

Interim Rules of Procedure of the State Bar of California
Effective January 1, 2022

5.17 Appearances for Non-Trial Events in the Hearing Department

(A) General Provision Authorizing Parties to Appear Remotely. Early Neutral Evaluation Conferences, Settlement Conferences, and all Hearings as defined in rule 5.4(37) except evidentiary hearings and trials will take place remotely by video or telephone. The court will publish information for remote appearances on the State Bar Court website.

(B) Notice by Party to Appear In-Person. Notwithstanding subparagraph (A), a party may appear in-person upon notice to the court that is served on the opposing party.

(1) **Notice to the Court.** The notice must be in writing and filed with the court as far in advance as possible but no fewer than 10 days before the appearance. The notice must be in writing and may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*.

(2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person no fewer than ten days before the appearance.

(3) **Notice by the Opposing Party.** On receipt of notice under subparagraph (B)(2), should the opposing party elect to also appear in-person, that party must notify the court and all other parties no fewer than two court days before the appearance. The notice must be in writing, may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*, and must be served on all parties pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person no fewer than two court days before the appearance.

(4) **Court Discretion to Order Remote Appearance or to Reschedule Proceeding.** If a party has provided notice of the party's intent to appear in-person under this subparagraph, the court may, in its discretion and in the interests of justice, order that the proceeding be conducted remotely or rescheduled if the judge is already scheduled to conduct another in-person proceeding in a different venue on the same date.

(C) Court Discretion to Require In-Person Appearance. Notwithstanding subparagraph (A), the court has discretion to require an in-person appearance, to conduct a proceeding partially remotely by video or telephone, or to continue the matter if, at any time during the proceeding being conducted remotely, the court determines that:

- (1) An in-person appearance would materially assist in the determination of the proceeding or the effective management or resolution of the case;
 - (2) The quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding; or
 - (3) The court otherwise determines that an in-person appearance is necessary.
- (D) The decision to require a remote appearance under subparagraph (B)(4) or to require an in-person appearance under subparagraph (C) is the final decision in the State Bar Court and is not reviewable.

5.18 Appearances for Evidentiary Hearings and Trials in the Hearing Department

- (A) **General Provision Requiring Parties and Witnesses to Appear in Person.** Except as permitted by this rule, parties and witnesses must appear in-person at evidentiary hearings and at trial as defined in rule 5.4(62).
- (B) **Notice by Party to Appear Remotely.** Notwithstanding subparagraph (A), a party may appear remotely by video or telephone upon notice to the court that is served on the opposing party.
- (1) **Notice to the Court.** Within 10 days after the court sends notice of the evidentiary hearing or notice of the trial date pursuant to rule 5.102, a party may provide notice of the party's intent to appear remotely. The notice must be in writing and may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*.
 - (2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within 10 days after the court has sent notice of the evidentiary hearing or notice of the trial date pursuant to rule 5.102.
 - (3) **Notice by the Opposing Party.** On receipt of notice under subparagraph (B)(2), should the opposing party elect to also appear remotely, that party must notify the court and all other parties within five days after the notice is served. The notice must be in writing, may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*, and must be served on all parties pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within five days after the notice is served.

(C) Opposition to Remote Proceedings. In response to notice of a remote proceeding provided under subparagraph (B), a party may make a showing to the court as to why a remote appearance or remote testimony should not be allowed by serving and filing the State Bar Court Form *Opposition to Remote Proceedings at Evidentiary Hearing or Trial*.

(1) **Notice of Opposition to the Court and Parties.** The Opposition must be filed with the court and served on the parties within five days after the initial notice of the party's intent to appear remotely. The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within five days after the initial notice of the party's intent to appear remotely.

(2) **Court Determination on Opposition.** In determining whether to conduct an evidentiary hearing or trial in whole or in part through the use of remote technology over opposition, the court must consider the following:

- i. Whether an in-person appearance would materially assist in the determination of the proceeding or the effective management or resolution of the case;
- ii. Whether the quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding;
- iii. Whether there is any limited access to technology or transportation asserted by a party that affects the ability for a party or witness to appear remotely; and
- iv. Whether the interests of justice are best served by permitting a party or witness to appear remotely in whole or in part over another party's opposition.

(D) Court Discretion to Require In-Person Appearance. If an evidentiary hearing or trial is conducted remotely in full or in part, the court has discretion at any time during the proceeding being conducted remotely to require an in-person appearance if the court determines that:

- (1) An in-person appearance would materially assist in the determination of the proceeding or the effective management or resolution of the case;
- (2) The quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding; or
- (3) The court otherwise determines that an in-person appearance is necessary.

(E) Review. The court's decision regarding subparagraph (C) is reviewable under rule 5.150.

Rule 5.154 Oral Argument Before Review Department

Except as otherwise provided in these rules, the Review Department will give the parties an opportunity for oral argument. The parties may waive oral argument at any time up to five days before the date set for oral argument. Unless oral argument is waived or the parties agree to a shorter period of notice, written notice of the time and place of oral argument must be served by the Clerk on the parties at least 30 days before the oral argument.

(A) General Provision Requiring Parties to Appear in Person. The Review Department will hear in-person oral argument in San Francisco and Los Angeles. Oral argument shall be scheduled in the venue in which the trial took place.

(B) Notice by Party to Appear Remotely. Notwithstanding subparagraph (A), a party may appear remotely by video or telephone upon notice to the court that is served on the opposing party.

(1) **Notice to the Court.** Within 10 days after the court sends notice of the time and place of oral argument, a party may provide notice of the party's intent to appear remotely. The notice must be in writing and may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*.

(2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within 10 days after the court sends notice of the time and place of oral argument.

(3) **Notice by the Opposing Party.** On receipt of notice under subparagraph (B)(2), should the opposing party elect to also appear remotely, that party must notify the court and all other parties within five days after the notice is served. The notice must be in writing, may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*, and must be served on all parties pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within five days after the notice is served.

(C) Information for Remote Appearances. The court will publish information for remote appearances on the State Bar Court website.

(D) Court Discretion to Require In-Person Appearance. If oral argument is conducted remotely in full or in part, the court has discretion at any time during the proceeding being conducted remotely to require an in-person appearance if the court determines that:

(1) An in-person appearance would materially assist in the determination of the proceeding or the effective management or resolution of the case;

(2) The quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding; or

(3) The court otherwise determines that an in-person appearance is necessary.

(E) Duration of Oral Argument. In a matter before the Review Department, each side shall have a maximum of 30 minutes for oral argument except as the Presiding Judge may otherwise direct.

(F) Expedited Oral Argument in Proceedings Underlying Business and Professions Code § 6007(c). Any respondent having timely sought review of a decision by the Hearing Department on the matter underlying an order for inactive enrollment under Business and Professions Code section 6007(c) may move that the review of that underlying matter be set for oral argument on the next available calendar regardless of location. Such motion shall be filed and served no later than the last day for filing briefs.

(G) Time of Submission. A proceeding pending in the Review Department is submitted when that Department has heard oral argument or has approved at the conclusion of oral argument unless otherwise ordered by the court.