



Judicial Council of California

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

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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

Anne M. Ronan, Supervising Attorney
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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

Author

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Corby Sturges
Attorney, Center for Families, Children & the Courts

Rules 3.670, 3.672, 5.9, 5.324, 5.482, 5.531, and 5.900 of the California Rules of Court are amended, effective August 4, 2023, to read:

Title 3. Civil Rules

Rule 3.670. Telephone appearance

(a) ***

(b) **Application**

Subdivisions (c) through (i) of this rule are suspended from January 1, 2022, to ~~July 1, 2023~~ January 1, 2026, during which time the provisions in rule 3.672 apply in their place. This rule applies to all general civil cases as defined in rule 1.6 and to unlawful detainer and probate proceedings.

(c)-(o) * * *

Rule 3.672. Remote proceedings

(a) **Purpose**

The intent of this rule is to promote greater consistency in the practices and procedures relating to remote appearances and proceedings in civil cases subject to Code of Civil Procedure section 367.75. 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.

(b) **Application**

(1) This rule applies to all civil cases subject to Code of Civil Procedure section 367.75. Provisions that apply specifically to juvenile dependency proceedings are set out in ~~subdivision (i)~~. This rule does not apply to proceedings in matters subject to Code of Civil Procedure section 367.76 or Welfare and Institutions Code section 679.5.

(2) Nothing in this 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.

(3) Nothing in this rule modifies current rules, statutes, or case law regarding confidentiality or access to confidential proceedings.

(c) **Definitions**

As used in this rule:

1 (1) “Civil case” is ~~as defined in rule 1.6(3), including all cases except criminal~~
2 ~~eases and petitions for habeas corpus, other than petitions for habeas corpus~~
3 ~~under Welfare and Institutions Code section 5000 et seq., which are governed~~
4 ~~by this rule~~ any case subject to Code of Civil Procedure section 367.75.
5

6 (2)–(8) * * *

7
8
9 **(d) Court discretion to require in-person appearance**

10
11 Notwithstanding the other provisions of this rule and except as otherwise required
12 by law, the court may require a party to appear in person at a proceeding subject to
13 this rule in any of the following circumstances:
14

- 15 (1) If the court determines on a hearing-by-hearing basis that an in-person
16 appearance would materially assist in the determination of the proceeding or
17 in the effective management or resolution of the case.
18
19 (2) If the court does not have the technology to conduct the proceeding remotely,
20 or if the quality of the technology prevents the effective management or
21 resolution of the proceeding.
22
23 (3) If, at any time during a remote proceeding, the court determines that an in-
24 person appearance is necessary, the court may continue the matter and
25 require such an appearance. Such determination may be based on the factors
26 listed in Code of Civil Procedure section 367.75(b).
27

28 **(e) Local court rules for remote proceedings**

- 29
30 (1) Except for juvenile dependency cases, a court may by local rule prescribe
31 procedures for remote proceedings subject to this rule, so long as the
32 procedures are consistent with the requirements of Code of Civil Procedure
33 section 367.75, posted on the court’s website, and include the following
34 provisions:
35
36 (A) A requirement that notice of intent to appear remotely be given to the
37 court and to all parties or persons entitled to receive notice of the
38 proceedings;
39
40 (B) A clear description of the amount of notice required; and
41
42 (C) For evidentiary hearing and trials, an opportunity for parties to oppose
43 the remote proceedings.
44

45 (2)–(5) * * *

1 **(f) Notice and waiver for duration of case**

2
3 (1) *Notice for remote appearances for duration of case*

4
5 At any time during a case subject to this rule, a party may provide notice to
6 the court and all other parties or persons who are entitled to receive notice of
7 the proceedings that the party intends to appear remotely for the duration of a
8 case. Such notice must be provided with at least as much advance notice as
9 required in (g), (h), or (i), or by local court rules or procedures.

10
11 (A)–(B) * * *

12
13 (2) * * *

14
15 **(g) Remote proceedings other than an evidentiary hearing or trial**

16
17 (1) *Applicable rules*

18
19 This subdivision applies to any proceeding subject to this rule other than an
20 evidentiary hearing or trial, unless one of the following applies:

21
22 (A) The court has applicable local procedures or local rules under (e);

23
24 (B) The proceeding is a juvenile dependency proceeding governed by (i);

25
26 (C) The person intending to appear remotely has provided a notice for
27 remote appearances for the duration of the case or all parties have
28 stipulated to a waiver of notice under (f);

29
30 (D) The court permits a party to appear remotely under (j)(2).

31
32 (2) * * *

33
34 **(h) Remote proceedings for an evidentiary hearing or trial**

35
36 (1) *Court notice of remote proceeding*

37
38 A court intending to conduct an evidentiary hearing or trial remotely in a case
39 subject to this rule must provide notice by one of the following means:

40
41 (A) By providing notice to all parties who have appeared in the action or
42 who are entitled to receive notice of the proceedings, at least 10 court
43 days before the hearing or trial date, unless the hearing or trial is on less
44 than 10 court days' notice, in which case at least two court days' notice
45 of remote proceedings is required; or

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

6
7 (2) *Party notice of remote proceeding*

8
9 (A) *Applicable rules*

10 This subdivision applies to all evidentiary hearings and trials in a case
11 subject to this rule unless one of the following applies:

- 12
13 (i) The court has applicable local procedures or local rules under (e);
14
15 (ii) The proceeding is a juvenile dependency proceeding governed by
16 (i);
17
18 (iii) The person intending to appear remotely has provided a notice
19 for remote appearances for the duration of the case or all parties
20 have stipulated to a waiver of notice under (f);
21
22 (iv) The court permits a party to appear remotely under (j)(2).

23
24 (B)–(D) * * *

25
26
27 (3) *Opposition to remote proceedings*

28
29 (A) *Filing and serving opposition*

30 In response to notice of a remote proceeding for an evidentiary hearing
31 or trial in a case subject to this rule, whether set by local rule or
32 otherwise noticed under (h)(1) or (2), or to obtain a court order for in-
33 person appearance, a party may make a showing to the court as to why
34 a remote appearance or remote testimony should not be allowed, by
35 serving and filing an *Opposition to Remote Proceedings at Evidentiary*
36 *Hearing or Trial* (form RA-015) by:

- 37
38 (i) At least five court days before the proceeding if for an
39 evidentiary hearing or trial for which a party gives or receives at
40 least 15 court days' notice; or
41
42 (ii) At least noon the court day before the proceeding if for an
43 evidentiary hearing or trial for which a party gives or receives
44 less than 15 court days' notice.
45
46

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

4
5 (B) * * *

6
7
8 **(i) Remote proceedings in juvenile dependency**

9
10 (1) *General provisions*

11
12 (A) This subdivision applies to any juvenile dependency proceeding. A
13 court may adopt local rules as provided in (e) to prescribe procedures
14 for remote juvenile dependency proceedings.

15
16 (B) * * *

17
18 (C) This subdivision does not apply to a juvenile justice proceeding. The
19 provisions in ~~(a)–(h) and (j)–(m)~~ Welfare and Institutions Code section
20 679.5 and any rules implementing that statute govern a remote
21 appearance in a juvenile justice proceeding.

22
23 (2)–(5) * * *

24
25 **(j)–(m) * * ***

26
27
28 **Title 5. Family and Juvenile Rules**

29
30 **Rule 5.9. Appearance by telephone**

31
32 **(a) Application**

33
34 Subdivisions (b) through (d) of this rule are suspended from January 1, 2022, to
35 ~~July 1, 2023~~ January 1, 2026. During that time, the provisions in rule 3.672 apply
36 in their place. This rule applies to all family law cases, except for actions for child
37 support involving a local child support agency and cases governed by the Indian
38 Child Welfare Act. Rule 5.324 governs telephone appearances in governmental
39 child support cases. ~~Rule 5.482(g)~~ Welfare and Institutions Code section 224.2(k)
40 governs telephone appearances in cases ~~governed by~~ under the Indian Child
41 Welfare Act.

42
43 **(b)–(d) * * ***

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

2
3 **(a) Purpose**

4
5 This rule is suspended from January 1, 2022, to ~~July 1, 2023~~ January 1, 2026.
6 During that time, the provisions in rule 3.672 apply in its place.
7

8 **(b)–(k) * * ***
9

10
11 **Rule 5.482. Proceedings after notice**

12
13 **(a)–(f) * * ***

14
15 **(g) Tribal appearance by telephone or other remote means**

16
17 ~~(1)~~ In any proceedings governed by the Indian Child Welfare Act ~~involving an~~
18 ~~Indian child held between January 1, 2022, and June 30, 2023,~~ the child’s
19 ~~tribe may~~ must be allowed to appear remotely by remote means at any
20 ~~proceeding as provided by the applicable provisions of rule 3.672, and during~~
21 ~~that time, paragraph (2) is suspended in~~ Welfare and Institutions Code section
22 224.2(k).
23

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

33 ~~(3)~~ No fee may be charged to a tribe for a telephonic or other remote appearance.
34
35

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

37
38 **(a) Application**

39
40 Subdivisions (b) and (c) of this rule are suspended from January 1, 2022, to ~~July 1,~~
41 ~~2023~~ January 1, 2026. During that time, the applicable provisions in rule 3.672 or
42 Welfare and Institutions Code sections 224.2(k) or 679.5, and any rules
43 implementing those statutes, govern remote appearances and proceedings in
44 juvenile court. The standards in (b) apply to any appearance or participation in
45 court by telephone, videoconference, or other digital or electronic means authorized
46 by law.

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(b)–(c) * * *

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

(a)–(d) * * *

(e) Telephone appearance

Paragraph (1) below is suspended from January 1, 2022, to ~~July 1, 2023~~ January 1, 2026. During that period, the juvenile dependency provisions in rule 3.672 apply in its place.

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

(2)–(3) * * *

(f) * * *

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 **noon on August 4**.
- If you are unable to reply by noon on August 4, 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 immediately, the Judicial Council approves the amendments to 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 enacted in Senate Bill 133 (Stats. 2023, ch. 34) and Assembly Bill 2960 (Stats. 2022, ch. 420, § 43).

My vote is as follows:

Approve Disapprove Abstain

Patricia Guerrero, Chair

/s/
Marla O. Anderson

/s/
Maria Lucy Armendariz

/s/
C. Todd Bottke

/s/
Kevin C. Brazile

/s/
Kyle S. Brodie

/s/
Jonathan B. Conklin

/s/
Carol A. Corrigan

/s/
Samuel K. Feng

/s/
David D. Fu

/s/
Carin T. Fujisaki

/s/
Brad R. Hill

Rachel W. Hill

/s/
Harold W. Hopp

My vote is as follows:

Approve Disapprove Abstain

_____/s/
Brian Maienschein

_____/s/
Ann C. Moorman

_____/s/
Gretchen Nelson

_____/s/
Maxwell V. Pritt

_____/s/
Marsha G. Slough

_____/s/
Thomas J. Umberg

Date: 8/10/23

Attest:

Millicent A. Sidwell
Acting Administrative Director and
Secretary of the Judicial Council