



# Judicial Council of California

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## INVITATION TO COMMENT

### SPR23-04

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**Title**

Appellate Procedure: Remote Appearances at Oral Argument in the Appellate Division

**Action Requested**

Review and submit comments by May 12, 2023

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rules 8.885 and 8.929

**Proposed Effective Date**

January 1, 2024

**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Contact**

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### Executive Summary and Origin

The Appellate Advisory Committee proposes updating the rules regarding oral argument in the appellate division to reflect modern videoconferencing technology and facilitate remote appearances. The current rules narrowly provide for videoconferencing at different courts to accommodate appellate division judges who would have to travel to attend oral argument in the same location. Parties are required to appear in person at the court that issued the order or judgment being appealed unless a local rule or appellate division order permits otherwise. This proposal would replace the videoconferencing provisions with broader authorization for remote appearances. The proposal originated with a suggestion from a committee member.

### Background

Rule 8.885 governs oral argument in misdemeanor and limited civil appeals. The corresponding rule for infraction appeals is rule 8.929. Effective January 1, 2010, rules 8.885 and 8.929 were amended to authorize oral argument by videoconference. The proposal followed a successful program involving the Superior Courts of Lassen, Modoc, Plumas, and Sierra Counties in which one judge was selected from each county to sit on a regional appellate division. When a matter came before the regional appellate division, it was heard by a panel of the judges from the other three counties. The program utilized videoconferencing to enable the judges to participate from

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

their home courts rather than spend the time traveling long distances to one courthouse. This innovation saved travel costs for the courts and facilitated scheduling, reducing delay for the parties.

The 2010 amendments authorize appellate divisions to provide videoconferencing on order of the court's presiding judge or the presiding judge's designee or, if permitted, by a local rule. If oral argument will be conducted by videoconference, each judge must participate at either the court that issued the order or judgment being appealed or from another court. Unless otherwise allowed, all parties must participate from the court that issued the order or judgment being appealed. The oral argument must be open to the public at the court that issued the judgment or order being appealed; public attendance may also be allowed at a court from which a judge is participating. The rules contain provisions requiring individuals who speak to be visible, audible, and identified by name, and prohibiting participation by unauthorized persons. Parties may not be charged a fee to attend oral argument by videoconference in the court that issued the judgment or order or in another court from which a judge is participating.

## **The Proposal**

This proposal would authorize remote appearances in the appellate division. As noted, the current rules were primarily intended to address the challenges of regional appellate divisions with judges having to travel long distances to appear together in person at one court; the rules provide similar benefits in large counties with appellate division judges located in distant courthouses. However, in the years since the 2010 amendments took effect, videoconferencing technology has advanced to the point that remote video appearances using a computer, smart phone, or tablet are now possible from wherever one is located and need not be limited to courthouses. Videoconferencing also no longer needs to be limited to the panel judges.

Under the proposed amendments, the videoconferencing provisions would be replaced by a subdivision regarding remote appearances at oral argument using remote technology. "Remote technology" is defined as follows: "technology that provides for the transmission of video and audio signals or audio signals alone. This phrase is meant to be interpreted broadly and includes a computer, tablet, telephone, cellphone, or other electronic or communications device." This definition matches the definition of "remote technology" in rule 3.672, the rule regarding remote proceedings in civil cases.

Consistent with the current rules authorizing videoconferencing, this proposal would allow appellate divisions to conduct oral argument in whole or in part through the use of remote technology if either a local rule authorizes it or a court orders it on the court's own motion or on application of a party. An application from a party requesting to appear remotely at oral argument must be filed within 10 days after the court sends notice of oral argument.

Provisions regarding fees again parallel those in rule 3.672. Parties who by statute are not charged court fees may not be charged a videoconference fee under Government Code section 70630. Parties with a fee waiver may not be charged a fee for remote appearances.

Updating the rules for oral argument in the appellate division would provide significant cost savings and efficiencies. Remote appearances expand access to justice by allowing parties and their attorneys to appear remotely from locations of their choosing, saving travel time and costs. During times of public emergencies, they also enable courts to perform their required functions and keep their calendars moving while protecting the health and safety of court users, court staff, and judicial officers.

### **Alternatives Considered**

The committee considered simply deleting the outdated videoconferencing provisions that were added to the rules in 2010 but decided that expanding and updating them was a better approach. The proposed amendments would continue to authorize oral argument by videoconference but, more broadly, would authorize remote appearances by remote technology, consistent with modern business and court practices.

The committee also considered taking no action to amend the videoconferencing rules but concluded that the rules are not only outdated, but also could hinder remote appearances by parties and their attorneys. The rules regarding videoconferencing currently require parties to appear in person at the court that issued the judgment or order that is being appealed unless otherwise allowed by court order or local rule. This default to in-person appearances, with remote appearances available only by exception, no longer makes sense within the current technological landscape.

### **Fiscal and Operational Impacts**

The rule amendments would not impose any fiscal impacts on the courts. They do not require courts to allow videoconferencing and do not require the purchase of any equipment or provider platform. Courts may choose to incur costs related to videoconferencing service providers or platforms (and may charge some parties a videoconference fee as provided by statute), or remote appearances more generally, but the committee expects that any costs would be offset by the time and cost savings and efficiencies discussed above.

Implementation impacts on courts may include the need for training, changes to case management systems, and changes to procedures for oral argument. The committee believes these operational impacts are outweighed by the benefits to courts and court users of facilitating remote appearances.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the rules regarding remote appearances at oral argument in the appellate division include any other provisions or procedures? If so, please specify.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.885 and 8.929, at pages 5–11

Rules 8.885 and 8.929 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1 **Rule 8.885. Oral argument**

2  
3 **(a) Calendaring and sessions**

4  
5 (1) Unless otherwise ordered, and except as provided in (2), all appeals in which  
6 the last reply brief was filed or the time for filing this brief expired 45 or  
7 more days before the date of a regular appellate division session must be  
8 placed on the calendar for that session by the appellate division clerk. By  
9 order of the presiding judge or the division, any appeal may be placed on the  
10 calendar for oral argument at any session.

11  
12 (2) Oral argument will not be set in appeals under *People v. Wende* (1979) 25  
13 Cal.3d 436 where no arguable issue is raised.

14  
15 ~~**(b) Oral argument by videoconference**~~

16  
17 ~~(1) Oral argument may be conducted by videoconference if:~~

18  
19 ~~(A) It is ordered by the presiding judge of the appellate division or the~~  
20 ~~presiding judge's designee on application of any party or on the court's~~  
21 ~~own motion. An application from a party requesting that oral argument~~  
22 ~~be conducted by videoconference must be filed within 10 days after the~~  
23 ~~court sends notice of oral argument under (c)(1); or~~

24  
25 ~~(B) A local rule authorizes oral argument to be conducted by~~  
26 ~~videoconference consistent with these rules.~~

27  
28 ~~(2) If oral argument is conducted by videoconference:~~

29  
30 ~~(A) Each judge of the appellate division panel assigned to the case must~~  
31 ~~participate in the entire oral argument either in person at the superior~~  
32 ~~court that issued the judgment or order that is being appealed or by~~  
33 ~~videoconference from another court.~~

34  
35 ~~(B) Unless otherwise allowed by local rule or ordered by the presiding~~  
36 ~~judge of the appellate division or the presiding judge's designee, all the~~  
37 ~~parties must appear at oral argument in person at the superior court that~~  
38 ~~issued the judgment or order that is being appealed.~~

39  
40 ~~(C) The oral argument must be open to the public at the superior court that~~  
41 ~~issued the judgment or order that is being appealed. If provided by local~~  
42 ~~rule or ordered by the presiding judge of the appellate division or the~~

1                   presiding judge’s designee, oral argument may also be open to the  
2 public at any of the locations from which a judge of the appellate  
3 division is participating in oral argument.  
4

5                   (D) ~~The appellate division must ensure that:~~

6  
7                   (i) ~~During oral argument, the participants in oral argument are~~  
8                   ~~visible and their statements are audible to all other participants,~~  
9                   ~~court staff, and any members of the public attending the oral~~  
10                   ~~argument;~~

11  
12                   (ii) ~~Participants are identified when they speak; and~~

13  
14                   (iii) ~~Only persons who are authorized to participate in the proceedings~~  
15                   ~~speak.~~

16  
17                   (E) ~~A party must not be charged any fee to participate in oral argument by~~  
18                   ~~videoconference if the party participates from the superior court that~~  
19                   ~~issued the judgment or order that is being appealed or from a location~~  
20                   ~~from which a judge of the appellate division panel is participating in~~  
21                   ~~oral argument.~~

22  
23                   **(b) Remote appearance**

24  
25                   (1) Definitions

26  
27                   (A) “Remote appearance” or “appear remotely” means the appearance of a  
28                   party at oral argument through the use of remote technology.

29  
30                   (B) “Remote technology” means technology that provides for the  
31                   transmission of video and audio signals or audio signals alone. This  
32                   phrase is meant to be interpreted broadly and includes a computer,  
33                   tablet, telephone, cellphone, or other electronic or communications  
34                   device.

35  
36                   (2) Oral argument may be conducted in whole or in part through the use of  
37                   remote technology if:

38  
39                   (A) It is ordered by the presiding judge of the appellate division or the  
40                   presiding judge’s designee on application of any party or on the court’s  
41                   own motion. An application from a party requesting to appear remotely  
42                   at oral argument must be filed within 10 days after the court sends  
43                   notice of oral argument under (c); or

1  
2 (B) A local rule authorizes remote appearances consistent with these rules.

3  
4 (3) Remote appearance fees

5  
6 (A) Parties who, by statute, are not charged filing fees or fees for court  
7 services may not be charged a videoconference fee under Government  
8 Code section 70630 or otherwise.

9  
10 (B) Parties with a fee waiver may not be charged fees for remote  
11 appearances.

12  
13 (i) To obtain remote appearance services without payment of a fee  
14 from a vendor or a court that provides such services, a party must  
15 advise the vendor or the court that they have received a fee  
16 waiver from the court. If a vendor requests, the party must  
17 transmit a copy of the order granting the fee waiver to the vendor.

18  
19 (ii) If a party, based on a fee waiver, receives remote appearance  
20 services under this rule without payment of a fee, the vendor or  
21 court that provides the remote appearance services has a lien on  
22 any judgment, including a judgment for costs, that the party may  
23 receive, in the amount of the fee that the party would have paid  
24 for the remote appearance. There is no charge for filing the lien.

25  
26 (c) **Notice of argument**

27  
28 (1)—Except for appeals covered by (a)(2), as soon as all parties' briefs are filed or  
29 the time for filing these briefs has expired, the appellate division clerk must send a  
30 notice of the time and place of oral argument to all parties. The notice must be sent  
31 at least 20 days before the date for oral argument. The presiding judge may shorten  
32 the notice period for good cause; in that event, the clerk must immediately notify  
33 the parties by telephone or other expeditious method.

34  
35 (2)—~~If oral argument will be conducted by videoconference under (b), the clerk~~  
36 ~~must specify, either in the notice required under (1) or in a supplemental~~  
37 ~~notice sent to all parties at least 5 days before the date for oral argument, the~~  
38 ~~location from which each judge of the appellate division panel assigned to the~~  
39 ~~case will participate in oral argument.~~

40  
41 (d)–(e) \* \* \*

42  
43 **Advisory Committee Comment**

1  
2 **Subdivision (a).** \* \* \*

3  
4 **Subdivision (b)(3).** Statutes currently provide that courts are not to charge fees to certain types of  
5 parties, such as governmental entities; representatives of tribes in cases covered by the Indian  
6 Child Welfare Act; and parties in certain types of cases, such as juvenile cases or actions to  
7 prevent domestic violence. This rule would preclude courts from charging videoconference fees  
8 to such parties as well.

9  
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11 **Rule 8.929. Oral argument**

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13 **(a) Calendaring and sessions**

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15 Unless otherwise ordered, all appeals in which the last reply brief was filed or the  
16 time for filing this brief expired 45 or more days before the date of a regular  
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31 ~~(B) A local rule authorizes oral argument to be conducted by~~  
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