



PRESIDENT'S PAGE

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Are Remote Proceedings Here To Stay?

The practice of law has changed significantly since the onset of the COVID-19 pandemic. For example, the rules now allow parties and witnesses to appear remotely in court for conferences, hearings, and trials. While telephone appearances were permitted prior to the pandemic, such appearances were only permitted for specified proceedings such as case management conferences, law and motion, and hearings on discovery motions. Telephone appearances are also limited by the nature of the medium. After Governor Newsom declared a state of emergency in March 2020, the Judicial Council adopted emergency rules to facilitate access to California courts. Emergency Rule 3, adopted on April 6, 2020, authorized courts to require that judicial proceedings be conducted remotely including but not limited to the use of video, audio, and telephonic means for appearances. In 2021, Senator Thomas Umberg introduced legislation to authorize remote proceedings in civil and juvenile dependency cases. The bill was approved by Governor Newsom on September 22, 2021, and resulted in the enactment of California Civil Procedure Section 367.75 (or "Section 367.75").

Generally, Section 367.75 authorizes California state courts to conduct conferences, hearings, and proceedings through the use of remote technology. Subject to certain exceptions, it also allows for trials or evidentiary hearings to be conducted through the use of remote technology. During a program earlier this year on the state of the Orange County Superior Court, Presiding Judge Maria Hernandez referenced

certain survey results that suggest that remote proceedings will play an increasingly important role in legal proceedings and that turning back the clock to the rules that existed in March 2020 would limit access to our courts.

Judge Hernandez cited to a 2021 poll from the National Center for State Court ("NCSC") that found 66% of the respondents were comfortable using video conferencing services for meetings or appointments typically held in person, 14% were a "little comfortable," while 20% were not comfortable. In another poll, 60% of the respondents said they would use video conferencing technology to report for jury duty, 55% said they would use it for arbitration or mediation, 52% said they would use such technology to appear remotely for their own cases and 49% said they would appear for jury duty by videoconference.

The NCSC's 2021 survey also conducted polls to assess public preferences for remote versus in-person appearances based on case types. Most respondents preferred remote appearances for cases involving traffic tickets, consumer debt, small claims, and landlord/tenant matters. On the other hand, most respondents preferred in-person appearances for child custody and divorce cases. The NCSC's survey also found that a majority of respondents believe courts should continue to hold hearings by video because it allows courts to hear more cases and resolve them more quickly, and it makes it easier to participate in the legal process without having to travel to a courthouse, take time off from work, and find childcare. 49% percent of the respondents also said the distance they would need to travel to reach their courthouse would be a barrier, while 56% percent had public health concerns with going to the courthouse.

"From the single parent with small children and no childcare, to the domestic violence survivor living in a shelter without transportation, the ability to appear remotely has helped many of our clients to overcome significant barriers to justice."

Monica Eav Glicken, Executive Director and General Counsel for Public Law Center

While it has only been a few years, it is hard to imagine the legal profession without the remote technology appearance options made available by Section 367.75. That may be a reality, however, as the law sunsets on July 1, 2023. In early 2022, Senator Umberg introduced legislation, SB 848, to make Section 367.75 permanent. The current version of the bill extends the sunset provision to January 1, 2026, and would require each Superior Court to report annually on the impact of technology issues or problems affecting civil remote proceedings, presumably to provide data on the successes and failures of remote proceedings before making the law permanent. As of

the date of this column, SB 848 has not been approved and, if not, could significantly change how individuals are able to access California courts.

While remote proceedings may not be the solution for all civil matters providing courts and litigants in civil cases with remote appearance options allowed people to access California courts during the COVID-19 pandemic. Now, it may be time to extend remote access to lessen the potential impact on our communities and courts from future contagions or natural disasters and preserve a crucial tool in increasing access to justice for low-income and vulnerable communities.

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