



Judicial Council of California

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INVITATION TO COMMENT

SP24-02

Title

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely

Action Requested

Review and submit comments by March 15, 2024

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rule 3.674

Proposed Effective Date

July 1, 2024

Proposed by

Trial Court Presiding Judges Advisory Committee
Hon. Maria D. Hernandez, Chair

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Executive Summary and Origin

The Code of Civil Procedure requires the Judicial Council to adopt a rule that includes “standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10). The Trial Court Presiding Judges Advisory Committee recommends adoption of proposed rule 3.674 of the California Rules of Court to satisfy the statutory mandate.

The proposed rule applies only in civil cases subject to Code of Civil Procedure section 367.75. The rule therefore does not apply in criminal proceedings, juvenile justice proceedings, or proceedings in matters identified in Code of Civil Procedure section 367.76 (civil commitments and other specified proceedings). The rule also does not apply when a judicial officer presides in person over a remote proceeding.

Background

Code of Civil Procedure section 367.10 requires the Judicial Council to adopt a rule establishing standards for when a judicial officer may preside over a remote proceeding from a location other than a courtroom. The statute provides that judicial officers may do so “in limited situations and in the interest of justice.” (Code Civ. Proc., § 367.10).

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 It is circulated for comment purposes only.

Code of Civil Procedure section 367.75 and rule 3.672¹ already establish standards governing remote appearances by parties. Currently, no statute or rule describes when a judicial officer may use remote technology to effectuate their own participation in a remote proceeding.

The Proposal

The Trial Court Presiding Judges Advisory Committee recommends adoption of proposed rule 3.674 to satisfy Code of Civil Procedure section 367.10's statutory mandate. As required by the statute, the rule sets out the limited circumstances under which, in the interest of justice, a judicial officer may preside remotely from a location other than a courtroom.

The rule in no way addresses the ability of any party or other participant to appear remotely. That option is governed by Code of Civil Procedure section 367.75 and rule 3.672. The rule also in no way limits the court's ability to conduct remote proceedings; in accordance with the statute, it limits only the location from which the judicial officer may preside over such proceedings.

Subdivision (a)—Purpose of the rule

Subdivision (a) describes the rule's purpose, consistent with the statutory mandate in section 367.10. The provision explains that the rule prescribes when, in limited situations and in the interest of justice, a judicial officer may use remote technology to effectuate their own participation in a proceeding—that is, preside remotely—from a location other than a courtroom. (Proposed Cal. Rules of Court, rule 3.674(a).)

Subdivision (b)—Application of the rule

Subdivision (b) describes the rule's scope, designating the circumstances and types of cases in which the rule applies.

With respect to the circumstances covered by the rule, the rule is limited to situations in which a judicial officer is using remote technology to effectuate their own participation in the proceeding (rule 3.674(b)(1)). This language clarifies that if a judicial officer is presiding in person but “using” remote technology to effectuate others' participation (such as admitting remote participants from a virtual waiting room or muting disruptive remote participants), the rule does not apply. The rule therefore does not affect the location of judicial officers presiding in person, even if one or more participants join a proceeding remotely.²

With respect to the types of cases to which the rule applies, paragraph (b)(3) establishes that the rule applies to civil cases subject to Code of Civil Procedure section 367.75. The rule therefore does not apply in juvenile justice proceedings or certain specific proceedings listed in section 367.76 that are expressly excised from section 367.75 (judicial commitments, involuntary

¹ All rule references are to the California Rules of Court.

² Accordingly, the rule does not affect existing authority to convene in-person hearings outside a courtroom. (See, e.g., Code Civ. Proc., § 651(a), (b) [authorizing site visits outside a courtroom, including the taking of evidence at such site visits, to aid a trier of fact in determining a case]; Gov. Code, § 68115(a)(1) [in times of specified emergencies, a presiding judge may request authorization to hold court sessions anywhere within the county].)

treatment and conservatorships, contempt proceedings, mentally disordered offender proceedings, commitment proceedings under the Penal Code, competency proceedings, outpatient placement and revocation proceedings, and involuntary medication and treatment hearings). Other statutory provisions already include requirements concerning the location of a judicial officer during a remote proceeding in these types of cases.³

The rule also does not apply in criminal proceedings. The omission of criminal proceedings from the rule is not intended to authorize a judicial officer to preside remotely over such proceedings where not otherwise allowed. Because the statutory authorization for criminal remote proceedings sunsets effective January 1, 2025, it would be premature to address criminal proceedings in the proposed rule while extension of that authority is pending in the Legislature.

Paragraph (b)(4) clarifies that the rule does not otherwise limit any powers judicial officers have to perform certain judicial functions outside of a courtroom, as permitted by law. For example, the rule does not affect existing law permitting specific judicial acts to be performed at any place in the state.

Subdivision (c)—Definitions

Subdivision (c) defines several of the terms used in the rule. The rule incorporates existing definitions from rule 3.672(c) (which governs remote proceedings) and Government Code section 70301(d) (which defines “court facilities” under the Trial Court Facilities Act of 2002). Incorporating existing definitions is intended to maintain clarity and consistency within the law.

Subdivisions (d) and (e)—Situations in which a judicial officer may preside remotely from a location other than a courtroom

The statutory mandate directs the council to adopt a rule describing “limited situations” in which, “in the interest of justice,” a judicial officer may preside remotely from a location other than a courtroom. To comply with this mandate, rule 3.674 places clear limits on judicial officers presiding remotely from locations outside a courtroom.

To achieve appropriate limitations on judicial officers presiding remotely, the rule divides its strictures into two situations: when a judicial officer is in a court facility but not presiding from a courtroom, and when a judicial officer is outside a court facility. The rule provides graduated provisions for these two scenarios, recognizing that only the most extraordinary circumstances will justify a judicial officer presiding remotely from outside a court facility.

Two general limitations apply in all scenarios: (1) presiding remotely always requires the approval of the presiding judge, and (2) presiding remotely must be in the interest of justice. These requirements serve two functions. First, requiring presiding judge approval ensures that

³ See Welf. & Inst. Code, § 679.5(c), (d) (minor has the right to the physical presence of the defense counsel, any testifying prosecution witnesses, and the judicial officer, subject to the minor’s waiver); Code Civ. Proc., § 367.76(d) (if the subject person is physically present in court, absent exceptional circumstances and exempting certain state department counsel, specified other participants and the judicial officer must be physically present in the courtroom).

presiding judges have the necessary visibility and authority to exercise their assignment duties and maintain the proper administration of their courts in accordance with their responsibilities under rule 10.603. Their approval also ensures that the rule's limitations will be faithfully observed. Second, requiring that presiding remotely be in the interest of justice ensures consistency with the clear statutory mandate.

Under subdivision (d), a judicial officer may preside remotely from a location within a court facility that is not a courtroom if the presiding judge approves, presiding remotely is in the interest of justice, and either (1) the proceeding is fully remote because no parties are appearing in person, or (2) no courtrooms are available in the court facility. These limitations prioritize presiding over remote proceedings from a courtroom in most cases but permit some flexibility for particular circumstances. This is especially true when limited courtroom space may favor judicial officers presiding over remote proceedings from other parts of a court facility, such as a conference room, to keep courtrooms available for in-person proceedings.

Under subdivision (e), a judicial officer may preside remotely from a location outside a court facility only in very limited circumstances. Again, presiding remotely must be approved by the presiding judge and be in the interest of justice. But in addition, a judicial officer may preside remotely from a noncourt location only if either (1) hazardous conditions prevent the judicial officer from safely accessing a courtroom (proposed rule 3.674(e)(1)), or (2) presiding remotely in the matter is essential to preventing a significant delay that will substantially prejudice the litigants (proposed rule 3.674(e)(2)). These provisions allow cases to proceed even if external conditions prevent a judicial officer from using a court facility and give presiding judges necessary tools to prevent excessive case delays that harm litigants.

Alternatives Considered

Because Code of Civil Procedure section 367.10 mandates that the Judicial Council adopt a rule of court, the committee did not consider the alternative of taking no action or an alternative that did not include adopting a rule.

Fiscal and Operational Impacts

The committee does not anticipate substantial fiscal or operational impacts to the courts. Because judicial officers and courts gained experience with remote proceedings during the height of the COVID-19 pandemic, the committee anticipates that courts will not need to make substantial operational changes to implement this rule. Moreover, the rule does not create any mandatory actions a court must take. Rather, the rule establishes those limited situations in which a judicial officer may preside remotely, when in the interest of justice and with the presiding judge's authorization.

The committee anticipates no impact on litigants or other court participants because the rule addresses only the situations in which judicial officers may preside remotely; it has no bearing on whether or when parties or other participants may appear remotely.

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 proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?

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

- What would the implementation requirements be for courts—for example, training staff (please identify positions and expected hours of training) and revising processes and procedures (please describe)?
- Would the proposal provide cost savings? If so, please quantify.
- Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Cal. Rules of Court, rule 3.674, at pages 6–7
2. Link A: Code Civ. Proc., § 367.10,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.10&lawCode=CCP

Rule 3.674 of the California Rules of Court would be adopted, effective July 1, 2024, to read:

1 **Title 3. Civil Rules**

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3 **Division 6. Proceedings**

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5 **Chapter 3. Hearings, Conferences, and Proceedings**

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7
8 **Rule 3.674. Limited situations in which a judicial officer may preside remotely from**
9 **a location other than a courtroom**

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11 **(a) Purpose**

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13 This rule prescribes when, in limited situations and in the interest of justice, a
14 judicial officer may use remote technology to effectuate their own participation in a
15 proceeding from a location other than a courtroom.

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17 **(b) Application**

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19 (1) This rule applies when a judicial officer presiding from a location other than
20 a courtroom uses remote technology to effectuate their own participation in
21 the proceeding.

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23 (2) This rule does not apply when a judicial officer presides in person over a
24 proceeding convened in a location other than a court facility, even if another
25 participant appears remotely.

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27 (3) This rule applies to all civil cases subject to Code of Civil Procedure section
28 367.75.

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30 (4) Nothing in this rule limits a judicial officer from engaging in any other
31 judicial functions, duties, or actions authorized by law to be performed in a
32 location other than a courtroom.

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34 **(c) Definitions**

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36 As used in this rule:

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38 (1) “Court facility” has the same meaning as that provided in Government Code
39 section 70301(d).

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41 (2) The following terms have the same meaning as those provided in rule
42 3.672(c):

Rule 3.674 of the California Rules of Court would be adopted, effective July 1, 2024, to read:

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(A) “Proceeding.”

(B) “Remote proceeding.”

(C) “Remote technology.”

(d) Location of a judicial officer within a court facility

A judicial officer may preside remotely from a location within a court facility other than a courtroom only if doing so is in the interest of justice, the presiding judge approves, and either:

- (1) No parties are appearing in person at the proceeding; or
- (2) No courtrooms are available in the court facility.

(e) Location of a judicial officer outside a court facility

A judicial officer may not preside remotely from a location outside a court facility unless doing so is in the interest of justice, the presiding judge approves, and

- (1) The judicial officer cannot safely access or preside from a court facility because of hazardous conditions, including those resulting from:
 - (A) Natural disaster;
 - (B) Severe weather;
 - (C) Public emergency;
 - (D) Facilities failure;
 - (E) Security threats; or
 - (F) Other extraordinary circumstances as determined by the presiding judge; or
- (2) Presiding remotely in a matter is essential to prevent a significant delay that would substantially prejudice the litigants.