



JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-072

For business meeting on January 21, 2022

Title

Judicial Branch Administration: Emergency Rules on Juvenile Dependency and Juvenile Delinquency Proceedings

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, emergency rules 6 and 7

Recommended by

Hon. Marsha G. Slough, Chair, Executive and Planning Committee
Hon. David M. Rubin, Chair, Judicial Branch Budget Committee and Litigation Management Committee
Hon. Kyle S. Brodie, Chair, Technology Committee
Hon. Marla O. Anderson, Chair, Legislation Committee
Hon. Carin Fujisaki, Chair, Rules Committee

Agenda Item Type

Action Required

Effective Date

January 21, 2022

Date of Report

January 7, 2022

Contact

Michael I. Giden, 415-865-7977
michael.giden@jud.ca.gov

Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council amend California Rules of Court, emergency rules 6 and 7, effective January 21, 2022, by replacing references to emergency rule 3 and rule 5.531 with references to new Code of Civil Procedure section 367.75 and its implementing rule, rule 3.672. The amendment would conform both rules to recent changes in the law regarding remote civil proceedings, which are governed by section 367.75 and rule 3.672, effective January 1, 2022, and is consistent with the recent amendment to emergency rule 3 that removed emergency rule 3's application to civil cases and confirmed its continued application to criminal cases.

Recommendation

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council, effective January 21, 2022, amend California Rules of Court, emergency rules 6 and 7 by replacing references to emergency rule 3 and rule 5.531 with references to Code of Civil Procedure section 367.75 and its implementing rule, rule 3.672.

The proposed amended rules are attached at page 4.

Relevant Previous Council Action

The Judicial Council, on April 6, 2020, adopted 12 emergency rules to address the impact of the COVID-19 pandemic on California residents and the courts in an effort to help courts continue to carry out their constitutional mission while protecting the health and safety of court users, court employees, and judicial officers. Among these rules was emergency rule 3, which authorized courts to conduct judicial proceedings and court operations using remote technology, as well as emergency rules 6 and 7, which set out emergency procedures for juvenile dependency and juvenile delinquency proceedings, respectively. At its meeting on November 19, 2021, the council approved amendments to emergency rule 3 that removed civil proceedings from the scope of the rule and confirmed that the rule will continue to apply to criminal proceedings.

Analysis/Rationale

Emergency rules 6 and 7 were drafted to provide juvenile courts with sufficient flexibility to conduct all necessary proceedings during the COVID-19 pandemic, and both rules authorize juvenile courts to hold remote proceedings subject to the provisions of emergency rule 3 that, at the time they were adopted, authorized courts to use technology to conduct judicial proceedings remotely in both civil and criminal cases.

Due to the success of remote proceedings during the pandemic and the improvement in access to justice, stakeholders and the Judicial Council urged the Legislature to enact a statute that authorizes courts to use remote technology to conduct civil proceedings. In response to these efforts, the Legislature enacted Code of Civil Procedure section 367.75¹ as part of Senate Bill 241 (Stats. 2021, ch. 214) (Link A). Section 367.75 authorizes the use of remote proceedings in all civil cases beginning January 1, 2022, and requires the Judicial Council to adopt rules of court to implement the statute. A new rule and rule amendments implementing section 367.75 went into effect January 1, 2022, via Circulating Order CO-21-05, coinciding with the effective date of the new statute.

The Judicial Council adopted emergency rule 3 early in the COVID-19 pandemic when the Legislature was not in session and could not take the actions necessary to explicitly authorize the use of remote judicial proceedings. By enacting section 367.75, the Legislature has now addressed the circumstances under which courts can conduct remote proceedings in civil cases, including juvenile dependency and delinquency proceedings. Now that emergency rule 3 no longer applies to

¹ All further statutory references are to the Code of Civil Procedure unless otherwise noted.

dependency or delinquency proceedings, it is necessary to revise emergency rules 6 and 7 so that there is no ambiguity about the procedures that apply to remote proceedings in these cases.

The revisions to emergency rules 6 and 7 would simply replace “rule 5.531 and emergency rule 3” with “Code of Civil Procedure section 367.75 and rule 3.672.” With this change, courts would have the authority to hold remote proceedings in dependency and delinquency matters subject to the requirements of the new statute and rule.

Policy implications

Amending emergency rules 6 and 7 to update the references to the authority to conduct proceedings via remote technology to reflect the recent change in the law furthers the council’s mission to improve the administration of justice and to increase access to justice.

Comments

The proposal to amend emergency rules 6 and 7 was not circulated for public comment. The primary reason is that it conforms the rule to changes in law resulting from the enactment of section 367.75, which will now govern the use of remote technology for civil proceedings, including juvenile matters. In addition, given that section 367.75, rule 3.672, and amendments to emergency rule 3 are effective on January 1, 2022, it is vital to conform rules 6 and 7 expeditiously to avoid any confusion or ambiguity about the conduct of juvenile proceedings via remote technology.

Alternatives considered

The internal committee chairs considered taking no action or, alternatively, repealing emergency rules 6 and 7 entirely. If there is no amendment to these rules, there would be ambiguity and confusion as to how to implement them with regard to proceedings via remote technology. Section 367.75 and rule 3.762 clearly apply to dependency and delinquency matters, and thus the references to emergency rule 3 in rules 6 and 7 can only cause confusion. If the rules were repealed entirely, other provisions in the rules that provide flexibility during the pandemic would be lost. Given the uncertainty about the duration of the pandemic emergency it is premature to repeal those rules.

Fiscal and Operational Impacts

Any costs and operational impacts resulting from revising emergency rules 6 and 7 to reflect the application of section 367.75 as of January 1, 2022 (e.g., costs for training court staff and judicial officers) would be the result of the new statute, and not of this proposed amendment conforming the rules to the statute. Amending emergency rules 6 and 7 is unlikely to have any direct fiscal and operational impacts.

Attachments and Links

1. Proposed Cal. Rules of Court, emergency rules 6 and 7, at page 4
2. Link A: Sen. Bill 241 (Stats. 2021, ch. 214),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB241

Emergency rules 6 and 7 of the California Rules of Court are amended, effective January 21, 2022, to read:

1 **Emergency rule 6. Emergency orders: juvenile dependency proceedings**

2
3 **(a)–(b) *****

4
5 **(c) Foster care hearings and continuances during the state of emergency**

6
7 (1) A court may hold any proceeding under this rule via remote technology
8 consistent with ~~rule 5.531 and emergency rule 3~~ Code of Civil Procedure
9 section 367.75 and rule 3.672.

10
11 (2)–(7) ***

12
13 **(d) *****

14
15
16 **Emergency rule 7. Emergency orders: juvenile delinquency proceedings**

17
18 **(a)–(b) *****

19
20 **(c) Proceedings with remote appearances during the state of emergency.**

21
22 (1) A court may hold any proceeding under this rule via remote technology
23 consistent with ~~rule 5.531 and emergency rule 3~~ Code of Civil Procedure
24 section 367.75 and rule 3.672.

25
26 (2)–(4) ***

27
28 **(d)–(f) *****