
ORANGE COUNTY BAR ASSOCIATION

**FAMILY LAW
SECTION WEBINAR**

Family Law Depositions 3.0:
How to Successfully Plan, Prepare and Use a Deposition



Tuesday, June 16, 2020

The background of the slide is a photograph of a modern office interior. On the left, there is a large window with a view of the outdoors. In the foreground, a black office chair is partially visible. A large, semi-transparent blue rectangle is overlaid on the right side of the image, containing the title and subtitle text. The bottom right corner of the blue rectangle is cut off by a diagonal line, revealing a white background underneath.

FAMILY LAW DEPOSITIONS

Family Law Depositions 3.0: How to
Successfully Plan, Prepare and Use a
Deposition

INTRODUCING YOUR PRESENTERS

Honorable Nancy Wieben Stock (Ret.)



The Honorable Nancy Wieben Stock (Ret.), served on the Orange County Superior Court bench for 24 years before she joined JAMS.

B. Robert Farzad, Esq.



B. Robert Farzad, Esq. is the managing partner of Farzad & Ochoa Family Law Attorneys, LLP, with offices in Orange County, Los Angeles and San Diego.

Nicole Nuzzo, Esq.



Nicole Nuzzo, Esq. is a Certified Family Law Specialist and partner in Bremer Whyte Brown & O'Meara, LLP. She works in the firm's Newport Beach office.

PLANNING THE DEPOSITION



PLANNING THE DEPOSITION, PART 1

Goals and Timing

- Goals of the deposition
 - Discussion with your client
 - Discussion of alternatives to a deposition
- Timing of the deposition
 - Information and documents you have before notice
 - Meet and confer before serving the notice
 - Mutual benefits of a meet and confer process



PLANNING THE DEPOSITION, PART 2

Embracing today's technology...with care

- Deposition notice in a Post Covid-19 world
- The virtual platform
- Benefits and pitfalls of using technology
 - Nefarious conduct and how to protect against it
 - Videotaped depositions
- Where are you in relation to your client?



PLANNING THE DEPOSITION, PART 3

The production demand and inevitable continuance request

- The carefully drafted production demand
 - Meet and confer revisited
- Anticipating objections
 - Statutory deadlines
 - Meet and confer process
- Anticipating requests for continuance
 - Mutually beneficial conditions

PREPARING FOR THE DEPOSITION



PREPARING FOR THE DEPOSITION, PART 1

Q&A 3.0

- How to put your Q&A together
 - List of relevant issues
 - Relevant portions of file to review
 - List of anticipated, undisputed facts
 - List of anticipated, disputed facts
 - List of anticipated evidence in support of disputed facts



PREPARING FOR THE DEPOSITION, PART 2

You do not know what you do not know. Get an expert who knows

- Subject matter outside your wheelhouse? Get a consultant or expert
 - Controllable cash flow for support purposes
 - Business valuations
 - Stocks and options
 - Custody move away
 - Drug and alcohol cases
 - Domestic violence
 - Special needs cases



PREPARING FOR THE DEPOSITION, PART 3

Different types of questions and exhibits that support them

- Admission-focused questions
- Impeachment
- Fishing for information “reasonably calculated to lead to the discovery of admissible evidence”
- Leading versus exploratory questions
- Avoiding objections that have merit
- Choosing your exhibits

THE DEPOSITION DAY



THE DEPOSITION DAY, PART 1

The “SoCal Stip”, ditching the note pad and more

- Written in lieu of oral instructions
- What is a “SoCal Stip” and why you really should care
- Effective use of technology
 - Note pad? Really?
 - Use of instant visual display of testimony
 - Exhibits in an electronic format. Yes, it is cool
 - Exchanging impeachment exhibits for low and higher budgets

THE DEPOSITION DAY, PART 2

The obstructive opposing counsel I am sure you never had

- Deposition objections that have merit and those that do not
- The nonresponsive answer. Deal with it
 - Motion to strike at the deposition? But there is no judge!
- Use of discovery referee or your trial judge
 - Private versus public judges
- Suspending a deposition



THE DEPOSITION DAY, PART 3

5th Amendment, privilege, privacy and hitting the brakes on some breaks

- Invoking the Fifth Amendment against self-incrimination
 - The not so fun situations it comes up
 - Post deposition options after invocation
- Privilege and privacy
 - How to “work the problem” at the deposition
- Question pending. Deponent wants a break? No break for you!

USING THE DEPOSITION TRANSCRIPT AT HEARING OR TRIAL



USE THE TRANSCRIPT, PART 1

Practice tips from the bench (that means you better pay attention)

- Cutting down hearing time in a Covid-19 world
 - Know C.C.P. section 2025.620 and your options
- Transcript in lieu of testimony
- Other “exceptional circumstance” may exist
 - AKA I do not want to be mis-tried for exceeding two hours
- Proper use of the other party’s testimony in the deposition



USE THE TRANSCRIPT, PART 2

Practice tips from your colleagues (with judicial wisdom sprinkled on top)

- Impeachment and page line summaries
- Use of videotaped depositions
- Authenticate exhibits & obtain exemplars
- Visual demonstration of testimony and exhibits side by side
- Attack credibility
- A Kennemur Motion
- Bolster your closing argument
- Your “Notice of Intent to Read Portions of Deposition Transcript into Evidence”



USE THE TRANSCRIPT, PART 3

Practice tips from your colleagues, continued...

- To read or not to read
 - Thou shalt know the Doctrine of Completeness
- Objection! At trial to deposition questions and answers
- Did your notice state you intended to use the videotaped deposition at trial? No? Oops!
- Reading non-party witness testimony invokes different rules
- Motions in Limine to exclude testimony



USE THE TRANSCRIPT, PART 4

From the “Captain Obvious” list of often forgotten procedure, we bring you...

- Lodge the transcript
- Show up with the original or make sure someone else does
- Lay foundation
- Ask permission (and not just to be polite)
- Offer the transcript into evidence



**“BY FAILING TO
PREPARE, YOU ARE
PREPARING TO FAIL”**

**BENJAMIN FRANKLIN
(WHO NEVER TOOK A BREAK WHILE A
QUESTION WAS PENDING)**

Thank you for attending this webinar on family law
depositions



TABLE OF AUTHORITIES

Here is the law

- Code of Civil Procedure §2025.220
 - Content of Deposition Notice Requirements.
- Code of Civil Procedure §2025.270
 - Timing for Notice of Deposition.
- Code of Civil Procedure §2025.280
 - Document Request Inclusion.
- Code of Civil Procedure §2025.310
 - A deponent must appear in person at deposition; other parties can attend by telephone or other remote electronic means. But see Judicial Council Emergency Rule 11.



TABLE OF AUTHORITIES

Here is the law (continued)

- Code of Civil Procedure §2025.330
 - A party noticing a deposition may also record the testimony by audio or video technology.
- Code of Civil Procedure §2025.340
 - Procedure relating to audio or video depositions.
- Code of Civil Procedure §2025.410
 - Objections to Deposition Notice must be served three calendar days prior to deposition.
- Code of Civil Procedure §2025.460
 - Objections at the deposition.
- Code of Civil Procedure §2025.460
 - Suspension of Deposition to Move for a Protective Order.



TABLE OF AUTHORITIES

Here is the law (continued)

- Code of Civil Procedure §2025.550
 - Handling of certified deposition transcript.
- Code of Civil Procedure §2025.560
 - Handling of certified audio/video recording.
- Code of Civil Procedure §2025.620
 - Deposition Transcript use at hearing/trial.
- California Rules of Court, Rule 2.1040
 - Electronic recordings presented or offered into evidence.
- California Rules of Court, Rule 3.1010 (c)
 - Oral Depositions by Telephone, Videoconference, or other remote electronic means
- Judicial Council Emergency Rule 11.
 - Permits deposition by remote means.
- *Kennemur v. State of California* (1982) 133 Cal. App. 3d 907.
 - Objection due to discovery abuse for failure to testify regarding opinion at deposition or to update counsel on new opinion thereafter.



Remote Deposition Minimum Technical Requirements and Best Practices

The technical requirements and recommendations listed below are the *minimum* requirements and suggested best practices. These will mitigate technical difficulties during your proceeding. These are recommendations; you may still experience technical interruptions due to other outside factors or your internet and/or hardware do not meet these minimum standards.

- **Internet connection** broadband wired or wireless (3G or 4G/LTE) & **One of the Following**– iPad, iPhone, Windows PC, Mac, Android or Chrome Book
 - **Note: Test your bandwidth.** Visit www.speedtest.net. (5 Mbps minimum upload/download)
 - **Note:** We recommend using Google Chrome as the browser.
 - **Note:** Use of a cell phone, is only recommended, if you are watching the proceeding. If you are actively involved in the proceeding, you should be on a laptop computer (13" screen or larger) or a desktop platform.
- **Speakers and a microphone** – built-in or USB plug-in. **Test your speakers.**
 - **Note:** Wireless Bluetooth devices are **not** recommended for these proceedings.
- **A webcam or HD webcam** – built-in or USB plug-in. **Test your camera.**
- **Conference Room system** (i.e. Cisco, Polycom, LifeSize)

Preparations and Other Recommendations – **Join your proceeding at least 30 minutes early to test your audio, video and bandwidth settings.**

Visual Background – You should have an uncluttered background and avoid open windows or light **behind** you. Proper lighting should be directed at your face. Face the camera directly, you want the court reporter to be able to see and hear you speaking.

Microphone Placement – Make sure the microphone is placed close to you and you use clear enunciation, do not speak too fast, do not whisper and mute you microphone if you do not have a speaking role. Do not talk over someone that is speaking.

Avoid Distractions – Children, household pets, gardeners etc. Be mindful of these possible distractions and make the proper arrangements.

Late Joiners/Early Departures – Pause to have the new participant introduce themselves for the record. Announce departure to avoid confusion at session drop-off.

Cell Phones/Landlines – Just as you would in any deposition or meeting. Make sure you silence you cell devices and any office phones (unless you are using the device for the proceeding).

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Attorneys for _____,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER**

_____,
Petitioner,
vs.

Respondent.

) Case No. XXXXXXXX
)
) **NOTICE OF TAKING REMOTE**
) **DEPOSITION**
)
) Date: _____
) Time: _____
) Place: Remotely via **ZOOM**
)
)

TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that [PARTY DESIGNATION], [NAME HERE] (hereinafter “[PARTY DESIGNATION]”) will take the Deposition of [PARTY DESIGNATION], [NAME HERE], on [DATE] at [TIME] **Counsel for the parties, the witness and the court reporter will all appear remotely via ZOOM video link.**

This deposition will be taken under the provisions of sections 2017.010 et. seq., 2019.010 et. seq. and 2025.010 et. seq. of the California Code of Civil Procedure, the California Rules of Court and the Judicial Council of the State of California’s Emergency Orders in regard to the

1 taking of remote depositions. The deposition will continue from day to day until completed
2 excluding weekends and holidays upon dates mutually convenient to the parties.

3 NOTICE IS FURTHER GIVEN that [PARTY DESIGNATION] will conduct this
4 deposition utilizing the secure web-based deposition option afforded by Esquire Court Reporters
5 through ZOOM. Also take notice that the court reporter will be remote via ZOOM and will not be
6 in the presence of the deponent, and the court reporter will swear in the witness remotely as
7 permitted by Emergency Rule 11.

8 Attached to this Notice of Deposition and incorporated hereinto this Notice as Exhibit "A"
9 is Esquire Court Reporters' *Remote Deposition Minimum Technical Requirements and Best*
10 *Practices*. Counsel for the witness is requested to contact the noticing attorney at least five (5)
11 business days prior to the deposition to advise that the witness and her counsel can comply with the
12 *Remote Deposition Minimum Technical Requirements and Best Practices* and so that the necessary
13 credentials, call-in numbers, testing and information, if necessary, can be provided to counsel or the
14 witness prior to the proceedings. In addition, [PARTY DESIGNATION] also reserves the right to
15 utilize instant visual display technology such that the court reporter's writing of the proceeding will
16 be displayed simultaneous to their writing of same on one's laptop, iPad, tablet or other type of
17 display device connected to the court reporter.

18 The deposition will be taken before a court reporter authorized to administer oaths under the
19 laws of the State of California pursuant to California Code of Civil Procedure Section 2025.320. If
20 an interpreter is needed at this deposition, this office must be notified no later than five (5) days
21 prior to the deposition of the language/dialect necessary.

22 Additionally, [PARTY DESIGNATION] reserves the right to record this deposition via
23 electronic video and/or audio tape recording in addition to recording the testimony by stenographic
24 methods pursuant to California Code of Civil Procedure Section 2025.330. Moreover, [PARTY
25 DESIGNATION] reserves the right to utilize the electronic video and/or audio tape recording for
26 any and all purposes at the time of trial pursuant to California Code of Civil Procedure, Sections
27 2025.330, 2025.340, and 2025.620.

28 There is a contract between the entity financing the litigation and the court reporting firm

1 that will be used to report the deposition. This contract permits the court reporting company to
2 provide services beyond deposition services.

3
4 Dated: April 13, 2020

XXXXXXXXXXXXXXXXXXXXXXXXXX

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6 By: _____
7 XXXXXXXXXXXXXXXX
8 Attorneys for XXXXXXXXXXXX

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ORANGE COUNTY BAR ASSOCIATION CIVILITY GUIDELINES

PREAMBLE

The practice of law is a noble, time-honored profession requiring and inspiring trust and confidence. Lawyers rightly take pride in seeking mutual cooperation and maintaining personal dignity. Lawyers practicing in Orange County share a commitment to civility and recognize their obligation to be professional with clients, other parties and counsel, the courts, and the public.

Courts expect lawyers to show others respect. Lawyers are officers of the court. Each lawyer's conduct should reflect well on the judicial system, the profession, and the fair administration of justice. Judicial resources are limited and wisely conserved when lawyers avoid frivolous disputes.

Lawyers should inspire public regard for the profession and for the judicial system. Rudeness, distrust, or abusive tactics by lawyers do not reflect well on the legal profession or inspire the public's confidence.

Civility allows for zealous representation, reduces clients' costs, better advances clients' interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution. These guidelines foster the civility and professionalism that are hallmarks of the best traditions of the legal profession.

All OCBA members are encouraged to adopt these guidelines as their personal standards. The guidelines exceed the Rules of Professional Conduct; do not replace any statute or rule; and are not intended as an independent basis for sanctions, discipline, or more litigation. Rather, the guidelines remind us that law is best practiced with civility and that clients, courts, the public, and the fair administration of justice are best served thereby.

GUIDELINES

1. Counsel shall show civility to other counsel and self-represented litigants.

- a. Communicate in a professional, businesslike manner. Respond to communications within a reasonable time, using reasonable means. Provide accurate redlines and note significant changes when exchanging drafts. Avoid personal attacks, demeaning comments, and misleading characterizations of the other side's positions, both in private communications and in court. Act civilly toward opposing counsel's staff members.
 - b. Extend professional courtesies. Agree to reasonable requests, including those regarding service of papers or extensions of time, whenever possible without prejudicing the client's interests or violating a court's scheduling order. Honor commitments.
-

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- c. Advise clients about the need for civility. Assure clients you will zealously represent them while still treating others with civility. Resist client requests to engage in abusive or disrespectful behavior.

2. Counsel shall show civility during discovery.

- a. Work together to make discovery self-executing. Meet and confer in good faith to try to limit and expedite discovery – and to resolve disputes without motions. Cooperate to make discovery reasonably convenient: e.g., provide written discovery requests in electronic format, discuss search terms for electronic discovery in advance, produce written responses and responsive documents in a user-friendly manner. Avoid pursuing discovery only to harass adversaries or increase litigation costs. Respond forthrightly and timely to non-objectionable requests.
- b. Schedule depositions reasonably. Respond to inquiries for dates within a reasonable time and on reasonable terms. Make good-faith efforts to accommodate the schedules of other parties, counsel, and witnesses. Delay or cancel depositions only with good cause and as much notice as practicable.
- c. Behave professionally at depositions. Avoid abusive or rude behavior, mischaracterizations of anyone's conduct, baseless instructions not to answer, and questions asked only to embarrass the witness. Make reasonable use of the allotted time, without needlessly running out the clock or requiring an additional day.

3. Counsel shall show civility to the courts.

- a. Respect the court's time. Make good-faith efforts to avoid or narrow issues before raising them with the court. Plan to make witnesses available while minimizing their wait time – consider on-call agreements. Notify the court as soon as possible if a matter resolves.
- b. Communicate respectfully with the court. Treat the court and its personnel with dignity. Avoid personal attacks, disrespectful familiarity, the appearance of impropriety, and improper ex parte communications.
- c. Conduct yourself professionally in court. Be punctual and prepared for every appearance. Wait for your matter respectfully. Let others speak, without interrupting. Accept responsibility for your handling of the case without blaming subordinates.
- d. Show this civility to all bench officers (judges, commissioners, temporary judges, referees), arbitrators, mediators, other dispute resolution providers, and their staffs.

Appendix I
Emergency Rules Related to COVID-19

Emergency rule 1. Unlawful detainers

(a) Application

Notwithstanding any other law, including Code of Civil Procedure sections 1166, 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.

(b) Issuance of summons

A court may not issue a summons on a complaint for unlawful detainer unless the court finds, in its discretion and on the record, that the action is necessary to protect public health and safety.

(c) Entry of default

A court may not enter a default or a default judgment for restitution in an unlawful detainer action for failure of defendant to appear unless the court finds both of the following:

- (1) The action is necessary to protect public health and safety; and
- (2) The defendant has not appeared in the action within the time provided by law, including by any applicable executive order.

(d) Time for trial

If a defendant has appeared in the action, the court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial.

(e) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

1 **Emergency rule 2. Judicial foreclosures—suspension of actions**

2
3 Notwithstanding any other law, this rule applies to any action for foreclosure on a
4 mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil
5 Procedure, beginning at section 725a, including any action for a deficiency judgment, and
6 provides that, until 90 days after the Governor declares that the state of emergency
7 related to the COVID-19 pandemic is lifted, or until this rule is amended or repealed by
8 the Judicial Council:

- 9
- 10 (1) All such actions are stayed, and the court may take no action and issue no
11 decisions or judgments unless the court finds that action is required to further the
12 public health and safety.
 - 13
 - 14 (2) Any statute of limitations for filing such an action is tolled.
 - 15
 - 16 (3) The period for electing or exercising any rights under that chapter, including
17 exercising any right of redemption from a foreclosure sale or petitioning the court
18 in relation to such a right, is extended.
 - 19
 - 20

21 **Emergency rule 3. Use of technology for remote appearances**

22
23 **(a) Remote appearances**

24
25 Notwithstanding any other law, in order to protect the health and safety of the public,
26 including court users, both in custody and out of custody defendants, witnesses, court
27 personnel, judicial officers, and others, courts must conduct judicial proceedings and
28 court operations as follows:

- 29
- 30 (1) Courts may require that judicial proceedings and court operations be
31 conducted remotely.
 - 32
 - 33 (2) In criminal proceedings, courts must receive the consent of the defendant to
34 conduct the proceeding remotely and otherwise comply with emergency rule
35 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the
36 court may conduct any criminal proceeding remotely. As used in this rule,
37 “consent of the defendant” means that the consent of the defendant is
38 required only for the waiver of the defendant’s appearance as provided in
39 emergency rule 5. For good cause shown, the court may require any witness
40 to personally appear in a particular proceeding.
 - 41
 - 42 (3) Conducting proceedings remotely includes, but is not limited to, the use of
43 video, audio, and telephonic means for remote appearances; the electronic

1 exchange and authentication of documentary evidence; e-filing and e-service;
2 the use of remote interpreting; and the use of remote reporting and electronic
3 recording to make the official record of an action or proceeding.
4

5 **(b) Sunset of rule**

6
7 This rule will remain in effect until 90 days after the Governor declares that the
8 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
9 repealed by the Judicial Council.
10

11
12 **Emergency rule 4. Emergency Bail Schedule**

13
14 **(a) Purpose**

15
16 Notwithstanding any other law, this rule establishes a statewide Emergency Bail
17 Schedule, which is intended to promulgate uniformity in the handling of certain
18 offenses during the state of emergency related to the COVID-19 pandemic.
19

20 **(b) Mandatory application**

21
22 No later than 5 p.m. on April 13, 2020, each superior court must apply the
23 statewide Emergency Bail Schedule:
24

- 25 (1) To every accused person arrested and in pretrial custody.
26
27 (2) To every accused person held in pretrial custody.
28

29 **(c) Setting of bail and exceptions**

30
31 Under the statewide Emergency Bail Schedule, bail for all misdemeanor and felony
32 offenses must be set at \$0, with the exception of only the offenses listed below:
33

- 34 (1) A serious felony, as defined in Penal Code section 1192.7(c), or a violent
35 felony, as defined in Penal Code section 667.5(c);
36
37 (2) A felony violation of Penal Code section 69;
38
39 (3) A violation of Penal Code section 166(c)(1);
40
41 (4) A violation of Penal Code section 136.1 when punishment is imposed under
42 section 136.1(c);
43

- 1 (5) A violation of Penal Code section 262;
- 2
- 3 (6) A violation of Penal Code sections 243(e)(1) or 273.5;
- 4
- 5 (7) A violation of Penal Code section 273.6 if the detained person made threats
- 6 to kill or harm, has engaged in violence against, or has gone to the residence
- 7 or workplace of, the protected party;
- 8
- 9 (8) A violation of Penal Code section 422 where the offense is punished as a
- 10 felony;
- 11
- 12 (9) A violation of Penal Code section 646.9;
- 13
- 14 (10) A violation of an offense listed in Penal Code section 290(c);
- 15
- 16 (11) A violation of Vehicle Code sections 23152 or 23153;
- 17
- 18 (12) A felony violation of Penal Code section 463; and
- 19
- 20 (13) A violation of Penal Code section 29800.
- 21

22 **(d) Ability to deny bail**

23
24 Nothing in the Emergency Bail Schedule restricts the ability of the court to deny
25 bail as authorized by article I, section 12, or 28(f)(3) of the California Constitution.

26
27 **(e) Application of countywide bail schedule**

- 28
- 29 (1) The current countywide bail schedule of each superior court must remain in
- 30 effect for all offenses listed in exceptions (1) through (13) of the Emergency
- 31 Bail Schedule, including any count-specific conduct enhancements and any
- 32 status enhancements.
- 33
- 34 (2) Each superior court retains the authority to reduce the amount of bail listed in
- 35 the court's current countywide bail schedule for offenses in exceptions (1)
- 36 through (13), or for any offenses not in conflict with the Emergency Bail
- 37 Schedule.
- 38

39 **(f) Bail for violations of post-conviction supervision**

- 40
- 41 (1) Under the statewide Emergency Bail Schedule, bail for all violations of
- 42 misdemeanor probation, whether the arrest is with or without a bench
- 43 warrant, must be set at \$0.

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(2) Bail for all violations of felony probation, parole, post-release community supervision, or mandatory supervision, must be set in accord with the statewide Emergency Bail Schedule, or for the bail amount in the court’s countywide schedule of bail for charges of conviction listed in exceptions (1) through (13), including any enhancements.

(g) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

Emergency rule 5. Personal appearance waivers of defendants during health emergency

(a) Application

Notwithstanding any other law, including Penal Code sections 865 and 977, this rule applies to all criminal proceedings except cases alleging murder with special circumstances and cases in which the defendant is currently incarcerated in state prison, as governed by Penal Code section 977.2.

(b) Types of personal appearance waivers

(1) With the consent of the defendant, the court must allow a defendant to waive his or her personal appearance and to appear remotely, either through video or telephonic appearance, when the technology is available.

(2) With the consent of the defendant, the court must allow a defendant to waive his or her appearance and permit counsel to appear on his or her behalf. The court must accept a defendant’s waiver of appearance or personal appearance when:

(A) Counsel for the defendant makes an on the record oral representation that counsel has fully discussed the waiver and its implications with the defendant and the defendant has authorized counsel to proceed as counsel represents to the court;

(B) Electronic communication from the defendant as confirmed by defendant’s counsel; or

1 (C) Any other means that ensures the validity of the defendant’s waiver.
2

3 **(c) Consent by the defendant**
4

5 (1) For purposes of arraignment and entry of a not guilty plea, consent means a
6 knowing, intelligent, and voluntary waiver of the right to appear personally in
7 court. Counsel for the defendant must state on the record at each applicable
8 hearing that counsel is proceeding with the defendant’s consent.
9

10 (2) For purposes of waiving time for a preliminary hearing, consent also means a
11 knowing, intelligent, and voluntary waiver of the right to hold a preliminary
12 hearing within required time limits specified either in Penal Code section
13 859b or under emergency orders issued by the Chief Justice and Chair of the
14 Judicial Council.
15

16 (3) The court must accept defense counsel’s representation that the defendant
17 understands and agrees with waiving any right to appear unless the court has
18 specific concerns in a particular matter about the validity of the waiver.
19

20 **(d) Appearance through counsel**
21

22 (1) When counsel appears on behalf of a defendant, courts must allow counsel to
23 do any of the following:
24

25 (A) Waive reading and advisement of rights for arraignment.
26

27 (B) Enter a plea of not guilty.
28

29 (C) Waive time for the preliminary hearing.
30

31 (2) For appearances by counsel, including where the defendant is either
32 appearing remotely or has waived his or her appearance and or counsel is
33 appearing by remote access, counsel must confirm to the court at each
34 hearing that the appearance by counsel is made with the consent of the
35 defendant.
36

37 **(e) Conduct of remote hearings**
38

39 (1) With the defendant’s consent, a defendant may appear remotely for any
40 pretrial criminal proceeding.
41

42 (2) Where a defendant appears remotely, counsel may not be required to be
43 personally present with the defendant for any portion of the criminal

1 proceeding provided that the audio and/or video conferencing system or other
2 technology allows for private communication between the defendant and his
3 or her counsel. Any private communication is confidential and privileged
4 under Evidence Code section 952.
5

6 **(f) Sunset of rule**
7

8 This rule will remain in effect until 90 days after the Governor declares that the
9 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
10 repealed by the Judicial Council.
11
12

13 **Emergency rule 6. Emergency orders: juvenile dependency proceedings**
14

15 **(a) Application**
16

17 This rule applies to all juvenile dependency proceedings filed or pending until the
18 state of emergency related to the COVID-19 pandemic is lifted.
19

20 **(b) Essential hearings and orders**
21

22 The following matters should be prioritized in accordance with existing statutory
23 time requirements.
24

- 25 (1) Protective custody warrants filed under Welfare and Institutions Code section
26 340.
27
- 28 (2) Detention hearings under Welfare and Institutions Code section 319. The
29 court is required to determine if it is contrary to the child's welfare to remain
30 with the parent, whether reasonable efforts were made to prevent removal,
31 and whether to vest the placing agency with temporary placement and care.
32
- 33 (3) Psychotropic medication applications.
34
- 35 (4) Emergency medical requests.
36
- 37 (5) A petition for reentry of a nonminor dependent.
38
- 39 (6) Welfare and Institutions Code section 388 petitions that require an immediate
40 response based on the health and safety of the child, which should be
41 reviewed for a prima facie showing of change of circumstances sufficient to
42 grant the petition or to set a hearing. The court may extend the final ruling on
43 the petition beyond 30 days.

1 (c) **Foster care hearings and continuances during the state of emergency**

- 2
- 3 (1) A court may hold any proceeding under this rule via remote technology
4 consistent with rule 5.531 and emergency rule 3.
5
- 6 (2) At the beginning of any hearing at which one or more participants appears
7 remotely, the court must admonish all the participants that the proceeding is
8 confidential and of the possible sanctions for violating confidentiality.
9
- 10 (3) The child welfare agency is responsible for notice of remote hearings unless
11 other arrangements have been made with counsel for parents and children.
12 Notice is required for all parties and may include notice by telephone or other
13 electronic means. The notice must also include instructions on how to
14 participate in the court hearing remotely.
15
- 16 (4) Court reports
- 17
- 18 (A) Attorneys for parents and children must accept service of the court
19 report electronically.
20
- 21 (B) The child welfare agency must ensure that the parent and the child
22 receive a copy of the court report on time.
23
- 24 (C) If a parent or child cannot receive the report electronically, the child
25 welfare agency must deliver a hard copy of the report to the parent and
26 the child on time.
27
- 28 (5) Nothing in this subdivision prohibits the court from making statutorily
29 required findings and orders, by minute order only and without a court
30 reporter, by accepting written stipulations from counsel when appearances
31 are waived if the stipulations are confirmed on the applicable Judicial
32 Council forms or equivalent local court forms.
33
- 34 (6) If a court hearing cannot occur either in the courthouse or remotely, the
35 hearing may be continued up to 60 days, except as otherwise specified.
36
- 37 (A) A dispositional hearing under Welfare and Institutions Code section
38 360 should not be continued more than 6 months after the detention
39 hearing without review of the child's circumstances. In determining
40 exceptional circumstances that justify holding the dispositional hearing
41 more than 6 months after the child was taken into protective custody,
42 the impact of the state of emergency related to the COVID-19
43 pandemic must be considered.

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- i. If the dispositional hearing is continued more than 6 months after the start date of protective custody, a review of the child must be held at the 6-month date. At the review, the court must determine the continued necessity for and appropriateness of the placement; the extent of compliance with the case plan or available services that have been offered; the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement; and the projected likely date by which the child may return home or placed permanently.
- ii. The court may continue the matter for a full hearing on all dispositional findings and orders.

(B) A judicial determination of reasonable efforts must be made within 12 months of the date a child enters foster care to maintain a child's federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the court must review the case to determine if the agency has made reasonable efforts to return the child home or arrange for the child to be placed permanently. This finding can be made without prejudice and may be reconsidered at a full hearing.

(7) During the state of emergency related to the COVID-19 pandemic, previously authorized visitation must continue, but the child welfare agency is to determine the manner of visitation to ensure that the needs of the family are met. If the child welfare agency changes the manner of visitation for a child and a parent or legal guardian in reunification, or for the child and a sibling(s), or a hearing is pending under Welfare and Institutions Code section 366.26, the child welfare agency must notify the attorneys for the children and parents within 5 court days of the change. All changes in manner of visitation during this time period must be made on a case by case basis, balance the public health directives and best interest of the child, and take into consideration whether in-person visitation may continue to be held safely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during times of crisis. Visitation may only be suspended if a detriment finding is made in a particular case based on the facts unique to that case. A detriment finding must not be based solely on the existence of the impact of the state of emergency related to the COVID-19 pandemic or related public health directives.

(A) The attorney for the child or parent may ask the juvenile court to review the change in manner of visitation. The child or parent has the

1 burden of showing that the change is not in the best interest of the child
2 or is not based on current public health directives.

3
4 (B) A request for the court to review the change in visitation during this
5 time period must be made within 14 court days of the change. In
6 reviewing the change in visitation, the court should take into
7 consideration the factors in (c)(7).
8

9 **(d) Sunset of rule**

10
11 This rule will remain in effect until 90 days after the Governor declares that the
12 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
13 repealed by the Judicial Council.
14

15 **Advisory Committee Comment**

16
17 When courts are unable to hold regular proceedings because of an emergency that has resulted in
18 an order as authorized under Government Code section 68115, federal timelines do not stop.
19 Circumstances may arise where reunification services to the parent, including visitation, may not
20 occur or be provided. The court must consider the circumstances of the emergency when deciding
21 whether to extend or terminate reunification services and whether services were reasonable given
22 the state of the emergency. (Citations: 42 U.S.C. § 672(a)(1)–(2), (5); 45 CFR § 1355.20; 45 CFR
23 § 1356.21 (b) – (d); 45 C.F.R. § 1356.71(d)(1)(iii); Child Welfare Policy Manual, 8.3A.9 Title
24 IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, Question 2
25 (www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=92)); Letter dated March 27, 2020, from Jerry Milner, Associate Commissioner, Children’s
26 Bureau, Administration for Children and Families, U.S. Department of Health and Human
27 Services.)
28
29
30

31 **Emergency rule 7. Emergency orders: juvenile delinquency proceedings**

32
33 **(a) Application**

34
35 This rule applies to all proceedings in which a petition has been filed under Welfare
36 and Institutions Code section 602 in which a hearing would be statutorily required
37 during the state of emergency related to the COVID-19 pandemic.
38

39 **(b) Juvenile delinquency hearings and orders during the state of emergency**

40
41 (1) A hearing on a petition for a child who is in custody under Welfare and
42 Institutions Code section 632 or 636 must be held within the statutory
43 timeframes as modified by an order of the court authorized by Government

1 Code section 68115. The court must determine if it is contrary to the welfare
2 of the child to remain in the home, whether reasonable services to prevent
3 removal occurred, and whether to place temporary placement with the
4 probation agency if the court will be keeping the child detained and out of the
5 home.

- 6
- 7 (2) If a child is detained in custody and an in-person appearance is not feasible
8 due to the state of emergency, courts must make reasonable efforts to hold
9 any statutorily required hearing for that case via remote appearance within
10 the required statutory time frame and as modified by an order of the court
11 authorized under Government Code section 68115 for that proceeding. If a
12 remote proceeding is not a feasible option for such a case during the state of
13 emergency, the court may continue the case as provided in (d) for the
14 minimum period of time necessary to hold the proceedings.
- 15
- 16 (3) Without regard to the custodial status of the child, the following hearings
17 should be prioritized during the state of emergency related to the COVID-19
18 pandemic:
- 19
- 20 (A) Psychotropic medication applications.
- 21
- 22 (B) All emergency medical requests.
- 23
- 24 (C) A petition for reentry of a nonminor dependent.
- 25
- 26 (D) A hearing on any request for a warrant for a child.
- 27
- 28 (E) A probable cause determination for a child who has been detained but
29 has not had a detention hearing within the statutory time limits.
- 30
- 31 (4) Notwithstanding any other law, and except as described in (5), during the
32 state of emergency related to the COVID-19 pandemic, the court may
33 continue for good cause any hearing for a child not detained in custody who
34 is subject to its juvenile delinquency jurisdiction until a date after the state of
35 emergency has been lifted considering the priority for continued hearings in
36 (d).
- 37
- 38 (5) For children placed in foster care under probation supervision, a judicial
39 determination of reasonable efforts must be made within 12 months of the
40 date the child enters foster care to maintain a child's federal title IV-E
41 availability. If a permanency hearing is continued beyond the 12-month date,
42 the court must nevertheless hold a review to determine if the agency has
43 made reasonable efforts to return the child home or place the child

1 permanently. This finding can be made without prejudice and may be
2 reconsidered at a full hearing.

3
4 **(c) Proceedings with remote appearances during the state of emergency.**

- 5
6 (1) A court may hold any proceeding under this rule via remote technology
7 consistent with rule 5.531 and emergency rule 3.
8
9 (2) At the beginning of any hearing conducted with one or more participants
10 appearing remotely, the court must admonish all the participants that the
11 proceeding is confidential and of the possible sanctions for violating
12 confidentiality.
13
14 (3) The court is responsible for giving notice of remote hearings, except for
15 notice to a victim, which is the responsibility of the prosecuting attorney or
16 the probation department. Notice is required for all parties and may include
17 notice by telephone or other electronic means. The notice must also include
18 instructions on how to participate in the hearing remotely.
19
20 (4) During the state of emergency, the court has broad discretion to take evidence
21 in the manner most compatible with the remote hearing process, including
22 but not limited to taking testimony by written declaration. If counsel for a
23 child or the prosecuting attorney objects to the court's evidentiary
24 procedures, that is a basis for issuing a continuance under (d).
25

26 **(d) Continuances of hearings during the state of emergency.**

27
28 Notwithstanding any other law, the court may for good cause continue any hearing
29 other than a detention hearing for a child who is detained in custody. In making this
30 determination, the court must consider the custody status of the child, whether there
31 are evidentiary issues that are contested, and, if so, the ability for those issues to be
32 fairly contested via a remote proceeding.
33

34 **(e) Extension of time limits under Welfare and Institutions Code section 709**

35
36 In any case in which a child has been found incompetent under Welfare and
37 Institutions Code section 709 and that child is eligible for remediation services or
38 has been found to require secure detention, any time limits imposed by section 709
39 for provision of services or for secure detention are tolled for the period of the state
40 of emergency if the court finds that remediation services could not be provided
41 because of the state of emergency.
42

1 **(f) Sunset of rule**

2
3 This rule will remain in effect until 90 days after the Governor declares that the
4 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
5 repealed by the Judicial Council.
6

7 **Advisory Committee Comment**

8
9 This emergency rule is being adopted in part to ensure that detention hearings for
10 juveniles in delinquency court must be held in a timely manner to ensure that no child is
11 detained who does not need to be detained to protect the child or the community. The
12 statutory scheme for juveniles who come under the jurisdiction of the delinquency court
13 is focused on the rehabilitation of the child and thus makes detention of a child the
14 exceptional practice, rather than the rule. Juvenile courts are able to use their broad
15 discretion under current law to release detained juveniles to protect the health of those
16 juveniles and the health and safety of the others in detention during the current state of
17 emergency related to the COVID-19 pandemic.
18
19

20 **Emergency rule 8. Emergency orders: temporary restraining or protective orders**

21
22 **(a) Application**

23
24 Notwithstanding any other law, this rule applies to any emergency protective order,
25 temporary restraining order, or criminal protective order that was requested, issued,
26 or set to expire during the state of emergency related to the COVID-19 pandemic.
27 This includes requests and orders issued under Family Code sections 6250 or 6300,
28 Code of Civil Procedure sections 527.6, 527.8, or 527.85, Penal Code sections
29 136.2, 18125 or 18150, or Welfare and Institutions Code sections 213.5, 304,
30 362.4, or 15657.03, and including any of the foregoing orders issued in connection
31 with an order for modification of a custody or visitation order issued pursuant to a
32 dissolution, legal separation, nullity, or parentage proceeding under Family Code
33 section 6221.
34

35 **(b) Duration of orders**

- 36
37 (1) Any emergency protective order made under Family Code section 6250 that
38 is issued during the state of emergency, must remain in effect for up to 30
39 days from the date of issuance.
40
41 (2) Any temporary restraining order or gun violence emergency protective order,
42 issued or set to expire during the state of emergency related to the COVID-19
43 pandemic must remain in effect for a period of time that the court determines

1 is sufficient to allow for a hearing on the long-term order to occur, for up to
2 90 days.

3
4 (3) Any criminal protective order, subject to this rule, set to expire during the
5 state of emergency, must be automatically extended for a period of 90 days,
6 or until the matter can be heard, whichever occurs first.

7
8 (4) Upon the filing of a request to renew a restraining order after hearing, that is
9 set to expire during the state of emergency related to the COVID-19
10 pandemic, the current restraining order after hearing must remain in effect
11 until a hearing on the renewal can occur, for up to 90 days from the date of
12 expiration.

13
14 *(Subd (b) was amended effective April 20, 2020.)*

15
16 **(c) Ex parte requests and requests to renew restraining orders**

17
18 (1) Courts must provide a means for the filing of ex parte requests for temporary
19 restraining orders and requests to renew restraining orders. Courts may do so
20 by providing a physical location, drop box, or, if feasible, through electronic
21 means.

22
23 (2) Any ex parte request and request to renew restraining orders may be filed
24 using an electronic signature by a party or a party's attorney.

25
26 *(Subd (c) was amended effective April 20, 2020.)*

27
28 **(d) Service of Orders**

29
30 If a respondent appears at a hearing by video, audio, or telephonically, and the
31 court grants an order, in whole or in part, no further service is required upon the
32 respondent for enforcement of the order, provided that the court follows the
33 requirements of Family Code section 6384.

34
35 **(e) Entry of orders into California Law Enforcement Telecommunications System**

36
37 Any orders issued by a court modifying the duration or expiration date of orders
38 subject to this rule, must be transmitted to the Department of Justice through the
39 California Law Enforcement Telecommunications System (CLETS), as provided in
40 Family Code section 6380, without regard to whether they are issued on Judicial
41 Council forms, or in another format during the state of emergency.

42
43 *Emergency Rule 8 amended effective April 20, 2020.*

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Emergency rule 9. Toll the statutes of limitations for civil causes of action

Notwithstanding any other law, the statutes of limitation for civil causes of action are tolled from April 6, 2020, until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

Emergency rule 10. Extensions of time in which to bring a civil action to trial

(a) Extension of five years in which to bring a civil action to trial

Notwithstanding any other law, including Code of Civil Procedure section 583.310, for all civil actions filed on or before April 6, 2020, the time in which to bring the action to trial is extended by six months for a total time of five years and six months.

(b) Extension of three years in which to bring a new trial

Notwithstanding any other law, including Code of Civil Procedure section 583.320, for all civil actions filed on or before April 6, 2020, if a new trial is granted in the action, the three years provided in section 583.320 in which the action must again be brought to trial is extended by six months for a total time of three years and six months. Nothing in this subdivision requires that an action must again be brought to trial before expiration of the time prescribed in (a).

Emergency rule 11. Depositions through remote electronic means

(a) Deponents appearing remotely

Notwithstanding any other law, including Code of Civil Procedure section 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or nonparty deponent, at their election or the election of the deposing party, is not required to be present with the deposition officer at the time of the deposition.

(b) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

1 **Emergency rule 12. Electronic service**

2
3 **(a) Application**

4
5 (1) Notwithstanding any other law, including Code of Civil Procedure section
6 1010.6, Probate Code section 1215, and rule 2.251, this rule applies in all
7 general civil cases and proceedings under the Family and Probate Codes,
8 unless a court orders otherwise.

9
10 (2) Notwithstanding (1), the rule does not apply in cases where parties are
11 already required by court order or local rule to provide or accept notices and
12 documents by electronic service, and is not intended to prohibit electronic
13 service in cases not addressed by this rule.

14
15 **(b) Required electronic service**

16
17 (1) A party represented by counsel, who has appeared in an action or proceeding,
18 must accept electronic service of a notice or document that may be served by
19 mail, express mail, overnight delivery, or facsimile transmission. Before first
20 serving a represented party electronically, the serving party must confirm by
21 telephone or email the appropriate electronic service address for counsel
22 being served.

23
24 (2) A party represented by counsel must, upon the request of any party who has
25 appeared in an action or proceeding and who provides an electronic service
26 address and a copy of this rule, electronically serve the requesting party with
27 any notice or document that may be served by mail, express mail, overnight
28 delivery, or facsimile transmission.

29
30 **(c) Permissive electronic service**

31
32 Electronic service on a self-represented party is permitted only with consent of that
33 party, confirmed in writing. The written consent to accept electronic service may be
34 exchanged electronically.

35
36 **(d) Time**

37
38 (1) In general civil cases and proceedings under the Family Code, the provisions
39 of Code of Civil Procedure section 1010.6(a)(4) and (5) apply to electronic
40 service under this rule.

41
42 (2) In proceedings under the Probate Code, the provisions of Probate Code
43 section 1215(c)(2) apply to electronic service under this rule.

1
2 **(e) Confidential documents**

3
4 Confidential or sealed records electronically served must be served through
5 encrypted methods to ensure that the documents are not improperly disclosed.
6

7 **(f) Sunset of rule**

8
9 This rule will remain in effect until 90 days after the Governor declares that the
10 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
11 repealed by the Judicial Council.
12

13 *Emergency Rule 12 adopted effective April 17, 2020.*
14
15

16 **Emergency rule 13. Effective date for requests to modify support**

17
18 **(a) Application**

19
20 Notwithstanding any other law, including Family Code sections 3591, 3603, 3653,
21 and 4333, this rule applies to all requests to modify or terminate child, spousal,
22 partner, or family support. For the purpose of this rule, “request” refers to *Request*
23 *for Order* (form FL-300), *Notice of Motion (Governmental)* (form FL-680), or
24 other moving papers requesting a modification of support.
25

26 **(b) Effective date of modification**

27
28 Except as provided in Family Code section 3653(b), an order modifying or
29 terminating a support order may be made effective as of the date the request and
30 supporting papers are mailed or otherwise served on the other party, or other
31 party’s attorney when permitted. Nothing in this rule restricts the court’s discretion
32 to order a later effective date.
33

34 **(c) Service of filed request**

35
36 If the request and supporting papers that were served have not yet been filed with
37 the court, the moving party must also serve a copy of the request and supporting
38 papers after they have been filed with the court on the other party, or other party’s
39 attorney when permitted. If the moving party is the local child support agency and
40 the unfiled request already has a valid court date and time listed, then subsequent
41 service of the request is not required.
42

1 **(d) Court discretion**

2

3 Nothing in this rule is meant to limit court discretion or to alter rule 5.92 or 5.260
4 regarding which moving papers are required to request a modification of support.

5

6 **(e) Sunset of rule**

7

8 This rule will remain in effect until 90 days after the Governor declares that the
9 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
10 repealed by the Judicial Council.

11

12 *Emergency Rule 13 adopted effective April 20, 2020.*

13

14 *Appendix I amended effective April 20, 2020; adopted effective April 6, 2020; previously amended*
15 *effective April 17, 2020.*