated to be substantial. The clerk’s office will be unable to maintain the current day-to-day processing of documents, including more critical orders and judgments, while also handling this influx of remote appearance notices. This new process would be easier to manage if it applied only to evidentiary hearings and trials.</p> <p>While the proposed rule does allow courts by local rule to modify/shorten the timelines for the various notices, it does not allow the court to establish a local rule that allows for remote appearances by default. Permitting a court to establish a default rule would minimize the need for processing notices prior to every hearing.</p> <p>This proposed rule would also impact a court’s ability to</p>	<p>The committee agrees that, as noted by the commenter, the new statute requires a party to provide notice to the court and all other parties of an intent to appear remotely.</p> <p>In light of this and other comments, the proposed rule and notice form have been modified to allow a party to give notice of an intent to appear remotely for the duration of a case. (See rule 3.672(f)(1) and form RA-010 at item 2.)</p> <p>The committee notes that the statute authorizes remote proceedings upon a party’s providing notice to the court and other parties of an intent to appear remotely. (§ 367.75(a).) The only exception is for evidentiary hearings and trials, for which the statute allows courts to initiate the remote proceedings. Because of that exception, the rule will allow courts to set a default only for those types of hearings and trials to be remote.</p>

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<b>Issue 2: Time and Form of Notice to Court and Other Parties</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>manage cases, by adding a layer of documentation required in order for the court to proceed smoothly with hearings.</p> <p><u>Self-Represented Parties</u> A significant number of litigants in the family law department, as well as conservatorships and guardianships in the probate department, are self-represented. Many have been appearing remotely without making a request or providing notice. Self-represented litigants already have a difficult time finding, completing, and submitting paperwork already required of them for their hearings, and this proposed rule will add another layer of documentation for the litigants to complete in order to continue appearing remotely in the future.</p>	<p>The committee notes that the new statute does not exempt self-represented parties from the requirement of providing notice to the court or other parties of their intent to appear remotely at non-evidentiary hearings. The new rule does allow courts to develop online procedures that would allow different notice and that may be easier for self-represented parties to use, and to adopt local rules that would set evidentiary hearings and trials as remote procedures should it desire to do so, so long as the requirements of the statute are met.</p>
Superior Court of Nevada County	<p>Our court’s primary comment is that the proposed rules, particularly those surrounding the handling of oppositions to remote appearances, lack sufficient flexibility for an efficient and workable solution. If implemented as drafted, these rules would lead to avoidable delays in hearings and trials. Every additional court notice required and continuance facilitated by the court creates additional strain on already overburdened court resources. The timelines required by the draft rules do not provide a mechanism other than continuances to facilitate an efficient process that would mitigate these additional resource constraints.</p> <p>The rule framework as drafted is incompatible with the court’s current technology suite (which includes automated scheduling for telephonic appearances in select hearings) and resource allocation. In order to facilitate a new framework such as the one contemplated by these draft rules, the court would have to</p>	<p>The committee appreciates the comment but notes that the statute allows for parties opposing remote appearances at evidentiary hearings and trials to make a showing to the court as to why a remote appearance should not be allowed. Because some such hearings are held on as little as 5 days’ notice, the rule regarding oppositions had to be fit within that timeframe. Subdivision (e) , however, allows a superior court to adopt shorter or longer deadlines by local rule.</p> <p>The committee notes that, under the new statute, requiring remote appearances as the default for non-evidentiary hearings is not authorized. However, the committee also notes that the statute does not mandate the provision of remote services or the purchase of new</p>

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	<p>use additional labor to manage or purchase new technology to facilitate scheduling appropriate matters.</p> <p>A modification of a pleading form to add “REMOTE APPEARANCE” is far too likely to lead to confusion and delays. Confusion and delays can result in unnecessary continuances when parties are not prepared. This results in further delay and more labor incurred in processing continuances and noticing parties. Notice of Remote Appearance and Opposition thereto should be submitted on required forms or as otherwise contemplated in a court’s local rule. This provides courts the flexibility to create efficient processes that align with existing business practices.</p>	<p>technology.</p> <p>In light of this and other comments, the committee has removed this provision.</p>
Superior Court of Placer County [Additional comment by judicial officer from the court]	<ul style="list-style-type: none"><li>• New Rule 3.672(c):<ul style="list-style-type: none"><li>○ Requiring notice in some of these proceedings under the new rule may be too onerous for self-represented litigants as a result of the necessity to file forms and the timelines in which they must be filed. Moreover, it will significantly increase staff workload as related to remote appearances related to the processing of forms. Here are some observations:<ul style="list-style-type: none"><li>▪ The new rule defines “Evidentiary hearings” to include “...any proceeding at which oral testimony may be provided.”</li><li>▪ By definition it will require almost all parties to a Family Law initial hearing on an R.F.O. to file a form and notice the other party. It will also require the same in D.V.R.O. initial hearings. (The parties are often sworn in at these hearings and provide testimony notwithstanding the fact they are often</li></ul></li></ul></li></ul>	<p>The committee agrees that the new statute, which does not exempt self-represented parties from the requirement of providing notice of intent to appear remotely to all other parties in a case, may place an added burden on those parties. The committee cannot by rule exempt them from the statutory requirements.</p> <p>The committee recognizes that these hearings, as described by the commenter, are indeed evidentiary hearings and as such are subject to subdivision (h)(1) of the rule.</p>

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Commenter	Comment	Committee Response
	<p>15 minutes or less.)</p> <ul style="list-style-type: none"><li>▪ In restraining orders or protective orders cases, the restrained party, once a temporary order is granted will not be able to provide notice to the other party. In child custody cases there may be a requirement or a need for on-site mediation which will require the parties to be present in person, absent an extraordinary circumstance.</li><li>▪ Like many trial courts, the court has conducted nearly every kind of proceeding remotely. Based on this experience, the court would like to comment that it has found that holding Family Law settlement conferences to be ineffective in the resolution or management of a case. The local bar associations have also requested these be in person absent an extraordinary or unusual circumstance.</li><li>▪ Finally, the new rule allows for remote appearances in Domestic Violence Restraining Order hearings and Contempt matters, however, the timelines do not work for D.V.R.O matters and remote appearances are not appropriate for these matters except as allowed by the court in unusual and extraordinary circumstances.</li></ul> <ul style="list-style-type: none"><li>• Placer County notes the following:</li><li>• Pursuant to the Placer County Superior Court’s current remote appearance emergency local rules, parties may go directly to the court’s website and sign up for the initial hearing on a Family Law R.F.O., a D.C.S.S. Child Support Hearing, a Family Law Case Resolution Conference</li></ul>	<p>The committee notes that restrained parties may provide papers related to the case to the protected party via attorney, process server, or other third party.</p> <p>Under the new statute, to the extent that a court has concluded that a certain type of proceeding is only effective in person, the court may require an in-person appearance of the parties, although it must make such decision on a hearing-by-hearing basis. (See Code Civ. Proc., § 367.75(b).)</p> <p>See response above. The committee notes that the statute allows remote appearances in evidentiary hearings and does not exclude hearings on requests for restraining orders. The court may determine, on a hearing-by-hearing basis, that a remote appearance is not appropriate. (Rule 3.672(d).)</p> <p>The proposed rules will allow courts to continue with such local online processes, so long as they comply with the statute. (See rule 3.672(e)(1).)</p>

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	<p>Hearing, and a Trial Assignment hearing without court approval and without notice. The local rules do allow the court to assess the matter and the court retains discretion to deny a remote appearance in the future. This process has been well received by the local bar association and self-represented litigants.</p> <ul style="list-style-type: none"> <li>• Pursuant to the Placer County Superior court’s current remote appearance emergency local rules the court does require “Mandatory In Person Appearances” in certain case types including Family Law and D.C.S.S. Trials and Long-Cause Evidentiary Hearings pursuant to F.C. section 217, Contempt Hearings/Trials, Default Judgement Hearings; D.V.R.O (Restraining Order) Hearings and Settlement Conferences. However, the local rule also allows for a party to ask the court for leave to file a request for a remote appearance in all of these hearings and then the party requesting the remote appearance must file the proper local form and provide notice to the other side. The parties may also stipulate at the time to a remote appearance should there be a request at the time the longer cause trial or hearing is set.</li> <li>• The Placer County Superior Court suggests one of the three options. These options provide greater access and reduce staff workload:             <ul style="list-style-type: none"> <li>○ Option 1: Adopt the Placer County emergency local rule 10.28 as a rule. It separates the process required for notice or approval by the court by hearing type. If the process for notice and approval is designated by hearing type then there is not a necessity to have a</li> </ul> </li> </ul>	<p>The committee notes that under the new statute, the party may provide notice to the court and all other parties of its intent to appear remotely at one of these hearings. If the court believes an in-person appearance is required, it has the discretion to require it. (Rule 3.672(d).)</p> <p>The committee has concluded that because the statute distinguishes only between (1) evidentiary hearings and trials, (2) juvenile dependency matters, and (3) all other hearings, conferences and proceedings, that the rule should do the same. There is no basis in the statute for treating some evidentiary hearings differently than other evidentiary hearings (other than in juvenile dependency actions).</p>

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	<p>definition for evidentiary hearing.</p> <ul style="list-style-type: none"> <li>○ Option 2: Modify the current draft rule to identify hearing types as opposed to defining an Evidentiary Hearing.</li> <li>○ Option 3: Modify the definition of an evidentiary hearing as set forth in the rule. That is, it could read “. . .any proceeding at which oral testimony and/or other evidence is presented, except for the following hearing types to include, initial Request for Orders in Family Law and/or Child Support hearings, Family Centered Case Resolution Conferences, Trial Assignment, Trial Confirming Conferences and any other hearing types as established by local rule by an individual county.</li> </ul> <ul style="list-style-type: none"> <li>● Finally, Placer County suggests that DVRO and Contempt matters, as well as Trials and Long Cause Evidentiary Hearings be subject to the default of mandatory in-person with the option to request leave of court with notice and approval processes. Again, this process has allowed parties the opportunity to be heard if the other side objects or if the court finds on a case by case basis and in-person appearance is required.</li> </ul>	<p>The committee notes that the court may by local rule set which evidentiary hearings it wishes to conduct remotely or otherwise, but the statute also allows parties to notify the courts and other parties when they wish to appear remotely. A judicial officer has the discretion to require an in-person appearance if appropriate under the statutory factors. (Rule 3.672(d).)</p>
Superior Court of Riverside County	<p>1. Proposed Rule 3.672(g)(1)(B) allows the court to adopt a local rule “providing that certain evidentiary hearings or trials are to be held remotely” so long as the court allows for a process by which self-represented parties can agree or all parties can show why remote appearances should not be allowed. This language should be modified to specify that both evidentiary and nonevidentiary hearings or trials can be specified to default to remote hearings. Nonevidentiary</p>	<p>While the committee does not disagree with the logic of the comment, the new statute provides authority for courts to conduct remote proceedings only following notice by a party of the party’s intent to appear remotely. (§ 367.76(a).) The exception that allows courts to initiate remote proceedings applies only to evidentiary hearings and trials. (§ 367.75(d)(1).) Because the rule cannot be inconsistent with the statute, it does not provide for the</p>

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	<p>hearings (such as case management conferences and law and motion hearings) are the most amenable to remote appearances and there is little reason why a local rule should only allow remote hearings to be the default standard for evidentiary hearings and trials. Through their local rules many courts have been conducting remote hearings in various nonevidentiary proceedings without the parties having to make a specific request. Indeed, remote nonevidentiary hearings have become commonplace. Thus, it makes little sense to shift the burden to the parties to request a remote nonevidentiary hearing. Parties would still be able to request an in-person hearing.</p> <p>2. Proposed Rule 3.672(g) provides in part that a request to conduct a trial or evidentiary hearing through the use of remote technology must be “upon . . . the motion of any party.” This language signifies a noticed motion that is set for hearing. At the hearing, an opposing party has an opportunity to show why a remote appearance or testimony should not be allowed. The current draft of proposed mandatory form CIV-021 provides a box at item 4 allowing a party to request a remote appearance at an evidentiary hearing or trial. Use of this box on the proposed mandatory form is not a motion, as required by the statute. A separate form should be developed that is a noticed motion.</p>	<p>court to make remote appearances the default for non-evidentiary hearings.</p> <p>There is no language in the statute mandating that the motion of the party to appear remotely be on notice longer than the 10 days provided in the rule, or require a noticed hearing. The committee notes that Code of Civil Procedure section 1005 sets requirements of time of notice and format for only those motions listed in the statute and “other proceedings . . . in which notice is required and no other time or method is prescribed by law or by court of judge.” (§ 1005(a).) Here, the rule is prescribing time and method of notice. In light of this comments, the rule has been modified to clarify this point. (Rule 3.672(h)(2)(B).</p>
<p>Superior Court of San Bernardino County</p>	<p><u>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</u></p> <p>Due to the COVID Pandemic, many courts are backlogged in the filing of pleadings and have to prioritize their filing. It is very likely that these forms will not make it to the actual department prior to the actual hearings. One suggestion would</p>	<p>The rule has been amended in light of this and other comments to allow courts to require by local rule that the party must ensure a copy of the papers are received in the courtroom. Because many courts do not permit</p>

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	<p>be that any Opposition Forms be required to be filed <i>directly in the courtroom</i>.</p> <p><u>Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice –which is required by statute- be provided to the court?</u></p> <p>Written notice may be best so that accurate records may be maintained. If only oral notice is given to the court, who would that notice be given to.</p>	<p>papers to be filed directly in a courtroom, the suggestion to require that will not work in the rule.</p> <p>After considering this and other comments on this issue, the committee has concluded that the rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice.</p>
<p>Superior Court of San Diego County</p>	<p>Q: <u>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</u></p> <p>Yes, for civil. Not for juvenile dependency and juvenile justice cases [see separate comments regarding juvenile matters].</p> <p>Q: <u>Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice –which is required by statute– be provided to the court?</u></p> <p>Civil: Since the statute requires proof of such notice, it appears that written notice should be provided in all circumstances. A party who provides oral notice would presumably still need to provide written proof similar to a declaration of notice for an ex parte application.</p>	<p>The committee appreciates the comment. As to juvenile dependency matters, see comments below. As to juvenile justice matters, the rule allows the court to develop local rules so long as they are in compliance with statute. (See rule 3.672(e)(1) and (2).)</p> <p>After considering this and other comments on this issue, the committee has concluded that the rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice.</p>



## SP21-08

**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

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### Issue 2: Time and Form of Notice to Court and Other Parties

Commenter	Comment	Committee Response
Ahn Tran	<p><u>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</u></p> <p>2-3 day notice using the form-based process might be too short. With the plan of providing an electronic form on the front end that can feed downstream stream systems, 2-3 days is sufficient for the court. We may need to change the form-based process to more than 2-3 days to ensure we timely process the notices.</p> <p><u>Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice which is required by statute be provided to the court?</u></p> <p>Written notice (form or court form-based system) should be required for the out-of-court process, but oral notices are allowed at hearings where the verbal notices can be recorded in the hearing minutes.</p>	<p>The committee notes that the rule allows local rules with different time frames so long as they are in compliance with statutory requirements.</p> <p>After considering this and other comments on this issue, the committee has concluded that the rule should require written notice to the court (unless a court has an online process for such request), but that less formal notice may be provided to the other parties. A declaration of notice has been added to form RA-010 to provide proof of such notice.</p>
Hon. Rebecca Wightman	<p>Many courts have indeed been successfully conducting remote proceedings for well over a year. Unfortunately, the proposed rules here seem to be a step backward – back into a more bureaucratic process – which on a broad level, in general puts the burden on litigants to notify the court, and the litigants to file opposition. For the many thousands of hearings that are held annually, that is a lot of paperwork (and clerk workload) to file notices and any opposition. It would be much better if the proposed rule could be made more clear that technology</p>	<p>Under the new statute, for non-evidentiary hearings, conferences, and proceedings, remote proceedings are authorized only after a party has provided notice to the courts and other parties. (Code Civ. Proc., § 367.75(a).) Only in evidentiary hearings and proceedings is a court authorized to determine that the matter shall be conducted remotely, unless a party shows why in person appearances or testimony are needed. (Code Civ. Proc. § 367.75(d)(1).)</p>

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### Issue 2: Time and Form of Notice to Court and Other Parties

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	<p>permitting, parties are entitled to appear remotely, unless there is an objection. (In other words, put the burden on the litigants/counsel to object if they do not want anyone to appear remotely and/or for the court to indicate if they will require in-person appearances.) If a layer of paperwork is going to be required of litigants, you are very likely going to see <u>less</u> participation, which will lead to more “defaults” and poorer orders – particularly in the high volume courts which often deal with lower-income litigants who cannot afford to take time off of work.</p> <p>During the past two years, I have watched the participation rate in my court alone increase from approximately 75% to 90%. Many of the litigants who appear in front of me (a Title IV-D courtroom) not only cannot afford to take time off of work to come to court, but will likely not realize the need to file a form (as only a percentage get help through the self-help centers), whether it is to notify the court or file an opposition to a remote appearance. I would hate to go back to there being less access to the courts than what we have come to know what is possible.</p>	<p>Courts will, under the proposed rules, be able to continue (or begin) to use online processes which may make it easier for the parties to indicate they want to appear remotely, so long as the process complies with the statutory requirements.</p>
Julia Wu	<p>[ ] I recommend that the proposed rules should permit local court rules to (i) provide the same or <i>more</i> than the notice period required by the proposed rules, instead of less, and (ii) to extend notice period longer than the current proposal. Although remote proceedings expand access to justice, the rules should also strive to maintain the quality of justice as well. Making the transition from an in-person evidentiary hearing or trial to a remote proceeding is no minor adjustment for parties and counsel appearing before the court. Parties spend considerable time and effort developing a strategy premised on in-person</p>	<p>The committee has considered this and other comments, and decided to leave the deadlines as proposed in the circulated rule. Subdivision (e), however, allows a superior court to adopt a shorter or longer deadline by local rule. The committee notes that parties and courts may raise the question of remote appearances and testimony at any time during a case if they are concerned that more time is needed to address issues that might arise.</p>

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**Issue 2: Time and Form of Notice to Court and Other Parties**

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	<p>presentation of arguments or questioning of witnesses, and adjusting to a remote proceeding necessitates significant changes to trial strategy to maintain quality representation. Other attorneys have also expressed concern regarding sudden adjustments from in-person to remote proceedings. Accordingly, a party choosing to appear remotely at an evidentiary hearing or trial should be required to provide notice as far in advance as possible to give all parties time to adjust and prepare or to file an opposition to the remote proceeding.</p>	

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**Issue 3: Trials and Evidentiary Hearings (Rule 3.673(h))**

Commenter	Comment	Committee Response
<p>California American Board of Trial Advocates (CAL-ABOTA)</p> <p>Jointly with:</p> <p>Consumer Attorneys of California California Defense Counsel (CDC) California Employment Lawyers Association (CELA) Consumer Attorneys Association of Los Angeles (CAALA) Alameda-Contra Costa Trial Lawyers' Association (ACCTLA) San Mateo County Trial Lawyers Association (SMCTLA) Capitol City Trial Lawyers Association (CCTLA) San Joaquin Trial Lawyers Association (SJTLA) Santa Clara County Trial Lawyers Association (SCCTLA) Consumer Attorneys of San Diego (CASD) Marin Trial Lawyers Association (MTLA) San Francisco Trial Lawyers Association (SFTLA) Orange County Trial Lawyers Association (OCTLA) Association of Defense Counsel of</p>	<p><b>I. The Implementing Rules Must Recognize the Statutory Right of Parties to Insist on In-Person Appearances in Trials and Evidentiary Hearings</b></p> <p>Although subdivision (d)(1) of new Code of Civil Procedure Section 367.75 permits a court, upon its own motion or the motion of any party, to conduct a trial or evidentiary hearing in whole or in part through the use of remote technology, absent a showing by the opposing party as to why a remote appearance should not be allowed, this authority is limited by the language of Section 367.75(f). This subdivision prohibits a court from requiring a party to appear through the use of remote technology. Unfortunately there is nothing in the proposed rules which recognizes the limitation imposed by subdivision (f) or facilitates the party's election to insist on an in-person appearance. Subdivision (f) was incorporated into SB 241 to uphold a core principle of the discussions in the legislature over remote appearances, that no party should be forced into a remote proceeding, particularly trials. Should a party not agree to a remote appearance, the limitation in subdivision (f) effectively requires in-person proceedings, unless the party agrees otherwise. We can envision, for example, that a party could insist on an in-person appearance, but still stipulate to remote appearances by certain witnesses. At the same time, we cannot envision a party insisting on an in-person appearance, but the court permitting all other individuals to be remote (except the court reporter, who must be physically present during trials, pursuant to subdivision (d)(2)(A)). This would, again, effectively require the objecting party to appear using</p>	<p>The committee agrees that section 367.75(f) prohibits a court from mandating any party to appear through the use of remote technology. That statutory provision is so clear the committee did not initially see a need to repeat it in the rule. In light of this and other comments, however, the committee has added that provision to the factors a court should consider in determining whether to conduct an evidentiary hearing or trial remotely in full or in part. (See Rule 3.672(h)(3)(B).)</p> <p>However, the committee disagrees with the commenters that one party asserting that party's right to appear in person under (f) <i>automatically</i> results in an evidentiary hearing or proceeding being held completely in person, with no other party allowed to appear remotely. The statute expressly provides that parties may appear and testify remotely, or the court may conduct the proceedings remotely, "absent a showing by the opposing party as to why a remote appearance or testimony should not be allowed." (§ 367.75(d)(1).) The rule as circulated mirrors that provision. Any rule that does not provide for a court to determine whether such a showing had been made would be inconsistent with statute. A change in the terms of the statute will require legislative action.</p>

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<p>Northern California and Nevada (ADC) Association of Southern California Defense Counsel (ASCDC) Orange County Chapter of the American Board of Trial Advocates</p>	<p>remote technology in violation of subdivision (f). Ultimately, we believe that the lessons of the pandemic in the appropriate use of remote technology in court proceedings will be most fully realized through consent-based solutions. We also believe that this was the intent of the legislature in enacting SB 241.</p> <p><b>II. The Implementing Rules Should Contain Criteria for Courts to Establish Good Cause to Require In-Person Appearances by Expert Witnesses</b></p> <p>Section 367.75(c) permits an expert witness to appear remotely absent good cause to compel in person testimony. Despite the inclusion of this language in the legislation, we are not convinced of the justification to treat experts differently from other witnesses, and we may pursue legislation to address this issue when the legislature returns in January. The implementing rules would be improved, however, by clearly articulating criteria for courts in determining when good cause exists to require in-person testimony. Our proposed criteria would, for example, require the court to consider whether the testimony of the expert is critical or necessary for the determination of the proceeding, and whether the credibility of the expert is a factor in determining the impact of the expert’s opinion.</p> <p>The above signed groups join together in our support of the attached proposed revisions to the draft rules and share the concerns highlighted herein. We strongly urge their inclusion as to ensure that remote hearings can continue, not only to encourage efficiencies in the courts, but also by establishing a framework that protects the right to justice for all. Thank you</p>	<p>The committee declines the suggestion to include in the rule a definition of the “good cause” standard to be applied under section 367.75(c). The potential bases for good cause for requiring an expert witness to appear in person are numerous and will vary from case to case. Moreover, at least one of the reasons proposed here (credibility of the expert) will be present in every case, so including it in a rule as to what constitutes good cause would not clarify the statutory provision which provides discretion to the court, but rather mandate in-person appearance of an expert in all situations where an objection is raised. The statute is clear in requiring a showing of good cause to compel in-person testimony by the expert, and determining what constitutes good cause in a given case is best left to parties to argue to the court.</p>

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**Issue 3: Trials and Evidentiary Hearings (Rule 3.673(h))**

Commenter	Comment	Committee Response
	<p>for considering our comments.</p> <p>Draft Revision to Judicial Council Proposed Court Rules</p> <p>[ ]</p> <p><b>(g) Remote proceedings for an evidentiary hearing or trial</b>            ...  <u><b>(3) Expert notice of remote appearance</b></u>  <u>Pursuant to CCP 367.75(c) an expert witness may appear remotely if all parties stipulate or absent good cause to compel in-person testimony.</u>  <u><b>(A) The following factors must be considered in determining whether good cause exists to compel in-person testimony. If one or more of these factors are met, the expert must appear in person.</b></u>  <u><b>(i) Whether the witness’s opinion is critical or necessary for the determination of the proceeding or the management or resolution of the action.</b></u>  <u><b>(II) Whether the credibility of the witnesses’ testimony is a factor in determining the impact of the opinion offered.</b></u>  <u><b>(iii) Whether allowing the witness to appear remotely would materially prejudice one or more of the parties to the action.</b></u>  <u><b>(B) The court may determine on a hearing-by-hearing basis that an in-person appearance would materially assist in the determination of the conference, hearing, or proceeding or in the effective management or resolution of the particular case.</b></u>  <del>(3)</del> <b>(4)</b> Opposition to remote proceedings            (A) Filing and serving opposition</p>	<p>See response above.</p>

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### Issue 3: Trials and Evidentiary Hearings (Rule 3.673(h))

Commenter	Comment	Committee Response
	<p>In response to notice of a remote proceeding under this subdivision set by local rule or otherwise provided under (g)(1) or (2), a party may <b><u>exercise its right under subdivision (f) to object to appearing remotely</u></b> <del>make a showing to the court as to why a remote appearance or remote testimony should not be allowed,</del> by serving and filing an Opposition to Remote Proceedings at Evidentiary Hearing or Trial (form CIV-022) <b>by:</b></p> <p>(i) At least five days before the proceeding if for an evidentiary hearing or trial for which a party gives or receives at least 15 days' notice; or</p> <p>(ii) At least noon the court day before the proceeding if for an evidentiary hearing or trial for which a party gives or receives less than 15 days' notice.</p> <p>(B) Court determination on opposition</p> <p>In determining whether to conduct an evidentiary hearing or trial in whole or in part through the use of remote technology over opposition, the court must consider, along with the factors in section 367.75(b), any limited access to technology or transportation asserted by a party. <b><u>If a party objects to appearing remotely pursuant to CCP 367.75 subdivision (f), all proceedings shall be held in-person, absent stipulation by the parties.</u></b></p> <p>DRAFT FORM</p> <p><b>Opposition to Remote Proceeding at Evidentiary Hearing or Trial</b></p> <p>*A box must be added to allow parties to exercise their right under CCP 367.75 subdivision (f) to object to appearing</p>	<p>See response above. The language in the proposed rule mirrors the language in the statute. § 367.75(d)(1).</p> <p>See response above.</p> <p>See response above.</p>

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Commenter	Comment	Committee Response
	remotely, triggering all proceedings to be held in-person.*	
California Federation of Interpreters, Local 39000	Remote access should not be used for trials or evidentiary hearings, whether court or jury in nature. The uncertainty of unstable connection, audio problems, and below standard equipment transmission quality is too much to risk for any court user. For interpreters, remote interpreting is inherently difficult and more fatiguing. The level of fatigue through remote interpreting is much more intense and over time exponentially impacts interpreting accuracy greatly.	The committee notes that the new statute expressly authorizes courts to conduct a trial or evidentiary hearing, in whole or in part, through the use of remote technology, absent a showing to why the remote proceedings should not be allowed. (§ 367.75(d)(1).) Eliminating or limiting that authority would be inconsistent with statute and therefore outside the purview of the council’s rule-making authority.
David Casady	<p>The rules proposed by the Ad Hoc Committee allow a court, on its own motion, to decide to conduct a trial or evidentiary hearing remotely. The proposed rules also state what factors the court must consider in determining whether to conduct the trial or evidentiary hearing in-person if opposition to a remote appearance has been raised by a party. One of those factors is whether “an in person appearance would materially assist” either in determining the outcome of a particular proceeding or in the effective management and resolution of the case as a whole.</p> <p>In my opinion, these factors are extremely broad based and ambiguous, thereby potentially interfering with our clients’ right to a trial by jury. They also appear to place the burden of proof on the party objecting to the remote appearance. This is extremely troubling to many in our profession, including the plaintiff’s bar.</p> <p>I urge the committee to reconsider.</p>	<p>The committee notes that the new statute expressly authorizes courts to conduct a trial or evidentiary hearing, in whole or in part through the use of remote technology. (§ 367.75(d)(1).) The committee also notes that the factor quoted is expressly stated in the statute as an appropriate basis for a court to use in determining whether an in-person appearance should be required. (§ 367.75(b)(2).)</p> <p>The statute provides that the trial or evidentiary hearing may be conducted remotely “absent a showing by the opposing party as to why a remote appearance or testimony should not be allowed.” (§ 367.75(d)(1).) To the extent this places the burden on the party objecting, it is the result of legislative action, and not a provision that can be changed by rule of court.</p>



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Commenter	Comment	Committee Response
Hon. Christine Copeland	<p>I have been a small claims commissioner for quite some time. My comments are my own and do not necessarily reflect those of my court.</p> <p>If small claims litigants opt to appear remotely, my concerns are:</p> <p>(1) How will they know that they are supposed to notify the other side in advance of their remote appearance?</p> <p>(2) How will the other party, whether appearing remotely or in person, get the remote party's evidence? It is very difficult to collect a party's evidence and exchange it with the other side WHEN PARTIES APPEAR IN PERSON; I think it will be far more challenging to get evidence turned in in advance AND to trust that the other side received it. I do not have the time or supplies to print out a remote party's filed evidence and give it to an appearing-in-person party. I believe the evidence exchange snags involved in remote appearances will result in many continued hearings and so will clog up an already-crowded system.</p> <p>(3) I feel even less secure about witnesses appearing remotely,</p>	<p>The committee notes that the statute does not exempt small claims parties or other self-represented litigants from remote proceedings, nor from the requirement of providing notice of such appearances to other parties. The instructions on the proposed mandatory <i>Notice of Remote Appearance</i> (form RA-010) contain information regarding providing notice.</p> <p>This query is outside the scope of this proposal. However, the committee notes that if a court does not have procedures or the technology to allow for the effective management or resolution of a trial through the use of remote appearances, then the court has the discretion to require an in-person appearance. (§ 367.75(b).)</p> <p>The statute provides a court with the discretion to</p>

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	<p>especially those who need an interpreter. The difficulty of conducting remote hearings increases with the number of people involved (parties, interpreters, witnesses and the hearing officer).</p> <p>So, any forms and procedures developed will hopefully be clear to self-represented litigants how to arrange a remote appearance, how to get evidence in to the court on time and also how to show the same evidence was served on the other party on time so the court can ensure it is looking at the same evidence the other party received.</p>	<p>require an in-person appearance if the court determines that such appearance would materially assist in the determination of a conference, hearing or proceeding, or in the effective resolution of a case. (§ 367.75(b).)</p> <p>Rules or forms that address the exchange of evidence are outside the scope of the current proposal. The committee also notes that different courts are handling such exchange in different ways, some with online document exchange platforms, others with email exchanges, etc. As noted above, courts without such procedures in place may conclude that in-person appearances are required under section 367.75(b).</p>
Encore Capital Group	<p>The new rules will also result in a number of important benefits, including:</p> <ul style="list-style-type: none"><li>• Increasing the efficiency and cost-effectiveness of the litigation process in our state courts</li><li>• Reducing the amount of time witnesses miss away from work and home to appear for testimony and thereby reducing default judgements</li><li>• Reducing or eliminating the need to pay witness fees</li></ul> <p>By way of background, Encore is a global financial services company headquartered in San Diego that purchases primarily delinquent credit card receivables from national banks and originators and works to help consumers on the road to financial recovery. By offering discounted payment plans, flexible repayment terms, and charging no pre-judgment interest or fees, we play a vital role in helping our consumers resolve their outstanding debt obligations.</p>	The committee appreciates the comments.

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Commenter	Comment	Committee Response
	<p>These new rules will provide significant cost and time benefits to litigants in the state. The burden of appearing as a witness is quite high for most people, and these rules will reduce witness fees and also minimize the amount of time away from work and home responsibilities witnesses must endure when involved in the litigation process. Allowing for witnesses to appear by remote electronic means has already been done successfully in Los Angeles County’s court system, through LACourtConnect, and we support expansion of such a remote electronic appearance system to the rest of the state.</p>	
Ernest Long	<p>As a civil litigation mediator working exclusively online, I can vouch for the huge assist online access has provided for my process.</p> <p>On the other hand, as a former trial lawyer, I have distinct reservations about imposing remote access rules on civil jury trials. The right to a jury trial that has been enshrined in law in this country since its inception is already falling victim to our overcrowded court system and civil jury trials are less and less available. Removing one of the key features of jury trials, live witness testimony, will serve only to diminish the crucible-like setting of the trial court. Thus, although I would certainly endorse the use of remote appearances in many, many judicially related settings, I would hesitate to make it available absent serious circumstances for the civil jury trial.</p> <p>The personal appearance of the witness and the ability of the jury to assess that person in the flesh is one of the key aspects of the process. The whole person testifies, not just a facial image, and that is what parties to a lawsuit that has advanced to</p>	<p>The committee notes that the new statute expressly authorizes courts to conduct a trial or evidentiary hearing, in whole or in part through the use of remote technology, absent a showing to why the remote proceedings should not be allowed. (§ 367.75(d)(1).) Eliminating or limiting that authority would be inconsistent with statute and therefore outside the purview of the council’s rule-making authority.</p>

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	<p>the point of trial are entitled to have as part of their proof. Accordingly, I would carve out civil jury trials from the otherwise honorable work of the committee and exclude ready access to remote appearances in that limited context. Thank you for considering my opinion</p>	
Los Angeles County Bar Association	<p>Whether to proceed with a remote evidentiary hearing or trial raises a host of important considerations. The proposed Rule currently directs that a court should consider technological or transportation concerns when determining a party’s opposition to proceeding remotely with trial or an evidentiary hearing. See Proposed Rule 3.672(g)(3)(B), along with the factors in Code of Civil Procedure section 367.75(b). The LACBA Litigation Section respectfully suggests that the proposed Rule should also recognize that, when determining whether an evidentiary hearing or trial should proceed remotely, a court should employ a flexible “good cause” standard and consider whether an in-person appearance would materially assist in the determination of an issue or promote the effective management or resolution of the case.</p> <p><b>Good Cause consideration in determining whether a trial or evidentiary hearing should proceed remotely.</b></p> <p>The new Code of Civil Procedure section 367.75(d)(1) permits a court, or upon motion of a party, to conduct a trial or evidentiary hearing remotely unless a party files an opposition and demonstrates why it should not be allowed. The proposed Rule specifically directs that “[i]n determining whether to conduct an evidentiary hearing or trial in whole or in part through the use of remote technology over opposition, the court must consider, along with the factors in section 367.75(b), “any</p>	<p>The committee notes that the factors listed in rule 3.672(h)(3)(B) are those mandated by statute. Moreover, the factors in section 367.75(b) referenced in the rule include the factor the commenter requests be added to the rule: “that an in-person appearance would materially assist in the determination of an issue or promote the effective management or resolution of the case.” (§ 367.75(b)(3).)</p>

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Commenter	Comment	Committee Response
	<p>limited access to technology or transportation asserted by a party.” Proposed Rule 3.672(g)(3)(B). The LACBA Litigation Section respectfully suggests that the proposed Rule should direct courts to employ a flexible “good cause” determination and consider all factors raised in opposition including whether an in-person appearance would materially assist in the determination of an issue or promote the effective management or resolution of the particular case, as provided in Section 367.75 (b)(3), in addition to the adequacy and quality of technology described in subsection 367.75(b) as well as access to technology or transportation concerns asserted by a party.</p> <p>The LACBA Litigation Section also endorses comments submitted by the California American Board of Trial Advocates, Consumer Attorneys of California, and California Defense Counsel including that the implementing rules must recognize the statutory right of parties to insist on in-person appearances in trials and evidentiary hearings and that the implementing rules should contain criteria for courts to establish good cause to require in-person appearances by expert witnesses.</p>	<p>As noted above and in the comment, the proposed rule states “the court must consider [ ] the factors in section 367.75(b)”. Those factors include the provision in section 367.75(b)(3) noted in the comment, whether an in-person appearance would materially assist in the determination of an issue or promote the effective management or resolution of the particular case. Therefore, the committee notes that the requested addition is already included in the rule.</p> <p>See the responses to that comment above.</p>
David Shuey	<p>This rule change should not apply to civil trials. I have no objection to conferences, hearings, etc. being remote but to have to try a civil case remotely or part remotely even over objection is not appropriate. With the rule this way the Courts will overrule objections to parties and witnesses appearing in person as that is what is being done now. Civil trials should be in person unless all parties (not the Court) stipulate to remote proceedings. Further, if a particular party or witness is allowed to appear remotely it should be for health reasons only (underlying condition, not vaxxed, etc.) and not simply</p>	<p>The committee notes that the new statute expressly authorizes courts to conduct a trial or evidentiary hearing, in whole or in part through the use of remote technology, absent a showing to why the remote proceedings should not be allowed. (§ 367.75(d)(1).) Eliminating or limiting that authority would be inconsistent with statute and therefore outside the purview of the council’s rule-making authority.</p>

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Commenter	Comment	Committee Response
	economic issues or convenience.	
Audrey Smith	<p>I write to object to the rules proposed by the Ad Hoc Committee regarding new Code of Civil Procedure section 367.75 and Remote Appearances that allow a court, on its own motion, to decide to conduct a trial or evidentiary hearing remotely. The factors the court must consider in determining whether to conduct the trial or evidentiary hearing in-person if opposition to a remote appearance has been raised by a party are extraordinarily broad and ambiguous. For example, one of those factors is whether “an in person appearance would materially assist” either in determining the outcome of a particular proceeding or in the effective management and resolution of the case as a whole. This leaves far too much discretion with the court and potentially interferes with a party’s right to trial by jury. The proposed rules also appear to place the burden of proof on the party objecting to the remote appearance.</p> <p>While the convenience of the court is an important factor, I question whether “ease of access” or “the pandemic” (when covid-19 can now be immunized and treated efficiently and effectively) justifies severely compromising civil parties’ rights to trial and to have their evidence heard in person. Zoom trials (and evidentiary hearings) do not provide a fair hearing as it is far too easy for jurors to tune out and/or do their own research. It is axiomatic—and proven by studies—that in-person appearance and testimony has a far stronger impact on a trier of fact. Allowing discretionary imposition of remote appearance proceedings should not become “the new normal.” Civil cases are already relegated to second class status in terms of trial precedence and parties to civil litigation have been forced to</p>	<p>The committee notes that the new statute expressly authorizes courts to conduct a trial or evidentiary hearing, in whole or in part through the use of remote technology. (§ 367.75(d)(1).) The factor quoted in the comment is expressly stated in the statute as an appropriate basis for a court to use in determining whether an in-person appearance should be required. (§ 367.75(b)(3).)</p> <p>The statute also provides that the trial or evidentiary hearing may be conducted remotely “absent a showing by the opposing party as to why a remote appearance or testimony should not be allowed.” (§ 367.75(d)(1).) To the extent this places the burden on the party objecting, it is the result of legislative action, and not a provision that can be changed by rule of court.</p>

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**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

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### Issue 3: Trials and Evidentiary Hearings (Rule 3.673(h))

Commenter	Comment	Committee Response
	participate in zoom trials during the emergency presented by the pandemic. Our clients have made enough compromises. The Courthouse should be open.	
Terence Snook	<p>While I do believe there are circumstances that due to illness, incarceration, weather or traffic conditions, this should be the exception and not the rule, at least as to essential witnesses. Those essential witnesses would include the main parties, the experts as to main issues of the case, and the witnesses as to contested witnesses. It is vitally important that a jury or judge see a person in a third dimensional context to watch for body language. A two-dimensional image on a screen is not a sufficient substitute.</p> <p>I am also concerned as to the integrity of the proceedings if the witness testifies remotely. There is no way to guarantee that a third person is not off screen or the witness is receiving text or email coaching his answers.</p> <p>Again, if the witness is stuck at an airport because of a snowstorm, of course the court should have the discretion to allow testimony by remote means, insuring as best the court can, that no third party is in the room that the witness will testify from nor any other electronic devices are present, and verifying the facts that present the excuse to travel. This would be preferable to continuing the trial or risk losing the testimony for either side. But again, it should be the exception, not the rule. Most parties and witnesses live in the jurisdiction the case is filed and in the past most trials continued without any interruption with live witnesses.</p> <p>Finally, allowing the court discretion in all cases invites</p>	<p>The committee notes that the new statute expressly authorizes courts to conduct a trial or evidentiary hearing, in whole or in part through the use of remote technology, absent a showing to why the remote proceedings should not be allowed. (§ 367.75(d)(1).) Eliminating or limiting that authority would be inconsistent with statute and therefore outside the purview of the council's rule-making authority.</p> <p>The discretion vested in the judge is provided by statute,</p>

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### Issue 3: Trials and Evidentiary Hearings (Rule 3.673(h))

Commenter	Comment	Committee Response
	potential abuses and uneven standards of application. Now instead of one standard, we will have several hundred each unique to each trial court.	and changing that would take legislative action.
Lynn G. Stocker	The underlying statute (CCP 367.75) is hopelessly vague as to the meaning of “an in person appearance would materially assist in the determination of the conference, hearing, or proceeding or in the effective management or resolution of the particular case.” It would be helpful if we could review the proposed Judicial Council form to be used in opposing a remote appearance. At a minimum, when a party objects to the court’s use of remote appearances at evidentiary hearings or to another party’s request to appear remotely, the burden of proof should be on the court or the party requesting the remote appearance to show that an in person appearance would not materially assist the trier of fact in determining the outcome of the proceeding. The ability to assess the truthfulness of responses during voir dire and trial is severely hampered by remote appearances	<p>The committee notes that revising statutory language is outside the scope of this rules proposal.</p> <p>The proposed opposition form was part of the Invitation to Comment (circulated as form CIV-022, renumbered in the recommendation here as form RA-015)</p> <p>The statute provides that the trial or evidentiary hearing may be conducted remotely “absent a showing by the opposing party as to why a remote appearance or testimony should not be allowed.” (§ 367.75(d)(1).) To the extent this places the burden on the party objecting, it is the result of a legislative action, and not one that can be changed by rule of court.</p>
Superior Court of Monterey County	<u>Evidentiary Hearings</u> Monterey would like a rule that would require parties to appear by video, instead of just audio, for all evidentiary hearings. This would assist with credibility determinations, which may include observing a person’s demeanor.	The committee concluded that such a rule is unnecessary, in light of the statutory provisions. If a party provides notice of intent to appear remotely by audio only, and a judicial officer concludes that a video or in-person is required for the effective resolution or management of a particular hearing, the judicial officer would have discretion to require that under section 367.75(b)(2) or (3).



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<b>Issue 4: Court’s Discretion to Require In-person Appearance (Rule 3.672(d))</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
<p>California American Board of Trial Advocates (CAL-ABOTA)</p> <p>Jointly with:</p> <p>Consumer Attorneys of California California Defense Counsel (CDC) California Employment Lawyers Association (CELA) Consumer Attorneys Association of Los Angeles (CAALA) Alameda-Contra Costa Trial Lawyers’ Association (ACCTLA) San Mateo County Trial Lawyers Association (SMCTLA) Capitol City Trial Lawyers Association (CCTLA) San Joaquin Trial Lawyers Association (SJTLA) Santa Clara County Trial Lawyers Association (SCCTLA) Consumer Attorneys of San Diego (CASD) Marin Trial Lawyers Association (MTLA) San Francisco Trial Lawyers Association (SFTLA) Orange County Trial Lawyers Association (OCTLA)</p>	<p>Draft Revision to Judicial Council Proposed Court Rules</p> <p><b>(d) Court discretion to require in-person appearance</b> <u>Although the court is to use best efforts in accommodating remote appearances where possible</u>, notwithstanding the provisions of this rule and except as otherwise required by law, the court may require a party to appear in person at a proceeding in any of the following circumstances:</p> <p>(1) If the court determines on a hearing-by-hearing basis that an in-person appearance would materially assist in the determination of the proceeding or in the effective management or resolution of the case.</p> <p>(2) If the court does not have the technology to conduct the proceeding remotely.</p> <p>(3) If, at any time during a remote proceeding, the court determines that an in-person appearance is necessary, the court may continue the matter and require such an appearance. Such determination may be based on the factors listed in Code of Civil Procedure section 367.75(b).</p>	<p>The committee notes that because subdivision (a) of the rule includes similar language (“to the extent feasible courts should permit parties to appear remotely”), it is not necessary to add it in this subdivision.</p>

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<b>Issue 4: Court’s Discretion to Require In-person Appearance (Rule 3.672(d))</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Association of Defense Counsel of Northern California and Nevada (ADC) Association of Southern California Defense Counsel (ASCDC) Orange County Chapter of the American Board of Trial Advocates		
Family Violence Appellate Project	In subd. (d), the phrase “Notwithstanding the provisions of this rule” is potentially confusing. It may be best to lay out the rule’s exceptions in that subdivision’s text.	The committee notes that while much of the rule provides that a party may appear remotely so long as they give notice, this subdivision—which addresses when courts may require in-person appearances—is notwithstanding those provisions which otherwise allow parties to elect how they will appear.
SEIU California	We are additionally concerned that there is insufficient guidance on page 14 (d)(2) regarding lack of technology. SB 241 contains two subparagraphs regarding technology—one speaking to the court’s possession of requisite technology, and one speaking to the quality of the technology in the court’s possession. Each sub-paragraph is equally important, as both speak to the ability of the court to conduct proceedings remotely and have parties/witnesses appear remotely, without diminishing the sanctity of proceedings or the quality of the official verbatim record. We urge inclusion of rules specific to both subparagraphs, rather than just the one referenced in (d)(2).	Subdivision (d)(2) has been modified in light of this comment.
Superior Court of Placer County (Additional comments from a judicial officer)	New Rule 3.672(d): The court suggests that an additional subdivision be added that states: “The court retains the discretion to create a local rule that requires an in-person appearance. Parties may follow procedures to request a remote	The committee declines this suggestion in light of the provisions of the statute allowing parties to provide notice to the court of intent to appear remotely and specific bases for the court to require in-person

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<b>Issue 4: Court’s Discretion to Require In-person Appearance (Rule 3.672(d))</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	appearance for these hearing types, which will be subject to judicial review on a hearing-by-hearing basis.”	appearances in light of such notice. § 367.75(a), (b), and (d).

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<b>Issue 5: Proposed Forms (other than for juvenile dependency cases)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
<p>California Department of Child Support Services</p>	<p>[ ] Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents? <b>Mandatory and Optional. If the idea is to expand and promote access to the court, then requiring the use of certain forms necessarily restricts and may create unintended consequences to realizing that goal.</b></p> <ul style="list-style-type: none"> <li>• Notice of Remote Appearance (form CIV-021) <b>This form should be optional and a party should be able to request a remote appearance in the simplest way possible for them.</b></li> <li>• Opposition to Remote Proceeding at Evidentiary Hearing or Trial (form CIV-022) <b>This form should be mandatory to encourage remote appearances but also provide a clear process for an individual who is opposing a remote proceeding.</b></li> <li>• Request to Appear Remotely – Juvenile Dependency (form JV-145) <b>Not applicable to IV-D matters</b></li> <li>• Request to Compel Physical Presence – Juvenile Dependency (form JV-146) <b>Not applicable to IV-D matters</b></li> </ul> <p>5) Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or JV form set? <b>If the order was made at hearing, the minutes of that order could state the pertinent information without the need for another JCC form. An optional form however is not objectionable for instances where a hearing has not occurred, but a party has requested a remote appearance and the court is denying that request. There would need to</b></p>	<p>The committee has concluded the <i>Notice of Remote Appearance</i> (now numbered as form RA-010) and <i>Opposition to Remote Proceeding at Evidentiary Hearing or Trial</i> (now numbered form RA-015) should be mandatory, except where courts are providing an online process instead (see rule 3.672(e)(1)-(2)) and in juvenile dependency cases (which are subject to different statutory and rule provisions). This will provide consistency across the state and ensure that all parties have access to a form that includes instructions regarding notice and a means of providing proof to the court that such notice was given. In addition, having a single notice form, rather than allowing parties to create their own pleading for that purpose, will make it easier for courts that do not have an online process to immediately recognize when a party is notifying the court that the party intends to appear remotely. (The newly proposed order (form RA-010) is optional.)</p> <p>The committee is recommending a new <i>Order Regarding Remote Appearance</i> (form RA-020), an optional form that a court may use upon determining that an in-person appearance is required, or allowing a remote appearance over objections or with certain requirements, such as appearing by video only or by</p>

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<b>Issue 5: Proposed Forms (other than for juvenile dependency cases)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<b>be a defined process in place to notice a party that their request to appear remotely has been denied and that they are ordered to appear in-person.</b>	telephone only. (The form may also be used when responding to requests or motions to compel brought under the juvenile dependency rules on forms RA-25 or RA-30.)
Committee on Administration of Justice, Litigation Section California Lawyers Association	<p><b>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</b></p> <p>CAJ believes the proposed forms should be mandatory and that forms should only be created for statewide use. As discussed in greater detail below, CAJ does not favor the possibility of local court procedures or local forms.</p> <p><b>Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or the JV form set?</b></p> <p>As noted above, CAJ’s comments are limited to the CIV set. CAJ supports approval of an order form, and suggests that it go beyond an order requiring an in-person appearance. CAJ believes a form should be approved that provides for an order containing any ruling, whether <i>requiring</i> an <i>in-person</i> appearance or <i>permitting</i> a <i>remote</i> appearance, particularly if an opposition has been filed. The form could also provide boxes to check for the reason(s), following Code of Civil Procedure section 367.75, and include space for additional explanation if needed. This would facilitate judicial rulings and</p>	<p>After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services.</p> <p>In light of this and other comments received, the committee is recommending a new optional order form. See response above to comment by California Department of Child Support Services.</p>

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<b>Issue 5: Proposed Forms (other than for juvenile dependency cases)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	provision of notice to the parties about a ruling and its basis.	
Family Violence Appellate Project	<p>Proposed Forms: CIV-021, CIV-022, JUV-145, JUV-146</p> <p><i>I. Plain Language</i></p> <p>In general, the language in each form is not accessible to the average litigant in California, whose average reading level is at about the eighth grade. On CIV-021, the instructions at the top under the caption, “necessary for persons to appear remotely” could be “about how to appear remotely,” and “in which remote appearances are permitted” could be “that allow remote appearances,” and “methods available for such appearance” could be “ways to appear remotely.” Item 1 of form CIV-021, “The person intending to appear remotely is (check and complete all that apply)” could be more plain: “The person who wants to appear remotely is (check and fill out all that apply).” Moreover, “evidentiary hearing” in item 4 may be better as “hearing where the court will take evidence” or something more explanatory, and “the following additional aspects of the proceeding be conducted” could be “the following parts of the proceedings are done.” And “preserve the confidentiality” in item 5 could be better phrased as “keep confidential.”</p> <p><b>A. Instructions (Proposed Form CIV-021)</b></p> <p>The instructions (p. 2) to CIV-021 could be improved. Item 2 (“Use of this form” could be “How to use this form”) could be entirely replaced with, “This form is meant to be used by parties who want to appear remotely in civil cases, per Code of Civil Procedure section 367.75, except for juvenile cases, which instead use form JV-145.” Also, item 3 (and elsewhere) says the new rules “provide” for certain things, but a more plain word could be “says” or “states” or, less so, “explains.” And</p>	The forms have been revised in light of the comments here regarding plain language.

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>the second sentence in item 3, ending with “when you have to serve and file,” should have added, “. . . this form to appear remotely.” And the last sentence does not need the last phrase “which are summarized below.”</p> <p>For the summaries in item 3, “in which no oral testimony under oath may be provided” could be better as “where no one can testify”—again, “provide” is not a plain word and the passive (“may be provided”) should be avoided to ensure clarity as to who is the actor, and it can be presumed here that “testimony” refers to oral testimony under oath. The same change can be made for the next summary in item 3, i.e., “where people can testify” instead of “in which oral testimony under oath may be provided.” This same change can be made in other parts of this and other forms that use this or a similar phrase (e.g., item 4).</p> <p>Item 5 can be entirely replaced with, “The court can order everyone to appear in person,” as “determine” is not a plain word, “is required” is passive, and “personal appearance” is unclear (someone appearing remotely can think that is “personal”). And item 6 can be entirely replaced with, “No one may record a proceeding without court approval.”</p> <p><b>B. Request for Remote Appearance (Proposed Form CIV-022)</b></p> <p>On form CIV-022, p. 1, item 2, “at which remote appearance or testimony has been set” can be replaced with “with a remote appearance.” On p. 2 (instructions), item 2 (“Use of form”), could be replaced entirely with, “This form is for you to oppose a remote appearance at a trial or evidentiary hearing. This form</p>	

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Issue 5: Proposed Forms (other than for juvenile dependency cases)		
Commenter	Comment	Committee Response
	<p>is for civil cases except for juvenile dependency cases, which use form JV-146.” Item 3 should clarify that “the opposition” in the first sentence means “the opposition to a remote appearance.”</p> <p>In addition, much of these forms use language verbatim or slightly altered from the proposed rule of court 3.672. To the extent this letter addresses comments as to that language in the proposed rule, those same comments apply to these forms.</p> <p><i>II. Other Items</i></p> <p>Each form should also contain information, in accessible plain language, about how litigants can request reasonable accommodations for disabilities, request interpreters, and request a court reporter if one is not provided, or otherwise record the proceeding upon request.</p> <p>Form CIV-021 should include a check-box to request a court reporter for litigants with fee waivers, per <i>Jameson v. Desta</i>. Requiring a separate form unnecessarily burdens litigants.</p>	<p>In light of this and other comments, information about how to request interpreters and accommodations for disabilities have been added to the notice form. (See form RA-010 at page 3.)</p> <p>The law allows electronic recording in certain case types but requires court reporters in others. (See Government Code section 69957.) Those provisions are not changed for remote appearances, except for the requirement that a court reporter be present in the courtroom for trials conducted with the use of remote technology. Similarly, the rules for parties providing court reporters or, for parties with fee waivers, for requesting court reporters, remain the same whether the party is appearing in person or remotely. (See rule 2.956 and <i>Request for Court Reporter by a Party with a Fee Waiver</i> (form FW-020).) The committee concludes that the current rule on this issue is sufficient to cover remote appearances as</p>



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<b>Issue 5: Proposed Forms (other than for juvenile dependency cases)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Item 2 of form CIV-021 should be clarified as to timing—is this form CIV-021 filed with the initial pleading papers that start the case, or only filed after a hearing date is set? For DVPA cases in most counties, survivors file their DV-100 petition and receive back from the court the decision on their temporary restraining order along with a hearing date for longer-term protection. No ex parte hearing is held. Would the petitioner file CIV-021 with their initial DV-100 petition, or only after they get a hearing date from the court? The rule and form suggest the latter. But the former should be allowed, and just as the court clerk has to complete the DV-109 and DV-110 by listing out the hearing date, so too should the clerk be required to complete item 2 of this CIV-021 for petitioners who filed this CIV-021 along with their DV-100 petition. That way petitioners will not have to double-back to the courthouse just to file this CIV-021 form.</p> <p>Item 4 on form CIV-021 is confusing and unnecessary, and should be removed. Proposed rule 3.672 does not differentiate between various aspects of evidentiary hearings or trials. What additional aspects aside from those in item 2 are contemplated here in item 4? If the evidentiary hearing or trial is being conducted remotely, would that not necessarily include the taking and admission of evidence, sharing exhibits, and so on? If a self-represented litigant wants to appear remotely, it seems unrealistic to think they would simultaneously have someone in person in the courtroom to hand over exhibits. If a represented litigant wants this in-person individual to be their attorney in the courtroom—or their attorney sends someone from their</p>	<p>well as in-person appearances.</p> <p>Rule 3.672(g) and (h) provide the deadlines for filing the notice form (renumbered as form RA-010), which may be filed with initial pleading papers or a certain number of days prior to a hearing, as is provided (times differ based on whether the hearing is evidentiary or non-evidentiary, and how much advanced notice is provided.) In light of these and other comments, the rules and the notice form has been modified to allow a party to provide a single notice of intent to appear remotely through the duration of the case, should that be preferred to indicating the date of a particular proceeding. (See rule 3.672(f)(1) and form RA-010 at item 2.)</p> <p>The committee declines the suggestion to remove this item. The text of the item has been revised in light of this and other comments, but parties have the right to request various aspects of the trial be conducted remotely, beyond their own appearance and their own testimony.</p>

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Issue 5: Proposed Forms (other than for juvenile dependency cases)		
Commenter	Comment	Committee Response
	<p>firm—such would be clear because the litigant would request to appear remotely for themselves but not include their attorney or this person from the attorney’s firm on the request in item 1. So item 4 is unduly cumbersome.</p> <p>Finally, in the instructions, for “Use of Form,” it may make sense to expressly exempt habeas proceedings, as the statute does, since they are technically civil matters and the instructions say these forms can be used in any (civil) case not criminal.</p>	<p>This item has been modified in light of this comment and a change in the language of the proposed rule.</p>
Hon. Janet Frangie	<p><u>Should the forms be mandatory?</u></p> <p>YES. It would be advantageous for all parties to file the same forms. Self-represented parties would be on the same playing field. I can only imagine that some attorneys would file “briefs” related to evidentiary hearings, including trials. In ruling on objections, the Court can always request further briefing or declarations.</p> <p>I am not sure these forms should be required for merely telephonic court appearances through CourtCall© and other services. These services handle the request and check in and notify the court. This takes the burden off the court staff. [FN P.S. The current <i>mandatory</i> form for Telephone Appearances is seldom used in this court.]</p> <p><u>Should an optional Order form be created?</u></p> <p><b><u>PLEASE!!!</u></b> However, this form should be optional as</p>	<p>After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services.</p> <p>In light of this and other comments received, the</p>

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<b>Issue 5: Proposed Forms (other than for juvenile dependency cases)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	circumstances may dictate a detailed Order by the Judge.	committee is recommending a new optional order form. See response above to comment by California Department of Child Support Services on this issue.
Kasey M. Dunton	<p>Based on the wide variety of systems already in place by different counties, I think it would be beneficial to make the notice forms permissive subject to local rule - at least for non-evidentiary hearings. For example, I practice in 5 Bay Area counties. Currently, most of them default to remote appearances for any matter involving attorneys, while a few consider it on a case-by-case basis. In Santa Clara county, non-evidentiary family law hearings REQUIRE that attorneys appear remotely to reduce the number of people present in the courthouse. Requiring each attorney to complete, file, and serve a form stating their intent to comply with the current local rule would contribute to an already-high backlog of paperwork and serve no purpose. For evidentiary hearings, attorneys have simply been giving notice to opposing counsel via e-mail or phone call, generally in consultation with the department and the clerk. There is no need to add forms to that process.</p> <p>However, in other counties where appearances are more likely to be requested in-person, such a form would be quite useful. In particular, as some courts begin to reopen and encourage cases to proceed in-person where possible, it would be beneficial to have a form on which a party or attorney unable to appear in person could register their intent to appear remotely, and an opposing party/attorney could make a proper objection.</p> <p>Therefore it would seem most prudent for the issue of the form to be addressed on a county-by-county basis. A permissive form would also give unrepresented parties the ability to make</p>	<p>After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.</p> <p>In light of these and other comments, the rules and the notice form has been modified to allow a party to provide a single notice of intent to appear remotely</p>

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	a request/objection easily but not require attorneys to file such a form for each and every appearance.	through the duration of the case, should that be preferred to indicating the date of a particular proceeding. (See rule 3.672(f)(1) and form RA-010 at item 2.)
Lawdable Press	(2) The forms should be mandatory. They are simple and straightforward, and it is unlikely that a party would have any reason to draft them from scratch. Again, any concern that someone would fail to use the mandatory form, and thus lose the right to appear remotely is alleviated by the good cause provision in para (i).	After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.
Legal Aid Association of California	<p><b>All proposed forms should be mandatory forms. That said, recognizing the myriad access issues associated with mandatory forms and SRLs in particular, alternative forms of notice should be permitted at the court’s discretion.</b></p> <p>These alternative forms of notice should not include local, court- and/or county-specific forms, as these local forms have proven to impede SRLs in completing and filing forms correctly on the first try as well as vary case type processes statewide. For example, a SRL may have one experience in X County only to have a different experience for the same case type in Y County. Alternative forms of notice could include, but should not be limited to, oral, email, or text message so long as courts have specific procedures in place for accepting and documenting such forms of notice.</p> <p>[ ] A new optional order form that requires in-person appearance for both form sets should be approved.</p> <p>[ ]</p>	<p>After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.</p> <p>In light of this and other comments received, the committee is recommending a new optional order form. See response above to comment by California Department of Child Support Services.</p>

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	<p>In the Notice of Remote Appearance form, we believe there needs to be improved use of plain language (“video conferencing” and “proceeding,” for example). Item 4 needs more context for SRLs. Item 5 needs more context for SRLs, in regard to what “preserve the confidentiality” means. In the “Instructions” on pg. 2, Item 2, bold line, it would be helpful to clarify how far in advance, and with whom at the court.</p> <p>Finally, Item 3 needs to reference a service information sheet.</p> <p>Much of the same goes for the “Opposition” form in regard to a need for improved use of plain language, and the same concerns with the “Instructions” on pg. 2 as with the notice form.</p> <p>In addition, we <b>strongly recommend that Notice of Remote Appearance form include a check-box to request that a court reporter be provided for the remote hearing for litigants with fee waivers.</b> This will greatly streamline the number of forms low-income litigants need to navigate and the court needs to process, and better ensure access to verbatim trial court records and access to meaningful appellate review. A record of the proceedings is critical for tenants in unlawful detainer, who are one unfavorable decision away from homelessness. Similarly, it is equally important in family law and domestic violence matters, as an unfavorable decision could cost a litigant their right to custody of their child or their right to be free and safe from abuse.</p>	<p>Some revisions to the text have been made in light of this and other comments received.</p> <p>As to item 2 in the instructions, the timeframe for giving the notice referenced in item 2 is described in item 3.</p> <p>As to “service”, the rule for providing notice has been modified to allow for less formality than required for service of documents, and the various options for providing notice are now set out on page 2 of the form in the new Declaration of Notice, so that parties can provide proof that notice was provided on that form.</p> <p>The law allows electronic recording in certain case types but requires court reporters in others. (See Government Code section 69957.) Those provisions are not changed for remote appearances, except for the requirement (in section 367.75(d)(2)(A)) that a court reporter be present in the courtroom for trials conducted with the use of remote technology. Similarly, the rules for parties providing court reporters or, for parties with fee waivers, for requesting court reporters, remain the same whether the party is appearing in person or remotely. (See rule 2.956 and <i>Request for Court Reporter by a Party with a Fee Waiver</i> (form FW-020).) The committee concludes that the current rule and form on this issue is sufficient to cover remote appearances as well as in-person</p>

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<b>Issue 5: Proposed Forms (other than for juvenile dependency cases)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
		appearances.
Legal Aid Foundation of CA	<p><u>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</u></p> <p>A clear and simple mandatory form, subject to local court procedures, would ensure better compliance with the Rule and avoid the confusion and uncertainty that could result from open and free form pleadings. A mandatory form is also more amenable to use by self-represented litigants. The addition of an information sheet or instructions for the mandatory form would also be helpful.</p>	After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.
Marlee Nelder	<p>1) Both CIV-021 &amp; CIV-022</p> <p>a. Modify caption box in CIV-021 &amp; CIV-022 to allow for identification of Other Party/Parties or different caption than Plaintiff/Petitioner and Defendant/Respondent, e.g. Guardianship of, Estate of, 3rd party in a child support services case, claimants in civil cases, etc.</p> <p>b. Build Proof of Service and Proof of Service Info into CIV-021 and CIV-022 along with timing requirements, as with many other Judicial Council forms.</p> <p>c. This deals with the proof of notice requirement in one form rather than requiring a separate proof of service.</p> <p>2) CIV-021 – Notice of Remote Appearance</p> <p>a. Form should specify that a separate form is needed for each party appearing remotely. The language “check and complete all that apply” seems to indicate one form is sufficient</p>	<p>The forms have been revised in light of these comments.</p> <p>The committee disagrees that a separate form is needed for each participant.</p>

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**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

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	<p>for multiple parties. A separate form should be required for each person appearing remotely for several reasons, including that the party / attorney / witness, etc. should be individually bound to conduct self as if personally present in Court.</p> <p>b. On page 1 #2, add checkboxes for common hearing types [ex: law &amp; motion, case management/status conference, other (specify)].</p> <p>c. On page 1 #2, add an optional notice that remote appearance be made for any continuances of the hearing. Not having that option would require a separate form for each continuance. Separate form should be required if the hearing is changing between evidentiary and non-evidentiary, as the considerations of the appropriateness of remote appearance may change.</p> <p>d. On page 1 #3, add language that indicates that if videoconference is chosen, the link will be sent to the address provided in the caption or add a space for a party to identify the email address they would like to have receive videoconferencing information. If there is no email address specified, no link can be sent.</p> <p>e. On page 1, # 5, insert a sentence: "I agree to conduct myself as if personally in the courtroom."</p> <p>f. On page 1 #5, remove the checkbox making this confidentiality optional.</p>	<p>The committee does not believe these are necessary. The date and location of the proceeding should be sufficient if the party cannot name the type of proceeding.</p> <p>The form has been revised in light of this comment.</p> <p>There is an item at the top of the form for the party to provide the appropriate email address.</p> <p>The committee disagrees that the right to appear remotely should be conditioned on such a prior agreement, but has added a note about conduct to the beginning of the form.</p> <p>The intent of the checkbox is to ensure that the party reads the item.</p>

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	<p>g. Suggest that page 1 # 5 be in bold.</p> <p>h. On page 2, consistently specify that times are measured in court days. (In the explanation under #3 instructions use “# days’ notice” when talking about receiving notice of hearing but specify a requirement of court days’ notice service requirement for the CIV-021 form itself).</p> <p>i. On page 2, emphasize #6.</p> <p>j. Document title should be correctly centered in its box.</p> <p>3) CIV-022 – Opposition to Remote Proceeding at Evidentiary Hearing or Trial</p> <p>a. Title should be consistent with request form (ex: Opposition to Remote Appearance).</p> <p>b. Add a section to specify whose remote appearance is being objected to if objection is not to remote appearances of any kind for the specified hearing.</p> <p>c. Page 1 #1, “check and complete all that apply” implies that the form can be used by multiple parties to file one opposition. A separate form be required for each person appearing remotely for several reasons, including that the party / attorney / witness, etc. should be individually bound to conduct self as if in Court.</p> <p>d. Form indicates it is mandatory but instructions under the caption state form may be used, indicating it is optional. On</p>	<p>The forms and rules have been changed to reference only court days.</p> <p>The title of item 6 on page two is in bold.</p> <p>The form has been revised to reflect this.</p> <p>Because the new statute authorizes parties to oppose remote appearances of other parties only at evidentiary hearings and trials, the title needs to reflect that. (See § 367.75(d)(1).)</p> <p>The instructions state that this information should be included if relevant (that is, that not objecting entirely to remote proceedings).</p> <p>This is correct.</p> <p>The committee has made the form mandatory and the language has been revised to reflect this.</p>



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	<p>page 2, #3, instructions state “on this form or in a separately created pleading”, again implying form is optional. Please just make this form mandatory.</p> <p>e. On page 2, #3 service instructions, specify court days, not calendar days.</p> <p>f. Build Proof of Service and Proof of Service information into the form, as with many other Judicial Council forms.</p>	<p>The rule and form have been revised in light of these and similar comments.</p> <p>Proof of service is generally not included on a form that must be served, as it must be served by a third party, which is often different than the person signing the form. In</p>
SEIU California	We further urge amending form CIV-021 to specify that official court reporters are required to be physically present in the courtroom during civil trials, to ensure that parties are aware of their rights to same. This form should also be amended to provide guidance to parties regarding how to request a court provided official court reporter in civil proceedings.	The committee has decided not to add information regarding court reporters to the notice form because it is a form for parties to provide notice to courts and other parties of the intent to appear remotely and is not related to court reporters. As noted above in response to Legal Aid Association of California’s comment on this issue, there is already a rule that addresses how court reporters are provided or requested.
Cheryl Siler	<p><b><u>FORM CIV-021</u></b> The Instructions for Giving Notice of Remote Appearance section of Form CIV-021 state:</p> <p>For motions and proceedings in which no oral testimony under oath may be provided If a party gives or receives at least <u>3 days'</u> notice of the proceeding (including all regularly noticed motions):</p> <ul style="list-style-type: none"> <li>• At least 2 court days before the proceeding, or,</li> <li>• By noon the court day before the proceeding if after receiving notice that another person will be appearing</li> </ul>	The rule and forms have been revised in light of this and similar comments, and now reference only court days.

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	<p>remotely.</p> <p>If a party gives or receives less than <u>3 days' notice</u> of the proceeding (including ex parte applications):</p> <ul style="list-style-type: none"> <li>• With the moving papers, if the notice to appear remotely is by the party that is asking for the hearing, or,</li> <li>• By noon the court day before the hearing if the notice to appear remotely is by any other party.</li> </ul> <p>[Emphasis added.]</p> <p>However, as noted above, proposed Rule 3.672(f)(2)(A), sets forth a time of 3 court days not 3 days. This inconsistency between the Form and the Rule should be resolved so as to avoid any uncertainty.</p>	
Superior Court of Alameda County	<ul style="list-style-type: none"> <li>• Should the proposed forms be mandatory? Should a new optional form be approved for requiring in-person appearances?</li> </ul> <p>No, the Court appreciates the flexibility provided by optional forms that would enable each court to establish their own local rules and protocols to match their court operations. The Court would, however, welcome the addition of another optional form that could be used to order remote appearances where appropriate.</p>	After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue
Superior Court of Los Angeles County	<ul style="list-style-type: none"> <li>• <i>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</i></li> </ul> <p><u>No comment.</u></p>	No response required.
Superior Court of Merced County	If the intent of the new legislation is to preserve judicial	The committee notes that the statute requires that, for

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	<p>discretion to conduct remote proceedings with notice and opportunity to object, the proposed forms should include such information.</p> <p>[ ]</p> <p>A proposed order form should be incorporated for all approved forms.</p> <p>The approved forms should be optional to allow judicial discretion during a time of rapid change and continuing confusion.</p>	<p>nonevidentiary hearings, proceedings may be conducted remotely upon a party providing notice of intent to appear remotely. A court may initiate remote proceedings for evidentiary hearings and trials. (See § 367.75(a) and (d).) The forms are intended to reflect that.</p> <p>In light of this and other comments received, the committee is recommending a new optional order form. See response above to comment by California Department of Child Support Services.</p> <p>After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.</p>
Superior Court of Orange County	<p><b>Forms</b> – For juvenile justice cases, a person may not intuitively look under Civil forms to find what they need. It is recommended they also include a juvenile form number to make it easier to find on the Judicial Council website.</p>	<p>The committee is recommending a new form category: Remote Appearance (RA) forms. This is to have all forms relating to remote appearances in this category, so that parties and litigants will know where to look for them no matter what kind of civil case they are appearing in.</p>
Superior Court of Placer County	<p>The court also submits the following comment regarding question “<i>Should a new optional form be approved, for requiring an in person appearance, in either the CIV or the JV form set?</i>”:</p> <ul style="list-style-type: none"> <li>○ The court supports creating a new, optional order form for requiring in-person appearances, so long as the</li> </ul>	<p>In light of this and other comments received, the committee is recommending a new optional order form.</p>

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	<p>order is separate from the notice forms. This will standardize procedures for courts if an opposition to a remote appearance at an evidentiary hearing, juvenile dependency hearing, or trial is filed, or if the court requires a party to appear in person at a proceeding pursuant to rule 3.672(d).</p> <p>A judicial officer of the court makes the following additional comments:</p> <ul style="list-style-type: none"><li>○ New Forms CIV-021 and JV-145: The forms currently do not address any agreements that ensure that the parties will conduct themselves in the same manner as if they appeared in person in court. Decorum and Civility are not addressed, manner of appearance, who can be present, where they can be when they appear are not addressed in addition to other concerns of the court.</li><li>○ Placer County suggests, if the forms are mandatory, that the forms include the language Placer County has adopted for its forms. The forms can be found on our Court website. The suggestion is to include the following on each form:</li></ul> <p>By signing I understand and agree to the following:</p> <ul style="list-style-type: none"><li>○ When appearing remotely, I may not receive assistance from anyone other than Counsel, a court certified interpreter or an individual appointed by or approved by the Court.</li><li>○ All rules of courtroom civility and decorum apply to a remote appearance and a remote appearance is the equivalent of an in-person appearance. Any actions that occur in the hearing are subject to all applicable rules,</li></ul>	<p>See response above to comment by California Department of Child Support Services.</p> <p>The committee has concluded that the right to appear remotely should not be conditioned on a prior agreement by the parties, but had added a note about conduct to the beginning of the forms to address these concerns.</p>

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	<p>statutes and laws and are enforceable in the same manner as if the attendee was in the courtroom.</p> <ul style="list-style-type: none"> <li>○ By making this request for a remote appearance, I do not have any scheduling conflicts with the appearance. I agree I will be available to participate in the hearing when the case is called by the Court. I agree to not be engaged in any other activity while participating in the scheduled hearing.</li> <li>○ If I am not connected with the remote platform at the time the Court calls my case or if my connection drops during my hearing, the Court will consider the failure of connection or the drop a failure to appear and the hearing may be dropped from calendar and/or the Court may proceed with the hearing and/or make rulings in the absence of an appearance as allowed by law.</li> <li>○ The Court, in its discretion, may decide to terminate the remote appearance if there is a disruption, noise, misconduct, a communication problem, a technical problem, other issue, including termination in the interest of justice.</li> <li>○ The Court retains discretion at all times to require a personal appearance and/or continue the hearing, and that I may be responsible for fees and/or costs due to a continuance.</li> <li>○ I understand that except as provided in California Rules of Court, rule 1.150, court proceedings shall not be photographed, recorded, or broadcast. Violators may be cited for contempt of court, or monetary sanctions may be imposed</li> <li>○ <i>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as</i></li> </ul>	<p>After considering this and other comments, the committee is recommending that the notice and</p>

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	<p><i>proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</i></p> <p>The court suggests that the proposed forms be optional if the local court has adopted local forms.</p>	<p>opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.</p>
<p>Superior Court of San Bernardino County</p>	<p><u>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</u></p> <p>Yes. It would be beneficial for all parties to file the same forms. This would help self-represented litigants with the court process as well as general uniformity.</p>	<p>After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.</p>
<p>Superior Court of San Diego County</p>	<p>Q: <u>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</u></p> <p>Civil: The proposed forms should be mandatory. This will allow the court to quickly identify which parties will be appearing remotely. Otherwise the notice may be included in the body of a motion or other declaration making it difficult for court staff to identify when such notice has been provided.</p>	<p>After considering this and other comments, the committee is recommending that the notice and opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.</p>
<p>Ahn Tran</p>	<p><u>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</u></p> <p>Our court is considering providing a web-based form to be used by the requestor. In response to the submission, the court will</p>	<p>After considering this and other comments, the committee is recommending that the notice and</p>

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	<p>confirm the request via email with a system-generated pdf attachment containing the requestor's information and upload the same document into our CMS. The proposed forms should be optional so courts can incorporate a higher level of automation. We will still need the forms for requestors who are more comfortable with the form-based process.</p> <p><u>Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or the JV form set?</u></p> <p>If one process is used for all civil cases, including Juvenile Dependency as discussed in question 6, A new form is not required, but changes to the proposed forms may be needed.</p> <p>. <u>Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or the JV form set?</u></p> <p>If one process is used for all civil cases, including Juvenile Dependency as discussed in question 6, A new form is not required, but changes to the proposed forms may be needed.</p> <p><u>Should form JV-145 require that all parties' consent to a witness's requested remote appearance—as mandated by section 367.75(h)(2)—be obtained before the form may be filed and indicated on the form, as currently proposed, or should the rule and form JV-146 instead require a party who does not consent to the witness's remote appearance to file that form to indicate lack of consent?</u></p> <p>We are reading this as having a common process for all Civil cases, including Juvenile Dependency, and it is a more efficient</p>	<p>opposition forms be mandatory unless the court provides an online process. See response above to comment by California Department of Child Support Services on this issue.</p> <p>The process for initiating remote proceedings in juvenile dependency cases are different, based on differing statutory provisions. (§ 367.75(h).)</p> <p>See response above.</p> <p>See response above. Because there are different processes, the forms are different.</p>

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**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

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

<b>Issue 5: Proposed Forms (other than for juvenile dependency cases)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>process for both the people and systems. If courts look into automating the front end to notice the court for Civil cases and Requesting the Court for Juvenile Dependency, the system process will only require one flow. If one flow, the form names will need to be changed to be more consistent:</p> <p>Civil            - Notice of Remote Appearance - CIV-021            - Opposition to Remote Proceeding - CIV-022</p> <p>Juvenile            - Request to Appear Remotely - Juvenile Dependency --&gt;            Notice of Remote Appearance - Juvenile Dependency - JUV-145            - Opposition to Remote Proceeding - Juvenile Dependency - JUV-146</p>	
Hon. Adam Wertheimer	<p>There should be optional forms created for the Court to rule on/respond to objections to remote appearances and ordering an in-person appearance. This should be a comprehensive, quick “check the box”, judicial response/order form. This form will be necessary and if a uniform statewide form is not created each individual court will need to create its own form. A uniform, vetted Judicial Council form would be better</p>	<p>In light of this and other comments received, the committee is recommending a new optional order form. See response above to comment by California Department of Child Support Services.</p>
Julia Wu	<p>[ ] I recommend that a notice be added to the forms stating that they are only valid until July 1, 2023. The authorization for remote proceedings in civil cases was enacted by the legislature in response to the current COVID-19 pandemic at a time when in-person access to the court system was limited. This is not intended to be a permanent change and, as SB 241 states under subsection (1), is to remain in effect only until July 1, 2023. Thus, I believe a notice placed on the forms can prevent any</p>	<p>The committee declines this suggestion, noting that the forms can be repealed if the law sunsets or amended if, as expected, the law is amended or replaced by July 1, 2023.</p>



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<b>Issue 5: Proposed Forms (other than for juvenile dependency cases)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	confusion for litigants.	
Mitchell K. Wunsh	<p>Consider adding family law specific forms to start with FL-. These forms would mirror the new CIV forms (CIV-021, etc.). Another thought would be to double-name the form (like the FL-105/GC-120).</p> <p>Self-represented litigants become familiar with the family law form series (so do the folks in the FLF offices!) and may not know to look in CIV for this type of information. Similarly, if these rules are applicable to family law, consider including similar updates to the Family section of the CRC.</p>	<p>The committee is recommending a new form category: Remote Appearance (RA) forms. The goal is to have all forms relating to remote appearances in this category, so that parties and litigants will know where to look for them no matter what kind of civil case they are appearing in.</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Alliance of Children’s Rights	<p>1. Noticing all parties (and persons entitled to notice of the proceedings) of intent to appear remotely is onerous and is made significantly more onerous when the consent of all parties is required to gain permission from the court for a remote appearance. The proposed rules seem to have the effect for Juvenile Dependency matters that the term “witness” as it is defined here includes many if not all the participants in any Juvenile Dependency hearing. Beyond the burden created by this rule, there is no guidance on what a party may do if the party is unable to procure the consents of all parties and/or is unable to notice all parties/persons. May a Declaration of Due Diligence be filed? Is there another alternative being considered that allows for some wiggle room? Or is the expectation that if a party is unable to notice another party or procure a consent (as the situation requires), that party must appear in-person no matter what? Or, to put it another way, is this rule all-or-nothing regarding these remote appearance requirements?</p>	<p>The committee understands the commenter’s point about notice of intent to appear being given to all parties. The committee has revised its recommendation for the notice requirements for all civil cases other than juvenile dependency to provide the opportunity for a party to give notice of intent to appear remotely for the duration of a case. See separate comments and responses regarding notice. With respect to juvenile dependency proceedings, neither the statute nor the proposed rule requires notice of intent. In contrast to section 367.75(a), which requires that at least one party give notice of intent to appear remotely as a condition precedent to the court’s conduct of remote proceedings, section 367.75(h), which governs remote proceedings in juvenile dependency, authorizes any dependency proceeding to be conducted remotely, in whole or in part, as long as, among other conditions any person authorized to be present has the opportunity to request to appear remotely. The committee has therefore revised its recommendation to authorize a court to conduct any dependency proceeding as a remote proceeding without a request as long as, among other conditions, the court provides an opportunity for any person authorized to be present to request to appear remotely. If the court conducts a proceeding remotely, any party, as defined, may appear remotely without notice or request, consistent with section 367.75(h)(1).</p> <p>Section 367.75(h)(2) also authorizes “[a] witness, including a party providing testimony, [to] appear through remote technology only with the consent of all parties.” The Judicial Council may not dispense with</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
		this statutory consent requirement through a rule of court. The committee has revised the proposed rule, however, to allow an attorney to file the request on behalf of a witness without obtaining the consent of all the parties. A party or attorney would be able to file a request to compel the witness's appearance in person, as also provided in the statute.
Debra K. Barriger Deputy County Counsel County of San Luis Obispo	<p>I am writing to express concern about the proposed Rule 3.672 as it relates to juvenile dependency proceedings, specifically as it relates to having to file a request to appear remotely. For our population and the manner in which social workers and attorneys interact with clients, this creates unnecessary barriers, increases costs to the Department and to minor's and parents counsel and creates additional barriers to access to court.</p> <p>Please do not adopt the rules for Juvenile Dependency at this time without further input under this timeline for January 1. The short answer your specific request for comments is in bold, with an explanation following. Please give this consideration.</p> <p><b>Does the proposal appropriately address the stated purpose?</b> <b>No</b></p> <p><b>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants?</b> <b>NO</b></p>	<p>The committee appreciates these comments. The committee has revised its recommendation to try to limit the procedural barriers to those required by section 367.75. The Judicial Council has no authority to dispense with statutory requirements through a rule of court. Please see below for responses to specific comments.</p> <p>See responses to specific comments below.</p> <p>The committee has revised its recommendation to eliminate the requirement for a request to appear remotely if the court is conducting a remote proceeding as long as, among other things, the court provides an opportunity for any person authorized to be present to request to appear remotely. This requirement seems more consistent with the structure and language of section 367.75(h). If the court is not conducting a remote proceeding and a request is needed, the committee has</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><b>Is written notice of intent to appear needed in all circumstances?</b>  <b>NO, would recommend the reverse of what you have proposed. If someone wants a live hearing, they can request it, but default (or allow default) for remote calendars. Oral notice on the record (at the remote hearing) requesting the in person hearing will work.</b></p> <p><b>The proposed forms should NOT be mandatory</b></p> <p>Our court is able to effectively manage remote calendars, it has saved countless hours of staff time, increased the ability for parents, CASA, relatives, NMD, and caregivers to attend court.</p> <p>While we support any parties request for an in-person hearing, our recommendation is to allow parties to request an in person hearing rather than having the in person hearing a default and having to request to appear remotely.</p>	<p>reduced the deadline to submit a request to no later than the time the case is called for hearing. The court may still order a party to appear in person if it determines that one or more of the factors enumerated in section 367.75 requires an in-person appearance.</p> <p>Section 367.75 limits the court’s discretion to require dependency proceedings to be conducted remotely. Under section 367.75(h), the court must satisfy specific conditions—including provision of an opportunity for any person authorized to be present to request to appear remotely—to conduct a remote proceeding. The committee has revised its recommendation to authorize the court to conduct remote proceedings in dependency if those conditions are met and to allow parties and other specified persons to appear remotely without a request.</p> <p>The committee has revised its proposal to recommend that form JV-145, <i>Request for Remote Appearance—Juvenile</i>, and form JV-146, <i>Request to Compel Physical Presence</i>, be renumbered as RA-025 and RA-030 and approved for optional use.</p> <p>The committee encourages courts to conduct remote dependency proceedings, subject to the statutory limits in section 367.75(h) as implemented by rule 3.672.</p> <p>The committee has interpreted section 367.75 not to authorize a court to specify a default manner of appearance in dependency, but to give parties the choice, subject to specific limits and the availability of adequate technology. One of those limits is found in section 367.75(h)(2), which authorizes a party to request that the</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>These rules of court appear unduly burdensome particularly for a small county and the forms are additionally cumbersome and it appears to me that this will increase court congestion, continuances and will impact calendars unnecessarily.</p> <p>For example, if the Department provides notice of a remote hearing to all parties and all parties show up remotely or are appearing through counsel, a hearing may proceed in a timely fashion on a remote calendar. If at that calendar the matter is set for contest, the parties could agree to a remote hearing or request an in person hearing at that time. If the party requests an in person hearing for an uncontested matter, the case could be continued to an appearance calendar for that purpose.</p>	<p>court compel the physical presence of a party or witness, and conditions a witness’s remote appearance on the consent of all other parties. The committee may not waive this statutory limit, but has attempted to provide clearer guidelines for submitting a request to allow a witness to appear remotely and for asking the court to compel a witness or party to appear in person. In addition, under section 367.75(j), represented parties may stipulate, subject to section 367.75(b), to a remote appearance or testimony.</p> <p>The committee has revised the proposed rules and has recommended that the forms be made optional to place as small a burden as possible on courts, consistent with section 367.75. To the extent that the statute imposes requirements that did not exist under emergency rule 3, the Judicial Council may not dispense with those requirements through a rule of court.</p> <p>Section 367.75 and rule 3.672 do not authorize the department to give notice of a remote proceeding unless the court has offered that option. The court must set the time, place, and manner of each proceeding in consultation with the parties. If the court offers an option for a remote proceeding, rule 3.672(i), as revised, provides that any party may use that option without a request as long as the conditions in section 367.75(h) are met. Those conditions include the opportunity for any person authorized to be present to request to appear remotely and a prohibition against requiring any party to appear remotely. (Code Civ. Proc., § 367.75(h)(1), (3).) A court that offers a remote proceeding option must, therefore, also offer an in-person option for the</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>But if the Department provides notice of an in person hearing and a party requests to appear remotely, but others appear in person, this presumes either that the hearing is being held where there is some sort of way for a person to appear remotely via video or that person is relegated to a telephone appearance. This creates additionally inequities. Where all parties are on video call with the court, the court has equal access to see and assess parties. If one is in court and one on the phone, this is not the same.</p> <p>The realities of juvenile dependency practice require cooperation and fluidity. Having parents’ and minor’s counsel (or the department) having to file additional paperwork to request a remote hearing is unnecessarily burdensome and takes away time that could be better spent preparing for court, meeting with clients, and resolving outstanding issues.</p> <p>The language of this proposed rule is far too narrow. For small counties, who may not have local juvenile rules or who may need to adopt them, the time frame is also going to cause additional notice issues for calendars and cases that have already been set and noticed for the New Year.</p>	<p>proceeding. Neither the court nor any party has the unconditional authority to decide that a proceeding will be conducted exclusively in one manner, whether remote or in person.</p> <p>Notwithstanding this policy concern, the statute authorizes such “hybrid” proceedings in dependency: “Any ... dependency proceeding may be conducted in whole <i>or in part</i>” as a remote proceeding, subject to specific conditions. (Code Civ. Proc., § 367.75(h) (emphasis added).) If the court permits a party to appear remotely, however, it must ensure that the technology in the courtroom enables all parties to participate fully in the proceeding.</p> <p>The committee has revised its recommendation to allow most requests to be made orally or in writing, to make the request forms optional, and to allow a request, if needed, to be made up to the time the case is called for hearing.</p> <p>The committee has provided for the expeditious adoption of local rules in rule 3.672(e), which waives rule 10.613’s requirements for a 45-day circulation of proposed local rules and a January 1 or July 1 effective date. In addition, rule 3.672(e) would authorize courts to continue using existing procedures until March 31, 2022, as long as those procedures are consistent with the statute. The committee does not recommend delaying the effective date of the proposed rule, as the statute will take effect on January 1, 2022, and the rule is needed to implement the statute.</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>For Juvenile I don't understand what the purpose of the "request to compel physical presence-juvenile dependency" is for? Litigants are not required to attend all of their hearings, they may appear through counsel, they may have to work, have child care or treatment obligations. This process could allow another party to compel the presence of another party for the purpose of harassment, etc. If a party needs to be present for testimony, we can use subpoena powers for in person testimony.</p> <p>For request for a witnesses' remote appearance, again I do not understand why an additional form is needed. At the time of the trial setting, the parties and the court can decide if this will be a remote or in person trial and the witness can be subpoenaed accordingly.</p>	<p>Proposed form JV-146, renumbered as RA-030, is intended to implement section 367.75(h)(2), which authorizes any party to the proceeding to request the court to compel the physical presence of a witness or a party, defined to include counsel. Neither the statute, nor the rule, nor the form implementing them would allow a <i>party</i> to compel the presence of another party. Only the court has the authority to do that. Moreover, the subpoena power may suffice for the purposes of a party calling a witness; that party may ask the court to specify the manner of the witness's appearance in the subpoena. If the party calling the witness has arranged for the witness to testify remotely, the subpoena power, exercised on behalf of another party who wants the witness to appear in person, may not be sufficient or appropriate. In that case, form RA-030 provides a vehicle for a party who wants to confront and cross-examine a witness in person to ask the court to compel the witness to appear in person. As noted above, under section 367.75(i) represented parties may stipulate, subject to the limits in section 367.75(b), to a witness's remote testimony.</p> <p>Under section 367.75(h)(2), all parties must consent before a witness's remote appearance. Not all courts hold a conference before a trial. In those courts, unless the parties file a stipulation to the manner of appearance, a written request is needed to notify the other parties that a witness plans to testify remotely. An advance deadline is needed to give the other parties time to exercise their statutory right not to consent to the witness's remote testimony.</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>I have practiced in dependency court in 5 or more different counties over 25 years. I do not believe that these proposed rules or forms advance access to the court, due process for parents, minors, and the Department, or otherwise aid in the process.</p> <p>I believe that a rule allowing for remote appearances as appropriate for a local juvenile court and ensuring that in-person hearings are available to parties upon request is all that is needed.</p> <p>For our county I believe these rules will effectively remove the remote calendar option and just have a return to the court room. It is unfortunate to lose an important and workable tool for our county which has saved so much staff and court time over the past year and a half while providing good access to court, counsel, and the department for dependency litigants.</p>	<p>The committee acknowledges the commenter’s experience and appreciates her perspective. The committee has revised its recommendation to address many of the commenter’s concerns.</p> <p>The committee does not recommend the suggested change. The statute does not authorize a court to place conditions on a party’s right to appear in person.</p> <p>The committee hopes that the Superior Court of San Luis Obispo County will find a way to maintain remote proceedings in juvenile dependency cases under the changes introduced by section 367.75, as implemented by rule 3.672.</p>
California Tribal Families Coalition	CTFC suggests an exemption for cases governed by the Indian Child Welfare Act (ICWA) from proposed Rule 3.672, just as there is an exemption in Rule 5.9 Appearance by Telephone. Assembly Bill (AB) 686 passed in 2019, requiring “the Judicial Council to establish a rule of court that would authorize the use of telephonic or other remote access by an Indian child’s tribe in proceedings where ICWA appl[ies].”	The committee does not recommend the suggested exemption. The text of Welfare and Institutions Code section 224.2(k) requires the Judicial Council to “adopt rules of court to <i>allow</i> for telephonic or other remote appearance <i>options</i> by an Indian child’s tribe.” The Judicial Council has, to date, adopted rules 5.482(g) and 5.531(b)(1) to provide these options. Section 367.75 places conditions on the range of permissible options for all remote appearances and proceedings, including remote appearances by tribes. To the extent that the options provided in rules 5.482(g) and 5.531(b)(1) are inconsistent with section 367.75, they may not be enforced as long as that statute remains in effect. Proposed rule 3.672 allows for a modified set of remote appearance options for parties, including tribes, in cases



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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>The bill additionally prohibits charging tribes a fee for telephonic or remote access. This is now codified at WIC § 224.2(k) and in Court Rule 5.482(g). The proposed changes to Court Rule 3.672 must not interfere with these provisions for tribes and their counsel in Indian Child Welfare Act cases.</p> <p>The timelines and required requests outlined in the proposed rule would place a burden on tribes appearing in ICWA cases because tribes and their counsel often receive short notice of hearings – even less than 24 hours in advance in some instances.</p> <p>An important component of Rule 5.482(g) is that the method of appearance for the child’s tribe is determined by the court, “as long as a method of effective remote appearance and participation sufficient to allow the tribe to fully exercise its rights is provided.” Preserving this right for tribes in ICWA cases must be included in the new rule.</p> <p>Where the new rule reserves a right for courts to deny a remote appearance in certain circumstances, tribes must be exempt and retain the right to appear remotely pursuant to Rule 5.482(g). To preserve tribes’ existing rights, CTFC recommends adding a</p>	<p>covered by ICWA, consistent with both Welfare and Institutions Code section 224.2(k) and Code of Civil Procedure section 367.75.</p> <p>The committee has also added language to rule 3.672(k) and the Advisory Committee Comment to confirm that a party, including a tribe, who is statutorily exempt from filing fees <i>or fees for other court services</i> may not be charged a videoconference fee. This language is intended to preclude a court from charging the fee required by Government Code section 70630.</p> <p>The committee has recommended postponing the deadline for a request when one is needed, and allowing oral requests to appear remotely to address these concerns.</p> <p>Section 367.75(f) requires the court, if it permits a remote appearance, to ensure that all parties can fully participate regardless of their manner of appearance. This requirement applies equally to appearances by tribes in proceedings governed by ICWA. Because rule 5.482(g) can be read to confer a right that exceeds the limits imposed by statute, the committee recommends that the provisions of rule 5.482(g), except for the prohibition against charging a tribe a fee to appear remotely, be suspended while section 367.75 is in effect.</p> <p>The committee does not recommend the suggested change. The authority for a court to require a party or witness to appear in person is both granted and limited by section 367.75(b). Nothing in Welfare and</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>third exception to proposed Rule 3.672(h)(1)(A) that imputes the ICWA preserving language from Rule 5.9 (which is otherwise suspended until 2023 by the new rule). The highlighted sections below are the proposed edits to Rule 3.672(h)(1)(A) beginning on page 19, line 12:</p> <p>(1) Applicable rules and definitions</p> <p>(A) This subdivision applies to any juvenile dependency proceeding, unless any of the following applies:</p> <p>(i) The court has adopted applicable local procedures or local rules under (e);</p> <p>(ii) The court has found cause to permit a person to appear remotely in response to a request under (i)(2); or</p> <p><b>(iii) The case is governed by the Indian Child Welfare Act. Rule 5.482(g) governs remote appearances in cases governed by the Indian Child Welfare Act.</b></p> <p>[ ]</p> <p>Because tribes appearing in ICWA cases should be exempt from the new rule, the proposed forms would be optional for tribes. Because some tribes may choose to file using the form, including a check box to identify as a tribe’s counsel on JV-145 is helpful as the Judicial Council has already drafted. CTFC will need to review the final rule before we comment further on the forms, as we do not know fully how the rule will impact tribes and their use of the forms.</p>	<p>Institutions Code section 224.2(k) purports to restrict the Legislature’s authority to place limits on the remote appearance options available to tribes. To the extent that rule 5.482(g) grants an unconditional right to tribes to appear remotely, it is inconsistent with section 367.75 and therefore invalid. The committee recommends that, while section 367.75 is in effect, the provisions of rule 5.482(g), except for the prohibition on charging fees to tribes for remote appearances, be suspended.</p> <p>The committee has revised its proposal to recommend that the proposed forms be renumbered as RA-025 and RA-030 and approved for optional use by any person, including a tribe, authorized to be present at a dependency proceeding.</p>
Children’s Law Center of California	<b>Purpose:</b> Broadly, the proposed rule unfortunately does not achieve the purpose of improving access to the courts and	The committee appreciates these comments. The committee has revised the proposed rule to simplify the

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>enabling parties to more easily participate in dependency hearings. Over the past year and a half of the pandemic, CLC represented over 30,000 clients across 28 courtrooms in Los Angeles, 8 of which were fully remote within days of the declaration of emergency, with all 28 operating virtually by June 2020 (Sacramento’s timeline was similarly expeditious). This experience confirmed the great benefit conferred upon attorneys, families, and hearing officers from the ability to be nimble and adjust, often without advance notice, in allowing remote appearances. As such, it is our position that with limited exception (i.e., witness testimony, addressed in more detail below), any rules related to remote hearing attendance should be expansive, flexible, and without barriers to participation.</p> <p><b>Notice/Timelines:</b> Overall we find the proposed timelines and notice provisions as written burdensome and unnecessary. Our position is that these requirements are not helpful as in our experience thus far with remote hearing attendance, advance notice of how a party will attend a hearing is unnecessary. These concerns apply to the entirety of sections (f) through (g)(3). A general rule requiring oral notice is sufficient. The statute does not require a formal showing of proof that oral notice was given.</p> <p><b>Suggested Amendments:</b></p> <ul style="list-style-type: none"> <li>• Rule 3.672(h)(1)(c)(2) – <i>Definition of evidentiary hearing or trial</i> - CLC recommends replacing “may be provided” with “is planned.”</li> </ul>	<p>process for appearing in dependency proceedings conducted in whole or in part as remote proceedings. Nevertheless, the rule must conform to the requirements of the statute, which governs the ability of parties to appear remotely and the authority of courts to conduct proceedings remotely. The committee intends the proposed rule, as revised, to promote access to the courts, including in dependency proceedings, within the limits imposed by section 367.75.</p> <p>Neither the statute nor the proposed rule requires notice of intent to appear remotely in dependency proceedings. As expressly provided in subparagraph (g)(1)(B) and item (h)(2)(A)(ii), subdivisions (g) and (h) do not apply to dependency proceedings. To the extent this comment applies to other types of civil cases, section 367.75(a) expressly conditions the conduct of remote proceedings on the provision by at least one party of notice of intent to appear remotely at least once during a case. The rule may not dispense with a statutory requirement.</p> <p>The committee understands this comment to refer to the definition of “evidentiary hearing or trial” in rule 3.672(c)(2), and does not recommend revising that definition as suggested. The definition has limited utility in dependency proceedings because section 367.75(h) does not distinguish evidentiary hearings or trials from other proceedings in a dependency case.</p>

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	<ul style="list-style-type: none"> <li>• Rule 3.672(h)(1)(c)(4) – <i>Definition of a party</i> - a party to a proceeding should be limited to actual parties and should not include nonparties. It is common that many persons “appear” in a dependency proceeding; relatives, foster parents, treatment providers, group home staff, and teachers are just a few examples. These individuals are frequently present at dependency hearings where they will state their name and relationship to the parties, provide information to the court, and sometimes be sworn in to provide brief testimony needed by the court to address an element of the case requiring immediate attention. Depending on how the court interprets the term “appearance” these individuals may or may not be considered parties; this could then confer burdens or rights not intended for persons other than the traditional parties to dependency case (parent/guardian, child, and petitioner).</li>   <li>• Rule 3.672(h)(2)(A)(i) – <i>Request to appear remotely/proceeding with at least 10 days’ notice</i> – CLC recommends replacing the current language with the following: Any person who has a statutory right to be present or is authorized by the court to be present who wishes to appear remotely at a proceeding may request to do so at any time before the hearing commences. The request may be made by any means reasonably calculated to ensure receipt by the court and all parties, including electronic, telephonic, orally, or in writing.</li> </ul>	<p>The committee understands this comment to refer to the definition of “party” in rule 3.672(c)(4), and does not recommend revising the definition as suggested. Section 367.75(i), however, defines “party,” for purposes of the statute, to include a nonparty subject to discovery in the case. Because section 367.75(h), which governs remote proceedings in dependency, expressly distinguishes between party and witness, the inclusion of nonparties subject to discovery blurs that distinction inconsistently with the definition in subdivision (i). Faced with this inconsistency, the committee has interpreted the specific use in (h) to control in dependency over the more general definition in (i). For this reason, as illustrated by the commenter, the rule as circulated already excluded dependency proceedings under subdivision (h) from (c)(4)’s definition of party. Nevertheless, the committee has revised the proposed definition of party in rule 3.672(i)(1)(B) to specify more precisely the parties to a dependency case as well as to exclude nonparties from the definition.</p> <p>The committee agrees that, in circumstances requiring a request, the deadline for submitting the request was too early. The committee has revised the recommended deadline as suggested to authorize a request, except one made on behalf of a witness, to be made no later than when the case is called for hearing.</p>

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	<p>CLC does not think there should be a minimum number of days’ notice required within this section. However, if a concrete timeline is to be included, we recommend no more than 3 days.</p> <ul style="list-style-type: none"> <li>• Rule 3.672(h)(2)(A)(ii) and (h)(2)(B) – <i>Further remote notice provisions</i> - CLC recommends deleting these subsections.</li> <li>• Rule 3.672(h)(2)(C) – <i>For a detention hearing</i> – CLC recommends replacing the current language with the following: Any person who has a statutory right to be present or is authorized by the court to be present who wishes to appear remotely at a proceeding may request to do so at any time before the hearing commences. The request may be made by any means reasonably calculated to ensure receipt by the court and all parties, including electronic, telephonic, orally, or in writing.</li> <li>• Rule 3.672(h)(3) – <i>Opposition to request to appear remotely</i> – CLC recommends adding “or as soon as practicable after the request is received” to the end of the current language.</li> <li>• Rule 3.672(h)(4) – <i>Determination of requests and oppositions</i> – this should remain in the rule as it relates to requiring all parties’ agreement for a witness to appear remotely. This is the only scenario where advance notice and opportunity to object to a remote appearance should be required. However, the language of (4)(A) would benefit from additional clarity by amending the language to read: “The court may grant the request of a witness who will give oral testimony, including a party, to appear remotely....”</li> </ul>	<p>The committee agrees that no advanced deadline for a request to appear remotely, except on behalf of a witness, is needed, and has revised subdivision (h) as described above.</p> <p>The committee agrees and has revised its recommendation to remove the requirements as suggested.</p> <p>The committee has revised its recommendation to remove the separate requirements for a detention hearing, in part because no request is required if the court offers a remote option at the hearing, in part because the revised deadline, as suggested by the commenter, for any proceeding is short enough to accommodate a request to appear remotely at a detention hearing, and in part to eliminate the distinction between the petitioner and other parties.</p> <p>The committee has revised its recommendation so that a request to appear remotely is not a condition to filing a request to compel physical presence.</p> <p>The committee has revised its recommendation regarding a request to compel physical presence. The statute and, therefore, the rule, authorize any party to request that the court compel the physical presence of a party or a witness. The committee has revised the rule to eliminate the ambiguity noted by the commenter.</p>

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	<p>• Rule 3.672(i)(1) – <i>Other rules regarding notice</i> – states that “If the proceeding is an evidentiary hearing or trial, the party must provide reasonable notice of the in-person appearance to the court and other parties who have appeared in the case.” This language directly conflicts with CCP 367.75(f) which expressly disallows the court from compelling remote appearances. As we interpret this language, the court could prohibit a party who did not provide notice of their intent to appear in-person from attending the hearing entirely. CLC recommends this language be removed from the Rule.</p> <p><i>Forms</i> - All the proposed forms should be optional.</p> <p><b><u>Proposed Form JV-145: Request to Appear Remotely</u></b> For the reasons discussed above, this form is unnecessary as only testifying witnesses should be required to give formal notice, and obtain consent, in order to appear remotely. The form should be modified to reflect this very limited circumstance. In practice, the testifying witness can give simply notice at the prior hearing/the hearing in which the testimony is scheduled that he or she intends to testify remotely.</p> <p><b><u>Proposed Form JV-146: Request to Compel Physical Presence</u></b> Similar to our comments regarding JV-145, a party who will not be testifying should not be compelled to be physically present; as such, this form seems unnecessary.</p>	<p>The committee has revised the proposed rule to delete the second sentence of rule 3.672(j)(1), as suggested.</p> <p>The committee has modified its proposal to recommend that forms JV-145 and JV-146 be renumbered as RA-025 and RA-030, and be approved for optional use.</p> <p>The committee has revised its recommendation to authorize an oral or written request to appear, except when the request is made on behalf of a witness. In that case, the request must be in writing, and may be made on form RA-025. The committee has retained the general structure of the form, but removed the item requiring the requesting party to document the consent of all parties to a witness’s remote appearance. The option to use this form does not imply that any person other than a witness must obtain other parties’ consent to appear remotely.</p> <p>The committee has revised its recommendation to authorize, in rule 3.672(i)(4), the use of this form to request an order to compel the physical presence of a witness or a party, regardless of whether the party will testify, as required by section 367.75(h)(2).</p>

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City and County of San Francisco Office of the City Attorney	<p><b>I. The proposed rule of court, rule 3.672, subdivision (h), conflicts with the new Code of Civil Procedure section 367.75 enacted by Senate Bill 241.</b></p> <p>Enacted Code of Civil Procedure section 367.75, which will go into effect on January 1, 2022, broadly allows for remote appearances in dependency hearings. Specifically, the statute reads:</p> <p>(h) <i>Any</i> juvenile dependency proceeding may be conducted in whole or in part through the use of remote technology subject to the following:</p> <p>(1) Any person authorized to be present <i>may request to appear remotely</i>.</p> <p>(2) Any party to the proceeding may request that the court compel the physical presence of a witness or party. A witness, including a party providing testimony, may appear through remote technology only with the consent of all parties and if the witness has access to the appropriate technology.</p> <p>(3) A court may not require a party to appear through the use of remote technology.</p> <p>(4) The confidentiality requirements that apply to an in-person juvenile dependency proceeding shall apply to a juvenile dependency proceeding conducted through the use of remote technology.</p> <p>(Stats. 2021, ch. 214, emphasis added.) Unlike the proposed rule of court, the statute does not require lengthy and written advance notice of an intent to appear remotely and does not prohibit the use of remote technology at a specific type of hearing, such as a detention hearing.</p> <p>“A rule is inconsistent with a statute if it conflicts with either the statute’s express</p>	<p>The committee appreciates these comments.</p> <p>The committee agrees that the proposed deadlines for submitting a request were too early. The committee has revised its recommendation to allow remote appearance without a request if specific conditions are met, move the deadline to file a request later, and allow oral or written requests. The committee believes, however, that the Judicial Council has sufficient constitutional authority to establish any reasonable deadline or manner</p>

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	<p>language or its underlying legislative intent. [Citations.]” (<i>In re Abbigail A.</i> (2016) 1 Cal.5th 83, 92.) Such a rule is void. (<i>Ibid.</i>)</p> <p>Prohibiting the petitioner in a child welfare case from ever appearing remotely at a detention proceeding as proposed rule of court, rule 3.672, subdivision (h)(2)(c) provides, directly conflicts with the plain language of enacted statute 367.75, subdivision (h), which unambiguously provides: “[a]ny juvenile dependency proceeding may be conducted in whole or in part through the use of remote technology . . .” (Code of Civ. Proc., § 367.75, subd. (h); stats. 2021, ch. 214, emphasis added.)</p> <p>Indeed, the primary objective of Senate Bill 241 is to “build upon the expanded use of technology in the legal industry during the COVID-19 pandemic by permanently permitting witnesses in civil cases to testify remotely.” (Ass. Com. on Jud., Analysis of Bill No. 241 (2021-2022 Reg. Sess.) Jul 13, 2021, p. 1.) Further, the Legislative history indicates a party or witnesses’ profession as a first responder should be a factor weighing in favor of that person being allowed to participate remotely: “[w]hether the witness is a peace officer, fire department employee, or other first responder that provides valuable public services such that it is in the public’s interest for the witness to remotely appear.” (Ass. Com. on Jud., Analysis of Bill No. 241 (2021-2022 Reg. Sess.) Jul 13, 2021, p. 2.) An emergency response social worker mandated to respond to child welfare referrals no matter the crisis of the day falls within the category of public servants who provide</p>	<p>for submitting a request to appear remotely under section 367.75(h) in light of the absence of a deadline in the statute and section 367.75(k)’s mandate to adopt rules of court to implement the statute by establishing, among other things, a deadline for submission of a request to appear remotely.</p> <p>The committee agrees and has revised its recommendation to remove that restriction.</p> <p>The committee does not draw any conclusions about the meaning or intent of section 367.75 from the judiciary committee analysis of SB 241, as amended June 28, 2021. That analysis preceded the insertion of section 367.75 into the bill by almost two months, recognized that significant disagreement existed over the provisions of the bill, and anticipated that further amendments were likely. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 241 (2021–2022 Reg. Sess.) as amended June 28, 2021, p. 9.) That analysis refers to a version of Code of Civil Procedure section 367.8, which applied only to witnesses and was amended out of SB 241 on August 30, 2021, four days before section 367.75 was added. The cited analysis cannot, therefore, illuminate the intent of section 367.75, which places limits on the conduct of remote proceedings that were not present in any earlier</p>



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	<p>valuable public services such that they should, at a minimum, not be categorically barred from attending a detention hearing remotely.</p> <p>Moreover, the Committee’s justification for the ban on social workers appearing remotely at a detention hearing is vague and unpersuasive: “A detention hearing must be held the court day after the petition is filed. Because the petitioner is a governmental agency, the agency bears the burden of proving the need for continued detention, and <i>the detention hearing often sets the course for the rest of the proceedings</i>, it is appropriate to require the petitioner to appear in person.” (Judicial Council of Cal., Invitation to Comment, Civil Practice and Procedure: Remote Appearances, page 7–8, fn. 36, emphasis added.)</p> <p>First, the fact that the petitioner is a governmental agency is, as explained above, not a factor weighing against remote appearances, but in fact, a factor weighing in favor of them.</p> <p>Second, the Agency bears the burden of proof in almost every hearing in a child welfare court case, not just at the detention hearing. (See Welf. &amp; Inst. Code, §§ 319, 355, 358, 361, subd. (c), 366.21, 366.22, 366.25, 366.26.) Third, whether or not the detention hearing sets the course for the rest of the proceedings bears no rational connection to the categorical bar on the petitioner (i.e. the Agency) appearing remotely at the detention hearing. The Agency has the burden of proof whether the social worker appears in person or remotely. Irrespective of whether the petitioner appears remotely or in person, the parents or child can contest the detention recommendation and compel the testimony of the social worker or can request a 24-hour continuance, which if requested, is granted automatically.</p>	<p>version of the bill or in the emergency rules.</p> <p>The committee agrees and has revised its recommendation to remove that provision from the rule.</p> <p>See response above.</p> <p>See response above.</p>

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	<p>(Code Civ. Proc., § 367.75, subd. (h); stats. 2021, ch. 214, emphasis added; Welf. &amp; Inst. Code, § 322.) Last, the juvenile court returns children at detention hearings held remotely just as it does for hearings held in person.</p> <p>In sum, a categorial bar to petitioners appearing remotely at detention hearings conflicts with the plain language of enacted statute Code of Civil Procedure, section 367.75.</p> <p><b>II. Proposed rule of court, rule 3.672, subdivision (h), would, in practice, make remote proceedings rare and extremely cumbersome to plan for, in conflict with the Legislature’s clear intent to allow them in dependency cases.</b></p> <p>The five-day advanced written notice requirements of subdivision (h) by every party who has entered an appearance in a case to appear remotely at any kind of dependency proceeding will be cumbersome and difficult to manage for courts across the state of California.</p> <p>Dependency cases typically have at least four attorneys (i.e. two parents, a child, and the Agency), at least four parties (two parents, one child, and the social worker), but often many more. Siblings may have different attorneys if the interests of the children conflict, there may be more than two presumed parents, de facto parents, and Court Appointed Special Advocates. In addition, based on the broad definition of “party” contained in subdivision (h)(1)(C), many additional people routinely enter appearances in dependency cases such as family treatment court representatives, a peer parent advocate, a private social worker, or an interpreter. Organizing and coalescing upwards of 10 JV-145 and JV-146 forms for each</p>	<p>See response above.</p> <p>The committee agrees and has revised its recommendation to move the deadline later, and allow a request to be submitted orally or in writing.</p>

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	<p>case on a dependency calendar that on any given morning or afternoon can include between 10 to 30 different cases, would tax the limited and already stretched judicial resources in dependency cases. This conflicts with the legislative intent of enacted Code of Civil Procedure section 367.75: “Lawyers and judges are searching for every available incremental improvement in efficiency to address the backlog of cases. Authorizing the appearance of witnesses via remote live video and expanding electronic service of documents will further these efficiencies by reducing congestion and increasing the speed of existing processes.” (Sen. Bill Fiscal Com., Analysis of Bill No. 241 (2021-2022 Reg. Sess.) Aug. 19, 2021, p. 1-2.)</p> <p>Proposed rule 3.672 also conflicts with itself. The stated purpose of rule 3.672 as outlined in subdivision (a), explains the purpose of the rule is to, “improve access to the courts and reduce litigation costs, to the extent feasible courts should permit parties to appear remotely at conferences, hearings, and proceedings in civil cases consistent with Code of Civil Procedure section 367.75.” (Proposed Rule of Ct., rule 3.672, subd. (a).) Requiring every person who has entered an appearance in a dependency case to complete, serve, and file JV-145 five days in advance of any type hearing not just trials, will increase litigation costs and billing hours for panel attorneys, be time consuming for courts to manage, and functionally limit remote access to hearings in dependency cases.</p> <p><b>III. The proposed rule of court, rule 3.672, subdivision (h) disproportionately interferes with parties’ equal access to dependency court hearings.</b></p> <p>Rule 3.672, subdivision (h) disproportionately interferes with</p>	<p>The committee understands the commenter’s frustration with the procedural requirements required by section 367.75 and recognizes that the authority to allow remote appearances and conduct remote proceedings in section 367.75 is subject to more limits than exist under emergency rules 3 and 6. The emergency rules were, however, adopted as time-limited, emergency measures to govern remote proceedings in the absence of legislation. The Legislature has now acted, and the Judicial Council must adopt rules that include the limits imposed by section 367.75. The committee has revised its recommendation to eliminate, simplify, or abbreviate these requirements to the extent possible while still implementing the statute.</p> <p>The committee does not recommend eliminating the</p>

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	<p>parties’ equal access to dependency court hearings by effectively limiting the ability to use remote technology in dependency cases and by requiring the consent of all parties, without exception, before a witness may appear remotely.</p> <p>Children who are placed, for example, in Fresno, California are hours away from the San Francisco Superior Court at 400 McAllister Street, but have been appearing remotely at a hearing, if they so choose, without needing to be absent from school, without the need to strain transportation resources of the Agency, and without needing to wait in the courthouse for hours to hear their case be called. Similarly, use of remote hearings has expanded parent access to and participation in hearings. A parent, for example, does not need to miss a visit with their child, miss work, miss an individual therapy appointment, or worry about unreliable transportation to get to the courthouse to attend a hearing. Parties who reside outside of the country, for example, in Mexico, Honduras, United Kingdom, Greece, or Canada have had easy access to their dependency hearings here in San Francisco. With the use of remote technology, the party can simply join the hearing via video at the exact time their case is ready to be heard from outside a visitation center, from the street, or from the security of the place they call home. Parents and children have benefitted from flexibility in access to the courts and limiting that access will disproportionately negatively affect those who have the least amount of resources and are the most vulnerable.</p> <p><b>IV. The proposed rule of court, rule 3.672 applies to every other segment of civil proceedings, including those that deal with liberty interests, without special treatment.</b></p>	<p>requirement that all parties consent to the remote appearance of a witness as a condition of that appearance. This condition is imposed by section 367.75(h)(2), which reads: “Any party to the proceeding may request that the court compel the physical presence of a witness or party. <u>A witness, including a party providing testimony, may appear through remote technology only with the consent of all parties</u> and if the witness has access to the appropriate technology.” (emphasis added). The committee has revised its recommendation to eliminate the requirement that a party or counsel obtain the consent of all parties <i>before</i> requesting permission for a witness to appear remotely, instead requiring a party to request that the court compel the witness’s appearance in person.</p>

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	<p>Dependency proceedings are the <i>only</i> sub practice in “civil cases” that have their own set of limitations on the use of remote technology in its proceedings. In other practice areas such as delinquency (Welf. &amp; Inst. Code, § 600 et. seq.) or conservatorship (Welf. &amp; Inst. Code, § 5350 et. seq.), deprivation of liberty is at stake. However, in these areas there are no analogous limitations on the use of remote technology in hearings. (<i>Compare</i> Proposed Rule of Court, rule 3.672, subd. (f)(2) [for all Civil cases other than dependency, a party choosing to appear remotely at a hearing must provide notice of the party’s intent to appear remotely at least one or two court days before the proceeding] <i>with</i> subd. (h)(2) [any person who wishes to appear remotely at a dependency proceeding must file a request at least five court days before a proceeding].) The differential treatment by the proposed rule limiting use of remote technology in dependency cases only, and in no other civil cases, has not been justified by the Ad Hoc Committee on Civil Remote Appearance Rules and is thus irrational.</p>	<p>Section 367.75 provides separate procedures for only one type of civil case: juvenile dependency. (Code Civ. Proc., § 367.75(h).) All other types of civil case are governed by the general provisions of the statute. (See <i>id.</i>, § 367.75(a), (d).) The committee has recommended separate procedures and limitations for remote proceedings in juvenile dependency that place the lightest burden on parties and courts that is consistent with the requirements of the statute.</p>
<p>Hon. Linda Hurst Superior Court of San Luis Obispo County</p>	<p>The Dependency population has transportation issues, child care concerns, treatment obligations and limited resources. We have experienced more active participation with remote hearings: more parties appearing and seemingly more contested hearings where parties appear. Requiring an affirmative step to request a remote hearing does appear to be counter intuitive. Please do not adopt the rules for Juvenile Dependency at this time without further input under this timeline for January 1. I plan to attend Juvenile Protection training in late January and ideally this Rule will still be open for discussion at that time. I also want to say that I echo the concerns noted by the Children’s Law Center of California in correspondence of today’s date. In San Luis Obispo, our court has been able to effectively manage remote calendars, it has saved countless hours of staff time, increased the ability for parents, CASA,</p>	<p>The committee appreciates these comments. The committee has revised its recommendation to try to limit the barriers imposed to those required by the statute. The Judicial Council has no authority to dispense with statutory requirements through a rule of court. Please see below for responses to specific comments. The committee does not recommend delaying the effective date of the proposed rule, as the statute will take effect on January 1, 2022, and the rule is needed to implement the statute.</p>

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	<p>relatives, NMD and caregivers to attend court.</p> <p>While we support any parties’ request for an in person hearing, our recommendation is to allow parties to request an in person hearing rather than having the in person hearing a default and having to request to appear remotely. The proposed Rule does not appear to address the realities of juvenile dependency practice that requires cooperation and fluidity. Having parents’ and minor’s counsel (or the department) required to file additional paperwork to request a remote hearing is unnecessarily burdensome and takes away time that could be better spent preparing for court, meeting with clients, and resolving outstanding issues. The language of this proposed rule is also pretty narrow. For small counties, who may not have local juvenile rules or who may need to adopt them, the time frame is also going to cause additional notice issues for calendars and cases that have already been set and noticed for the New Year.</p> <p>Litigants are not required to attend all of their hearings, they may appear through counsel, they may have to work, have child care or treatment obligations. This process could allow another party to compel the presence of another party for the purpose of harassment, etc. If a party needs to be present for testimony, we can use subpoena powers for in person testimony.</p>	<p>The committee has interpreted section 367.75 not to authorize a court to specify a default manner of appearance in dependency, but to give parties the choice, subject to specific limits and the availability of adequate technology. One of those limits is found in section 367.75(h)(2), which authorizes a party to request that the court compel the physical presence of a party or witness, and conditions a witness’s remote appearance on the consent of all other parties. The committee may not waive this statutory limit, but has attempted to provide clearer guidelines for submitting a request to allow a witness to appear remotely and for asking the court to compel a witness or party to appear in person. In addition, under section 367.75(j), represented parties may stipulate, subject to section 367.75(b), to a remote appearance or testimony.</p> <p>Proposed form JV-146, renumbered as RA-030, is intended to implement section 367.75(h)(2), which authorizes any party to the proceeding to request the court to compel the physical presence of a witness or a party, defined to include counsel. Neither the statute, nor the rule, nor the form implementing them would allow a <i>party</i> to compel the presence of another party. Only the court has the authority to do that. Moreover, the subpoena power may suffice for the purposes of a party calling a witness; that party may ask the court to specify the manner of the witness’s appearance in the subpoena. If the party calling the witness has arranged for the witness to testify remotely, the subpoena power, exercised on behalf of another party who wants the</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>I would argue that a rule allowing for remote appearances as appropriate for a local juvenile court to ensure that in person hearings are available to parties upon request is all that is needed.</p> <p>The proposed rule could effectively remove the remote calendar option. It is unfortunate to lose an important and workable tool for our county which has saved so much staff and court time over the past year and a half while providing good access to court, counsel, and the department for dependency litigants.</p>	<p>witness to appear in person, may not be sufficient or appropriate. In that case, form RA-030 provides a vehicle for a party who wants to confront and cross-examine a witness in person to ask the court to compel the witness to appear in person. As noted above, under section 367.75(i) represented parties may stipulate to a witness’s remote testimony, subject to the limits in section 367.75(b).</p> <p>The committee appreciates this comment; however, the statute does not authorize a court to place conditions on a party’s right to appear in person.</p> <p>The committee hopes that the Superior Court of San Luis Obispo County will find a way to maintain remote proceedings in juvenile dependency cases under the changes introduced by section 367.75, as implemented by rule 3.672.</p>
Family Violence Appellate Project	In subd. (h)(1)(C), the definition of “party” seems to be missing the word “also”: “a ‘party’ is <i>also</i> a person who . . . .”	The committee appreciates this comment. The committee has revised its recommended definition of a party in a dependency case and resolved the issue.
Juvenile Court Judges of California	<p><b><u>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</u></b></p> <p>The proposed timelines for providing notice do not work for litigants or the courts in dependency or juvenile justice proceedings.</p>	<p>The committee appreciates these comments.</p> <p>The committee agrees, generally speaking, and has revised its recommendation to eliminate the requirement in rule 3.672(i) of an advance request to appear remotely in a dependency proceeding. An advance <i>notice</i> is not required to comply with section 367.75(i). To the extent that the deadlines for notice under rule 3.672(g) and (h) do not work in juvenile justice cases, rule 3.672(e) has</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>As a preliminary matter, the time for notice of a proceeding (i.e., 10 days as the delineator) may not be as pertinent to the timing of notice of remote appearances as the nature of the proceeding. Remote appearances at most six-month dependency status review hearings and other uncontested hearings work well for families and the courts and are less likely to be opposed. In-person appearances may be more appropriate, or more likely to be requested, at detention and initial hearings, jurisdiction and disposition hearings, or any contested hearing.</p> <p><u>Dependency Cases:</u> In dependency cases, proceedings with at least 10 days' notice are primarily status review hearings and Section 366.26 hearings. The reports for these types of hearings must be filed at least 10 calendar days before the hearing. [FN3 CRC 5.708(b)(2).] The proposed timeline does not provide parties enough time to review the report to determine whether to appear in person or remotely. The proposed timeline for oppositions to be filed no later than the close of business two court days before the proceeding likewise does not provide the court with enough time to review the opposition and to issue a ruling prior to the hearing.</p> <p>Detention hearings must be held no later than one court day after the filing of a petition. [FN4 Welf. &amp; Inst. Code, § 315] There is very little time for any party or attorney to submit a written request to appear remotely or to object as required by the proposed rule. It will also be very difficult for court</p>	<p>been revised to authorize courts to adopt local rules as long as those rules include, among other things, a clear statement of the amount of notice required.</p> <p>The committee agrees that some types of proceeding may be more suitable for remote conduct and other types more suitable for conducting in person. The distinction of one group from the other, however, is beyond the scope of this proposal, which seeks only to implement section 367.75. The statute makes no distinction among different dependency proceedings, and the committee has revised its recommendation to eliminate the distinction of detention hearings from other proceedings.</p> <p>The committee agrees that the deadlines in rule 3.672(i), as circulated, were too early, and has revised its recommendation to require a court, as a condition of conducting a remote dependency proceeding, to allow any person to request to appear remotely, orally or in writing, no later than the time the case is called for hearing.</p> <p>See response above.</p>



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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>operations to manage the paper flow if written notices are filed up to the beginning of the calendar. A more workable solution is to permit oral notices of remote appearance for detention hearings. The court can then address any objections at the hearing and take appropriate action.</p> <p>The three court day minimum timeline for notification of telephonic appearances in Rule 5.531 is more practicable for dependency hearings other than the detention hearing.</p> <p>[ ]</p> <p><b><u>Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice—which is required by statute —be provided to the court?</u></b></p> <p>Written notice of intent to appear is not needed in all circumstances. Dependency and juvenile justice cases have significantly more hearings in the life of a case than a typical civil case. Further, dependency and juvenile justice cases continue to have court hearings after the trial (i.e., the jurisdictional hearing). Requiring a written notice of intent from all parties for every hearing, regardless of the nature of the hearing, is unduly burdensome on the parties and the court.</p> <p>Oral notice made on the record at the conclusion of the juvenile justice or dependency hearing when the next hearing is set and while all parties are present should be deemed sufficient notice. This would allow sufficient time for an opposing party to object and request in-person appearances.</p>	<p>See response above.</p> <p>The requirement of notice of intent to appear remotely, in section 367.75(a) and rule 3.672(g)–(h), does not apply to a remote proceeding in a dependency case, which is governed by section 367.75(h). The committee has revised its recommendation to allow a court to conduct a dependency proceeding as a remote proceeding as long as it meets the statutory conditions. If the court is conducting a proceeding remotely, the revised rule authorizes any person entitled to be present under rule 5.530(b) to appear remotely without submitting a request. Even if the court is not conducting a proceeding remotely, it must provide an opportunity for any person authorized to be present to request to appear remotely, orally or in writing, no later than the time the case is called for hearing.</p>

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	<p>Another approach is to permit parties to enter a notice of remote appearance that would remain in effect until either withdrawn or overruled for a particular hearing by the court.</p> <p>Alternatively or additionally, courts should have authority to adopt local rules that authorize, but do not require, remote appearances at all juvenile justice or dependency hearings unless objected to or otherwise ordered by the court to serve as notice in lieu of individual notices of intent for each hearing. This is consistent with the court’s authority to conduct a trial or evidentiary hearing by remote hearing upon its own motion, absent a showing by the opposing party as to why a remote appearance or testimony should not be allowed. (CCP § 367.75(d)).</p> <p><b><u>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</u></b></p> <p>All the proposed forms should be optional.</p> <p><b><u>Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or the JV form set?</u></b></p> <p>Yes. The Court needs an order form to rule on any request or opposition to appear remotely, as well as to exercise its</p>	<p>See response above. The committee has revised its recommendation to permit an oral request to appear remotely, except when the request is made on behalf of a witness.</p> <p>The committee agrees in part, and intends revised rule 3.672(i) to authorize courts to hold presumptively remote proceedings in dependency cases as long as the courts meet the conditions imposed by section 367.75(h). One such condition, in section 367.75(h)(3) and rule 3.672(i)(2)(C), is that the court not require any party to appear remotely at a proceeding. The same requirement, in section 367.75(f), applies to juvenile justice proceedings. In addition, the general rule, which applies to juvenile justice proceedings, has been revised to authorize a party to give a single notice of intent to appear remotely for the duration of the case, subject to a right to appear in person at a particular proceeding. To the extent that local rules would be needed to specify the details of this process, rule 3.672(e) authorizes courts to adopt them, on a flexible, expedited schedule, as long as they are consistent with section 367.75 and rule 3.672(i).</p> <p>The committee agrees and has revised its proposal to recommend that the forms be approved for optional use.</p> <p>The committee does not recommend the creation of an order form specifically for dependency. The committee</p>

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	<p>discretion to require an in-person appearance.</p> <p><b><u>Should JV-145 require that all parties’ consent to a witness’s requested remote appearance—as mandated by section 367.75(h)(2)—be obtained before the form may be filed and indicated on the form, as currently proposed, or should the rule and form JV-146 instead require a party who does not consent to the witness’s remote appearance to file that form to indicate lack of consent?</u></b></p> <p>Yes. Judicial economy is promoted by requiring prior consent for a witness’s remote appearance to be reflected on Form JV-145 because without the consent of all parties, the court has no discretion but to require a physical appearance of the witness. However, JV-145 should be amended to include the date of notification, each party’s response, and the date of the response. As Item 4 is currently drafted, there is potential that the person completing the form will check the boxes without having actually obtained consent.</p>	<p>has revised its recommendation to include a general order form, RA-020, that is intended to be suitable for ordering either remote or in-person appearance in proceeding covered by rule 3.672.</p> <p>The committee has revised its recommendation in response to the weight of comments to remove the requirement that a party indicate prior consent of all parties to a witness’s remote appearance on form RA-025. Many commenters thought this requirement would be too burdensome and time-consuming to comply with. As revised, the rule would require a request for a remote appearance by a witness to be submitted in writing and served on all parties no later than three court days before the proceeding. A request to compel physical presence, also required in writing, must be filed and served in writing no later than two court days before the proceeding. Parties could use proposed forms RA-025 and RA-030 for these requests. The committee anticipates that most issues related to the manner of a witness’s appearance will be settled by stipulation before an evidentiary hearing or trial, so the promotion of judicial economy from requiring documentation of prior consent would be slight and outweighed by the burdens on parties and attorneys.</p>
Ms. Theresa Klein San Luis Obispo County	[Ms. Klein agrees with and repeats the comments above by Debra Barringer]	

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>I am writing to express concern about the proposed Rule 3.672 as it relates to juvenile dependency proceedings, specifically as it relates to having to file a request to appear remotely. For our population and the manner in which social workers and attorneys interact with clients, this creates unnecessary barriers, increases costs to the Department and to minor’s and parents counsel and creates additional barriers to access to court.</p> <p>Our court is able to effectively manage remote calendars, it has saved countless hours of staff time, increased the ability for parents, CASA, relatives, NMD, and caregivers to attend court.</p> <p>While we support any parties request for an in person hearing, our recommendation is to allow parties to request an in person hearing rather than having the in person hearing a default and having to request to appear remotely.</p> <p>These rules of court appear unduly burdensome particularly for a small county and the forms are additionally cumbersome and it appears to me that this will increase court congestion, continuances and will impact calendars unnecessarily.</p>	<p>The committee appreciates these comments. The committee has revised its recommendation to try to limit the barriers to remote dependency proceedings to those required by the statute. The Judicial Council has no authority to dispense with statutory requirements through a rule of court. Please see below for responses to specific comments.</p> <p>The committee encourages courts to conduct remote dependency proceedings, subject to the statutory limits in section 367.75(h) as implemented by rule 3.672.</p> <p>The committee has interpreted section 367.75 not to authorize a court to specify a default manner of appearance in dependency, but to give parties the choice, subject to specific limits and the availability of adequate technology. One of those conditions is found in section 367.75(h)(2), which authorizes a party to request that the court compel the physical presence of a party or witness, and conditions a witness’s remote appearance on the consent of all other parties. The committee may not waive this statutory conditions, but has attempted to provide clearer guidelines for submitting a request to allow a witness to appear remotely and for asking the court to compel a witness or party to appear in person. In addition, under section 367.75(j), represented parties may stipulate, subject to section 367.75(b), to a remote appearance or testimony.</p> <p>The committee has revised the proposed rules and has recommended that the forms be made optional to place as small a burden as possible on courts, consistent with section 367.75. To the extent that the statute imposes</p>

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	<p>For example, if the Department provides notice of a remote hearing to all parties and all parties show up remotely or are appearing through counsel, a hearing may proceed in a timely fashion on a remote calendar. If at that calendar the matter is set for contest, the parties could agree to a remote hearing or request an in person hearing at that time. If the party requests an in person hearing for an uncontested matter, the case could be continued to an appearance calendar for that purpose.</p> <p>But if the Department provides notice of an in person hearing and a party requests to appear remotely, but others appear in person, this presumes either that the hearing is being held where there is some sort of way for a person to appear remotely via video or that person is relegated to a telephone appearance. This creates additional inequities. Where all parties are on video call with the court, the court has equal access to see and assess parties. If one is in court and one on the phone, this is not the same.</p>	<p>requirements that did not exist under emergency rule 3, the Judicial Council may not dispense with those requirements through a rule of court.</p> <p>Section 367.75 and rule 3.672 do not authorize the department to give notice of a remote proceeding unless the court has offered that option. The court must set the time, place, and manner of each proceeding in consultation with the parties. If the court offers an option for a remote proceeding, rule 3.672(i), as revised, provides that any party may use that option without a request as long as the conditions in section 367.75(h) are met. Those conditions include the opportunity for any person authorized to be present to request to appear remotely and a prohibition against requiring any party to appear remotely. (Code Civ. Proc., § 367.75(h)(1), (3).) The statute does not authorize the court to place conditions on a party's choice to appear in person. Neither the court nor any party has the unconditional authority to decide that a proceeding will be conducted exclusively in one manner, whether remote or in person.</p> <p>The committee appreciates this comment. Notwithstanding this policy concern, the statute authorizes such "hybrid" proceedings in dependency: "Any ...dependency proceeding may be conducted in whole <i>or in part</i>" as a remote proceeding, subject to specific conditions. (Code Civ. Proc., § 367.75(h) (emphasis added).) If the court permits a party to appear remotely, however, it must ensure that the technology in the courtroom enables all parties to participate fully in the proceeding.</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>The realities of juvenile dependency practice require cooperation and fluidity. Having parents’ and minor’s counsel (or the department) having to file additional paperwork to request a remote hearing is unnecessarily burdensome and takes away time that could be better spent preparing for court, meeting with clients, and resolving outstanding issues.</p> <p>The language of this proposed rule is far too narrow. For small counties, who may not have local juvenile rules or who may need to adopt them, the time frame is also going to cause additional notice issues for calendars and cases that have already been set and noticed for the New Year.</p> <p>To answer your request for specific comments:</p> <p>Does the proposal appropriately address the stated purpose? No</p> <p>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? NO</p>	<p>The committee has revised its recommendation to allow most requests to be made orally or in writing, to make the request forms optional, and to allow a request, if needed, to be made up to the time the case is called for hearing.</p> <p>The committee has provided for the expeditious adoption of local rules in rule 3.672(e), which waives rule 10.613’s requirements for a 45-day circulation of proposed local rules and a January 1 or July 1 effective date. In addition, rule 3.672(e) would authorize courts to continue using existing procedures until March 31, 2022, as long as those procedures are consistent with the statute. The committee does not recommend delaying the effective date of the proposed rule, as the statute will take effect on January 1, 2022, and the rule is needed to implement the statute.</p> <p>See responses to specific comments below.</p> <p>The committee has revised its recommendation to eliminate the requirement for a request to appear remotely if the court is conducting a remote proceeding as long as, among other things, the court provides an opportunity for any person authorized to be present to request to appear remotely. This requirement seems more consistent with the structure and language of section 367.75(h). If the court is not conducting a remote proceeding and a request is needed, the committee has reduced the deadline to submit a request to no later than the time the case is called for hearing. The court may</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Is written notice of intent to appear needed in all circumstances? NO, would recommend the reverse of what you have proposed. If someone wants a live hearing, they can request it, but default (or allow default) for remote calendars. Oral notice on the record (at the remote hearing) requesting the in person hearing will work.</p> <p>The proposed forms should NOT be mandatory.</p> <p>For Juvenile I don't understand what the purpose of the "request to compel physical presence-juvenile dependency" is for? Litigants are not required to attend all of their hearings, they may appear through counsel, they may have to work, have child care or treatment obligations. This process could allow another party to compel the presence of another party for the purpose of harassment, etc. If a party needs to be present for testimony, we can use subpoena powers for in person testimony.</p>	<p>still order a party to appear in person if it determines that one or more of the factors enumerated in section 367.75 requires an in-person appearance.</p> <p>Section 367.75 limits the court's discretion to require dependency proceedings to be conducted remotely. Under section 367.75(h), the court must satisfy specific conditions—including provision of an opportunity for any person authorized to be present to request to appear remotely—to conduct a remote proceeding. The committee has revised its recommendation to authorize the court to conduct remote proceedings in dependency if those conditions are met and to allow parties and other specified persons to appear remotely without a request.</p> <p>The committee has revised its proposal to recommend that form JV-145, <i>Request for Remote Appearance—Juvenile</i>, and form JV-146, <i>Request to Compel Physical Presence</i>, be renumbered as RA-025 and RA-030 and approved for optional use.</p> <p>Proposed form JV-146, renumbered as RA-030, is intended to implement section 367.75(h)(2), which authorizes any party to the proceeding to request the court to compel the physical presence of a witness or a party, defined to include counsel. Neither the statute, nor the rule, nor the form implementing them would allow a party to compel the presence of another party. Only the court has the authority to do that. Moreover, the subpoena power may suffice for the purposes of a party calling a witness; that party may ask the court to specify the manner of the witness's appearance in the subpoena. If the party calling the witness has arranged for the</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>For request for a witnesses' remote appearance, again I do not understand why an additional form is needed. At the time of the trial setting, the parties and the court can decide if this will be a remote or in person trial and the witness can be subpoenaed accordingly.</p> <p>I have practiced in dependency court in 5 or more different counties over 25 years. I do not believe that these proposed rules or forms advance access to the court, due process for parents, minors, and the Department or otherwise aid in the process.</p> <p>I believe that a rule allowing for remote appearances as appropriate for a local juvenile court and ensuring that in person hearings are available to parties upon request is all that is needed.</p> <p>For our county I believe these rules will effectively remove the</p>	<p>witness to testify remotely, the subpoena power, exercised on behalf of another party who wants the witness to appear in person, may not be sufficient or appropriate. In that case, form RA-030 provides a vehicle for a party who wants to confront and cross-examine a witness in person to ask the court to compel the witness to appear in person. As noted above, under section 367.75(i) represented parties may stipulate, subject to the limits in section 367.75(b), to a witness's remote testimony.</p> <p>Under section 367.75(h)(2), all parties must consent to a witness's remote appearance. Not all courts hold a conference before a trial. In those courts, unless the parties file a stipulation to the manner of appearance, a written request is needed to notify the other parties that a witness plans to testify remotely. An advance deadline is needed to give the other parties time to exercise their statutory right not to consent to the witness's remote testimony.</p> <p>The committee acknowledges the commenter's experience and appreciates her perspective. The committee has revised its recommendation to address many of the commenter's concerns.</p> <p>The statute does not authorize the court to place any conditions on a party's right to appear in person.</p> <p>The committee hopes that the Superior Court of San</p>



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	remote calendar option and just have a return to the courtroom. It is unfortunate to lose an important and workable tool for our county which has saved so much staff and court time over the past year and a half while providing good access to court, counsel, and the department for dependency litigants.	Luis Obispo County will find a way to maintain remote proceedings in juvenile dependency cases under the changes introduced by section 367.75, as implemented by rule 3.672.
Law Foundation of Silicon Valley	<p><b>Language should be added to proposed Rule 3.672(h) to expressly prohibit its application to proceedings involving nonminor dependents</b></p> <p>As part of the implementation of California’s extended foster care system approximately one decade ago, the Judicial Council engaged in related rulemaking. Rule of Court 5.900 was enacted to create general provisions applicable to extended foster care proceedings. That rule includes language related to telephonic appearances by nonminor dependents. It includes a general right to make such appearances, with the court being able to compel physical attendance only upon showings related to good cause and undue hardship.</p> <p>In its current form, Rule 3.672(h) does not specifically exempt nonminor dependents from the requirements to follow the new procedures for entering a remote appearance. Any steps taken that rollback protections previously provided to parties would contradict the spirit of SB 241. Further, we do not believe the Judicial Council intends to limit the previously established rights of nonminor dependents. Therefore, we are asking for the final version of the Rule to include language that eliminates any confusion as to the continued application of Rule 5.900.</p> <p><b>Modify proposed 3.672(h)(4) to conform with the express statutory language of newly enacted Code of Civil Procedure Section 367.75</b></p>	<p>The committee appreciates these comments.</p> <p>The committee does not recommend the suggested change. The committee has added paragraph (b)(2) to the proposed rule to make clear that nothing in the rule limits a requirement or right established by statute or case law to an appearance in one manner, either remote or in person, to the exclusion of the other. To the extent that Welfare and Institutions Code section 388(e) confers a right on a nonminor dependent to appear remotely at specific hearings, the rule does not limit the application of that right.</p> <p>The committee has also modified the required procedures to simplify them, authorizing a court to conduct remote dependency proceedings without requiring a request as long as it meets the statutory conditions, including providing any person authorized to be present to submit a request to appear remotely. The request may be oral or written and may be submitted up to the time the case is called for hearing.</p>

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**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Proposed Rule 3.672(h)(4)(B) provides three subparagraphs to offer courts guidance as to when it is appropriate to deny a person’s request to appear remotely. Subparagraph (i) references the applicable provision of Code of Civil Procedure Section 367.75, as enacted by SB 241. We believe the Council should go no further in rulemaking on the question of the court’s discretion to deny such requests. Proposed subparagraphs (ii) and (iii) exceed the directives of SB 241, offering the court opportunities to deny requests to appear remotely not found within the legislation. Therefore, we are asking that subparagraphs (ii) and (iii) be eliminated from the proposal.</p> <p>Should the Council proceed with these subparagraphs, we ask for changes to their language that provide clarity as to their application. The current language in subparagraph (ii) lacks clarity as to who carries the burden on the question of whether a remote appearance will impact confidentiality. We believe the burden should not be carried by the party requesting to appear remotely. To promote clarity, we recommend the following language for subparagraph (ii):</p> <p style="padding-left: 40px;"><b>The court finds, based on an individualized case determination, that the requesting person cannot maintain confidentiality of the proceeding if appearing remotely.</b></p> <p>Should the Council proceed with subparagraph (iii), we ask for changes to narrow the instances where it can be utilized. Specifically, we believe it should only be used when a party to the case has filed an opposition. Further, the party filing the opposition should carry the burden to demonstrate why the</p>	<p>The committee does not recommend deleting subparagraphs (ii) and (iii) from rule 3.672(i)(5)(B). The provisions further the purpose of the statute by protecting the confidentiality of the proceedings and the procedural rights of the parties.</p> <p>The committee does not recommend the suggested change. It has revised proposed rule 3.672(i)(5)(B)(ii) to clarify that the court bears the responsibility to ensure privacy and security sufficient to maintain the required confidentiality of the remote proceeding, as required by section 367.75(e)(2).</p> <p>The committee does not recommend the suggested change. Under the revised rule, a court may conduct remote dependency proceedings as long as it gives any person authorized to be present an opportunity to request to appear remotely. The court does not need to require a</p>

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	<p>remote appearance will cause undue prejudice.</p> <p><b>Add language permitting counsel to appear remotely without submitting a written request, in specified instances</b></p> <p>Juvenile dependency cases often involve hearings where one or more parties fail to make an appearance. For example, a party may wish to waive their appearance for different reasons. Minor’s counsel often represent very young clients that do not ever appear at court. This Rule, through the language of 3.672(h)(1)(C) and the proposed forms applicable to juvenile dependency, appears to require counsel to submit a written request each time they wish to appear remotely. We believe a different approach that would allow courts greater latitude to permit remote appearances by counsel is warranted.</p> <p>Requiring the submission of a written request in all instances where counsel wishes to appear remotely adds unnecessarily to the court’s workload. Judicial officers should have the flexibility to permit remote appearances by counsel without having to review court forms, and in instances where unforeseen circumstances make adherence to the Rule’s timelines impractical. The specified instances where a court may authorize a remote appearance by counsel without a written request should include the following:</p>	<p>request. With this revised framework, the court will rarely need to determine a request to appear, but may need to determine a request to compel the physical presence of a party or a witness, or may determine without a request that a remote appearance would be prejudicial to a party. The authority to require an in-person appearance is consistent with the prohibition of a court’s requiring a party to appear remotely.</p> <p>The committee has revised the proposal to authorize a court to conduct remote dependency proceedings as long as it provides any person authorized to be present with an opportunity to request to appear remotely. The court may, consistent with providing this opportunity, allow parties and counsel to appear without a request. The committee has also revised the proposal to allow a request to appear remotely to be made orally or in writing.</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<ul style="list-style-type: none"> <li>○ Instances where the Court has approved a written request to appear remotely submitted by that counsel’s client.</li> <li>○ Instances where the Court otherwise verifies that counsel’s client will not make an appearance at the hearing.</li> </ul> <p><b>Change language in proposed 3.672(h)(1)(D) concerning when a witness may provide oral testimony through a remote appearance</b></p> <p>Code of Civil Procedure Section 367.75(h)(2) sets forth limits on when a testimonial witness may appear remotely. The relevant language says a “a witness, including a party providing testimony, may appear through remote technology only with the consent of all parties and if the witness has access to the appropriate technology.” The language of the proposed rule implementing this statutory provision should be modified to avoid unnecessary limits on the ability of witnesses to appear remotely.</p> <p>Our proposed language for this provision is noted below and is supported by the following rationale. First, we believe the requirement that consent be obtained from all parties that have appeared in the action places an undue burden on the person providing testimony. Given the nature of dependency proceedings, it is possible for instances to arise where years have elapsed since a party’s last appearance. It would be impractical, if not impossible, for a witness to obtain consent from that party. Second, a witness might lack means to meaningfully communicate with one or more parties prior to the day of a hearing, even in instances where that party is an active participant. Requiring the witness to verify, on the court</p>	<p>The committee has revised the proposal to remove the requirement that a party requesting a witness’s remote appearance document the consent of all parties. Instead, a party who asks the court to compel the physical presence of a witness would be able to indicate on the request that the party had not given consent. In addition, because all parties to a dependency case are represented, the committee does not foresee many witnesses requesting to appear remotely on their own. Finally, as has been pointed out by other commenters, the parties may stipulate to the manner of a witness’s appearance before the evidentiary hearing or trial at which the witness will testify.</p>

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	<p>form, their receipt of consent would impose a barrier to exercising the opportunity to make a remote appearance.</p> <p><b>A witness who will give oral testimony must verify consent of all parties that will appear at the proceeding.</b></p> <p><b>Add language to the proposed rule that explicitly incorporates the protections of Senate Bill 538 from the current legislative session</b></p> <p>On October 8, Governor Newsom signed into law SB 538, legislation that relates to the conduct of proceedings under the Domestic Violence Prevention Act. As relevant to this proposed rule, SB 538 confers upon parties and witnesses to a DVPA proceeding the ability to appear remotely on the petition for a restraining order. The legislation adds Section 6308 to the Family Code to effectuate this change.</p> <p>Welfare and Institutions Code Section 213.5 provides statutory authority for the juvenile court to issue restraining orders. Section 213.5 cross-references the Family Code to provide guidance as to how an applicant is to seek a restraining order in the juvenile court. It specifically says the court has exclusive jurisdiction to issue such orders, in matters related to domestic violence, upon application in the manner called for in Family Code Section 6300. Family Code Section 6300 is one of several Family Code sections that governs the conduct of DVPA proceedings.</p> <p>Petitioners limited to seeking protection under Section 213.5, due to its grant of exclusive jurisdiction to the juvenile court, should have the same procedural rights as those pursuing relief directly under the DVPA. This includes the newly codified</p>	<p>The committee does not recommend the suggested change. Many independent statutory or judicially recognized constitutional rights to a specific manner of appearance or other procedural protections exist. Any attempt to list them all would almost certainly omit some. Rather than attempt a list, the committee has added paragraph (b)(2) to proposed rule 3.672 to make clear that nothing in the rule limits a requirement or right established by statute or case law to an appearance in one manner, either remote or in person, to the exclusion of the other. To the extent that Family Code section 6308 confers a right to appear remotely at a hearing on a petition for a restraining order filed under Welfare and Institutions Code section 213.5, the added language would ensure that the rule was not interpreted to limit that right.</p>

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	<p>right to make remote appearances at restraining order hearings. Without explicit reference to this right in Rule 3.672(h), confusion as to the scope of SB 538 is likely. Therefore, we are asking the Council to adopt the following language:</p> <p style="text-align: center;"><b>Family Code Section 6308(a) shall apply to proceedings held under Welfare and Institutions Code Section 213.5 related to domestic violence.</b></p>	
Legal Aid Association of California	<p>[ ] member organizations who serve tribes in dependency cases believe the proposed rule changes will bring tribes into a complex discretionary notice process in which courts can ostensibly deny tribes the right to appear remotely. Such a change would conflict with existing Cal. Rules of Court, rule 5482(g), which unilaterally allows tribes to appear remotely without having to seek permission from the court to do so.</p> <ul style="list-style-type: none"> <li>● Request to Appear Remotely form: The juvenile dependency “Instructions” on pg. 1 are daunting, at best. “Not applicable” checkboxes for attorneys should be more left-aligned so that it is easier to identify which attorney item they are associated with. As they are now, it is easy to miss them.</li> <li>● Last, for the request to compel physical appearance, for juvenile dependency, Item 1, it is unclear what is meant by “name” and what are examples of “descriptions.”</li> </ul>	<p>See response to comment of California Tribal Family Coalition above.</p> <p>The committee has revised the proposed form to recommend its approval for optional use, clarify the instructions, and eliminate item 4, which had included the “not applicable” check boxes.</p> <p>The committee has revised the parenthetical instruction in item 1 to call expressly for the “type of hearing, if known.”</p>
Legal Aid Foundation of Los Angeles	<p>Related to Notice for domestic violence restraining order cases, the language in (h)(4)(A) is problematic: “Determination of requests and oppositions (A) The court may grant the request of a witness, including a party who will give oral testimony, to appear remotely <i>only if all parties have given consent to the witness’s remote appearance.</i>” The parties in a domestic violence restraining order cases are almost always witnesses who provide oral testimony. Requiring consent by both parties</p>	<p>Rule 3.672(i) applies, according to its terms, only to remote proceedings in juvenile dependency cases. If a party to a dependency case requests a domestic violence restraining order under Welfare and Institutions Code section 213.5, to the extent that Family Code section 6308 provides an applicable independent statutory right to a remote appearance to make such a request and testify in support of it, the committee’s proposed</p>

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	<p>grants an additional level of control – one enforced by the courts - to the party who caused harm to the injured party. Last month the Governor signed SB538, which added language to Family Code section 6308 that will require the court to allow a party or witness to appear remotely at a hearing on a domestic violence restraining order. Lethality risks are elevated when survivors leave abusive relationships and file for restraining orders against those who harmed them. One of LAFLA’s initiatives last year to address such harms was to create a pilot remote hearing studio in partnership with other city offices and nonprofits. Based out of a Family Justice Center with advocates present, the remote hearing studio provides a safe and supportive environment where the court’s remote options are made accessible in trauma-informed ways. Creating a Notice process that ignores the safety and trauma-based needs of survivors is a step backwards to progress that has been made during the pandemic and will only exacerbate the existing access gap for survivors.</p>	<p>addition of rule 3.672(b)(2) makes clear that the rule does not limit that right. Whether the provision in Code of Civil Procedure section 367.75(h)(2) conditioning the remote appearance of a witness in a dependency proceeding on the consent of all parties prevails over or is itself subject to the right to appear remotely conferred by Family Code section 6308, and whether that right applies to a restraining order request in a dependency proceeding are questions beyond the scope of this proposal.</p>
<p>Hon. Annemarie G. Pace Superior Court of San Bernardino County</p>	<p>I am writing to comment on the proposed rules for remote appearances as they relate to juvenile dependency cases. In general, the mandatory nature of the forms and the language places an undue burden on parties and on the court. It creates unnecessary paperwork that will have to be processed by already overwhelmed court staff and bench officers. Juvenile court is supposed to be collaborative, other than contested hearings. Since the pandemic many juvenile courts have established informal procedures for allowing remote appearances. And even before, parties out of state or at remote locations appeared by phone or video.</p> <p>Even in most contested hearings, arrangements are made at the</p>	<p>The committee appreciates these comments. The committee recognizes the requirements of section 367.75 differ from those in emergency rules 3 and 6, under which juvenile courts have been operating for the past 21 months but those rules were temporary emergency measures adopted by the council when the Legislature was out of session. Now that the Legislature has enacted statutory authority for remote proceedings, that statute governs. The committee has revised its recommendation to the extent permissible under the statute. In particular, the committee recommends that forms JV-145 and JV-146, renumbered as RA-025 and RA-030, be approved for optional use, as suggested.</p> <p>The committee appreciates this comment and has</p>

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	<p>trial setting about who can appear remotely or not. The rule is overly formal and unnecessary in those cases where there is no disagreement among the parties. The minute orders reflect who is going to testify by electronic means. In addition, any opposition can be litigated on the record at the trial setting. This is a much more efficient procedure than mandatory forms, all of which need to be processed by court staff. Moreover, it is waste of lawyers' time to have to give notice to one another when, again, it can be handled in the courtroom.</p> <p>While each court has the ability to draft local rules, this comes at a cost as well. They take time to draft and to receive approval.</p> <p>Any rules implemented should be more flexible to allow addressing the issue in court. This would be far more efficient and fair to the parties.</p>	<p>revised the proposed rule to simplify it. To the extent that the parties and the court can stipulate to the manner of witnesses' appearance before a trial, section 367.75(i) makes clear that they may do so. Nevertheless, if parties are unable to stipulate, the rule still applies the condition in section 367.75(h)(2) of consent by all parties to the remote appearance of a witness by requiring a request in writing to be made in sufficient time before the proceeding to give the other parties an opportunity to request that the court compel the witness's physical presence.</p> <p>The committee understands the cost of adopting local rules. It has revised its recommendation in rule 3.672(e) to limit the restrictions on local rules for remote dependency proceedings and waive the requirements in rule 10.613 for a January 1 or July 1 effective date and a 45-day circulation period.</p> <p>The committee agrees, and has modified recommended rule 3.672(i) to authorize a court to conduct a remote dependency proceeding as long as it meets the conditions in the statute: (1) it provides an opportunity for any person authorized to be present to request to appear remotely; (2) it applies the same protections to the confidentiality of the proceedings as it would if the proceedings were conducted in person; and (3) it does not require any party to appear remotely.</p>
Superior Court of Alameda County	<ul style="list-style-type: none"> <li>Should the proposed JV-145 require that all parties consent to a requested remote appearance be obtained before the form may be filed, or should the party not-consenting be required to file a form indicating lack of consent?</li> </ul>	The committee appreciates the court's comments.



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	In order to better support the legislative goal of remote access, we would support a form indicating lack of consent to be filed by the non-consenting party.	The committee agrees with the suggestion and has modified its recommendation to remove the requirement that the party requesting a witness’s remote appearance document all parties’ consent from the rule and the optional request form (renumber as RA-025) and to allow a party to indicate lack of consent on the optional form (renumbered as RA-030) for asking the court compel the witness’s physical presence.
Superior Court of Los Angeles County	<p>• <i>Should form JV-145 require that all parties’ consent to a witness’s requested remote appearance—as mandated by section 367.75(h)(2)—be obtained before the form may be filed and indicated on the form, as currently proposed, or should the rule and form JV-146 instead require a party who does not consent to the witness’s remote appearance to file that form to indicate lack of consent?</i></p> <p>The rule should not require the requesting party to obtain consent of all parties. The burden should be on the non-consenting party to file a JV-146 in opposition. In cases where there are many parties, it is unreasonable to place this burden on the filer prior to filing the JV-145.</p>	<p>The committee appreciates the court’s comments.</p> <p>The committee agrees with the suggestion and has modified its recommendation to remove the requirement that the party requesting a witness’s remote appearance document all parties’ consent from the rule and the optional request form (renumber as RA-025) and to allow a party to indicate lack of consent on the optional form (renumbered as RA-030) for asking the court to compel the witness’s physical presence.</p>
Superior Court of Orange County, Juvenile Division	<p><b>Proposed Rules and Forms:</b> [ ]</p> <p><b><u>SPECIFIC COMMENTS:</u></b> <b>Proposed rule 3.672, subdivision (h)(1)(D):</b> To get all parties’ consent prior to filing a request to appear remotely seems quite onerous on witnesses who may be unfamiliar with legal proceedings, and specifically juvenile court proceedings. In addition, certain witnesses may not even know how to access the rule or the form. In dependency cases there are sometimes</p>	<p>The committee appreciates the court’s comments.</p> <p>The committee agrees with the concerns and has modified its recommendation to remove the requirement that the party requesting a witness’s remote appearance document all parties’ consent from the rule and the optional request form (renumber as RA-025) and to allow a party to indicate lack of consent on the optional</p>

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	<p>several parties. If the “person who will give oral testimony” knows nothing about the process or who the actual parties are, this requirement is going to be daunting. Lastly, should the “person who will give oral testimony” request the names of the parties or their attorneys from the juvenile court, the request could venture into problems with Welfare and Institutions Code section 827.</p> <p><b>Proposed rule 3.672, subdivision (h)(2)(A)(i):</b> Should this subdivision exclude “incarcerated parents” as they have the option to appear remotely for certain proceedings under rule 5.530, subdivision (f)? Also, reference JV-451/JV-450.</p> <p>Under this same subdivision, will a caregiver or de facto parent know the parties to serve?</p> <p><b>Proposed rule 3.672, subdivision (h)(2)(C):</b> Recommend changing the words “at any time before the beginning of the calendar,” to “at any time before the case is called.”</p> <p>[ ] In addition, it has been recommended that any juvenile dependency or juvenile justice related rules be placed under</p>	<p>form (renumbered as RA-030) for asking the court to compel the witness’s physical presence.</p> <p>The committee does not recommend the suggested change, as section 367.75 trumps any rights created by rule. However, the committee has added subdivision (b)(2) to clarify that rule 3.672 does not limit any independent right established by statute or case law to appear remotely. The relationship of section 367.75 to rights established by other statutes, including Penal Code section 2625, is beyond the scope of this proposal.</p> <p>The committee cannot answer this question, but has revised its recommendation to allow a juvenile court to conduct remote dependency proceedings without a request, as long as it, among other conditions, provides an opportunity for any person authorized to be present to request, orally or in writing, to appear remotely. Service of a request on other parties is required only if a party is requesting the remote appearance of a witness.</p> <p>The committee agrees and has modified its recommendation accordingly.</p> <p>The committee does not recommend the suggested change. The rules and the forms for remote proceedings</p>

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	<p>Title 5, instead of Title 3, where these rules are proposed to be.</p> <p><b>JV-145-</b> the persons listed in line 2.i.-m. may not know who the parties are that need to be served much less the address or email to send service. The instructions require service, but for persons other than witnesses, there is no proof of service.</p> <p>[ ]</p> <p><b>Request for Specific Comments</b></p> <ul style="list-style-type: none"> <li>▪ <i>Does the proposal appropriately address the stated purpose?</i> <ul style="list-style-type: none"> <li>▪ Not necessarily for reasons indicated.</li> </ul> </li> <li>▪ <i>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</i> <ul style="list-style-type: none"> <li>▪ In particular, the timelines would not work for juvenile detention hearings. There are several questions to consider for juvenile detention hearings such as:                             <ul style="list-style-type: none"> <li>○ Service of Notice – persons will, generally, not know who to serve and they may not have an attorney prior to the hearing. Additionally, there is no proof of service included on the form.</li> <li>○ Timing - courts may not have sufficient time to</li> </ul> </li> </ul> </li> </ul>	<p>in civil cases should be placed together. The committee has added language to existing rules in title 5 to notify parties that rule 3.672 governs remote appearances while it is in effect.</p> <p>The committee has revised its recommendation to allow a juvenile court to conduct remote dependency proceedings without a request, as long as it, among other conditions, provides an opportunity for any person authorized to be present to request, orally or in writing, to appear remotely. Service of a written request on other parties is required only if a party is requesting the remote appearance of a witness. The committee anticipates that, because all parties in a dependency case are represented by counsel, the parties themselves will not be arranging the manner of a witness’s appearance.</p> <p>See responses to specific comments.</p> <p>The committee agrees, and has modified its recommendation to allow courts to conduct remote dependency proceedings without a request as long as they provide an opportunity for any person authorized to be present to remote to appear remotely. The request may be oral or written, and must be made no later than the time the case is called for hearing. If further details are needed to specify a process in a court, rule 3.672(e)</p>

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	<p>organize a remote appearance given that a detention hearing usually occurs the next day.</p> <ul style="list-style-type: none"> <li>▪ Also, consideration should be given to the time needed to coordinate between the detention facility or jail.               <ul style="list-style-type: none"> <li>○ If by statute, the detention hearing must be heard within a specific amount of time from the detention, this proposed process could conflict with rules around continuances.</li> </ul> </li> <li>▪ <i>Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice – which is required by statute – be provided to the court?</i> <ul style="list-style-type: none"> <li>▪ Oral notice is sufficient.</li> </ul> </li> <li>▪ <i>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</i> <ul style="list-style-type: none"> <li>▪ Optional</li> </ul> </li> <li>▪ <i>Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or the JV form set?</i> <ul style="list-style-type: none"> <li>▪ Yes</li> </ul> </li> <li>▪ <i>Should form JV-145 require that all parties’ consent to a witness’s requested remote appearance – as mandated by section 367.75(h)(2) – be obtained before the form may be</i></li> </ul>	<p>authorizes the adoption of local rules on an expedited schedule. If a court cannot offer a remote option, however, it must allow a party to appear in person.</p> <p>The committee has considered the concerns raised by the commenter and simplified the process to accommodate those concerns. Under the simplified process, the committee does not believe that the timing or coordination issues for arranging the availability of a parent or child for a remote appearance should be more complicated than they would be for arranging the production of a parent or child for an in-person appearance. To the extent that local procedures or protocols need to be formalized, rule 3.672(e) provides broad scope for local rules to be adopted on an expedited schedule.</p> <p>The committee agrees and has modified its recommendation to require an opportunity for a request to be made orally or in writing.</p> <p>The committee agrees and has modified the proposal to recommend that the dependency forms (renumbered as RA-025 and RA-030) be approved for optional use.</p> <p>The committee agrees and recommends that form RA-020 be adopted for optional use as an order form in all cases governed by the rule, including dependency.</p>

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**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><i>filed and indicated on the form, as currently proposed, or should the rule and form JV-146 instead require a party who does not consent to the witness’s remote appearance to file that form to indicate lack of consent?</i></p> <ul style="list-style-type: none"> <li>▪ No comment. There are instances where persons entitled to be present and/or witnesses will not know who/how to serve. Additionally, it is unusual for a non-party witness to file requests/motions directly with the court.</li> </ul>	<p>The committee has modified its recommendation to indicate the presumption that counsel for a represented party will submit the request for a witness’s remote appearance, and has removed the requirement that a party or counsel document the consent of all parties on the request. A party may file a request to compel a witness’s physical presence, thereby indicating that the party does not consent.</p>
Superior Court of San Bernardino County	<p><u>Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or the JV form set?</u> Yes.</p> <p><u>Should form JV-145 require that all parties’ consent to a witness’s requested remote appearance—as mandated by section 367.75(h)(2)—be obtained before the form may be filed and indicated on the form, as currently proposed, or should the rule and form JV-146 instead require a party who does not consent to the witness’s remote appearance to file that form to indicate lack of consent?</u> The committee does not have any comments to offer on this question.</p>	<p>The committee appreciates the court’s comments.</p> <p>The committee agrees and recommends that form RA-020 be adopted for optional use as an order form in all cases governed by the rule, including dependency.</p> <p>No response required.</p>
Superior Court of San Diego County	<p>Q: <u>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</u> [ ] Not for juvenile dependency and juvenile justice cases (see General Comments below).</p>	<p>The committee appreciates the court’s comments.</p> <p>The committee agrees and has shortened the timelines required for notice of intent to appear remotely. For dependency proceedings, the committee has modified it</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Q: <u>Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice—which is required by statute—be provided to the court?</u> [ ] Juvenile: No, written notice should not be required in all cases. Proof of oral notice could be accomplished by [1] an affidavit sworn under penalty of perjury that oral notice was given and/or [2] a statement at the hearing on the record (after being sworn in) that oral notice was given.</p> <p>Q: <u>Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</u> [ ] Juvenile: The forms should be optional.</p> <p>Q: <u>Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or the JV form set?</u></p>	<p>recommendation to allow a court to conduct remote dependency proceedings without requiring a request, requesting to appear remotely as long as the court, among other conditions, provides any person authorized to be present the opportunity to request, orally or in writing, no later than the time the case is called for hearing. In addition, the committee has added subdivision (f) to authorize a party to any other type of civil case to give notice at any time that it intends to appear remotely for the duration of the case, as well as to allow all parties to waive notice.</p> <p>The committee has modified its recommendation to authorize an oral request and to require the court, as a condition of conducting a remote proceeding, provide any person authorized to be present the opportunity to make a request no later than the time the case is called for hearing. The only time a request must be in writing and served in advance of the proceeding is when it is made on behalf of a witness.</p> <p>The committee agrees and has modified the proposal to recommend that the dependency forms (renumbered as RA-025 and RA-030) be approved for optional use.</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>[ ] Juvenile: Not necessary, but fine as long as it is optional.</p> <p>Q: <u>Should form JV-145 require that all parties’ consent to a witness’s requested remote appearance—as mandated by section 367.75(h)(2)—be obtained before the form may be filed and indicated on the form, as currently proposed, or should the rule and form JV-146 instead require a party who does not consent to the witness’s remote appearance to file that form to indicate lack of consent?</u></p> <p>Requiring the consent of all parties before filing the request would probably not work in most juvenile cases due to statutory time constraints.</p> <p><u>General Comments</u></p> <p><b>Juvenile:</b> The proposed new rule would be in Title 3, which includes the Civil Rules. It is recommended that a new rule that governs juvenile cases be in Title 5, which includes Family and Juvenile Rules. The Civil Rule could include a cross-reference to the Juvenile Rule.</p> <p>[ ]</p> <p>[Comment in section re local rules as well, for purpose of discussion]</p> <p>The San Diego Juvenile Court is in favor of the subdivision of rule 3.672 that allows a court to adopt a local rule and would</p>	<p>The committee recommends that form RA-020 be adopted for optional use as an order form in all cases governed by the rule, including dependency.</p> <p>The committee agrees with the concerns and has modified its recommendation to remove the requirement that the party requesting a witness’s remote appearance document all parties’ consent from the rule and the optional request form (renumber as RA-025) and to allow a party to indicate lack of consent on the optional form (renumbered as RA-030) for asking the court to compel the witness’s physical presence.</p> <p>The committee does not recommend the suggested change. The rules and the forms for remote proceedings in civil cases should be placed together because they govern a wide variety of civil cases, including but not limited to dependency. Many of the provisions of rule 3.672, not only subdivision (i), apply to dependency proceedings. The committee has added language to existing rules in title 5 to notify parties that rule 3.672 governs remote appearances while it is in effect.</p> <p>The committee has expanded the authorized scope of local rules under rule 3.672(e) and expressly included</p>

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<b>Issue 6: Juvenile Dependency</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	want that same provision in a juvenile rule, if one is drafted. We recommend even broader discretion be given to courts to adopt local rules that do not comply with CRC 3.672(e)(1). We have found that for non-evidentiary hearings, remote appearances have been a huge benefit to children, youth, and families, solving problems like lack of transportation and missed school and work. For evidentiary hearings, issues around who will appear remotely and who must appear in person are often worked out on a case-by-case basis at the settlement conference. The process proposed by the new rule would not work well in juvenile proceedings (dependency <u>and</u> juvenile justice).	authority for courts to adopt local rules for remote proceedings in dependency cases. In addition, the authority for all parties to waive advance notice by stipulation should be read to apply to dependency proceedings, as section 367.75(j) makes clear that nothing in the whole section is intended to prohibit remote appearances on stipulation by counsel for represented parties.



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<b>Issue 7: Juvenile Justice (Delinquency)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
California Public Defenders Association	<p>The California Public Defenders Association, a statewide organization of public defenders and criminal defense attorneys, including those who defend minors alleged to come under the jurisdiction of the juvenile court due to criminal acts in delinquency proceedings, and respondents in civil commitment, conservatorship, contempt, and competency proceedings, write to express our collective concerns with ITC SP21-08.</p> <p>The proceedings which are of interest to CPDA are those categorized as “special proceedings”, implicating the fundamental right to Liberty and often involving extremely vulnerable men, women, and children. The importance of in-person contact and meaningful confidential communication with these clients, even in “routine” hearings in these cases, cannot be overstated. Under the best of circumstances, those who are the subject of such proceedings face exceptional challenges in understanding what’s going on in a courtroom. Moreover, the exchange of energy and ability of all participants to read and respond to each other’s nonverbal cues inherent to in-person hearings, simply cannot be approximated through videoconferencing. The prospect of expanding authorization for courts to use remote technology in conducting substantive hearings in these matters and with these clients is of great concern to CPDA.</p> <p>The most straightforward way to alleviate our concerns would be to specify, in the rules implementing Code of Civil Procedure section 367.75 that the statute’s provisions apply only to general civil cases, as defined in California Rules of Court, rule 1.6, paragraph (4), and not to special proceedings</p>	<p>The committee appreciates these comments. See below for responses to specific comments.</p> <p>The committee understands and appreciates these concerns. The committee notes that, under Code of Civil Procedure section 367.75(f), (g), and (h)(3), the court is barred from requiring any party to a case governed by the statute to appear remotely. Nothing in proposed rule 3.672 has the effect of authorizing a court to require a remote appearance.</p> <p>The committee does not share the commenter’s interpretation of section 367.75. The statute applies to all civil cases, meaning all cases except criminal cases and habeas corpus proceedings other than habeas proceedings under the Lanterman-Petris-Short Act, to</p>

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<b>Issue 7: Juvenile Justice (Delinquency)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>implicating liberty interests, such as delinquency proceedings, conservatorship proceedings, civil commitment proceedings, and contempt proceedings. We urge the committee to make this modification. We believe this is consistent with the Legislature’s intent in enacting section 367.75, with existing statutory and decisional law, and with other provisions of the California Rules of Court.</p> <p><b>I. LIKE CODE OF CIVIL PROCEDURE SECTION 367.5, CODE OF CIVIL PROCEDURE SECTION 367.75 APPLIES ONLY TO GENERAL CIVIL CASES, UNLAWFUL DETAINER ACTIONS, AND PROBATE CASES</b></p> <p>Since January 1, 2008, telephonic appearances have been authorized in general civil cases, unlawful detainer actions and probate cases. (Code of Civ. Proc., § 367.5; Cal. Rules of Court, rule 3.670(b).)</p> <p>Effective January 1, 2022, Code of Civil Procedure section 367.75 will expand this authority to authorize remote appearances by videoconference, as well as by telephone. “General civil case” is defined in Rule 1.6 of the California Rules of Court to include “all civil cases except probate, guardianship, conservatorship, juvenile, and family law proceedings (including proceedings under divisions 6–9 of the Family Code, Uniform Parentage Act, Domestic Violence Prevention Act, and Uniform Interstate Family Support Act; freedom from parental custody and control proceedings; and adoption proceedings), small claims proceedings, unlawful detainer proceedings, and “other civil petitions” described in subparagraph (5). (Cal. Rules of Court, rule 1.6(4).) Subparagraph (5) sets forth a list of civil petitions that are not</p>	<p>which the statute also applies. See below for responses to specific comments.</p> <p>Section 367.75 does more than expand the existing statutory authority for telephonic appearances to include appearances by videoconference. A simple amendment to section 367.5 would have been sufficient, and perhaps unnecessary, for that purpose. The first place to look when interpreting a statute is the text. Section 367.75, unlike section 367.5, never mentions “general civil cases.” (Compare Code Civ. Proc., § 367.75(a) (in <i>civil cases</i>, a party may appear remotely and the court may conduct proceedings wholly or partly remotely) with <i>id.</i>, § 367.5(a) (in civil cases, courts <i>should</i> permit parties to appear by telephone at appropriate proceedings) and <i>id.</i>, § 367.5(b) (in all <i>general civil cases</i>, a party that has provided notice may appear by telephone at specified</p>

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<b>Issue 7: Juvenile Justice (Delinquency)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>general civil cases, including petitions to prevent civil harassment, elder abuse, and workplace violence, petitions for name change, petitions to contest election results, and petitions for relief from late claims.</p> <p>Effective January 1, 2022, section 367.75 [FN 1 Subsequent statutory references are to the Code of Civil Procedure, unless otherwise indicated.] will authorize remote appearances by litigants and their attorneys at most hearings in such civil cases, including for trials and evidentiary hearings, with proper advanced notice. (§ 376.75, subd. (a).) It will also expand the authority of parties to call expert witnesses to testify through remote technology, unless good cause to compel in-person testimony is shown. (§ 367.75, subd. (c).) And it expands the authority of the court, upon its own motion or the motion of any party, to conduct trials and evidentiary hearings through the use of remote technology, unless it is persuaded, by an opposing party, that remote testimony should not be permitted. (§ 367.75, subd (d).)</p> <p>In addition to general civil cases, the statute also appears to apply to “juvenile dependency proceedings,” which are specifically mentioned and governed by subdivision (h) of section 376.75. CPDA is of the position that the statute does not encompass juvenile delinquency cases, as they are not general civil cases; nor can it constitutionally encompass other proceedings of a civil nature which implicate liberty interests and are subject to heightened statutory and constitutional protections, like civil commitment petitions, competency</p>	<p>proceedings). This change in the statutory language—from “general civil cases” in section 367.5 to “civil cases” in section 367.75—reflects a legislative intent to expand the range of proceedings in which remote appearances are authorized to all civil cases and not to limit that authority to general civil cases. Had the Legislature intended section 367.75 to apply only to general civil cases, it would have said so.</p> <p>The committee does not share the commenter’s interpretation of section 367.75(a) as limiting the application of that section to “<i>such</i> civil cases,” with the implication that “such” refers to “general.” The statute neither refers to general civil cases nor defines civil cases to restrict the sense of that term. Section 367.5(b) shows that the Legislature understood the distinction between civil cases and general civil cases, was aware that the rules of court included a definition of “general civil case,” and knew how to refer expressly to that definition. Nevertheless, it did not do so in SB 241.</p> <p>The committee agrees that section 367.75(h) applies to remote proceedings in dependency cases, and imposes separate conditions on the juvenile court’s authority to conduct remote proceedings in dependency. Because the Legislature made no separate provision for juvenile justice cases, those cases are governed by the general provisions of the statute and, therefore, of the rule. The committee does not need to determine whether “juvenile delinquency” cases are general civil cases, as that issue</p>

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<b>Issue 7: Juvenile Justice (Delinquency)</b>		
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	<p>proceedings, and conservatorship petitions.</p> <p>The Code of Civil Procedure defines an “action” as “an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. (§ 22.) Two types of “actions” exist – “civil actions” and “criminal actions” (§ 24.) California has “but one form of civil actions for the enforcement or protection of private rights and the redress or prevention of private wrongs.” (§ 307.) Proceedings which are not civil actions or criminal actions are categorized as “special proceedings.” (§ 23.)</p> <p>Some special proceedings implicate the fundamental right to liberty: others do not. Examples of those which do implicate a person’s liberty, potentially for the rest of their lives, include proceedings under Penal Code section 1368 (<i>People v. Loomis</i> (1938) 27 Cal.App.2d 236), contempt proceedings (<i>Miles California Co. v. Hawkins</i> (1959) 175 Cal.App.2d 162, 164) civil commitment proceedings (NGI, MDO, MDSO, SVP, WIC 1800, WIC 6500) (<i>People v. Bachman</i> (1955) 130 Cal.App.2d 445; <i>People v. Riley</i> (1951) 37 Cal.2d 510; <i>In re Application of O’Connor</i> (1915) 29 Cal.App. 225); and conservatorship proceedings (<i>Bagratiun v. Superior Court</i> (2003) 110 Cal.App.4th 1677, 1685, fn. 7). The Legislature has enacted laws giving heightened protections to respondents in certain special proceedings and juvenile delinquency proceedings – protections which cannot be reconciled with the language of newly added Section 367.75, subd. (c); see e.g. Pen. Code, § 1026.5, subd. (b)(7) [an NGI committee is entitled to “the rights guaranteed under the federal and State Constitutions for criminal proceedings”]; Welf. &amp; Inst. Code § 679 [minor who</p>	<p>is beyond the scope of the statute and this proposal.</p> <p>Section 367.75 and proposed rule 3.672 use the term “civil case,” which encompasses both civil actions and special proceedings of a civil nature. The definition of a civil action and the distinction between a civil action and a special proceeding of a civil nature are beyond the scope of this proposal.</p> <p>The committee recognizes that some civil cases, particularly those instituted by a governmental entity, are subject to heightened statutory or constitutional protections. Neither the Legislature nor the Judicial Council has the authority to limit the scope of constitutional protections. Likewise, the Judicial Council has no authority to limit statutory protections by rule of court. Section 367.75 does not, its application to all civil cases notwithstanding, purport to limit the application of any independent statutory or constitutional protection afforded to any party, including a respondent to a civil petition brought by a governmental entity. Of particular relevance to this proposal is the right of a party to be “physically present” at specified proceedings. Neither the statute nor the proposed rule purports to limit or place conditions on the exercise of that right. Section 367.75(a) conditions a <i>remote</i> appearance or proceeding, other than an evidentiary hearing or trial, on at least one party’s notice of intent to appear remotely. In addition,</p>

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<b>Issue 7: Juvenile Justice (Delinquency)</b>		
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	<p>is the subject of a juvenile court hearing has the right to be physically present in the courtroom at such hearings, and court cannot conduct a hearing in a delinquency proceeding remotely without the minor’s consent], see also <i>E.P. v. Superior Court</i> (2020) 59 Cal.App.5th 52.)</p> <p>Additionally, because these proceedings implicate the fundamental right to Liberty, they are subject to heightened constitutional protections which supersede the authority of the Legislature. (<i>In re Gault</i> (1967) 387 U.S. 1 [right to counsel, privilege against self-incrimination and the rights of confrontation and cross-examination apply in juvenile delinquency cases], <i>In re Damon H.</i> (1985) 165 Cal.App.3d 471, 477; <i>In re Watson</i> (1979) 91 Cal.App.3d 455, 461-462 [in civil commitment proceedings, due process guarantees the right to be present during the presentation of evidence absent personal waiver or demonstrated inability to attend]; <i>People v. Fisher</i> (2009) 172 Cal.App.4th 1006, 1014 [right to be personally present extended to individuals who are subject to petitions to administer involuntary medications, which involves a loss of liberty]; <i>People v. Nguyen</i> (2013) 218 Cal.App.4th 1363, 1371 [person subject to SVPA proceeding has the due process right to be present for trial].)</p> <p>Courts presume that the Legislature, when enacting statutes, was aware of existing law and judicial interpretation of the law. (<i>People v. Superior Court (Zamudio)</i> (2000) 23 Cal.4th 183, 199; <i>Moran v. Murtaugh Miller Meyer &amp; Nelson, LLP</i> (2007) 40 Cal.4th 780, 785.) We urge the Judicial Council to apply this presumption in interpreting and implementing section 367.75.</p>	<p>section 367.75(f) expressly <i>prohibits</i> a court from requiring a party to appear through the use of remote technology, thus avoiding any conflict with, for example, Welfare and Institutions Code section 679, as interpreted in <i>E.P. v. Superior Court</i> (2020) 59 Cal.App.5th 52.</p> <p>As discussed above, nothing in section 367.75 or proposed rule 3.672 restricts the independent right of a party to be physically present at a proceeding in any civil case. The statute and the rule also do not authorize remote testimony at an evidentiary hearing or trial if that testimony would impermissibly infringe on a party’s right to confront or cross-examine witnesses. As the commenter notes, the nature and extent of applicable constitutional protections depends on the nature of the case, the potential consequences for one or more parties, and the type of protection at issue. It is beyond the scope of a single statute or rule to specify every circumstance in which an independent statutory or constitutional right might limit the application of the statute or rule. Nevertheless, to be cautious, the committee has modified its proposal to add rule 3.672(b)(2) to clarify that nothing in the rule limits a right established by statute or case law to an appearance in one manner, either remote or in-person, to the exclusion of the other.</p> <p>The committee agrees. Section 367.75 does not impinge any independent rights established by statute or case law; neither does proposed rule 3.672.</p>

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<b>Issue 7: Juvenile Justice (Delinquency)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><b>II. THE PROPOSED RULES SHOULD BE MODIFIED TO ALLEVIATE APPARENT CONFLICTS IN THE LAW AND CONSTITUTIONAL PROBLEMS WITH SECTION 367.75</b></p> <p>Recognizing the time-sensitive nature of the Committee’s task, CPDA respectfully suggests the following amendments to the proposed rules:</p> <ul style="list-style-type: none"> <li>• Throughout the proposed rules, the term “civil cases” should be replaced with “general civil cases” (as specified in Cal Rules of Court, rule 3.670 (b)); thereby effectively excluding all special proceedings which implicate liberty interests.</li> <li>• Advisory Committee Comments should distinguish proceedings which potentially implicate liberty interests from the “general civil cases” encompassed by the new statute, noting conflicting statutory, decisional, and constitutional law.</li> </ul> <p>Should the Work Group decline to adopt this simple modification, we would urge the following modifications to the proposed rules, until clarification by the courts and/or Legislature is secured:</p> <ul style="list-style-type: none"> <li>• Proposed Rule 3.672, subdivision (a) should be modified to add the following language after “consistent with Code of Civil Procedure section 367.75”: “and existing provisions of statutory, decisional, and constitutional law”.</li> <li>• Proposed Rule 3.672, subdivision (b) should be modified</li> </ul>	<p>The committee does not recommend the suggested change, as limiting the rule’s application to general civil cases would be inconsistent with section 367.75.</p> <p>The committee does not recommend the suggested change. The committee has made clear, in rule 3.672(b)(2), that the rule does not limit any independent right to an appearance in a specific manner. The suggested distinction between general civil cases and proceedings that implicate liberty interests is therefore both unnecessary, as the rule does not limit any rights to which a party is entitled because of the party’s liberty interest, and insufficient, as it does not vindicate rights to which a party may be entitled because of other fundamental interests. The interplay of remote appearances with independent rights will change how, and perhaps whether, the rule may be applied in a specific proceeding or type of proceeding. Resolving all such issues of application is beyond the scope of this proposal.</p> <p>The committee does not recommend the suggested</p>

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	<p>to specify that the rule applies to “all general civil cases,” consistent with Rule 3.670, subdivision (b).</p> <ul style="list-style-type: none"> <li>Proposed Rule 3.672, subdivision (c) should be modified to define “Civil Case”, for purposes of Code of Civil Procedure section 367.75, as “General Civil Case,” as defined in rule 1.6 (4).</li> <li>Proposed Rule 3.672, subdivision (d) should be modified to add subparagraph (4), “If, in a special proceeding potentially impacting a liberty interest, the effected party or his attorney objects to the remote proceeding.”</li> <li>Proposed Rule 3.672, subdivision (f), subparagraph (1) should be modified to add subparagraph (D), “The proceeding is one which potentially implicates the fundamental right to Liberty.”</li> <li>Proposed Rule 3.672, subdivision (g) should specify that it does not apply to special proceedings which potentially implicate the fundamental right to Liberty and that, in such proceedings, no evidentiary hearing or trial shall be conducted remotely without the consent of the person who is the subject of the proceeding and their attorney. Even with that consent, the notice provisions applicable to civil actions and special proceedings which do not potentially implicate fundamental rights do not apply.</li> <li>Proposed Rule 5.531, subdivision (a), should be modified</li> </ul>	<p>change, as it would be inconsistent with section 367.75, which applies to “civil cases.”</p> <p>The committee does not recommend the suggested change, as it would be inconsistent with section 367.75, which applies to “civil cases.”</p> <p>The committee does not recommend the suggested change. As discussed above, it is both unnecessary and insufficient to protect a party’s independent rights. And, as provided in section 367.75(f), (g), and (h), as well as rule 3.672(j)(1), the court may not require a party to appear remotely and, even if a party has indicated its intent to appear remotely, the party may always appear in person without a court order.</p> <p>The committee does not recommend the suggested change. As discussed above, it is both unnecessary and insufficient to protect a party’s independent rights.</p> <p>The committee does not recommend the suggested change. As discussed above, it is both unnecessary and insufficient to protect a party’s independent rights. The extent to which a party’s fundamental interests need protection and the specific nature and extent of that protection vary among case types. These matters are better left to case-by-case determination by the courts.</p> <p>The committee does not recommend the suggested</p>

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	<p>to state, “During that time, the applicable provisions in rule 3.672 govern remote appearances and proceedings in juvenile dependency proceedings.</p> <ul style="list-style-type: none"> <li>• Mandatory Form CIV-021 should be modified in the Instructions section (p. 2), paragraph 2, to read: “This form is intended for use in civil actions only (any cases which are not criminal and are not special proceedings potentially implicating Liberty interests).”</li> </ul> <p><b>CONCLUSION</b> We appreciate the opportunity to comment on the proposed rules, and urge serious consideration of our proposed modifications.</p> <p><b>Supplemental Comment:</b> This is to supplement the comment submitted [earlier].</p> <p>The California Supreme Court has concluded that the Legislature’s failure to make Code of Civil Procedure Part 2 expressly applicable to other special proceedings “must be held to have been intentional” (<i>Carpenter v. Pacific Mutual Life Ins. Co.</i> (1939) 13 Cal.2d 306, 311), and has held that Part 2 of the Code of Civil Procedure does not generally extend to a special proceeding unless the statutes establishing the special proceeding expressly incorporate Code of Civil Procedure Part 2 provisions. (<i>Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.</i> (1987) 43 Cal.3d 696, 707.)</p> <p>(<i>Bagrations v. Superior Court</i> (2003) 110 Cal.App.4th 1677,</p>	<p>change. While section 367.75 is in effect, its provisions govern remote appearances in all juvenile court proceedings because those proceedings are civil in nature. Rule 3.672, which implements section 367.75, therefore applies to remote appearances in juvenile court proceedings.</p> <p>The committee does not recommend the suggested change for the reasons stated above.</p> <p>The committee does not recommend the suggested interpretation. Section 367.75, by its own terms, applies to “civil cases,” and is not limited to “civil actions,” or “general civil cases.” Assuming, as urged above by the commenter, that the Legislature knew the state of existing law when it enacted section 367.75, and finding only one existing legal definition of the term “civil case,” i.e., the one in rule 1.6(3) of the California Rules of Court, the Legislature intended section 367.75 to apply to all cases within the scope of that definition, that is, all cases “except criminal cases and petitions for habeas corpus.” (Cal. Rules of Ct., rule 1.6(3).) No</p>



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	<p>1685-1686.)</p> <p>I believe this supports the interpretation suggested by CPDA – that CCP 367.75, which is codified in Part 2 of the Code of Civil Procedure, applies to “general civil cases” and does not apply to special proceedings.</p>	<p>commenter has contended that a juvenile justice case is a criminal case or a habeas corpus proceeding. The actual issue is whether section 367.75 may be applied to wardship proceedings consistent with other statutory or decision-based rights. Because section 367.75 prohibits the court from requiring a party or witness to appear remotely and authorizes the court to require an in-person appearance, any concerns related to fears of mandatory remote appearances are misplaced.</p>
<p>Children’s Law Center of California</p>	<p>The Rule requires clarification that its provisions do not apply to delinquency hearings. Many of our clients are involved in juvenile justice proceedings, the outcomes of which often carry life-long implications. The process of drafting SB 241 and CCP § 367.75, with which CLC was very involved, did not intend applicability to juvenile delinquency, and the many discussions regarding the bill’s language reflected this. These proceedings - which often involve lengthy periods of incarceration, separation from family and community, and restrictions on movement and association - are more akin to criminal proceedings than civil. CLC supports and refers the Committee to the thoughtful analysis submitted by Jonathan Laba on behalf of the Contra Costa County Public Defender’s office to this effect, and we urge the Judicial Council and the Ad Hoc Committee to make clear that rule 3.672 does not apply to juvenile delinquency cases proceeding under section 602 of the Welfare and Institutions Code.</p>	<p>The committee appreciates these comments. For the reasons stated above in the response to the California Public Defenders Association, Code of Civil Procedure section 367.75 applies, by its terms, to all civil cases, as that term is defined in rule 1.6(3) of the California Rules of Court. Welfare and Institutions Code section 203 expressly provides that “a proceeding in the juvenile court [shall not] be deemed a criminal proceeding.” Because the statute and the rule preclude a court from requiring any party or witness to appear remotely in a covered proceeding, the concerns raised in other comments do not provide sufficient reason to restrict the rule’s application in the absence of express statutory direction. To be cautious, however, the committee has added rule 3.672(b)(2) to its proposal to make clear that nothing in the rule limits an independent right established by statute or case law to one manner of appearance, remote or in-person, to the exclusion of the other.</p>
<p>City and County of San Francisco Office of the City Attorney</p>	<p><b>IV. The proposed rule of court, rule 3.672, applies to every other segment of civil proceedings, including those that deal with liberty interests, without special treatment.</b></p>	<p>The committee appreciates these comments.</p>

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	<p>Dependency proceedings are the <i>only</i> sub practice in “civil cases” that have their own set of limitations on the use of remote technology in its proceedings. In other practice areas such as delinquency (Welf. &amp; Inst. Code, § 600 et seq.) or conservatorship (Welf. &amp; Inst. Code, § 5350 et seq.), deprivation of liberty is at stake. However, in these areas there are no analogous limitations on the use of remote technology in hearings. (<i>Compare</i> Proposed Rule of Court, rule 3.672, subd. (f)(2) [for all Civil cases other than dependency, a party choosing to appear remotely at a hearing must provide notice of the party’s intent to appear remotely at least one or two court days before the proceeding] <i>with</i> subd. (h)(2) [any person who wishes to appear remotely at a dependency proceeding must file a request at least five court days before a proceeding].) The differential treatment by the proposed rule limiting use of remote technology in dependency cases only, and in no other civil cases, has not been justified by the Ad Hoc Committee on Civil Remote Appearance Rules and is thus irrational.</p>	<p>Code of Civil Procedure section 367.75 applies generally to civil cases, its treatment of juvenile dependency cases in subdivision (h) presenting the sole exception. To implement section 367.75, the committee has, as it must, followed the language in the statute. The distinction of dependency from other civil cases needs no other justification. Moreover, to suggest that parties in other types of civil cases are without protection is to misread the statute. Both section 367.75 and rule 3.672 place substantial limits on the conduct of remote proceedings, including prohibiting a court from requiring a party to appear remotely (Code Civ. Proc., § 367.75(f)–(g)) and authorizing the court, sua sponte, to require a party or witness to appear in person if the court determines for any of several specified reasons that an in-person appearance is required (see <i>id.</i>, § 367.75(b)–(c), (e)(2)).</p>
Juvenile Court Judges of California	<p><b><u>Does the proposal appropriately address the stated purpose?</u></b></p> <p>The proposal is not appropriate for juvenile justice proceedings. In general, JCJC supports the continued use of remote appearances in juvenile justice proceedings. Remote appearances have resulted in increased access to the courts for youth, parents, and victims; enhanced trauma-informed court practices; and safety during the Covid-19 pandemic. However, we are concerned that juvenile justice proceedings have been included with civil proceedings and that the civil rules and forms do not meet the needs of juvenile justice cases.</p> <p>It has been long established since <i>In re Gault</i> (1967) 387 U.S.</p>	<p>The committee appreciates these comments.</p> <p>The committee supports the continued use of remote appearances in juvenile justice proceedings as permitted by law. In the absence of legislation, emergency rules 3 and 7 authorized the use of remote appearances in juvenile justice cases at the court’s discretion. Effective January 1, 2022, the Legislature has acted, in section 367.75, to authorize remote appearance in all civil cases, and has placed limits on the court’s discretion. The Judicial Council must, as required by section 367.75(k), adopt rules to implement the statute.</p> <p>The committee understands the unique nature of juvenile</p>

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	<p>1, that youth are entitled to the same protections of the Bill of Rights in a juvenile justice proceeding as an adult facing confinement or other sanctions in a criminal proceeding. While juvenile justice hearings should not be labeled as criminal proceedings [FN1 Welf. &amp; Inst. Code, § 203.] and have been labeled as “essentially civil” in nature at times, juvenile procedures have also been found to be “quasi-criminal in nature.” See, e.g., <u>In re Sidney M.</u> (1984) 162 Cal.App.3d 39, 47; <u>Joe Z. v. Superior Court</u> (1970) 3 Cal.3d 797,801. Last year, the Court of Appeal similarly applied the criminal procedure for remote appearances in Emergency Rule 3 to juvenile justice proceedings. <u>E.P. v. Superior Court of Yolo County</u> (2020) 59 Cal.App.5th 52.</p> <p>It is unclear that juvenile justice proceedings should be treated as civil proceedings. The Rule 1.6(3) definition and subsequent cross-reference in the dependency subdivision (h)(1)(E) stating that the “provisions in (a) through (g) and (i) through (l) govern a remote appearance in any juvenile justice proceeding” do not</p>	<p>justice proceedings, in which the potential restriction of a ward’s liberty requires many of the same procedural protections afforded an adult defendant in criminal proceedings. Statutes and case law make clear, however, that a juvenile justice proceeding is fundamentally not criminal in nature. “An order adjudging a minor to be a ward of the juvenile court <i>shall not</i> be deemed a conviction of a crime for any purpose, <i>nor shall</i> a proceeding in the juvenile court be deemed a criminal proceeding.” (Welf. &amp; Inst. Code, § 203 (emphasis added).) A proceeding that is “quasi-criminal” is, fundamentally, <i>not</i> criminal, but civil, no matter the number and level of attendant procedural protections. In section 367.75, the Legislature applied the complex set of permissions, restrictions, and conditions on remote appearances and proceedings to “civil cases.” As defined in Cal. Rules of Court, rule 1.6(3)—the only available legal definition of the term—a “civil case” includes all cases except criminal proceedings and petitions for writ of habeas corpus. No contention has been raised that a juvenile justice proceeding qualifies as either of those. Without any indication in the statutory language or legislative history that juvenile justice proceedings should be excluded, section 367.75 must be interpreted to include them. The committee may not, therefore, exclude juvenile justice proceedings from the scope of rule 3.672.</p> <p>Whether juvenile justice proceedings should be treated as civil cases is a policy question in the province of the Legislature. Presumably, the Legislature would not answer that question the same way regarding each type of treatment. The Legislature has, however, answered</p>

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	<p>necessarily resolve the concern. Regardless, juvenile justice cases should be treated as specialized, hybrid proceedings for the same reasons that there are specialized rules for dependency proceedings. The proposed civil rules and accompanying civil forms are not tailored to the participants and procedures in a juvenile justice case:</p> <ul style="list-style-type: none"><li>• Subdivision (a) encourages courts to permit remote appearances “to improve access to the courts and reduce litigation costs ... “ without specifying other countervailing factors including the due process rights of the youth.</li></ul>	<p>the question affirmatively when determining the scope of section 367.75. And the Legislature did not distinguish juvenile justice cases from other civil cases as it did dependency cases. The committee is left to implement the statute that was enacted, not a statute that might have been enacted. Labeling juvenile justice cases as civil or criminal, however, seems to obscure the real issue: how to ensure that the rights and protections to which accused minors are entitled are maintained when one or more parties, attorneys, or witnesses appears remotely at such a proceeding. Nothing in the statute or the rule requires or authorizes a court to conduct remote proceedings, in whole or in part, in such a way as to impinge on the independent statutory or decisional rights of an accused minor. And, of course, they could not validly do so. A statute may not validly impinge on a constitutional right; neither may a statute limit an independent statutory right without a clear expression of legislative intent to do so. No such expression is present in the text or history of section 367.75. No language in the rule is needed to vindicate those principles. To be cautious, however, the committee has added rule 3.672(b)(2) to clarify that nothing in the rule limits any requirement or right established by statute or case law to an appearance in one manner, either remote or in person, to the exclusion of the other.</p> <p>The silence in the rule’s purpose clause does not override any independent statutory or decisional rights of an accused minor. It simply gives reasons to permit remote appearances without implying that reasons not to permit remote appearances do not exist.</p>

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	<ul style="list-style-type: none"> <li>The parties to a juvenile justice proceeding are the petitioner (district attorney) and the youth. However, other persons who are not parties are entitled to be present at the juvenile court proceeding as enumerated in Rule 5.530, including the parents, probation officer, CASA workers, Indian custodians, and victims.<sup>2</sup></li> <li>By referring to a “party choosing to appear remotely”, the notice provisions in subdivision (f) do not provide a process for the other persons entitled to be present at a juvenile justice proceeding to request remote appearances. In comparison, the rule for dependency proceedings refer to “any person entitled to be present ... “ (Subdivision (h)(2)).</li> </ul>	<p>The committee agrees that the statute is not a perfect fit when applied to juvenile justice proceedings; however, amendments to the statute to improve that fit are the province of the Legislature. The Judicial Council may not depart from the general requirements in the statute in the absence of express legislative direction, such as that provided for juvenile dependency proceedings. In the situation presented by the commenter, the exclusion of the persons mentioned from the statute and the rule may actually operate to their benefit. The rule requires a party to give notice of intent to appear remotely as a condition of a court conducting remote proceedings. Once a party has given notice, and the court has decided to conduct remote proceedings, it seems reasonable that persons who are not parties but nevertheless legally entitled to be present at the proceeding may choose to appear remotely. And, under the statute and the rule, the court cannot preclude a party from appearing in person. In juvenile justice proceedings, therefore, it is possible that a nonparty entitled to be present may be subject to fewer restrictions on how they choose to appear than a party.</p> <p>As noted above, the statute authorizes the court to conduct proceedings in whole or in part through the use of remote technology once a party has given that notice of intent to appear remotely. Once the court has decided to conduct a proceeding remotely, even in part, there seems to be no reasonable basis for the court to preclude a person entitled to be present from appearing remotely or even to require that person to submit a request. If a court determines that a request is needed, a party’s counsel could request on behalf of other persons entitled to be present and for the court to authorize their remote</p>

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	<ul style="list-style-type: none"> <li>• Form CIV-021 does not use juvenile court terminology (e.g., “defendant/respondent” instead of “minor” or “nonminor” or “youth”) and does not appear designed for use by the non-party persons entitled to be present at a juvenile justice proceeding. The confidentiality admonition does not place the applicant on sufficient notice of what confidentiality must be “preserved” and what the consequences of any violation may be. Confidentiality rules in juvenile justice proceedings can be complicated, especially when the hearings are open to the public and the rules in Welf. &amp; Inst. Code, § 676 apply. Additionally, the instructions for service do not provide enough guidance about whom is entitled to notice of the request.</li> <li>• Form CIV-022 does not use juvenile court terminology.</li> </ul> <p>The civil rules for remote appearances by a witness are particularly problematic for juvenile justice proceedings. Under Code of Civil Procedure, § 367.75, the burden to show why</p>	<p>appearance. Although neither the statute nor the rule supplies a procedure for submitting or determining such a request, rule 3.672(e) authorizes a court to adopt local rules on an expedited schedule to establish procedures that would, for example, fill gaps in the statute and statewide rule.</p> <p>This problem is not unique to juvenile justice proceedings; it applies to many other civil cases as well. To reduce the effect of the problem on these types of cases, the committee recommends that the forms be renumbered as RA-010 and RA-015, and that terminology be revised to be more agnostic regarding case types. It is beyond the scope of a general rule to enumerate the procedural requirements for every type of proceeding to which it might apply. Nevertheless, the committee is confident that, because all parties to a juvenile justice proceeding are represented by counsel, and all witnesses are called by counsel, all persons appearing remotely at a juvenile justice proceeding will be adequately advised by counsel and, if necessary, the court, regarding the applicable confidentiality requirements. The committee is not persuaded that these concerns are different in kind from those arising in proceedings held in person in the courtroom.</p> <p>The committee has modified the proposal to renumber form CIV-022 as RA-015 and use terminology applicable to more case types.</p> <p>The committee does not read the statute to require a request or motion as a condition to the court’s requiring a party or witness to appear in person for any of the</p>

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	<p>remote testimony should not be allowed is on the opposing party. In contrast, the dependency provisions require the consent of all parties prior to a witness appearing remotely. At a minimum, juvenile justice evidentiary hearings and trials should have the same protections as for dependency hearings.</p> <p>If Rule 3.672 is applied to juvenile justice proceedings, we agree with subdivision (b)(1)'s exception for "when an in-person appearance is otherwise required by law" which would be consistent with the youth's right to be present as stated in Welf. &amp; Inst. Code, § 679.</p> <p>However, Rule 3.672 should not be applied to juvenile justice proceedings. Until further legislation specific to juvenile justice proceedings is enacted, juvenile justice courts should continue to operate with their existing procedures pursuant to the Emergency Rules.</p> <p><b><u>Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants? And for the courts?</u></b></p> <p>The proposed timelines for providing notice do not work for litigants or the courts in dependency or juvenile justice proceedings.</p>	<p>reasons enumerated in section 367.75(b), (e)(2), or (f), or rule 3.672(d). The Legislature chose to require consent of all parties to the remote appearance of a witness in dependency proceedings. It could have chosen to require consent in juvenile justice proceedings, but did not. The court nevertheless retains discretion under section 367.75, rule 3.672(d), and any other applicable statute or judicial decision to require a witness to appear in person.</p> <p>The committee agrees, and to accommodate circumstances in which a requirement of or a right to either an in-person appearance or a remote appearance is provided by statute or case law, the committee has expanded this provision and placed it alone in paragraph (b)(2) of the rule for emphasis.</p> <p>As explained above, the committee has determined that, under the language of section 367.75, it has no discretion to exempt juvenile justice proceedings from the ambit of the rule. The committee notes that, on November 19, 2021, the Judicial Council amended emergency rule 3, effective January 1, 2022, to limit that rule's scope to criminal proceedings. Without the authority of section 367.75 and rule 3.672, a juvenile court will have no authority to conduct juvenile justice proceedings remotely after January 1.</p> <p>The committee has added new subdivision (f) to allow a party to give one notice of intent to appear remotely for the duration of a case and to allow all parties, by stipulation, to waive notice of intent for the duration of the case. A party would still be able to appear in person</p>

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	<p>As a preliminary matter, the time for notice of a proceeding (i.e., 10 days as the delineator) may not be as pertinent to the timing of notice of remote appearances as the nature of the proceeding. Remote appearances at most six-month dependency status review hearings and other uncontested hearings work well for families and the courts and are less likely to be opposed. In-person appearances may be more appropriate, or more likely to be requested, at detention and initial hearings, jurisdiction and disposition hearings, or any contested hearing.</p> <p><u>Juvenile Justice Cases:</u>            Juvenile Justice proceedings are not easily categorized by 3-days' notice requirements. Like criminal cases, juvenile justice proceedings are intended to move swiftly when the youth is in custody, e.g., 15 court days for an in-custody jurisdiction hearing, 10 court days for an in-custody disposition hearing. The 10-days'/2-days' notice requirements for a jurisdiction trial in Subdivision (g), assuming the notice requirement is based on the length of time between setting the trial and commencement of trial, simply do not work in a juvenile justice case. Similarly, an in-custody disposition hearing would trigger the 2-court day requirement (notice of proceeding with at least 3-days' notice) but the probation officer's social study report is not due until at least 48 hours before the disposition hearing. [FN5 CRC 5.785(a).] And just as for dependency status review hearings, probation reports for post-disposition six-month status review hearings are due 10 court days before the hearing.</p>	<p>under rule 3.672(j)(1).</p> <p>The committee has revised proposed rule 3.672(e) to authorize courts to modify the deadlines in the rule by adopting local rules as long as the local rules require a notice of intent to appear remotely and include a clear description of the amount of notice required. A local rule applicable to remote appearances in juvenile justice cases that required an appropriate amount of notice for specific proceedings would seem to fall within the scope of this authorization.</p> <p>The committee has modified the proposed rule to allow a party to give notice of intent to appear remotely one time for the duration of a case. This amendment would limit the circumstances in which a party needed to give notice of intent to appear remotely at a specific proceeding, but would not preclude a party from appearing in person.</p>
Jonathan Laba	<u>Senate Bill 241 and CCP § 367.75</u>	The committee appreciates these comments.



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	<p>In June 2020, the Judicial Council circulated ITC #LEG20-02, requesting comment on proposed legislation that would provide statutory authority for courts to permit remote video appearances in civil actions and proceedings. The ITC provided a list of the types of cases to which the proposed legislation would apply.</p> <p>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, petitions for name changes, and sexually violent predator hearings.</p> <p>(ITC LEG20-02, p. 2.) While juvenile dependency proceedings explicitly are referenced, no mention is made in the ITC of possible application to juvenile delinquency proceedings.</p> <p>Because of the legislation’s evident inapplicability to juvenile delinquency cases, members of the juvenile defense bar did not submit comment about the proposed legislation. I have spoken to organizations that would have a very strong interest in legislation governing remote proceedings in delinquency cases, including the California Public Defenders Association (CPDA), California Attorneys for Criminal Justice (CACJ), and the Pacific Juvenile Defender Center (PJDC). None responded to the June 2020 ITC because it was believed the proposed legislation had no application to juvenile delinquency practice.</p> <p>Once Senate Bill 241 was proposed in the Legislature, these beliefs were confirmed. SB 241 contains no reference to juvenile delinquency proceedings – in fact, SB 241 does not contain even one mention of the words “delinquency,” “justice,” “602,” or “criminal.” SB 241 does, however, contain</p>	<p>The legislation proposed by several Judicial Council advisory committees in LEG20-02 was never submitted to the Judicial Council for its approval and was not enacted in any form.</p> <p>SB 241 was neither drafted nor sponsored by the Judicial Council. Many stakeholders participated in the negotiations over the language of the bill’s provisions, including section 367.75. Ultimately, the Legislature determined the shape of the bill presented to the Governor. The Judicial Council must adopt rules to implement the enacted bill, not a bill that it might prefer to have been enacted.</p> <p>The committee recognizes that section 367.75 includes no reference to any specific case type except juvenile dependency. The committee is not privy to the reasons that the Legislature chose to single out juvenile dependency; nevertheless, that is what it did. The</p>

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	<p>multiple references to juvenile cases in the context of juvenile <i>dependency</i>. New Code of Civil Procedure section 367.75 appropriately recognizes that special rules must govern juvenile dependency cases, as compared to traditional “civil” cases, given the due process rights of children and families in child welfare proceedings. [FN 1 Numerous child welfare organizations supported SB 241 and worked to ensure that protections for children in dependency cases were included in the bill. (Sen. Rules Com., Off. of Sen. Floor Analyses, Sen. Bill No. 241 (2021-2022 Reg. Sess.) Sept. 9, 2021, pp. 10-11.) In contrast, no criminal prosecution or defense organizations are listed as either supporters or opponents of the legislation.] Accordingly, section 367.75(h) provides essential protections for parties in dependency proceedings:</p> <ul style="list-style-type: none"> <li>• Any party to the proceeding may request that the court compel the physical presence of a witness or party;</li> <li>• The consent of all parties is required for a witness to appear remotely; and</li> <li>• A court may not require a party to appear through the use of remote technology.</li> </ul> <p>(Code Civ. Proc., § 367.75, subd. (h)(2), (h)(3).)</p> <p>The liberty interests at stake in juvenile delinquency proceedings are even higher than in dependency cases. “As the United States Supreme Court has recognized, the interests at stake in a juvenile delinquency proceeding parallel those at risk in a criminal prosecution.” (<i>In re Kevin S.</i> (2003) 113 Cal.App.4th 97, 118.) All of the constitutional rights that apply to adult criminal proceedings apply in delinquency cases, with the exceptions of the rights to jury trial and bail. (<i>See In re</i></p>	<p>committee must implement section 367.75 as it reads: section 367.75(h) applies to dependency; the provisions applying to all civil cases apply to juvenile justice. Nothing in this application limits the protections due accused minors in those proceedings.</p> <p>The committee does not dispute this proposition. No provision in the rule is needed to require a court to require the physical presence of a party or witness at a proceeding if a statute (e.g., Welf. &amp; Inst. Code, § 679) or judicial decision (e.g., <i>In re Gault</i> (1967) 387 U.S. 1) requires such an appearance. The Court of Appeal’s decision in <i>E.P. v. Superior Court</i> (2020) 59 Cal.App.5th 52, 60—which construed emergency rules 3 and 7, despite their plain language to the contrary, not to</p>

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	<p><i>Gault</i> (1967) 387 U.S. 1; <i>Joe Z. v. Superior Court</i> (1970) 3 Cal.3d 797.) While juvenile proceedings are not “technically” criminal (see <i>In re Jerald C.</i> (1984) 36 Cal.3d 1, 8 (plurality opin.)), our courts have acknowledged for decades the “widely held belief” that under current practices juvenile court proceedings under section 602 are in reality criminal proceedings.” (<i>Id.</i> at p. 8, fn.4; <i>In re Gregory K.</i> (1980) 106 Cal.App.3d 164, 168 &amp; fn.2.) As the Supreme Court has explained, “the ‘civil’ label of convenience cannot obscure the quasi-criminal nature of juvenile proceedings, involving as they often do the possibility of a substantial loss of personal freedom.” (<i>Joe Z. v. Superior Court, supra</i>, 3 Cal.3d at p. 801.)</p> <p>Despite the fact that children in delinquency proceedings are afforded heightened constitutional protections compared to children in dependency proceedings, [FN 2 Various statutory provisions also provide heightened protections to youth – protections that would be in clear conflict with section 367.75 if it were applicable to delinquency cases. (See, e.g., Welf. &amp; Inst. Code, § 679 [youth in section 602 proceedings, and their parents and guardians, are entitled to be present at juvenile court hearings]; <i>E.P. v. Superior Court</i> (2020) 59 Cal.App.5th 52, 60 [child’s consent required before a delinquency hearing is held remotely under the emergency rules].)] SB 241 does not provide youth in section 602 cases even the above basic protections afforded by section 367.75(h) to parties in dependency cases. Coupled with the lack of any textual reference to delinquency cases in the statute and the absence of legislative history indicating applicability to section 602 cases, the logical explanation is that the Legislature did not intend SB 241 to apply to delinquency cases.</p> <p><u>Proposed Rule 3.672 – Definition of “Civil Case”</u></p>	<p>authorize the juvenile court to require an accused minor to appear remotely in a juvenile justice proceeding because of the minor’s right to be present under Welfare and Institutions Code section 679—is sufficient evidence of that proposition. Nevertheless, to be cautious, the committee has added paragraph (b)(2) to the rule to state plainly that nothing in the rule limits any right established by statute or case law to an appearance in one manner, remote or in person, to the exclusion of the other.</p> <p>Both section 367.75 and rule 3.672 place substantial limits on the conduct of remote proceedings that provide protections to parties in all types of civil cases, including juvenile justice. In addition to prohibiting a court from requiring a party to appear remotely (Code Civ. Proc., § 367.75(f)–(g)), the statute authorizes the court, <i>sua sponte</i>, to require a party or witness to appear in person if the court determines, for any of several specified reasons, that an in-person appearance is required (see <i>id.</i>, § 367.75(b)–(c), (e)(2)). The specification of those reasons in the statute should be read to incorporate, not exclude, statutory or decisional rights or requirements that apply to specific case types.</p>

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	<p>Proposed Rule 3.672 adopts the definition of “civil case” as used in Rule 1.6(3) of the Rules of Court. Rule 1.6(3) states: “Civil case” means a case prosecuted by one party against another for the declaration, enforcement, or protection of a right or the redress or prevention of a wrong. Civil cases include all cases except criminal cases and petitions for habeas corpus. (Cal. Rules of Court, rule 1.6(3).)</p> <p>It is not at all clear that cases prosecuted under section 602 of the Welfare and Institutions Code fit within the first sentence of this definition. In contrast, section 602 cases squarely fit within the definition of “criminal” case under the rules. “Criminal case” means a proceeding by which a party charged with a public offense is accused and prosecuted for the offense. (Cal. Rules of Court, rule 1.6(7).)</p> <p>Youth in delinquency cases are parties charged with a public offense who are accused and prosecuted for that offense.</p> <p>I do not mean to wade too deeply into the thicket of whether delinquency cases, as a general proposition, should be characterized as “civil” or “criminal.” I only suggest that Proposed Rule 3.672’s assumption that rule 1.6 provides a strong foundation for interpreting “civil” cases (as contemplated by SB 241) to include delinquency cases is a far less stable foundation than one might think. [FN 3 While a project for another day, it would be timely for the Judicial Council to consider revising existing rule 1.6 to define separately those quasi-civil / quasi-criminal proceedings that</p>	<p>The committee agrees that, by itself, the first sentence of rule 1.6(3) would not clearly include a juvenile justice case. To resolve any ambiguity, the Judicial Council added the second sentence. Read as a whole, rule 1.6(3) includes juvenile justice cases within the scope of “civil cases,” as defined. Moreover, it is precluded by Welfare and Institutions Code section 203 from defining them otherwise, notwithstanding their resemblance to criminal cases, as defined.</p> <p>The committee appreciates this comment.</p>

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	<p>implicate liberty interests, which not only include delinquency cases but also wide range of civil commitment proceedings.]</p> <p>Proposed Rule 3.672 – Applicability to Delinquency Proceedings – Proposed Modification</p> <p>Despite the constitutional and statutory protections afforded to youth in delinquency cases, the proposed language of rule 3.672 seeks to treat delinquency cases identically to general civil cases for purposes of remote proceedings.</p> <p>This subdivision [applying heightened protections to dependency cases] does not apply to juvenile justice proceedings. [FN 4 While this Comment is addressed at the application of Proposed Rule 3.672 to delinquency cases, I would also support modifying this definition to exclude other civil cases implicating liberty interests.] The provisions in (a) through (g) and (i) through (l) govern a remote appearance in any juvenile justice proceeding. (Proposed Cal. Rules of Court, rule 3.672(h)(1)(E).)</p> <p>In light of the issues discussed herein, I request rule 3.672 by modified as follows:</p> <p>(1) Proposed Rule 3.672(c)(1): Modify to state that “‘civil case’ means a case prosecuted by one party against another for the declaration, enforcement, or protection of a right or the redress or prevention of a wrong. Civil cases include all cases except criminal cases, juvenile delinquency cases under section 602 of the Welfare and Institutions Code, and petitions for habeas corpus.” [FN 5 While this Comment is addressed at the application of Proposed Rule 3.672 to delinquency cases, I would also support modifying this definition to exclude other civil cases</p>	<p>The committee has not proposed in rule 3.672 to treat juvenile justice cases, or any other type of case covered by the rule, identically to general civil cases. The proposed rule establishes outer boundaries for the conduct of remote proceedings, within which courts must apply other independent legal protections and develop local rules as needed to conduct remote proceedings in specific case types.</p> <p>The committee does not recommend the requested change. Section 367.75 means what it says: it applies to civil cases. With the amendment of emergency rule 3 to restrict its application only to criminal proceedings, section 367.75 and rule 3.672 provide the only authority for the courts to conduct remote proceedings in civil, that is, non-criminal, cases from January 1, 2022, forward. The committee cannot limit the scope of the rule’s application to a narrower range of cases than the statute requires.</p>

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	<p>implicating liberty interests.]            (2) Delete subdivision (h)(1)(E) of Proposed Rule 3.672.</p> <p><u>Future Legislation</u></p> <p>As I have expressed within the Family and Juvenile Law Advisory Committee, I believe remote proceedings appropriately can occur at the request of the youth in certain types of delinquency proceedings, assuming the youth’s constitutional and statutory rights are protected. Since SB 241 and CCP § 367.75 do not apply to delinquency cases, there is a need for legislation that would authorize remote proceedings in delinquency once the current emergency rules expire or are revoked. I would be grateful for the opportunity to collaborate with other members of the Committee to sponsor such legislation and to draft a court rule applicable to delinquency cases.</p>	<p>The committee does not recommend the suggested change. Deletion of subdivision (i)(1)(E) would increase ambiguity and promote confusion.</p> <p>The committee takes no position on possible legislation, as that is beyond the scope of this proposal.</p>
Los Angeles Count Alternative Public Defender	<p>Request: Does the proposal appropriately address the stated purpose?</p> <p>Comment: Yes. However, Forms CIV-021 and -022 do not easily lend themselves to delinquency proceedings. For example, all parties to a delinquency proceeding will end up checking “other” under section 1. The parties in a delinquency proceeding are, on the other hand, encompassed in section 2 of proposed form JV-145. In addition, by classifying the form as CIV, parties and witnesses will not be easily able to find the forms. In general, delinquency forms are designated as JV.</p> <p>Request: Will the proposed timelines for providing notice of remote appearance to courts and other parties work for litigants?</p>	<p>The committee appreciates these comments.</p> <p>The committee has revised the proposed forms to renumber them as RA-010 and RA-015 to remove the implication that they are to used only in general civil cases, to expand the terms used to designate parties, and otherwise to make the forms more friendly to parties in multiple case types.</p>

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	<p>Comment: The timelines for evidentiary hearings with less than 15 days’ notice are untenable in juvenile delinquency court. Other than the jurisdictional hearing, all evidentiary hearings occur on a timeline that is less than 15 days. Because the proposed rule allows opposition to the intent to appear remotely to be filed no later than noon on the court day prior to the hearing, little time remains for an opposition hearing to take place. If the court finds that a party or witness offering testimony must be present, even less time remains to secure the person’s attendance prior to the statutory deadline for the hearing.</p> <p>The California Supreme Court noted in <i>People v. Hajjaj</i> (2010) 50 Cal.4th 1184, 1201, that “the state bears the duty of supplying judicial resources sufficient to bring defendants to trial within the statutory period.” Serious constitutional concerns will arise when a minor is forced to choose between asserting his right to confront and cross-examine the witnesses against him and refraining from asserting that right out of concern that statutory deadlines will be exceeded in order to secure the in-person appearance of a witness. If a minor is effectively denied the right to oppose the remote appearance of a testifying witness, he is denied his right to due process. This situation could be avoided by adopting the procedure used in dependency court, as proposed in rule 3.672(h), and criminal court, as proposed in Penal Code section 977.3: requiring the consent of all parties and the court for remote testimony in an evidentiary hearing or trial.</p> <p>Request: Is written notice of intent to appear needed in all circumstances, or would a rule requiring oral notice to the court and parties be sufficient? If so, how should proof of such notice</p>	<p>The committee agrees that the time for opposition to a notice of intent to have a witness appear remotely is short. The notice of hearing requirements in juvenile justice proceedings notwithstanding, neither the statute nor the rule requires the court to hold a hearing on the opposition. Moreover, if the opposition asserts the constitutional right to confront a witness in person, the court should not need a hearing to grant the opposition. As rule 3.672(b)(2) makes clear, nothing in the rule limits a requirement or right established by statute or case law to an appearance in one manner, either remote or in person, to the exclusion of the other.</p> <p>As noted above, nothing in the rule limits the exercise of an independent statutory or decisional right to an appearance in one manner. That includes a party’s right to a witness’s personal appearance for purposes of confronting and cross-examining the witness. If minor’s counsel is concerned that a particular witness is likely to wish to appear remotely, counsel may want to take steps to secure the witness’s physical presence before the deadlines approach. Finally, if the statute authorized the application of the dependency procedures to juvenile justice cases, the committee would consider doing so. The statute, however, provides different treatment only for dependency proceedings.</p>

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	<p>– which is required by statute – be provided to the court?</p> <p>Comment: In order to protect a minor’s right to due process it is important to require written notice of intent to appear. Doing so will decrease the likelihood of a dispute arising regarding whether proper notice was received.</p> <p>Request: Should the proposed forms (or any of them) be mandatory in cases without local court procedures, as proposed in the rule, or optional, making it possible for parties to serve and file individually crafted documents?</p> <p>Comment: Parties should have the option to file individually crafted documents as long as they contain all of the information required on the forms. Of particular concern to our office is the attestation that the confidential nature of a delinquency proceeding will be protected.</p> <p>Request: Should a new optional order form be approved, for requiring an in-person appearance in either the CIV or the JV form set?</p> <p>Comment: Yes. In the juvenile delinquency context, it is</p>	<p>The committee has revised proposed rule 3.672(h) to require written notice to the court, but to allow oral notice to other parties. The committee has also, however, revised rule 3.672(e) to authorize courts to adopt local rules prescribing procedures for remote proceedings, except for jury trials, as long as the procedures are consistent with section 367.75, posted on the court’s website, and include a requirement of notice of intent, a clear description of the amount of notice required, and the opportunity to oppose remote proceedings for an evidentiary hearing or trial. If revised rule 3.672 proves insufficiently flexible to accommodate the deadlines needed for juvenile justice proceedings, local rules could be explored.</p> <p>The committee recommends that the notice form (RA-010) and the opposition form (RA-015) be adopted for mandatory use when a form is required. As noted above, in some circumstances, oral notice is permitted.</p> <p>The committee has modified its proposal to add <i>Order</i></p>



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	<p>important that witnesses be ordered to appear. A form order would definitively communicate that the intent to appear remotely was rejected and that an in-person appearance is required.</p> <p>Request: Should form JV-145 require that all parties’ consent to a witness’s requested remote appearance – as mandated by section 367.75(h)(2) – be obtained before the form may be filed and indicated on the form, as currently proposed, or should the rule and form JV-146 instead require a party who does not consent to the witness’s remote appearance to file that form to indicate lack of consent?</p> <p>Comment: Because the Alternate Public Defender represents minors who are both dependent and delinquent wards, we are responding to this inquiry. It is more in line with CCP 367.75 to require that consent be obtained prior to filing the JV-145. Otherwise the burden is shifted to the other parties to lodge an objection. In the interests of judicial economy, the request should only be submitted if and when the requesting party has obtained consent from all other parties.</p>	<p><i>Regarding Remote Appearance</i> (form RA-020) to the proposal and recommend that it be approved for optional use.</p> <p>In response to the weight of the comments received, the committee has revised its recommendation to remove the requirement that a party requesting the remote appearance of a witness document the prior consent of all parties. Instead, the committee has revised form RA-030 to allow a party filing a request to compel the physical presence of a witness to indicate that the party has not given consent to the witness’s remote appearance.</p>
Los Angeles County Public Defender	<p>Our concern is that the proposed rule is so vague and broadly written that it will be applied to juvenile <i>delinquency</i> proceedings, even though it appears that the rule is actually intended to only apply to juvenile <i>dependency</i> matters. If the rule does indeed apply to juvenile delinquency matters, we oppose it. In addition, we are concerned the rule might apply to quasi-civil matters such as competence to stand trial, sexually violent predator cases, and civil contempts.</p> <p>The proposed rule states that “provisions in (a) through (g) and (i) through (l) govern a remote appearance in any <i>juvenile</i></p>	<p>The committee intends that the general provisions of the rule apply to juvenile justice (delinquency) cases, as required by section 367.75. The statute applies to civil cases, which include all case except for criminal cases and habeas corpus proceedings other than proceedings under the LPS Act, to which the statute and the rule apply.</p> <p>“Juvenile justice” is a friendlier term used to denote “juvenile delinquency.” To make sure there is no</p>

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	<p><i>justice proceeding.</i>” (Proposed Court Rule 3.672(h)(1)(E), emphasis added.) This is a very broad term. Juvenile <i>delinquency</i> matters <i>are</i> encompassed within the term “juvenile justice.” (See, for example, <i>B.M. v. Superior Court</i> (2019) 40 Cal.App.5th 742.) Thus, the rule’s language implies that the proposed rule applies to juvenile delinquency cases.</p> <p>In addition, juvenile delinquency cases have been considered to be civil actions, as opposed to criminal cases. “Under the plain meaning of these statutes, a juvenile delinquency proceeding is a ‘civil action’ rather than a ‘criminal proceeding.’ Accordingly, courts have long held that juvenile delinquency proceedings are civil actions, not criminal in nature.” (<i>Rinaker v. Superior Court</i> (1998) 62 Cal.App.4th 155, 164; citations omitted.)</p> <p>Application of the proposed remote appearance rules to juvenile delinquency proceedings violates the Constitutionally-guaranteed Confrontation right. Although the Supreme Court approved remote testimony in <i>Maryland v. Craig</i> (1990) 497 U.S. 836, it did so because necessity was shown. The Supreme Court plainly held that face-to-face confrontation may be abridged only where there is “a <i>case-specific</i> finding of necessity.” (<i>Id.</i> at pp. 857-858, emphasis added.) Penal Code section 1347 reflects the <i>Craig</i> requirements, permitting remote testimony by child victims <i>only</i> where the court finds by clear and convincing evidence that specified factors would be so substantial “as to make the minor unavailable as a witness unless closed-circuit testimony is used.” (<i>Id.</i> at subd. (b)(2).)</p> <p>In contrast, the proposed rule does not require any case-specific finding of necessity. Instead, it presumes that COVID is sufficient to justify remote testimony in all cases. The burden is</p>	<p>confusion, the committee intends, as required by section 367.75, that the rule apply to cases in which a petition is filed alleging that a minor is described by Welfare and Institutions Code section 602.</p> <p>As the commenter notes, juvenile justice/delinquency cases are civil cases. Section 367.75 applies expressly to civil cases.</p> <p>Nothing in the statute or the rule does or could impinge on the judicially established constitutional rights of an accused minor in a juvenile justice case. To make that clear, the committee has added separate paragraph 3.672(b)(2) to confirm that nothing in the rule “limits a requirement or right established by statute or case law to an appearance in one manner, either remote or in person, to the exclusion of the other.” Thus, a minor has a statutory right to appear in person under Welfare and Institutions Code section 679 and a constitutional right established by case law to confront and cross-examine witnesses.</p> <p>The proposed rule does not address COVID-19 or other public-health emergencies. It applies the requirements of section 367.75 to a broad range of civil cases while</p>

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	<p>placed on parties opposing remote testimony to show why in-person testimony is necessary. (Proposed Rule 3.672, subd. (g)(3).) This is the opposite of what <i>Craig</i> requires and renders the proposed rule unconstitutional.</p> <p>Apart from the rule’s unconstitutionality, the Public Defender believes the rule is simply unwise. We believe that it is vital for children accused of crimes, and subject to substantial consequences including lengthy incarceration, to be physically present before the trier of fact during the hearing adjudicating their guilt, and to be faced with their accusers. The many instances of false convictions should serve as a warning that lessening the requirements of confrontation is precisely the wrong direction to go.</p> <p>We note that throughout the pandemic, our delinquency clients have invariably physically appeared at juvenile delinquency adjudication proceedings and the witnesses against them have also personally appeared. Apart from ensuring that our clients get to face their accusers, we believe it is important for rehabilitation for our clients to experience the reality of the juvenile justice system from inside the courtroom.</p> <p>We are also concerned about the scope of newly enacted Code of Civil Procedure section 367.75, which refers to “civil cases” without clarity or definition. My office represents clients in mental health competence proceedings, sexually violent predator proceedings, and some contempt proceedings, all of which are considered to be civil in nature, yet which have Constitutional criminal procedure protections. We strongly</p>	<p>providing courts with sufficient flexibility to mold those requirements when necessary to conform to other legal requirements. Section 367.75(b) and (d) apply expressly only if their application is consistent with other legal requirements. Rule 3.672(b)(2) make clear that the same restriction governs the rule.</p> <p>Nothing in the rule limits an accused child’s statutory right under Welfare and Institutions Code section 679 to be physically present at a juvenile justice proceeding.</p> <p>Nothing in the statute or the rule authorizes a court to conduct entirely remote proceedings without the agreement of all the parties. Furthermore, section 367.75(f)–(g) expressly prohibits a court from requiring a party to appear remotely. If the court and the attorneys agree that juvenile justice proceedings should be conducted entirely in person, nothing in the statute or the rule requires otherwise.</p> <p>Section 367.75 applies to “civil cases,” defined as provided in California Rules of Court, rule 1.6(3). To the extent that judicially recognized constitutional protections require the physical presence of parties or other persons at proceedings, the statute and the rule do not authorize remote appearances.</p>

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	<p>oppose broadening remote appearances in those contexts for the reasons specified above.</p> <p>It may be that the proposed rule is <i>not</i> intended to apply to juvenile delinquency proceedings. If so, the intent can easily be clarified by modifying Proposed Court Rule 3.672(h)(1)(E) to say, “provisions in (a) through (g) and (i) through (l) govern a remote appearance in any juvenile dependency proceeding.”</p> <p>In addition, the term “civil cases” in Code of Civil Procedure section 367.75 can be clarified to exclude matters such as mental health competence proceedings, sexually violent predator proceedings, and civil contempt matters. These modifications would obviate the concerns expressed above. However, for the reasons explained above, we oppose remote appearances in all contexts. We believe that having the litigants actually appear in person greatly facilitates both the appearance and the experience of fairness and justice.</p>	<p>As noted above, the committee intends rule 3.672 to apply to the broadest possible range of civil cases, as reflected in the incorporation of the existing definition of “civil case” in rule 1.6(3).</p> <p>Section 367.75 applies expressly to civil cases. Resolving ambiguities in statutory language is beyond the scope of this proposal. The committee must apply the statute as written.</p>
Pacific Juvenile Defender Center (PJDC)	<p>PJDC is concerned that the Proposed Rule may be interpreted to include juvenile delinquency proceedings under Welfare &amp; Institutions Code section 602 within the scope of new Code of Civil Procedure 367.75, enacted in Senate Bill 241 (Stats. 2021, ch. 214.), but the statute does not, in fact, include juvenile delinquency proceedings within its ambit. For this reason, and those further reasons set out below, PJDC respectfully suggests the following changes:</p> <ol style="list-style-type: none"> <li>1. The definition in 3.672(c)(1) be clarified to state that Proposed Rule 3.672 does <i>not</i> apply to juvenile delinquency proceedings.</li> <li>2. Proposed Rule 3.672(h)(E), referencing “juvenile justice</li> </ol>	<p>The committee appreciates these comments.</p> <p>The committee does not recommend the suggested change. Section 367.75 applies to all civil cases. Juvenile justice cases are civil cases. (See Welf. &amp; Inst. Code, § 203.)</p> <p>The committee does not recommend the suggested</p>

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	<p>proceedings,” be deleted.</p> <p><u>Comments on Proposed Rule 3.672</u>            We are commenting because Proposed Rule 3.672, as written, may be understood to apply to juvenile delinquency proceedings, which would be unlawful under statutory provisions and the state and federal constitutions. We urge the Ad Hoc Committee to amend the proposed rule accordingly to prevent any misunderstanding.</p> <p>An ambiguity exists as to whether Proposed Rule 3.672 may apply to juvenile delinquency proceedings based on the definition of “civil proceedings” adopted in the rule at Proposed Rule 3.672(c)(1). That provision states: “‘Civil case’ is defined as in rule 1.6(3), including all cases except criminal cases and petitions for habeas corpus.” Notably, new Section 367.75 does not contain that definition of “civil case.” To the extent the addition of this definition seeks to sweep juvenile delinquency proceedings within Section 367.75, it exceeds the scope and intent of that statute and violates Article VI, § 6(d) of the California Constitution. (See <i>Jevne v. Superior Court</i> (2005) 35 Cal.4th 935, 945–46.)</p> <p>The ambiguity as to whether Proposed Rule 3.672 is to apply to juvenile delinquency proceedings is further compounded by the subdivision of Proposed Rule 3.672 found at Proposed Rule 367.76(h)(1)(E), concerning juvenile dependency proceedings which states: “This subdivision does not apply to juvenile justice proceedings. The provisions in (a) through (g) and (i) through (l) govern a remote appearance in any juvenile justice proceeding.” (Emphasis supplied). The term “juvenile justice proceeding” could be reasonably interpreted to include juvenile delinquency proceedings, but the term “juvenile justice</p>	<p>change. Section 367.75 distinguished only one type of case, juvenile dependency, for special treatment. Section 367.75(h) provides separate requirements for dependency proceedings; rule 3.672(i) implements those requirements. Because section 367.75 did not provide separate requirements for juvenile justice cases, the statute’s general provisions, as implemented by rule 3.672’s general provisions, apply to juvenile justice cases.</p> <p>The committee recognizes that section 367.75 does not include a definition of “civil case.” The lack of a statutory definition of a term, however, does not necessarily make the use of the term ambiguous. Context, and the usage of terms in similar statutes, can help determine what a term signifies. For example, Code of Civil Procedure section 367.5, which addresses telephone appearances, refers to both “civil cases” and “general civil cases.” Section 367.75, unlike section 367.5, never mentions “general civil cases.” (Compare Code Civ. Proc., § 367.75(a) (in <i>civil cases</i>, a party may appear remotely and the court may conduct proceedings wholly or partly remotely) with <i>id.</i>, § 367.5(a) (in <i>civil cases</i>, courts should permit parties to appear by telephone at appropriate proceedings) and <i>id.</i>, § 367.5(b) (in all <i>general civil cases</i>, a party that has provided notice <i>may</i> appear by telephone at specified proceedings). In section 367.5, “civil cases” necessarily refers to a broader range of cases than does “general civil cases” because courts have discretion to permit remote appearances in the former, and must permit them, on notice, in the latter. If “general civil cases” was broader, encouraging the courts to permit remote</p>

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	<p>proceeding” does not appear in new Section 367.75. For the reasons set out below, PJDC does not believe new Code of Civil Procedure section 367.75 applies to juvenile delinquency cases. Accordingly, PJDC suggests that the definition in 3.672(c)(1) be clarified to state that Proposed Rule 3.672 does not apply to juvenile delinquency proceedings and that New Rule 3.672(h)[(1)](E), referencing “juvenile justice proceedings,” be deleted.</p> <p>For almost two years our members have been actively involved in litigating issues surrounding remote appearances in delinquency courts and have observed firsthand the constitutional and statutory violations that have resulted from the indiscriminate application of remote appearances in the juvenile delinquency setting, including impairment of the attorney/client relationship and the right to counsel, the right to confront and cross examine witnesses, and a decline in understanding of the proceedings and the ability to meaningfully participate by vulnerable youth. We have seen the statutory rights of both youth and parents and guardians to be</p>	<p>appearances in “civil cases” would make no sense, because court would be required to permit them. From the change in the statutory language—from “general civil cases” in section 367.5 to “civil cases” in section 367.75—it is therefore appropriate to impute a legislative intent to expand the range of proceedings in which remote appearances are authorized to all civil cases and not to limit that authority to general civil cases. Furthermore, a broad definition is consistent with the limited indication of section 367.75’s purpose available in the relevant legislative history. The Senate Floor Analysis from September 9, 2021, the day before the final vote on SB 241, reflects the proponents’ position that “remote hearings and trials are essential to allow the wheels of justice to continue to turn,” and “the benefits [of remote proceedings] are widespread.” (Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 241 (2021–2022 Reg. Sess.) Sept. 9, 2021, p. 11.) The use of “civil cases” to mean all cases other than criminal cases or criminal-related habeas corpus proceedings is consistent with the Legislature’s intent.</p> <p>The committee shares the commenter’s concern with the “indiscriminate application” of remote appearances in juvenile justice proceedings. Section 367.75 and rule 3.672 take important steps to prevent such application. The principal step is to prohibit the court from requiring a party to appear remotely. (Code Civ. Proc., § 367.75(f); see § 367.75(g) (self-represented party), ((h) (party in dependency case).) The proposed rule also makes clear that it does not limit any independent statutory or decisional right to an appearance in a specific manner, either remote or in-person. (See</p>

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	<p>physically present under Welfare &amp; Institutions Code section 679 ignored by the bench in a rush to embrace remote proceedings for efficiency. We are therefore alarmed about the potential application by some bench officers of Proposed Rule 3.672, as written, to delinquency proceedings, which would be unauthorized by law.</p> <p>There is no indication in the legislative history that Code of Civil Procedure section 367.75 was intended to apply juvenile delinquency proceedings, which, as set forth below, are quasi-criminal proceedings, accompanied by substantial constitutional due process rights, that would be impaired if new Code of Civil Procedure section 367.75 applied to them. Further, while new Code of Civil Procedure section 367.75 expressly states that it applies to juvenile dependency proceedings, it does <i>not</i> state that it applies to juvenile delinquency proceedings. (Code of Civ. Proc., § 367.75(h).)</p> <p>Newly enacted section 367.75 states that it applies to civil proceedings, specifically including juvenile dependency proceedings. (Code of Civ Proc., § 367.75.). It is well established that juvenile delinquency proceedings are not civil proceedings, but are quasi-criminal in nature, because of the potential for severe stigmatization and incarceration. (<i>In re Gault</i> (1967) 387 U.S. 1, 49-51; <i>Joe Z. v. Superior Court of Los Angeles County</i> (1970) 3 Cal.3d 797, 801.) As the California Supreme Court explained in <i>Joe Z.</i>, while juvenile court proceedings are not criminal proceedings ([Welf. &amp; Insts. Code] § 203, “the ‘civil’ label-of-convenience (<i>In re Gault</i>, 387 U.S. 1, 50 [18 L.ed.2d 527, 588, 87 S.Ct. 1428]) cannot obscure</p>	<p>proposed rule 3.672(b)(2).) This provision reinforces the statutory prohibition against requiring a remote appearance by emphasizing the applicability of other grounds that restrict the court’s authority in favor of the party’s. For example, as the commenter notes, Welfare and Institutions Code section 679 gives an accused minor the right to be physically present at a hearing in a juvenile justice case. Nothing in the proposed rule does, or could, limit that right.</p> <p>Section 367.75 applies to civil cases. To describe a case as “quasi-criminal” means that, fundamentally, it is <i>not</i> a criminal case, but it nevertheless has some characteristics of a criminal case. To the extent that those characteristics require the application of constitutional procedural protection to some civil cases, nothing in section 367.75 does or could authorize the deprivation of those protections. To the extent that a required remote appearance would lead to such a deprivation, section 367.75 expressly forbids it.</p> <p>As explained above, section 367.75 applies to civil cases. The only conclusion that follows from section 367.75(h)’s exclusive application to juvenile dependency cases is that remote appearances in all other civil cases are governed by the provisions of section 367.75 that do not apply to dependency. The only conclusion about the application of the statute to any other type of civil case that can be derived from the statute’s separate treatment of dependency cases is that the Legislature did not choose to treat that case type separately.</p>

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	<p>the quasi-criminal nature of juvenile proceedings, involving as they often do the possibility of substantial loss of personal freedom.” (<i>Joe Z., supra</i>, at p. 801.)</p> <p>A minor accused in a juvenile delinquency proceeding is entitled to all of the constitutional protections afforded to an adult accused in a criminal proceeding except for the right to a jury trial and the right to bail. In particular, the minor is entitled to an attorney, to confront and cross-examine witnesses and to proof of guilt beyond a reasonable doubt. (<i>Gault, supra</i>, 387 U.S. 1; <i>In re Winship</i> (1970) 397 U.S. 358.) Accordingly, a juvenile delinquency proceeding is very different from a civil proceeding and, in fact, much more akin to an adult criminal proceeding. Thus, while juvenile delinquency proceedings are not criminal, they also are not civil for purposes of new Code of Civil Procedure section 367.75.</p> <p>Except in very limited circumstances, the right to confront and cross-examine witnesses encompasses the right to do so in the physical presence of the witness, a right which would be impaired if section 367.75 and Proposed Rule 3.672 applied to juvenile delinquency proceedings. (<i>Maryland v. Craig</i> (1990) 497 U.S. 836, 850 (“[A] defendant’s right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured”); <i>People v. Arredondo</i> (2019) 8 Cal.5th 694, 707-708: (“[U]nder <i>Craig</i>, an accommodation that abridges the right to face-to-face confrontation is constitutionally permissible only if</p>	<p>The committee agrees with the commenter’s premises, but cannot accept the conclusion. Although a juvenile justice proceeding may be different in many respects from a paradigmatic civil action, it does not follow that it is not civil for purposes of section 367.75. Nothing in section 367.75 does, or could, impinge on an accused minor’s constitutional rights. Neither does it impinge on any statutory right to appear in a specified manner, whether in person or remote. The statute expressly prohibits a court from requiring a party to appear remotely. To the extent that Welfare and Institutions Code section 679 provides an alleged youthful offender with the right to appear at a judicial proceeding in person, nothing in section 367.75 or rule 3.672 even purports to limit that right.</p> <p>The committee accepts that the constitutional right to confront and cross-examine witnesses may be satisfied in most circumstances only by the physical presence of the witness. Neither section 367.75 or proposed rule 3.672 limit the ability of an accused minor to appear in person at a proceeding or to compel a witness to appear in person.</p>



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	<p>the harm the witness may suffer from testifying is caused by ‘the presence of the defendant,’ not by the courtroom generally”).) The confrontation right applies to minors in juvenile court proceedings. (<i>Gault, supra</i>, 387 U.S. at p. 56. See also <i>In re Kevin S.</i> (2003) 113 Cal.App.4th 97, 108.)</p> <p>The right to counsel also includes the right to continuous consultation with counsel, which becomes impossible when counsel and client are not in the same physical location. (<i>Geders v. United States</i> (1976) 425 U.S. 80, 88.) (United States Supreme Court held that the trial court’s order prohibiting the defendant from consulting with his trial counsel during a 17-hour overnight recess denied the defendant his Sixth Amendment right to the assistance of counsel, stating, “[o]ur cases recognize that the role of counsel is important precisely because ordinarily a defendant is ill-equipped to understand and deal with the trial process without a lawyer’s guidance...[T]he defendant requires the guiding hand of counsel at every step in the proceedings against him” [Citation omitted].); <i>People v. Zammora</i> (1944) 66 Cal.App.2d 166, 234. (Error to seat defendants apart from counsel).) In <i>Zammora</i>, the California Supreme Court explained that, [a] defendant in a criminal case is not required to leave his defense in the hands of his counsel, because the Constitution guarantees him the right ‘to appear and defend, in person and with counsel’. This quoted phrase from our State Constitution does not limit the right to defend in person “or” with counsel, but explicitly says “and” with counsel. A basic part of a defendant’s right to counsel is that of consultation whenever necessary.</p> <p>These rights are equally applicable to youth. (<i>Gault, supra</i>, at 36). (“The child requires the guiding hand of counsel at every step in the proceedings against him.”) Experience over the</p>	<p>The committee agrees that ongoing, confidential communication between client and counsel is a critical element of the right to counsel. The committee does not, however, see any requirement in the statute or the proposed rule that would preclude an attorney and client from appearing together, either both in person or both remotely, or that would authorize a court to prevent them from conferring privately. And section 367.75(e)(2) requires the court to “require that a remote appearance by a party or witness have the necessary privacy and security appropriate for the conference, hearing, proceeding, or trial.”</p> <p>The committee agrees that these rights apply to accused minors in juvenile justice cases. Enforcing these rights is beyond the scope of the statute and this proposal.</p>

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	<p>pandemic has shown that minors have little understanding of the proceedings when they are not present with counsel in the courtroom. Conversely, an attorney who elects to appear remotely, to be with the client in custody, is not as effective because the attorney is not in the courtroom. Still worse are scenarios where the child appears in the courtroom alone, frequently shackled, but the attorney appears remotely.</p> <p>Moreover, minors cannot be required to participate in remote proceedings, or be pressured to consent to do so, because minors have both a constitutional and a statutory right to personally appear and defend with counsel. Under Art. I, § 15 of the California Constitution, “[t]he defendant in a criminal cause has the right to a speedy, public trial, to compel attendance of witnesses in the defendant’s behalf, to have the assistance of counsel for the defendant’s defense, <i>to be personally present with counsel</i>, and to be confronted with witnesses against the defendant. (Cal. Const., art. I, § 15.); California courts recognize these rights to be co-extensive with the federal Fifth, Sixth and 14th Amendment constitutional rights. (See <i>People v. Butler</i> (2009) 46 Cal.4th 847, 861 (right to be present co-extensive with Federal Due Process). Those rights have been applied to juvenile cases. (<i>Edward S</i> (2009) 173 Cal.App.4th 387, 406 (effective assistance of counsel); <i>Damon H.</i> (1985) 165 Cal.App.3d 471, 477 n.6. (right to confront and cross-examine.))</p> <p>Further, minors and their parents and guardians have an independent statutory right to be physically present at all hearings in juvenile delinquency court pursuant to Welfare &amp; Institutions Code section 679, which right would also be impaired by mandatory application of section 367.75 and Proposed Rule 3.672 in juvenile delinquency cases. Welfare</p>	<p>The committee agrees that minors cannot be required to participate remotely in juvenile justice proceedings, Nothing in the statute or rule requires them to do so.</p> <p>The provisions in section 367.75 and rule 3.672 prohibiting a court from requiring a party to appear remotely and authorizing a party to appear remotely on the party’s notice of intent to do so effectively require every party, including an accused minor in a juvenile justice proceeding, to consent to appearing remotely.</p>

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	<p>and Institutions Code section 679 provides that “[a] minor who is the subject of a juvenile court hearing and any person entitled to notice of the hearing under the provisions of Section 658, is entitled to be present at such hearing.” (Welf. &amp; Inst. Code, § 679.) In <i>E.P. v. Superior Court</i> (2020) 59 Cal.App.5th 52, 58–59, the Court held that it violated the minor’s right to be present in court under Welfare &amp; Institutions Code section 679 for the Yolo County Superior Court to require all proceedings in juvenile delinquency proceedings to be held remotely in the absence of a finding of good cause. The Court further held that the temporary emergency rules required the minor’s consent before a juvenile delinquency hearing could be held remotely. (<i>E.P., supra.</i>, at p. 60.) The right to appear personally is vital to the youth because judges must, appropriately “take into account, in their demeanor and conduct, of the emotional and psychological attitude of juveniles with whom they are confronted.” (<i>Gault, supra.</i>, at pp. 26–27.) Youth are disadvantaged when they are dehumanized by appearing remotely from a prison cell.</p> <p>These important constitutional and statutory rights of children accused of crimes were not part of the Legislative discussion resulting in the enactment of Code of Civil Procedure section 367.75, which addresses <i>only</i> civil proceedings. Accordingly, juvenile delinquency proceedings may not be the subject of Proposed Rule 3.672, which derives its authority from Code of Civil Procedure 367.75. Rather, the United States and California Constitutions, as well as Welfare &amp; Institutions Code section 679 only permit remote proceedings at the express request of the minor. Any proposed statute or rule would have to be consistent with those constitutional and statutory rights. We would be pleased to offer our thoughts on the development of such a statute and rule.</p>	<p>As noted above, the legislative enactment, which expressly applies to all civil cases, does not require the deprivation of any of the rights discussed by the commenter, and expressly prohibits the deprivation of some of them.</p>

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<b>Issue 7: Juvenile Justice (Delinquency)</b>		
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SEIU California	[W]e are concerned regarding the reference to juvenile justice proceedings in (E) on page 19. SB 241 applies only to civil proceedings, and does not apply to criminal or delinquency proceedings. (E) should either be stricken in entirety, or end after the first sentence, as the remainder of the sub-paragraph gives rise to uncertainty as to the applicability of the rules to juvenile justice proceedings.	The committee appreciates this comment. The committee does not recommend the suggested changes. Under both statute and case law, juvenile justice (delinquency) cases are civil cases. (See, e.g., Welf. & Inst Code, § 203.) Section 367.75 applies, by its terms, to “civil cases.” In the absence of statutory language or legislative history excluding juvenile justice proceedings from the scope of the statute, the committee must implement the statute as applying to all civil cases, including juvenile justice cases.
Superior Court of Orange County	<p>The proposed rules and forms are designed to cover multiple case types. As for juvenile cases, subdivision (h) of rule 3.672 addresses juvenile dependency matters, leaving juvenile justice cases to fall under the remainder of the rule. We understand the purpose of the rule is to provide guideposts for courts to either use or to establish their own local rules under.</p> <p>Just as a general comment, the added provisions and the use of the forms may prove to be overburdensome for parties and attorneys, creating a more complicated process for remote appearances. In our county, our juvenile court hearings are primarily in-person hearings, with parties given the option to appear remotely if they need to for one reason or another. The process is largely informal, and requests are typically made orally in the courtroom where the case is assigned.</p> <p><b>Juvenile Justice Proceedings:</b> We recognize that the nature of a juvenile justice proceeding is civil and not deemed to be criminal. (See Welf &amp; Inst. Code, § 203; <i>People v. Vela</i> (2017) 11 Cal.App.5th 68, 73.) However, the rule should better reflect its application to juvenile justice proceedings by more pronounced verbiage at the beginning of the rule. Even though juvenile justice proceedings are civil, they have many elements</p>	<p>The committee appreciates the court’s comments.</p> <p>The committee has revised the proposal to simplify the notice process, to permit oral notice in some circumstances, and to reduce the required level of formality.</p> <p>The committee agrees with many of the commenter’s points, but its charge is to adopt a rule of court to implement section 367.75, which applies generally to all civil cases. The only case type given separate treatment in the statute is juvenile dependency. Juvenile justice proceedings are mentioned in rule 3.672(i) to prevent misapplication of that subdivision. The rule as a whole</p>

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	<p>of a criminal proceeding. The general public, including parties, parents, attorneys, and juvenile court stakeholders, have a mindset that these proceedings are criminal. Without specific mention of the application to juvenile justice proceedings, there may be more confusion for those who must follow the rules, especially since there is an entire subdivision dealing with juvenile dependency matters and not juvenile justice proceedings.</p> <p>[ ]</p> <p>There is reference throughout the ITC memorandum and the proposed rules that indicate these rules only apply to civil proceedings, which are defined and clearly exclude criminal. It is not until deep into rule 3.672 that there is mention of juvenile justice proceedings. Proposed rule 3.672, subdivision (h)(1)(E) states: <i>“This subdivision does not apply to juvenile justice proceedings. The provisions in (a)-(g) and (i)-(l) govern remote hearings in any juvenile justice proceeding.”</i> Additionally, in footnote #32 on page 7 of the ITC memorandum, there is reference to juvenile justice proceedings being subject to the rest of section 367.75. As pointed out in that footnote, there is a subdivision of the rule devoted entirely to juvenile dependency matters, yet there is no such direction when it comes to juvenile justice matters, most specifically juvenile justice detention hearings.</p> <p>Lastly, there is no accounting for rights typically afforded in criminal proceedings, such as the right to confront and cross-examine a witness.</p> <p>In addition, it has been recommended that any juvenile dependency or juvenile justice related rules be placed under Title 5, instead of Title 3, where these rules are proposed to be.</p>	<p>applies to far too many types of civil cases to list them all, and the committee does not recommend trying to do so.</p> <p>No response required.</p> <p>The committee has added paragraph (b)(2) to proposed rule 3.672 to make clear that nothing in the rule limits a requirement or right established by statute or case law to an appearance in one manner, either remote or in person, to the exclusion of the other. To the extent that a right, such as the right to confront and cross-examine witnesses, is a judicially recognized constitutional right, section 367.75 also should be read, if possible, not to</p>

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		limit that right.
Superior Court of San Diego County	The new CCP 367.75 does not specifically address juvenile justice cases. Proposed new rule 3.672(h)(1)(E) provides that the subdivision governing dependency cases does not apply to juvenile justice proceedings and that the rest of the rule governing civil cases would govern a remote appearance in any juvenile justice proceeding. This does not seem correct, as the timelines for civil cases would not work in a juvenile justice case. The proposed civil forms do not include all the parties and witnesses in a juvenile justice case, which could include the District Attorney, parent/guardian, probation officer, CASA, representative of an Indian tribe, and others. CRC 5.530, which is cited on the proposed new JV-145, applies equally to juvenile justice cases.	The committee appreciates the court's comments. Section 367.75 applies to civil cases, without restriction in text or legislative history. Consistent with the purposes of SB 241 to keep the wheels of justice turning and to promote the benefits of remote proceedings, civil cases must be read broadly to apply to as many case types as possible. Juvenile justice cases are civil cases to which the statute applies, and the proposed rule must implement the statutory requirements on the statute's terms. Because the statute does not distinguish juvenile justice cases from other civil cases, the general provisions of the statute and the proposed rule apply to them. The committee recognizes that the statutory requirements may not fit perfectly with the procedural requirements of juvenile justice or other civil cases that depart from the paradigmatic framework of a civil action, and has relaxed some of the rule's requirements to give parties more flexibility. In addition, the conditions on adoption of local rules have been loosened to give courts more options for tailoring the statewide requirements to local circumstances and specific case types.

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

<b>Issue 8: Technical Requirements</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
California Federation of Interpreters, Local 39000	<p>As currently written, the proposed 3.672 Rule of Court does not appropriately address the stated purpose for the following reasons:</p> <ul style="list-style-type: none"> <li>▪ Although the stated intent of the rule is to promote uniformity, the rule fails to address the myriad of platforms being used. The use of various platforms throughout the pandemic has demonstrated that not all audiovisual integrated platforms are suitable for court proceedings, much less remote interpreting. Some platforms lack the necessary integration to address language access and are not user friendly. For this rule of court to live up to its intended potential of promoting uniformity, it needs to mandate that only one platform be used throughout all state courts. The platform selected should have a built-in, if not turnkey solution for language access, with redundancy to enhance reliability, as well as have encryption and features to protect confidentiality. Without these considerations terms like “innovation” and “technology” are empty buzzwords for those court users of limited English proficiency.</li> </ul> <p>[]</p> <ul style="list-style-type: none"> <li>▪ The Rule of Court does not provide recommended technology specifications. Courts have been functioning with either a scarcity of dedicated equipment, or equipment that is not appropriate for the complexity and demands of remote hearings, much less ones that need spoken language interpretation. The rule itself does not set minimal standards for equipment, nor does it set a threshold that courts must meet to decide whether to move forward or not with remote hearings.</li> </ul>	<p>The many trial courts in this state use different platforms for remote appearances, some telephonic only, others with a mixture of telephonic platforms and videoconferencing (including audio) platforms. A determination of what single platform is best and should be in effect as of January 1, 2022 is outside the scope of this rules proposal.</p> <p>See response above. Defining technical requirements for all the courts across California to be in effect by January 1, 2022 is outside the scope of this rule.</p>

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**Issue 8: Technical Requirements**

<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Almost all courts, if not all of them, have been carrying out remote hearings using one laptop or singular tablet in a courtroom. In hybrid situations, individuals appearing remotely have difficulty seeing in-person court participants because of distant field of view, or simply not being framed in the camera image. Defendants appearing remotely from a jail facility are unable to see their attorneys in court because cameras are too distant from participants on both ends.</p> <p>It is paramount that an interpreter has a clear view of participants who are speaking. Due to the nature of the interpreters' skill set, while working in the simultaneous mode, interpreters use extralinguistic cues to confirm that what they heard is in fact what was said. Every day, interpreters compete with both the sound of their own voice and the common background noises in our courtrooms while interpreting simultaneously. Therefore, facial expressions, head nods, hand gestures, and other extralinguistic cues are very important for interpreters to render complete, accurate interpretation of the spoken word. The lack of sufficient cameras in a courtroom and the failure to place and frame those cameras correctly creates an impediment for interpreters to perform their duties to the level of integrity and accuracy required of their oath.</p> <ul style="list-style-type: none"><li>▪ Audibility problems have been among the biggest obstacles in providing equal access to justice using remote hearings. The proposed rule fails to address the importance of minimal specifications for audio, as well as setting a minimal audio threshold for courts to meet before conducting any hearing remotely. Similar to having sufficient cameras in key designated locations, properly functioning microphones that</li></ul>	<p>See response above.</p>



## SP21-08

**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

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### Issue 8: Technical Requirements

Commenter	Comment	Committee Response
	<p>comply with the accepted minimum international specifications for remote interpreting [FN 1 ISO PAS 24019, Simultaneous interpreting delivery platforms — Requirements and recommendations. <i>Plateformes de distribution d’interprétation simultanée — Exigences et recommandations</i>, (First Edition 2020-01)] are also a key element that cannot be ignored. Without the proper placement of multiple microphones throughout a courtroom, additional to the few at counsel table, remote participants are cheated from meaningful communication, and thereby meaningful access to justice. No remote participant should be left to guess what was said due to courts skimping on microphones.</p> <ul style="list-style-type: none"><li>▪ Minimal specifications for systems, visual image, audio acuity, and proper connectivity should be a requirement for all who wish to participate in a remote hearing. Meaningful access to justice can only be achieved if all hearing participants can be seen and heard effectively. Access to justice fails when those who choose to remotely participate in a hearing do not have adequate equipment, platform software, and internet access that complies with the technological requisites needed to render meaningful access in remote mode. [FN 2 Ibid.] The proposed rule fails to address what minimal specifications are needed for participants who desire to appear remotely.</li><li>▪ The Rule of Court also fails to address the importance of specifications, such as location and confidentiality, and provides no guidance to local courts. It is futile to meet all technical and connection requirements if remote participants are in a noisy and/or public area.</li></ul>	<p>Attempting to define what technical requirements a participant must meet to appear remotely, and determining how a court could learn of and enforce those requirements, especially on self-represented parties, is outside the scope of this proposal.</p> <p>As to confidentiality, the rule states that it does not modify current rules, statutes, or case law regarding confidentiality or access to confidential proceedings. (Rule 3.672(b)(3).) Whatever law applies to an in-person proceeding applies to remote proceedings. As to audibility issues, the rule reflects the statute, which</p>

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<b>Issue 8: Technical Requirements</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
		authorizes judicial officers to require an in-person appearance should the audibility be such that it inhibits a court reporter’s or interpreter’s ability to accurately do their work.
Family Violence Appellate Project	Moreover, subd. (k) should include minimum requirements for the videoconferencing vendors used by the courts. Not only minimum technical specifications, such as being able to work on cellphones and tablets as well as laptops as well as with the major browsers like Chrome, Firefox, Safari, and Edge, but also basic protections for litigants. For instance, confidentiality and privacy must be ensured, and vendors must commit not to discriminate against any litigant based on a protected class or being a survivor.	The many trial courts in this state use different platforms for remote appearances, some telephonic only, others with a mixture of telephonic platforms and videoconferencing (including audio) platforms. A determination of what technical specifications should be in effect as of January 1, 2022 is outside the scope of this rules proposal.
Legal Aid Association of California	<p><b>Second, remote technology can be a barrier for people with disabilities.</b> 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. This must be required of all video conferencing platforms adopted by local courts. It is also vital for documents, presentations, and other materials to be compliant with the Web Content Accessibility Guidelines (WCAG) 2.1, and that the platform further comply with the 21st Century Communications and Video Accessibility Act (CVAA).</p> <p>For people with disabilities that wish to use the remote hearings system, SB 241 mandates that the “system shall be accessible to individuals with disabilities, including parties and attorneys with disabilities.” However, the word “disabled” (this is the term used on the form and is not the person-first language</p>	<p>The committee appreciates the suggestion but notes that the many trial courts in this state use different platforms for remote appearances, some telephonic only, others with a mixture of telephonic platforms and videoconferencing (including audio) platforms. A determination of what technical specifications should be in effect as of January 1, 2022 is outside the scope of this rules proposal.</p> <p>Moreover, the committee notes that the quoted section of Senate Bill 241 below is not from the remote appearances section of the bill but is from current Code of Civil Procedure section 1010.6(h)(1)(a) (another part of section 1010.6 was amended in SB 241). The section cited addresses electronic filing systems, not remote appearances at court proceedings.</p>

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Issue 8: Technical Requirements		
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	<p>LAAC would utilize) appears only once in <b>SP21-08</b> in the form for telephonic appearances, and “disability” or “disabilities” appear zero times in the proposal. Because there is no explicit discussion of how SP21-08 will comply with SB 241, we therefore find that the Judicial Council’s proposal does less than is mandated by SB 241, which states that the system must be “accessible to individuals with disabilities.” <b>We see no evidence that this system will be accessible. At a minimum, the rules must require that no court can contract with a videoconference provider that is not in compliance with the ADA, WCAG 2.1, and the CVAA.</b></p> <p><b>Third</b>, for limited English proficiency (LEP) court users, 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. Here, the approach is similar to the framework for dealing with the digital divide. If there is a language access issue with the remote hearing, then it will go to an in-person hearing under <b>SP21-08</b>. According to SP21-08, “the statute allows a court to require an in-person appearance even after that notice has been provided, if technology does not support a remote appearance or does not support it well enough for the court, court reporter, interpreter, or counsel to be effective.” [FN 10 Pg. 4, new rule 3.672.] We recognize that this is, in part, to protect the right of LEP court users by requiring in-person hearings when interpretation cannot be conducted effectively for the remote hearing. <b>However, we do not think this is sufficient for language access or language justice purposes and request that the system not merely revert to</b></p>	<p>See response above. In addition, because the provision being objected to—providing for in-person appearances if interpretation is not adequately supported by technology—is expressly included in the statute (§ 367.75(b)(6)), changing it is outside the scope of this proposal.</p>

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Issue 8: Technical Requirements		
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	<p><b>in-person but instead provide a suitable remote option for LEP users.</b></p> <p>[ ]</p> <ul style="list-style-type: none"><li>• Within Rule 3.672(k), <b>there should be minimum standards set forth for courts in choosing remote platforms</b>, such as ensuring that the platform allows for closed captioning, that it doesn't require downloading an app (web-based access available or dial in). This allows remote participation in public settings, where downloading an app may be impossible (i.e., public library space or even public school space reserved for court access), and for those who may have security concerns, limited data for downloading, or technically limited devices.</li></ul>	<p>See response above.</p>
SEIU of California	<p>Further, we believe that additional clarification should be made regarding technology including microphones and cameras at the court reporters' desks. Where no such microphones and cameras are provided, it can be difficult for the court reporter to communicate when necessary to halt proceedings due to inaudibility concerns. Further without cameras, it can often be difficult for the court reporter to be able to discern who is speaking.</p>	<p>The many trial courts in this state use different platforms for remote appearances, some telephonic only, others with a mixture of telephonic platforms and videoconferencing (including audio) platforms. A determination of what technical specifications should be in effect in each courtroom as of January 1, 2022 is outside the scope of this rules proposal.</p>

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<b>Issue 9: Other (information on website, language access, fees, court reporters, definition of party, decorum rule)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Alliance for Children’s Rights	We appreciate the requirement that the notice of new local remote appearance rules and the rules themselves must be displayed prominently on the court’s website. However, we are concerned that this communication does not go far enough to ensure that pro pers understand and can use these new rules effectively. We suggest that courts be required to provide specific access information in layperson’s terms in addition to posting these rules. Additionally, handouts and/or other prominently displayed information regarding remote appearances should be readily available in courts so that if a pro per makes an in-person appearance because the pro per knew of no other option, that person can then access the information regarding remote appearances and how to make them for any future hearings.	The committee notes that the rule requires that courts, in addition to posting the rules (rule 3.672(e)), must publish notice online providing parties with the information necessary to appear remotely at proceedings in that court. (Rule 3.672(m).)
California Federation of Interpreters, Local 39000	<ul style="list-style-type: none"> <li>▪ The Rule of Court fails to mandate that remote appearance notices should also be provided at a minimum in the top ten languages of each local court. When providing an LEP with notice that a party desires to appear remotely in a language in which they are not proficient, the LEP is at a disadvantage. The short timeframes for remote appearance notices as proposed in the rule do not allow LEP’s enough time to find someone who can translate the notice, much less file a protest in opposition, if desired. To have such short timeframes and timelines excludes LEPs from meaningful access to justice.</li> <li>▪ The Rule does not establish instructions Judicial Officers give at the start of every remote hearing to safeguard meaningful access. It is important for Judicial Officers to address all remote</li> </ul>	<p>The committee understands that the Judicial Council will be translating the forms following adoption into several of the languages most frequently used statewide.</p> <p>The new statute mandates that courts must, before proceeding with remote proceedings, have a process for participants and court personnel to alert of judicial</p>

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	<p>participants and staff, stating on the record at the beginning of any remote hearing that if there is a technical, audio, or connection problem, it is incumbent upon the participants to disclose it immediately. Additionally, as part of the instructions, the Judicial Officer should remind participants to speak clearly, without overlapping or interruptions. It is imperative that all remote proceedings be conducted under strict guidelines and protocols.</p> <p>We, the working court interpreters for spoken language, urge the committee to add detail and clarity to the proposed rule of court. Moreover, we remind the courts that successfully carrying out remote interpreting of any sort is a complex endeavor with a plethora of factors to consider for meaningful communication to occur. Remote access is not a solution that can be applied to all situations under whatever conditions may prevail at the time, nor is it something to be mused over and experimented with as each court may. Our experience in providing remote interpretation during the pandemic has made clear to our interpreter members and the LEPs for whom we deliver language access that remote is not appropriate for any and all proceedings and/or hearings. This Rule of Court does not address what are the appropriate situations under which remote interpreting would be indicated. There are no guardrails!</p>	<p>officer of technology or audibility issues that arise during a proceeding. (§ 367.75(e)(1).) The committee concludes that there is no reason for the rule to duplicate the statute on this point.</p> <p>The committee notes that the statute does not limit the proceedings in which parties may appear remotely based on the English-language proficiency of the parties who wish to appear remotely, and so the rule does not either.</p>
California Tribal Court Families	<p>Additionally, CTFC recommends an edit to the Advisory Committee Comment on Subdivision (j) to include tribes as an enumerated party, so the comment beginning on page 23, line 12 would read:</p> <p>“Subdivision (j). Statutes currently provide that courts are not</p>	<p>The Advisory Committee Note and the subdivision in the rule have both been amended in light of this comment. (Rule 3.672(k).)</p>

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	to charge filing fees to certain types of parties, such as governmental entities, <b>tribes in cases governed by the Indian Child Welfare Act</b> , and parties in certain types of cases, such as juvenile cases or actions to prevent domestic violence. This rule would preclude courts from charging videoconference fees to such parties as well.”	
Committee on Administration of Justice, Litigation Section California Lawyers Association	[ ] CAJ notes that the proposed rules do not contain an explicit reference to an important provision in new Code of Civil Procedure section 367.75(f), stating that the “court shall not require a party to appear through the use of remote technology.” CAJ recommends that the proposed rules be revised to add this provision.	The committee had initially concluded that because the provision is clearly stated in the statute, it need not be repeated in the rule. However, in light of this and other comments, reference to the subdivision has been added to the rule relating to oppositions to court’s conducting remote proceedings. (Rule 3.672(g)(3)(B).)
CourtCall	<ul style="list-style-type: none"> <li>• CourtCall has historically (primarily pre-Pandemic) provided equipment and/or connectivity to courts to enable remote participation in addition to providing scheduling, call moderation and support among other functions. CourtCall remains prepared to continue to do so where courts do not have the required technology or resources referenced in Proposed Rule 3.672 (d) (2) and (3). In this manner, CourtCall can assist courts in providing the broadest access to justice as required by CCP 367.75 and the Proposed Rule 3.672.</li> <li>• Proposed Rule 3.672 (j) makes reference to filing fees. Please clarify the distinct fees being referenced and their amounts.</li> </ul>	<p>The committee appreciates the comments.</p> <p>The filing fees referenced in that subdivision are the fees set out in the current Statewide Civil Fee Schedule, which can be viewed at <a href="https://www.courts.ca.gov/documents/StatewideCivilFeeSchedule-20200101.pdf">https://www.courts.ca.gov/documents/StatewideCivilFeeSchedule-20200101.pdf</a>.</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<ul style="list-style-type: none"> <li>• Please clarify the extent to which Rule 3.670 (j) and (k) operate in conjunction with proposed Rule 3.672. For example, when is the \$94.00 fee to be collected and by whom? Additionally, who is responsible for ongoing payment of the \$20.00 fee to the Trial Court Trust Fund (to which CourtCall has paid in excess of \$60,000,000 since 2011)?</li> <li>• Please clarify how CCP 367.75 and Proposed Rule 3.672 impact the existing Master Agreement (and Participation Agreements).</li> <li>• Please clarify how do CCP 367.75 and Proposed Rule 3.672 impact the operation of CCP 367.6, Government Code 72010 and Government Code 72011.</li> <li>• Please clarify whether the Committee or Judicial Council of California (JCC) has any details or proposals relating to the <i>costs</i> associated with providing the level of service required by CCP 367.75 and Proposed Rule 3.672 (e.g., equipment, personnel, software, connectivity, outside services).</li> <li>• Please clarify whether the Committee or JCC has any details or proposals relating to <i>funding</i> for the costs associated with providing the level of service required by CCP 367.75 and Proposed Rule 3.672 (e.g., budget allocations, user fees/surcharges).</li> <li>• By vendor or platform, what specific amounts, if any, has the JCC provided or committed to provide to local courts</li> </ul>	<p>This query is outside the scope of this proposal because the query relates to telephone appearances under Code of Civil Procedure section 367.5 and rule 3.670.</p> <p>Because this query seeks a legal opinion, it is outside the scope of this proposal.</p> <p>Because this query seeks a legal opinion, it is outside the scope of this proposal.</p> <p>This query is outside the scope of this proposal.</p> <p>This query is outside the scope of this proposal.</p> <p>This query is outside the scope of this proposal.</p>



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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>(via direct funding, advance, reimbursement or otherwise) to utilize such vendors or platforms to provide the level of service required by CCP 367.75 and Proposed Rule 3.672?</p> <ul style="list-style-type: none"> <li>• It is unclear from the language on page 12 of the Invitation to Comment whether subsections (c)-(q) of current Rule 3.670 are remaining in place or being removed. Please clarify the extent to which current Rule 3.670 is being amended.</li> <li>• To the extent not addressed in response to previous comments, please clarify whether courts and/or vendors will be permitted to, required to, or prohibited from charging fees for remote access pursuant to the CCP 367.75 and Proposed Rule 3.672? If permitted or required, how will those fees to be established?</li> <li>• Please clarify whether the fee for video participation differs from the fee for audio-only (or telephonic) participation?</li> <li>• Regarding remote participation in <i>trials</i>, please clarify whether there is a contemplated uniform fee structure?</li> <li>• Proposed Rule 3.672 (k) provides: “A court, by local rule, may designate the vendors or platforms that must be used for remote appearances”. What factors should a court use in considering which vendors or platforms to designate?</li> <li>• Has the JCC designated certain vendors as “approved” for use by local courts? If so, did the JCC conduct a formal</li> </ul>	<p>Those subdivisions are not being removed at this time, however, under proposed rule 3.670(b), subdivisions (c) through (i) would be suspended until July 1, 2023.</p> <p>This query is outside the scope of this proposal. Code of Civil Procedure section 367.75, which this rules proposal implements, did not address fees for remote proceedings.</p> <p>See Government Code section 70630 and Code of Civil Procedure section 367.6.</p> <p>This query is outside the scope of this proposal. Code of Civil Procedure section 367.75, which this rules proposal implements, did not address fees for remote participation in trials.</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>procurement process to qualify those vendors or platforms (and what was the criteria for approval)?</p> <ul style="list-style-type: none"> <li>Please clarify under Proposed Rule 3.672 who (the court, the judge hearing matter, the party requesting remote access) determines if a matter will proceed by audio or video? May video be required? If so, by whom and in what circumstances?.</li> </ul>	<p>This query is outside the scope of this proposal.</p> <p>This query is outside the scope of this proposal.</p> <p>The party may notify the court of an intent to appear by remote technology, and a court may decline to allow the remote appearance if the technology is not in use in the relevant court or courtroom, or if the technology that is available is such that the court determines that an in-person appearance would material assist in the determination of a particular proceeding or in the effective management or resolution of the case. See proposed order form RA-020.</p>
Family Violence Appellate Project	<p>[ ] The portion of the rule governing fees, subd. (j), is currently confusing and inequitable in at least four ways:</p> <p>First, subd. (j)(2) is vague as to whether it also includes litigants with only partial fee waivers. The intent suggests yes, but spelling this out would be useful.</p> <p>Second, the different fees covered in subd. (j)(1) versus subd.</p>	<p>In response to all these points, the committee notes that renumbered subdivision (k)(2) is intended to mirror, but not change, the provisions that currently apply to fees for telephonic appearances under Code of Civil Procedure section 367.5, which provisions are outside the scope of this proposal.</p> <p>The court notes that parties who are not charged filing</p>

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	<p>(j)(2) suggest litigants with fee waivers cannot be charged any “fees” (subd. (j)(2)(A)), while litigants in fee-waived proceedings (like DVPA cases) only cannot be charged “videoconferencing fees” (subd. (j)(1)). Thus, the court or vendor could charge fees to subd. (j)(1) litigants so long as those expenses are not labeled or considered “videoconferencing fees”—examples that could be allowed under subd. (j)(1), but not subd. (j)(2), perhaps include a “service fee,” “administrative fee,” “court fee,” “technology fee,” or the like. Subd. (j)(1) litigants, like those with fee waivers under subd. (j)(2), should not be charged any fees.</p> <p>Third, subd. (j)(2)(C) is concerning and should be removed. Automatically attaching a lien to a cost award for a fee waiver litigant could dissuade that litigant from seeking costs at all, which could discourage pro or lo bono attorneys from representing clients with fee waivers. While the telephone appearance rule contains this same provision (rule 3.670(l)(3)), new rules should promote rather than discourage access to legal aid and the courts.</p> <p>And fourth, subd. (j)(2)(B) should be modified to place the burden on the court, not the litigant, for informing the vendor of the party’s fee waiver status, and providing a copy of the order upon request. Presumably the court has this burden for cases under subd. (j)(1), so why not under subd. (j)(2)? The court has this information readily on hand while litigants may misplace court papers, and it is the court who is in the best position to send the order; presumably, the court is in almost constant contact with its videoconferencing platform vendor while litigants may not know about this rule or how to contact</p>	<p>fees (and so may not under (k)(1) be charged videoconference fees under Government Code section 70630), may apply for a fee waiver that would relieve them from other fees relating to remote appearances, such as telephone appearance fees.</p> <p>Because this rule covers all remote appearances, including those by telephone, this rule mirrors the provisions that currently apply to fees for telephonic appearances under Code of Civil Procedure section 367.5, which provisions are outside the scope of this proposal.</p> <p>See response above.</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>the vendor.</p> <p>Finally, subd. (l) should clarify that courts' notices to litigants about requesting a remote appearance must include information about the fees the vendor will or may charge, about fee waivers, about how those with fee waivers cannot be charged fees and the procedures (if any) they need to follow to ensure this, and about how those involved in fee-waived proceedings (like DVPA cases) cannot be charged fees. Also, the notice needs to include the name and contact information of the vendor(s).</p>	<p>Subdivision (m) requires that a court must post notice online providing parties with the information necessary to appear remotely at proceedings in that court, which will include any contact information required. The rule is clear that courts may not charge for remote video-conferencing services to parties who cannot be charged other fees under statute.</p>
Hon. Janet Frangie	<p><u>Rule 3.670 (i) (1) – page 21:</u> Does this subsection apply only to Juvenile Dependency? I ask because the subsection only references (h). It should also include (f) and (g).</p> <p><u>Page 23 – Advisory Committee Comment and subdivision (g) and (l):</u> I am confused as to why the “Advisory Committee Comment” is here and the lettering does not match up.</p>	<p>The committee notes that renumbered subdivision (j) references parties who have given notice of intent to appear remotely (which covers all cases other than juvenile dependency) as well as those authorized to appear under newly renumbered (i) (in juvenile dependency cases).</p> <p>The committee’s comment on renumbered subdivision (h) is to make it clear that courts and parties do not have to wait until the last dates provided in (h) for raising the topic of remote appearances under that section (including for remote appearances at trials), but may do so at any time, including at case management conferences, etc.</p> <p>The comment on renumbered subdivision (k) is to provide examples of when fees for video conferences should not be charged under that rule.</p>

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<b>Issue 9: Other (information on website, language access, fees, court reporters, definition of party, decorum rule)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Legal Aid Association of California	<p>Within Rule 3.672(1), <b>courts should be required to publish instructions on accessing and using the remote platforms, and any ways in which the platform will or will not meet accessibility needs.</b></p> <p>[ ] <b>there are additional concerns beyond notice</b> we suggest be examined that are not addressed in the proposal as is.</p> <ul style="list-style-type: none"> <li>• Generally, where possible, we believe that hearings should be scheduled using individual scheduling with time-certain proceedings and this should be clear in the notice to the litigants.</li> <li>• We suggest that the court could provide a <b>list of legal aid organizations</b> in the court’s proximity if the litigant is self-represented, or at least provide a link to LawHelpCA, [FN 14 <a href="https://www.lawhelpca.org/">https://www.lawhelpca.org/.</a>] where there are lists of legal aid organizations.</li> <li>• Generally, <b>there might also be privacy and/or safety concerns for sensitive matters that should be considered—such as domestic violence cases—where a litigant may be unable to avoid using technology located in public areas of the home or locations in the vicinity of the opposing and/or abusive party.</b> The court should recognize and address such concerns. For example, the court should ensure that parties and</li> </ul>	<p>The committee notes that renumbered subdivision (m) requires that a court must publish notice online providing parties with the information necessary to appear remotely at proceedings in that court. Potential accommodations for accessibility can be requested via a <i>Disability Accommodation Request</i> (form MC-410). (That information has been added to the Instructions on form RA-010.)</p> <p>The committee notes that this suggestion is outside the scope of the proposal. Calendaring and scheduling is within the purview of local courts, and would not generally be addressed on a statewide basis.</p> <p>This suggestion is outside the scope of this rule proposal relating to remote appearances, but the committee notes that each court provides links to their self-help centers on their websites, with links also available to each <a href="https://courts.ca.gov">courts.ca.gov</a>.</p> <p>The committee notes that court outreach to one party on an ex parte basis is generally not allowed by law. However, a judicial officer could certainly continue a remote hearing if the officer concludes that a party is not in a safe place while testifying.</p>

## SP21-08

**Civil Practice and Procedure: Remote Appearances** (Adopt Cal. Rules of Court, rule 3.672; amend rules 3.670, 5.9, 5.324, and 5.531; adopt forms CIV-021, CIV-022, JV-145, and JV-146; and revoke forms CIV-020, FL-679, and FL-679-INFO)

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Issue 9: Other (information on website, language access, fees, court reporters, definition of party, decorum rule)		
Commenter	Comment	Committee Response
	<p>witnesses are in a location free from influence or danger from others. Ideally, this could be done by a court clerk or staff person individually with each remote attendee before court begins, to help ensure the response received is true and free from influence. If the person is not in a safe location, the court should document that and include it as part of the record in the case, and the Judicial Council should determine what would happen in that instance, but if the solution is for the hearing not to go forward, it should not result in a default.</p> <ul style="list-style-type: none"><li>• Last, the <b>court should further determine how a record of the proceedings will be created for litigants to use on appeal</b>, whether through the videoconferencing platform or an official court reporter, and notify the litigant of how to access such a record for this purpose, along with fee waiver information. [ ]</li><li>• Relatedly, we have also heard reports regarding the continuing problem with CourtCall not waiving fees for both clients and legal aid attorneys, saying the fee waiver waives the client's CourtCall fee or the attorney's, but not both. This</li></ul>	<p>The law allows electronic recording in certain case types and requires court reporters in others. (See Government Code section 69957.) Those provisions are not changed for remote appearances, except for the requirement that a court reporter be present in the courtroom for trials conducted with the use of remote technology. (Code Civ. Proc., § 367.75(d)(2).) Similarly, the rules for parties providing court reporters or, for parties with fee waivers, for requesting court reporters, remain the same whether the party is appearing in person or remotely. (See rule 2.956 and <i>Request for Court Reporter by a Party with a Fee Waiver</i> (form FW-020).) The committee concludes that the current rule and form on this issue is sufficient to cover remote appearances as well as in-person appearances.</p> <p>This suggestion addresses the enforcement of current rule 3.670 relating to fees charged by CourtCall under that rule, and as such is outside the scope of this rule proposal.</p>

**SP21-08**

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	results in legal aid nonprofits paying hundreds of dollars in fees due to these CourtCall policies. Fee waivers should be sufficient to waive remote appearance fees for both clients and legal aid counsel.	
SEIU California	Of primary concern is the silence within the proposed rules regarding the requirement pursuant to 367.75(d)(2)(A) that official court reporters or official court reporters pro tempore be physically present in the courtroom during civil trials, whenever a trial is conducted remotely, in whole or in part. This important protection was included in SB 241 due to widespread technological problems giving rise to repeated instances of court reporters' inability to hear parties and witnesses appearing remotely over a wide variety of technological platforms. Such problems were exacerbated by the inability of court reporters to alert the court when technological problems had arisen, where portions of the proceedings were inaudible or unintelligible, or where court reporters required repetition of testimony to maintain the sanctity of the official verbatim record, addressed in 367.75(e)(1). As official court reporters are obligated under the statute to be physically present in the courtroom whenever a trial is conducted remotely, either in whole or in part, it is important to include guidance to better address the above-mentioned shortcomings to ensure that proceedings conducted remotely do not result in a diminishment of the sanctity of the official verbatim record. Accordingly, in addition to adding reference to this important requirement, we urge further amending the rules to clarify that official court reporters and official court reporters pro tempore must always be made to be participants on the remote platform used by the court, with unmuting capabilities in any remote proceeding.	The committee notes that the rule is silent on this point because the statute is clear and there is no rule needed to implement it.

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>[ ]</p> <p>Further, while we appreciate the reference to existing ROC 1.150(c) on form CIV-021, we are concerned regarding the potential for increased violations of this rule given the expansion of use of technological platforms, and the corollary lack of control by the court over the actions of parties and witnesses appearing remotely. Accordingly, we would urge the inclusion of an admonition from the bench reminding all parties and witnesses appearing remotely of this rule, and reiterating that the official record is the transcript of the proceedings taken by the official court reporter or official court reporter pro tempore.</p>	<p>The committee notes that there is nothing in the proposed rule that will prohibit courts from making such an admonition if the court believes appropriate.</p>
Cheryl Siler	<p><b><u>AMENDMENT TO RULE 3.670</u></b></p> <p>The proposed amendment to Rule 3.670(b) adds the language “Subdivisions (c) through (i) of this rule are suspended from January 1, 2022, to July 1, 2023, during which time the provisions in rule 3.672 apply in their place.”</p> <p>This additional language does not address subdivision (k)(2) which refers to late fees if a request is not made at least <u>2 days</u> before the scheduled appearance. From footnote 40 in the proposal, it appears that the committee intends to keep the requirements of CRC 3.670(k)(2) for remote appearances that are made telephonically.</p> <p>As such, how would maintaining this requirement for giving <u>2 days</u>’ notice of intent to appear by telephone work with the new rule requirements that require the notice of remote appearance be provided <u>2 court days</u> before the proceeding? Once again, the use of two different units of time in the two rules is likely to</p>	<p>The commenter is correct that the proposal is not intended to change current rules regarding charging for telephonic appearances. Presumably the provision in subdivision (k)(2) will work with the deadlines in the new rule the same way it has worked with the deadlines in the current telephone appearance rule.</p>



**SP21-08**

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<b>Issue 9: Other (information on website, language access, fees, court reporters, definition of party, decorum rule)</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>cause problems.</p> <p>I suggest the proposed amendment to Rule 3.670 either suspend the provisions of subdivision (k)(2) as well as subdivisions (c) through (i), or revise CRC 3.670(k)(2) to state, “An additional late request fee of \$30 is to be charged for an appearance by telephone if the request to the vendor or the court providing telephone services is not made at least two <u>court</u> days before the scheduled appearance, except...”</p>	
<p>Superior Court of Alameda County</p>	<ul style="list-style-type: none"> <li>• <b><u>Rule 3.672, subsection (c)(4)</u></b></li> </ul> <p>Currently, subsection (c)(4) of the proposed rule expands the definition of a “party” beyond CCP 367.75 to include “any person appearing in an action <b>and that person’s counsel...</b>” (Emphasis added.) Code of Civil Procedure section 367.75, subsection (i), on the other hand, defines “party” to include only an actual party and non-parties subject to discovery.</p> <p>It appears the legislative intent of CCP 367.75 was to ensure that parties—not counsel—had the option to appear in person. The proposed expanded definition of party would appear to allow counsel, even in the absence of a party, to insist on a personal appearance at all court proceedings. Such a circumstance would undermine remote proceedings in several ways.</p> <p>First, non-evidentiary hearings such as case management or law and motion matters are exclusively conducted remotely in our court and other courts. If an attorney has the option of insisting on a personal appearance, the practical result would be to force many of these hearings to be conducted live, especially in courts that lack technical ability to conduct hybrid hearings.</p>	<p>The Committee believes that interpreting “party” to include counsel for a party is consistent with the intent of the statute. Subdivision (a) of the new statute allows a court to conduct “conferences, hearings, and proceedings” remotely after a party has given notice of the <u>party’s</u> intent to appear remotely. If “party” is interpreted to not include counsel, then for the many conferences, hearings, and proceedings which the commenter acknowledges are attended only by counsel, there would be no authority for the court to hold such proceedings remotely. This would include all law and motion, status conferences, case management conferences, etc. The committee believes that the statute was intended to authorize that such proceedings may be conducted remotely, even though the actual party may not attend them.</p>

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<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Second, for evidentiary hearings-especially trials-much of the proceeding often is conducted in the absence of a party. Allowing counsel to invoke the right to appear would undermine the use of remote proceedings where a party is not present.</p> <p>We therefor ask that the proposed definition of “party” in subsection (c)(4) be amended to match the CCP and be limited to the actual party, not their counsel.</p>	
Superior Court of Monterey County	<p><u>Courtroom Decorum</u> Any person who wishes to appear remotely should observe courtroom decorum (including appearance) as though they are appearing in person. Whether or not this should be a local rule is up for further discussion.</p>	The committee has considered this suggestion but concludes it is not appropriately part of this rule proposal. The committee has added a note to the notice form (form RA-010) to address this concern.
Superior Court of Orange County	<p><b>Throughout the rules:</b> It is recommended to change the word “email” to “electronic service” throughout the rule.</p>	The rule has been modified so that the word e-mail is no longer used in it.
Superior Court of Placer County	<p>New Rule 3.672(k): In the event the court is required to change vendors or platforms used for remote appearances, the court would need to amend the local rule designating the specific vendor(s). The court suggests this rule be modified to also allow courts to point to a location on its website that designates the vendors or platforms that must be used for remote appearances.</p>	The rule has been modified in light of this comment. See rule 3.672(m).

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**Chart 10: Questions Seeking Specific Comments from Courts**

Commenter	Comment	Committee Response
<p>Juvenile Court Judges of California</p>	<p><b><u>Would the proposal provide cost savings?</u></b></p> <p>No. The proposal increases workload for the dependency and juvenile justice courts and the parties by requiring the preparation and filing of a significant number of forms for every hearing. For dependency counsel who have already struggled to maintain reasonable caseloads, mandated written notice at each hearing will presumably increase their work spent on administrative tasks.</p> <p><b><u>What would the implementation requirements be for courts?</u></b></p> <p>In addition to training staff, courts will need to establish new procedures for the judge to review these requests and oppositions and issue rulings for every hearing.</p> <p><b><u>How well would this proposal work in courts of different sizes?</u></b></p> <p>This proposal will cause a significant increase in workload for larger counties, especially those courts that hear hundreds of dependency and juvenile cases in a day.</p>	<p>The committee appreciates the information. The committee notes that in light of these and other comments, the proposed rule relating to juvenile dependency hearings has been revised.</p>
<p>Superior Court of Alameda County</p>	<ul style="list-style-type: none"> <li>• What would the implementation requirements be for courts-for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</li> </ul> <p>The answer to this question likely will vary greatly from court to court. Some courts were able, during the pandemic, both to deploy remote resources and train staff on their use. Other</p>	<p>The committee appreciates the information.</p>

**SP21-08**

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**Chart 10: Questions Seeking Specific Comments from Courts**

Commenter	Comment	Committee Response
	<p>courts may have been unable to do so.</p> <p>Certainly, there is a learning curve for court staff to learn how to connect and moderate remote proceedings, and the effort is greater where the hearing is “hybrid” i.e., where some parties are remote and others are physically present in the courtroom. Courts that have not yet deployed remote or hybrid technology should be aware of these issues.</p>	
<p>Superior Court of Los Angeles County</p>	<ul style="list-style-type: none"> <li>• <i>Would the proposal provide cost savings? If so, please quantify.</i></li> </ul> <p>Provision for accomplishing the goals of the legislation through local rule provides flexibility that will lead to more efficient implementation.</p> <ul style="list-style-type: none"> <li>• <i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></li> </ul> <p>Implementation requirements have more to do with providing remote access, than with complying with the rule. Provision for implementing the statute through local rule lowers the costs of complying with the rule, since courts may incorporate existing technologies and/or procedures in their local rules.</p> <ul style="list-style-type: none"> <li>• <i>How well would this proposal work in courts of different sizes?</i> No comment.</li> </ul>	<p>The committee appreciates the information.</p>
<p>Superior Court of Nevada County</p>	<p>Given the timeline provided for substantive comment on this policy and aforementioned resource constraints, the court is</p>	<p>The committee appreciates the information.</p>

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**Chart 10: Questions Seeking Specific Comments from Courts**

Commenter	Comment	Committee Response
	<p>unable to quantify implementation requirements and impacts beyond those generally stated above. That said, it is very difficult to foresee how these draft rules and forms would provide a cost savings to the court. It is significantly more likely that this framework would create additional costs. As a smaller court, this proposal does not provide adequate flexibility to account for facilitating remote access. In short, the court lacks the most fundamental of core technologies to make this successful: people.</p>	
<p>Superior Court of Orange County, Juvenile Division</p>	<ul style="list-style-type: none"> <li>▪ <i>Would the proposal provide cost savings? If so, please quantify.</i> <ul style="list-style-type: none"> <li>▪ No</li> </ul> </li> <li>▪ <i>What would the implementation requirements be for courts – for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket code in case management systems, or modifying case management systems?</i> <ul style="list-style-type: none"> <li>▪ Development of procedures, training, development of docket/event codes for CMS, Web updates, phone scripts and meeting with attorneys/stakeholders.</li> </ul> </li> <li>▪ <i>How well would this proposal work in courts of different sizes?</i></li> </ul> <p>Unknown</p>	<p>The committee appreciates the information.</p>
<p>Superior Court of San Bernardino County</p>	<p>Court impact includes new processes/procedures, implementation of new local rules, training of staff, procurement/installation and maintenance of remote equipment</p>	<p>The committee appreciates the information.</p>

**SP21-08**

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**Chart 10: Questions Seeking Specific Comments from Courts**

Commenter	Comment	Committee Response
	<p>in all departments, CMS mapping and updates. No cost savings associated with this proposed rule but will provide a means of access to litigants that will have a positive impact on large courts and courts where geographical and transportation challenges exist.</p> <p>1. <u>Would the proposal provide cost savings? If so, please quantify.</u></p> <p>The committee doesn't see a significant cost savings for the court up front. It appears it may provide additional costs for the technology to do these hearings.</p> <p>2. <u>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</u></p> <p>There would need to be training of courtroom staff (judicial assistant's and court attendant's) of approximately 50 staff members. The number of expected training hours would be approximately 28 hours (14 courtrooms with approximately 2 hours of training per department). This training would include how to operate the technology to conduct the remote hearings as well as training on how to process and update the requests and cases. The current processes and procedures would need to be revised to include the remote hearing option and codes associated with those hearings. There would need to be a creation of codes specific to remote hearings in the case management system which would identifying the hearing as being held remotely.</p>	

**SP21-08**

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**Chart 10: Questions Seeking Specific Comments from Courts**

Commenter	Comment	Committee Response
	<p>3. <u>How well would this proposal work in courts of different sizes?</u></p> <p>It appears it would be best fit for courts of a smaller size as in larger courts it may deem more challenging due to training of staff, revisions of processes and procedures, and the creation of codes for the case management systems.</p>	
Superior Court of San Diego	<p>Q: Would the proposal provide cost savings? If so, please quantify.</p> <p>No.</p> <p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Train judges, staff (courtroom clerks and clerical support), and local stakeholders (attorneys, social workers, probation officers, agency support staff); create and revise processes; implement and/or revise local rule(s); update court web site regarding remote appearance policies and procedures; possibly develop new or revise existing minute order codes. The number of hours this will take is difficult to quantify</p>	The committee appreciates the information.
Ahn Tran	<p><u>Would the proposal provide cost savings? If so, please quantify?</u></p> <p>Since we will support both in-person and remote processes, no projected cost savings are identified at this time.</p> <p><u>What would the implementation requirements be for courts for</u></p>	The committee appreciates the information.

**SP21-08**

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Commenter	Comment	Committee Response
	<p><u>example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</u></p> <p>Our issue will be the evidentiary hearings since we do not have an evidence management system yet.</p>	



Appendices to Comment by  
**Self-Represented Litigation Network**

Katherine Altener  
Consulting Senior Strategic Advisor

DRAFT

## Appendix A

### Best Practices for Integration of Technology in Court Proceedings

During the course of the pandemic, the Conference of Chief Justices and Conference of State Court Administrators, and leading national organizations such as the National Center for State Courts (NCSC)<sup>1</sup>, the American Bar Association (ABA)<sup>2</sup>, the National Legal Aid and Defender Association (NLADA)<sup>3</sup>, and the Center for Court Innovation (CCI)<sup>4</sup> have developed best practices guidance to aid courts in creating hybrid environments that optimize technology and ensure constitutional protections are not eroded and substantive law not undermined. Common themes among these resources call for courts to be mindful of the following as they adopt new procedures that integrate technology:

- upholding a party's right to advocate for them self within our adversarial system;
- engaging all stakeholder groups impacted, recognizing self-represented litigants as the largest user group;

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<sup>1</sup> See NCSC's Pandemic resources generally at <https://www.ncsc.org/newsroom/public-health-emergency>, which include technology guidance and resolutions to guide technology, simplification, and self-help services.

<sup>2</sup> ABA Resolution and lengthy memo providing guidance on remote at <https://www.ncsc.org/newsroom/public-health-emergency>.

<sup>3</sup> NLADA research on ODR at <https://www.nlada.org/sites/default/files/NLADA%20Pew%20ODR%20Report%20Ensuring%20Equity%20in%20Efficiency.pdf>.

<sup>4</sup> CCI Sixth Amendment Initiative at <https://www.courtinnovation.org/sixth-amendment>.

- segmenting case types and stages of the proceedings, and then conducting a close analysis from the perspectives of the different stakeholder groups of how constitutional and substantive rights are impacted;
- adopting an iterative approach that relies on data, analysis, and tailored research;
- ensuring parties have access to the needed technology, and when they don't, provide alternative access;
- complying with the Americans with Disabilities Act, both in terms of the technology being used, and building the non-technological offramps when the appropriate accommodation cannot be provided via technology;
- ensuring alternative access for those who speak a language other than what the technology provides.

As the court considers the current proposal, we urge it to explore how each of these concerns has been addressed in the current proposal, and not to shy away from the need for additional evidence, research, options, or deliberation of how to implement just and even-handed rules. However, we are not suggesting the court should abandon remote services while it makes improvements, rather it should work to integrate these practices.

**AMERICAN BAR ASSOCIATION**  
**ADOPTED BY THE HOUSE OF DELEGATES**

**AUGUST 3-4, 2020**

**RESOLUTION**

RESOLVED, That the American Bar Association applauds the work of federal, state, local, territorial and tribal courts and the members of federal, state, local territorial and tribal bars for their thoughtful and innovative approaches to administer the justice system and protect the interests of litigants during the COVID-19 pandemic;

FURTHER RESOLVED, That the American Bar Association supports a considered and measured approach in adopting and utilizing virtual or remote court proceedings established as a result of the COVID-19 pandemic, prioritizing use of such procedures for essential proceedings and those cases in which litigants consent to the use of virtual or remote processes;

FURTHER RESOLVED, That the American Bar Association urges regular review of any decision to detain an individual pending a final proceeding made during a period of mandatory use of virtual or remote court proceedings;

FURTHER RESOLVED, That the American Bar Association urges that any authorization of mandatory use of virtual and remote court proceedings during the COVID-19 pandemic continue for as short a time as possible and in no event longer than the duration of the declaration of emergency issued in the jurisdiction;

FURTHER RESOLVED, That the American Bar Association urges that use of virtual or remote court proceedings be permitted when litigants have consented to the use of such procedures, including being offered a delay until a safe, in-person proceeding can be held;

FURTHER RESOLVED, That the American Bar Association urges that no person consenting to the use of virtual or remote court proceedings be required to sign a blanket waiver of rights or waive the right to have the procedure or outcome of the proceeding be subject to appellate or post-conviction review;

FURTHER RESOLVED, That the American Bar Association urges the formation of committees to conduct evidence-based reviews of the use of virtual or remote court proceedings and make recommendations for procedures, revisions of procedures and

best practices to ensure that they are guaranteeing all applicable constitutional rights and ensure that attorneys can comply with their professional ethical obligations. Such committees should include representatives of all constituencies involved in or affected by the type of court or proceeding under consideration;

FURTHER RESOLVED, That the American Bar Association urges that all virtual or remote court proceedings be tailored to the needs of participants and take into account the type of case and proceeding to be conducted, the participants involved, and whether participants are likely to be represented by counsel, by:

- (1) Considering the ability of all participants to access and fully participate in the proceedings, including:
  - a. Ensuring that participation options for virtual or remote court proceedings are free for participants and observers;
  - b. Providing options concerning participation and permitting participants to select the means of participation best suited to them without prejudice;
  - c. Allowing participants to alter their chosen means of participation for each proceeding;
  - d. Providing necessary support for those who, for financial, technological, language access, disability, or other reasons, may not be able to fully participate without assistance;
  - e. Ensuring that methods of participation reduce, to the fullest extent possible, any prejudice that might result from the circumstances of participation;
  - f. Providing contingencies for possible technological or access problems during the proceeding;
  - g. Guaranteeing that participants are not pressured or obligated to waive constitutional rights;
- (2) Providing training on applicable procedures, including training on possible areas of technological bias;
- (3) Providing additional funding to assist courts, legal aid and public defense providers, prosecutors, and social service providers to expand and improve access to virtual and remote court proceedings, particularly for those who may require financial, technological, language access, or other specialized assistance;
- (4) Protecting full attorney-client relationships, including providing access for private consultation both before and during court proceedings and guaranteeing the confidentiality of such communications; and
- (5) Enabling and encouraging access to other litigation assistance programs and self-help programs previously available;

FURTHER RESOLVED, That the American Bar Association urges that advance notice be provided to the public of all virtual or remote proceedings and that full and meaningful public access to such proceedings be guaranteed, while also protecting the privacy of those proceedings legally exempted from public access; and

FURTHER RESOLVED, That the American Bar Association urges that virtual and remote court procedures be studied for purposes of developing best practices and determining possible biases, and that, if such studies suggest prejudicial effects or disparate impacts on particular litigants or case outcomes, steps should be taken to halt, alter, or revise virtual or remote court procedures.

DRAFT

## REPORT

During the COVID-19 pandemic, courts have endeavored to find ways to operate safely, while also ensuring that essential court proceedings continue. These efforts have been incredibly admirable, particularly amid the set of changeable crisis circumstances faced and they are deserving of acknowledgment.

In many jurisdictions, this has involved quickly setting up remote or virtual courts, using meeting technologies such as Zoom or Go to Meeting. Because of the pandemic, the remote or virtual court procedures often have been crafted without time for consultation and input from the various constituencies that would normally be consulted prior to a change in court procedures, such as attorneys, clerks, social service providers, litigant support groups, victims groups, etc. In Texas, for example, on Thursday, March 19, 2020, the Office of Court Administration advised judges that they had acquired 600 Zoom licenses to permit courts to go online starting Tuesday, March 24, 2020. In the first month of operation, Texas held “more than 8,500 separate proceedings . . . involving 113,000 participants and just over 1,300 judges.”<sup>1</sup> According to the National Center for State Courts, at least 40 states have issued some guidance on holding virtual or remote hearings, but the approaches vary widely.<sup>2</sup> As of July 27, 2020, only fifteen state court systems have announced plans to reopen.<sup>3</sup>

As they have been implemented, numerous questions have arisen over how to conduct virtual or remote court as fairly as possible, including:

- When should appearance at a virtual or remote proceeding be mandatory vs. optional?
- How can we create procedures that ensure equal access for all participants? How can we create procedures that guarantee criminal defendants all applicable constitutional rights?
- How can we create procedures that ensure that attorneys can comply with their professional ethical obligations?
- How can we ensure that the circumstances of participation (video vs. telephone, background, and lighting) do not unfairly prejudice the proceeding in favor of or against a participant?
- How can we share documents and evidence in real time with proceeding participants?

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<sup>1</sup> Erik De la Garza, *Texas Courts Zoom Forward with Virtual Hearings*, Courthouse News Service (April 24, 2020).

<sup>2</sup> *Id.* As of July 27, 2020, the National Center for State Courts website on Virtual Hearings listed five states (Delaware, Connecticut, New Jersey, New Mexico and Alaska) and Puerto Rico as having statewide orders requiring courts to close and mandating virtual court proceedings. An additional fifteen states have statewide orders urging the use of virtual hearings, including Wisconsin, California, Texas, Illinois and New York. National Center for State Courts, Virtual Courts Chart (visited July 27, 2020), available at <https://www.ncsc.org/newsroom/public-health-emergency>.

<sup>3</sup> National Center for State Courts, Statewide Plans to Resume Court Operations Chart (visited July 27, 2020), available at <https://www.ncsc.org/newsroom/public-health-emergency> (listing and linking to plans from Montana, Wisconsin, Texas, Arkansas, Tennessee, South Carolina, Florida and Pennsylvania).



- How can we ensure the timely and effective transmission of court orders and notices?
- How can we ensure that attorneys have a full and contemporaneous opportunity to consult privately with clients during proceedings?
- How can we provide public and media access to courts held virtually/remotely? Once available, should such proceedings be subject to recording and available after the live event? If so, for how long?

As the pandemic has become the new normal, it has become obvious that these procedures will be in use, at least in part, for some time to come. As courts implement or expand the use of emergency procedures for virtual or remote court, it is important not to lose sight of the questions raised by these procedures and to take the earliest possible opportunity for consultation, input and feedback of the myriad justice system actors.<sup>4</sup>

This Resolution urges a considered and measured approach to the compulsory use of virtual and remote court procedures, while permitting the use of such procedures whenever litigants provide consent and are further provided the option of an in-person hearing whenever such a hearing is safely<sup>5</sup> possible. The Resolution further encourages each jurisdiction employing virtual or remote court: (1) to establish committees to conduct evidence-based reviews of virtual and remote court procedures; (2) to guarantee equal access, due process, effective assistance of counsel, and fundamental fairness; (3) to provide additional funding to improve access to virtual or remote court proceedings; (4) to ensure that the public, including the media, is provided access to court proceedings unless an appropriate exception applies, in which case the privacy of the proceeding should be protected; (5) to provide training on virtual and remote procedures; and (6) to study the impacts of these procedures for possible prejudicial effect or disparate impact on outcomes.

### **Concerns Related to Virtual and Remote Court Proceedings**

Virtual and remote court proceedings raise concerns about the impact of telepresence, equal access to the proceedings, attorney-client relationships and access to assistance programs, and public access and privacy concerns. This Report addresses each of these concerns in turn before proposing policy recommendations on the use of virtual and remote courts, as well as appropriate review of such use.

#### *Impact of Telepresence*

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<sup>4</sup> This Resolution does not take a position on whether the use of virtual or remote court proceedings are legal or constitutional. For an overview of past rulings on the use of virtual or remote court proceedings in various types of hearings, see Mike L. Bridenback, *Study of State Trial Courts Use of Remote Technology*, National Association of Presiding Judges and Court Executive Officers, April 2016, available at <http://napco4courtleaders.org/wp-content/uploads/2016/08/Emerging-Court-Technologies-9-27-Bridenback.pdf>. Some courts have found video and remote court procedures inadequate for bail proceedings, for some plea hearings, for evidentiary hearings and for trials. *Id.* at 4-7.

<sup>5</sup> The Resolution does not take a position on when in-person court proceedings should resume. Given the public health nature of this crisis, the determination of whether in-person court proceedings can be safely held should be made in conjunction with the public health and medical experts in each jurisdiction.

Watching someone on a screen does not have the same impact as seeing the individual in-person. “Virtual hearings inevitably skew the perceptions and behavior of the involved parties by either removing or over-emphasizing non-verbal cues, failing to properly simulate normal eye contact, or exaggerating features.”<sup>6</sup> A recent report by the Surveillance Technology Oversight Project recently noted that these problems “can obstruct the fact-finding process and prevent accurate assessments [of] credibility and demeanor.”<sup>7</sup> The few studies conducted of use of videoconferencing in courts show that these issues can have significant impacts on outcome.

In 1999, Cook County, Illinois (Chicago) began holding most bail hearings in felony cases using a closed-circuit television procedure. The defendant remained at the detention center for the bail hearing. A study of the impact of this procedural change was conducted by a research team from Northwestern University led by Shari Seidman Diamond.<sup>8</sup> The study concluded that “defendants were significantly disadvantaged by the videoconferenced bail proceedings.”<sup>9</sup> Specifically, “[t]he average bond amount for the offenses that shifted to televised hearings increased by an average of 51%.”<sup>10</sup> The researchers noted that the disparity may have been, in part, caused by the quality of the technology, the lack of “eye contact” caused by watching the screen rather than the camera, the reduced ability or willingness of the defendant to speak up during a hearing, or the negative impact of the proceeding on attorney-client communication.<sup>11</sup>

An observational study of teleconferenced immigration hearings conducted in 2004-2005 found such hearings “a poor substitute for in-person hearings.”<sup>12</sup> The study found that the use of videoconferences reduced the ability or opportunity of immigrants to speak or ask questions and lessened their ability to communicate with their attorneys.<sup>13</sup> The conferences were also plagued by technical difficulties, with almost half of observed cases experiencing one or more problems.<sup>14</sup> The study called for a “moratorium on

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<sup>6</sup> Albert Fox Cahn and Melissa Giddings, *Virtual Justice: Online Courts During COVID-19*, Surveillance Technology Oversight Project (July 23, 2020), at 10, available at <https://static1.squarespace.com/static/5c1bfc7eee175995a4ceb638/t/5f1b23e97ab8874a35236b67/1595614187464/Final+white+paper+pdf.pdf>; see also Alfred Ng, *Going to court online is supposed to be safer. For many, it's actually much worse*, CNET (July 23, 2020), available at <https://www.cnet.com/news/why-virtual-courts-put-defendants-at-a-disadvantage/>.

<sup>7</sup> *Id.*; see also Anne Poulin, *Criminal Justice and Videoconferencing Technology: The Remote Defendant*, 78 Tul. L. Rev. 1089 (2004) (noting that videoconferencing may have a negative impact on the way the defendant is perceived as well as the way in which the defendant experiences the criminal justice system), available at <https://digitalcommons.law.villanova.edu/wps/art15>.

<sup>8</sup> Shari Seidman Diamond, *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. of Crim. L. & Criminology 869 (2010).

<sup>9</sup> *Id.* at 898.

<sup>10</sup> *Id.* at 897.

<sup>11</sup> *Id.* at 898-99.

<sup>12</sup> The Legal Assistance Foundation of Metropolitan Chicago and the Chicago Appleseed Fund for Justice, *Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court* (Aug. 2, 2005), at 5, available at [http://chicagoappleseed.org/wp-content/uploads/2012/08/videoconfreport\\_080205.pdf](http://chicagoappleseed.org/wp-content/uploads/2012/08/videoconfreport_080205.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 6-7.

videoconferencing in removal cases until it can be improved.”<sup>15</sup> A different study of the use of teleconferencing in immigration proceedings determined that remote hearings impacted outcome, lessening the likelihood asylum would be granted.<sup>16</sup>

### *Access to Courts*

In many essential and time-sensitive civil proceedings, such as family court proceedings, litigants are not represented by counsel. Depending on case type and location, between 65% and 100% of litigants in civil cases are self-represented, which translates into an estimated 30 million self-represented litigants per year going through the civil courts.<sup>17</sup> Similarly, in the lowest level criminal cases, in which the potential punishment is limited to a fine, most individuals are not represented. In criminal cases, approximately 80% of all defendants qualify for public defense services, generally indicating that their family income is at or near the poverty line.<sup>18</sup> Income matters because many of the procedures for virtual or remote court require the participant to have internet or a phone line. Legal aid providers and public defenders report that even telephonic hearings can be problematic. Very few people have land line phones and many clients who have cell phones<sup>19</sup> use prepaid calling plans that may run out or go inactive during periods of personal economic stress.<sup>20</sup>

While internet access continues to improve, a substantial number of individuals and communities still lack access. According to a Pew study released in 2019, 10% of American adults do not use the internet.<sup>21</sup> This percentage rises to almost 30% for adults with less than a high school education.<sup>22</sup> Adults from households earning less than \$30,000 a year are also far less likely to use the internet in comparison to higher earning counterparts.<sup>23</sup> Another Pew study noted that about one quarter of adults in rural areas

<sup>15</sup> *Id.* at 8.

<sup>16</sup> Frank M. Walsh & Edward M. Walsh, *Effective Processing or Assembly-Line Justice? The Use of Teleconferencing in Asylum Removal Hearings*, 22 *Geo. Immgr. L.J.* 259, 271 (2008).

<sup>17</sup> Self-Represented Litigant Network Brief, *How many SRL's? (SRLN 2019)*, available at <https://www.srln.org/node/548/srln-brief-how-many-srls-srln-2019>. It is noteworthy that the vast majority of the litigants who receive help from legal aid are self-represented, with approximately 95% of the cases handled by LSC grantees closing with brief service or advice and counsel.

<sup>18</sup> Caroline Wolf Harlow, *Defense Counsel in Criminal Cases* (Nov. 2000), available at <https://www.bjs.gov/content/pub/pdf/dccc.pdf> (“At felony case termination, court-appointed counsel represented 82% of State defendants in the 75 largest counties.”).

<sup>19</sup> Cell phone use is widespread. According to a Pew Study, 96% of adults use a cell phone and 81% of use a smartphone. For a substantial number (37%), the smartphone is their primary way of accessing the internet. *Mobile Technology and Home Broadband*, Pew Research (June 13, 2019), available at <https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/>.

<sup>20</sup> Use of prepaid cell phones is very common. In 2013, about 1 in 3 cell phone users used a prepaid cell phone. See Marc Lifsher, *More Cellphone Users Switch to Prepaid Plans*, *PHYS* (Feb. 22, 2013), available at <https://phys.org/news/2013-02-cellphone-users-prepaid.html>. See also Bruce Wilkinson, *What's Driving the Growth of Pre-Paid Cell Phones*, Nielsen (Apr. 30, 2010), available at <https://www.nielsen.com/us/en/insights/article/2010/whats-driving-the-growth-of-pre-paid-cell-phones/>.

<sup>21</sup> Monica Anderson, et al., *10% of Americans don't use the internet. Who are they?* (Apr. 22, 2019), available at <https://www.pewresearch.org/fact-tank/2019/04/22/some-americans-dont-use-the-internet-who-are-they/>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

report that “access to high-speed internet is a major problem in their local community.”<sup>24</sup> Even in suburban and urban areas, substantial numbers of adults (13% and 9% respectively) report major problems with internet access.<sup>25</sup> The percentage of adults using broadband at home also differs by race, with almost 80% of white adults reporting home broadband access, compared to 66% of black adults and 61% of Hispanic adults.<sup>26</sup>

Access is not made equal by simply providing the technology and instructions. Even when an individual is able to obtain access to internet to participate in virtual proceedings, the conditions of their home or surroundings may unwittingly create prejudice or bias.<sup>27</sup> Legal aid providers and public defenders have expressed concern that, unlike in courtrooms, where they can discuss and even assist their clients with appropriate clothing and other aspects of presentation, they cannot go to their homes and ensure that the space is clear and quiet, and that the client has appropriate lighting, etc. before the start of a video proceeding. A cluttered or dirty home, a noisy or crowded space, or even a particular poster or book could leave an impression that harms a litigant.<sup>28</sup>

Creating equal access to virtual and remote court proceedings may require having both phone and internet options, as well as establishing free access points, perhaps at social service organizations, for individuals to attend proceedings and obtain assistance, if needed. What those options are and how they are established may differ by jurisdiction. Participants should be permitted to choose the option that works best for them in consultation with their attorney, if represented. Participants should be given a choice for each hearing or proceeding, as circumstances may change. For example, a litigant might prefer a telephonic option from home for a set hearing, but if the hearing is part of a larger docket call, may prefer to go to a portal at a social service agency so as not to waste prepaid minutes. Similarly, the ability to use a portal might be critical to ensure the safe participation of an individual alleging domestic abuse and seeking a protective order. If

<sup>24</sup> Monica Anderson, *About a quarter of rural Americans say access to high-speed internet is a major problem* (Sept, 10, 2018), available at <https://www.pewresearch.org/fact-tank/2018/09/10/about-a-quarter-of-rural-americans-say-access-to-high-speed-internet-is-a-major-problem/>.

<sup>25</sup> *Id.*

<sup>26</sup> Pew Research, *Internet/Broadband Face Sheet* (June 12, 2019), available at <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>.

<sup>27</sup> This concern goes well beyond the potential for prejudice based on appearance, extending to concerns that participants may be subject to pressures or coaching during participation. For example, a domestic violence victim may feel extreme pressure not to participate in a hearing or to lie if he/she is required to appear from a home shared with the alleged abuser.

<sup>28</sup> It is noteworthy that in almost every Best Practices list for conducting online meetings or events, the list notes that lighting and background are critical to how you are perceived. See, e.g. Career Partners International, *6 Best Practices for Virtual Meetings* (Mar. 27, 2020), available at <https://www.cpiworld.com/6-best-practices-virtual-meetings/> (noting that “what’s behind you really matters,” as do lighting, camera angle and distracting noises). The Texas Courts COVID page provides Best Practice recommendations for judges. Some of the tips include: “Position the camera at your eye level or slightly above eye level; Be mindful of what is behind you, choose a solid neutral wall if possible - or use our [Judicial Virtual Background](#); Check the lighting. Light from a window behind you might blind the camera, making you look dark. Light above you in the center of a room might also cast shadows. Ideally, position a lamp, or sit facing a window, where light is directly on your face. Also be aware that your monitor casts light that can make you look blue.” See Texas Judicial Branch, *Tips for Successful Hearing*, available at <https://www.txcourts.gov/programs-services/electronic-hearings-with-zoom/>.



able to subsequently obtain safe, separate housing, appearing from home may be safer and easier thereafter.<sup>29</sup> Flexibility is critical. The COVID-19 pandemic is likely to create economic instability for the foreseeable future, and thus jurisdictions must assume that circumstances for litigants will also remain in flux.<sup>30</sup>

Different access options alone may also not be sufficient to permit participation, particularly for those individuals with disabilities or language access issues. For example, hearing impaired clients may require real time court transcription or captioning to participate. In some courtrooms prior to the pandemic, this service was provided for free via CART.<sup>31</sup> Zoom and other platforms for online or remote hearings may be deficient for these participants. Some platforms also are more compatible with the assistance readers used by visually impaired participants. Similarly, those with language access issues may need a supplementary system for real-time translation or for the court to ensure a translator is available for the online or remote proceeding.<sup>32</sup>

When considering access, participation is one factor. Another is distribution of necessary orders and other paperwork. Zoom and other meeting-based platforms do not easily allow someone to upload a document to participants, and yet the contemporaneous sharing of written agreements, orders, and other documents can be critical to ensuring that everyone in attendance at a hearing leaves with the same understanding of what has been agreed to or ordered. Many courts are using a secondary platform, such as Dropbox or a court-specific portal, to exchange or distribute documents, but this adds a layer of technological complexity. It also does not address access for the visually impaired or the public. Participants should similarly be given options regarding how to receive documents and be able to select the options that work best for them. In addition to documents, the process for distributing notices to litigants should be confirmed regularly, and where feasible, duplicative options should be used to account for potential changes in circumstances and uncertainty.

### *Attorney-Client Relationships and Access to Legal Assistance*

At in-person court proceedings, attorneys typically meet with the client immediately prior to the proceeding, often near the courtroom, to address last minute considerations. If a

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<sup>29</sup> Remote appearance may also improve the conditions of appearance for those who find in person appearance in court stressful or traumatic.

<sup>30</sup> The Texas Access to Justice Commission created a primer for judges on best practices for conducting Zoom hearings with self-represented litigants. After noting that some self-represented litigants use phone plans and may have limited minutes that preclude even telephone participation in Zoom hearings, the document candidly admits, “We do not have a solution for this problem, and welcome your ideas.” See Texas Access to Justice Commission, *Best Practices for Courts in Zoom Hearings Involving Self Represented Litigants*, available at <https://www.txcourts.gov/media/1446335/zoomsrbestpractices.pdf>.

<sup>31</sup> CART stands for Communication Access Real-Time Translation. For more information, see American Judges Foundation and National Court Reporters Foundation, *Communication Access Real-Time Translation (CART) in the Courtroom: Model Guidelines* (Sept 2002), available at <https://www.ncra.org/docs/default-source/uploadedfiles/governmentrelations/cart-in-the-courtroom-model-guidelines.pdf>.

<sup>32</sup> Some jurisdictions are endeavoring to address these issues. See, e.g., The California Commission on Access to Justice, *Remote Hearings and Access to Justice During COVID-19 and Beyond* (May 18, 2020), available at <https://calatj.egnyte.com/dl/dpk9zAsQxd/>.

client has a question or concern during the court proceeding, the client can consult with the attorney at counsel table or, if necessary, request a brief recess for a more private and thorough consultation. Replicating this level of communication and consultation in virtual or remote court proceedings is difficult.<sup>33</sup> Every possible effort should be made to do so, and particular attention should be paid to providing support and assistance for vulnerable litigants or witnesses, such as children.

Courts have attempted to ensure full attorney-client communication during virtual or remote court proceedings, but often these efforts are complicated by the same issues of technical experience and access addressed above. Texas courts, which use Zoom for most court hearings, encourage the use of breakout rooms for attorney-client communications. Observing these hearings, however, it was common to see judges disconnect participants instead of relocating them to breakout rooms and/or to see witness participants erroneously decline invitations to breakout rooms and then court administrators and/or judges having challenges inviting them to the breakout room again. In one instance, an attorney suggested that the other participants, including the judge, prosecutor, and court personnel, simply mute themselves during her conference with her client, either not realizing or not caring that this would still permit them, and the online observers, to hear that conference. During some criminal hearings involving in-custody defendants, the deputy at the jail kept declining rather than accepting invitations to breakout rooms, making it impossible for in-custody defendants to confer with their attorneys. While we can expect judges, attorneys and jail personnel to improve in their use of this technology, in each case, it is often a new experience for litigants, meaning that problems with technology and various work arounds and alternative options will continue to be necessary.

Perhaps more importantly, for in-custody defendants, the breakout room mechanism creates privacy from the judge, prosecutor, and on-line observers, but does not create privacy from the multiple deputies and other personnel in the hearing room at the jail. As virtual or remote court proceedings are examined or established, special attention must be paid to ensuring that litigants can have full and confidential access to their attorney for consultation and explanation, even if this delays the proceedings. The technological methods of doing this as simply as possible may differ by procedure and platform utilized. In undertaking to form or evaluate consultation capabilities, jurisdictions are encouraged not to rely on a request for such consultation from litigants. Far too often, if the judge asks a litigant if he or she understands, the litigant will reply “yes” automatically when, if given the opportunity to ask questions of counsel, the individual would ask several questions. Therefore, it may be advisable for the judge or presiding authority to plan or require short breaks throughout proceedings to allow for such consultation,<sup>34</sup> rather than asking if consultation is required or expecting the litigant to request such consultation if needed.

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<sup>33</sup> Eric T. Bellone, *Private Attorney- Client Communications and the Effect of Videoconferencing in the Courtroom*, 8 J. Int'l Comm. L. & Tech. 24 (2013) (finding generally that negatives of videoconferencing on the attorney-client relationship far outweigh benefits).

<sup>34</sup> The mechanism for consultation need not be complex. Oftentimes, it is sufficient to permit a lawyer and client to leave the virtual courtroom or courtroom call, talk to each other privately by phone, and then rejoin the call. Such consultations should be readily available and encouraged.

It is unlikely that any virtual procedure can effectively mimic the communication opportunities provided by in-person hearings. Whatever procedures are put in place, significant training should be provided, and made mandatory if feasible, to ensure that judges, court administrators and attorneys are facile at using the mechanisms that permit confidential attorney-client conversations, as well as the exchange of documents and enable them to assist litigants and other participants in using these procedures. Such training should pay special attention to the particular challenges faces by criminal defendants, self-represented litigants and litigants with disabilities.

It is also important that courts ensure that litigants are informed about and have access to the legal and non-legal resources that were accessible before virtual and remote proceedings were introduced. For example, civil litigants often do not have access to free legal counsel, but do have access to lawyer-of-the-day programs or other legal assistance programs, which provide assistance in answering questions about proceedings, preparing forms, etc. Often these programs are located in courthouses and litigants are referred by court personnel. Courts should diligently inform litigants participating in virtual or remote proceedings about these programs and how to access them. If necessary, courts should postpone proceedings to permit a litigant to obtain assistance.

### *Public Access and Privacy Concerns*

The Sixth Amendment to the U.S. Constitution guarantees a defendant the right to a public trial.<sup>35</sup> The U.S. Supreme Court has held that the press and public have a right under the First Amendment to attend trials,<sup>36</sup> as well as other court proceedings.<sup>37</sup> Public access is also the means by which family members and loved ones of litigants, defendants or other participants can attend the proceedings.<sup>38</sup> Public access is fundamental to protecting the integrity of the judicial system and maintaining the trust of the public, and courts should therefore take meaningful steps to protect the constitutional rights at stake, including the right of access, with narrow limitations on such access imposed only for the compelling reasons that would typically justify closure. The temptation to close a courtroom for administrative convenience or through lack of effort to establish means of remote or virtual access must not be condoned.

As courts have moved online, many have not prioritized public access. Some do not have public access at all. When a public feed is available, the manner in which they share virtual or remote proceedings is often confusing and deficient. There is usually no public

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<sup>35</sup> See, e.g., Fed. R. Crim. P. 53 (“Except as otherwise provided by statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.”).

<sup>36</sup> *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (closing the courtroom during a fourth criminal trial following three mistrials violated the First Amendment right of the media and public to attend the trial).

<sup>37</sup> *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147 (1993)(public has right to attend preliminary hearing).

<sup>38</sup> The right to a public trial entitles a criminal defendant “at the very least . . . to have his friends, relatives and counsel present, no matter with what offense he may be charged.” *In re Oliver*, 333 U.S. 257, 272 (1948). Exclusion of family members from the courtroom has been held to violate the Sixth Amendment. See, e.g., *United States v. Rivera*, No 10-50426, (9<sup>th</sup> Cir. June 22, 2012).

notice that informs observers of which hearings will be streamed when and where, what type of proceeding is to be heard and who the litigants are.

In jurisdictions providing public access, that access is typically via a YouTube or Facebook Live Feed, rather than the court website. In watching or listening to a streamed or broadcast hearing, no header is provided concerning the case, the personnel, or even the type of docket. In in-person criminal proceedings, the judge, prosecutor, defense attorney and accused are identifiable by where they stand or sit in the courtroom. Most online platforms do not similarly allow a party to lock a view into place, and there is therefore no discernable way to distinguish attorneys from the court personnel or from the litigants.

Establishing the electronic means of allowing remote access is only the first step; courts must make meaningful efforts to ensure that the time and virtual location of hearings are known to the public through each court's website. Technically allowing for access while leaving the public and other participants in the dark about how to connect to the audio or video feed is not sufficient. The daily docket information for each court system should be centralized on one page on the court's website with links to the hearings and instructions on how to connect. Additionally, encouraging individuals to introduce themselves and/or label their feed with their correct name and position/title, would improve public understanding of hearings significantly.

At the same time, the right of the public and press to attend court proceedings is not absolute. In some proceedings, the right of a particular litigant or witness to privacy or continued anonymity trumps the right of public access. For example, juvenile court proceedings in some states are closed to limit the future consequences for the minor.<sup>39</sup> A judge may also close a proceeding that would otherwise be open to the public to protect the identity of an undercover officer or a child witness.<sup>40</sup> Protecting the privacy of these court proceedings that should remain private is as important as ensuring public access to those that should be made public. Virtual and remote court procedures must therefore both ensure privacy in appropriate cases, something difficult to guarantee on many of the online platforms, and ensure public and media access in the majority of cases to which there is a right of access.

Moreover, the right of public access to a courtroom does not extend to recording the proceedings. The debate over cameras in courtrooms has been going on for decades, with proponents arguing that broadcasting permits the public to understand the justice system, and opponents arguing that cameras may distract participants and require the counsel to create two levels of argument—one on the law and one for the public. While

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<sup>39</sup> See, e.g., Rasmussen, Kristen, *Access to Juvenile Justice*, The Reporters Committee for Freedom of the Press, at 4-5, available at <https://www.rcfp.org/wp-content/uploads/imported/SJAJJ.pdf>. The right of access to juvenile proceedings, where it exists, is usually statutory and not based on the First Amendment. See, e.g., *San Bernardino County Dep't of Pub. Social Seres. v. Superior Court*, 283 Cal. Rptr. 332, 338-39 (Cal. Ct. App. 1991) (The First Amendment right of access does not extend to juvenile delinquency hearings).

<sup>40</sup> See, e.g., *State v. Ucerio*, 450 A.2d 809 (RI 1982).



many courts allow recordings, many other courts still forbid such recordings.<sup>41</sup> Allowing remote access to court proceedings over the internet, however, subjects all such proceedings to possible recording. While a judge can instruct that no one record the proceedings,<sup>42</sup> the judge cannot technologically bar such recordings.<sup>43</sup>

### **Mandatory vs. Permissive Use of Virtual or Remote Court Proceedings:**

Virtual and remote court procedures, when optional, not only provide a method of safely holding critical hearings during the COVID-19 pandemic but may also serve to expand convenient access to courts in appropriate instances. Attending court in person is often difficult. It commonly requires individuals to take a full day off work, arrange childcare and travel to and from the courthouse, which may be some distance from their residence, and may or may not be accessible by public transportation. Many times, the individual arrives at court only to wait a considerable time for his or her case to be called and then participates in only a brief hearing resulting in the setting of another hearing date. For example, in a low-level criminal case, a status hearing commonly involves only a short exchange regarding discovery, status of plea negotiations and when the case will be ready for trial. Similarly, a status conference in a child neglect case may be a relatively short conversation noting that nothing has changed and that the continuation of the current plan and placement remains appropriate. In such cases, the ability to attend a hearing by phone or video conference may provide greater efficiency, as well as cause far less disruption and expense for the parties involved. For this reason, remote court procedures have been used in some rural communities for a long time.<sup>44</sup>

However, virtual and remote court procedures, if mandated, raise important concerns about restricting access and causing prejudice or impacting outcomes. Given these concerns, courts should be cautious in mandating use of virtual and remote court proceedings during the public health emergency caused by COVID-19, prioritizing essential proceedings. Essential proceedings should be narrowly defined to include preliminary proceedings that have the potential to result in the detention or release of an individual from custody and other critical civil proceedings such as temporary orders of protection, interim child custody or child welfare orders or other temporary injunctions or

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<sup>41</sup> See National Center for State Courts, *Cameras in the Court – Resource Guide* (Mar 20, 2019), available at <https://www.ncsc.org/Topics/Media/Cameras-in-the-Court/Resource-Guide.aspx> (noting that most states permit exceptions regardless of which predominant rule they have adopted).

<sup>42</sup> Texas has encouraged judges to make this request and post a watermark on the broadcast that says Do Not Record. The instructions for judges in Texas also provide information on how to delete the YouTube recording following the proceeding. See Texas Instructions on Creating a Court YouTube Channel, available at [https://81db691e-8a8c-4e25-add9-60f4845e34f7.filesusr.com/ugd/64fb99\\_eb8a7a1d2fd04e1e8d4d542990b7a945.pdf](https://81db691e-8a8c-4e25-add9-60f4845e34f7.filesusr.com/ugd/64fb99_eb8a7a1d2fd04e1e8d4d542990b7a945.pdf).

<sup>43</sup> Jurisdictions and judges have alternative means of dissuading individuals from recording proceedings. For example, participants who record hearings after instruction not to record could be held in contempt.

<sup>44</sup> See, e.g., Alaska R. Civ. P. 99 – Telephonic Participation in Civil Cases, available at <https://casetext.com/rule/alaska-court-rules/alaska-rules-of-civil-procedure/part-xiii-general-provisions/rule-99-telephonic-participation-in-civil-cases>. (“The court may allow one or more parties, counsel, witnesses or the judge to participate telephonically in any hearing or deposition for good cause and in the absence of substantial prejudice to opposing parties.”). See also, Alaska Superior Court, Form on Telephonic Appearance, available at <https://public.courts.alaska.gov/web/forms/docs/tf-710.pdf>.

orders concerning the safety or placement of an individual, as well as hearings on petitions necessary to protect constitutional rights. Any order mandating the use of virtual or remote court procedures also should remain in operation as short a time as possible and should not continue beyond the length of the jurisdiction's public health emergency.<sup>45</sup> Further, any decision made during a mandatory virtual court proceedings to detain an individual should be subject to regular review or reconsideration.

In certain types of proceedings, virtual and remote court appearance may be antithetical to due process, and such determinations should be respected. For example, in criminal cases, the right of confrontation requires in-person trials.<sup>46</sup> Similarly, based on a comprehensive review of immigration proceedings, including the existing studies concerning the negative impact of video appearance on outcomes for noncitizens in such proceedings, the ABA House of Delegates adopted a Resolution providing that such video appearances in immigration cases should be "limited to procedural matters" and permitted only after the noncitizen gives informed consent.<sup>47</sup> Nothing in this Resolution is intended to conflict with or override such specific recommendations with regard to particular kinds of hearings.

At the same time, because virtual or remote court proceedings have the potential to ease and expand access to the courts, and indeed may be the only access available during this pandemic, optional use of these procedures, governed by consent, should be as widely available as possible. Before a litigant consents to the use of a virtual or remote court procedure, the litigant should understand the possible impact of using the procedures and agree go forward. Further, litigants should be offered either the option of a safe, in-person proceeding or a delay until a safe, in-person proceedings can be held. Finally, no individual consenting to utilize a virtual or remote court procedure should be required to sign a blanket waiver of rights or waive the right to appeal or otherwise challenge the fairness of the procedure used or the outcome.

### **Establishing and Reviewing Virtual or Remote Court Procedures:**

Procedures for holding virtual and remote court proceedings should, to the fullest extent possible, take into account the complex considerations of possible prejudice, participant access, public access/privacy, and attorney-client relationships. To this end, as soon as practicable, each jurisdiction should establish a committee or committees to solicit feedback on and conduct an evidence-based review of virtual or remote court procedures.

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<sup>45</sup> This is consistent with several of the state-based declarations mandating use of virtual or remote court proceedings for essential hearings during the pandemic. By contrast, section 15002 of the Coronavirus Aid, Relief, and Economic Security Act, or CARES, Act, enacted on March 27, 2020, provided that, upon a finding of emergency conditions by the Judicial Conference and authorization by the chief judge of the federal district court, video conferencing can be used with the consent of a defendant after consultation with counsel for certain types of proceedings including detention hearings, initial appearances, arraignments, probation and supervised release revocation proceedings, guilty pleas and sentencing.

<sup>46</sup> The right to confront witnesses is "[o]ne of the fundamental guarantees of life and liberty . . . long deemed [] essential for the due protection of life and liberty." *Union. v. Pointer v. Texas*, 380 U.S. 400 (1965) (overruling *West v. Louisiana*, 194 U.S. 258 (1904)).

<sup>47</sup> Resolution 10M114B, available at [https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2010/2010\\_my\\_114b.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2010/2010_my_114b.pdf).

Some courts are already taking steps to create such review committees. In England, for example, recognizing that COVID-19 “resulted in significant changes in the operation of the civil justice system, particularly the swift expansion of the use of remote hearings,” the Civil Justice Council established a committee to solicit feedback on remote hearing procedures and “identify areas where additional work may be needed.”<sup>48</sup> Several courts in the United States have likewise recognized the importance of a comprehensive review and already formed such a committee or committees. For example, in North Carolina, Chief Justice Cheri Beasley established a Task Force to “recommend directives and policy changes” to court operations.<sup>49</sup> Separate committees may be necessary to review types of courts and/or court proceedings.

In establishing committee(s) to review virtual or remote court procedures, special care should be taken to include representation and feedback from all groups who participate in the procedures or are impacted by such procedures.<sup>50</sup> In civil cases, this includes not only judges and attorneys, but also court staff, litigant representation, including representation from legal aid organizations, Access to Justice Commission representation, media representatives and possibly the juror administration officials. Committees addressing criminal court virtual and remote proceedings, should include not

<sup>48</sup> Courts and Tribunals Judiciary, *Rapid Consultation: The impact of COVID-19 measures on the civil justice system*, May 1, 2020, available at <https://www.judiciary.uk/announcements/rapid-consultation-the-impact-of-covid-19-measures-on-the-civil-justice-system/>.

<sup>49</sup> Press Release, *Chief Justice Beasley Forms COVID-19 Task Force*, April 30, 2020, available at <https://www.nccourts.gov/news/tag/press-release/chief-justice-beasley-forms-covid-19-task-force>.

Wisconsin similarly formed a Task Force. See *Task Force to look at safe operations in state courts during COVID-19 pandemic*, April 29, 2020, available at [https://madison.com/wsj/news/local/crime-and-courts/task-force-to-look-at-safe-operations-in-state-courts-during-covid-19-pandemic/article\\_074c4636-537c-5e95-8252-aea7fabf6e61.html](https://madison.com/wsj/news/local/crime-and-courts/task-force-to-look-at-safe-operations-in-state-courts-during-covid-19-pandemic/article_074c4636-537c-5e95-8252-aea7fabf6e61.html).

<sup>50</sup> The committee established in England has solicited feedback from all those who have been involved in proceedings to date, specifically requesting feedback on the following questions:

- What is working well about the current arrangements?
- What is not working well about current arrangements?
- Which types of cases are most suited to which type of hearings and why?
- How does the experience of remote hearings vary depending on the platform that is used?
- What technology is needed to make remote hearings successful?
- What difference does party location make to the experience of the hearing?
- How do remote hearings impact on the ability of representatives to communicate with their clients?
- How do professional court users and litigants feel about remote hearings?
- How do litigants in person experience hearings that are conducted remotely?
- How do remote hearings impact on perceptions of the justice system by those who are users of it?
- How is practice varying across different geographical regions?
- What has been the impact of current arrangements on open justice?
- What other observations would you make about the impact of COVID-19 on the operation of the civil justice system?

Courts and Tribunals Judiciary, *Rapid Consultation: The impact of COVID-19 measures on the civil justice system*, May 1, 2020, available at <https://www.judiciary.uk/announcements/rapid-consultation-the-impact-of-covid-19-measures-on-the-civil-justice-system/>

only judges, public defenders, prosecutors, and private attorneys, but also jail staff, pretrial services, probation and parole services, victims or victims' advocates, and media representatives. Such committees should also seek input broadly from participants, observers and other interested groups to ensure the consideration of all comments, concerns or issues raised by these procedures.

### **Considerations for Review:**

The proposed Resolution highlights certain important criteria that should be considered by the committees evaluating virtual and remote court procedures to guarantee equal access and fundamental fairness. Chief among these considerations is that virtual or remote proceedings should be tailored to the needs of participants and take into account the type of case and proceeding, the participants involved, and whether participants are represented by counsel.

Specifically, the Resolution further urges jurisdictions to:

- a. Ensure that participation options for virtual or remote court proceedings are free for participants and observers;
- b. Provide options concerning participation and permit participants to select the means of participation best suited to them without prejudice;
- c. Allow participants to alter their chosen means of participation for each proceeding;
- d. Provide necessary support for those who, for financial, technological, language access, disability, or other reasons, may not be able to fully participate without assistance;
- e. Ensure that methods of participation reduce, to the fullest extent possible, any prejudice that might result from the circumstances of participation;
- f. Provide contingencies for possible technological or access problems during the proceeding;
- g. Guarantee that participants are not pressured or obligated to waive constitutional rights;

The Resolution urges that jurisdictions provide training on their virtual and remote court proceedings, including training on possible areas of technological bias. The Resolution also urges that, in recognition of the costs of establishing and improving access to virtual and remote court proceedings, jurisdictions provide additional funding to courts, other justice system participants and social service providers for this purpose.

Finally, the Resolution urges that virtual and remote court proceedings protect attorney-client relationships, including providing access for private consultation both before and during court proceedings and guaranteeing the confidentiality of such communications, as well as assist unrepresented litigants by enabling and encouraging access to other litigation assistance programs and self-help programs previously available.

### **Public Access and Private Proceedings:**

The Resolution urges jurisdictions to provide advance notice to the public of all virtual or remote proceedings and ensure full and meaningful public access to such proceedings, unless the proceeding is legally exempted from public access, in which case the privacy of the proceeding should be protected.

### **Encouraging Study of the Impacts of Virtual or Remote Court Procedures:**

In addition to addressing concerns identified by the diverse participants in courts, jurisdictions should be concerned about the potential unseen and inadvertent harms that might arise from virtual and remote court procedures. As noted above, very little is known about the impact of viewing individuals through a screen,<sup>51</sup> as opposed to in-person, but those studies that do exist show an impact on decision-making, and possible harm to some litigants.<sup>52</sup> These studies raise serious concerns that virtual and remote court procedures might impact outcomes, including potentially increasing pre-trial detention and other incarceration or exacerbating racial, ethnic and economic disparities. It is incumbent on the jurisdictions using these procedures to conduct research on the impact of their use.<sup>53</sup> Similarly, studies should be conducted to determine whether permitting virtual or remote participation in courts increases access. Does it reduce failure-to-appear rates and default judgments? If possible, litigant satisfaction should also be examined. Some such studies are already underway. Several studies on how new virtual platforms such as Zoom hearings may impact court proceedings are already underway.<sup>54</sup>

Jurisdictions should, where feasible, conduct such research or, at a minimum, cooperate with researchers who wish to study the impact of these procedures. Jurisdictions should also review any research when published and adapt, revise or discontinue procedures as warranted, particularly if disparate or harmful impacts are suggested.

### **Conclusion:**

The COVID-19 pandemic has forced courts to adapt quickly. Many courts have responded by moving to remote or virtual court proceedings for essential hearings. Others

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<sup>51</sup> See, e.g., Shannon Havener, Thesis: *Effects of Videoconferencing on Perception in the Courtroom*, Arizona State University (2014), available at [https://repository.asu.edu/attachments/135164/content/Havener\\_asu\\_0010N\\_13889.pdf](https://repository.asu.edu/attachments/135164/content/Havener_asu_0010N_13889.pdf).

<sup>52</sup> See, e.g., Shari Seidman Diamond, *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. of Crim. L. & Criminology 869 (2010); The Legal Assistance Foundation of Metropolitan Chicago and the Chicago Appleseed Fund for Justice, *Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court* (Aug. 2, 2005).

<sup>53</sup> The RAND Corporation recently conducted a review of existing research on remote and virtual proceedings, convening an Advisory Workshop and publishing a set of recommendations regarding needed research. Camille Gourdet, et al., *Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology*. RAND Corporation, 2020. [https://www.rand.org/pubs/research\\_reports/RR3222.html](https://www.rand.org/pubs/research_reports/RR3222.html).

<sup>54</sup> Michael Waters, *Video-Chat Juries and the Future of Criminal Justice*, Wired (May 21, 2020), available at <https://www.wired.com/story/video-chat-juries-and-the-future-of-criminal-justice/> (detailing studies on remote proceedings underway in Florida, Michigan, Texas, Missouri, Arizona, and the United Kingdom).

are considering doing so, and still others are considering further expansions of their platforms. Such innovation is necessary to maintain safety during the pandemic while continuing essential court proceedings. Further, such proceedings, when voluntary, may provide means of increasing access.

Evaluation of these platforms to ensure that they protect litigants' rights and ensure fundamental fairness is critical. It is incumbent upon jurisdictions to conduct this analysis in an evidence-based manner, including encouraging study of the procedures and soliciting input and feedback from users and key constituencies. If necessary, jurisdictions should be willing to alter their remote or virtual court procedures to improve access, encourage and enable attorney-client communications and other forms of assistance, and appropriately balance public access with privacy concerns.

Respectfully submitted,

Theodore Howard

Chair, Standing Committee on Legal Aid and Indigent Defendants

**GENERAL INFORMATION FORM**

Submitting Entity: Standing Committee on Legal Aid and Indigent Defendants

Submitted By: Theodore Howard, Chair

1. Summary of Resolution(s).

This Resolution seeks to limit the compulsory use of virtual and remote court procedures to essential proceedings, while permitting the use of such procedures whenever litigants provide informed consent and are further provided the option of an in-person hearing whenever such a hearing is safely possible. The Resolution further encourages each jurisdiction employing virtual or remote court: (1) to establish committees to conduct evidence-based reviews of virtual and remote court procedures; (2) to guarantee equal access, due process and fundamental fairness; (3) to provide additional funding to improve access to virtual or remote court proceedings; (4) to ensure that the public, including the media, is provided access to court proceedings unless an appropriate exception applies, in which case the privacy of the proceeding should be protected; (5) to provide training on virtual and remote procedures; and (6) to study the impacts of these procedures for possible prejudicial effect or disparate impact on outcomes.

2. Approval by Submitting Entity.

Revision approved July 31, 2020

3. Has this or a similar resolution been submitted to the House or Board previously?  
No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

There is a policy regarding appearance by video in Immigration proceedings. 10M114B provides that video appearance should be limited to procedural matters and utilized only with the informed consent of the noncitizen. As addressed in the Report, nothing in this Resolution is intended to conflict with this existing policy.

There are numerous ABA policies concerning the accessibility of the courts, the use of technology in the courts, and the evaluation of court procedures as they impact those with barriers to access. See, e.g., 91A115 (Recommendations for improving access for the elderly and persons with disabilities), 95M106 (Urging experimentation to broadcast court proceedings, including by video), 95M301 (Affirming access to the justice system irrespective of financial status), 96M114 (Urging safeguards in court rules and legislation to avoid deprivation of access to justice due to economic status), 02M112 (Promoting accessibility to the courts for persons with disabilities), 04A103B (Addressing electronic discovery rules), 11M10A (Supporting improvements to the

federal courts' CM/ECF systems), 14A105A (Opposing the delay to the right to a civil jury due to financial circumstances).

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

6. Status of Legislation.

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Numerous jurisdictions are looking for guidance on when and how to use and evaluate virtual and remote court proceedings during the COVID-19 crisis. This Resolution and Report would be distributed to key constituencies to provide guidance with staff support available to help access additional, more detailed materials such as the studies and resources cited in the Report. The Resolution would also be posted on SCLAIID's COVID-19 Resources webpage.

8. Cost to the Association.

Adoption of this proposed resolution would result in only minor indirect costs associated with staff time devoted to the policy subject matter as part of the staff members' overall substantive responsibilities.

9. Disclosure of Interest.

N/A

10. Referrals. By copy of this form, the Report with Recommendation will be referred to the following entities:

Center for Public Interest Law  
 Center for Innovation  
 Commission on Immigration  
 Commission on Disability Rights  
 Forum on Communications Law  
 Judicial Division  
 Section on Civil Rights and Social Justice  
 Section of Criminal Justice  
 Section on Dispute Resolution  
 Section on Family Law  
 Section on Litigation  
 Section of State and Local Government Law  
 Solo, Small Firm and General Practice Division



11. Contact Name and Address Information (Contacts prior to meeting).

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## EXECUTIVE SUMMARY

### 1. Summary of the Resolution

This Resolution seeks to limit the compulsory use of virtual and remote court procedures to essential proceedings, while permitting the use of such procedures whenever litigants provide informed consent and are further provided the option of an in-person hearing whenever such a hearing is safely possible. The Resolution further encourages each jurisdiction employing virtual or remote court: (1) to establish committees to conduct evidence-based reviews of virtual and remote court procedures; (2) to guarantee equal access, due process and fundamental fairness; (3) to provide additional funding to improve access to virtual or remote court proceedings; (4) to ensure that the public, including the media, is provided access to court proceedings unless an appropriate exception applies, in which case the privacy of the proceeding should be protected; (5) to provide training on virtual and remote procedures; and (6) to study the impacts of these procedures for possible prejudicial effect or disparate impact on outcomes.

### 2. Summary of the Issue that the Resolution Addresses

During the COVID-19 pandemic, courts have endeavored to find ways to operate safely and ensure that essential proceedings continue. In many jurisdictions, this has involved quickly setting up remote or virtual courts, using meeting technologies such as Zoom or Go to Meeting. Because these procedures were established in response to a crisis, time could not initially be taken to form a committee to review the proposed procedures, solicit input from key constituencies or fully consider the impact of these procedures on issues of access, privacy and attorney-client relationships.

### 3. Please Explain How the Proposed Policy Position Will Address the Issue

This Resolution seeks to set out limitations on the mandatory use of virtual and remote court procedures, including limiting mandatory use to essential proceedings, establishing a sunset provisions for mandatory use, and ensuring regular review of detention decisions made during a virtual proceeding. At the same time this Resolution urges wide use of virtual and remote court proceedings when litigants provide informed consent.

This Resolution also urges jurisdictions to create committee(s), including all key stakeholders, to review existing or planned virtual or remote court procedures and provides a set of criteria for evaluation. The criteria prioritizes ensuring equal and full access for all participants, maintaining a robust attorney-client relationship, and ensuring public access or privacy of proceedings as appropriate for the type of hearing. The Resolution further calls on jurisdictions to study or support the studying of procedures for possible bias or disparate impact and make adjustments accordingly.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

The Judicial Division has expressed concerns that this Resolution did not sufficiently acknowledge that courts had done considerable work to keep courts operational, did not request funding to help expand access to virtual or online courts, and incorrectly directed the provisions to all aspects of government instead of courts. In response to their comments, we have revised the Report to more fully acknowledge the work done by the courts to keep the courts open for essential procedures during the public health emergency caused by COVID-19. Additionally, we have included a provision urging additional funding for both the courts and other justice system participants to assist in improving access to virtual and remote court proceedings. On the third point, SCLAID believes that all aspects of government, not merely courts, should play a role in ensuring access and therefore the Resolution is appropriately directed. We have forwarded the revision to the Judicial Division for consideration, but are not certain whether they will support the revision.

## Instructions for Review and Action by Circulating Order

### Voting members

- Please reply to the email message with “I approve,” “I disapprove,” or “I abstain,” by **December 28, 2021**.
- If you are unable to reply by **December 28**, please do so as soon as possible thereafter.

### Advisory members

The circulating order is being emailed to you for your information only. There is no need to sign or return any documents.

**CIRCULATING ORDER**  
**Judicial Council of California**  
**Voting and Signature Pages**

Effective January 1, 2022, the Judicial Council adopts Cal. Rules of Court, rule 3.672; amends rules 3.670, 5.9, 5.324, 5.482, 5.531, and 5.900; adopts forms RA-010 and RA-015; approves forms RA-020, RA-025, and RA-030; and revokes forms CIV-020, FL-679, and FL-679-INFO.

My vote is as follows:

Approve

Disapprove

Abstain

\_\_\_\_\_  
Tani G. Cantil-Sakauye, Chair

\_\_\_\_\_  
Marla O. Anderson

\_\_\_\_\_  
Richard Bloom

\_\_\_\_\_  
C. Todd Bottke

\_\_\_\_\_  
Stacy Boulware Eurie

\_\_\_\_\_  
Kevin C. Brazile

\_\_\_\_\_  
Kyle S. Brodie

\_\_\_\_\_  
Jonathan B. Conklin

\_\_\_\_\_  
Carol A. Corrigan

\_\_\_\_\_  
Samuel K. Feng

\_\_\_\_\_  
David D. Fu

\_\_\_\_\_  
Carin T. Fujisaki

\_\_\_\_\_  
Brad R. Hill

\_\_\_\_\_  
Rachel W. Hill

My vote is as follows:

Approve

Disapprove

Abstain

\_\_\_\_\_  
Harold W. Hopp

\_\_\_\_\_  
Dalila Corral Lyons

\_\_\_\_\_  
Gretchen Nelson

\_\_\_\_\_  
Maxwell V. Pritt

\_\_\_\_\_  
David M. Rubin

\_\_\_\_\_  
Marsha G. Slough

\_\_\_\_\_  
Thomas J. Umberg

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Administrative Director and  
Secretary of the Judicial Council

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee action requested** [Choose from drop down menu below]:  
**Circulate for comment (out of cycle)**

**Rules Committee Meeting Date:** December 20, 2021

**Title of proposal:** CEQA Actions: New Projects and Fees for Expedited Review

**Proposed rules, forms, or standards** (*include amend/revise/adopt/approve*):

Adopt rule 3.2240; amend rules 3.2200, 3.2220–3.2223, 8.700, 8.702, 8.703, and 8.705

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee and Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Christy Simons, [christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov), 415-865-7694

James Barolo, [james.barolo@jud.ca.gov](mailto:james.barolo@jud.ca.gov), 415-865-8928

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by Rules Committee date: November 2, 2021

Project description from annual agenda: Item 6 on Appellate Advisory Committee annual agenda: "This is a joint project with Civil and Small Claims Advisory Committee. This year, new statutes require streamlined CEQA review for Environmental Leadership projects and Environmental Leadership Transit projects (Senate Bill 7, Senate Bill 44). In recent years, the Legislature added Old Town Center Redevelopment in the City of San Diego, additional State Capitol Building Annex projects, the "Oakland Sports and Mixed-Use Projects" related to a new baseball stadium, and projects in Inglewood related to a new NBA arena to the list of projects to be provided with expedited CEQA review, requiring amendments to the rules of court, including rules 3.2200 et seq. for the trial court and rules 8.700–8.705 for the appellate courts. (Public Resources Code sections 21168.6.7, 21168.6.8, 21168.6.9, 21178, 21189.50, 21189.70.) The statutes for the Environmental Leadership, Environmental Leadership Transit, Oakland ballpark, and Inglewood arena projects also require the council to adopt rules regarding costs that must be paid by a project applicant/developer to the court for expedited handling of the case. This project is legislatively mandated."

Item 7 on Civil and Small Claims Advisory Committee's annual agenda is nearly identical.

*If requesting July 1 or out of cycle, explain:*

Staff were advised in November that litigation involving the Oakland ballpark could be filed as early as March 2022. It is, therefore, necessary to get the legislatively-mandated rules in place as soon as possible. The goal is for the proposal to go to the Judicial Council at its March 2022 meeting.

**Additional Information:** (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

**Information for JC Staff regarding form translations:**

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

# JUDICIAL COUNCIL OF CALIFORNIA

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

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## INVITATION TO COMMENT SP21-11

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<b>Title</b>	<b>Action Requested</b>
CEQA Actions: New Projects and Fees for Expedited Review	Review and submit comments by January 14, 2022
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Adopt rule 3.2240; amend rules 3.2200, 3.2220–3.2223, 8.700, 8.702, 8.703, and 8.705	March 11, 2022
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair Civil and Small Claims Advisory Committee Hon. Tamara L. Wood, Chair	Christy Simons, 415-865-7694 <a href="mailto:christy.simons@jud.ca.gov">christy.simons@jud.ca.gov</a> James Barolo, 415-865-8928 <a href="mailto:james.barolo@jud.ca.gov">james.barolo@jud.ca.gov</a>

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### Executive Summary and Origin

As mandated by the Legislature, the Judicial Council previously adopted rules and established procedures that implemented a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act (CEQA) challenging certain projects that qualified for such streamlined procedures. This proposal will implement recent legislation requiring that the Judicial Council amend these rules to include additional projects for streamlined review. The proposal will also implement new statutory provisions requiring that, in cases under two of the statutes, the council, by rule of court, establish fees to be paid by those project applicants to the courts for the additional costs of streamlined CEQA review.

### Background

In 2011, the Legislature enacted Assembly Bill 900 (Stats. 2011, ch. 354), creating an expedited judicial review procedure for CEQA cases relating to “environmental leadership projects.” AB 900 required that challenges to such projects be brought directly to the Court of Appeal and that project applicants seeking certification of a project agree to pay the costs of the Court of Appeal in an amount determined by Judicial Council rule. (Public Resources Code, §§ 21183(f),

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*



21185.<sup>1</sup>) To implement AB 900, the council adopted rule 8.497. Subsequently, the statutory provision requiring that a petition for writ relief be filed only in the Court of Appeal was ruled unconstitutional by the Superior Court of Alameda County; this ruling was not challenged on appeal.

In 2013, the Legislature again addressed expedited CEQA review by the courts in Senate Bill 743 (Stats. 2013, ch. 386). SB 743 eliminated the provision requiring that a CEQA challenge to a leadership project be brought directly in the Court of Appeal and instead required the Judicial Council to adopt rules requiring that actions or proceedings, including any appeals, be resolved within 270 days of certification of the record of proceedings (SB 743, § 11; amending Pub. Resources Code, § 21185). The Legislature did not identify specific time frames for resolution in the trial court or the Court of Appeal, specifying instead a total time period of 270 days for completion of the proceedings. (§§ 21185 and 21168.6.6.) SB 743 also provided an expedited review process for projects relating to a new basketball arena and surrounding sports and entertainment complex planned for Sacramento (SB 743, § 7; adding § 21168.6.6).<sup>2</sup>

In 2014, the Judicial Council adopted rules 3.2220–3.2231 and 8.700–8.705<sup>3</sup> to implement SB 743.<sup>4</sup> In developing those rules, the committees determined, among other things, that there was a distinction made in the Legislature’s delegation of authority to the council with respect to procedures it could adopt for the Sacramento arena cases versus the environmental leadership cases. Specifically, SB 743 provided that for the Sacramento arena cases the expedited procedures to be established by the Judicial Council will apply “[n]otwithstanding any other law.” (§ 21168.6.6(c).) There was no similar provision in the statutes regarding environmental leadership cases. (§ 21185.)

One particular challenge in meeting the 270-day time period for completing review of these cases in the courts was the time for service of a petition. The Public Resources Code provides that a party may take up to 10 business days after filing its petition to serve the respondent public agency and another 20 business days after that to serve any real party in interest. (§§ 21167.6(a), 21167.6.5(a).) Because SB 743 authorized rules of court in Sacramento arena cases “[n]otwithstanding any other law,” the council adopted rules mandating that service on all named parties be completed within three court days, rather than over a two- to four-week period. (Rule 3.2236.) The service rule for environmental leadership cases included an incentive for earlier service rather than mandating it. (See rule 3.2222(d).)

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<sup>1</sup> All further statutory references are to the Public Resources Code unless otherwise noted.

<sup>2</sup> No change was made to the requirement in the original statute that the project applicant in environmental leadership cases pay for the Court of Appeal costs, but the new statute did not add a similar provision in the Sacramento arena cases and did not provide for payment of trial court costs in either category.

<sup>3</sup> The existing rule providing for payment of costs to the Court of Appeal was at that time renumbered as rule 8.705.

<sup>4</sup> The 2014 report to the Judicial Council is available at [www.courts.ca.gov/documents/jc-20140425-itemM.pdf](http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf).

In 2015, Senate Bill 836 added provisions similar to those enacted by SB 743, requiring that the Judicial Council adopt rules to apply the expedited review procedures for resolution of CEQA challenges to “capitol building annex projects.” SB 836 provided for review within 270 days from the date of certification of the administrative record. (§ 21189.51.) Effective July 2016, the council amended the rules to include capitol building annex projects.

In an effort to avoid constitutional concerns regarding the enactments, all of the legislation included language to the effect that the expedited time frames are “to the extent feasible.”

## The Proposal

### New projects eligible for expedited review

In four recent bills,<sup>5</sup> the Legislature expanded the type of projects for which streamlined administrative approval and CEQA expedited review are available:

- Assembly Bill 734 (Stats. 2018, ch. 959)<sup>6</sup> adds “Oakland Sports and Mixed-Use Project,” comprising projects developed by the Oakland Athletics in a certain area in Oakland, including a baseball park and adjacent residential, retail, commercial, cultural, entertainment, and recreational uses, which meet certain requirements set out in the statute (Oakland ballpark project). (See § 21168.6.7.)
- Assembly Bill 987 (Stats. 2018, ch. 961)<sup>7</sup> adds projects located in Inglewood, California, comprising an NBA arena plus related parking and access infrastructure; office space; a sports medicine clinic; retail, restaurant, and community spaces; and a hotel, which meet certain statutory requirements (Inglewood arena project). (See § 21168.6.8.)
- Assembly Bill 1826 (Stats. 2018, ch. 40)<sup>8</sup> expands the statutes providing expedited review of the capitol building annex project to include work related to that project, such as parking or visitor facilities, as well as a new state office building close to the capitol (expanded capitol annex project). (See §§ 21189.50–21189.53 and Gov. Code, § 9125.)

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<sup>5</sup> An invitation to comment on proposed rule amendments to implement two more statutes will be circulated in Spring 2022. Senate Bill 7 (Stats 2021, ch. 19) reenacts with certain changes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, which was repealed by its own terms January 1, 2021. It provides for certification of certain large projects that would replace old facilities with new ones that reduce pollution and generate jobs, including residential, retail, commercial, sports, cultural, entertainment, and recreational-use projects (environmental leadership projects). (See §§ 21178 et seq.) Senate Bill 44 (Stats 2021, ch. 633) adds sustainable public transit projects in Los Angeles in preparation for the 2028 Summer Olympic and Paralympic Games (environmental leadership transit projects). (See § 21168.6.9.)

<sup>6</sup> Assembly Bill 734 may be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB734](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734).

<sup>7</sup> Assembly Bill 987 may be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB987](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987).

<sup>8</sup> Assembly Bill 1826 may be viewed at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1826](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1826).

- Assembly Bill 2731 (Stats. 2020, ch. 291)<sup>9</sup> adds transit-oriented development projects related to the redevelopment of Old Town Center in San Diego (Old Town Center project). (See §§ 21189.70 et seq.)

The proposed amended rules are intended to implement the new legislation by adding these projects to the list of projects to which the existing rules for expedited CEQA review apply and incorporating them by reference where appropriate in those rules. The proposed rules also include new fees for expedited review, in both the trial and appellate courts, of challenges to Oakland ballpark and Inglewood arena projects, as required by those statutes.

### **Scope of rules to be amended**

The new statutes regarding the Oakland ballpark project, the Inglewood arena project, the expanded capitol annex project, and the Old Town Center project include similar provisions regarding expedited review:

Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of any environmental impact report for the project that is certified pursuant to subdivision (d) or the granting of any project approvals, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

(Pub. Resources Code, § 21168.6.7(c) (Oakland); see also §§21168.6.8(f) (Inglewood), 21189.51 (expanded capitol annex; within 270 days of certification of the record of proceedings), 21189.70.3 (Old Town Center; within 270 business days of the filing of the certified record).)

Although rules referenced in the statutes are trial court rules only, this proposal would amend both trial court and appellate rules. The statutes state that any action or proceeding relating to the environmental impact report, “including any potential appeals therefrom,” must be completed within the specified number of days, “to the extent feasible.” Thus, it appears that the provisions are intended to encompass appeals as well as trial court proceedings.<sup>10</sup>

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<sup>9</sup> Assembly Bill 2731 may be viewed at

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB2731](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2731).

<sup>10</sup> The amended rules in the proposal do not include the rules directed solely to the Sacramento arena projects, even though those rules (rules 3.2235–3.2237) are included in the rules cited in the statutes. As noted above, those rules were adopted only for cases involving Sacramento arena projects because of the provision in that statute that the expedited procedures would apply “notwithstanding any other law.” Although a similar phrase is included in AB 987 (the Inglewood arena statute) and AB 2731 (the Old Town Center San Diego statute), there is no such provision in AB 734 (the Oakland ballpark statute). Because all three statutes use similar provisions regarding expedited review and direct that the same rules apply, it appears the Legislature intended that review for all three projects be the same. Since the mandatory service rules could not be applied to Oakland ballpark cases, they have not been applied to Inglewood arena or Old Town Center cases. And because the council had previously concluded that the special service rules should not be amended to apply to the original capitol annex project cases, the committees did not consider applying them to the cases under the expanded capitol annex statute, AB 1875.

### **Time for expedited review**

The current trial court and appellate rules for expedited CEQA review include references to a 270-day time limit for completing court proceedings. Both rule 3.2221(b) regarding stipulated extensions of time in the trial court, and rule 8.702(f)(4) regarding stipulated extensions of time to file a brief in the Court of Appeal, state: “If the parties stipulate to extend the time . . . , they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days.” When these rules were adopted in 2014, as discussed above, the statutes to which the rules applied (sections 21168.6.6(c)–(d), 21185, and 21189.51) required that the actions or proceedings, including any appeals, be resolved, to the extent feasible, within 270 days of certification of the record or the filing of the certified record. However, one of the statutes to be implemented by this proposal contains a different time limit: To the extent feasible, actions challenging the Old Town Center project must be resolved within 270 *business days* of the filing of the certified record. To accommodate different time periods under the rules and to avoid confusion, the committees propose replacing references in the provisions regarding stipulations to “270 days” with the “statutorily prescribed” time. (See proposed amended rules 3.2221(b), 8.702(f).)

### **New fees for expedited review**

The Oakland ballpark statute<sup>11</sup> and the Inglewood arena statute<sup>12</sup> include nearly identical provisions requiring that, before the Governor certifies a project for streamlining (including the expedited court review), the project applicant must agree to pay for “any additional costs incurred by the courts in hearing and deciding any case” subject to the statutes. The statutes provide that the costs be determined by the council.

These provisions (set out in the footnotes) are similar to the provision for costs in former section 21182(f)<sup>13</sup> of the 2011 environmental leadership act. The primary difference is that the earlier provision provides for payment of “the costs of the Court of Appeal . . . in hearing and deciding” the expedited case, while the new laws provide for payment of “any additional costs” to the trial court as well as the appellate court.

For cases brought under the Oakland ballpark and Inglewood arena statutes, the committees propose fee amounts of \$120,000 at the trial court level, to be paid by the project developer

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<sup>11</sup> Section 21168.6.7(d)(6) (Oakland ballpark): “The project applicant agrees to pay for any additional costs incurred by the courts in hearing and deciding any case brought pursuant to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the rules of court adopted by the Judicial Council.”

<sup>12</sup> Section 21168.6.8(b)(6) (Inglewood arena): “The project applicant agrees to pay any additional costs incurred by the courts in hearing and deciding any case subject to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council.”

<sup>13</sup> Environmental leadership—Section 21183(f): “The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to Section 21185.”

within 10 days of the filing of the petition, and \$140,000 at the appellate level, to be paid within 10 days of the filing of a notice of appeal.<sup>14</sup> As discussed below, in developing these proposed amounts, the committees looked to the former fee for streamlined environmental leadership cases, the experiences in cases that have been litigated under those rules, and the provision in the new ballpark and arena statutes that the amount is for “additional” costs incurred by the courts in providing expedited review.

### ***Court time spent on prior environmental leadership cases***

The current environmental leadership rule originally adopted by the council in 2012<sup>15</sup> provides for payment of a fee of \$100,000 by the project developer at the time a notice of appeal is filed, as well as payment of the costs of any special master or contract personnel retained to work on the case. As stated in the report to the council on the original rule, that \$100,000 amount was determined as follows:

This proposed fee was calculated based on estimates collected from courts about the time spent by judges, justices, research attorneys, and judicial assistants on recent CEQA cases regarding projects of the size eligible for participation in the act’s expedited review procedure. The fee assumes that, on average, the following amount of time will be spent on such a case:

- 108 hours by the justice assigned to prepare a draft decision;
- 10 hours by each of the other two justices on the panel;
- 230 hours by research attorneys; and
- 31 hours by judicial assistants.

Additional amounts for other staff time, benefits, and overhead were also included in calculating the total fee.

(Judicial Council rep., p. 8.)<sup>16</sup>

It turns out that the estimates made in 2012 fell far short of reality for the work necessary for an appellate court to complete the expedited process. In late 2016, the Judicial Council submitted a legislatively required report on how AB 900 (the environmental leadership statute) had fared in the courts and the impact it had on judicial administration. At that time, a single case had been tried and appealed under the environmental leadership project rules, a challenge to the Event Center and Mixed-Use Development at Mission Bay Blocks 29–32 (the Warriors’ Mission Bay project). The details of the timing of that case, in which the Court of Appeal decision was issued

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<sup>14</sup> This proposal also modifies rule 8.705 so that the type of costs listed in subparagraphs (A) and (B) of current item (2) is included in the text of item (3).

<sup>15</sup> See rule 8.705. Originally adopted as rule 8.497, the rule has been renumbered since but is otherwise unchanged.

<sup>16</sup> Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178–21189.3* (Apr. 11, 2012), p. 8, [www.courts.ca.gov/documents/jc-20120424-itemA1.pdf](http://www.courts.ca.gov/documents/jc-20120424-itemA1.pdf).

327 days after the case was initially filed,<sup>17</sup> are set out in the report to the Legislature and have been reviewed in more detail in preparation for this recommendation. After an initial delay of 64 days to litigate whether the case should be moved from Sacramento to San Francisco, the courts moved quite expeditiously, consistent with the expedited procedures. The report to the Legislature describes the work entailed as follows:

The Mission Bay project CEQA case is extremely large and complex. The administrative record filed in both the trial court and the Court of Appeal comprises 56 volumes—more than 168,000 pages. The joint appendix filed in the Court of Appeal is 1,514 pages in length. The petitioners’ petition for writ of mandate filed in the trial court included three separate causes of action raising multiple issues regarding the approval of the Mission Bay project. The petitioners’ brief filed in the Court of Appeal, First Appellate District also raised multiple issues. Many of the issues raised in this case involve highly technical questions that require specialized expertise to evaluate.

(Judicial Council of Cal., Jobs and Economic Improvement Through Environmental Leadership Act: Report to the Legislature Under Assembly Bill 900, Public Resources Code Section 21189.2 (Dec. 1, 2016), p. 6.)<sup>18</sup>

The time spent to adjudicate these complex issues was estimated as follows:

- The CEQA judge at the Superior Court of San Francisco County spent 5 hours a day on the case (he could not spend full time because of other commitments at the court), as well as 15 hours each weekend throughout the time the case was at the trial court. This means that 740 hours (the equivalent of 92 workdays) were expended on the case by the judicial officer, rather than the 108 hours (approximately 14 workdays) estimated in 2012. In addition, the equivalent of one full-time research attorney worked on the case throughout the time it was in the trial court (91 workdays), resulting in well over 700 hours of research attorney time.
- At the Court of Appeal, First Appellate District, the Mission Bay case took precedence over all other cases assigned to the division handling this case, including juvenile dependency cases. One appellate justice and two research attorneys (rather than the usual single attorney) worked on this case, essentially on a full-time basis, for a total of three months or approximately 60 workdays each. The more than 900 hours (or 120 workdays)

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<sup>17</sup> At the time of the report, oral argument had not yet been held. However, it was held shortly thereafter, and the Court of Appeal issued its opinion on November 29, 2016. The work on the case was not completed within the 270 days for several reasons, but primarily because of time expended on petitioner’s efforts at the trial court and the Court of Appeal, Third Appellate District to keep the case in Sacramento (where initially filed) rather than in San Francisco (where it was ultimately decided). Per the case dockets in Appendix C attached to the 2012 council report, it took 64 days between the time of filing and when the case was eventually received in the Superior Court of San Francisco County. The court time expended in those 64 days by the Superior Court of Sacramento County and the Court of Appeal, Third Appellate District was not taken into consideration in developing the amount of the new fee.

<sup>18</sup> The report may be viewed at <https://www.courts.ca.gov/documents/lr-2016-jobs-and-economic-improvement.pdf>.

of research time at the Court of Appeal is also significantly more than the 230 hours (or 29 workdays) originally estimated in establishing the \$100,000 fee in the leadership cases.

A second project certified under the environmental leadership statute has been involved in litigation—the Sunset Boulevard Project, a major mixed-use construction project in Los Angeles. This litigation, filed in the Superior Court of Los Angeles County and appealed to the Court of Appeal, Second Appellate District, was similarly large and complex, with four separate complaints asserting CEQA violations, two of which went up on appeal.<sup>19</sup> The trial court judge, an experienced CEQA judge, spent hundreds of hours on the case but, because of the complexity of the case and her need to spend time on other matters, the judgment took 230 days to issue. The Court of Appeal decision took a similar amount of time. The trial court judge reported that if she had been able to work on the case full time, she may have been able to have the judgment issued within the desired timeline.

### ***Development of new fee amounts***

As described above, AB 734 (the Oakland ballpark project) and AB 987 (the Inglewood arena project) require the project applicants to pay any “additional” court costs (“as provided in the rules of court adopted by the Judicial Council”) in order to adjudicate CEQA challenges brought against the project in 270 days. Given the typical scope of CEQA cases that qualify for expedited procedures and the court resources used in the Mission Bay and Sunset Boulevard cases, the committees concluded that the only possible way for courts to comply with the statutory timeline would be to take the case out of normal processing and assign personnel to it full time. Accounting for weekends and court holidays, 270 days is equivalent to approximately 182 workdays. Splitting this time equally between the trial and appellate courts means that each court has roughly 91 workdays to hear and decide the case.

Indeed, the trial court judge in the Mission Bay case estimated that he spent the equivalent of 92 workdays on the case and was assisted by two research attorneys who together spent a similar amount of time. Similarly, the trial court judge in Sunset Boulevard estimated that she may have been able to meet the expedited timeline if she had worked on the case full time. Appellate review of the Mission Bay case took a comparable amount of time. One appellate court justice and two research attorneys worked on that case for roughly 60 workdays each, or 180 workdays total. One appellate court justice and one research attorney spending 91 workdays on a case would also amount to approximately 180 workdays. The only data with respect to the time for appellate review in the Sunset Boulevard case is from the docket—a decision was filed 234 days after the notice of appeal was filed.

Accordingly, the cost of a judicial officer and a research attorney to work full time for 91 workdays at each court level appears to be a reasonable estimate for “additional costs” to adjudicate an expedited CEQA challenge. Such an estimate does not include other appellate

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<sup>19</sup> *L.A. Conservancy v. City of L.A.; Fix the City, Inc. v. City of Los Angeles* (Mar. 23, 2018, B284093) [nonpub. opn.].

court justice time, staff time, or overhead, all of which were factored into the calculation for the fee required in current rule 8.705, which aimed to cover *all* appellate court costs for environmental leadership projects.<sup>20</sup> The estimates<sup>21</sup> are as follows:

- In the trial court, the cost of a judge for 91 days and one research attorney for 91 days would be approximately \$120,000.
- In the appellate court, the cost of one appellate justice for 91 days and one research attorney for 91 days would be approximately \$140,000.

The committees thus propose that the above amounts be charged for the expedited review by the trial court and the Court of Appeal, respectively. (See proposed rules 3.2240 and 8.705.) As permitted by the statutes, the proposed rules also allow for costs for any special master required for the matter to be charged directly to the project developer, as is currently provided in the environmental leadership cases.

### **Other amendments**

At the time it was circulated in 2012, a couple of comments received on the proposal for the \$100,000 fee for expedited CEQA review by the Court of Appeal in environmental leadership cases suggested that the rule should clarify that this is not a recoverable cost. The Appellate Advisory Committee declined to include this provision at the time,<sup>22</sup> but noted that, if this issue was not addressed by the Legislature, the committee would consider the possibility of circulating a new proposal regarding this issue in the future. The committees are now including such a rule in this proposal. See proposed rules 3.2240(4) and 8.705(5).

### **Alternatives Considered**

Because the new rules and fees are mandated by the Legislature, the committees did not consider the alternative of no rules.

The committees considered a different method of determining the costs to be paid: require the posting of a \$100,000 deposit, calculate the court's actual costs for hearing and deciding that particular matter at the conclusion of the case, and require payment of actual costs at the end of the case. The committees ultimately decided against this approach, however, because of the administrative burden associated with calculating and collecting these costs in each case.

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<sup>20</sup> Inclusion of other staff time and overhead may be appropriate when determining the fee for projects brought under SB 7 (future environmental leadership projects) and SB 44 (environmental leadership transit projects), both of which require the project applicant to agree "to pay the costs of the trial court and the court of appeal in hearing and deciding" any challenge to the project under CEQA.

<sup>21</sup> These estimates are based solely on salary compensation and do not include judicial officer or attorney benefits such as health care or retirement.

<sup>22</sup> The committee noted in its report to the council at that time that such a provision had not been included in the rule as circulated and was a sufficiently substantive change that the committee could not recommend it without further circulation.



## **Fiscal and Operational Impacts**

Implementing the new legislation requiring expedited review of CEQA challenges to new project types may generate costs and operational impacts for both the trial court and the Court of Appeal in which the proceedings governed by these statutes are filed. The committees do not anticipate that this rule proposal will result in any additional costs to other courts.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Is it appropriate or necessary to include the provision that the new fees are not recoverable (see rules 3.2240(4) and 8.705(5))?

## **Attachments and Links**

1. Proposed new and amended Rules of Court, rules 3.2200, 3.2220–3.2233, 3.2240, 8.700, 8.702, 8.703, and 8.705
2. Link A: Assembly Bill 734,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB734](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734)
3. Link B: Assembly Bill 987,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB987](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987)
4. Link C: Assembly Bill 1826,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB987](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987)
5. Link D: Assembly Bill 2731,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB2731](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2731)

Rule 3.2240 of the California Rules of Court would be adopted and rules 3.2200, 3.2220–3.2223, 8.700, 8.702, 8.703, and 8.705 would be amended, effective January 1, 2022, to read:

1 **Rule 3.2200. Application**

2  
3 Except as otherwise provided in chapter 2 of the rules in this division, which govern  
4 actions under Public Resources Code sections 21168.6.6–21168.6.8, 21178–21189.3, and  
5 21189.50–21189.57, and 21189.70–21189.70.10, the rules in this chapter apply to all  
6 actions brought under the California Environmental Quality Act (CEQA) as ~~set forth~~  
7 stated in division 13 of the Public Resources Code.  
8  
9

10 **Chapter 2. California Environmental Quality Act Proceedings Under Public**  
11 **Resources Code Sections 21168.6.6–21168.6.8, 21178–21189.3, and 21189.50–**  
12 **21189.57, and 21189.70–21189.70.10**

13  
14 **Article 1. General Provisions**

15  
16 **Rule 3.2220. Definitions and application**

17  
18 **(a) Definitions**

19  
20 As used in this chapter:

21  
22 (1) A “streamlined CEQA project” means any project within the definitions  
23 stated in (2) through (7).

24  
25 ~~(1)~~(2) An “environmental leadership development project” or “leadership project”  
26 means a project certified by the Governor under Public Resources Code  
27 sections 21182–21184.  
28

29 ~~(2)~~(3) The “Sacramento entertainment and sports center project” or “Sacramento  
30 arena project” means an entertainment and sports center project as defined by  
31 Public Resources Code section 21168.6.6, for which the proponent provided  
32 notice of election to proceed under that statute described in section  
33 21168.6.6(j)(1).  
34

35 (4) An “Oakland sports and mixed-use project” or “Oakland ballpark project”  
36 means a project as defined in Public Resources Code section 21168.6.7 and  
37 certified by the Governor under that section.  
38

39 (5) An “Inglewood arena project” means a project as defined in Public Resources  
40 Code section 21168.6.8 and certified by the Governor under that section.  
41

42 ~~(3)~~(6) An “expanded capitol building annex project” means a state capitol building  
43 annex project, annex project–related work, or state office building project as  
44 defined by Public Resources Code section 21189.50.  
45

1 (7) An “Old Town Center transit and transportation facilities project” or “Old  
2 Town Center project” means a project as defined in Public Resources Code  
3 section 21189.70.  
4

5 **(b) Proceedings governed**  
6

7 The rules in this chapter govern actions or proceedings brought to attack, review,  
8 set aside, void, or annul the certification of the environmental impact report or the  
9 grant of any project approvals for ~~the Sacramento arena project, a leadership~~  
10 ~~project, or a capitol building annex project~~ a streamlined CEQA project. Except as  
11 otherwise provided in Public Resources Code sections 21168.6.6–21168.6.8,  
12 21178–21189.3, and 21189.50–21189.57, and 21189.70–21189.70.10 and these  
13 rules, the provisions of the Public Resources Code and the CEQA Guidelines  
14 adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et  
15 seq.) governing judicial actions or proceedings to attack, review, set aside, void, or  
16 annul acts or decisions of a public agency on the grounds of noncompliance with  
17 the California Environmental Quality Act and the rules of court generally apply in  
18 proceedings governed by this rule.  
19

20 **(c) Complex case rules**  
21

22 \* \* \*

23  
24 **Rule 3.2221. Time**  
25

26 **(a) Extensions of time**  
27

28 \* \* \*

29  
30 **(b) Extensions of time by parties**  
31

32 If the parties stipulate to extend the time for performing any acts in actions  
33 governed by these rules, they are deemed to have agreed that the statutorily  
34 prescribed time for resolving the action may be extended ~~beyond 270 days~~ by the  
35 number of days by which the performance of the act has been stipulated to be  
36 extended, and to that extent to have waived any objection to noncompliance with  
37 the deadlines for completing review stated in Public Resources Code sections  
38 21168.6.6(e)–(d)–21168.6.8, 21185, and 21189.51, and 21189.70.3. Any such  
39 stipulation must be approved by the court.  
40

41 **(c) Sanctions for failure to comply with rules**  
42

43 If a party fails to comply with any time requirements provided in these rules or  
44 ordered by the court, the court may issue an order to show cause as to why one of  
45 the following sanctions should not be imposed:  
46

1 (1)–(2) \* \* \*

2

3 (3) If the failure to comply is by respondent or a real party in interest, removal of  
4 the action from the expedited procedures provided under Public Resources  
5 Code sections 21168.6.6(e)–(d), 21168.6.8, 21185, ~~and~~ 21189.51, and  
6 21189.70.3, and these rules; or

7

8 (4) \* \* \*

9

10 **Rule 3.2222. Filing and service**

11

12 (a)–(c) \* \* \*

13

14 (d) **Service of petition in action regarding ~~leadership project and capitol building~~  
15 ~~annex project~~ streamlined CEQA project other than the Sacramento arena  
16 project**

17

18 If the petition or complaint in an action governed by these rules and relating to a  
19 streamlined CEQA project other than the Sacramento arena project ~~leadership~~  
20 ~~project or a capitol building annex project~~ is not personally served on any  
21 respondent public agency, any real party in interest, and the Attorney General  
22 within three court days following filing of the petition, the time for filing  
23 petitioner’s briefs on the merits provided in rule 3.2227(a) and rule 8.702(e)(f) will  
24 be decreased by one day for every additional two court days in which service is not  
25 completed, unless otherwise ordered by the court for good cause shown.

26

27 (e) \* \* \*

28

29 **Rule 3.2223. Petition**

30

31 In addition to any other applicable requirements, the petition must:

32

33 (1) On the first page, directly below the case number, indicate that the matter is  
34 either a ~~“Sacramento Arena CEQA Challenge,”~~ or an ~~“Environmental~~  
35 ~~Leadership CEQA Challenge,”~~ or a ~~“Capitol Building Annex Project”~~ a  
36 “Streamlined CEQA Project”;

37

38 (2) State one of the following:

39

40 (A) The proponent of the project at issue provided notice to the lead agency  
41 that it was proceeding under Public Resources Code section 21168.6.6,  
42 21168.6.7, or 21168.6.8 (whichever is applicable) and is subject to this  
43 rule; or

44

1 (B) The project at issue was certified by the Governor as a leadership  
2 project under Public Resources Code sections 21182–21184 and is  
3 subject to this rule; or  
4

5 (C) The project at issue is an expanded capitol building annex project as  
6 defined by Public Resources Code section 21189.50 and is subject to  
7 this rule; or  
8

9 (D) The project at issue is an Old Town Center project as defined by Public  
10 Resources Code section 21189.70 and is subject to this rule;  
11

12 (3) If a leadership project, provide notice that the person or entity that applied for  
13 certification of the project as a leadership project must, if the matter goes to  
14 the Court of Appeal, make the payments required by ~~Public Resources Code~~  
15 ~~section 21183(f)~~ rule 8.705; and  
16

17 (4) If an Oakland ballpark or Inglewood arena project, provide notice that the  
18 person or entity that applied for certification of the project as an Oakland  
19 ballpark or Inglewood arena project must make the payments required by rule  
20 3.2240 and, if the matter goes to the Court of Appeal, the payments required  
21 by rule 8.705; and  
22

23 ~~(4)~~(5) \* \* \*

24  
25 **Rule 3.2240. Trial Court Costs in Oakland Ballpark and Inglewood Arena Projects**  
26

27 In fulfillment of the provisions in Public Resources Code sections 21168.6.7 and  
28 21168.6.8 regarding payment of trial court costs with respect to cases concerning certain  
29 streamlined CEQA projects:  
30

31 (1) Within 10 days after service of the petition or complaint in a case concerning an  
32 Oakland ballpark project or an Inglewood arena project, the person or entity that  
33 applied for certification of the project as a streamlined CEQA project must pay a  
34 fee of \$120,000 to the court.  
35

36 (2) If the court incurs the costs of any special master appointed by the court in the case  
37 or of any contract personnel retained by the court to work on the case, the person or  
38 entity that applied for certification of the project must also pay, within 10 days of  
39 being ordered by the court, those incurred or estimated costs.  
40

41 (3) If the party fails to timely pay the fee or costs specified in this rule, the court may  
42 impose sanctions that the court finds appropriate after notifying the party and  
43 providing the party with an opportunity to pay the required fee or costs.  
44

45 (4) Any fee or cost paid under this rule is not recoverable.  
46

1  
2 **Chapter 11. Review of California Environmental Quality Act Cases Under Public**  
3 **Resources Code Sections 21168.6.6–21168.8, 21178–21189.3, ~~and~~ 21189.50–21189.57,**  
4 **and 21189.70–21189.70.10.**  
5  
6

7 **Rule 8.700. Definitions and application**  
8

9 **(a) Definitions**

10 As used in this chapter:  
11

12  
13 (1) A “streamlined CEQA project” means any project within the definitions  
14 stated in (2) through (7).  
15

16 ~~(1)(2)~~ An “environmental leadership development project” or “leadership project”  
17 means a project certified by the Governor under Public Resources Code  
18 sections 21182–21184.  
19

20 ~~(2)(3)~~ The “Sacramento entertainment and sports center project” or “Sacramento  
21 arena project” means an entertainment and sports center project as defined by  
22 Public Resources Code section 21168.6.6, for which the proponent provided  
23 notice of election to proceed under that statute described in section  
24 21168.6.6(j)(1).  
25

26 (4) An “Oakland sports and mixed-use project” or “Oakland ballpark project”  
27 means a project as defined in Public Resources Code section 21168.6.7 and  
28 certified by the Governor under that section.  
29

30 (5) An “Inglewood arena project” means a project as defined in Public Resources  
31 Code section 21168.6.8 and certified by the Governor under that section.  
32

33 ~~(3)(6)~~ An “expanded capitol building annex project” means a state capitol building  
34 annex project, annex project–related work, or state office building project as  
35 defined by Public Resources Code section 21189.50.  
36

37 (7) An “Old Town Center transit and transportation facilities project” or “Old  
38 Town Center project” means a project as defined in Public Resources Code  
39 section 21189.70.  
40

41 **(b) Proceedings governed**  
42

43 The rules in this chapter govern appeals and writ proceedings in the Court of  
44 Appeal to review a superior court judgment or order in an action or proceeding  
45 brought to attack, review, set aside, void, or annul the certification of the  
46 environmental impact report or the granting of any project approvals for an

1 environmental leadership development project, the Sacramento arena project, or a  
2 capitol building annex a streamlined CEQA project.  
3

4 **Rule 8.702. Appeals**  
5

6 **(a) Application of general rules for civil appeals**  
7

8 \* \* \*

9  
10 **(b) Notice of appeal**  
11

12 (1) \* \* \*

13  
14 (2) *Contents of notice of appeal*  
15

16 The notice of appeal must:

17  
18 (A) State that the superior court judgment or order being appealed is  
19 governed by the rules in this chapter;  
20

21 (B) Indicate whether the judgment or order pertains to ~~the Sacramento~~  
22 ~~arena project, a leadership project, or a capitol building annex~~ a  
23 streamlined CEQA project; and  
24

25 (C) If the judgment or order being appealed pertains to a leadership project,  
26 an Oakland ballpark project, or an Inglewood arena project, provide  
27 notice that the person or entity that applied for certification or approval  
28 of the project as a leadership ~~such a~~ project must make the payments  
29 required by rule 8.705.  
30

31 ~~(c)-(e)~~ \* \* \*

32  
33 **(f) Briefing**  
34

35 (1)-(3) \* \* \*

36  
37 (4) *Extensions of time to file briefs*  
38

39 If the parties stipulate to extend the time to file a brief under rule 8.212(b),  
40 they are deemed to have agreed that the statutorily prescribed time for  
41 resolving the action may be extended ~~beyond 270 days~~ by the number of days  
42 by which the parties stipulated to extend the time for filing the brief and, to  
43 that extent, to have waived any objection to noncompliance with the deadlines  
44 for completing review stated in Public Resources Code sections 21168.6.6~~(e)~~-  
45 ~~(d)~~ 21168.6.8, 21185, and 21189.51, and 21189.70.3 for the duration of the  
46 stipulated extension.

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(5) \* \* \*

(g) \* \* \*

**Advisory Committee Comment**

**Subdivision (b).** It is very important to note that the time period to file a notice of appeal under this rule is the same time period for filing most postjudgment motions in a case regarding the Sacramento arena project, and in a case regarding ~~a leadership project or capitol building annex~~ any other streamlined CEQA project, the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.

**Rule 8.703. Writ proceedings**

(a) **Application of general rules for writ proceedings**

\* \* \*

(b) **Petition**

(1) \* \* \*

(2) *Contents of petition*

In addition to any other applicable requirements, the petition must:

- (A) State that the superior court judgment or order being challenged is governed by the rules in this chapter;
- (B) Indicate whether the judgment or order pertains to ~~the Sacramento arena project, a leadership project, or a capitol building annex~~ a streamlined CEQA project; and
- (C) If the judgment or order pertains to a leadership project, an Oakland ballpark project, or an Inglewood arena project, provide notice that the person or entity that applied for certification of the project as a ~~leadership~~ such a project must make the payments required by rule 8.705.

**Rule 8.705. Court of Appeal costs in leadership certain streamlined CEQA projects**

In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8, and 21183 regarding payment of the Court of Appeal’s costs with respect to cases concerning leadership, Oakland ballpark, and Inglewood arena projects:



- 1 (1) Within 10 days after service of the notice of appeal or petition in a case concerning  
2 a leadership project, the person ~~who~~ or entity that applied for certification of the  
3 project as a leadership project must pay a fee of \$100,000 to the Court of Appeal.  
4
- 5 (2) Within 10 days after service of the notice of appeal or petition in a case concerning  
6 an Oakland ballpark project or Inglewood arena project, the person or entity that  
7 applied for certification of the project as an Oakland ballpark project or Inglewood  
8 arena project must pay a fee of \$140,000 to the Court of Appeal.  
9
- 10 ~~(2)~~(3) If the Court of Appeal incurs ~~any of the following~~ costs of any special master  
11 appointed by the Court of Appeal in the case or of any contract personnel retained  
12 by the Court of Appeal to work on the case, the person ~~who~~ or entity that applied  
13 for certification of the project as a leadership project, an Oakland ballpark project,  
14 or an Inglewood arena project must also pay, within 10 days of being ordered by  
15 the court, the following costs those incurred or estimated costs:  
16
- 17 (A) ~~The costs of any special master appointed by the Court of Appeal in the~~  
18 ~~ease; and~~  
19
- 20 (B) ~~The costs of any contract personnel retained by the Court of Appeal to~~  
21 ~~work on the case.~~  
22
- 23 ~~(3)~~(4) If the party fails to timely pay the fee or costs specified in this rule, the court may  
24 impose sanctions that the court finds appropriate after notifying the party and  
25 providing the party with an opportunity to pay the required fee or costs.  
26
- 27 (5) Any fee or cost paid under this rule is not a recoverable cost.  
28

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee action requested** [Choose from drop down menu below]:  
**Circulate for comment (out of cycle)**

**Rules Committee Meeting Date:** 12-20-2021

**Title of proposal:** Invitation to Comment: Proposed Rule of Court for new advisory committee for data and information governance

**Proposed rules, forms, or standards** (*include amend/revise/adopt/approve*):  
Approve Cal. Rules of Court, rule 10.68; and repeal rule10.66.

*Committee or other entity submitting the proposal:*

*Staff contact (name, phone and e-mail): Leah Rose-Goodwin, 415-865-7708, leah.rose-goodwin@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by Rules Committee date:

Project description from annual agenda:

*If requesting July 1 or out of cycle, explain:*

The proposed rule will form a new advisory body that will formulate new policies for council approval concerning data and information. This request is being made out of cycle because the new advisory body must be formed as soon as possible to provide the Judicial Council with direction in this important area.

**Additional Information:** (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)  
see above

**Information for JC Staff regarding form translations:**

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

# JUDICIAL COUNCIL OF CALIFORNIA

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

[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

### SP21-12

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**Title**

Judicial Branch Administration: Data and Information Governance Advisory Committee

**Action Requested**

Review and submit comments by January 14, 2022

**Proposed Rules, Forms, Standards, or Statutes**

Adopt Cal. Rules of Court, rule 10.68 and repeal rule 10.66

**Proposed Effective Date**

March 11, 2022

**Proposed by**

Hon. Marcia G. Slough, Chair,  
Executive and Planning Committee  
Hon. Kyle S. Brodie, Chair,  
Judicial Council Technology Committee

**Contact**

Leah Rose-Goodwin, Manager  
(415) 865-7708  
[leah.rose-goodwin@jud.ca.gov](mailto:leah.rose-goodwin@jud.ca.gov)

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### Executive Summary and Origin

The chairs of the Executive and Planning Committee and the Technology Committee recommend adoption of proposed California Rules of Court, rule 10.68 to establish a data and information governance advisory committee. The committees also propose the repeal of rule 10.66 because the duties and responsibilities of the new proposed advisory body will include those of the Workload Assessment Advisory Committee established by that rule.

### Background

At its May 21, 2022, meeting, the Judicial Council accepted a report, *Data and Information Governance Policy Concepts*, from the Information Technology Advisory Committee. That report was the final work product of the Information Technology Advisory Committee's Data Analytics Workstream, which was charged with recommending a data analytics strategy for the branch that included developing branchwide data and information governance policy recommendations. The discussion at the Judicial Council meeting highlighted the need for ongoing work in this subject area beyond the workstream's report.

Following council acceptance of the report, the chairs of the Executive and Planning Committee and the Technology Committee formed a joint working group consisting of representatives from each of the two committees to study the issue. Over the course of several discussions, the group discussed the business need for and objectives of policy development in this subject area and

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

determined that a standing advisory body was needed to lead and plan branch data and analytic strategy. The working group then reviewed the areas of focus and annual agendas of other council advisory bodies to determine if there were any existing advisory bodies that had the same duties and scope of responsibility of the proposed new committee.

The joint working group determined that the area of focus and duties of the Workload Assessment Advisory Committee (WAAC) were substantively aligned to the proposed scope and duties for the new committee. (See proposed rule 10.68, attached). Although the proposed new committee's vision and scope is broader, the study group concluded that the WAAC's areas of work should be included as part of the new committee's scope. Specifically, the joint working group recognized the need to continue the important workload analyses currently conducted under the direction of the WAAC in understanding and measuring trial court workload and allocating resources to courts on the basis of empirical data.

## **The Proposal**

Proposed rule 10.68 would establish a new advisory body, the Data and Information Governance Advisory Committee, to make recommendations in the area of data and information governance and management. This advisory body would develop policy for data and information management and will help execute a new vision for data analytics in the judicial branch: to analyze, use, and share data to inform decisionmaking in order to enhance and expand vital and accessible services for all the people of California.

In addition, the proposal would repeal rule 10.66 and dissolve WAAC because the area of focus for WAAC will now be included within rule 10.68 and the work under rule 10.66 will be included in that addressed by the new advisory body.

## **Alternatives Considered**

The joint working group considered a number of alternatives when determining how to move forward. One option was to create a new advisory body with an area of focus that did not overlap with any existing advisory body. This option was rejected in the interest of keeping the existing number of Judicial Council advisory bodies.

Rather than creating the proposed new advisory committee, the joint working group considered the alternative of substantially amending and expanding the scope and duties of the Workload Assessment Advisory Committee. However, once the group started drafting the rule language to address the relevant issues, it became apparent that drafting an area of focus for a new advisory committee—which will have a more expansive focus than WAAC—would be more straightforward than making substantial amendments to WAAC's charge in the current rule of court.

Another option was to consolidate the work of the Judicial Branch Statistical Information System (JBSIS) Subcommittee of the Court Executives Advisory Committee as well as the Workload Assessment Advisory Committee into the proposed new advisory body. This alternative was

discarded because the technical and tactical nature of the JBSIS Subcommittee’s work differs from the proposed focus of the new advisory committee on governance and management of data. The joint working group anticipates that the JBSIS Subcommittee and the proposed advisory committee would certainly coordinate and consult with each other.

**Fiscal and Operational Impacts**

This proposal will not create any direct fiscal impacts. Because the proposal calls for establishing a new advisory committee and retiring another, there is no net increase in administrative costs needed to support the new advisory body.

<p style="text-align: center;"><b>Request for Specific Comments</b></p> <p style="text-align: center;">Does the proposal appropriately address the stated purpose?</p>
--

**Attachments and Links**

1. Cal. Rules of Court, rules 10.66 and 10.68, at pages 4 and 5

Rule 10.66 of the California Rules of Court would be repealed and rule 10.68 would be adopted, effective March 11, 2021, to read:

1 **Rule 10.66. Workload Assessment Advisory Committee [Repealed]**

2  
3 **(a) ~~Area of focus~~**

4  
5 ~~The committee makes recommendations to the council on judicial administration~~  
6 ~~standards and measures that provide for the equitable allocation of resources across~~  
7 ~~courts to promote the fair and efficient administration of justice.~~

8  
9 **(b) ~~Additional duties~~**

10  
11 ~~In addition to the duties specified in rule 10.34, the committee must recommend:~~

12  
13 ~~(1) Improvements to performance measures and implementation plans and any~~  
14 ~~modifications to the Judicial Workload Assessment and the Resource~~  
15 ~~Assessment Study Model;~~

16  
17 ~~(2) Processes, study design, and methodologies that should be used to measure~~  
18 ~~and report on court administration; and~~

19  
20 ~~(3) Studies and analyses to update and amend case weights through time studies,~~  
21 ~~focus groups, or other methods.~~

22  
23 **(c) ~~Membership~~**

24  
25 ~~(1) The advisory committee consists of an equal number of superior court~~  
26 ~~judicial officers and court executive officers reflecting diverse aspects of~~  
27 ~~state trial courts, including urban, suburban, and rural locales; size and~~  
28 ~~adequacy of resources; number of authorized judgeships; and for judicial~~  
29 ~~officers, diversity of case type experience.~~

30  
31 ~~(2) A judicial officer and court executive officer may be from the same court.~~

32  
33  
34 **Rule 10.68. Data and Information Governance Advisory Committee**

35  
36 **(a) Areas of focus**

37  
38 The committee makes recommendations to the Judicial Council regarding the  
39 collection, use, and sharing of judicial branch data and information to inform  
40 decisionmaking, promote transparency, and improve the administration of justice  
41 while ensuring the security of nonpublic data and data sources.

1 **(b) Additional duties**

2  
3 In addition to the duties described in rule 10.34, the committee must:

- 4  
5 (1) Develop and recommend policies, or revisions to existing policies,  
6 concerning standards and measures to use in collecting, analyzing and  
7 sharing data and information that will advance the goals of increased access  
8 to justice, greater transparency and accountability, and enhanced delivery of  
9 services to the public.
- 10  
11 (2) Develop and recommend performance measures, studies, and methodologies  
12 to measure and report on court administration, practices, and procedures,  
13 including workload assessments; and
- 14  
15 (3) Identify, analyze, and report on emerging issues related to branch data and  
16 information, including usage of data and information to support branch  
17 projects and initiatives.

18  
19 **(c) Membership**

20  
21 The committee must include at least one member from each of the following  
22 categories:

- 23  
24 (1) Appellate justice;
- 25  
26 (2) Trial court judicial officer;
- 27  
28 (3) Trial court or appellate court administrator; and
- 29  
30 (4) Court staff with data and information management expertise.

31  
32 **(d) Member selection**

33  
34 Factors to be considered in making all appointments to the committee include a  
35 candidate's general expertise and experience in data, information, or technology  
36 governance and management.