



Judicial Council of California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-194

For business meeting on November 17, 2023

Title

Judicial Branch Administration: Ad Hoc
Workgroup on Post-Pandemic Initiatives
Final Report

Agenda Item Type

Information Only

Date of Report

October 26, 2023

Submitted by

Ad Hoc Workgroup on Post-Pandemic
Initiatives
Hon. Marsha G. Slough (Ret.), Chair

Contact

Shelley Curran, 415-865-4013

shelley.curran@jud.ca.gov

Joseph Carozza, 415-865-4627

joseph.carozza@jud.ca.gov

Executive Summary

In March 2021, former Chief Justice Tani G. Cantil-Sakauye established the Ad Hoc Workgroup on Post-Pandemic Initiatives to examine court practices adopted during the pandemic to increase access to justice, modernize services, and promote uniformity in court practices going forward. Beginning in March 2021, the workgroup received input from 76 stakeholders from 46 entities. The workgroup released two interim reports on remote access to courts and improving the juror experience, drafted a remote proceedings guide for judicial officers, developed a Judicial Council policy on remote access to electronic court records, and submitted a report to the Legislature and Governor under Code of Civil Procedure section 367.9. Additionally, the workgroup referred eight concepts to Judicial Council advisory bodies, the Judicial Council staff organization, and other stakeholders for further development. This report serves as the final report of the Ad Hoc Workgroup on Post-Pandemic Initiatives, outlining the many accomplishments of the workgroup to increase access to justice, modernize services, and promote uniformity in court practices across the state.

Relevant Previous Council Action

In response to the COVID-19 pandemic, former Chief Justice Cantil-Sakauye and the Judicial Council of California acted as outlined below.

Three-phased response to the pandemic

The Chief Justice and the council employed a three-phased strategic response to the COVID-19 pandemic.

Phase One

Beginning in March 2020, the Chief Justice and the council responded rapidly to the pandemic by issuing statewide emergency orders and approving temporary measures to give courts flexibility to continue to provide essential services to Californians while protecting the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. These measures included:

- Six statewide temporary emergency orders issued by the Chief Justice;¹
- Thirteen temporary emergency rules in criminal, civil, and juvenile justice matters approved by the council;² and
- Seven hundred fifty-nine court-requested emergency orders issued by the Chief Justice between March 2020 and October 2022.³

Additionally, the Chief Justice and the Judicial Council issued numerous advisories for trial and appellate courts on best practices for court proceedings and operations in responding to the pandemic.

Phase Two

The second phase of the response focused on budget development and advocacy to maintain court resources and services, reflected in the fiscal year 2021–22 State Budget.

Phase Three

The final phase focused on gathering lessons learned during the pandemic and providing ways to enhance existing court practices based on these lessons. To coordinate the efforts of the final phase, the Chief Justice appointed the Ad Hoc Workgroup on Post-Pandemic Initiatives.

Establishment of the Ad Hoc Workgroup on Post-Pandemic Initiatives

In March 2021, former Chief Justice Tani G. Cantil-Sakauye named Judicial Council members to the Ad Hoc Workgroup on Post-Pandemic Initiatives and tasked the workgroup with identifying, refining, and enhancing successful court practices that emerged during the COVID-19 pandemic

¹ Included time extensions for arraignments, preliminary exams, criminal trials, and civil trials, plus waivers of local rules requirements and suspension of rules on remote technology. All emergency orders have been rescinded.

² Emergency rules have since been rescinded or codified in statute, fully or partially.

³ The last COVID-related emergency order expired at the end of October 2022.

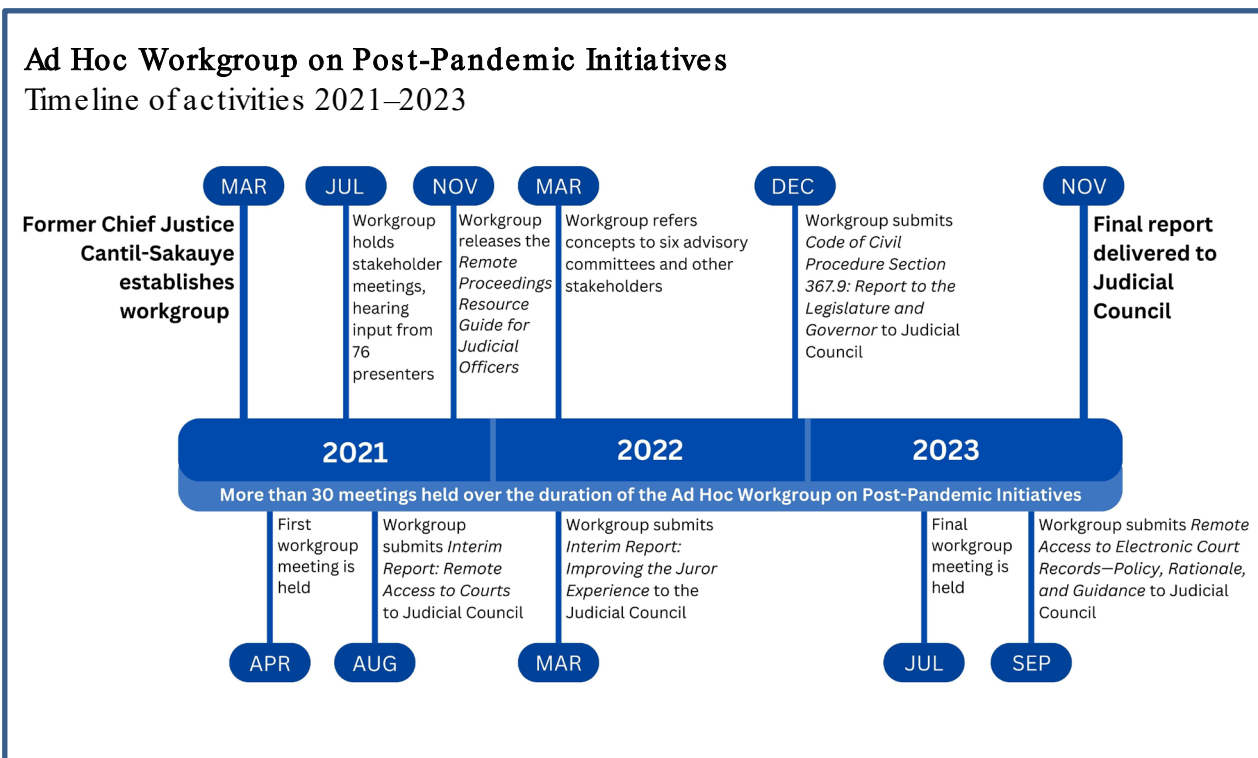
to increase access to justice, modernize services, and promote uniformity in court practices going forward. The workgroup was charged with seeking input from court leadership, court users, and justice system partners; considering jury system reform, unlawful detainer processes, and streamlining of case processing practices; and making recommendations to the council for direct action or routing proposals to council advisory committees for further consideration.

Analysis/Rationale

Overview of the workgroup's accomplishments

Over the course of its three-year duration, the Ad Hoc Workgroup on Post-Pandemic Initiatives and its subcommittees:

- Held more than 30 meetings and conducted input sessions with 76 judicial branch partners, advocates, and stakeholders from 46 entities to inform the work of the workgroup;
- Released two interim reports and a remote proceedings guide for judicial officers;
- Developed a policy on remote access to court records;
- Submitted a report to the Legislature and the Governor, as required under Code of Civil Procedure section 367.9; and
- Referred eight final concepts to six Judicial Council advisory committees, the council's staff organization, and other stakeholders for further development.



Work of the Ad Hoc Workgroup on Post-Pandemic Initiatives informed by judicial branch input

From April to July 2021, the workgroup invited branch stakeholders to provide input on practices that were adopted by the courts during the pandemic and that provided continued access to justice while maintaining the health and safety of court users, judicial officers, and staff. The workgroup held several input sessions, hearing from a total of 76 individuals from 46 entities, including court users in all case types, judicial officers, council advisory body chairs, court staff, criminal and civil attorneys, and legal aid attorneys representing low-income litigants.⁴

From the work and input of these stakeholders, two common themes emerged:

- A desire for consistent court practices and procedures within and among trial courts throughout the state; and
- Greater remote *and* in-person access to the courts.

First interim report: Remote access to the courts

The majority of judicial branch users and stakeholders who presented to the workgroup in these input sessions expressed strong support for the expansion of remote access to court proceedings during the pandemic and for maintaining extensive remote access going forward. This input confirmed that remote proceedings allow individuals who face barriers in accessing the courts (such as having to travel long distances to court or take time off work) to efficiently resolve their court matters, and that providing access to the courts through the use of remote technology is an access-to-justice issue.

The workgroup made the following recommendations in its interim report delivered to the Judicial Council in August 2021:

- California courts should expand and maximize remote access on a permanent basis for most proceedings and should not default to pre-pandemic levels of in-person operations.
- The Judicial Council should encourage and support courts to substantially expand remote access through all available technology and should work to promote consistency in remote access throughout the state to ensure that Californians have equal access to the courts while providing flexibility to meet local needs.⁵

The interim report provided a condensed, selective summary of comments that the workgroup received from a wide variety of judicial branch stakeholders on the use of remote technology to

⁴ A full list of stakeholders who presented to the workgroup, as well as the organizations they represent, can be found in the workgroup's first interim report (Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Remote Access to Courts* (Aug. 16, 2021), pp. 11–14, www.courts.ca.gov/documents/P3-Workgroup-Remote-Access-Interim-Report-8162021.pdf).

⁵ *Id.* at p. 2.

provide access to the courts. It identified the benefits, areas of concern, and considerations that needed to be addressed in making remote access to court proceedings fair, consistent, and permanent.

Remote proceedings continue to be a part of California's court system. The 2021 California Court Efficiency Act gave parties the option to appear remotely in civil cases and authorized courts to conduct proceedings—including conferences, hearings, and trials—through the use of remote technology until July 1, 2023.⁶ These provisions were recently extended to January 1, 2026, for civil proceedings.⁷ Remote proceedings in criminal matters are authorized until January 1, 2025, for criminal proceedings.⁸

Second interim report: Improving the juror experience

In addition to the benefits of maintaining remote access to court proceedings, stakeholders identified the need to improve the experience of jurors.

The COVID-19 pandemic highlighted many new and existing barriers to jury service, especially for low-income and unhoused individuals, communities of color, seniors, people with disabilities, parents of school-age children, those without access to reasonable transportation, and other vulnerable, underserved, or underrepresented populations.

The interim report, delivered to the Judicial Council in March 2022, made the following interim recommendations:

1. The Judicial Council should encourage and support efforts to secure **designated and ongoing state funding for juror pay** and **mitigate transportation issues** in order to reduce potential barriers to juror participation.
2. In order to increase efficiency and access to the public, California courts should consider allowing jurors to complete their **juror questionnaires and hardship forms online**, before being required to physically appear in court for voir dire.
3. California courts should consider **staggering jury service appearance times** with varying panel sizes in order to maximize efficiency for court staff and the public.

⁶ Sen. Bill 241; Stats. 2021, ch. 214.

⁷ Sen. Bill 133; Stats. 2023, ch. 34.

⁸ Assem. Bill 134; Stats. 2023, ch 47.

4. California courts should consider developing or adopting **virtual jury selection platforms** that incorporate modules for conducting voir dire, which can help to streamline the juror selection process and gather information related to for-cause and peremptory challenges.⁹

The report also provided a condensed, selective summary of comments the workgroup received from a variety of judicial branch stakeholders on the use of these innovative practices in jury administration, management, and operations.

It is also worth noting that the California State Legislature recently adopted legislation to expand jury participation and service:

- Assembly Bill 1981 (Lee; Stats. 2022, ch. 326) increased jurors' travel reimbursement to include roundtrip mileage and provided jurors and prospective jurors with free access to public transportation or, alternatively, a public transit reimbursement of up to \$12 per day. Additionally, the bill created a two-year pilot program to allow the branch to study the impact of increased juror per diem rates on jury participation, and the Budget Act of 2023 contained funding to support this pilot program as well as the increases in juror mileage and public transit reimbursements.
- Assembly Bill 1452 (Ting; Stats. 2021, ch. 717) authorized the Superior Court of San Francisco County to conduct a pilot program until December 31, 2023, to analyze whether paying \$100 per day to certain low-income trial jurors in criminal cases promotes more economically and racially diverse jury panels.

Remote proceedings resource guide

Although many courts had been preparing for and piloting video remote conferencing technologies before the COVID-19 pandemic, those plans were accelerated and, in many cases, required California's courts to conduct remote proceedings without the benefit of advance planning for broad deployment and daily use.

The workgroup played a central role in developing a resource guide to help judicial officers plan and conduct proceedings through the use of video conferencing, also referred to as "remote court proceedings." The publication offers suggestions for presiding over court proceedings that are entirely remote, as well as hybrid proceedings, where some participants are in person and others are remote. The guide highlights issues that judicial officers want to consider before beginning a remote court proceeding and identifies issues that may arise when using video remote conferencing software. It also lists helpful resources with more in-depth information about these topics. The guide serves as a resource and tool to promote the effectiveness of proceedings conducted remotely.

⁹ Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Improving the Juror Experience* (Mar. 2022), p. 3, www.courts.ca.gov/documents/Ad-Hoc-Workgroup-on-Post-Pandemic-Initiatives_Improving-the-Juror-Experience-Report.pdf.

Remote access to electronic court records policy

Former Chief Justice Cantil-Sakauye also tasked the workgroup with developing a coordinated policy on remote access to court records in order to promote consistency among council advisory bodies as the committees considered various proposals that implicate remote access. The workgroup created the Remote Access to Electronic Court Records Subcommittee to develop a policy for use by advisory bodies when considering pending legislation, proposals for new legislation or rules of court, or any other action that implicates remote access to electronic court records.

As part of its process, the subcommittee held a series of feedback sessions on a draft policy and invited the chairs of the following council advisory committees to attend:

- Advisory Committee on Providing Access and Fairness
- Appellate Advisory Committee
- Civil and Small Claims Advisory Committee
- Court Executives Advisory Committee
- Criminal Law Advisory Committee
- Family and Juvenile Law Advisory Committee
- Information Technology Advisory Committee
- Probate and Mental Health Advisory Committee
- Traffic Advisory Committee
- Trial Court Presiding Judges Advisory Committee

The feedback from the chairs of the advisory committees was overall positive, and they believed the proposed policy would be helpful in clearly stating the differing roles of the Legislature and the council.

In September 2023, the Judicial Council approved the workgroup’s proposed *Remote Access to Electronic Court Records—Policy, Rationale, and Guidance*.¹⁰ The policy delineates roles and responsibilities of the council and the Legislature as follows:

- Proposals related to determining what information contained in electronic court records may be disclosed and to whom are better suited for the Legislature in its statewide policymaking role.
- Proposals related to establishing the manner by which the public may remotely access these records are better suited for the Judicial Council in its role in promoting the fair administration of justice.

The policy also contains a guidance section intended to assist advisory bodies when evaluating a remote access proposal and determining whether to recommend action by the council. The

¹⁰ Located in Appendix D of the California Rules of Court and available at www.courts.ca.gov/documents/appendix_d.pdf.

guidance section contains a series of questions that advisory bodies should address in their analysis.

In addition to approving the workgroup's proposed policy, the Judicial Council also approved the workgroup's recommendation to establish an advisory body to review existing rules of court related to remote access to electronic court records and determine whether further recommendations regarding those rules are appropriate, consistent with the proposed policy.

Report to the Legislature and the Governor: Code of Civil Procedure section 367.9

Code of Civil Procedure section 367.9 required the Judicial Council to convene a working group composed of judges, court executive officers, attorneys, court reporters, court interpreters, legal aid organizations, and court-appointed dependency counsel to develop recommendations to the Legislature and Governor providing a statewide framework for remote civil court proceedings and addressing court reporter availability and future workforce.

The Code of Civil Procedure Section 367.9 Working Group (CCP 367.9 Working Group), separate from the Ad Hoc Workgroup on Post-Pandemic Initiatives, convened in June 2022 to develop the recommendations.

The Ad Hoc Workgroup on Post-Pandemic Initiatives—because of its unique position as a workgroup made up of Judicial Council members, and as the central hub in the identification of court practices that emerged during the pandemic and increased access to justice—oversaw the progress of the CCP 367.9 Working Group. The former Chief Justice tasked the Ad Hoc Workgroup on Post-Pandemic Initiatives with submitting the CCP 367.9 Working Group's report to the Legislature and the Governor.¹¹ The report outlines 21 recommendations in the following five areas: (1) court reporter availability and future workforce, (2) statewide procedural and technical guidelines to ensure court users receive the best possible levels of service and access, (3) case types and proceeding types for which remote proceedings are appropriate, (4) protocols for ensuring court users fully understand their options for accessing the court remotely, and (5) whether changes are needed to existing laws protecting the accuracy of the official verbatim record and preserving parties' rights to appeal.

Concepts referred to advisory bodies, the Judicial Council staff organization, and other stakeholders

In addition to the work described above, the workgroup, informed by the input sessions with stakeholders, advocates, and branch partners, identified other topics for further consideration.

To prioritize future efforts, the workgroup invited the chairs of the council's Advisory Committee on Providing Access and Fairness; Civil and Small Claims, Collaborative Justice Courts, Court Executives, Criminal Law, Family and Juvenile Law, Information Technology,

¹¹ Ad Hoc Workgroup on Post-Pandemic Initiatives, *Report to the Legislature: Code of Civil Procedure Section 367.9: Report to the Legislature and Governor* (Nov. 10, 2022), <https://jcc.legistar.com/View.ashx?M=F&ID=11458013&GUID=75B619DA-F962-4CBD-83FD-F01CA128334E>.

Traffic, and Trial Court Presiding Judges Advisory Committees; and Tribal Court–State Court Forum to a series of feedback sessions. The chairs provided valuable input to help refine the list to eight preliminary concepts that are appropriate for further consideration.

Based on the feedback from the chairs of the committees, the workgroup referred six of the concepts to council advisory committees in March 2022 to add to their annual agendas. Depending on the concept, development may result in changes to rules of court, promulgations of best practices and information sharing, or legislative proposals. The remaining two concepts were referred to the council staff organization for development of a potential pilot and to the attorney stakeholder groups for the development of joint recommendations.

Following are the eight concepts, their descriptions, and the actions taken:

Concept Description	Action Taken
<i>Calendar sessions and appointment system for court clerks:</i> Improve services to the public by staggering calendars to reduce the number of users entering the courthouse at the same time, and provide court users with more specific times for court hearings.	Referred to the Court Executives Advisory Committee with the Trial Court Presiding Judges Advisory Committee.
<i>Use of settlement conferences in unlawful detainer (UD) cases:</i> Support the use of settlement conferences in UD cases to encourage landlords and tenants to work on solutions and thereby avoid trials.	Referred to the Civil and Small Claims Advisory Committee.
<i>Use of virtual visitation in family and juvenile law matters:</i> Ensure the effective use of court-ordered virtual visitation in family and juvenile law matters when in-person visitation is not feasible.	Referred to the Family and Juvenile Law Advisory Committee.
<i>Traffic infraction process:</i> Expand the use of remote technology, where possible, to allow for remote appearances in traffic infraction cases.	Referred to the Traffic Advisory Committee with the Information Technology Advisory Committee.
<i>E-filing and e-signatures:</i> Increase options for electronic filing and the use of e-signatures to increase efficiencies, reduce administrative costs to courts, and promote more portable access to documents for judges, court staff, attorneys, clients, and self-represented litigants.	Referred to the Court Executives Advisory Committee, Information Technology Advisory Committee, and Trial Court Presiding Judges Advisory Committee.
<i>Online self-help services and live chat on court websites:</i> Improve and expand access to online resources via chatbot or live chat, and supplement court self-help centers.	Referred to the Court Executives Advisory Committee and the Information Technology Advisory Committees.
<i>Discovery motions reform to help with backlog:</i> Develop recommendations to improve and ensure timely resolution of civil discovery disputes in the courts.	Sent a letter sent to the California chapters of the American Board of Trial Advocates, California Defense Counsel, the California Lawyers Association, and Consumer Attorneys of California requesting they develop joint recommendations and consider the potential

	impacts on the rights of individuals or the opportunity for parties to collect, prepare, and present their evidence, testimony, and arguments; promote consistent access, when possible, while accounting for court sizes, needs, and resources; and address the ongoing impacts of the digital divide.
Remote access between defense and in-custody clients: Improve the infrastructure (including the use of technology) of jails to expand remote access and communication between in-custody defendants and attorneys.	Referred to the Judicial Council staff organization for further development.

Fiscal Impact and Policy Implications

This serves as a final report on the work of the Ad Hoc Workgroup on Post-Pandemic Initiatives. There is no ongoing fiscal impact. However, the work to develop and advance the concepts referred to the council advisory bodies and the council staff organization is still ongoing. As these concepts evolve into fully developed proposals with their respective subject-matter experts, additional fiscal impacts and policy implications may be considered by the council.

Attachments and Links

1. Attachment A: Ad Hoc Workgroup on Post-Pandemic Initiatives: Membership
2. Link A: *Interim Report: Remote Access to Courts* (Aug. 16, 2021), www.courts.ca.gov/documents/P3-Workgroup-Remote-Access-Interim-Report-8162021.pdf
3. Link B: *Interim Report: Improving the Juror Experience* (Mar. 2022), www.courts.ca.gov/documents/Ad-Hoc-Workgroup-on-Post-Pandemic-Initiatives_Improving-the-Juror-Experience-Report.pdf
4. Link C: *Judicial Council: Policy on Remote Access to Electronic Court Records* (Aug. 7, 2023), <https://jcc.legistar.com/View.ashx?M=F&ID=12271697&GUID=3AA26E61-26A7-4EBD-BAF7-635292950C41>
5. Link D: *Report to the Legislature: Code of Civil Procedure Section 367.9: Report to the Legislature and Governor* (Nov. 10, 2022), <https://jcc.legistar.com/View.ashx?M=F&ID=11458013&GUID=75B619DA-F962-4CBD-83FD-F01CA128334E>

Ad Hoc Workgroup on Post-Pandemic Initiatives
Membership

Hon. Marsha G. Slough (Ret.), Chair
Associate Justice of the Court of Appeal
Fourth Appellate District, Division Two

Hon. Marla O. Anderson
Judge of the Superior Court of California,
County of Monterey

Hon. Kevin C. Brazile
Judge of the Superior Court of California,
County of Los Angeles

Hon. Kyle S. Brodie
Judge of the Superior Court of California,
County of San Bernardino

Rebecca J. Fleming
Court Executive Officer of Superior Court
of California, County of Santa Clara

Hon. Brad R. Hill
Administrative Presiding Justice of the
Court of Appeal, Fifth Appellate District

Rachel W. Hill
Attorney at Law

Shawn C. Landry
Court Executive Officer of the Superior
Court of California, County of Yolo

Hon. Ann C. Moorman
Presiding Judge of the Superior Court of
California, County of Mendocino

Gretchen Nelson
Attorney at Law

JUDICIAL COUNCIL STAFF

Shelley Curran
Chief Policy and Research Officer

Saskia Kim
Attorney
Executive Office

Deirdre Benedict
Supervising Analyst
Criminal Justice Services

Joseph Carozza
Senior Analyst
Executive Office