



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 21-162*

For business meeting on: October 1, 2021

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<b>Title</b>	<b>Agenda Item Type</b>
Civil Practice and Procedure: Remote Depositions	Action Required
<b>Rules, Forms, Standards, or Statutes Affected</b>	<b>Effective Date</b>
Amend Cal. Rules of Court, rule 3.1010	January 1, 2022
<b>Recommended by</b>	<b>Date of Report</b>
Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	July 29, 2021
	<b>Contact</b>
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### Executive Summary

The Civil and Small Claims Advisory Committee recommends amending rule 3.1010 of the California Rules of Court governing remote depositions. The proposed amendments reflect recent statutory changes enacted in Senate Bill 1146 (Stats. 2020, ch. 112, § 3) that (1) removed the requirement that deponents appear in the physical presence of the deposition officer, and (2) eliminated the different treatment for party and nonparty deponents. The revised law also permits any party or attorney of record to be physically present with the deponent during the deposition, and the proposed rule amendment requires notice for a party or attorney to make such an appearance at a remote deposition.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend California Rules of Court, rule 3.1010, effective January 1, 2022.

The proposed amended rule is attached at pages 6–7.

## Relevant Previous Council Action

In April 2020, as part of the emergency rules of court adopted in response to the public safety concerns raised by the COVID-19 pandemic, the Judicial Council adopted emergency rule 11,<sup>1</sup> which provided that the deponent “is not required to be present with the deposition officer at the time of the deposition.” In September 2020, the California Legislature passed, and the Governor signed, Senate Bill 1146 (Link A), which took effect immediately. Among other modifications, SB 1146 changed Code of Civil Procedure section 2025.310,<sup>2</sup> which regulates the conduct of depositions. SB 1146 deleted the prior provisions of section 2025.310 that, with certain limitations, allowed for remote depositions and replaced them with language from emergency rule 11. Thereafter, emergency rule 11 was repealed by the Judicial Council.

## Analysis/Rationale

Senate Bill 1146 made several substantial changes to section 2025.310. The law previously treated party deponents and nonparty deponents differently—party deponents had to appear in person at a deposition, while nonparty deponents could, by court order for good cause, appear remotely so long as in the presence of the deposition officer. The Legislature eliminated those differences and added provisions that the deponent or deposing party may elect that the deposition officer attend the deposition and swear in the witness from a different location than the deponent. Additionally, subject to existing law on protective orders, any party or attorney of record may now be physically present with the deponent—thus eliminating from the statute the express provision that the nonparty could appear remotely from all others if good cause was shown. The amended law also makes clear that the provisions allowing the deposition officer and other participants to appear remotely do not waive any other requirements regarding the time, place, or manner of conducting a deposition. Finally, the new law contains a provision clarifying that the law does not change who may lawfully serve as a deposition officer under California law.

To address the amendments to section 2025.310, the committee recommends making the following amendments to rule 3.1010:

- To eliminate the different treatment of party and nonparty deponents in current rule 3.1010, the recommendation deletes subsection (d) and makes subsection (c) applicable to all deponents.<sup>3</sup>
- Since section 2025.310 allows the deponent to have the deposition officer attend the deposition in a different location, the recommended proposal also deletes the requirement that deponents be in the presence of the deposition officer in rule 3.1010(c) and instead

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<sup>1</sup> All further rule references are to the California Rules of Court unless otherwise noted.

<sup>2</sup> All statutory references are to the Code of Civil Procedure unless otherwise noted.

<sup>3</sup> The elimination of different subsections for party and nonparty deponents presented some confusion as to whether party deponents could elect to appear remotely under subsection (b), which currently applies to any party. To eliminate such confusion, the committee recommends that subsection (b) of the amended rule be directed to “any party, *other than the deponent*, . . .”

obligates deponents to appear “as required by statute or as agreed to by the parties and deponent.”

- To address the provision of revised section 2025.310 that permits a party or attorney of record to be physically present with the deponent, the amended rule adds a requirement to subsection (a)(3) that any party or attorney of record intending to appear in the physical presence of the deponent at a deposition that is taken remotely must provide written notice of such attendance at least five court days before the deposition.<sup>4</sup> However, the deponent’s attorney is expressly exempt from the new notice requirements under the proposal.
- The recommended proposal also replaced or added language in the rule to mirror the statute. The proposed rule now includes the phrase “or attorney of record” after any mention of “party” and uses “physically present” instead of “personally present.”
- The recommendation retains current subsection (e) of the rule, allowing the court to make other orders, as appropriate, in specific cases. A similar provision is also present in amended section 2025.310(c).

### **Policy implications**

Rule 3.1010 and section 2025.310 concern a complex policy area that the COVID-19 pandemic has brought focus and attention to—remote legal processes, specifically remote depositions. Many practitioners and court officers (including commenters to the proposal and members of the committee) support expanding the ability to take and participate in depositions remotely. Benefits of remote depositions include reduced costs to litigants and a greater ease at which distant witnesses are able to be deposed. While remote depositions offer benefits, they also present logistical hurdles and concerns about a party’s right to be present at a deposition, which also implicates privacy and safety concerns.

Accordingly, the proposed amendments aim to reflect the statute and expand the ability for litigants to depose witnesses remotely, but also set up a reasonable process whereby parties and attorneys can attend remote depositions in person, and retain maximum flexibility for an alternative process to be agreed to by the parties or ordered by the court. Specifically, following the statutory changes, the recommended rule no longer requires party deponents to attend their deposition in person and no longer requires a nonparty deponent to show good cause to sit for a deposition remotely. Rather, deponents can sit remotely if the parties agree (or if the court so orders).

Additionally, while any party or attorney can attend a remote deposition in person, the proposal requires five court days’ notice to afford ample time for the parties to work out logistics (including the location), resolve any objections, and obtain a protective order, if needed. The committee believes the proposed rule balances the competing concerns and closely adheres to the amended statute.

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<sup>4</sup> Since the committee recommends a notice period of five court days, the proposal also includes a conforming change to the notice requirement for appearing at the deposition remotely found in subsection (b)(1).

## **Comments**

The proposed amendments to rule 3.1010 were circulated for public comment between April 15 and May 27, 2021, as part of the regular spring comment cycle. Comments were received by 13 individuals and entities. The commenters included eight attorneys or law firms in private practice, the California Defense Counsel (CDC), the Consumer Attorneys of California (CAOC), the Orange County Bar Association, the Family Law and Juvenile Division of the Superior Court of Orange County, and the Superior Court of San Diego County. Of the 13 commenters, seven commenters agreed with the proposal without modification, one agreed if modified, three did not indicate a position but offered specific comments, and two did not agree with the proposal.

A chart setting forth all the comments and the committee's responses to the comments is attached at pages 8–18. The most significant comments are discussed below.

### ***Notice to attend remote depositions in person***

When the committee circulated the proposal for comment, subsection (a)(3) of the amended rule mandated *three* court days' notice for a party or attorney to be physically present with a remote deponent. The committee initially proposed three court days to be consistent with current subsection (b)(1), which contains a three-court-day-notice requirement to attend a deposition remotely. Two commenters, however, suggested that five court days' notice for an attorney or party to be physically present with a remote deponent is preferable to afford ample time for parties to object, to take protective action, or to make additional preparations. The committee also notes that in practice many parties are agreeing to arrangements for remote depositions, and the suggested change would provide more time for parties to reach agreement without court intervention. In addition to including this suggestion in the recommended proposal, the committee also proposes changing the notice requirements in subsection (b)(1) to five court days to retain consistency across the rule.

### ***Physical presence at remote depositions***

Multiple commenters also raised logistical and privacy concerns about the ability of a party or attorney to be physically present at a remote deposition, which is now permitted by statute. With regard to logistics, a party or attorney attending a remote deposition in person would need to know where the deponent will sit for the deposition and the current or proposed rule does not specifically address such a process. That said, the amendments to section 2025.310 and the proposed amendments to rule 3.1010 do not alter or shift the burden away from the party taking the deposition to determine the logistics of the deposition. Indeed, section 2025.310(d) expressly states that it does not “waive any other provision of this title, including, but not limited to, provisions regarding the time, place, or manner in which a deposition shall be conducted.” Furthermore, subsection (c) of the rule affords the ability of parties to agree as to how the deponent will appear, and the notice requirement of subsection (a) provides the deposing party time to make appropriate arrangements if another party or attorney wishes to attend the deposition in person. As a final backstop, both the rule and the statute permit the court to make other orders in a specific action. (See proposed rule 3.1010(d) and § 2025.310(c).)

Another commenter suggested that an attorney could use the proposed rule to “intrude on a deponent’s home.” However, as discussed above, the committee recommends a requirement that advance notice be provided for an attorney to be physically present with a remote deponent in order to provide time for the deponent or other parties to object or make arrangements acceptable to all parties. Additionally, the proposed rule and the statute provide that a party or attorney’s ability to attend a deposition in the physical presence of the deponent is subject to section 2025.420, which allows any party, deponent, or affected person to move for a protective order and allows a court to issue an order protecting that person.

### **Alternatives considered**

Because SB 1146 went into effect last September and expressly contradicts the current provisions of rule 3.1010, the advisory committee determined it must act and that taking no action would be inappropriate.

In addition to this recommendation, the committee considered the alternative of deleting rule 3.1010 altogether, to remove the conflict between rule 3.1010 and section 2025.310 without providing for anything further. A majority of the advisory committee ultimately decided, however, that providing guidance in the form of a rule of court is preferable. In particular, the committee concluded that amending rule 3.1010 to add a notice requirement for a party appearing at the deposition in the physical presence of a remote deponent was appropriate because the statute is silent on any such notice. Given the possibility that deponents may plan to participate in remote depositions from their homes, a notice requirement in order for other parties to be physically present was deemed crucial.

The committee also considered developing new rules governing the conduct of remote depositions, but concluded that it was too early in the process to determine what rules were needed. The committee will contemplate adding the issue to its agenda for next year.

### **Fiscal and Operational Impacts**

Given that depositions, whether in person or remote, are primarily conducted without significant involvement of courts, the proposal is unlikely to have substantial fiscal and operational impacts on courts. The courts that commented on the proposal indicated that operational impacts will be limited to notifying court staff of the changes. The proposal may provide some cost savings to litigants and courts if more remote depositions are taken and fewer discovery disputes are brought before the courts.

### **Attachments and Links**

1. Cal. Rules of Court, rule 3.1010, at pages 6–7
2. Chart of comments, at pages 8–18
3. Link A: SB 1146,  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB1146](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1146)

Rule 3.1010 of the California Rules of Court is amended, effective January 1, 2022, to read:

1 **Rule 3.1010. Oral depositions by telephone, videoconference, or other remote**  
2 **electronic means**

3  
4 **(a) Taking depositions**

5  
6 Any party may take an oral deposition by telephone, videoconference, or other  
7 remote electronic means, provided:

- 8  
9 (1) Notice is served with the notice of deposition or the subpoena;  
10  
11 (2) That party makes all arrangements for any other party to participate in the  
12 deposition in an equivalent manner. However, each party so appearing must  
13 pay all expenses incurred by it or properly allocated to it;  
14  
15 (3) Any party or attorney of record may be ~~personally~~ physically present at the  
16 deposition at the location of the deponent without giving prior written notice  
17 of such appearance served by personal delivery, email, or fax, at least five  
18 court days before the deposition, and subject to Code of Civil Procedure  
19 section 2025.420. An attorney for the deponent may be physically present  
20 with the deponent without notice.

21  
22 **(b) Appearing and participating in depositions**

23  
24 Any party, other than the deponent, or attorney of record may appear and  
25 participate in an oral deposition by telephone, videoconference, or other remote  
26 electronic means, provided:

- 27  
28 (1) Written notice of such appearance is served by personal delivery, email, or  
29 fax at least ~~three~~ five court days before the deposition;  
30  
31 (2) The party so appearing makes all arrangements and pays all expenses  
32 incurred for the appearance.

33  
34 **(c) ~~Party d~~Deponent's appearance**

35  
36 A ~~party~~ deponent must appear as required by statute or as agreed to by the parties  
37 and deponent at his or her deposition in person and be in the presence of the  
38 deposition officer.

39  
40 **~~(d) Nonparty deponent's appearance~~**

1 ~~A nonparty deponent may appear at his or her deposition by telephone,~~  
2 ~~videoconference, or other remote electronic means with court approval upon a~~  
3 ~~finding of good cause and no prejudice to any party. The deponent must be sworn~~  
4 ~~in the presence of the deposition officer or by any other means stipulated to by the~~  
5 ~~parties or ordered by the court. Any party may be personally present at the~~  
6 ~~deposition.~~

7  
8 **(e) (d) Court orders**

9  
10 On motion by any person, the court in a specific action may make such other orders  
11 as it deems appropriate.  
12

### SPR21-03

#### Discovery: Remote Depositions (Amend Cal. Rules of Court, rule 3.1010)

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

	Commenter	Position	Comment	Committee Response
1.	California Defense Counsel By Christopher E. Faenza President	N	<p>On behalf of the California Defense Counsel, we appreciate the opportunity to comment on proposed changes to California Rule of Court 3.1010, dealing with remote depositions. The California Defense Counsel is the legislative arm of the combined membership in the Association of Defense Counsel of Northern California and Nevada and the Association of Southern California Defense Counsel. Our members specialize in the representation of defendants in civil litigation.</p> <p>Respectfully we believe that the proposed rule changes should be withdrawn until further discussion can occur over issues of clarity and unintended consequences. Specifically, we would raise the following concerns:</p> <ul style="list-style-type: none"><li>• Although we recognize that the proposed rule changes are based upon the language of SB 1146 (Chapter 112, Statutes of 2020), which eliminated distinctions between party/party affiliated and third-party deponents, we believe that at the implementation level, distinctions are still necessary. While it makes sense, for example, for lawyers to advise third-party witnesses of an intention to be present at a remote deposition, the same obligation is unnecessary for affiliated witnesses;</li></ul>	<p>The committee declines to withdraw the proposed rule changes because as it stands, rule 3.1010 does not conform to statute. The committee considered deleting rule 3.1010 altogether, but decided that the rule should be retained and require notice for a party appearing at the deposition in the physical presence of a remote deponent.</p> <p>To the extent the commenter suggests retaining the current rule's different treatment of party and nonparty deponents, the committee declines to make this change because it would be inconsistent with the statute.</p> <p>The committee believes that notice of an intention to be physically present with a remote deponent is proper for all witnesses due to privacy and safety concerns and to allow the deponent, or their attorney, to object. Moreover, the notice also permits time for all the parties in the action to agree to other arrangements.</p>

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



**SPR21-03**

**Discovery: Remote Depositions** (Amend Cal. Rules of Court, rule 3.1010)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<ul style="list-style-type: none"> <li>We recommend that the Advisory Committee reconsider the timing of notices for parties and lawyers to attend remote depositions in person, and to object or seek protective orders concerning such attendance. First, we believe that the notice should be provided five days in advance of the deposition instead of the proposed three, in order to timely object, and second, we recommend that the Advisory Committee consider permitting a simple objection to attendance pursuant to Code of Civil Procedure Section 2025.410 rather than requiring a motion for protective order under Section 2025.420. Especially in the current environment, the protective order procedure could unintentionally assist lawyers in tying up the depositions they do not want to see occur.</li> <li>Practical problems may arise particularly in the context of a third-party witness who opts to appear remotely in the privacy of his/her own home, office or other setting. As currently proposed, an attorney could give written notice of his/her intention to be physically present at the location of the third-party witness. First, the attorney would need to know where the witness was located. Second, what if the</li> </ul>	<p>In light of this and other comments, the proposal has been modified to require at least five court days’ notice.</p> <p>To the extent commenter suggests that the reference to section 2025.420 be replaced with a reference to 2025.410, the committee declines the suggestion because the statute expressly provides that the remote appearances are subject to section 2025.420.</p> <p>The committee recognizes that remote depositions may raise logistical questions that might not arise with in-person depositions. That said, the committee notes that neither the recommended rule, nor section 2025.310, shifted the burden to determine the location of the deposition away from the deposing party. Additionally, both the recommended rule, and the Code of Civil Procedure permit parties to determine how a given deposition will be conducted through agreement. Finally, the required notice to be present in the</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>witness refused to allow the attorney to be present in his/her home or office? The privacy rights of an unrepresented third-party witness should be considered. These are examples of practical problems that need to be fleshed out.</p> <p>Thank you for considering our view. We would be happy to answer any questions or provide additional information upon request.</p>	<p>recommended rule provides an opportunity for the parties to make arrangements that accommodate a party or attorney’s physical presence at a remote deposition, or for the deponent to request a protective order under section 2025.420.</p>
2.	<p>Consumer Attorneys of California By Saveena Takhar, Esq. Legislative Counsel</p>	NI	<p>I write on behalf of the Consumer Attorneys of California (CAOC) to comment on “SPR21-03 Discovery: Remote Depositions.”</p> <p>CAOC is a voluntary non-profit membership organization of over 3,400 consumer attorneys practicing throughout California. The organization was founded in 1962 and many of our members represent consumers in various practice areas and have utilized remote depositions authorized by the Judicial Council Emergency Rules and SB 1146 (2020-Umberg).</p> <p><b><u>Background: The Civil Court Shutdown</u></b></p> <p>As a result of the COVID-19 pandemic, civil trials have been suspended and hearings are delayed and restricted. The civil courts are suffering their biggest hit possibly of all time. On March 27, 2020 the governor responded to civil justice issues by authorizing Chief Justice Tani Cantil-Sakauye to “take any action she</p>	<p>The committee appreciates the information provided.</p>

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	Commenter	Position	Comment	Committee Response
			<p>deems necessary to maintain the safe and orderly operation of that court.” [FN 1 <a href="https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf">https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf</a>]</p> <p>Governor Newsom also specifically suspended CCP § 2025.310 relating to remote depositions. [FN 2 <a href="https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf">https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf</a>]</p> <p>The statutory suspension was intended to allow attorneys to utilize remote depositions in every case, circumventing a law that previously had required that parties be deposed in the physical presence of a reporter unless there was a stipulation to the contrary.</p> <p>Chief Justice Tani Cantil-Sakauye and the Judicial Council responded to these requests during their April 6 emergency meeting, issuing a series of rules including Emergency Rule 11, which enacted rules for depositions through remote electronic means. [FN 3 <a href="https://jcc.legistar.com/View.ashx?M=F&amp;ID=8234474&amp;GUID=79611543-6A40-465C-8B8B-D324F5CAE349">https://jcc.legistar.com/View.ashx?M=F&amp;ID=8234474&amp;GUID=79611543-6A40-465C-8B8B-D324F5CAE349</a>]</p> <p>CAOC then joined with the California Defense Counsel (CDC) to sponsor SB 1146 (Umberg) in 2020. SB 1146 took a must needed, first step towards allowing justice to continue outside the courtroom by codifying Judicial Council Emergency Rules 11 to allow for remote depositions.</p>	

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**SPR21-03**

**Discovery: Remote Depositions** (Amend Cal. Rules of Court, rule 3.1010)

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

	Commenter	Position	Comment	Committee Response
			<p><b><u>General Comments</u></b>                      As soon as Emergency Rule 11 went into effect, the plaintiffs bar began to utilize remote depositions. Removing the requirement that the deponent be physically in the presence of the deposition officer opened up not only a means for depositions to be conducted safely during a pandemic but it also created more efficient procedures overall. Court reporters can now offer their remote deposition services throughout the state. Litigation in general has also become more efficient by avoiding travel costs and other expenses of in person depositions.</p> <p>Remote depositions are not without their flaws. Our membership has reported being met with resistance by opposing counsel either through delay tactics or gamesmanship. However, on balance remote depositions are an important tool both during the pandemic and as we move forward.</p> <p><b><u>Requested Amendment</u></b>                      CAOC agrees with the Judicial Council’s recommendation to require notice if the party or attorney of record decides to exercise their right under 2025.310 to be physically present with the deponent. Many deponents sit for their remote deposition in their home or a private place. Given health concerns due to the COVID-19 pandemic and general privacy concerns we support an amendment to Rule</p>	<p>In light of this and other comments, the proposal has been modified to require at least five court days’ notice.</p>

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	Commenter	Position	Comment	Committee Response
			<p>3.1010(a)(3) requiring notice with a caveat. CAOC urges the Judicial Council to extend the time required from three court days to five court days to give the deponent and their counsel the necessary time to take any protective action or make additional arrangements.</p> <p>Requested amendment highlighted below:</p> <p>(a) Taking depositions Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided:</p> <p>(1) Notice is served with the notice of deposition or the subpoena;</p> <p>(2) That party makes all arrangements for any other party to participate in the deposition in an equivalent manner. However, each party so appearing must pay all expenses incurred by it or properly allocated to it;</p> <p>(3) Any party <b><u>or attorney of record</u></b> may be <del>personally</del> physically present at the deposition <b><u>at the location of the deponent</u></b> <del>without giving prior written notice</del> <b><u>of such appearance served by personal delivery, email, or fax, at least <del>three</del> five court days before the deposition, and subject to Code of Civil Procedure section 2025.420.</u></b></p>	
3.	Evans, Wieckowski, & Ward By Cathleen Fralick Attorney Sacramento	A	No specific comment.	The committee notes the commenter’s agreement with the proposal.

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**SPR21-03****Discovery: Remote Depositions** (Amend Cal. Rules of Court, rule 3.1010)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
4.	Frederico Stea Attorney Los Angeles	A	No specific comment.	The committee notes the commenter's agreement with the proposal.
5.	Matthew Gardner Attorney Los Angeles	A	No specific comment.	The committee notes the commenter's agreement with the proposal.
6.	Allegra Gorchynski Attorney Los Angeles	A	No specific comment.	The committee notes the commenter's agreement with the proposal.
7.	Meechan, Rosenthal & Karpilow, P.C. By Rebecca Slay Paralegal Santa Rosa	A	These comments relate to the proposed changes for Civil practice. Yes, continue remote depositions with the recorder and deponent in separate locations!!!	The committee notes the commenter's agreement with the proposal.
8.	Orange County Bar Association By Larisa M. Dinsmoor President	N	The proposal attempts to address the stated purpose but introduces several ambiguities that would likely create confusion, uncertainty, and unnecessary litigation. Below are a few examples.  First, under Subsection (a)(3), an attorney of record who wishes to appear in person at the location must provide written notice at least three court days before the deposition. But the proposal also adds "attorney of record" to the language in subsection (b), meaning that under Subsection (b)(1), an attorney of record must provide written notice that they intend to appear remotely at least three days before the deposition. As a result, when subsections (a)(3) and (b)(1) are read together, a party's attorney—including the <i>deposing or defending attorney</i> —would be required to provide notice three days before the deposition whether they	In light of this and other comments, the proposal has been modified to expressly exclude the deponent's attorney from the required notice in subsection (a)(3). The committee also notes that subsection (a) of the recommended rule only applies when the party taking the deposition does so remotely, meaning that notice for a physical appearance at a deposition is only required at remote depositions. Furthermore, in California Rules of Court, rule 1.6 the term "party" includes "the party's attorney of record." Accordingly, the recommended amendment to subsection (b) does not impose any new notice requirement on attorneys of record.

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	Commenter	Position	Comment	Committee Response
			<p>intended to appear in person or remotely. The rule does not specify what the consequence would be for a failure to provide the required notice, but the language could be interpreted to prohibit the attorney from attending the deposition at all.</p> <p>Second, the proposed language in Subsection (c) creates additional ambiguity by striking “party” and replacing it with “deponent.” Under the proposed language, a deponent must appear as required by statute. But, under Subsections (a) and (b), “any party” may appear at a deposition in person or remotely, so long as the party provides three days’ notice. Accordingly, if the person being deposed is a party, the language is unclear as to which Subsection needs to be followed. Again, this tension in the language will create confusion and result in unnecessary motion practice that could be avoided if the rule were clarified.</p> <p>Finally, the heading of the Rule (“Oral depositions by telephone, videoconference, or other remote electronic means”) indicates the subsection is intended to apply only when the deposition is noticed as a telephonic/videoconference deposition. But, Subsection (c) allows for a deponent to be required to attend in person. It is therefore unclear whether the rule is also intended to apply when the deposition notice designates the deposition as being in person. In those cases,</p>	<p>The committee declines to recommend an amendment to the rule to specify the consequences of not providing notice. The recommended amendments, including the notice in (a)(3), are intended only to implement the provisions of revised section 2025.310.</p> <p>In light of this comment, the proposal has been modified to include “other than the deponent” in subsection (b).</p> <p>The committee declines to recommend modifying the heading of the rule because subsections (a) and (b) apply to remote deposition participants and subsection (c) does not provide any additional requirements or protections for remote or in-person deponents.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			would this rule apply? Would certain subsections apply? Given that the rule could be interpreted to cover in-person depositions as well, the language of the rule should be clarified to specify whether the Judicial Council believes it applies only in “remote” depositions or all depositions.	
9.	Marcy L. Gribin Sanchez Associate Attorney Los Angeles	A	No specific comment.	The committee notes the commenter’s agreement with the proposal.
10.	Spinelli, Donald, Nott By Natasha N. Langenfeld Attorney Sacramento	NI	Regarding the below rule amendment, we are concerned that an attorney could use this proposed rule to intrude on a deponent’s home for a deposition. We appreciate your consideration of this concern.	The committee appreciates the concern and notes that revised Code of Civil Procedure section 2025.310 expressly provides the right of parties and attorneys to be physically present with deponents. The committee added the required notice to subsection (a) of the rule to address the safety and privacy concerns by providing time for deponents to object, request a protective order, or make other arrangements. Additionally, the committee notes that neither the recommended rule, nor section 2025.310 shifted the burden to determine the location of the deposition away from the deposing party. In light of this and other comments, the rule has been amended to require at least five court days’ notice to physically appear at a remote deposition.
11.	Superior Court of California, County of Orange By Family Law and Juvenile Division	NI	Request for Specific Comments  • Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the information provided and has included the implementation requirements in the report to the Judicial Council.

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



**SPR21-03**

**Discovery: Remote Depositions** (Amend Cal. Rules of Court, rule 3.1010)

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

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li>• Would the proposal provide cost savings? If so, please quantify. No, I don't believe the proposal will provide cost savings.</li>   <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? This proposal will not have significant implementation requirements. Training will consist of informing staff of the notice requirement.</li>   <li>• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, 3 months is sufficient time for implementation.</li>   <li>• How well would this proposal work in courts of different sizes? I believe this proposal will work in courts of different sizes.</li> </ul>	
12.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	<ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? Yes.</li>   <li>• Would the proposal provide cost savings? If so, please quantify.</li> </ul>	The committee appreciates the information provided and has included the implementation requirements in the report to the Judicial Council.

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

**SPR21-03****Discovery: Remote Depositions** (Amend Cal. Rules of Court, rule 3.1010)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>No.</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? Implementation would be limited to notifying staff of the changes.</li> <li>• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</li> <li>• How well would this proposal work in courts of different sizes? It appears the proposal will work for courts of various sizes.</li> </ul>	
13.	Patricia Valenzuela Attorney Anaheim	AM	<p>Instead of the notice requirement of “3 days”, all would be better served if the notice period is counted by court days, either 2 or 3 seems reasonable. The use of “court days” will eliminate any gamesmanship stemming from the “5:00 pm Friday service” or shortening of time to object or seek a protective order, due to weekends or holidays. Thank you!</p>	The committee appreciates the comment and has retained the use of “court days” in the proposal.

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