



Judicial Council of California

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

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INVITATION TO COMMENT

SPR25-01

Title

Appellate Procedure: Remote Appearances at Oral Argument in the Appellate Division

Action Requested

Review and submit comments by May 23, 2025

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 8.885 and 8.929

Proposed Effective Date

January 1, 2026

Proposed by

Appellate Advisory Committee
Hon. Allison M. Danner, Chair

Contact

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Executive Summary and Origin

The Appellate Advisory Committee proposes updating the rules regarding oral argument in the appellate division to reflect modern videoconferencing technology and facilitate remote participation by both parties and appellate division judges. The current rules narrowly provide for videoconferencing at different courts to accommodate appellate division judges who would otherwise have to travel to attend oral argument in the same location. Parties are required to appear in person at the court that issued the order or judgment being appealed unless a local rule or appellate division order permits otherwise. This proposal would replace the videoconferencing provisions with broader authorization for remote participation. The proposal originated with a suggestion from a committee member.

Background

Rule 8.885 governs oral argument in misdemeanor and limited civil appeals. The corresponding rule for infraction appeals is rule 8.929. Effective January 1, 2010, rules 8.885 and 8.929 were amended to authorize oral argument by videoconference. The proposal followed a successful program involving the Superior Courts of Lassen, Modoc, Plumas, and Sierra Counties in which one judge was selected from each county to sit on a regional appellate division. When a matter came before the regional appellate division, it was heard by a panel of the judges from the other three counties. The program utilized videoconferencing to enable the judges to participate from

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their home courts rather than spend the time traveling long distances to one courthouse. This innovation saved travel costs for the courts and facilitated scheduling, reducing delay for the parties.

The current rules, which have not been amended since 2010, authorize appellate divisions to provide videoconferencing on order of the court's presiding judge or the presiding judge's designee or, if permitted, by a local rule. If oral argument will be conducted by videoconference, each judge must participate at either the court that issued the order or judgment being appealed or from another court. Unless otherwise allowed, all parties must participate from the court that issued the order or judgment being appealed. The oral argument must be open to the public at the court that issued the judgment or order being appealed; public attendance may also be allowed at a court from which a judge is participating. The rules contain provisions requiring individuals who speak to be visible, audible, and identified by name, and prohibiting participation by unauthorized persons. Parties may not be charged a fee to attend oral argument by videoconference in the court that issued the judgment or order or in another court from which a judge is participating.

In August 2023, the Judicial Council amended rule 3.672 relating to remote appearances by parties in civil cases subject to Code of Civil Procedure section 367.75. In July 2024, the Judicial Council adopted rule 10.635, which prescribes when a judicial officer of a superior court may use remote technology to effectuate their own participation in a such a proceeding from a location other than a courtroom. These rules, however, do not apply to the appellate division of a superior court.

Prior Circulation

An earlier version of this proposal was previously circulated for public comment in the spring 2023 cycle. At the same time, the Legislature had just passed a bill enacting Code of Civil Procedure section 367.10 requiring the Judicial Council to adopt rules for when a judicial officer may preside over a remote court proceeding from a location other than a courtroom.¹ The bill also amended section 367.75 and added section 367.76 related to remote appearances by parties in certain superior court civil proceedings. Based on these statutory changes, the council was considering rules for both remote appearances by parties in trial court civil proceedings and situations in which a trial court judicial officer may preside remotely in these proceedings (see rules 3.672 and 10.635 noted above). The Appellate Advisory Committee chose to defer action on the proposal at that time but instead revisit it after the council had acted on these other proposals relating to remote proceedings to ensure that any changes made to the appellate rules would not conflict with other rules.

The Proposal

This proposal would replace the current provisions regarding videoconferencing for oral argument in appellate division proceedings with new provisions that more broadly authorize

¹ Stats.2023, c. 34 (S.B.133), § 6, eff. June 30, 2023.

remote appearances by parties in the appellate division and remote participation in oral argument by appellate division judges. As noted, the current rules were primarily intended to address the challenges of regional appellate divisions with judges having to travel long distances to appear together in person at one court; the rules provide similar benefits in large counties with appellate division judges located in distant courthouses. However, in the years since the current rules took effect, videoconferencing technology has advanced to the point that remote video appearances using a computer, smart phone, or tablet are now possible from wherever one is located. Videoconferencing also no longer needs to be limited to the panel judges. Under the proposed amendments, the videoconferencing provisions would be replaced by a subdivision regarding remote appearances at oral argument using remote technology. “Remote technology” is defined as “technology that provides for the transmission of video and audio signals or audio signals alone. This phrase is meant to be interpreted broadly and includes a computer, tablet, telephone, cellphone, or other electronic or communications device.” This definition matches the definition of “remote technology” in rule 3.672, the rule regarding remote proceedings in civil cases.

Consistent with the current rules authorizing videoconferencing, this proposal would allow appellate divisions to conduct oral argument in whole or in part through the use of remote technology if either a local rule authorizes it or a court orders it on the court’s own motion or on application of a party. An application from a party requesting to appear remotely at oral argument would be required to be filed within 10 days after the court sends notice of oral argument.

Consistent with the new rules on remote appearances by parties in trial court civil proceedings, the proposed amendments to the rules for appellate division proceedings would provide that no party can be mandated to appear remotely. Any local rules would need to include procedures for self-represented litigants to agree to remote appearances and procedures for opting out of remote appearances. The proposed amendments also retain the requirement from the current videoconference rules that at least one of the judges hearing the oral argument must be present in the courtroom for the proceedings.

Provisions regarding fees again parallel those in rule 3.672 relating to remote appearances by parties in trial court proceedings. Parties who by statute are not charged court fees may not be charged a videoconference fee under Government Code section 70630. Parties with a fee waiver may not be charged a fee for remote appearances.

Updating the rules for oral argument in the appellate division would provide significant cost savings and efficiencies. Remote appearances expand access to justice by allowing parties and their attorneys to appear remotely from locations of their choosing, saving travel time and costs. Additionally, proceedings in the appellate division are limited to oral argument, which does not include factors weighing in favor of in-person proceedings, such as juries, witness testimony, evidentiary exhibits, or court reporters. Remote participation by judges is necessary in counties with insufficient numbers of judges to empanel a full bench for appellate division oral arguments and is practical and efficient even in large counties where appellate division panel judges may be

sitting in multiple and geographically distant court locations. Despite these changes, the proposed rule amendments maintain a requirement for public access to oral argument.

Alternatives Considered

The committee considered simply repealing the outdated videoconferencing provisions in the current rules but decided that expanding and updating them was a better approach. The proposed amendments would continue to authorize oral argument by videoconference but, more broadly, would authorize remote appearances by remote technology, consistent with modern business and court practices.

The committee also considered taking no action to amend the videoconferencing rules but concluded that the rules are not only outdated, but also could hinder remote appearances by parties and their attorneys. The rules regarding videoconferencing currently require parties to appear in person at the court that issued the judgment or order that is being appealed unless otherwise allowed by court order or local rule. This default to in-person appearances, with remote appearances available only by exception, no longer makes sense within the current technological landscape.

In addition, the committee considered amending the rules to include the same or similar provisions to those in rule 10.635 but concluded that the differences between trial and appellate proceedings necessitate different rules. For example, oral arguments do not involve juries, witness testimony, evidentiary exhibits, or court reporters. Further, the procedural needs for appellate division proceedings vary widely from county to county. For these reasons, the committee concluded that increased flexibility for remote appearances by parties and remote participation by judges

Fiscal and Operational Impacts

The rule amendments would not impose any fiscal impacts on the courts. They do not require courts to allow videoconferencing and do not require the purchase of any equipment or provider platform. Courts may choose to incur costs related to videoconferencing service providers or platforms (and may charge some parties a videoconference fee as provided by statute), or remote appearances more generally, but the committee expects that any costs would be offset by the time and cost savings and efficiencies discussed above.

Implementation impacts on courts may include the need for training, changes to case management systems, and changes to procedures for oral argument. The committee believes these operational impacts are outweighed by the benefits to courts and court users of facilitating remote appearances.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Given the difference in the nature of trial-level proceedings in the superior court and oral argument in the appellate division, is it appropriate for the appellate division rules to differ substantively from rule 10.635?
- Is it necessary to require that at least one of the judges hearing the oral argument be present in the courtroom for the proceedings?
- Should the rules regarding remote appearances at oral argument in the appellate division include any other provisions or procedures? If so, please specify.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 8.885 and 8.929, at pages 6–14



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