



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-094

For business meeting on May 17, 2024

Title

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely

Agenda Item Type

Action Required

Effective Date

July 1, 2024

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 10.635

Date of Report

May 6, 2024

Recommended by

Trial Court Presiding Judges Advisory Committee

Hon. Maria D. Hernandez, Chair

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Executive Summary

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt a rule of court concerning when a judicial officer may preside remotely in civil cases subject to Code of Civil Procedure section 367.75, effective July 1, 2024. The proposed rule satisfies the statutory mandate contained in Code of Civil Procedure section 367.10 that requires the council to adopt a rule that includes “standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10.)

Recommendation

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt California Rules of Court, rule 10.635, effective July 1, 2024.

The proposed rule is attached at pages 8–9.

Relevant Previous Council Action

The council has taken no previous action regarding when a judicial officer may preside over a remote court proceeding from a location other than a courtroom.

Analysis/Rationale

Background

Code of Civil Procedure section 367.10 requires the council to adopt a rule establishing standards for when a judicial officer may preside over a remote proceeding from a location other than a courtroom. The statute provides that judicial officers may do so “in limited situations and in the interest of justice.”¹

Proposed rule

The Trial Court Presiding Judges Advisory Committee recommends adoption of proposed rule 10.635 to fulfill the statutory mandate expressed in Code of Civil Procedure section 367.10. As required by the statute, the rule sets out the limited circumstances under which, in the interest of justice, a judicial officer may preside remotely from a location other than a courtroom.

The proposed rule does not address the ability of any party or other participant to appear remotely. That option is governed by Code of Civil Procedure section 367.75 and rule 3.672. The rule also in no way limits the court’s ability to conduct remote proceedings; in accordance with the statute, it limits only the location from which the judicial officer may preside over such proceedings.

The proposed rule applies only in civil cases subject to Code of Civil Procedure section 367.75 and does not apply in criminal proceedings, juvenile justice proceedings, or proceedings in matters identified in Code of Civil Procedure section 367.76 (civil commitments and other specified proceedings). The rule also does not apply when a judicial officer presides in person over a remote proceeding.

Purpose of the proposed rule

Subdivision (a) describes the purpose of the proposed rule, consistent with the statutory mandate in section 367.10. The provision explains that the rule prescribes when, in limited situations and in the interest of justice, a judicial officer may use remote technology to effectuate their own participation in a proceeding—that is, preside remotely—from a location other than a courtroom.²

Scope of the proposed rule

Subdivision (b) describes the scope of the proposed rule, designating the circumstances and types of cases in which the rule applies.

¹ Code Civ. Proc., § 367.10.

² Proposed rule 10.635(a).

With respect to the circumstances covered by the proposed rule, the rule is limited to situations in which a judicial officer is using remote technology to effectuate their own participation in the proceeding.³ This language clarifies that if a judicial officer is presiding in person but “using” remote technology to effectuate others’ participation (such as admitting remote participants from a virtual waiting room or muting disruptive remote participants), the rule does not apply. The rule therefore does not affect the location of a judicial officer who is presiding in person, even if one or more participants join a proceeding remotely.⁴

With respect to the types of cases to which the proposed rule applies, subdivision (b)(3) establishes that the rule applies to civil cases subject to Code of Civil Procedure section 367.75. The rule therefore does not apply in juvenile justice proceedings or proceedings in certain specific matters listed in section 367.76 that are expressly excised from section 367.75 (judicial commitments, involuntary treatment and conservatorships, contempt proceedings, mentally disordered offender proceedings, commitment proceedings under the Penal Code, competency proceedings, outpatient placement and revocation proceedings, and involuntary medication and treatment hearings). Other statutory provisions already include requirements concerning the location of a judicial officer during a remote proceeding in these types of cases.⁵

The proposed rule also does not apply in criminal proceedings. The omission of criminal proceedings from the rule is not intended to authorize a judicial officer to preside remotely over such proceedings where not otherwise allowed. Because the statutory authorization for criminal remote proceedings sunsets effective January 1, 2025, it would be premature to address criminal proceedings in the proposed rule while extension of that authority is pending in the Legislature.

In addition, the proposed rule does not apply to superior court appellate division proceedings because the Appellate Advisory Committee is considering revisions to rule 8.885 (which governs oral argument in misdemeanor and limited civil appeals) and rule 8.929 (which governs oral argument in infraction appeals) that should clarify the use of remote proceedings in appellate division proceedings.⁶

³ Proposed rule 10.635(b)(1).

⁴ Accordingly, the proposed rule does not affect a court’s existing authority to convene in-person hearings outside of a courtroom. (See, e.g., Code Civ. Proc., § 651(a), (b) (authorizing site visits outside of a courtroom, including the taking of evidence at such site visits, to aid a trier of fact in determining a case); Gov. Code, § 68115(a)(1) (in times of specified emergencies, a presiding judge may request authorization to hold court sessions anywhere within the county).)

⁵ See Code Civ. Proc., § 367.76(d) (if the subject person is physically present in court, absent exceptional circumstances and exempting certain state department counsel, specified other participants and the judicial officer must be physically present in the courtroom); Welf. & Inst. Code, § 679.5(c), (d) (minor has the right to the physical presence of the defense counsel, any testifying prosecution witnesses, and the judicial officer, subject to the minor’s waiver).

⁶ Judicial Council of Cal., Advisory Comm. Agenda (Oct. 26, 2023), item 13 (Update rules regarding oral argument in the appellate divisions), p. 11, <https://www.courts.ca.gov/documents/aac-annual.pdf>.

Paragraph (b)(4) of the proposed rule clarifies that the rule does not otherwise limit any powers judicial officers have to perform certain judicial functions outside of a courtroom, as permitted by law. For example, the rule does not affect existing law permitting specific judicial acts to be performed at any place in the state.⁷

Definitions

Subdivision (c) of the proposed rule defines several of the terms used in the rule. The rule incorporates existing definitions from rule 3.672(c) (which governs remote proceedings) and Government Code section 70301(d) (which defines “court facilities” under the Trial Court Facilities Act of 2002). Incorporating existing definitions is intended to maintain clarity and consistency within the law.

Situations in which a judicial officer may preside remotely from a location other than a courtroom

The statutory mandate directs the council to adopt a rule describing “limited situations” in which, “in the interest of justice,” a judicial officer may preside remotely from a location other than a courtroom. To comply with this mandate, subdivisions (d) and (e) of the proposed rule place clear limits on judicial officers presiding remotely from locations outside of a courtroom.

To achieve appropriate limitations on judicial officers presiding remotely, the rule divides its strictures into two situations: when a judicial officer is in a court facility but not presiding from a courtroom, and when a judicial officer is outside of a court facility. The rule provides graduated provisions for these two scenarios, recognizing that only the most extraordinary circumstances will justify a judicial officer presiding remotely from outside of a court facility.

Two general limitations apply in all scenarios: (1) presiding remotely requires the approval of the presiding judge, and (2) presiding remotely must be in the interest of justice. These requirements serve two functions. First, requiring presiding judge approval assures that presiding judges have the necessary authority to exercise their assignment duties and ensure the effective management and administration of their courts in accordance with their responsibilities under rule 10.603. Their approval also ensures that the rule’s limitations will be faithfully observed. Second, requiring that presiding remotely be in the interest of justice ensures consistency with the clear statutory mandate.

Under subdivision (d) of the proposed rule, a judicial officer may preside remotely from a location within a court facility that is not a courtroom if the presiding judge approves, presiding remotely is in the interest of justice, and either (1) the proceeding is fully remote because no parties are appearing in person or (2) no courtrooms are available in the court facility. These limitations prioritize presiding over remote proceedings from a courtroom in most cases but permit some flexibility for particular circumstances. This is especially true when limited courtroom space may favor judicial officers presiding over remote proceedings from other parts

⁷ See, e.g., Code Civ. Proc., § 166(b) (authorizing judges to exercise certain powers out of court, anywhere in the state).

of a court facility, such as a conference room or chambers, to keep courtrooms available for in-person proceedings.

Under subdivision (e) of the proposed rule, a judicial officer may preside remotely from a location outside of a court facility only in very limited circumstances. Again, presiding remotely must be approved by the presiding judge and be in the interest of justice. But in addition, a judicial officer may preside remotely from a non-court location only if either (1) hazardous conditions prevent the judicial officer from safely accessing a court facility (proposed rule 10.635(e)(1)) or (2) presiding remotely in the matter is essential to preventing a significant delay that will substantially prejudice the litigants (proposed rule 10.635(e)(2)). These provisions allow cases to proceed even if external conditions prevent a judicial officer from using a court facility and give presiding judges necessary tools to prevent excessive case delays that harm litigants.

Policy implications

Adopting the proposed rule describing the limited situations in which a judicial officer may preside remotely from a location other than a courtroom will satisfy a statutory mandate. The proposed rule is carefully drafted to achieve a balance between maintaining flexibility for individual courts and effectuating the Legislature’s mandate that presiding remotely be “in limited situations and in the interest of justice.”

Comments

The proposed rule was circulated for public comment from February 8 to March 15, 2024, as part of a special cycle, and 11 comments were received. The committee received comments from the following: four individual judges, the Superior Court of San Diego County, the Family Law and Juvenile Divisions of the Superior Court of Orange County, a judicial officer at the Superior Court of Riverside County, a group of judicial officers at the Superior Court of San Bernardino County, a group of deputy directors at the Superior Court of San Bernardino County, Court Technology Services at the Superior Court of San Bernardino County, and the Orange County Bar Association. Two commenters agreed with the proposal, six commenters agreed with the proposal if modified, one commenter did not agree, and two did not indicate a position but provided suggested revisions to the proposed rule.

A chart with the full text of the comments received and the committee’s responses is attached at pages 10–22. The principal comments and the committee’s responses are summarized below. Also, several commenters provided comments addressing fiscal or operational impacts of the proposal, described below in the “Fiscal and Operational Impacts” section.

Scope of the proposed rule

Two commenters suggested that it should be made clear in a comment to the proposed rule or text accompanying the rule that the rule does not apply to superior court appellate division proceedings. As noted above, the Appellate Advisory Committee is considering revisions to the rules that govern the use of remote proceedings in appellate division proceedings. For this reason, the committee is not recommending adopting the commenters’ specific proposed

modifications. The committee does agree, as stated previously, that the proposed rule does not apply to appellate division oral arguments.

Approval by presiding judge

Two commenters suggested that, in addition to presiding judges, supervising judges be allowed to approve a request from a judicial officer to preside remotely, explaining that “[i]n bigger courts, judges have more immediate access to their supervising judges.” The committee is not recommending a change to the rule, but agrees that, in larger courts, presiding judges may determine that a supervising judge will have a more granular understanding of day-to-day issues in a particular courthouse, including the caseloads and calendars of the judicial officers. As a result, the presiding judge in such a court may find it appropriate to delegate this responsibility.

One commenter objected to the proposed rule’s requirement of presiding judge approval in order for a judicial officer to preside remotely. As discussed above and in the attached comment chart, the committee concludes an approval requirement is necessary to balance the flexibility individual courts need to ensure litigants have timely and suitable access to justice with implementing the legislative mandate to prioritize presiding from courtrooms. Moreover, that requirement assures that presiding judges are able to ensure the effective management and administration of their courts, consistent with the rule.

Location of the rule

In response to a question posed in the invitation to comment regarding whether the proposed rule should be located in title 3 (Civil) of the California Rules of Court or whether it would be more appropriate to locate it in another title (e.g., title 10 (Judicial Administration)), the Superior Court of San Diego County and the Family Law and Juvenile Divisions of the Superior Court of Orange County commented that title 10 was the more appropriate location. The deputy directors at the Superior Court of San Bernardino County, commented that title 3 seemed appropriate because of its proximity to other rules on remote proceedings.

In considering the issue, the committee believes that it is more appropriate to locate the rule in title 10. Although there is some advantage to locating the proposed rule near rule 3.672 due to their similar subject matter (remote proceedings), the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. Moreover, locating the rule in title 10 offers proximity to other rules governing the duties and responsibilities of presiding judges (rule 10.603) and trial court judges (rule 10.608). For these reasons, the committee is recommending that the location of the rule be revised accordingly.

The Family Law and Juvenile Divisions of the Superior Court of Orange County also suggested that the rule be located in title 1 (Rules Applicable to All Courts). However, the committee is not recommending that the rule be located there because the rule is not applicable to all courts.

Alternatives considered

Because Code of Civil Procedure section 367.10 mandates that the council adopt a rule of court, the committee did not consider the alternative of taking no action or an alternative that did not include adopting a rule.

Fiscal and Operational Impacts

The committee does not anticipate that this proposal would result in substantial fiscal or operational impacts on the courts. Because judicial officers and courts gained experience with remote proceedings during the height of the COVID-19 pandemic, the committee anticipates that courts will not need to make substantial operational changes to implement the proposed rule. Moreover, the rule does not mandate any court actions. Rather, the rule establishes those limited situations in which a judicial officer may preside remotely, when in the interest of justice and with the presiding judge's approval.

The committee received comments from three courts in response to questions posed in the invitation to comment regarding fiscal and operational impacts of the proposed rule. Although the courts reported a possible need for additional procedures or training concerning the proposed rule, no court reported substantial fiscal or operational burdens as a result of the proposal.

Finally, the committee anticipates no impact on litigants or other court participants because the rule addresses only the situations in which judicial officers may preside remotely; it has no bearing on whether or when parties or other participants may appear remotely.

Attachments and Links

1. Cal. Rules of Court, rule 10.635, at pages 8–9
2. Chart of comments, at pages 10–22
3. Link A: Code Civ. Proc., § 367.10,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.10.&lawCode=CCP

Rule 10.635 of the California Rules of Court is adopted, effective July 1, 2024, to read:

Title 10. Judicial Administration Rules

Division 4. Trial Court Administration

Chapter 1. General Rules on Trial Court Management

Rule 10.635. Limited situations in which a judicial officer may preside remotely from a location other than a courtroom

(a) Purpose

This rule prescribes when, in limited situations and in the interest of justice, a judicial officer may use remote technology to effectuate their own participation in a proceeding from a location other than a courtroom.

(b) Application

- (1) This rule applies when a judicial officer presiding from a location other than a courtroom uses remote technology to effectuate their own participation in the proceeding.
- (2) This rule does not apply when a judicial officer presides in person over a proceeding convened in a location other than a court facility, even if another participant appears remotely.
- (3) This rule applies to all civil cases subject to Code of Civil Procedure section 367.75.
- (4) Nothing in this rule limits a judicial officer from engaging in any other judicial functions, duties, or actions authorized by law to be performed in a location other than a courtroom.

(c) Definitions

As used in this rule:

- (1) “Court facility” has the same meaning as that provided in Government Code section 70301(d).
- (2) The following terms have the same meaning as those provided in rule 3.672(c):

Rule 10.635 of the California Rules of Court is adopted, effective July 1, 2024, to read:

(A) “Proceeding.”

(B) “Remote proceeding.”

(C) “Remote technology.”

(d) Location of a judicial officer within a court facility

A judicial officer may preside remotely from a location within a court facility other than a courtroom only if doing so is in the interest of justice, the presiding judge approves, and either:

(1) No parties are appearing in person at the proceeding; or

(2) No courtrooms are available in the court facility.

(e) Location of a judicial officer outside a court facility

A judicial officer may not preside remotely from a location outside a court facility unless doing so is in the interest of justice, the presiding judge approves, and

(1) The judicial officer cannot safely access or preside from a court facility because of hazardous conditions, including those resulting from:

(A) Natural disaster;

(B) Severe weather;

(C) Public emergency;

(D) Facilities failure;

(E) Security threats; or

(F) Other extraordinary circumstances as determined by the presiding judge; or

(2) Presiding remotely in a matter is essential to prevent a significant delay that would substantially prejudice the litigants.

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Janet M. Frangie Judge, Superior Court of San Bernardino County	N	What is the rationale for this rule? While remote proceedings have shown to be effective during the Pandemic and afterwards for consumers and attorneys, this rule seeks to restrict the court from implementing its own rules for remote access for judicial officers tailored to that court's specific needs.	Proposed rule 10.635 is a response to the Legislature's mandate in Code of Civil Procedure section 367.10 that "the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom." (Code Civ. Proc., § 367.10.)
			For example, in San Bernardino County, the largest county size wise in the contiguous United States, there may be an occasion where a judicial officer is called on to handle a calendar in a court far from his/her sitting court and remote proceedings for non-trial/evidentiary hearing purposes would be advantageous and cost-effective.	The committee agrees that judicial officers presiding remotely can offer convenience and efficiency in counties with large and diverse geography. The committee notes that nothing in the rule prevents a judicial officer from using remote technology to preside from their own bench over a proceeding in a different courthouse. If no courtrooms are available in their own courthouse, they may preside remotely from any location within the court facility under subdivision (d)(2).
			Does this rule apply to judges conducting settlement conferences and Informal Discovery Conferences in chambers via Zoom where all other parties/attorneys are also on Zoom? It would seem to.	In the described circumstances, the rule would apply and, assuming the presiding judge has approved and presiding remotely is in the interest of justice, the judicial officer would be authorized to preside remotely from chambers under subdivision (d)(1) because the judicial officer is within a court facility and all parties are appearing remotely.
			I have sat on many calendars after the Pandemic where the only person in the courtroom was me.	The committee appreciates the information.

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

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			My courtroom and the civil courtrooms in San Bernardino County contain three large screens for those present in the courtroom. When I have appeared remotely during the Pandemic from outside the court (due to quarantining), my appearance is much larger on the screen than when I am physically present in the court.	
			I urge this body to not restrict a particular court's ability to allow remote proceedings where the presiding judge or court determines that remote proceedings can be conducted by a judicial officer outside the courtroom in non-trial/evidentiary proceedings.	In light of the Legislature's requirement that the Judicial Council adopt rules that permit presiding remotely only in limited situations and in the interest of justice, the council cannot decline to adopt a rule that applies to all courts. The committee believes the rule is faithful to the legislative mandate while allowing courts the flexibility they need to ensure litigants have timely and convenient access to justice.
			At the most, this rule should be limited to non-trial/evidentiary proceedings.	The committee appreciates this comment but, in light of the Legislature's mandate, does not recommend that the rule's scope should be narrowed based on type of proceeding.
2.	Hon. Harold W. Hopp Judge, Superior Court of Riverside County	AM	I agree with the proposed rule, but suggest an edit to the language. Twice the proposed rule includes "effectuate their own participation" (subsections a and b(1)). I suggest that "participate" would convey the same meaning and save a few words. I note that elsewhere, the proposed rule uses "preside", which would also be a better alternative than the proposed language, in my view.	The committee appreciates the commenter's suggestion and agrees that using "preside" or "participate" in the referenced instances presents a more streamlined approach. The committee recommends the proposed language, however, to emphasize that presiding using remote technology does not include a judicial officer using remote technology to effectuate the participation of others at the hearing (when a judicial officer uses a

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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	Commenter	Position	Comment	Committee Response
				remote technology platform to admit a party from an electronic waiting room, for example). The committee is concerned that using only “preside” or “participate” may suggest that the rule includes when a judicial officer is presiding in person but using remote technology for other purposes. Because the rule does not encompass that situation, the committee does not recommend modifying the language.
3.	Orange County Bar Association by Christina Zabat-Fran, President	A	The Orange County Bar Association agrees with the above referenced proposals [including instant SP24-02].	No response required.
4.	Hon. Annemarie Pace Judge, Superior Court of San Bernardino County	NI	I support the ability for judicial officers to appear by remote proceedings under the proposed rule. It promotes access to justice and the speedy resolution of matters. I have conducted hearings remotely where I was recovering from surgery or illness. My ability to do my calendar from home made it so families were not subjected to continuances or long waits for their cases to be heard. It also limited the burden on the other judges who already have full calendars.	The committee appreciates the information.
			My suggested modification would be to allow supervising judges as well as the PJ to approve remote proceedings. In bigger courts, judges have more immediate access to their supervising judges.	The committee appreciates this suggestion and notes that it expects presiding judges in larger courts may find it appropriate to delegate responsibility for approving such requests.

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
5.	Superior Court of Orange County, Family Law and Juvenile Divisions by Katie Tobias, Operations Analyst	NI	This proposal will clearly state when a Judicial Officer may or may not appear remotely outside of the Court Facility and why.	The committee appreciates this comment.
			<p><i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal does appropriately address the stated purpose.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify positions and expected hours of training) and revising processes and procedures (please describe)?</i> Communication of the new rule and training sessions (2-4 hours) for new judicial officers on how to conduct hearings remotely utilizing different devices. Court Technology Services will be impacted to provide equipment and update security protocols. If new equipment is incorporated, additional training would be needed (hours dependent on type of equipment) and training materials would have to be produced.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> The proposal does not appear to provide cost savings.</p>	The committee appreciates the responses to the specific questions posed in the invitation to comment.
			<i>Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would</i>	The committee agrees that it is more appropriate to locate the rule in title 10 (Judicial Administration).

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

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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	Commenter	Position	Comment	Committee Response
			<p><i>it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?</i></p> <p>The following locations are more appropriate for the proposed rule: Title 1 (Rules Applicable to All Courts) or Title 10 (Judicial Administration).</p>	Although there is some advantage to locating the rule near rule 3.672 due to their similar subject matter, the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. In light of this, the committee recommends revising the location of the rule accordingly. The committee is not recommending that the rule be located in title 1 because the rule is not applicable to all courts.
			<p><i>Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Our court is a large court and 90 days is more appropriate for implementation.</p>	The committee appreciates this response to the specific question posted in the invitation to comment. In light of the legislative mandate, the committee does not recommend revising the effective date.
6.	Superior Court of Riverside County, "Judicial Officer" by Sarah Hodgson, General Counsel	AM	<p>Judicial officer comment: A judicial officer should not need approval from the presiding judge to preside remotely from one's chambers. It is common to do Informal Discovery Conferences, MSCs, and other work from chambers and to do so remotely. Technically, one is still presiding over these matters. Also, if technology in the courtroom is not working, it is common to preside over fully remote matters in chambers.</p>	The committee appreciates this comment. The committee included the required approval by presiding judges to achieve a balance between maintaining flexibility for individual courts and effectuating the Legislature's mandate that presiding remotely be "in limited situations in the interest of justice." The committee believes presiding judge approval is essential to this balance and necessary for presiding judges to effectively fulfill their duties. The committee therefore does not recommend revising this language.

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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	Commenter	Position	Comment	Committee Response
7.	Superior Court of San Bernardino County, Court Technology Services, by Brenda Martin Del Campo, Management Analyst II	AM	In the last sentence of the second paragraph on page 4, it seems reasonable (and likely) that a judicial officer may preside from their chambers in these circumstances as well, we could suggest that be added as an example “....such as a conference room or chambers...”	The committee agrees that, if a judicial officer otherwise meets the requirements of subdivision (d)(1), they may preside remotely from any location within the court facility, including a conference room or chambers. The committee will include the suggested example to the report to the council.
			This option could also possibly lead to different courtroom footprint needs if we could assign cases to “hearing rooms” that could potentially be smaller and/or with fewer requirements than full-blown courtrooms.	No response required.
			Some things to consider might be: 1.Procedures clarifying criteria and process for Presiding Judge approval 2.Procedures for staff support for a remote judicial officer 3.CMS Calendar/scheduling/remote appearance solution (e.g. Zoom) considerations when not in a courtroom	The committee appreciates this information. The committee expects that individual courts will implement procedures as necessary to meet their needs.
			Since it’s not a requirement for a judge to conduct proceedings remotely, I don’t know that the timeline from approval would affect implementation, but rather how long it would take our court to develop and communicate procedures and make any associated case management changes.	The committee appreciates the response to the specific question posed in the invitation to comment.

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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			This is not called out in the proposed rule, but I do think that part of the presiding judge procedure to authorize a judge to conduct a proceeding outside of the courthouse, may want to include the remote judge confirming they have adequate internet bandwidth and equipment to adequately conduct a courtroom session.	The committee appreciates this suggestion and expects that individual courts will implement procedures as necessary to meet their needs.
8.	Superior Court of San Bernardino County, “Deputy Director Feedback” by Brenda Martin Del Campo, Management Analyst II	AM	The proposal does appropriately address the status purpose.	The committee appreciates the response to the specific questions posed in the Invitation to Comment.
			Title 3 seems appropriate because it would follow the other rules regarding Hearings, Conferences and Proceedings re: Telephone Appearances and Remote Proceedings.	The committee thanks the commenter for its response to the question concerning the location of the proposed rule. The committee is recommending that the rule be located in title 10 (Judicial Administration) because the rule is fundamentally one of court administration that imposes no duties or obligations on parties, as discussed further in the response to Comment no. 5, <i>supra</i> .
			Currently we use Zoom and all our staff (CA and JA) are trained on how to use Zoom – However, if a different program is to be used we would need training.	The committee appreciates the responses to the specific questions posed in the invitation to comment.
			As we have experienced with Civil Remote Proceedings in the past implementation requirements should have minimal effect. However, we will need to implement procedures	

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	Commenter	Position	Comment	Committee Response
			<p>to properly notify the public, litigants, and counsel of when a judicial officer intends to preside remotely over a specific hearing.</p> <p>It would be necessary to create procedures for requests to the presiding judge that a judicial officer preside over a hearing remotely in the interest of justice or to prevent a significant delay that would substantially prejudice the litigants. Ex. Petitions for Request for Release of Remains.</p> <p>We think it wouldn't be cost saving but at the same time it shouldn't cost the court more money as the judges have computers. As long as we use systems that the court currently use the cost should be the same.</p> <p>I truly see very minimal cost savings in the use of Civil Remote Proceedings, because although the Court facilities and utilities may not be being used during remote proceedings, we still have the overhead costs of technology to support the remote proceedings and the time, resources and staffing effort and materials required to properly notify the public, litigants, and counsel of when a judicial officer intends to preside remotely over a specific hearing.</p> <p>This depends on the technology already available to the court. If it is not necessary to purchase new equipment and it is merely a matter of installing it in conference rooms for the remote appearance of</p>	

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	Commenter	Position	Comment	Committee Response
			a judicial officer, then it might save the court the need to remodel and create new courtrooms in counties with a greater need.	
			45-60 days from the approval of this by the JCC, should provide sufficient time for implementation.	The committee appreciates this response to the specific question posed in the invitation to comment. The committee does not recommend any change to the implementation date, as discussed further in the response to Comment no. 5, <i>supra</i> .
			I know CCP367.75 outlines the proceedings eligible for remote appearance; however trials will be problematic or any evidentiary hearing because of exhibits.	The committee appreciates this information. The committee notes that the rule would not provide any limitations or authorizations beyond existing law governing when a court may conduct remote proceedings, or in which types of cases a court may do so.
			Does location matter, in terms of the judge being in the county the case resides?	The committee notes that the rule does not place any limitations on a judicial officer's specific location beyond whether the judicial officer is in a courtroom, in a court facility, or outside a court facility. However, to the extent existing law addresses the locations from which a judge may perform certain functions, that law would continue to govern.
9.	Superior Court of San Bernardino County, "Judicial Officer Feedback" by Brenda Martin Del Campo, Management Analyst II	AM	I would be completely supportive of a Judges ability to appear remotely. Especially when a Judge is ill or must quarantine secondary to COVID or any other infectious process that would	The committee appreciates this information. The committee notes that whether an illness or quarantine will justify a judicial officer's presiding remotely under the rule will depend on the individual circumstances at issue.

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

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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

	Commenter	Position	Comment	Committee Response
			be a source or contamination for the staff as well as the public.	
			I support it as I have used this option during an illness and that it prevented delays for the families waiting for their cases to be heard.	The committee appreciates this information.
			I also suggested that the supervising judge be able to approve remote proceedings by the judge.	Please refer to the committee's response to Comment no. 4, <i>supra</i> .
			Not sure why it is necessary to make a distinction between on facility and off facility. Seems like remote is remote. Clearly, they are discouraging off facility appearances. Is it because of logistics? (files, staff...?) or security (signing in from unsecure equipment?) which leads to my second thought...	Proposed rule 10.635 is a response to the Legislature's mandate in Code of Civil Procedure section 367.10 that "the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom." (Code Civ. Proc., § 367.10.)
			Is there any limitations on the security of the equipment being used? Does it have to be on court provided equipment? Is this something to be determined on a Court by Court basis?	Nothing in the rule addresses required equipment or security protocols. The committee is not recommending changes in response to this suggestion because it is outside the scope of the current proposal.
			Do they need to address staff, JA, Reporter? Does this contemplate they will also be appearing remotely, but at the facility? especially for off facility hearings?	The rule addresses only the location from which a judicial officer may preside remotely. Separate statutes and rules govern the location of other court staff. The committee notes that if an "off-facility hearing" is an in-person hearing, then the rule does not apply. Even if one or more participants appear remotely at such a hearing, if the judicial officer is presiding in person, the rule does not apply. (See Proposed rule 10.635(b)(2).)

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Civil Remote Proceedings: When a Judicial Officer May Preside Remotely (adopt Cal. Rules of Court, rule 3.674)

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	Commenter	Position	Comment	Committee Response
			I support the proposal, but there are two clarifications that would be helpful. First, the comments accompanying the rule could make clear that the presiding judge could authorize a judicial officer to conduct multiple hearings away from court, for a period of time, encompassing multiple cases.	The committee appreciates these comments. The committee expects that individual courts will implement procedures as necessary to meet their needs.
			Second, as the rule is currently written it appears to be limited to "hazardous conditions." Presumably that could include a hazard to a judge's health, but the phrasing of the rule makes it appear to be focused on external factors. Those might already be implied, given the breadth of the proposal, but it seemed worth mentioning.	The committee notes that the rule does not include health hazards to a judicial officer as a specific, enumerated basis for presiding remotely. However, it is possible that such hazards may constitute "other extraordinary circumstances as determined by the presiding judge" under subdivision (e)(1)(F), or may authorize presiding remotely to prevent a significant and prejudicial delay under subdivision (e)(2), provided the other requirements of the subdivision are met. This will depend on the individual circumstances at issue.
			Another small point: appellate division hearings do not raise the same concerns as other court proceedings. California's appellate courts have conducted oral arguments with justices not being in a court location, which speaks to the nature of appellate calendars – there are no witnesses, no evidence, and no juries. That being so, I believe the text accompanying the rule (in particular, the second paragraph of the executive summary) should state that just as the rule does not apply to non-civil proceedings, it does not apply to appellate division proceedings.	The committee appreciates this comment and will integrate the suggested reference into the report to the council.

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	Commenter	Position	Comment	Committee Response
10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	<p><i>Does the proposal appropriately address the state purpose?</i> Yes.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) and revising processes and procedures (please describe)?</i> Updating procedures and minute orders.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> No.</p> <p><i>Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	The committee appreciates the responses to the specific questions posed in the invitation to comment.
			<p><i>Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?</i> It would be more appropriate to locate the rule in Title 10 Judicial Administration.</p>	The committee agrees that it is more appropriate to locate the rule in title 10 (Judicial Administration). Although there is some advantage to locating the rule near rule 3.672 due to their similar subject matter, the proposed rule is fundamentally one of court administration that imposes no duties or obligations on parties. In light of this, the committee recommends revising the location of the rule accordingly (see response to Comment no. 5, <i>supra</i>).

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	Commenter	Position	Comment	Committee Response
11.	Hon. Helen Williams Judge, Superior Court of Santa Clara County	A	It would seem that the proposed rule is not intended to cover appellate division oral arguments, which include limited civil cases and which are elsewhere covered at rule 8.885. These arguments occur in superior courts. This appellate division rule (which needs to be updated) allows oral argument by "videoconference" or for judges to appear/preside that way under certain circumstances. It might help to have a comment to the proposed rule [10.635] that expressly says it is not intended to cover appellate division arguments occurring in superior court.	<p>The committee thanks the commenter for the suggestion and agrees that the rule does not encompass appellate division oral arguments. Because the Appellate Advisory Committee is considering revisions to rules 8.885 and 8.929, which govern the use of remote proceedings in appellate division proceedings, the committee does not recommend adopting this modification.</p> <p>In order to clarify the rule's scope, however, the committee will note in the report to the council that the rule does not impact appellate division proceedings (see response to Comment no. 9, <i>supra</i>).</p>

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