

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: Email action July 31, 2023

Rules Committee action requested [Choose from drop down menu below]:
Submit to JC (without circulating for comment)

Title of proposal: Civil Practice and Procedure: Remote Appearances

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
Amend Cal. Rules of Court, rules 3.670, 3.672, 5.9, 5.324, 5.482, 5.531, and 5.900

Committee or other entity submitting the proposal:
Judicial Council staff
Deborah Brown, Chief Counsel
Charlene Depner, Director, Center for Families, Children & the Courts

Staff contact (name, phone and e-mail):
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Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (date): N/A
Project description from annual agenda:

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*
This is a proposal to simply implement and reflect recent statutory changes, so no circulation required under Cal. Rules of Court, rule 10.22(d)(2). As discussed in report, new law already in effect and rules will be inconsistent with current law until these changes made.

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

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)
This proposal:
 - includes forms that have been translated.
 - includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
 - includes forms that staff will request be translated.
- **Form Descriptions** (for any proposal with new or revised forms)
 - The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).
- **Self-Help Website** (check if applicable)
 - This proposal may require changes or additions to self-help web content.



Judicial Council of California

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number CO-23-02

Title

Civil Practice and Procedure: Remote
Appearances

Action Requested

VOTING MEMBERS ONLY: Submit votes
by responding to the transmittal email.

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 3.670,
3.672, 5.9, 5.324, 5.482, 5.531, and 5.900

Please Respond By

Noon on August 4, 2023

Recommended by

Judicial Council staff
Deborah Brown, Chief Counsel
Charlene Depner, Director, Center for
Families, Children & the Courts

Date of Report

July 24, 2023

Contact

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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

Judicial Council staff recommends that the council amend several rules of court to implement recent legislation regarding remote appearances in civil matters, enacted in Senate Bill 133 (Stats. 2023, ch. 34) and effective when signed by the Governor. SB 133 amends Code of Civil Procedure section 367.75, the statute that authorizes courts to conduct proceedings using remote technology in all civil matters, extending the sunset date of that statute from July 1, 2023, to January 1, 2026. SB 133 also carves out remote proceedings in certain types of civil matters that are now addressed in two new statutes rather than in section 367.75. The recommended amendments also reflect recent legislation authorizing an Indian child's tribe, notwithstanding any other rule or statute, to participate remotely in proceedings to which the Indian Child Welfare Act applies (Assem. Bill 2960; Stats. 2022, ch. 420, § 43).

Recommendation

Judicial Council staff recommends that the Judicial Council, effective August 4, 2023, amend California Rules of Court, rules 3.670, 3.672, 5.9, 5.324, 5.482, 5.531, and 5.900 to reflect the changes to statutory provisions related to remote appearances in civil matters, including changes in the application of the rules, the sunset dates, and the authority for tribal courts to appear remotely.

The proposed amended rules are attached at pages 6–12.

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 council has adopted various rules and standards relating to appearances by telephone and later, videoconference platforms, over the past 40 years.¹

Most relevant to this proposal, in September 2021 the Legislature enacted Senate Bill 241 (Stats. 2021, ch. 214)² authorizing courts to, among other things, conduct proceedings in all civil matters through the use of remote technology, under section 367.75 of the Code of Civil Procedure. As mandated by that statute, the Judicial Council adopted rule 3.672, effective January 2022, applicable to remote proceedings in all civil cases, to implement the new law. At the same time, the council amended the various rules relating solely to telephonic appearances (encompassed by new rule 3.672), suspending those rules until July 1, 2023, the original sunset date of section 367.75.³

Analysis/Rationale

The recommended rule amendments are primarily minor changes to implement the recent amendments to Code of Civil Procedure section 367.75, which became effective at the time the Governor signed SB 133 on June 30, 2023.⁴ Additional changes are recommended to two rules to reflect new statutory provisions in AB 2960 expressly authorizing remote appearances by tribal representatives in matters subject to the Indian Child Welfare Act (ICWA).⁵

¹ A summary of the various changes in law and rules of court is provided in Judicial Council of California, Circulating Order CO-21-05, Civil Practice and Procedure: Remote Appearances (Dec. 17, 2007) at <https://jcc.legistar.com/View.ashx?M=A&ID=918636&GUID=BFA5B7E4-6AD9-42AA-BA44-3CCE361CDD7F>.

² SB 241 is available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB241.

³ The council also amended emergency rule 3 at this time to limit its applicability to remote proceedings in criminal matters. Remote proceedings in criminal matters were later addressed by the Legislature (see Penal Code sections 977 and 977.3) and emergency rule 3 sunsetted in June 2022.

⁴ SB 133 is available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB133.

⁵ AB 2960 is available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2960.

Rule 3.672, Remote proceedings

When Code of Civil Procedure section 367.75 first went into effect, the council promptly adopted new rule 3.672 relating to remote proceedings—including appearances by videoconferences and telephone—in all civil cases. The rule echoed the original statute; the subdivisions stating its purpose and describing its application state that it applies in all civil cases.⁶ The rule’s definition of “civil case” incorporates by reference rule 1.6(3) (“ ‘Civil cases’ include all cases except criminal cases and petitions for habeas corpus”).⁷

SB 133 has limited the application of section 367.75, carving out proceedings subject to the two new statutes that were enacted in the bill:

- New Code of Civil Procedure section 367.76, which applies to remote proceedings in civil commitment, competency, and contempt proceedings;⁸ and
- New Welfare and Institutions Code section 679.5, which applies to remote proceedings in juvenile justice matters.⁹

To reflect these new exceptions in rule 3.672, this proposal amends subdivisions (a) (Purpose), (b) (Application), and (c) (Definitions), so that the term “civil cases” is limited to those civil cases subject to Code of Civil Procedure section 367.75. The proposed amendment expressly states in the Application subdivision that the rule does not apply to proceedings subject to Code of Civil Procedure section 367.76 or to the new Welfare and Institutions Code section. In

⁶ Code Civ. Proc., § 367.75(a) & (d); rule 3.672(a) & (b)(1).

⁷ Rule 3.672(c)(1).

⁸ Specifically, Code of Civil Procedure section 367.76 applies to proceedings in the following matters:

- (A) Judicial commitments under Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, except for delinquency proceedings.
- (B) Involuntary treatment and conservatorships of gravely disabled persons under Chapter 1 (commencing with Section 5000), Chapter 2 (commencing with Section 5150), and Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code, including Murphy conservatorships.
- (C) Contempt proceedings under Title 5 (commencing with Section 1209) of Part 3 of this code.
- (D) Mentally disordered offender proceedings under Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.
- (E) Commitment proceedings under Section 1026, et seq. of the Penal Code.
- (F) Competency proceedings under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code.
- (G) Placement and revocation proceedings pursuant to Section 1600 et seq. of the Penal Code.
- (H) Involuntary medication and treatment hearings for individuals committed or awaiting admission to a State Department of State Hospitals facility as described in Section 4100 of the Welfare and Institutions Code.

Code Civ. Proc., § 367.76(a)(1).

⁹ Code Civ. Proc., § 367.75(a)(2).

addition, any place in the rule that refers to cases or proceedings generally would be amended to limit the references to cases or proceedings “subject to this rule.”¹⁰ Finally, the statement in the rule that noted that juvenile justice proceedings were subject to the general provisions of the rule would be amended to note that they are now governed by Welfare and Institutions Code section 679.5.¹¹

Other amended rules

Telephone appearance rules generally

Code of Civil Procedure section 367.75 does not distinguish between types of remote technology platforms, for example, telephonic (audio alone) or videoconference (both audio and video, or either). For that reason, as noted above, the council suspended the prior telephone appearance rules (previously authorized under Code of Civil Procedure section 367.5, which was limited to telephone only) in the general civil rules (3.670), family law rules (5.9 and 5.324), ICWA rules (5.482), and juvenile rules (5.531 and 5.900) at the same time it adopted rule 3.672, to the extent the provisions in those rules limit remote hearings and provide specific rules regarding notice of such hearings, noting that they have been replaced with the provisions in rule 3.672. This proposal would extend the suspensions until January 1, 2026, in each of these rules (except for rule 5.482, as described below) to reflect the new sunset date.

In addition to amending the sunset date, in the rule addressing proceedings in juvenile court proceedings, rule 5.531, the proposal adds a reference to the new statute addressing remote appearances in those matters, Welfare and Institutions Code section 679.5, as well as to the new ICWA remote appearance statute, Welfare and Institutions Code section 224.2(k) (see discussion below).

ICWA telephone and remote appearance rule

The proposal treats rule 5.482 (addressing remote appearances by tribal representatives in proceedings subject to ICWA) differently than the other rules in order to implement the new statutory provisions in Welfare and Institutions Code section 224.2(k) recently enacted by AB 2960. The amended statute expressly authorizes an Indian child’s tribe, notwithstanding any other provision, to participate by telephone or other remote appearance methods in proceedings to which the Indian Child Welfare Act may apply. Under the statute, a court has discretion to determine the method of appearance but must provide at least one effective method of remote participation that is sufficient for the tribe to exercise its rights in full. No fee may be charged for the remote appearance. Both because this statute was enacted after the civil remote appearance statute, and because it states that the authority for a tribal representative to appear remotely is “notwithstanding any other provision,” this statute, rather than Code of Civil Procedure section 367.75 (and the rules implementing that statute) governs tribal remote appearances in matters subject to ICWA.

¹⁰ Rule 3.672(d), (e)(1), (f)(1), (g)(1), (h)(1), (h)(2)(A) & (h)(3)(A).

¹¹ Rule 3.672(i)(1)(C).

Because the statute adopted, almost verbatim, language in the suspended paragraphs of rule 5.482(g), staff recommends both removing the language regarding the suspension and replacing the currently suspended parts of the rule with a reference to the statute. The rule would read:

In proceedings governed by the Indian Child Welfare Act, the child’s tribe must be allowed to appear remotely as provided in Welfare and Institutions Code section 224.2(k). No fee may be charged to a tribe for a telephone or other remote appearance.

A reference to Welfare and Institutions Code section 224.2(k) would replace the reference to this rule in rule 5.9, in stating what law applies in family law cases under ICWA, and in rule 5.531, where it could apply to remote appearances by tribal representatives in juvenile court cases in which ICWA applies.

Policy implications

These amendments reflect the changes made by the Legislature; they do not by themselves implicate any policies beyond the council’s policy for its rules to be consistent with statute.

Comments

This proposal was not circulated for public comment because the amendments are minor and noncontroversial and simply implement and reflect statutory changes; they are therefore within the Judicial Council’s purview to adopt without circulation. (See rule 10.22(d)(2).)

Alternatives considered

Council staff considered waiting for the next Judicial Council meeting to make these recommendations but concluded that doing so would result in rules with language contrary to current law, which could lead to confusion among parties and the courts.

Fiscal and Operational Impacts

Any impacts are the result of the statutory changes, not the rule amendments themselves, which merely reflect those changes.

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 6–12
2. Voting instructions, at page 13
3. Vote and signature pages, at pages 14–15

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