



JUDICIAL COUNCIL OF CALIFORNIA

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HON. TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

HON. MARSHA G. SLOUGH
Chair, Executive and Planning Committee

HON. DAVID M. RUBIN
Chair, Judicial Branch Budget Committee
Chair, Litigation Management Committee

HON. MARLA O. ANDERSON
Chair, Legislation Committee

HON. CARIN T. FUJISAKI
Chair, Rules Committee

HON. KYLE S. BRODIE
Chair, Technology Committee

Hon. Maria Lucy Armendariz
Hon. Richard Bloom
Hon. C. Todd Botke
Hon. Kevin C. Brazile
Hon. Jonathan B. Conklin
Hon. Carol A. Corrigan
Hon. Samuel K. Feng
Mr. David D. Fu
Hon. Brad R. Hill
Ms. Rachel W. Hill
Hon. Harold W. Hopp
Hon. Ann C. Moorman
Ms. Gretchen Nelson
Mr. Maxwell V. Pritt
Hon. Thomas J. Umberg

ADVISORY MEMBERS

Hon. Judith K. Dulcich
Ms. Rebecca J. Fleming
Mr. Shaun C. Landry
Hon. Kimberly Merrifield
Hon. Glenn Mondo
Hon. David Rosenberg
Mr. David H. Yamasaki

MR. MARTIN HOSHINO
Administrative Director
Judicial Council

January 1, 2023

Ms. Cara L. Jenkins
Legislative Counsel
1021 O Street, Suite 3210
Sacramento, California 95814

Ms. Erika Contreras
Secretary of the Senate
State Capitol, Room 305
Sacramento, California 95814

Ms. Sue Parker
Chief Clerk of the Assembly
State Capitol, Room 319
Sacramento, California 95814

Re: *Code of Civil Procedure Section 367.9: Report to the Legislature and Governor*, as required under Assembly Bill 177, Code of Civil Procedure section 367.9

Dear Ms. Jenkins, Ms. Contreras, and Ms. Parker:

Pursuant to Government Code section 9795, the Judicial Council is submitting the *Code of Civil Procedure Section 367.9: Report to the Legislature and Governor* on recommendations required under Assembly Bill 177, Code of Civil Procedure section 367.9.

If you have any questions related to this report, please contact Shelley Curran, Chief Policy and Research Officer at 415-865-4013.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council

Ms. Cara L. Jenkins
Ms. Erika Contreras
Ms. Sue Parker
January 1, 2023
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MH/SC/mkb

Enclosures

cc: Eric Csizmar, Consultant, Senate Republican Policy Office
Matt Osterli, Consultant, Senate Republican Fiscal Office
Morgan Branch, Consultant, Senate Republican Policy Office
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee
Sandy Uribe, Chief Counsel, Assembly Public Safety Committee
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Administrative Director
Judicial Council

Report title: *Code of Civil Procedure Section 367.9: Report to the Legislature and Governor*

Statutory citation: Assembly Bill 177 (Stats. 2021, ch. 257)

Date of report: January 1, 2023

The Judicial Council has submitted a report to the Legislature in accordance with Assembly Bill 177.

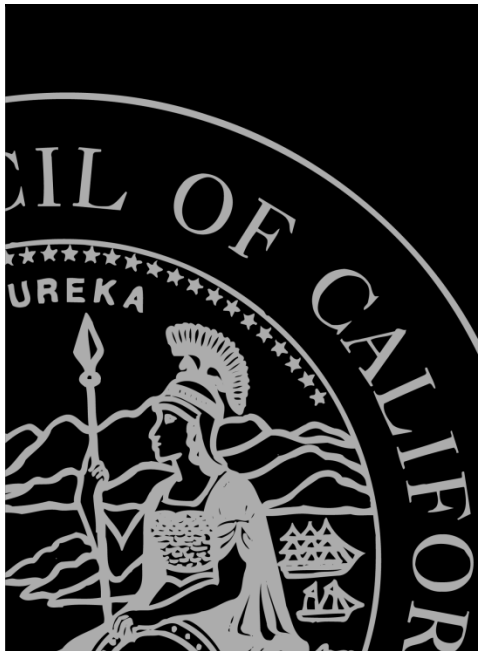
The following summary of the report is provided under the requirements of Code of Civil Procedure Section 367.9.

Assembly Bill 177 (Stats. 2021, ch. 257), a Public Safety Trailer Bill enacted in 2021, added section 367.9 to the Code of Civil Procedure, requiring the Judicial Council to convene a working group for the purpose of recommending a statewide framework for remote civil court proceedings that addresses equal and fair access to justice, and to submit a report with the working group's recommendations to the Legislature and the Governor by January 1, 2023.

In response, the Judicial Council convened the Code of Civil Procedure Section 367.9 Working Group to undertake the requirements of AB 177. This report fulfills the legislative mandate.

The full report can be accessed here: <https://www.courts.ca.gov/7466.htm>

A printed copy of the report may be obtained by calling 916-323-3198.



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

AD HOC WORKGROUP ON POST-
PANDEMIC INITIATIVES

JANUARY 1, 2023



JUDICIAL COUNCIL
OF CALIFORNIA

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Hon. Tani G. Cantil-Sakauye
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Chair of the Judicial Council*

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AD HOC WORKGROUP ON POST-PANDEMIC INITIATIVES

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Fourth Appellate District, Division Two

Hon. Marla O. Anderson

Judge of the Superior Court of California,
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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

Hon. Thomas A. Delaney

Judge of the Superior Court of California,
County of Orange

Ms. Rebecca J. Fleming

Court Executive Officer
Superior Court of California,
County of Santa Clara

Mr. Kevin Harrigan

Court Executive Officer
Superior Court of California,
County of Tehama

Hon. Brad Hill

Administrative Presiding Justice of the
Court of Appeal, Fifth Appellate District

Ms. Rachel W. Hill

Attorney at Law

Hon. Ann C. Moorman

Judge of the Superior Court of California,
County of Mendocino

Ms. Gretchen Nelson

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Chief Policy and Research Officer
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Ms. Deirdre Benedict

Supervising Analyst
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EXECUTIVE SUMMARY

[Assembly Bill 177 \(Stats. 2021, ch. 257\)](#),¹ a Public Safety Trailer Bill enacted in 2021, added section 367.9 to the Code of Civil Procedure, requiring the Judicial Council to convene a working group for the purpose of recommending a statewide framework for remote civil court proceedings that addresses equal and fair access to justice, and to submit a report with the working group's recommendations to the Legislature and the Governor by January 1, 2023. The law mandates that the composition of the working group include judges, court executive officers, attorneys, court reporters, court interpreters, legal aid organizations, and court-appointed dependency counsel. The bill further specifies that the working group consider and make recommendations in the following 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.

In response, the Judicial Council convened the Code of Civil Procedure Section 367.9 Working Group to undertake the requirements of AB 177. This report fulfills the legislative mandate.

BACKGROUND

On March 4, 2020, Governor Gavin Newsom declared a state of emergency in response to the spread of COVID-19 in California. To continue to respond to the crisis and assist the courts, Governor Newsom, on March 27, 2020, issued Executive Order N-38-20, which, among other things, gave the Judicial Council of California and its chairperson the authority to take actions necessary to maintain access to the essential operations of California's court system while protecting the health and safety of California residents.² Over the course of several months in 2020, the Judicial Council adopted 13 emergency rules and Chief Justice Tani G. Cantil-Sakauye signed four statewide emergency orders under her constitutional and other legal authority, including the authority granted in the executive order.

On April 6, 2020, the council adopted the first 11 emergency rules on a variety of topics 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. Of those 11 rules, emergency rules 3 and 5 authorized the use of technology for remote appearances in civil and criminal matters. The council then adopted emergency rule 12 on April 17, 2020, and emergency rule 13 on April 20, 2020.

¹ Assem. Bill 177.

² Exec. Order N-38-20, www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf.

Use of technology to conduct proceedings remotely

On March 30, 2020, the Chief Justice issued an order suspending any rule in the California Rules of Court that would prevent a court from using technology to conduct judicial proceedings and court operations remotely, consistent with Governor Newsom's Executive Order N-38-20 that provided for the suspension of related statutes that impose limitations on the subject of the emergency orders. As stated above, on April 6, 2020, the council adopted emergency rules 3 and 5, which provided authority for courts to conduct proceedings remotely in civil actions and in criminal matters, with consent of the defendant.

In September 2021, the Legislature enacted Senate Bill 241 (Stats. 2021, ch. 214), authorizing, among other things, courts to conduct proceedings through the use of remote technology in all civil cases under new section 367.75 of the Code of Civil Procedure. In recognition of the passage of the new law, the council amended emergency rule 3 on November 19, 2021, to remove civil proceedings from the scope of the rule effective January 1, 2022, to coincide with the effective date of the new statute.

On February 25, 2022, Governor Newsom signed Executive Order N-04-22, which stated that many executive orders that he issued in response to the COVID-19 pandemic would expire between February 25, 2022 and June 30, 2022. On March 11, 2022, the council adopted amendments to sunset all of the remaining emergency rules on June 30, 2022, including emergency rules 3 and 5. In June 2022, the Legislature enacted Assembly Bill 199 (Stats. 2022, ch. 57) that, among other things, authorized the use of remote proceedings in criminal matters with the consent of the defendant.³

The authority for remote civil proceedings sunsets on June 30, 2023, and the authority for remote criminal proceedings sunsets on January 1, 2024.

Additional AB 177 reports

In addition to the submission of this report, AB 177 requires the Judicial Council to prepare and submit two other reports:

1. [Under Code of Civil Procedure section 367.8, the council must submit to the Legislature a report by January 1, 2023](#), on data related to the use of remote technology in civil actions by the trial courts.
2. Under Government Code section 69950.5, the council must submit a report to the Legislature by January 1, 2024, after collaborating with key stakeholder groups (including the California Court Reporters Association, exclusively recognized employee

³ Assem. Bill 199.

organizations representing court reporters, and the Court Reporters Board of California) with recommendations to increase uniformity in transcription rate expenditures in California.

AD HOC WORKGROUP ON POST-PANDEMIC INITIATIVES

In March 2021, the Chief Justice created the Ad Hoc Workgroup on Post-Pandemic Initiatives (P3) and charged the workgroup with identifying, refining, and enhancing successful court practices adopted during the pandemic. P3 was also tasked with recommending, for ongoing implementation, the practices that demonstrate the most promise to increase access to justice, modernize services, and promote consistency and uniformity throughout the state.

The P3 workgroup heard from 75 individuals representing 45 entities, including court users in all case types, judicial officers, court staff, criminal and civil attorneys, and legal aid attorneys representing low-income litigants. From the work and input of these stakeholders, common themes emerged: (1) a desire for consistent court practices and procedures within and among trial courts throughout the state, and (2) greater remote *and* in-person access to the courts.

In August 2021, P3 issued an interim report that provided a condensed summary of selected comments the workgroup received on the use of remote technology to provide access to the courts.⁴ The interim report included benefits, identified areas of concern, and considerations that need to be addressed to improve remote access to court processes.

P3 made the following interim recommendations:

- 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 in substantially expanding remote access through all available technology and should promote fairness by adopting balanced policies and encouraging consistency in remote access throughout the state to ensure that Californians have equal access to the courts while providing flexibility to meet local needs.

The Chief Justice directed P3 to submit this report, containing the recommendations of the 367.9 Working Group, to the Governor and the Legislature.

⁴ www.courts.ca.gov/documents/P3-Workgroup-Remote-Access-Interim-Report-8162021.pdf.

CODE OF CIVIL PROCEDURE SECTION 367.9 WORKING GROUP

The Code of Civil Procedure Section 367.9 Working Group (367.9 Working Group) is 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 for a statewide framework for remote civil court proceedings and addressing court reporter availability and future workforce needs.

The 367.9 Working Group convened in June 2022 and included 25 members whose collective experience satisfied the criteria set forth in AB 177:

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

Hon. Danielle K. Douglas
Judge of the Superior Court of California,
County of Contra Costa

Ms. Dorothy Alther
California Indian Legal Services

Mr. Oliver Dunlap
Attorney at Law
Bartko Zankel Bunzel & Miller

Ms. Laura Beth Arnold
Chief Public Defender,
County of Stanislaus

Mr. Michael Fermin
Chief Assistant District Attorney
San Bernardino County District Attorney's
Office

Mr. Saul Bercovitch
Director of Governmental Affairs
California Lawyers Association

Mr. Kevin Harrigan
Court Executive Officer
Superior Court of California,
County of Tehama

Hon. Rupert A. Byrdsong
Judge of the Superior Court of California,
County of Los Angeles

Ms. Leslie Starr Heimov
Executive Director
Children's Law Center Los Angeles

Ms. Sherri R. Carter
Court Executive Officer
Superior Court of California,
County of Los Angeles

Ms. Janet Hudec
Certified Court Interpreter
Superior Court of California,
County of Madera

Ms. Salena Copeland
Legal Aid Association of California

Ms. Carolyn Dasher
Service Employees International Union 721

Ms. Lynn Martinez
Disability Rights California

Mr. Peter Stirling Doody
Attorney at Law
Higgs Fletcher & Mack LLP

Ms. Alyson M. Messenger
Managing Staff Attorney
Jenesse Center, Inc.

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

Mr. Craig Michael Peters
Attorney at Law
Altair Law

Ms. Gretchen Nelson
Attorney at Law
Nelson & Fraenkel LLP

Ms. Aimee Skochko
California Court Reporters Association

Mr. Tam “Tyler” T. Nguyen
Certified Court Interpreter
Superior Court of California,
County of Sacramento

Ms. Robin Sunkees
Court Reporters Board of California

Hon. Theodore Zayner
Presiding Judge of the Superior Court of
California, County of Santa Clara

Mr. Darrel Parker
Court Executive Officer
Superior Court of California,
County of Santa Barbara

The working group held six remote meetings throughout July, August, and September 2022. All 367.9 Working Group meetings were open to the public and recorded. All meeting agendas, materials, and minutes can be found on the [Judicial Council website](#).

Subgroups and presentations

After the first 367.9 Working Group meeting on July 1, 2022, ad hoc subgroups were formed to gather information related to remote appearances in these specific case types:

- General Civil
- Criminal
- Family
- Tribal Issues
- Juvenile Delinquency and Dependency
- Unlawful Detainer and Small Claims

Each subgroup included multiple working group members with subject matter expertise related to its specified case type. The subgroups were tasked with reaching out to constituents and stakeholders in their topic areas to gather both positive and negative feedback related to remote court proceedings and bringing the information back to the working group.

The agenda items covered at each of the meetings were as follows:

- **July 1:** Summary of the requirements set forth in Code of Civil Procedure section 367.9, information from Judicial Council staff on the data collection report required under Code of Civil Procedure section 367.8, data and outcomes using Zoom and the Ability-to-Pay

program for remote services, and an update on nationwide remote proceedings from the National Center for State Courts.

- **July 25:** Findings on successes and challenges of remote proceedings in General Civil and Family Law case types and updates on the Information Technology Advisory Committee’s new workstream called “Advancing the Hybrid Courtroom.”
- **August 10:** Findings on successes and challenges of remote proceedings in Family Law, Juvenile Justice, Child Welfare, Small Claims, and Unlawful Detainer case types, as well as updates from the Court Reporters Board of California.
- **August 25:** Findings on successes and challenges of remote proceedings in General Civil, Criminal, and Tribal issues, as well as a presentation on court interpreters from working group members and updates from Judicial Council staff on funding in the 2021–22 State Budget to address the court reporter shortage in family and civil cases in California.
- **September 8:** Updates from the Service Employees International Union regarding court reporters.

Public comment

The 367.9 Working Group held a two-hour public meeting via BlueJeans on September 1, 2022, dedicated to public input to further inform members on the benefits and challenges of remote court proceedings.

Over 140 people attended the session, including members of the working group, Judicial Council staff, observers, and commenters. Altogether, 37 public comments were presented virtually during the session, and 56 written comments were submitted. The public comment session was recorded, and the link to the full session along with all the written comments were provided to working group members to review prior to discussing and finalizing the working group’s recommendations. A full recording of the public comment session can be accessed on the Judicial Council’s website.⁵

367.9 WORKING GROUP RECOMMENDATIONS

Upon the conclusion of subgroup presentations and public input, each working group member was invited to submit recommendations for consideration on each of the statutorily mandated topic areas, via a fillable form (see Attachment A), to be considered and voted on by the full working group at its final meeting.

All suggestions provided by working group members were considered; those with common themes were merged into more comprehensive questions, and a final list of recommendations was prepared. The list was provided to members before the final meeting on September 8, 2022, and members were given the opportunity at that time to add recommendations to the list for

⁵ [Link to the 367.9 Working Group public comment session](#)

consideration at the meeting. After receiving feedback from the working group, the draft recommendations were considered by all working group members during the final meeting. The working group reviewed and discussed each individual recommendation, edited some of the recommendations via group consensus, and then voted on each one.

The final 21 recommendations and the vote tallies for each are listed below, and all recommendations provided by the working group are included in Attachment B.

RECOMMENDATION AREA 1: COURT REPORTER AVAILABILITY AND FUTURE WORKFORCE⁶

Multiple statutes address court reporting requirements. At a minimum, courts provide a court reporter for felony and juvenile proceedings. Electronic reporting is prohibited, except under certain circumstances when a reporter is unavailable, for limited civil, misdemeanor, and infraction proceedings. When a court reporter is not available in a civil case type where a court reporter is not required, parties may choose to obtain and pay for their own reporter; parties with fee waivers may request an official court reporter and the court must provide one.

Data presented to the 367.9 Working Group suggests that there are declining numbers of available licensed court reporters in California, with many reporters retiring or leaving court employment to work in the private sector.

Based on the data and information presented during the meetings, the working group considered the following recommendations related to this topic:

Recommendation 1.1: Expand the pool of court reporters through monetary and other incentives.

MEMBER VOTES: Yes: 21 No: 1 Abstain: 1

Recommendation 1.2: Expand the use of court reporters through the use of innovative technologies.

MEMBER VOTES: Yes: 20 No: 4 Abstain: 0

Recommendation 1.3: Expand the pool of court reporters through the use of voice writing.

MEMBER VOTES: Yes: 19 No: 4 Abstain: 2

Recommendation 1.4: Expand the use of court reporters through the use of remote court reporting.

MEMBER VOTES: Yes: 20 No: 5 Abstain: 0

⁶ The recommendation topic areas were provided by statute in section 367.9(c).

Recommendation 1.5: Establish grants or scholarships for education and training of court reporters.

MEMBER VOTES: Yes: 20 No: 4 Abstain: 1

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

The COVID-19 pandemic caused the courts to pivot quickly to maintain court operations and access to justice. Technological platforms and guidelines vary among the courts, resulting in various methods for accessing and attending remote proceedings. Some members of the 367.9 Working Group reported that the differences among courts can create challenges for court users. The following recommendations were designed to ensure the best level of service and access for all court users.

Based on the information presented during the meetings, the working group considered the following recommendations related to this topic:

Recommendation 2.1: Provide modernized remote appearance technology and equipment for use in the court.

MEMBER VOTES: Yes: 23 No: 0 Abstain: 2

Recommendation 2.2: Develop statewide guidelines, broad-spectrum, user-friendly manuals, and accessible aids in various languages for all parties appearing remotely, with a specific emphasis on seniors, self-represented litigants, people with disabilities, limited-English-proficiency litigants, victims/survivors of domestic violence, and other vulnerable court users.

MEMBER VOTES: Yes: 25 No: 0 Abstain: 0

Recommendation 2.3: Encourage the Judicial Council of California to continue to evaluate and adopt statewide rules and forms for use in remote proceedings.

MEMBER VOTES: Yes: 21 No: 2 Abstain: 1

Recommendation 2.4: Place statewide guidelines, tutorials, and other aids on individual court websites and the Judicial Council of California website.

MEMBER VOTES: Yes: 24 No: 0 Abstain: 0

Recommendation 2.5: Increase technological access for self-represented or indigent litigants, people with disabilities, seniors, and all who may have trouble accessing the court remotely.

MEMBER VOTES: Yes: 22 No: 0 Abstain: 0

Recommendation 2.6: Provide remote proceeding training for all judicial officers and court staff including court reporters and interpreters.

MEMBER VOTES: Yes: 24 No: 0 Abstain: 0

Recommendation 2.7: Provide funding to the courts to create new positions that are responsible for providing technical support for remote proceedings.

MEMBER VOTES: Yes: 23 No: 0 Abstain: 2

RECOMMENDATION AREA 3: CASE TYPES AND PROCEEDING TYPES FOR WHICH REMOTE PROCEEDINGS ARE APPROPRIATE

The working group was provided with information showing that courts used remote technology to conduct proceedings remotely during the pandemic in many different case types. Working group members reached out to court users and stakeholders, and received input on benefits and challenges in various case types.

Some of the benefits that members noted include:

- Certain barriers to in-person participation for all court users are removed, such as job constraints, lost income from work, childcare needs, transportation issues, traffic congestion in urban areas, and length of travel for rural communities.
- Self-represented litigants, who constitute a large portion of court users, identified specific benefits such as reduced travel time; reduction of expenses incurred from travel, missed work, or childcare; or not having to be in the same room as a witness or other party in a case. This was also true of victims of crime and in proceedings for domestic violence restraining orders.
- Individuals with mental health or substance use disorders can participate without leaving their treatment facilities.
- Experts and other witnesses, including law enforcement officers, have shown greater interest and willingness to testify when they do not need to set aside a whole day to travel to the courthouse for an in-person appearance.
- Attorneys in civil and other matters do not have to travel to court, which ultimately saves their clients' money.
- Remote appearances by a youth in custody allows the youth access to justice while allowing them uninterrupted access to programming and services at their placement or school.

Concerns were also raised by members:

- Members noted challenges providing adequate interpreting services when they were not physically present with the court user. Concerns were also raised with the impact of remote participation on consecutive versus simultaneous interpreting.

- Members noted challenges with capturing a verbatim record during remote or hybrid proceedings.
- Some attorneys—especially criminal defense attorneys—expressed a desire to be physically present with their clients to ensure that clients fully understand the court proceedings, and noted the need for ensuring confidential communications.
- Many members noted concerns about the digital divide and the inability of some court users to access the courts remotely. This was identified as an issue in both urban and rural areas.
- Challenges identified in general civil cases included connectivity issues, lack of formal and consistent remote hearing processes and procedures, and difficulty related to presenting documents and other physical evidence during the trial.

Based on the information presented during the meetings, the working group considered the following recommendations related to this topic:

Recommendation 3.1: Remote proceedings should be available, but not mandated, in all case types when:

- **Courts and parties or others appearing remotely have access to technology;**
- **Clear and private communication between parties and their attorneys is available; and**
- **Technology provides for clear communication between all participants and court interpreters.**

MEMBER VOTES: Yes: 19 No: 6 Abstain: 0

Recommendation 3.2: With additional input from stakeholders, the Legislature may want to consider if there are specific categories of court proceedings or hearing types that should presumptively occur in person.

MEMBER VOTES: Yes: 8 No: 14 Abstain: 2

RECOMMENDATION AREA 4: PROTOCOLS FOR ENSURING COURT USERS FULLY UNDERSTAND THEIR OPTIONS FOR ACCESSING THE COURT REMOTELY

As courts were forced to navigate through the pandemic with fast evolving procedures and technical guidelines, court users, including self-represented litigants, were forced to do the same, sometimes without the tools necessary to do so. The following recommendations were designed to ensure court users are provided with the tools needed to assist them in appearing remotely.

Based on the information presented during the meetings, the working group considered the following recommendations related to this topic:

Recommendation 4.1: Establish protocols for ensuring court users fully understand their options for accessing the court remotely or in person.

MEMBER VOTES: Yes: 25 No: 0 Abstain: 0

Recommendation 4.2: Continually solicit feedback from court users to ensure they understand their options for accessing the court remotely or in person.

MEMBER VOTES: Yes: 24 No: 0 Abstain: 0

Recommendation 4.3: Develop clear, concise, and accessible information and instructions in various languages that are made available to all court users prior to hearings.

MEMBER VOTES: Yes: 24 No: 0 Abstain: 0

Recommendation 4.4: Provide funding to develop private areas in community locations that are equipped with necessary technology and support for use by parties and other remote participants.

MEMBER VOTES: Yes: 22 No: 3 Abstain: 0

Recommendation 4.5: Support efforts to ensure that limited-English-proficiency litigants understand court proceedings, including:

- Providing the option of consecutive versus simultaneous interpreting;
- Being physically present with parties where possible; and
- Providing opportunities for clients, attorneys, and interpreters to meet privately.

Significant additional work is needed to ensure language access is available and that remote proceedings are not a barrier to justice.

MEMBER VOTES: Yes: 20 No: 3 Abstain: 1

RECOMMENDATION AREA 5: WHETHER CHANGES ARE NEEDED TO EXISTING LAWS PROTECTING THE ACCURACY OF THE OFFICIAL VERBATIM RECORD AND PRESERVING PARTIES' RIGHTS TO APPEAL

Capturing and preserving an official, verbatim record of court proceedings is critical to the administration of justice. Providing meaningful access to the courts includes providing access to the appellate process, for which a record of the trial court proceedings is vital. Currently, statutes addressing the creation of a record generally provide that it be created by a court reporter, and some specifically provide that it be made by shorthand. Court reporters and other court users cited challenges with the ability to create a verbatim record in hearings where remote technology is used.

Based on the information presented during the meetings, the working group considered the following recommendations related to this topic:

Recommendation 5.1: Amend Government Code section 69957 to allow electronic recording in all case types when a court reporter is not available.

MEMBER VOTES: Yes: 17 No: 7 Abstain: 1

Recommendation 5.2: California should take additional steps to promote the availability of court reporters (as included in Recommendation Category 1), but when a court reporter is not available, California should increase the use of electronic recording to protect a party's right to appeal.

MEMBER VOTES: Yes: 16 No: 8 Abstain: 1

Recommendation 5.3: Establish best practices for all participants to follow when proceedings involve a remote appearance to ensure the making of an accurate and verbatim record.

MEMBER VOTES: Yes: 22 No: 1 Abstain: 1

Recommendation 5.4: Ensure that a licensed reporter takes down the record and that record be the only acceptable record. Audio recordings should be banned.

MEMBER VOTES: Yes: 6 No: 17 Abstain: 1

Recommendation 5.5: Mandate court reporters in family law cases.

MEMBER VOTES: Yes: 7 No: 14 Abstain: 3

ATTACHMENTS

1. *Attachment A: California Code of Civil Procedure Section 367.9 Recommendation Submission Form*
2. *Attachment B: California Code of Civil Procedure Section 367.9 Working Group: All Member Suggestions and Points (Sept. 8, 2022)*

Attachment A

California Code of Civil Procedure section 367.9 required the Judicial Council of California 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 for a statewide framework for remote civil court proceedings and court reporter availability and workforce.

The 367.9 Working Group has been charged with developing recommendations in five key areas, which may differ by case type or proceeding type. Each of those recommendation areas are listed below and space is provided under each area for your written recommendation(s).

Please include your name and affiliation, provide your recommendation(s) in the appropriate box below, and submit your form to both Michelle Brooke (michelle.brooke@jud.ca.gov) and Brandie Pilapil (brandie.pilapil@jud.ca.gov) by **5:00 p.m. on August 30, 2022**.

Name:	
Affiliation:	

Please detail your recommendations below:

1. Statewide procedural and technical guidelines to ensure court users receive the best possible levels of service and access.

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2. Case types and proceeding types for which remote proceedings are appropriate.

-

3. Court reporter availability and future workforce.

-

**Code of Civil Procedure Section 367.9 Working Group
Recommendations**

4. Protocols for ensuring court users fully understand their options for accessing the court remotely.
<ul style="list-style-type: none">•
5. Whether changes are needed to existing laws protecting the accuracy of the official verbatim record and preserving parties' rights to appeal⁵.
<ul style="list-style-type: none">•

⁵ Code Civ. Proc., § 367.9(c).

Judicial Council's Code of Civil Procedure Section 367.9 Working Group (367.9 Working Group)

All Member Suggestions and Points

September 8, 2022

RECOMMENDATION AREA 1: COURT REPORTER AVAILABILITY AND FUTURE WORKFORCE

Consider the expanded use of remote court reporting, taking into account the results of the AB 253 pilot project.

More funding to get more court reporters.

Government Code section 69957 should be amended to allow electronic court recording in all case types when a local court reporter is not available. We cannot follow "availability" rules for court reporters as is currently used for interpreters due to lack of time and the onerous processes.

Voice writing is not a solid solution due to my experience in the federal court system. Parties find it annoying due to the extra noise when the voice writer repeats what is spoken in court. Also, it seems it may be more accurate to record what is said directly in court with electronic court recording rather than having someone repeat what is being said.

We need to continue to consider access to justice issues when court reporters are unavailable. This could either be allowing electronic recording (that could later be transcribed if needed for appeal) or other alternatives, such as the voice recording proposal currently before the legislature.

Particularly in cases where a court reporter should be available because of Jameson, all alternatives should be provided.

In the immediate and mid-term, this issue is more accurately described as recruitment and retention problem since courts cannot compete with the private sector. The Legislature has prioritized the hiring of reporters. Yet courts are not spending the extra money provided to them by the Legislature and many courts are not sincere in their recruitment efforts. Some courts have done very little to actively recruit official reporters while paying expensive freelance fees to pro tem reporters.

Courts are not maximizing their authority under government code section 68086 to recoup fees for the actual costs of providing court reporter services in civil actions or cases.

RECOMMENDATION AREA 1: COURT REPORTER AVAILABILITY AND FUTURE WORKFORCE

In the longer-term a greater pool of potential court reporter candidates needs to be created. The Legislature's recent action in adopting the licensure of voice writers is a great first step in expanding the pool of fully licensed individuals who meet the same educational background, qualifications and testing as certified shorthand reporters to ensure the gold standard of creating the verbatim record is upheld in California.

The Legislature has clearly established their intent in maintaining the gold standard in court reporting through the use of official court reporters.

Standards need to be set so that court reporters can create record when proceedings held remotely.

Court reporter should be able to terminate remote hearing when technology is not allowing for a record to be made.

Need to have set standards and training for judges conducting remote hearings.

Both court reporters and court interpreters play a vital role in access to justice within our system. While many civil litigators and well-funded parties have become acclimatized to supplying their own court reporters or interpreters for proceedings, there is an unfortunate imbalance where parties cannot afford such services (and the court can no longer provide them). With sufficient technology and safeguards, remote proceedings have the potential to allow for greater parity and equity in access to reporters and interpreters, insofar as it could permit California courts to share pools of these talented and qualified individuals, potentially providing them to parties who cannot otherwise bear the cost themselves.

Allowing in the appropriate circumstances for remote reporters and interpreters could also potentially lead to a more robust workforce: With reporters and interpreters able in some circumstances to provide services from a fixed office, the burdens of travel and related expenses would be reduced. Meanwhile these important justice workers would be able to leverage their own successful technology set-ups, upon which they know that they can rely to properly perform their responsibilities.

All dependency proceedings must have an official record. The reporter must be provided by/compensated by the court not the parties.

Court reporters are vital to uphold defendant and court user rights. It is imperative to make court reporting viable and is complete court profession with rates mirroring the private sector.

The record is important to ensure appeal rights. Having court reporters is the only way we can fulfill that promise.

There is no lack of court reporters, only lack of complete wages in the courts. Not recognizing and dignifying the court reporting profession by keeping wages low only discourages employment and makes us part of the failures of justice.

RECOMMENDATION AREA 1: COURT REPORTER AVAILABILITY AND FUTURE WORKFORCE

Because the lack of court reporters and court personnel affects access to justice, we should return to the practice of ensuring a court reporter is automatically seated in every courtroom. To this end, create an aggressive campaign to recruit court reporters and court personnel by (1) increasing pay and benefits, including time off; (2) establishing grants or scholarship for education and training; (3) providing increased subsidies for travel, childcare, and other personal obligations that prevent employment.

The court reporter shortage has reached a crisis point. Last week, LA Superior Court announced that court reporters would no longer be available in family law and probate matters. It is time to think of other ways to preserve the court record without a reporter. One obvious solution is to allow the audio recording of court proceedings. Other jurisdictions, such as Washington state, successfully implemented the audio recording of court proceedings years ago. Audio recording of court proceedings would integrate seamlessly with remote appearances, at least when all parties appear remotely, as the platforms already have record capability.

With the current shortage of court reporters, and without any end in sight to that shortage, developing effective ways of allowing a greater pool of court reporters to be available for hearings through remote proceedings can perhaps provide some temporary alleviation of the problem. Long term, the courts need to have additional solutions available for making a record.

A survey of court reporters, current and former, should be distributed to identify barriers to full-time employment, e.g the 30-year delay increasing the transcript pay rate, misclassification of reporters, courts summarily getting rid of reporters in case types such as in San Diego, which led to the California Supreme Court decision in Jameson.

There should be a detailed audit of court practices related to recruitment and retention to ensure the highest level of efforts. There should be a review of best practices to identify ways to ensure that these professionals are provided working conditions that will result in best outcomes for capturing the verbatim record.

Collaboration with private organizations and labor groups to identify strategies to recruit and retain court reporters.

There should also be a detailed review on how courts spent or did not spend the recent allocation of \$10 million for family law court reporters and the current annual \$30 million allocation. Creation of a court reporter recruitment task force, chaired by a court reporter, could develop recommendations for courts to better recruit, retain, and improve working conditions.

Because the number of court reporters continue to decline, California needs to consider ways to increase the availability of court reporters or consider other ways that individuals, regardless of their income level, can get records of their court proceedings.

Courts must incentivize the official court reporter position to be competitive in the labor market.

RECOMMENDATION AREA 1: COURT REPORTER AVAILABILITY AND FUTURE WORKFORCE

Use funds provided by SB170 and SB154:

Signing bonuses

Retention bonuses

Salary increases

Court contributions to deferred compensation

Eliminate non-living wage retirement tiers.

Schedule flexibility, including job sharing and part-time work.

Put official reporters back into civil and family law courtrooms. The freelance court reporters currently working in those courtrooms will follow.

AB156/SB137 provides for licensure of voice writing court reporters.

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

Provide statewide consistent virtual appearance technology (and training) using one uniform platform (Zoom is rated the best). Smaller counties still use phone appearance which are not effective since it is hard to hear the parties and is not a preferred form of appearing remotely. Investment in technology for smaller counties for virtual appearances is necessary since the driving distance to these courts is far and not efficient for attorneys, tribes or families.

Training Court Clerks on providing the access (invite) information uniformly and consistently. Even with the filing of the RA-010 form sometimes the Clerks will leave an attorney in a “waiting room” forget they are there and the attorney misses the hearing. Should not have to rely on contacting County Counsel or other attorneys to remind the Court that you are appearing remotely. Using a standing Zoom log in for all hearings makes the most sense.

Only require the filing of one RA-010 form per case not for every hearing.

Standardize any additional local forms a Court wants in addition to the RA-010 form. Some counties have an additional local form for virtual appearance and is confusing if you are practicing in multiple courts.

The Judicial Council should reverse its suspension of Rule 5.482 (g) (2) in dependency proceedings involving the ICWA.

Instructions for remote appearances by parties must be made available, in English and Spanish language and in plain English, with graphics where possible, including instructions as to what to do if connection is interrupted, expectations as to confidentiality of proceedings (LPS, Juvenile Court), and expectations as to decorum (enter meeting with mic muted and camera turned off) and court staff must be diligent to admit court participants who are connected and “in waiting room” into the court session.

Arrangements need to be made for children subject to the court’s jurisdiction under WIC 600, et seq., particularly those who are socio-economically disadvantaged, and their parents to have access to devices with reliable internet connectivity in order to fully participate in court hearings.

Interpreters and court reporters must be able to hear proceedings where parties or witnesses appear or testify remotely and court must exercise authority to prevent people from speaking over each others by clearly articulating expectations and consistently enforcing those expectations (without muting litigants, which is dehumanizing) at the commencement of each hearing.

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

Resources must be available in the courtroom for interpreters to participate (when physically in court) in confidential conversations between a litigant and their attorney; particularly where the litigant is a child, is suspected of suffering from a developmental disability or serious mental illness.

Court must be cognizant of comprehension issues with non-English language speakers who are appearing remotely as witnesses, litigants or other interested parties and must provide opportunities for conversations to occur, with the attorney who subpoenaed the witness, or with counsel for a litigant, as needed. Efficiency cannot supersede justice.

Thought needs to be given as to the manner in which exhibits can be marked, shown to witnesses for authentication and foundation, and admitted, via remote technology without “publication” of the exhibit to the finder of fact. Same is true for refreshing recollection and impeachment with documentary evidence. Court must have a mechanism for ensuring confidentiality (in cases in which confidentiality laws apply) of the proceedings in terms of others who may be present in the remote location, and court must have a mechanism for preventing “cheating” (i.e. looking at prepared Q & A, drafted by an attorney and provided to witness in advance) during testimony, to insure integrity of the proceedings and guarantee due process and the right to a fair trial. This may not be practicable or possible with remote testimony.

Without recommending a specific statewide procedural or technical guideline, a general recommendation that consideration be given to statewide uniformity, particularly on procedural and mechanical issues (not the actual technology used by a particular court).

Training for the judges regarding establishing protocols in their particular department, setting the tone for speaking clearly and slowly; setting the tone for speaking one person at a time; interfacing with counsel before the matter is called.

Admonitions on not having any other people in the room to assist, or other devices to receive information in real time separate from the proceedings.

Upgrade/modernize equipment to provide remote capability; training on how to use the equipment.

Training for judges and attorneys when interpreters are used.

Court remote appearance etiquette guidelines would be helpful for court users when appearing remotely (e.g., how to dress, press mute when not talking, etc.).

Judicial officers should be required to have cameras on for remote appearances.

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

Language Justice: There continue to be challenges with working with court interpreters in remote proceedings. The Judicial Council should revisit the recommendations of the language access report with a lens to remote proceedings. Simultaneous interpretation may not be appropriate via video appearances, even when it was appropriate in in-person proceedings. There should be clear statewide forms and processes because interpreters based in some counties could appear remotely in other counties when there are shortages. The experience of our important interpreters should be consistent whether they are sitting in a courtroom in LA or appearing remotely for a self-represented litigant in Lake County.

Language Justice: The Judicial Council should create a way for litigants and attorneys to complain about a lack of language access in court rooms without fear of repercussions. An online portal and phone number should be set up for complaints, protecting the complainant's identity if requested, but gathering enough information for an investigation into whether an individual judge is systematically violating people's right to due process.

Language Justice: All technology guidance should be available in other language (i.e. how to access zoom links and what to do when there is a technology challenge).

Language Justice: In in-person hearings, interpreters are often available to the litigant immediately afterward to answer clarifying questions, like “what did the judge just say?” Now, with remote access, the connection is severed too quickly, and LEP litigants are often confused about what to do next.

Access for People with Disabilities: All technology adopted by each court must be accessible for people with disabilities, including those who may use screen readers (for the viewing of evidence). It is not enough to say that litigants can just come to court.

Access for People with Disabilities: Courts currently are inconsistent with their Reasonable Accommodation requests. I know of at least one judge who is not granting RAs for seniors to appear by phone. This should be standard when a court already uses CourtCall.

Access for People with Disabilities: Remote hearings have worked well for many people with disabilities who have difficulty appearing in court.

Judicial Training: Similar to the required training on implicit bias, judges should also receive training on patience with people struggling to access the courts remotely. If a judge themselves does not understand how the technology is used, then they will have even less patience when a litigant says that they have a challenge.

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

A survey should be sent out broadly to court users to obtain their suggestions before adopting guidelines. This would allow for meaningful feedback to ensure the best possible outcome for court users.

Instructional video posted to local court website and Judicial Council website.

Email address where litigants can request information about how to appear remotely.

Given the diversity and divergence of systems currently used across the state by Courts – and the varying degrees of IT support and experience available to both Courts and parties in those different jurisdictions – a set of statewide procedural and technical guidelines would be very valuable to ensure court users receive the best possible levels of service and access.

Related, while it may ultimately prove impracticable to set a single statewide system (and so a single procedure or guideline) for remote access across all of California, it nonetheless is highly recommended that the State minimize the total number of different systems (on-line platforms, vendors, and/or bespoke Court services) that parties will be required to access, understand, and become competent with in order to participate in remote proceedings in our California courts.

- For example, a standardized list of Court-approved on-line video platforms from which jurisdictions could choose would minimize the amount of licenses, software, or other set-up and familiarity required by parties that wish to appear remotely. Similarly, a list of court-approved vendors, vetted by California court staff and approved to run more complex proceedings (where participant access may need to be monitored in order to address sealing and confidential testimony), also would have value. (Indeed, such standardization would find precedent in the state courts' use of Court Call and other telephonic remote systems.)**

Efforts to standardize Courtroom equipment across the state would also be highly valuable. A baseline for quality, number, and preferred placement of microphones, cameras, monitors, and courthouse personnel or vendors would also be valuable.

- Courtroom equipment guidelines should be made in consultation with court staff, court reporters and interpreters, and local counsel who regularly appear in the jurisdiction.**

Guidelines and protocols should also take into account the need not just for reliable (Wi-Fi) access and basic equipment – i.e. the physical set-up – but also for additional IT and vendor support that may be required at some courts to operate complex remote

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

proceedings and trials – particularly those that involve multiple parties, confidential and/or sealed testimony and exhibits, or the need to monitor remote juror access and engagement.

Finally, training both for courtroom staff, and for those that seek remote access to the court (perhaps by video), will be necessary.

Remote/hybrid proceedings cannot be fully inclusive and provide meaningful access to justice or reliable testimony and evidence necessary to allow for the trier of fact to make competent decisions without:

- Adequate tech for all parties, attorneys, witnesses, court staff (including interpreters and court reporters) and the judge. This includes reliable connectivity, audio and visual including microphones and cameras to ensure that all parties, lawyers, court reporter can see and hear each other and the witness,
- Simultaneous interpretation which includes opportunities for the client and their attorney to communicate privately with the assistance of the interpreter. Considerations for ASL interpretation should be informed by the ASL and when relevant the Intermediary Interpreter. We may need to seek further guidance/information in order to issue meaningful recommendations.

Whenever a party (child or parent) is physically present in the courtroom their attorney should be as well.

Children should never testify from a location different than their attorney. If the child is testifying remotely – the attorney and child should be at the same physical location.

When persons, including but not limited to parties, are participating remotely the court should assess (perhaps we can create some guidelines/sample questions) the degree of privacy and confidentiality available to the person at their remote location. Each remote hearing should include an admonishment regarding the confidential nature of dependency hearings, prohibition on recording and all person participating remotely should affirm that there are no other unidentified persons present, that they are in a private location etc.

Attorneys, judges and staff similarly should ensure that they are in a private location and that no beings including children and pets (unless the pet is part of an official program to provide comfort or support for a witness or victim) interrupt or appear during the proceedings.

Private spaces equipped with necessary tech in public locations such as libraries, community centers, administrative buildings etc should be considered for use by families and witnesses especially in jurisdictions where 1) the courthouse is not geographically

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

convenient to the areas where families with open child welfare cases reside and 2) there is inadequate infrastructure to support the use of one's personal/home wifi to access remote court proceedings.

Statewide procedures and technical guidelines should adopt ISO/PAS 24019

Hybrid Courtroom (interpreter is in the courtroom):

- Workstation for interpreter in each courtroom.
- Video screens at workstations will consist of two video monitors. The minimum requisite for each screen is flat panel, LCD computer monitor, with minimum screen size of 19 inches at a resolution capability of 1280x720 pixels.
- Web-cameras for all participants, microphones for all participants, all participants should have a screen in front of them where they can easily see all other remote participants with minimum 720p (1280x720 pixels) and 30 frames per second.
- Headsets and microphones for interpreters- Both headphones and microphones must have noise cancellation features and be direct cable-connected USB or other appropriate cabling, into the computer.
- Audio equipment for non-interpreter participants (individual microphones, speakers, and headsets).
- sufficient audio equipment for all participants to be heard clearly by all.
- Reproduction of audio frequencies in the useful frequency range, with a variation of maximum +/-3dB. Additionally, a high-pass filter shall attenuate the frequencies below 125 Hz with a slope of at least 12 dB per octave to improve speech intelligibility.
- Connected microphones and headphones with audio frequencies between 125Hz and 15 000 Hz, with a variation of maximum +/-10dB.
- Transmit of audio frequency between 125Hz and 15 000 Hz to interpreters, with a variation of maximum +/-3dB. Same audio frequencies shall apply when the interpreter's input is interpreted language channel, as in the case in relay interpreting.
- Computer – computers with processor that is dual core 2Ghz or higher, has at least 4Gb of memory, flat panels displays/monitors, each at 19 inches in size and resolution at least 1280x720 pixels per inch.
- Wired internet connection with bandwidth for group video calling for group video calling that is, at a minimum, for 720p HD video – 2.6 Mbps/1.8bps.
- Mechanism for confidential communication.

Video Remote (interpreter is not in the courtroom):

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

- End point conditions- separate private room with four ceiling to floor walls and a closable door in a courthouse or other court facility.
- Uniform platforms with integrated simultaneous and consecutive features in separate channel or platforms with compatibility with dedicated conference interpreting software that supports simultaneous and consecutive interpreting.
- Platforms with capability for breakout rooms.
- Connected microphones and headphones with audio frequencies between 125Hz and 15 000 Hz, with a variation of maximum +/-10dB.
- Transmit of audio frequency between 125Hz and 15 000 Hz to interpreters, with a variation of maximum +/-3dB. Same audio frequencies shall apply when the interpreter's input is interpreted language channel, as in the case in relay interpreting.
- Reproduction of audio frequencies in the useful frequency range, with a variation of maximum +/-3 dB. Additionally, a high-pass filter shall attenuate the frequencies below 125 Hz with a slope of at least 12 dB per octave to improve speech intelligibility.
- Audio equipment for non-interpreter participants (individual microphones, speakers, and headsets) – sufficient audio equipment for all participants to be heard clearly by all.
- Video screens at workstations will consist of two video monitors. The minimum requisite for each screen are flat panel, LCD computer monitor, with minimum screen size of 19 inches at a resolution capability of 1280x720 pixels.
- Computer for court participants– computers with processor that is dual core 2Ghz or higher, has at least 4Gb of memory, flat panels displays/monitors, each at 19 inches in size and resolution at least 1280x720 pixels per inch.
- Wired internet connection with bandwidth for group video calling for group video calling that is, at a minimum, for 720p HD video – 2.6 Mbps/1.8bps.

Establish guidelines with alternatives because people with disabilities, seniors, etc. may not (1) have access to, or accessibility features on, a computer; (2) understand how to use a computer; or (3) in many rural areas, have adequate or access to internet systems.

Alternatives include (1) plain language instructions in all languages, including ASL and other non-verbal languages; (2) ability to request an in-person hearing/trial without denial; (3) providing public computers with privacy in rural community spaces; (4) providing immediate technological assistance; (5) free phone access (800 or 888 numbers) for persons unable to use internet or don't have

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

computers or cell phones; (6) acceptance that cameras may need to be off to access Zoom or other platforms; and (7) posting the call in number (again 800 number) on the Zoom (etc.) screen for those who are cut off or need better audio.

Judicial and clerk training regarding disability access, rural issues, and other access to justice pediments.

All remote hearings should be transcribed by a court reporter and should not be dependent on request.

All pro per cases unless the pro per party elects an in-person court hearing. If the pro per litigant elects a remote hearing, a hybrid option should not be available to prevent inequities in the matter.

There should be uniformity of access in all designated case types. For example, if remote appearances are available in family law, they should be available in all family law proceedings. It's confusing for litigants to have different remote appearance procedures for various proceedings.

There should be uniformity of public access; the public should be able to observe proceedings open to the public, whether they occur in person or remotely. Courts should consider streaming proceedings to ensure uniformity of access.

The courts should consider partnering with legal aid organizations and related non-profits to ensure that litigants have access to WiFi, devices, and appropriate spaces for remote proceedings so that litigants can take advantage of remote appearance options.

Remote appearance platforms must be configured to allow support persons, such as Family Code 6303 support persons, to appear remotely with the victim litigant.

Remote appearance platforms should be configured to allow the parties to view the cases before theirs to promote increased understanding of the process and decrease the amount of time the court spends explaining the process.

Courts should adopt guidelines regarding the safety of victims appearing remotely. For example, the blur-background feature should be automatically enabled in all DV cases and upon request in other matters to ensure that a victim's location is not disclosed to the person that harmed them.

Instructions (website, instruction downloads, or instructional videos) regarding remote appearance access should be made available in all of the core languages in the area.

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

Improve translation tools on remote appearance platforms. Sometimes, this might mean upgrading a subscription to include the available translation features and tools on the platform.

Give non-English speaking litigants the option of consecutive versus simultaneous translation.

Where simultaneous translation must be used, provide non-English speaking litigants with two devices, so they don't have to mute or leave the proceedings to utilize the interpreter's services.

Adopt a general policy that non-English speaking litigants not be asked to mute themselves or disconnect from the proceedings, denying them access to their proceedings.

Ensure that all courtroom staff are properly trained to use the remote appearance platform and that training is provided before any substantive system upgrades or changes.

Incorporate technology support on the same software as the joining software so that litigants using a cell.

Enable the screen share function on all remote appearance platforms so that litigants can more readily share evidence, thus improving access to remote appearance options.

Consider setting minimum technology standards for courts, such as all courtrooms offering remote appearance be equipped with two cameras, to ensure continuity of user experience and consistent expectations.

Sponsor legislation to create funding so that access to remote appearances remains free.

From an access to justice perspective, all courts should be equipped with the best possible internet access so that all court participants have the opportunity to participate in court proceedings remotely. There should also be tutorials available to participants that help them understand how to gain remote access to court proceedings. Clear guidelines and rules about how remote proceedings are handled are a helpful benchmark for all participants, whether court reporters, lawyers or litigants.

Based on discussions with court reporters from around the state, current practices have been inconsistent and erratic. There have been a wide spectrum of problems and challenges with a broad range of responses. It appears that no court has landed on a clear path forward to eliminate the problems. It would be beneficial to survey court users from around the state and identify what has worked

RECOMMENDATION AREA 2: STATEWIDE PROCEDURAL AND TECHNICAL GUIDELINES TO ENSURE COURT USERS RECEIVE THE BEST POSSIBLE LEVELS OF SERVICE AND ACCESS

well and what has not, conduct collaborative discussions to identify if there are effective strategies that can be used and replicated, and in what types of cases and situations, if any.

The focus should be on what works for court issues and the proper operations that will ensure due process, including capturing of the verbatim record in as many cases as possible and as accurately as possible.

In order to support effective and efficient remote courts hearings, trial courts should create new positions that are responsible for coordinating remote proceedings and supporting participants in each remote proceeding.

Education on importance of the record and critical role of the court reporter.

Establish best practices for all users (bench officers, court staff, attorneys and litigants) to follow when proceedings involve a remote appearance to ensure the making of a good record.

Court reporter must have a microphone and be an active participant.

Court reporter MUST NOT be muted.

Court reporter must be able to see all speakers.

Instruct that remote appearance requires the same decorum as if appearing in person.

RECOMMENDATION AREA 3: CASE TYPES AND PROCEEDING TYPES FOR WHICH REMOTE PROCEEDINGS ARE APPROPRIATE

Those I surveyed found virtual hearings appropriate for dependency cases, domestic violence, and eviction cases.

Most Courts are requiring in-person appearances for evidentiary and contested (trial) hearings, which should be subject to the discretion of the Court and not a mandatory requirement. Some evidentiary hearings and trials (bench) may be appropriate for a virtual appearance.

NOT appropriate in the following proceedings under WIC 300, et seq. – Initial Hearing/Detention; Contested Removal Hearings; Contested Jurisdictional Hearings; Hearings in which Certified Court Interpreters are required for litigants.

NOT appropriate in the following proceedings under WIC 602, et seq. – Initial Hearing/Detention; Evidentiary Hearings (motions requiring witness testimony/WIC 707 hearings/Jurisdictional hearings/hearings to ascertain a child’s competency “to stand trial”; Disposition Hearings) and any hearing in which a minor or their parents require the assistance of a court-certified interpreter.

NOT appropriate in any special proceeding implicating liberty interest, unless court is capable and willing to allow for confidential attorney-client communication prior to, during, and after hearing, with interpreter, if needed.

In special proceedings involving liberty interests, no remote testimony by witnesses should be permitted without consent by the person who is the subject of the proceeding; unless the person, by virtue of diminished mental capacity, is presumptively unable to waive statutory rights (e.g. LPS, MDO, MDSO, or NGRI proceedings), in which case, the attorney for the person should have exclusive authority.

NOT appropriate at hearings in competency proceedings, at which the court (PC 1368, PC 1369, PC 1372) or jury (PC 1369) is required to make a preliminary assessment or finding as to the defendant/respondent’s current mental competency to stand trial, without consent of the defendant/respondent’s counsel of record.

NOT appropriate at “critical stages of proceedings in a civil commitment matter, without the consent of the respondent and, in the case of a person with diminished mental capacity who is presumptively unable to knowingly, intelligently and voluntarily waive statutory rights, the consent of their attorney. (e.g., WIC 6602, WIC 6603, WIC 6605, and WIC 6608; WIC 6503.

NOT appropriate in contempt proceedings, other than routine scheduling hearings.

Consider establishing unique factors to apply in certain types of cases (e.g., conservatorship, civil commitment, juvenile delinquency) when determining whether a proceeding should take place remotely, in whole or in part, while maintaining the option of remote proceedings in all case types, particularly with the parties’ consent.

RECOMMENDATION AREA 3: CASE TYPES AND PROCEEDING TYPES FOR WHICH REMOTE PROCEEDINGS ARE APPROPRIATE

Reconfirm that the court shall not require a remote appearance in any case type or proceeding, with a “default” right to in-person appearances. There has been some discussion and potential confusion about the existing statutory language. CCP section 367.75 (f) provides, in part: "The court shall not require a party to appear through the use of remote technology." CCP section (d)(1) provides: "Except as otherwise provided by law and subject to the limitations of subdivision (b), upon its own motion or the motion of any party, the court may conduct a trial or evidentiary hearing, in whole or in part, through the use of remote technology, absent a showing by the opposing party as to why a remote appearance or testimony should not be allowed." Although the two can be harmonized (even if the court is conducting a trial in whole through the use of remote technology, a particular party cannot be required to appear remotely and must be allowed to appear in person) clarification may be needed.

Remote should be available for all proceedings even though in person may work better in some disciplines.

All case types should allow the option of remote appearances. No case type should mandate remote appearances.

I think it is very rare that a case type or proceeding would never be appropriate. In most cases and types, it may be appropriate with litigant/attorney agreement, even for juveniles, especially on shorter, non-substantive hearings.

Surveys should be sent to court users, court reporters, courtroom clerks, judges and court executive officers for their feedback to determine how remote proceedings are working from their perspective and to accurately assess where problems lie so they can be remedied before making recommendations on what case types and proceeding types are appropriate to be conducted remotely.

Civil, Family, Probate, Juvenile Delinquency and Dependency.

Remote proceedings work well for non-evidentiary hearings.

Remote proceedings are a useful and positive tool for the courts that should remain an option post-pandemic. When used in the right circumstances, remote proceedings can increase efficiency and access to justice, decrease costs, and further the goals of our justice system. To be sure, there remain kinks in the system, inconsistencies across jurisdictions, and a need to better define when, where, and how to use the remote tool. As a general rule, remote proceedings in California should be opt-in by both parties' agreement, not a default that is set by jurisdiction, case type or proceeding type.

RECOMMENDATION AREA 3: CASE TYPES AND PROCEEDING TYPES FOR WHICH REMOTE PROCEEDINGS ARE APPROPRIATE

Remote proceedings tend to be most useful for the least complicated proceedings – the more evidentiary or dispositive a hearing, or the more complex a trial, the less likely remote proceedings will be as effective as in-person. That said, there are exceptions to this general rule, and the option to opt-in for remote or hybrid proceedings can have a valuable role in almost any proceeding.

It is difficult to identify categorically certain specific case types and proceedings for which a remote or hybrid option is always appropriate. Much will depend upon the facts of a given litigation and the parties' perceptions of how best to present their case. In the general civil context, however, remote proceedings are frequently an appropriate and highly efficient tool for case management conferences, discovery hearings, ex parte motions, and the majority of standard pretrial motion practice. So too, some dispositive hearings, and even trial, can benefit from remote or hybrid options – again, particularly where the parties both opt-in.

Related, while the remote summoning and initial screening of jurors can yield added efficiencies that both improve citizen involvement as jurors and increase the diversity of the jury pool, many civil litigators and jurists believe that fully remote juries (as well as remote final jury selection) can prove problematic in many instances.

Initial hearings should not be remote.

Contested WIC 366.26 hearings with party testimony should not be remote.

Exceptions to these two recommendations might include cases where there are no parties or family members present.

ex. initial hearing for a child under 5 and neither parent present due to incarceration, military service, medical condition prohibiting travel to court or whereabouts unknown.

While not a mandate, a strong preference for in person hearings for contested matters with party or other lay testimony is recommended.

All other case/hearing types may be remote per the current language/considerations of CCP 367.75 h (1-4).

This statutory language does though need some technical cleanup for clarity.

There should be mandatory training and/or written guidelines for dependency judges regarding the “intangibles” discussed in slides 8-11 of the attached Power Point.

REMOTE INTERPRETING SHOULD BE A LAST RESORT. IN PERSON INTERPRETING SHOULD ALWAYS BE A PRIORITY.

RECOMMENDATION AREA 3: CASE TYPES AND PROCEEDING TYPES FOR WHICH REMOTE PROCEEDINGS ARE APPROPRIATE

Case types appropriate for remote if no in-person interpreter available: non-complex, brief and routine, non-evidentiary, matters lasting less than 20 minutes, and low stakes proceedings.

NO: TRIALS, TESTIMONY, HEARINGS, AND MOTIONS.

Appropriate Civil: Continuance, dismissals or vacating dates, and Self-help.

Appropriate Juvenile: Continuance, dismissals or vacating dates, and appointing attorney to case.

Appropriate Dependency: Continuance, dismissals or vacating dates, appointing attorney to case, obtaining initial parent contact information and relatives for minor placements.

Appropriate Criminal: arraignments, continuance, reviews, uncontested traffic cases, attorney client interviews, probation interviews, and witness/victim interviews.

Family law (especially with domestic violence concerns) and DVRO matters.

General civil law matters.

Landlord/tenant (if agreed upon by litigants).

Ex parte matters.

Settlement and discovery matters.

Status conferences, law and motion, bench trials.

Pro per matters (see previous recommendation #1).

Family Law

Traffic

Civil

Criminal – although I realize that there is debate about remote jury trials

RECOMMENDATION AREA 3: CASE TYPES AND PROCEEDING TYPES FOR WHICH REMOTE PROCEEDINGS ARE APPROPRIATE

I am not including Dependency or Delinquency proceedings at this time as there seemed to be real concerns about the privacy of the proceedings and the attorneys' ability to interact with clients appearing remotely.

All cases types have some proceedings which are appropriate for remote appearances.

A survey should be sent to courts, court personnel, including clerks, reporters, and interpreters, to identify the case types, proceeding types, technology specifications, etc., that have been used during the last two years.

It would also be key to identify whether courts have been complying with the emergency orders and SB 241 or have been operating in violation of the law. There have been reports of practices inconsistent with the current statute.

Additionally, a catalogue of problems and challenges should be created to get a better understanding of what has not worked well.

Beyond collecting case types, it would also be crucial to identify the specific type of proceeding and which individual utilized remote, example, the witness, a party, etc.

It would also be beneficial to identify the stated justification, if any, of the remote appearance - was the witness living out-of-state/local? was it just a matter of convenience or necessity to appear remotely?

Remote proceedings should be available in all case types with the consent of the parties and where all parties have access to the appropriate technology and due process rights are protected.

Use remote where litigants have minimum level of technology available to participate successfully.

But NOT while working, smoking, eating, driving, etc..

RECOMMENDATION AREA 4: PROTOCOLS FOR ENSURING COURT USERS FULLY UNDERSTAND THEIR OPTIONS FOR ACCESSING THE COURT REMOTELY

Standard notice given at the time a party files (in-person or online, etc.) a Petition, Complaint, Answer or Notice of Intervention by a tribe in a dependency case involving the Indian Child Welfare Act.

Notice should provide all options---phone and virtual appearances—with instructions on how to access each methods as well as costs if associated with a method and waiver of the costs if appropriate. (Sacramento County has a good set of instructions).

Written protocols and protocols delivered from the bench regarding remote proceedings.

Guidelines and recommendations for courts to provide information on websites, case notices and the statewide information should be posted on the JCC website.

We assume that hybrid proceedings are our future. A minimum number of courtrooms in each county should be set up with that assumption, and the state of California should fund those changes through general funds.

Court websites should be evaluated to ensure that self-represented litigants are able to understand how to appear remotely if needed.

There should be an easy-to-find number where people can call if they are having difficulty with appearing remotely.

There should be better calendaring or a message to communicate where the court is in the calendar so that litigants and attorneys have an idea of when they will appear if they are in a "waiting room." This is currently inconsistent throughout the state.

The Judicial Council should create statewide guidance to aid in court's determination of whether and when a default judgement should ever be appropriate. For example, in the case where a respondent to a TRO asks to appear remotely and then claims that they have lost access to the internet, a judge may still issue a TRO for the litigant's safety.

Broad and expansive feedback from court users must be taken to fully realize what they need to ensure their understanding of their options and rights under the statute.

Options and information should be posted on both local county website and Judicial Council website.

While protocols for ensuring court users understand their remote options are important, they are best drafted after those options are first fully fleshed out by the courts – including through the incorporation of any recommendations here.

RECOMMENDATION AREA 4: PROTOCOLS FOR ENSURING COURT USERS FULLY UNDERSTAND THEIR OPTIONS FOR ACCESSING THE COURT REMOTELY

- **Issues such as potential opt-in requirements for remote proceedings in various contexts will necessarily inform the degree to which protocols are appropriate or unnecessary. And the determination of, for example, whether opt-in should not be required in all contexts is still the subject of discussion by the Working Group and stakeholders here.**
- **Similarly, other issues related to options for access, including pragmatic points such as how to get access to a computer, or Wi-Fi, which on-line platform to use, what sorts of microphone or camera are best to use, and perhaps basics of on-line decorum, all also await further fleshing from the Working Group and courts.**

Written information at an appropriate reading level, in the user's language of choice provided as far in advance as is practicable but no less than 48 hours before an initial hearing and in accordance with notice and receipt of report requirements for all other hearings. Written notice should include an advisement to contact your attorney with question and to confirm mode of participation. The L.A. Dependency Hearing Cover sheet provides this type of notice and may be a useful example.

Logon instructions should include helpful graphics or screenshots.

A helpline for technical assistance.

At the start of each hearing the court should articulate the right to be present and ascertain on the record that the party has chosen to be remote.

Dependency courts also would benefit from guidance on the importance of providing access information for relatives, extended family and other supportive persons. Ex. if the children are in foster care, mother is in custody and father is whereabouts unknown but an out of state relative or temporarily away from the local courthouse wishes to attend the hearing – to request placement providing that person with remote access benefits the court, the agency, the child and the parents.

Explanation of the dangers and risk of using remote, technical problems that can arise, and challenges.

Knowingly and intelligent waiver to remote proceeding after explaining the dangers of using remote, technical problems that can arise, and challenges.

Protocols should always indicate that at anytime, any remote proceeding participants (regardless if in the courtroom or appearing remotely) have the ability to object to continue with remote and request continuance of case to a date and time when all participants may appear in person.

RECOMMENDATION AREA 4: PROTOCOLS FOR ENSURING COURT USERS FULLY UNDERSTAND THEIR OPTIONS FOR ACCESSING THE COURT REMOTELY

Encourage and instruct court users to speak up and make the Court aware of technical, audio, visual, and connectivity issues.

Inform court user that if technical, audio, visual, and connectivity issues arise, the Court will stop the remote proceeding and order all to appear in person.

Concise operating instructions for all.

Concise instructions when working with interpreters.

Judge should check in with both court user and interpreter to ensure they are connected and no problems have come up.

Only court users with the proper acceptable devices, technology, bandwidth, video, and audio should be allowed to appear remotely.

Only court users who have extraordinary circumstances should be the only one's allowed to appear remotely. For example, living out of state, communicable disease, mental health facility where the court user is violent or will suffer great emotional harm if transported to court, etc..

Meaningful access to justice should not be sacrificed for cost savings.

The integrity of our Justice system should never be compromised.

Interpreters should never be placed in a situation where they are asked to "pretend" to provide language access.

Initial pamphlet in plain language describing appearance options and alternatives for all parties.

Five days prior to a remote hearing, court personnel should contact in pro per litigants to ensure they are comfortable and ready for the remote hearing, and to ensure that internet systems and other tools are available and accessible.

On demand technical assistance.

Rescheduling of matters when internet or other problems beyond the litigants control create unequal access issues.

Signage regarding the availability of remote appearance options should be posted at the clerk's office and all self-help centers. Self-help centers that assist with DV restraining orders should post notice of remote appearance options since DV Victims have a statutory right to appear remotely.

RECOMMENDATION AREA 4: PROTOCOLS FOR ENSURING COURT USERS FULLY UNDERSTAND THEIR OPTIONS FOR ACCESSING THE COURT REMOTELY

All court websites should notify litigants of the available remote appearance options and how to access those options.

The court should offer all remote appearance instructions (website, downloads, videos) in the languages commonly spoken in the court's jurisdiction.

Where appropriate, Judicial Council forms should be amended to notify litigants of the right to appear remotely.

As discussed above, tutorials should be available for all participants that clearly explain not only the technology for remote proceedings, but also the guidelines and ground rules.

A survey of court users, including those who rely on interpreters, should be undertaken to understand their needs and also situations that have led them to attempt to access the court remotely and whether it is consistent with the delivery of justice.

Clear and concise information and instructions must be made available to all court users prior to hearings.

Court staff should be available during hearings to troubleshoot issues.

There should be more uniformity of remote platforms across the courts statewide.

Establish minimum technology requirements such as internet speed and bandwidth and REQUIRE users to apprise themselves of the technology requirements and best practices.

RECOMMENDATION AREA 5: WHETHER CHANGES ARE NEEDED TO EXISTING LAWS PROTECTING THE ACCURACY OF THE OFFICIAL VERBATIM RECORD AND PRESERVING PARTIES' RIGHTS TO APPEAL

To ensure the existence of an official verbatim record and preserve parties' rights to appeal, consider expanding Government Code section 69957(a) to cover additional types of cases, including family law, domestic violence, and possibly others. For ease of reference, 69957(a) provides, in part: "If an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded . . ."

Government Code section 69957 should be amended to allow electronic court recording in all case types when a local court reporter is not available. We cannot follow "availability" rules for court reporters as is currently used for interpreters due to lack of time and the onerous processes.

Voice writing is not a solid solution due to my experience in the federal court system. Parties find it annoying due to the extra noise when the voice writer repeats what is spoken in court. Also, it seems it may be more accurate to record what is said directly in court with electronic court recording rather than having someone repeat what is being said.

Government Code section 69957(a) should be expanded to include all case types in California where court reporters are typically unavailable due to shortages, including family law and DV.

I do not personally believe that the voice reporting option, currently being considered by the California legislature, will bridge the entire gap needed for lack of a verbatim record. We still need to allow electronic reporting when no court reporter is available.

A survey should be sent to court statewide to obtain feedback to best answer this question.

Clearly, the last two years have shown there are real technology and protocol issues that must be addressed. But more must be done to obtain meaningful feedback from court reporters.

Only change is that the judge shall terminate a remote hearing when advised by the court reporter that a verbatim record cannot be created.

As a starting point, recall that telephonic appearances have been in use for several decades now, both with reporters in the courtroom, and also themselves remote. While not always perfect, they have proved functional, reliable, and efficient in appropriate circumstances.

RECOMMENDATION AREA 5: WHETHER CHANGES ARE NEEDED TO EXISTING LAWS PROTECTING THE ACCURACY OF THE OFFICIAL VERBATIM RECORD AND PRESERVING PARTIES' RIGHTS TO APPEAL

Related to this historical frame of reference, most court reporting services already have full audio of proceedings on their laptops when they are reporting on (previously telephonic) remote proceedings. As such, reporters can typically play back audio of proceedings when completing their transcripts.

Perhaps the most needed legal change is approval of something akin to Senator Umberg's SB 848 (prior to amendment), continuing the use of remote proceedings generally.

There should be a law that ensures that an actual reporter's taking down the record and that record be the only acceptable record. Audio recordings should be banned. Records taken down by licensed reporters is the only way we can ensure the preservation of the right to appeal.

Government Code section 69957 should be amended or possibly repealed to permit recording any court proceeding where a court reporter's presence is not statutorily required.

The legislature should create an official record-keeper position to facilitate a clean, accurate record. The sole function of the record-keeper would be to ensure the accuracy and clarity of the verbatim record for later transcribing purposes. The record-keeper would audibly identify who is speaking where the parties forget to self-identify and would referee to prevent the parties from talking over one another or at the same time as the judge.

As court reporters become more and more scarce, there needs to be additional options for recording proceedings and ensuring the timely production of the record as well as the accuracy of the record.

Mandate official reporters in family law.

In order to promote access to verbatim court records for all parties, California should take additional steps to promote the availability of court reporters but when a court reporter is not available, California should increase the use of electronic reporting.

With the passage of AB156/SB137, it would be premature to take the drastic step of changing existing laws protecting the accuracy of the official verbatim record.