



Superior Court of California County of Orange

Hon. Layne H. Melzer, Dept. C12
REMOTE TRIAL PROCEDURES for Civil Court Trials

Pursuant to California Judicial Council Emergency Rule 3¹ and Orange County Superior Court Administrative Order No. 20/22, this Department will conduct “remote,” videoconference trials using Zoom² as its technology platform. Unless modified by Court order, these procedures shall apply to cases designated as appropriate for a remote trial.³ Remote trials remain subject to OCLR 317 and this Department’s existing trial rules, except as expressly modified herein.

I. General Provisions

- a. Remote trials will generally be reserved for cases that fit the following criteria: (1) the case (or a bifurcated cause of action) is to be tried only to the Court sitting without a jury; (2) the nature of the case (including witnesses, evidence presentation, subject matter and the litigants) is such that it can be efficiently and effectively litigated remotely; and (3) a remote proceeding will not present any unique technological or other challenges and will not otherwise unduly prejudice the rights of the parties.

¹ Use of technology for remote appearances

- (a) Notwithstanding any other law, in order to protect the health and safety of the public, including court users, both in custody and out of custody defendants, witnesses, court personnel, judicial officers, and others, courts must conduct judicial proceedings and court operations as follows:
 - a. Courts may require that judicial proceedings and court operations be conducted remotely. (. . .)
 - b. Conducting proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding.
- (b) Sunset: 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after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

² The Court reserves the right to change its designated remote access software/application at any time as needed to ensure full and fair access to proceedings. Instructions for using Zoom videoconference software for remote access are publicly available on the Court’s public website.

³ Other “non-trial” proceedings/hearings may be conducted remotely by direction of the Court. In such circumstances, the Court expects adherence to these procedures where appropriate.

- b. A case may be designated for remote trial by way of a minute order issued in advance of the trial date or at the time the case is called for trial. While the Court may consider the parties willingness to participate in a remote trial as a factor in its evaluation, consent is not a prerequisite. Upon being designated for remote trial, participation is mandatory.
- c. *No filming, broadcasting, photography or electronic recording is permitted of this court session per California Rules of Court, rule 1.150 and Orange County Superior Court rule 180. Violations of this rule may result in sanctions or criminal prosecution.*
- d. All hearings will be subject to a time limitation to be determined by the Court after consultation with the parties. This time limit will be allocated equitably amongst the parties. Time limits will be strictly enforced.
- e. At the time of trial, the parties will be directed to the Department's "virtual courtroom" through a web-link to be provided by the Clerk. The Clerk will communicate with the parties using the most current email address provided the Court pursuant to applicable Court Rules.
- f. Remote proceedings may be facilitated by the Clerk through the Department's email: C12@occourts.org. Use of the Department email is not a substitute for the electronic filing of documents when required. It is not a forum for any and all communications with the Court. It is reserved only for those uses specifically identified and permitted herein. *Ex parte communications with the Court remain strictly prohibited.*
- g. Only parties, counsel, and witnesses previously identified may participate in the trial. The link to the videoconference trial may be forwarded only to such persons. *Third party witnesses who have not agreed to appear by using the videoconference link may be directed to appear in C12 on an appointed time by calling the department at (657) 622-5212 for further instructions from the Court.*
- h. Any member of the public wishing to attend a remote proceeding may do so by contacting the courtroom clerk for access instructions.**

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II. Hearing Decorum

- a. The attorney is responsible for a client's behavior while participating. Parties shall likewise advise all witnesses of the rules and procedures relevant to these remote proceedings and shall be responsible to ensure their witnesses display appropriate decorum and compliance with these procedures.
- b. All participants (parties, counsel and witnesses) must be in an office or room with proper lighting. There should not be any distractions (noise or other things) occurring in the background. While they are present at trial, participants must always be visible and able to be heard when prompted.
- c. Participants shall conduct themselves in the same manner they would if they were physically present before the Court. Participants shall wear professional attire appropriate for all court proceedings and take all necessary steps to eliminate background noise or distractions.
- d. Witnesses will be admitted to the videoconference when it is time for them to testify. They should leave the proceeding after testimony, unless the attorneys/parties make a request to have them remain after their testimony is complete, and the Court has granted the request.
- e. Parties must arrange for witnesses to testify in a quiet location with no other undisclosed or unnecessary persons present and where no documents or other material in any way connected with the case (whether electronic, physical, or in any other form) are accessible except for trial exhibits.
- f. During the examination of a witness, no party, counsel, or other person may communicate with the witness (electronically, verbally, in writing, through signs or signals, or in any other way) except as part of the examination itself and in the full sight and hearing of opposing parties, opposing counsel, and the Court. *A violation of this order is a ground for the court to find a party, counsel, or witness in contempt of court.*
- g. Participants will be allowed to speak only when prompted by the Court. Participants should ask to sign off before leaving the proceeding to ensure their presence is no longer required.

III. Technology

- a. Before trial commences all participants must have access to Zoom (or any substituted application) on their electronic devices (computers, cell phones, tablets, or laptops). All participants must test functionality prior to the time of trial. *Again, instructions for using Zoom (and other commonly used remote applications) are available on the Court's public website. A strong highspeed internet connection is essential.*
- b. If a party's internet connection is poor or the Court is otherwise unable to view, hear or understand a participant, the Court reserves the right to continue the matter, declare a mistrial (where appropriate) or take other necessary action. Where the inability to communicate is immediately resolvable, the Court may permit a temporary delay or explore other real time "work arounds" and/or technological alternatives.
- c. The parties are responsible for ensuring that all witnesses and other necessary participants are able (including necessary software, hardware and use instructions) and available to participate in the contemplated remote trial which responsibility may include providing sufficient details in any subpoena or notice to appear that will create a legal obligation to comply with the Court's remote trial procedures.
- d. All participants will be responsible for providing the Court with a means of "rescue" communication that will allow the Court to quickly, during the hearing, contact the affected party to address technological challenges. In the event a participant is having difficulty hearing or seeing the proceedings, he or she may contact the clerk through the Department email or phone to alert the Court and to receive further instructions.

IV. Interpreters/Reporters

- a. Pursuant to Emergency Rule 3, use of interpreters through videoconference is also expressly permitted. If an interpreter is needed, it will generally be the responsibility of the party whose witness requires an interpreter to make those arrangements. The party requiring an interpreter shall alert the Court before the trial commences.

- b. In the absence of a prior court order, privately hired court reporters must also participate remotely. It is the responsibility of the party hiring a court reporter to make the necessary arrangements for his/her access to the planned remote proceedings. Per the Court's Privately Retained Court Reporter policy, Local Form L-0860 (Stipulation and Appointment of Official Reporter Pro Tempore) must be electronically filed with the court at least 5 days prior to the trial when parties select a court reporter not on the Court-Approved Official Reporters Pro Tempore List.⁴

V. Exhibits⁵

- a. The parties are to prepare and submit two exhibit binders in the form of Joint Exhibit Notebooks (see Local Rule 317(C))—one for the Court and one for the Court Clerk—to the Department not less than three (3) court days before the remote trial starts. Each exhibit in the copy of the Joint Exhibit Binder for the Court Clerk must be pre-marked with exhibit tags affixed. This will be the official set of Exhibits available for admission.
- b. The parties are responsible for providing copies of relevant exhibits (identical in all respects to those in the official Exhibit book) to witnesses in advance of their trial testimony. An attorney's or party's failure to do so may result in that party being unable to question the witness on the exhibit.
- c. To the extent a party anticipates using a legitimate impeachment or rebuttal exhibit it must be pre-scanned and ready to forward electronically to the other party, to their counsel, to the witness, and to the Court (C12@occourts.org) at the earliest possible opportunity. The Copy emailed to Court will be added to the official book of Exhibits.

⁴ There shall be no other audio or video recording of any of the Court proceedings on or off the record. Again, any such recording is unlawful and may result in sanctions or prosecution.

⁵ The Court reserves the right to utilize other alternatives (and technology platforms) for the exchange, sharing and trial-use of digital evidence after consultation with the parties.