



Remote Proceedings Resource Guide for Judicial Officers

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AD HOC WORKGROUP ON POST-
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I. Introduction

A. Enhancing Access to Justice

Conducting court proceedings remotely using video remote conferencing software, also known as *virtual meeting software*, is a relatively new innovation in California’s courts. In 2017, the Commission on the Future of California’s Court System delivered a report to the Chief Justice that recommended that “the option to attend court proceedings remotely should ultimately be available for all noncriminal case types and appearances, and for all witnesses, parties, and attorneys in courts across the state.” (Commission on the Future of California’s Court System (Futures Commission), *Report to the Chief Justice* (Apr. 2017), p. 222, www.courts.ca.gov/documents/futures-commission-final-report.pdf.)

Use of video remote conferencing to conduct proceedings can make California’s courts more efficient and accessible to many litigants. The Futures Commission report identified benefits of video remote conferencing, including:

- Giving participants the option to appear from their homes or workplaces;
- Saving time, travel costs, and the need to miss work or arrange childcare;
- Access for those who have physical disabilities or who live far from the courthouse; and
- Providing in-custody litigants with the ability to appear in civil matters.

(*Id.* at p. 223.)

Although many courts have been preparing for and piloting video remote conferencing technologies, the COVID-19 pandemic required California’s courts to start conducting remote proceedings without the benefit of advance planning for broad deployment and daily use. Because public health officials previously limited the occupancy of confined spaces, remote proceedings became frequent and widespread. They allowed the state’s courts to stay open to litigants during the public health crisis, when court services were acutely needed.

Remote proceedings continue to be a part of California’s court system. The 2021 California Court Efficiency Act gives parties the option to appear remotely in civil cases and authorizes courts to conduct proceedings—including conferences, hearings, and trials—through the use of remote technology until July 1, 2023. (Sen. Bill 241.)

The Judicial Council of California will submit a report to the Legislature and the Governor by January 1, 2023, on trial courts’ use of remote technology in civil cases. (Assem. Bill 177.) The Judicial Council will also convene a working group to recommend a statewide framework for remote civil court proceedings that addresses equal and fair access to justice. (*Id.*) A report with the working group’s recommendations will be submitted to the Legislature and the Governor by January 1, 2023. (*Id.*)

Many judicial officers now preside over a remote courtroom for part or all of the day. The use of video conferencing in the courtroom is new; it requires developing familiarity with and effective use of video remote conferencing software. Judicial officers need to know how to establish and

maintain a confident and engaged virtual presence. In addition, judicial officers must rely on the software's features to maintain control of a virtual courtroom even when court staff, attorneys, and litigants are not in the same place.

B. Scope of This Resource Guide

The Judicial Council has created this resource guide to help judicial officers plan and conduct proceedings through the use of video conferencing, also referred to as “remote court proceedings.” This publication offers suggestions for presiding over remote court proceedings. Although such proceedings may involve both video and audio virtual meeting technologies, this guide focuses on video conferencing proceedings. Also, whereas some proceedings involve remote parties exclusively, many are hybrid situations in which some participants are physically present in the courtroom while others participate remotely. This guide highlights key things that you may want to consider prior to beginning a remote court proceeding and identifies issues that may arise when you are using video remote conferencing software to conduct a remote court proceeding. It also lists helpful resources with more in-depth information about these topics.

II. Video Remote Conferencing Best Practices for Remote Court Proceedings

A. Goals of Remote Court Proceedings

Remote court proceedings should be effective and productive for judicial officers and accessible and fair for litigants. Your courtroom staff will want a remote court proceeding that is organized and well managed. Clerk's office staff and other processing staff are likely to desire predictability and efficiency. Finally, information technology court staff are probably concerned about security, and the reliability of the technology and software used for remote court proceedings.

It is a branch goal that, ultimately, remote court proceedings be made available whenever needed to enhance access to court proceedings. All 58 superior courts have already held at least one remote proceeding. We recommend that all courts adopt remote court proceedings as part of everyday practice and fully integrate them into existing court processes and systems, as appropriate to the case type, the specific case, and the nature of the proceeding. As remote court proceedings are viewed and implemented as an alternative to appearances in a physical courtroom, their use need not be limited to temporarily solving the challenges posed by the COVID-19 pandemic.

B. Remote Court Proceedings as an Alternative to Traditional In-Person Court Proceedings

Remote court proceedings are new and unfamiliar territory for everyone. It is important to remind yourself—as well as court staff, attorneys, and litigants—of these facts. Patience is key for all parties, those on camera and those behind the scenes.

Although using video remote conferencing software to conduct remote court proceedings allows important court business to continue when in-person appearances are not possible, it does not feel identical to your physical courtroom. It expands access but requires learning new tools and processes. Because technical aptitudes vary considerably, the attorneys and litigants who appear in your virtual courtroom, especially self-represented litigants, may already feel stressed by using technology to make their court appearance. Lack of technical experience and knowledge, both actual and self-perceived, may exacerbate the situation. In addition, most courts cannot provide extensive technical support to parties and attorneys who are appearing remotely. On the other hand, some litigants and attorneys are well versed on the use of technology and may appear better prepared than those who are not as adept. Thus, holding remote court proceedings requires planning, adaptability, flexibility, and calmness.

C. Key Considerations Before Commencing Remote Court Proceedings

1. More Time

When calendaring remote court proceedings, consider allocating more time than would be allowed for the same proceeding when all parties are present in the courtroom. Remote court proceedings may take longer than expected because of inexperienced participants and unforeseen technological issues.

2. Preparation of Necessary Equipment

If available, designate a trained staff member to check all video and audio equipment before a remote court proceeding. The goal is to ensure that the equipment functions properly and that all parties in the virtual courtroom can clearly participate in the proceedings. This standard protects due process and encourages participation.

3. Level of Public Access

Determine the level of access that is appropriate for each remote court proceeding so that it can be accommodated. For example, certain juvenile law proceedings require limited access because of the sensitive nature of the topics being discussed.

4. Digital Documents

Digitize documents whenever possible, especially for active cases, to provide remote online access for parties who may need to view or reference those documents during the remote court proceeding.

5. Electronic Signatures

Encourage the use of electronic signatures where allowed and practical.

6. Being Seen and Heard During Remote Court Proceedings

Four factors impact on-camera appearance: lighting, camera, clothing/background, and audio. For each category, the following checklists of recommended practices will help ensure that a judicial officer can be clearly seen and heard during a remote court proceeding—maintaining the same quality over a remote court proceeding as an in-person one.

a. Lighting Checklist

- ☐ *Check the lighting before remote court proceedings start.* A room must be sufficiently lit for a person's face to be clearly visible to other users of the video remote conferencing software. People and objects in a room that is too dark are likely to appear grainy on video.
- ☐ *Direct light at the front or side of one's face for optimum visibility.* It is preferable not to sit in a place with a window directly behind you. Too much light behind a person appearing on camera is likely to make the face too dark to see facial expressions or create unwanted shadows. Overhead ceiling lighting can pose similar problems.
- ☐ *If necessary, position a desk light or other small bulb near the camera, pointed in the direction of the person on screen.* An ideal light source will be about an arm's length away from the face of the person appearing on camera. Alternatively, sit in front of a

window. Natural light can be an adequate substitute for a light bulb. Experiment before remote proceedings to select the best option.

b. Camera Checklist

- ☐ *Position the camera at or slightly above eye level.*
- ☐ *Sit an arm's length away from the camera.* Doing so ensures that the microphone will effectively detect your voice and transmit it to participants.
- ☐ *As often as possible, look directly at the camera when speaking.* Doing so allows you to make eye contact with the participants. It also ensures that your voice is being projected directly toward the microphone. Do not look only at your computer screen or keyboard.

c. Clothing/Background Checklist

- ☐ *Solid-colored clothing looks best on camera.* Patterned clothing and accessories with stripes, checks, busy patterns, or certain colors may appear distorted on camera. A robe is required for all court proceedings, including those conducted from judicial chambers.
- ☐ *Consider whether using the software's digital background will create distracting distortions for others.* Clothing of a certain color may clash with or interfere with virtual backgrounds. A person who moves, even slightly, while using a virtual background may appear distorted or irregular. It is a good idea to test the compatibility of a clothing and virtual background combination before a remote court proceeding.
- ☐ *Maintain personal privacy.* Check to see whether family photos, bulletin board notes, or other items should be moved out of camera view.

d. Audio Checklist

- ☐ *Ambient noise in the same room as the camera will make speech unclear and may interrupt other participants who are trying to speak.* Sources include music, telephone and live conversations, smartphone tones, and animals.
- ☐ *To check your microphone levels before joining a remote court proceeding, open the computer's audio settings and select the microphone that you will use.* Verify that you can be heard and that the program detects your voice.
- ☐ *Consider muting yourself when you are not speaking to avoid transmitting background noise.* It is a good idea to become familiar with the video remote conferencing software's mute features. For example, some programs automatically mute participants when they are not speaking. In addition, a participant's audio may be muted when joining remote court proceedings.
- ☐ *Remote proceedings may present some challenges with respect to multiple parties speaking at the same time.* Simultaneous remote speakers may cancel each other out. You may need to ask the speakers to repeat what was said separately. Consider advising participants at the beginning of the remote court proceeding to pause briefly before talking because there may be audio and/or video delays when using video remote conferencing software.

- *Keep the space around smartphones and tablets free of extraneous noise.* Because the microphones on these devices pick up noise easily, when one is used to connect to video remote conferencing software, place it on a stable surface and do not move or touch the device or shuffle papers near it once remote court proceedings have started. Also do not put your device near a keyboard if you will be typing during the proceeding.

7. Security Considerations Before Remote Court Proceedings

a. Interference by Uninvited Participants

Bad actors in all sectors have disrupted video remote meetings. One example of a cyberattack that could occur during a remote court proceeding is so-called “Zoom bombing,” when an uninvited individual joins a meeting to post explicit video and audio, such as pornographic and/or hate images, or use threatening language.

b. Privacy

Reduce the possibility of a cyberattack interrupting a remote court proceeding by using the video remote conferencing software’s settings to manage access to each proceeding. Require a meeting password to join, or use the waiting room feature to control who is admitted. If you use the waiting room feature, you will be notified about each attendee who wants to join the proceedings and can decide whether they should be admitted.

c. Limited Screen Sharing and File Transfer

Set screen-sharing options to “host only” until another party needs to share something. At that time, you can allow the specific participant to share their screen if you decide that it is appropriate. Encourage sharing of a single application rather than the entire screen to preserve privacy by avoiding inadvertent sharing and interruptions from email notifications. Remember to revoke that ability once sharing is finished. Similarly, disable the annotation and file transferring features when they are not being used.

d. Assignment of a Backup Host

Consider increasing the security of the remote court proceeding by designating court staff to be a backup host when possible. Doing so prevents the host role from being assigned to an unexpected or unauthorized attendee if you inadvertently lose your connection. A designated backup host can start or continue the remote court proceeding and act as the host, keeping all parties online until you are able to rejoin. Backup hosts can be chosen when scheduling a remote court proceeding.

8. Remote Proceedings That Require Language Interpretation

Plan ahead when using remote language interpreting. Doing so will ensure availability of equipment, services, and personnel. Optimize interpreter resources. Consider talking with the interpreter ahead of time to discuss potential challenges. Determine in advance which cases will require interpreters, and group those cases together.

9. Advance Stipulations and Admissions

The most efficient use of the court's and parties' time may be to ensure that any stipulations and admissions regarding the authenticity of records be submitted and resolved before remote court proceedings.

D. Key Considerations During Remote Court Proceedings

1. At the Beginning of Remote Court Proceedings

a. Participant-Related Logistics

At the beginning of the remote proceeding, set forth the processes and protocols. These include when to state your appearance, and protocols on speaking and giving testimony, not talking over others, notifying the court about audio problems, using interpreters, court reporter presence, and handling documents. It is important that everyone involved understands the protocols and what is expected to maintain order and a sense of formality.

(1) Offensive Backgrounds

Ensure that participants' backgrounds, whether physical or virtual, do not contain material that is considered offensive and risks prejudicing the proceedings. Examples of possibly offensive materials that may prejudice the proceedings include a wall hanging, piece of clothing, or a virtual background that depict hate speech, obscene gestures, or profane language.

(2) Muted Audio

Consider reminding participants to mute their audio when they are not speaking, and to unmute their audio when it is their turn to speak.

(3) Keeping Available Video Turned On

Consider reminding parties who have cameras to turn on their video so that active participation is clear to everyone.

(4) Audio-Only Participants

When participants are using only audio, remind them to identify themselves before they speak so that everyone knows who is speaking.

b. Discussing Expected Behavior Before a Disruption Occurs

A discussion at the beginning of a remote court proceeding may be an effective tool that a judicial officer can use to prevent participants from being disruptive. Some judicial officers choose to have a staff member, a courtroom deputy, or themselves discuss ground rules with all remote participants before explaining the substance of remote court proceedings.

Possible topics include how the court proceeding will be conducted, how the audio or video platform will be used, and basic rules that all participants and specific participants must follow. For suggestions about responding to disruptive behavior during an in-progress remote court proceeding, see section II.D.2.d below (Handling Disruptive Behavior During a Remote Court Proceeding).

2. Key Considerations During In-Progress Remote Court Proceedings

a. Personal Privacy

Conducting remote court proceedings implicates privacy concerns. Unlike a physical courtroom, where the bailiff and other staff can fully monitor the activities of participants and observers, individuals using video conferencing software are likely able to surreptitiously record or photograph the proceedings. Anyone using video conferencing software should be aware of that risk. They should avoid, for example, sharing or saying their social security number, home address, or bank account number in a remote proceeding, in the same way that they would not speak such private information into the microphone in a public courtroom. A judicial officer who is presiding over a remote court proceeding may decide to offer a general reminder to avoid disclosing sensitive information over video conferencing software because it could be overheard by an unintended audience. This warning might be offered at the start of the proceedings or interjected at a juncture where it seems likely that such information is about to be shared.

b. General Approaches to Remote Evidence Sharing

Most video remote conferencing software programs provide tools that all participants in a remote court proceeding can use to share documentary evidence. These tools include the ability to share one's computer screen or a particular computer application with all participants, and the ability to transfer, or *send*, electronic files and documents to other participants in remote court proceedings.

In addition, when objects have been photographed or videotaped, the court can keep the original item while sharing the photo or video of the item with multiple parties who are attending remote court proceedings.

Before deciding the most appropriate way to share evidence during a remote proceeding, judicial officers may want to consider the court proceeding type, the sensitivity of the likely topics, and the security level required.

(1) Security of Evidence Shared During Remote Court Proceedings

Sharing evidence during a remote court proceeding may raise special considerations that do not exist when the physical evidence and all parties are present in the same courtroom.

(a) Email

Email is routinely used to communicate and send files, but it is not a secure process. Think of an email message as similar to a mailed postcard: it may be

viewed by parties other than the intended recipient, and, after being delivered, can be sent to others. For this reason, email should not be used to transmit sensitive information, either in the body of an email or an attachment. Even well-intentioned parties may inadvertently send an email to unintended or incorrect recipients and may mistakenly attach the wrong file to an email. Version control problems may arise when email is used, where a person may send one email and then a similar but slightly different email later. An email with numerous files or very large files attached can be hard to keep track of and to parse.

Moreover, email can be illegally captured by or forwarded to another party, either intentionally or unintentionally. Email is also a common entry point for destructive computer and network viruses.

You should consult your court's information technology department to find a more secure platform than email. Alternatives to email may include transferring a document, file, or photograph through video remote conferencing software. Your court may also provide access to Secure File Transfer Protocol (SFTP) or cloud storage that can be shared via a link.

(b) Witness Testimony

You may want to consider the specific noncourtroom location of parties, attorneys, and testifying witnesses. A person's location could reasonably be viewed as relevant because it may have security and privacy implications. It could also impinge on the person's candor. For example, if a testifying witness who has sensitive information is not alone or is in a location where they could be overheard, the witness may improperly censor their responses. This scenario could lead to the court's deciding the case with limited and incomplete information.

(c) Document Redaction

Redaction of documents may happen differently during remote court proceedings. In particular, redacting documents before they are shared with other parties will require careful use of available technology. Handing the judge a document and asking for a quick *in camera* review is a straightforward process when the parties are present in person; creativity and care are required to duplicate that process in a remote proceeding.

c. Conducting Private Conversations During a Remote Court Proceeding

Video remote conferencing software offers two ways to have a private conversation during a remote court proceeding: (1) the chat feature allows you to type a message to all or selected participants, and (2) the breakout room feature allows selected parties to be moved by the meeting's host to a private subsidiary videoconference where the conversation will not be heard by participants who remain in the main room. Note that not all video remote conferencing software includes these capabilities, and advance

planning with your court's information technology department is recommended if these features are desired.

Please be aware that parties in a case before you may be having simultaneous private conversations through another platform. For instance, during a remote court proceeding, a defense attorney and a prosecutor may be texting each other about the logistics of an upcoming case or attempting to resolve a case.

In addition, the Code of Judicial Ethics canon prohibiting improper ex parte communications also applies during remote proceedings and conversations, the same as in any other in-person or written conversation with parties and witnesses. (Cal. Code Jud. Ethics, canon 3B(7).)

d. Handling Disruptive Behavior During a Remote Court Proceeding

A discussion before a remote court proceeding may be an effective tool that a judicial officer can use to prevent proceeding participants from behaving disruptively. (See § II.D.1.b., *Discussing Expected Behavior Before a Disruption Occurs*.) If that tactic is not employed or is ineffective, there are technological tools that may help you curb disruptive behavior.

These tools include muting a participant's audio, turning off a participant's camera, moving a participant to a waiting room, or removing a participant entirely. Make sure to create a record of any action that you take.

e. Remote Court Proceedings That Require Language Interpretation

During remote court proceedings, language interpretation is likely to be different from the interpreting that happens when all parties are present in the same room. The process will almost certainly take longer during a remote court proceeding. The interpreter may require more frequent breaks to maintain accuracy. The limited-English-proficient (LEP) court user may want periods off of the record, as well, because communicating through an interpreter over remote conferencing software may increase fatigue and stress.

When an LEP court user requires the help of a language interpreter to access remote court proceedings, video remote interpreting is an available option.

(1) Video Remote Interpreting

The first option for language interpretation during a remote court proceeding is video remote interpreting (VRI). This option is available in some courts. Using VRI requires unique considerations.

(a) Interrupting and Clarifying; Suspending and Rescheduling

Consult with the interpreter to determine the best way to facilitate needed interruptions. Suspend and reschedule a matter if, for technology or other reasons, VRI fails to facilitate effective communication or if the interpreter finds

the communication to be ineffective. Testing VRI equipment prior to the proceeding will minimize the impact of potential technical issues.

(b) VRI Likely to Increase Interpreter Fatigue

It is possible that VRI sessions may need to be shorter and have more frequent breaks than in-person interpreting.

(c) An Advantage of VRI Over Audio Only

VRI has an advantage over remote audio interpreting: it provides visual cues.

(d) Written Documents

The court must ensure that written information, including exhibit copies and postproceeding documents such as orders, is sent to the interpreter so that the interpreter can provide the LEP individual with sight interpretation, if necessary.

III. Resources

Brennan Center for Justice, *The Impact of Video Proceedings on Fairness and Access to Justice in Court* (Sep. 10, 2020), www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court.

Brennan Center for Justice, *Principles for Continued Use of Remote Court Proceedings* (Sep. 10, 2020), www.brennancenter.org/our-work/research-reports/principles-continued-use-remote-court-proceedings.

California Commission on Access to Justice, *Remote Hearings and Access to Justice During COVID-19 and Beyond* (May 18, 2020), <https://www.calatj.org/wp-content/uploads/2021/01/2020-Remote-Hearings-Guide.pdf>.

California Courts, Judicial Resources Network, “Language Access Resource Center,” <https://jrn.courts.ca.gov/programs/lap/resource.htm> (as of Oct. 27, 2021).

California Courts, Judicial Resources Network, “Video Remote Interpreting (VRI) Resource Center,” <https://jrn.courts.ca.gov/programs/lap/vri-resources.htm> (as of Oct. 27, 2021).

California Judicial Branch, *Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language–Interpreted Events* (May 21, 2021), www.courts.ca.gov/documents/vri-guidelines.pdf.

Joint Technology Committee, *JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings* (June 25, 2020), www.ncsc.org/_data/assets/pdf_file/0019/42814/2020-07-27-Managing-Evidence-for-Virtual-Hearings-002.pdf.

National Center for State Courts, *Conducting Fair and Just Remote Hearings: A Bench Guide for Judges*, www.ncsc.org/_data/assets/pdf_file/0025/51784/Remote-Hearing-Bench-Guide.pdf (as of Oct. 27, 2021).

IV. Public Access to Remote Court Proceedings

There are multiple ways that courts are providing public access to remote court proceedings. Your court's information technology staff may be able to provide a listen-only audio solution to give the public access to your virtual courtroom. You may also contact the Judicial Council of California's Information Technology department for assistance.