

*The Orange County Bar Association  
Covid-19 Task Force Presents*

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# HOW TO TAKE A DEPOSITION VIRTUALLY

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Wednesday, April 22, 2020



Speakers

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**APRIL 22, 2020 OCBA WEBINAR**  
**HOW TO TAKE A DEPOSITION VIRTUALLY**

**I. Program Outline**

**II. Applicable Rules**

A. Code of Civil Procedure section 2025.310

B. California Rules of Court, Rule 3.1010

C. FRCP 30

**III. COVID-Related Amendments to the Rules**

A. Governor Gavin Newsom's Executive Order N-38-20 dated March 27, 2020

B. Judicial Council Emergency Rule 11 dated April 6, 2020

## Program Outline

### **Proud Usahacharoenporn**

#### **I. Normally what rules apply?**

- A. CCP 2025.310: Same as CRC 3.1010
- B. CRC 3.1010:
  - 1. Check with your reporter re what technology will be used and include specifics in the notice
  - 2. What does it mean to make arrangements for parties to participate?
  - 3. What does it mean that any party can be personally present without notice?
  - 4. CRC 3.1010(c)—party deponent must appear at his or her depo in person and be in the presence of depo officer (also in CCP 2025.310(b))
- C. FRCP 30(f)—parties can stipulate or a court can order that a depo be taken by telephone or other remote means.

#### **II. Have these rules been changed because of COVID?**

- A. CCP 2016.030: parties can modify discovery rules by stipulation
- B. Governor Newsom’s Order dated March 27, 2020: suspends CCP 2025.310(b) to the extent it limits the court’s authority to allow a party deponent to appear at a depo remotely
- C. Judicial Council April 6 Emergency Rule 11: changes CCP 2025.310 and CRC 3.1010 so that any party or nonparty does not need to be present in same room as a reporter until 90 days after the governor declares the state of emergency is lifted or until otherwise amended/repealed by the judicial council
- D. Federal: Check your court’s local rules

### **Adrienne Marshack**

#### **III. Preparing a witness for deposition remotely**

- A. Practical considerations/logistics
- B. Reviewing documents

1. What to expect
- C. Conduct during depositions
  1. If you are taking the deposition
    - a. How to handle exhibits/considerations
    - b. Making sure there is a clear record
  2. If you are defending the deposition
    - a. Objections (making sure your witness gives you a chance before responding)
    - b. Off-the-record conversations with your witness
    - c. Breaks/controlling the flow of the deposition for your witness

### **Corey Smith**

#### **IV. Technology/equipment required for remote depositions**

- A. High speed Internet requirements
- B. Webcam
- C. Phone Connection (in event of computer audio issues)
- D. Tablet/smart phone for realtime (if needed)

#### **V. Exhibit sharing**

- A. How to allow the witness to review the entire document
  1. Live demonstration
- B. How to direct the witness to a specific portion of a document
  1. File sharing options
- C. Exhibits
  1. Pre-marking exhibits
  2. Court Reporter marking of exhibits with digital stickers

West's Annotated California Codes  
Code of Civil Procedure (Refs & Annos)  
Part 4. Miscellaneous Provisions (Refs & Annos)  
Title 4. Civil Discovery Act (Refs & Annos)  
Chapter 9. Oral Deposition Inside California (Refs & Annos)  
Article 3. Conduct of Deposition (Refs & Annos)

West's Ann.Cal.C.C.P. § 2025.310

§ 2025.310. Use of telephone or other remote electronic means

Effective: July 1, 2005

[Currentness](#)

(a) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means.

(b) The court may expressly provide that a nonparty deponent may appear at the deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent shall appear at the deposition in person and be in the presence of the deposition officer.

(c) The procedures to implement this section shall be established by court order in the specific action or proceeding or by the California Rules of Court.

#### Credits

(Added by [Stats.2004, c. 182 \(A.B.3081\)](#), § 23, operative July 1, 2005.)

#### Editors' Notes

#### LAW REVISION COMMISSION COMMENTS

2004 Addition

Subdivision (a) of Section 2025.310 continues the first sentence of former Section 2025(h)(3) without change.

Subdivision (b) continues the second and third sentences of former Section 2025(h)(3) without substantive change.

Subdivision (c) continues the fourth sentence of former Section 2025(h)(3) without substantive change. [33 Cal.L.Rev.Comm. Reports 849 (2004)].

West's Ann. Cal. C.C.P. § 2025.310, CA CIV PRO § 2025.310  
Current with urgency legislation through Ch. 3 of 2020 Reg.Sess

West's Annotated California Codes  
California Rules of Court (Refs & Annos)  
Title 3. Civil Rules (Refs & Annos)  
Division 10. Discovery (Refs & Annos)  
Chapter 2. Conduct of Discovery (Refs & Annos)

Cal.Rules of Court, Rule 3.1010  
Formerly cited as CA ST PRETRIAL AND TRIAL Rule 333

Rule 3.1010. Oral depositions by telephone, videoconference, or other remote electronic means

[Currentness](#)

**(a) Taking depositions**

Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided:

- (1) Notice is served with the notice of deposition or the subpoena;
- (2) That party makes all arrangements for any other party to participate in the deposition in an equivalent manner. However, each party so appearing must pay all expenses incurred by it or properly allocated to it;
- (3) Any party may be personally present at the deposition without giving prior notice.

**(b) Appearing and participating in depositions**

Any party may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided:

- (1) Written notice of such appearance is served by personal delivery, e-mail, or fax at least three court days before the deposition;
- (2) The party so appearing makes all arrangements and pays all expenses incurred for the appearance.

**(c) Party deponent's appearance**

A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer.

**(d) Nonparty deponent's appearance**

A nonparty deponent may appear at his or her deposition by telephone, videoconference, or other remote electronic means with court approval upon a finding of good cause and no prejudice to any party. The deponent must be sworn in the presence of

the deposition officer or by any other means stipulated to by the parties or ordered by the court. Any party may be personally present at the deposition.

**(e) Court orders**

On motion by any person, the court in a specific action may make such other orders as it deems appropriate.

**Credits**

(Formerly Rule 333, adopted, eff. Jan. 1, 2003. Renumbered Rule 3.1010 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2016.)

[Notes of Decisions \(2\)](#)

Cal. Rules of Court, Rule 3.1010, CA ST CIVIL RULES Rule 3.1010

California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through December 15, 2019. California Supreme Court, California Courts of Appeal, Guidelines for the Commission of Judicial Appointments, Commission on Judicial Performance, and all other Rules of the State Bar of California are current with amendments received through December 15, 2019.

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United States Code Annotated  
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)  
Title V. Disclosures and Discovery (Refs & Annos)

Federal Rules of Civil Procedure Rule 30

Rule 30. Depositions by Oral Examination

Currentness

**(a) When a Deposition May Be Taken.**

**(1) *Without Leave.*** A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under [Rule 45](#).

**(2) *With Leave.*** A party must obtain leave of court, and the court must grant leave to the extent consistent with [Rule 26\(b\)\(1\) and \(2\)](#):

**(A)** if the parties have not stipulated to the deposition and:

**(i)** the deposition would result in more than 10 depositions being taken under this rule or [Rule 31](#) by the plaintiffs, or by the defendants, or by the third-party defendants;

**(ii)** the deponent has already been deposed in the case; or

**(iii)** the party seeks to take the deposition before the time specified in [Rule 26\(d\)](#), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or

**(B)** if the deponent is confined in prison.

**(b) Notice of the Deposition; Other Formal Requirements.**

**(1) *Notice in General.*** A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.



**(2) Producing Documents.** If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under [Rule 34](#) to produce documents and tangible things at the deposition.

**(3) Method of Recording.**

**(A) Method Stated in the Notice.** The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

**(B) Additional Method.** With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

**(4) By Remote Means.** The parties may stipulate--or the court may on motion order--that a deposition be taken by telephone or other remote means. For the purpose of this rule and [Rules 28\(a\)](#), [37\(a\)\(2\)](#), and [37\(b\)\(1\)](#), the deposition takes place where the deponent answers the questions.

**(5) Officer's Duties.**

**(A) Before the Deposition.** Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under [Rule 28](#). The officer must begin the deposition with an on-the-record statement that includes:

- (i)** the officer's name and business address;
- (ii)** the date, time, and place of the deposition;
- (iii)** the deponent's name;
- (iv)** the officer's administration of the oath or affirmation to the deponent; and
- (v)** the identity of all persons present.

**(B) Conducting the Deposition; Avoiding Distortion.** If the deposition is recorded non-stenographically, the officer must repeat the items in [Rule 30\(b\)\(5\)\(A\)\(i\)-\(iii\)](#) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

**(c) Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.**

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* An objection at the time of the examination--whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition--must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

**(d) Duration; Sanction; Motion to Terminate or Limit.**

(1) *Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with [Rule 26\(b\)\(1\) and \(2\)](#) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* The court may impose an appropriate sanction--including the reasonable expenses and attorney's fees incurred by any party--on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit.*

(A) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or may limit its scope and manner as provided in [Rule 26\(c\)](#). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* [Rule 37\(a\)\(5\)](#) applies to the award of expenses.

**(e) Review by the Witness; Changes.**

(1) *Review; Statement of Changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate.* The officer must note in the certificate prescribed by [Rule 30\(f\)\(1\)](#) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

**(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.**

(1) *Certification and Delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

**(2) Documents and Tangible Things.**

(A) *Originals and Copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals--after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked--in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals.* Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the Transcript or Recording.* Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of Filing.* A party who files the deposition must promptly notify all other parties of the filing.

(g) **Failure to Attend a Deposition or Serve a Subpoena; Expenses.** A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

#### CREDIT(S)

(Amended January 21, 1963, effective July 1, 1963; March 30, 1970, effective July 1, 1970; March 1, 1971, effective July 1, 1971; November 20, 1972, effective July 1, 1975; April 29, 1980, effective August 1, 1980; March 2, 1987, effective August 1, 1987; April 22, 1993, effective December 1, 1993; April 17, 2000, effective December 1, 2000; April 30, 2007, effective December 1, 2007; April 29, 2015, effective December 1, 2015.)

#### ADVISORY COMMITTEE NOTES

##### 1937 Adoption

**Note to Subdivision (a).** This is in accordance with common practice. See U.S.C., Title 28, [former] § 639 (Depositions *de bene esse*; when and where taken; notice), the relevant provisions of which are incorporated in this rule; [West's Ann.Code Civ.Proc. § 2031](#); and statutes cited in respect to notice in the Note to Rule 26(a). The provision for enlarging or shortening the time of notice has been added to give flexibility to the rule.

**Note to Subdivisions (b) and (d).** These are introduced as a safeguard for the protection of parties and deponents on account of the unlimited right of discovery given by Rule 26.

**Note to Subdivisions (c) and (e).** These follow the general plan of [former] Equity Rule 51 (Evidence Taken Before Examiners, Etc.) and U.S.C., Title 28, [former] §§ 640 (Depositions *de bene esse*; mode of taking), and [former] 641 (Same; transmission to court), but are more specific. They also permit the deponent to require the officer to make changes in the deposition if the deponent is not satisfied with it. See also [former] Equity Rule 50 (Stenographer--Appointment--Fees.)

**Note to Subdivision (f).** Compare [former] Equity Rule 55 (Depositions Deemed Published When Filed.)

**Note to Subdivision (g).** This is similar to 2 Minn.Stat. (Mason, 1927) § 9833, but is more extensive.

### 1963 Amendment

This amendment corresponds to the change in Rule 4(d)(4). See Advisory Committee's Note to that amendment.

### 1970 Amendment

**Subdivision (a).** This subdivision contains the provisions of existing Rule 26(a), transferred here as part of the rearrangement relating to Rule 26. Existing Rule 30(a) is transferred to 30(b). Changes in language have been made to conform to the new arrangement.

This subdivision is further revised in regard to the requirement of leave of court for taking a deposition. The present procedure, requiring a plaintiff to obtain leave of court if he serves notice of taking a deposition within 20 days after commencement of the action, is changed in several respects. First, leave is required by reference to the time the deposition is to be taken rather than the date of serving notice of taking. Second, the 20-day period is extended to 30 days and runs from the service of summons and complaint on any defendant, rather than the commencement of the action. *Cf. Ill.S.Ct.R. 19-1 S-H Ill. Ann. Stat. § 101.19-1.* Third, leave is not required beyond the time that defendant initiates discovery, thus showing that he has retained counsel. As under the present practice, a party not afforded a reasonable opportunity to appear at a deposition, because he has not yet been served with process, is protected against use of the deposition at trial against him. See Rule 32(a), transferred from 26(d). Moreover, he can later redepose the witness if he so desires.

The purpose of requiring the plaintiff to obtain leave of court is, as stated by the Advisory Committee that proposed the present language of Rule 26(a), to protect “a defendant who has not had an opportunity to retain counsel and inform himself as to the nature of the suit.” Note to 1948 amendment of Rule 26(a), quoted in 3A Barron & Holtzoff, *Federal Practice and Procedure* 455-456 (Wright ed. 1958). In order to assure defendant of this opportunity, the period is lengthened to 30 days. This protection, however, is relevant to the time of taking the deposition, not to the time that notice is served. Similarly, the protective period should run from the service of process rather than the filing of the complaint with the court. As stated in the note to Rule 26(d), the courts have used the service of notice as a convenient reference point for assigning priority in taking depositions, but with the elimination of priority in new Rule 26(d) the reference point is no longer needed. The new procedure is consistent in principle with the provisions of Rules 33, 34, and 36 as revised.

Plaintiff is excused from obtaining leave even during the initial 30-day period if he gives the special notice provided in subdivision (b)(2). The required notice must state that the person to be examined is about to go out of the district where the action is pending and more than 100 miles from the place of trial, or out of the United States, or on a voyage to sea, and will be unavailable for examination unless deposed within the 30-day period. These events occur most often in maritime litigation, when seamen are transferred from one port to another or are about to go to sea. Yet, there are analogous situations in nonmaritime litigation, and although the maritime problems are more common, a rule limited to claims in the admiralty and maritime jurisdiction is not justified.

In the recent unification of the civil and admiralty rules, this problem was temporarily met through addition in Rule 26(a) of a provision that depositions *de bene esse* may continue to be taken as to admiralty and maritime claims within the meaning of Rule 9(h). It was recognized at the time that “a uniform rule applicable alike to what are now civil actions and suits in admiralty” was clearly preferable, but the *de bene esse* procedure was adopted “for the time being at least.” See Advisory Committee's Note in Report of the Judicial Conference: Proposed Amendments to Rules of Civil Procedure 43-44 (1966).

The changes in Rule 30(a) and the new Rule 30(b)(2) provide a formula applicable to ordinary civil as well as maritime claims. They replace the provision for depositions *de bene esse*. They authorize an early deposition without leave of court where the witness is about to depart and, unless his deposition is promptly taken, (1) it will be impossible or very difficult to depose

him before trial or (2) his deposition can later be taken but only with substantially increased effort and expense. *Cf. S.S. Hai Chang, 1966 A.M.C. 2239 (S.D.N.Y.1966)*, in which the deposing party is required to prepay expenses and counsel fees of the other party's lawyer when the action is pending in New York and depositions are to be taken on the West Coast. Defendant is protected by a provision that the deposition cannot be used against him if he was unable through exercise of diligence to obtain counsel to represent him.

The distance of 100 miles from place of trial is derived from the *de bene esse* provision and also conforms to the reach of a subpoena of the trial court, as provided in Rule 45(e). See also S.D.N.Y. *Civ.R. 5(a)*. Some parts of the *de bene esse* provision are omitted from Rule 30(b)(2). Modern deposition practice adequately covers the witness who lives more than 100 miles away from place of trial. If a witness is aged or infirm, leave of court can be obtained.

**Subdivision (b).** Existing Rule 30(b) on protective orders has been transferred to Rule 26(c), and existing Rule 30(a) relating to the notice of taking deposition has been transferred to this subdivision. Because new material has been added, subsection numbers have been inserted.

**Subdivision (b)(1).** If a subpoena duces tecum is to be served, a copy thereof or a designation of the materials to be produced must accompany the notice. Each party is thereby enabled to prepare for the deposition more effectively.

**Subdivision (b)(2).** This subdivision is discussed in the note to subdivision (a), to which it relates.

**Subdivision (b)(3).** This provision is derived from existing Rule 30(a), with a minor change of language.

**Subdivision (b)(4).** In order to facilitate less expensive procedures, provision is made for the recording of testimony by other than stenographic means--*e.g.*, by mechanical, electronic, or photographic means. Because these methods give rise to problems of accuracy and trustworthiness, the party taking the deposition is required to apply for a court order. The order is to specify how the testimony is to be recorded, preserved, and filed, and it may contain whatever additional safeguards the court deems necessary.

**Subdivision (b)(5).** A provision is added to enable a party, through service of notice, to require another party to produce documents or things at the taking of his deposition. This may now be done as to a nonparty deponent through use of a subpoena duces tecum as authorized by Rule 45, but some courts have held that documents may be secured from a party only under Rule 34. See *2A Barron & Holtzoff, Federal Practice and Procedure* § 644.1 n. 83.2, § 792 n. 16 (Wright ed. 1961). With the elimination of "good cause" from Rule 34, the reason for this restrictive doctrine has disappeared. *Cf. N.Y.C.P.L.R. § 3111.*

Whether production of documents or things should be obtained directly under Rule 34 or at the deposition under this rule will depend on the nature and volume of the documents or things. Both methods are made available. When the documents are few and simple, and closely related to the oral examination, ability to proceed via this rule will facilitate discovery. If the discovering party insists on examining many and complex documents at the taking of the deposition, thereby causing undue burdens on others, the latter may, under Rules 26(c) or 30(d), apply for a court order that the examining party proceed via Rule 34 alone.

**Subdivision (b)(6).** A new provision is added, whereby a party may name a corporation, partnership, association, or governmental agency as the deponent and designate the matters on which he requests examination, and the organization shall then name one or more of its officers, directors, or managing agents, or other persons consenting to appear and testify on its behalf with respect to matters known or reasonably available to the organization. *Cf. Alberta Sup.Ct.R. 255.* The organization may designate persons other than officers, directors, and managing agents, but only with their consent. Thus, an employee or agent who has an independent or conflicting interest in the litigation--for example, in a personal injury case--can refuse to testify on behalf of the organization.

This procedure supplements the existing practice whereby the examining party designates the corporate official to be deposed. Thus, if the examining party believes that certain officials who have not testified pursuant to this subdivision have added information, he may depose them. On the other hand, a court's decision whether to issue a protective order may take account of the availability and use made of the procedures provided in this subdivision.

The new procedure should be viewed as an added facility for discovery, one which may be advantageous to both sides as well as an improvement in the deposition process. It will reduce the difficulties now encountered in determining, prior to the taking of a deposition, whether a particular employee or agent is a "managing agent." See Note, *Discovery Against Corporations Under the Federal Rules*, 47 Iowa L.Rev. 1006-1016 (1962). It will curb the "bandying" by which officers or managing agents of a corporation are deposed in turn but each disclaims knowledge of facts that are clearly known to persons in the organization and thereby to it. Cf. *Haney v. Woodward & Lothrop, Inc.*, 330 F.2d 940, 944 (4th Cir. 1964). The provision should also assist organizations which find that an unnecessarily large number of their officers and agents are being deposed by a party uncertain of who in the organization has knowledge. Some courts have held that under the existing rules a corporation should not be burdened with choosing which person is to appear for it. E.g., *United States v. Gahagan Dredging Corp.*, 24 F.R.D. 328, 329 (S.D.N.Y.1958). This burden is not essentially different from that of answering interrogatories under Rule 33, and is in any case lighter than that of an examining party ignorant of who in the corporation has knowledge.

**Subdivision (c).** A new sentence is inserted at the beginning, representing the transfer of existing Rule 26(c) to this subdivision. Another addition conforms to the new provision in subdivision (b)(4).

The present rule provides that transcription shall be carried out unless all parties waive it. In view of the many depositions taken from which nothing useful is discovered, the revised language provides that transcription is to be performed if any party requests it. The fact of the request is relevant to the exercise of the court's discretion in determining who shall pay for transcription.

Parties choosing to serve written questions rather than participate personally in an oral deposition are directed to serve their questions on the party taking the deposition, since the officer is often not identified in advance. Confidentiality is preserved, since the questions may be served in a sealed envelope.

**Subdivision (d).** The assessment of expenses incurred in relation to motions made under this subdivision (d) is made subject to the provisions of Rule 37(a). The standards for assessment of expenses are more fully set out in Rule 37(a), and these standards should apply to the essentially similar motions of this subdivision.

**Subdivision (e).** The provision relating to the refusal of a witness to sign his deposition is tightened through insertion of a 30-day time period.

**Subdivision (f)(1).** A provision is added which codifies in a flexible way the procedure for handling exhibits related to the deposition and at the same time assures each party that he may inspect and copy documents and things produced by a nonparty witness in response to a subpoena duces tecum. As a general rule and in the absence of agreement to the contrary or order of the court, exhibits produced without objection are to be annexed to and returned with the deposition, but a witness may substitute copies for purposes of marking and he may obtain return of the exhibits. The right of the parties to inspect exhibits for identification and to make copies is assured. Cf. *N.Y.C.P.L.R. § 3116(c)*.

## 1971 Amendment

The subdivision permits a party to name a corporation or other form of organization as a deponent in the notice of examination and to describe in the notice the matters about which discovery is desired. The organization is then obliged to designate natural persons to testify on its behalf. The amendment clarifies the procedure to be followed if a party desires to examine a non-party organization through persons designated by the organization. Under the rules, a subpoena rather than a notice of examination is served on a non-party to compel attendance at the taking of a deposition. The amendment provides that a subpoena may

name a non-party organization as the deponent and may indicate the matters about which discovery is desired. In that event, the non-party organization must respond by designating natural persons, who are then obliged to testify as to matters known or reasonably available to the organization. To insure that a non-party organization that is not represented by counsel has knowledge of its duty to designate, the amendment directs the party seeking discovery to advise of the duty in the body of the subpoena.

### 1972 Amendment

**Subdivision (c).** Existing Rule 43(b), which is to be abrogated, deals with the use of leading questions, the calling, interrogation, impeachment, and scope of cross-examination of adverse parties, officers, etc. These topics are dealt with in many places in the Rules of Evidence. Moreover, many pertinent topics included in the Rules of Evidence are not mentioned in Rule 43(b), e.g. privilege. A reference to the Rules of Evidence generally is therefore made in subdivision (c) of Rule 30.

### 1980 Amendment

**Subdivision (b)(4).** It has been proposed that electronic recording of depositions be authorized as a matter of course, subject to the right of a party to seek an order that a deposition be recorded by stenographic means. The Committee is not satisfied that a case has been made for a reversal of present practice. The amendment is made to encourage parties to agree to the use of electronic recording of depositions so that conflicting claims with respect to the potential of electronic recording for reducing costs of depositions can be appraised in the light of greater experience. The provision that the parties may stipulate that depositions may be recorded by other than stenographic means seems implicit in Rule 29. The amendment makes it explicit. The provision that the stipulation or order shall designate the person before whom the deposition is to be taken is added to encourage the naming of the recording technician as that person, eliminating the necessity of the presence of one whose only function is to administer the oath. See Rules 28(a) and 29.

**Subdivision (b)(7).** Depositions by telephone are now authorized by Rule 29 upon stipulation of the parties. The amendment authorizes that method by order of the court. The final sentence is added to make it clear that when a deposition is taken by telephone it is taken in the district and at the place where the witness is to answer the questions rather than that where the questions are propounded.

**Subdivision (f)(1).** For the reasons set out in the Note following the amendment of Rule 5(d), the court may wish to permit the parties to retain depositions unless they are to be used in the action. The amendment of the first paragraph permits the court to so order.

The amendment of the second paragraph is clarifying. The purpose of the paragraph is to permit a person who produces materials at a deposition to offer copies for marking and annexation to the deposition. Such copies are a “substitute” for the originals, which are not to be marked and which can thereafter be used or even disposed of by the person who produces them. In the light of that purpose, the former language of the paragraph had been justly termed “opaque.” [Wright & Miller, \*Federal Practice and Procedure: Civil\* § 2114.](#)

### 1987 Amendment

The amendments are technical. No substantive change is intended.

### 1993 Amendment

**Subdivision (a).** Paragraph (1) retains the first and third sentences from the former subdivision (a) without significant modification. The second and fourth sentences are relocated.

Paragraph (2) collects all provisions bearing on requirements of leave of court to take a deposition.



Paragraph (2)(A) is new. It provides a limit on the number of depositions the parties may take, absent leave of court or stipulation with the other parties. One aim of this revision is to assure judicial review under the standards stated in Rule 26(b)(2) before any side will be allowed to take more than ten depositions in a case without agreement of the other parties. A second objective is to emphasize that counsel have a professional obligation to develop a mutual cost-effective plan for discovery in the case. Leave to take additional depositions should be granted when consistent with the principles of Rule 26(b)(2), and in some cases the ten-per-side limit should be reduced in accordance with those same principles. Consideration should ordinarily be given at the planning meeting of the parties under Rule 26(f) and at the time of a scheduling conference under Rule 16(b) as to enlargements or reductions in the number of depositions, eliminating the need for special motions.

A deposition under Rule 30(b)(6) should, for purposes of this limit, be treated as a single deposition even though more than one person may be designated to testify.

In multi-party cases, the parties on any side are expected to confer and agree as to which depositions are most needed, given the presumptive limit on the number of depositions they can take without leave of court. If these disputes cannot be amicably resolved, the court can be requested to resolve the dispute or permit additional depositions.

Paragraph (2)(B) is new. It requires leave of court if any witness is to be deposed in the action more than once. This requirement does not apply when a deposition is temporarily recessed for convenience of counsel or the deponent or to enable additional materials to be gathered before resuming the deposition. If significant travel costs would be incurred to resume the deposition, the parties should consider the feasibility of conducting the balance of the examination by telephonic means.

Paragraph (2)(C) revises the second sentence of the former subdivision (a) as to when depositions may be taken. Consistent with the changes made in Rule 26(d), providing that formal discovery ordinarily not commence until after the litigants have met and conferred as directed in revised Rule 26(f), the rule requires leave of court or agreement of the parties if a deposition is to be taken before that time (except when a witness is about to leave the country).

**Subdivision (b).** The primary change in subdivision (b) is that parties will be authorized to record deposition testimony by nonstenographic means without first having to obtain permission of the court or agreement from other counsel.

Former subdivision (b)(2) is partly relocated in subdivision (a)(2)(C) of this rule. The latter two sentences of the first paragraph are deleted, in part because they are redundant to Rule 26(g) and in part because Rule 11 no longer applies to discovery requests. The second paragraph of the former subdivision (b)(2), relating to use of depositions at trial where a party was unable to obtain counsel in time for an accelerated deposition, is relocated in Rule 32.

New paragraph (2) confers on the party taking the deposition the choice of the method of recording, without the need to obtain prior court approval for one taken other than stenographically. A party choosing to record a deposition only by videotape or audiotape should understand that a transcript will be required by Rule 26(a)(3)(B) and Rule 32(c) if the deposition is later to be offered as evidence at trial or on a dispositive motion under Rule 56. Objections to the nonstenographic recording of a deposition, when warranted by the circumstances, can be presented to the court under Rule 26(c).

Paragraph (3) provides that other parties may arrange, at their own expense, for the recording of a deposition by a means (stenographic, visual, or sound) in addition to the method designated by the person noticing the deposition. The former provisions of this paragraph, relating to the court's power to change the date of a deposition, have been eliminated as redundant in view of Rule 26(c)(2).

Revised paragraph (4) requires that all depositions be recorded by an officer designated or appointed under Rule 28 and contains special provisions designed to provide basic safeguards to assure the utility and integrity of recordings taken other than stenographically.

Paragraph (7) is revised to authorize the taking of a deposition not only by telephone but also by other remote electronic means, such as satellite television, when agreed to by the parties or authorized by the court.

**Subdivision (c).** Minor changes are made in this subdivision to reflect those made in subdivision (b) and to complement the new provisions of subdivision (d)(1), aimed at reducing the number of interruptions during depositions.

In addition, the revision addresses a recurring problem as to whether other potential deponents can attend a deposition. Courts have disagreed, some holding that witnesses should be excluded through invocation of [Rule 615 of the evidence rules](#), and others holding that witnesses may attend unless excluded by an order under Rule 26(c)(5). The revision provides that other witnesses are not automatically excluded from a deposition simply by the request of a party. Exclusion, however, can be ordered under Rule 26(c)(5) when appropriate; and, if exclusion is ordered, consideration should be given as to whether the excluded witnesses likewise should be precluded from reading, or being otherwise informed about, the testimony given in the earlier depositions. The revision addresses only the matter of attendance by potential deponents, and does not attempt to resolve issues concerning attendance by others, such as members of the public or press.

**Subdivision (d).** The first sentence of new paragraph (1) provides that any objections during a deposition must be made concisely and in a non-argumentative and non-suggestive manner. Depositions frequently have been unduly prolonged, if not unfairly frustrated, by lengthy objections and colloquy, often suggesting how the deponent should respond. While objections may, under the revised rule, be made during a deposition, they ordinarily should be limited to those that under Rule 32(d)(3) might be waived if not made at that time, *i.e.*, objections on grounds that might be immediately obviated, removed, or cured, such as to the form of a question or the responsiveness of an answer. Under Rule 32(b), other objections can, even without the so-called “usual stipulation” preserving objections, be raised for the first time at trial and therefore should be kept to a minimum during a deposition.

Directions to a deponent not to answer a question can be even more disruptive than objections. The second sentence of new paragraph (1) prohibits such directions except in the three circumstances indicated: to claim a privilege or protection against disclosure (*e.g.*, as work product), to enforce a court directive limiting the scope or length of permissible discovery, or to suspend a deposition to enable presentation of a motion under paragraph (3).

Paragraph (2) is added to this subdivision to dispel any doubts regarding the power of the court by order or local rule to establish limits on the length of depositions. The rule also explicitly authorizes the court to impose the cost resulting from obstructive tactics that unreasonably prolong a deposition on the person engaged in such obstruction. This sanction may be imposed on a non-party witness as well as a party or attorney, but is otherwise congruent with Rule 26(g).

It is anticipated that limits on the length of depositions prescribed by local rules would be presumptive only, subject to modification by the court or by agreement of the parties. Such modifications typically should be discussed by the parties in their meeting under Rule 26(f) and included in the scheduling order required by Rule 16(b). Additional time, moreover, should be allowed under the revised rule when justified under the principles stated in Rule 26(b)(2). To reduce the number of special motions, local rules should ordinarily permit--and indeed encourage--the parties to agree to additional time, as when, during the taking of a deposition, it becomes clear that some additional examination is needed.

Paragraph (3) authorizes appropriate sanctions not only when a deposition is unreasonably prolonged, but also when an attorney engages in other practices that improperly frustrate the fair examination of the deponent, such as making improper objections or giving directions not to answer prohibited by paragraph (1). In general, counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer. The making of an excessive number of unnecessary objections may itself constitute sanctionable conduct, as may the refusal of an attorney to agree with other counsel on a fair apportionment of the time allowed for examination of a deponent or a refusal to agree to a reasonable request for some additional time to complete a deposition, when that is permitted by the local rule or order.

**Subdivision (e).** Various changes are made in this subdivision to reduce problems sometimes encountered when depositions are taken stenographically. Reporters frequently have difficulties obtaining signatures--and the return of depositions--from deponents. Under the revision pre-filing review by the deponent is required only if requested before the deposition is completed. If review is requested, the deponent will be allowed 30 days to review the transcript or recording and to indicate any changes in form or substance. Signature of the deponent will be required only if review is requested and changes are made.

**Subdivision (f).** Minor changes are made in this subdivision to reflect those made in subdivision (b). In courts which direct that depositions not be automatically filed, the reporter can transmit the transcript or recording to the attorney taking the deposition (or ordering the transcript or record), who then becomes custodian for the court of the original record of the deposition. Pursuant to subdivision (f)(2), as under the prior rule, any other party is entitled to secure a copy of the deposition from the officer designated to take the deposition; accordingly, unless ordered or agreed, the officer must retain a copy of the recording or the stenographic notes.

### 2000 Amendment

**Subdivision (d).** Paragraph (1) has been amended to clarify the terms regarding behavior during depositions. The references to objections “to evidence” and limitations “on evidence” have been removed to avoid disputes about what is “evidence” and whether an objection is to, or a limitation is on, discovery instead. It is intended that the rule apply to any objection to a question or other issue arising during a deposition, and to any limitation imposed by the court in connection with a deposition, which might relate to duration or other matters.

The current rule places limitations on instructions that a witness not answer only when the instruction is made by a “party.” Similar limitations should apply with regard to anyone who might purport to instruct a witness not to answer a question. Accordingly, the rule is amended to apply the limitation to instructions by any person. The amendment is not intended to confer new authority on nonparties to instruct witnesses to refuse to answer deposition questions. The amendment makes it clear that, whatever the legitimacy of giving such instructions, the nonparty is subject to the same limitations as parties.

Paragraph (2) imposes a presumptive durational limitation of one day of seven hours for any deposition. The Committee has been informed that overlong depositions can result in undue costs and delays in some circumstances. This limitation contemplates that there will be reasonable breaks during the day for lunch and other reasons, and that the only time to be counted is the time occupied by the actual deposition. For purposes of this durational limit, the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition. The presumptive duration may be extended, or otherwise altered, by agreement. Absent agreement, a court order is needed. The party seeking a court order to extend the examination, or otherwise alter the limitations, is expected to show good cause to justify such an order.

Parties considering extending the time for a deposition--and courts asked to order an extension--might consider a variety of factors. For example, if the witness needs an interpreter, that may prolong the examination. If the examination will cover events occurring over a long period of time, that may justify allowing additional time. In cases in which the witness will be questioned about numerous or lengthy documents, it is often desirable for the interrogating party to send copies of the documents to the witness sufficiently in advance of the deposition so that the witness can become familiar with them. Should the witness nevertheless not read the documents in advance, thereby prolonging the deposition, a court could consider that a reason for extending the time limit. If the examination reveals that documents have been requested but not produced, that may justify further examination once production has occurred. In multi-party cases, the need for each party to examine the witness may warrant additional time, although duplicative questioning should be avoided and parties with similar interests should strive to designate one lawyer to question about areas of common interest. Similarly, should the lawyer for the witness want to examine the witness, that may require additional time. Finally, with regard to expert witnesses, there may more often be a need for additional time--even after the submission of the report required by Rule 26(a)(2)--for full exploration of the theories upon which the witness relies.

It is expected that in most instances the parties and the witness will make reasonable accommodations to avoid the need for resort to the court. The limitation is phrased in terms of a single day on the assumption that ordinarily a single day would be preferable to a deposition extending over multiple days; if alternative arrangements would better suit the parties, they may agree to them. It is also assumed that there will be reasonable breaks during the day. Preoccupation with timing is to be avoided.

The rule directs the court to allow additional time where consistent with Rule 26(b)(2) if needed for a fair examination of the deponent. In addition, if the deponent or another person impedes or delays the examination, the court must authorize extra time. The amendment makes clear that additional time should also be allowed where the examination is impeded by an “other circumstance,” which might include a power outage, a health emergency, or other event.

In keeping with the amendment to Rule 26(b)(2), the provision added in 1993 granting authority to adopt a local rule limiting the time permitted for depositions has been removed. The court may enter a case-specific order directing shorter depositions for all depositions in a case or with regard to a specific witness. The court may also order that a deposition be taken for limited periods on several days.

Paragraph (3) includes sanctions provisions formerly included in paragraph (2). It authorizes the court to impose an appropriate sanction on any person responsible for an impediment that frustrated the fair examination of the deponent. This could include the deponent, any party, or any other person involved in the deposition. If the impediment or delay results from an “other circumstance” under paragraph (2), ordinarily no sanction would be appropriate.

Former paragraph (3) has been renumbered (4) but is otherwise unchanged.

**Subdivision (f)(1):** This subdivision is amended because Rule 5(d) has been amended to direct that discovery materials, including depositions, ordinarily should not be filed. The rule already has provisions directing that the lawyer who arranged for the transcript or recording preserve the deposition. Rule 5(d) provides that, once the deposition is used in the proceeding, the attorney must file it with the court.

“Shall” is replaced by “must” or “may” under the program to conform amended rules to current style conventions when there is no ambiguity.

## **GAP Report**

The Advisory Committee recommends deleting the requirement in the published proposed amendments that the deponent consent to extending a deposition beyond one day, and adding an amendment to Rule 30(f)(1) to conform to the published amendment to Rule 5(d) regarding filing of depositions. It also recommends conforming the Committee Note with regard to the deponent veto, and adding material to the Note to provide direction on computation of the durational limitation on depositions, to provide examples of situations in which the parties might agree--or the court order--that a deposition be extended, and to make clear that no new authority to instruct a witness is conferred by the amendment. One minor wording improvement in the Note is also suggested.

## **2007 Amendment**

The language of Rule 30 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The right to arrange a deposition transcription should be open to any party, regardless of the means of recording and regardless of who noticed the deposition.

“[O]ther entity” is added to the list of organizations that may be named as deponent. The purpose is to ensure that the deposition process can be used to reach information known or reasonably available to an organization no matter what abstract fictive concept is used to describe the organization. Nothing is gained by wrangling over the place to fit into current rule language such entities as limited liability companies, limited partnerships, business trusts, more exotic common-law creations, or forms developed in other countries.

**2015 Amendment**

Rule 30 is amended in parallel with Rules 31 and 33 to reflect the recognition of proportionality in Rule 26(b)(1).

[Notes of Decisions \(1078\)](#)

Fed. Rules Civ. Proc. Rule 30, 28 U.S.C.A., FRCP Rule 30  
Including Amendments Received Through 4-1-20

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**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-38-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** government institutions throughout California are working to mitigate the impacts of the COVID-19 pandemic; and

**WHEREAS** the Judicial Branch, under the leadership of the Judicial Council and its Chairperson, is among those government institutions that has risen to the challenge presented by COVID-19; and

**WHEREAS** the Judicial Branch retains extensive authority, statutory and otherwise, to manage its own operations as it deems appropriate to mitigate the impacts of COVID-19; and

**WHEREAS** the authority entrusted to the Judicial Branch and its officers under existing law includes the authority of the Chairperson of the Judicial Council to issue orders, under Government Code section 68115, authorizing courts to take certain actions in response to an emergency, as well as the authority of the Judicial Council, under Article VI, section 6 of the California Constitution, to "adopt rules for court administration, practice, and procedure" as long as those rules are not inconsistent with statute; and

**WHEREAS** the Chairperson of the Judicial Council has already exercised her authority to suspend jury trials; to extend the time period for bringing an action to trial; to authorize particular courts to deem certain days holidays under Code of Civil Procedure sections 12 and 12a; and to take other action to protect the health and safety of all who work in, use, and otherwise attend the courts, while also preserving parties' due process rights; and

**WHEREAS** the purpose of this Order is to enhance the authority of the Judicial Council and its Chairperson to issue emergency orders; to amend or adopt rules for court administration, practice, and procedure; and to take other action to respond to the emergency caused by COVID-19;

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To the extent Government Code section 68115 or any other provision of law imposes or implies a limitation on the subject matter the Chairperson of the Judicial Council may address via emergency order or statewide rule issued pursuant to section 68115, that limitation is suspended. This paragraph is intended to remove any impediment that would otherwise prevent the Chairperson from authorizing, by

emergency order or statewide rule, any court to take any action she deems necessary to maintain the safe and orderly operation of that court. Nothing in this paragraph is intended to in any way restrict the Chairperson's existing authority under section 68115, or to alter in any way any order the Chairperson has previously issued pursuant to her authority under section 68115.

- 2) To the extent Government Code section 68115 or section 68072, or any other provision of law, imposes or implies a limitation on the authority of the Judicial Council or its Chairperson to provide (by emergency order issued pursuant to section 68115 or otherwise) for an emergency statewide or local rule or order amending the California Rules of Court or any other applicable court rule, or for any other expedited procedure for amending the California Rules of Court or any other applicable court rule, that limitation is suspended. This paragraph is intended to remove any impediment that would otherwise prevent the Judicial Council or its Chairperson from establishing (by emergency order or otherwise) an emergency or otherwise expedited procedure for making such amendments to the California Rules of Court or any other applicable court rule as the Judicial Council may, in its discretion, choose to adopt in response to the COVID-19 pandemic. This paragraph should be construed to extend the rulemaking authority of the Judicial Council to its constitutional maximum under Article VI, section 6 of the California Constitution.
- 3) In the event that the Judicial Council or its Chairperson, in the exercise of rulemaking authority consistent with Paragraph 2, wishes to consider a rule that would otherwise be inconsistent with any statute concerning civil or criminal practice or procedure, the relevant statute is suspended, subject to the following conditions:
  - a) The statute is suspended only to the extent it is inconsistent with the proposed rule;
  - b) The statute is suspended only if the proposed rule is adopted; and
  - c) The statute is suspended only when the adopted rule becomes effective.

The purpose of this paragraph is to afford the Judicial Council and its Chairperson maximum flexibility to adopt any rules concerning civil or criminal practice or procedure they may deem necessary to respond to the COVID-19 pandemic, while ensuring that the rules adopted "shall not be inconsistent with statute," as provided in Article VI, section 6 of the California Constitution.

- 4) In addition to any statute suspended pursuant to Paragraph 3, the following statutes are suspended:
  - a) Code of Civil Procedure section 2025.310, subdivision (b), to the extent that subdivision limits a court's authority to provide that a party deponent may appear at a deposition by telephone.
  - b) Code of Civil Procedure section 1010.6, subdivisions (b) through (d), to the extent those subdivisions limit a court's authority to order parties to accept electronic service, or to perform service

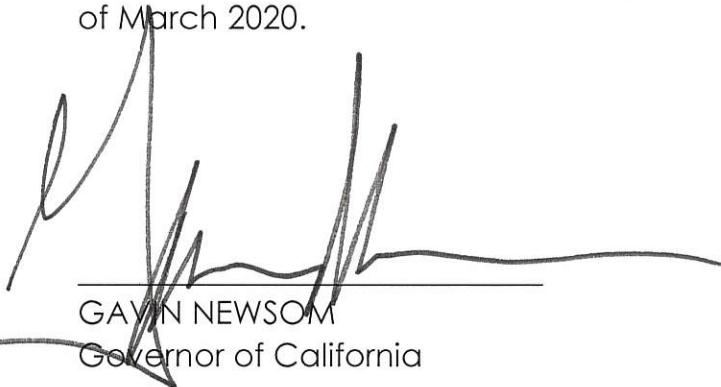
electronically.

- 5) Nothing in this Order is intended to suspend or otherwise interfere with any rule of the California Rules of Court, any local rule of any California court, or any other rule or order of any California court, except to the extent the Judicial Council or its Chairperson may provide consistent with this Order or in a manner otherwise authorized by law.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 27th day of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State



Emergency Rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the California Rules of Court are adopted effective April 6, 2020, to read:

1  
2 **Emergency rule 1. Unlawful detainers**

3  
4 **(a) Application**

5  
6 Notwithstanding any other law, including Code of Civil Procedure sections 1166,  
7 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.  
8

9 **(b) Issuance of summons**

10  
11 A court may not issue a summons on a complaint for unlawful detainer unless the  
12 court finds, in its discretion and on the record, that the action is necessary to protect  
13 public health and safety.  
14

15 **(c) Entry of default**

16  
17 A court may not enter a default or a default judgment for restitution in an unlawful  
18 detainer action for failure of defendant to appear unless the court finds both of the  
19 following:  
20

21 (1) The action is necessary to protect public health and safety; and

22  
23 (2) The defendant has not appeared in the action within the time provided by  
24 law, including by any applicable executive order.  
25

26 **(d) Time for trial**

27  
28 If a defendant has appeared in the action, the court may not set a trial date earlier  
29 than 60 days after a request for trial is made unless the court finds that an earlier  
30 trial date is necessary to protect public health and safety. Any trial set in an  
31 unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days  
32 from the initial date of trial.  
33

34 **(e) Sunset of rule**

35  
36 This rule will remain in effect until 90 days after the Governor declares that the  
37 state of emergency related to the COVID-19 pandemic is lifted, or until amended or  
38 repealed by the Judicial Council.  
39  
40  
41

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  
40  
41  
42

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

- 2
- 3 (1) Under the statewide Emergency Bail Schedule, bail for all violations of  
4 misdemeanor probation, whether the arrest is with or without a bench  
5 warrant, must be set at \$0.
- 6
- 7 (2) Bail for all violations of felony probation, parole, post-release community  
8 supervision, or mandatory supervision, must be set in accord with the  
9 statewide Emergency Bail Schedule, or for the bail amount in the court’s  
10 countywide schedule of bail for charges of conviction listed in exceptions (1)  
11 through (13), including any enhancements.

12

13 **(g) Sunset of rule**

14

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

18

19

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

22

23 **(a) Application**

24

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

29

30 **(b) Types of personal appearance waivers**

- 31
- 32 (1) With the consent of the defendant, the court must allow a defendant to waive  
33 his or her personal appearance and to appear remotely, either through video  
34 or telephonic appearance, when the technology is available.
- 35
- 36 (2) With the consent of the defendant, the court must allow a defendant to waive  
37 his or her appearance and permit counsel to appear on his or her behalf. The  
38 court must accept a defendant’s waiver of appearance or personal appearance  
39 when:
- 40
- 41 (A) Counsel for the defendant makes an on the record oral representation  
42 that counsel has fully discussed the waiver and its implications with the

1                    defendant and the defendant has authorized counsel to proceed as  
2                    counsel represents to the court;

3  
4                    (B) Electronic communication from the defendant as confirmed by  
5                    defendant’s counsel; or

6  
7                    (C) Any other means that ensures the validity of the defendant’s waiver.  
8

9                    **(c) Consent by the defendant**

10  
11                    (1) For purposes of arraignment and entry of a not guilty plea, consent means a  
12                    knowing, intelligent, and voluntary waiver of the right to appear personally in  
13                    court. Counsel for the defendant must state on the record at each applicable  
14                    hearing that counsel is proceeding with the defendant’s consent.

15  
16                    (2) For purposes of waiving time for a preliminary hearing, consent also means a  
17                    knowing, intelligent, and voluntary waiver of the right to hold a preliminary  
18                    hearing within required time limits specified either in Penal Code section  
19                    859b or under emergency orders issued by the Chief Justice and Chair of the  
20                    Judicial Council.

21  
22                    (3) The court must accept defense counsel’s representation that the defendant  
23                    understands and agrees with waiving any right to appear unless the court has  
24                    specific concerns in a particular matter about the validity of the waiver.

25  
26                    **(d) Appearance through counsel**

27  
28                    (1) When counsel appears on behalf of a defendant, courts must allow counsel to  
29                    do any of the following:

30  
31                    (A) Waive reading and advisement of rights for arraignment.

32  
33                    (B) Enter a plea of not guilty.

34  
35                    (C) Waive time for the preliminary hearing.

36  
37                    (2) For appearances by counsel, including where the defendant is either  
38                    appearing remotely or has waived his or her appearance and or counsel is  
39                    appearing by remote access, counsel must confirm to the court at each  
40                    hearing that the appearance by counsel is made with the consent of the  
41                    defendant.  
42

1 **(e) Conduct of remote hearings**

- 2
- 3 (1) With the defendant’s consent, a defendant may appear remotely for any  
4 pretrial criminal proceeding.
- 5
- 6 (2) Where a defendant appears remotely, counsel may not be required to be  
7 personally present with the defendant for any portion of the criminal  
8 proceeding provided that the audio and/or video conferencing system or other  
9 technology allows for private communication between the defendant and his  
10 or her counsel. Any private communication is confidential and privileged  
11 under Evidence Code section 952.

12

13 **(f) Sunset of rule**

14

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

18

19

20 **Emergency rule 6. Emergency orders: juvenile dependency proceedings**

21

22 **(a) Application**

23

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

26

27 **(b) Essential hearings and orders**

28

29 The following matters should be prioritized in accordance with existing statutory  
30 time requirements.

- 31
- 32 (1) Protective custody warrants filed under Welfare and Institutions Code section  
33 340.
- 34
- 35 (2) Detention hearings under Welfare and Institutions Code section 319. The  
36 court is required to determine if it is contrary to the child’s welfare to remain  
37 with the parent, whether reasonable efforts were made to prevent removal,  
38 and whether to vest the placing agency with temporary placement and care.
- 39
- 40 (3) Psychotropic medication applications.
- 41
- 42 (4) Emergency medical requests.
- 43

- 1           (5) A petition for reentry of a nonminor dependent.  
2  
3           (6) Welfare and Institutions Code section 388 petitions that require an immediate  
4 response based on the health and safety of the child, which should be  
5 reviewed for a prima facie showing of change of circumstances sufficient to  
6 grant the petition or to set a hearing. The court may extend the final ruling on  
7 the petition beyond 30 days.  
8

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

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



1  
2 (A) A dispositional hearing under Welfare and Institutions Code section  
3 360 should not be continued more than 6 months after the detention  
4 hearing without review of the child's circumstances. In determining  
5 exceptional circumstances that justify holding the dispositional hearing  
6 more than 6 months after the child was taken into protective custody,  
7 the impact of the state of emergency related to the COVID-19  
8 pandemic must be considered.

9  
10 i. If the dispositional hearing is continued more than 6 months after  
11 the start date of protective custody, a review of the child must be  
12 held at the 6-month date. At the review, the court must determine  
13 the continued necessity for and appropriateness of the placement;  
14 the extent of compliance with the case plan or available services  
15 that have been offered; the extent of progress which has been  
16 made toward alleviating or mitigating the causes necessitating  
17 placement; and the projected likely date by which the child may  
18 return home or placed permanently.

19  
20 ii. The court may continue the matter for a full hearing on all  
21 dispositional findings and orders.

22  
23 (B) A judicial determination of reasonable efforts must be made within 12  
24 months of the date a child enters foster care to maintain a child's  
25 federal title IV-E availability. If a permanency hearing is continued  
26 beyond the 12-month date, the court must review the case to determine  
27 if the agency has made reasonable efforts to return the child home or  
28 arrange for the child to be placed permanently. This finding can be  
29 made without prejudice and may be reconsidered at a full hearing.

30  
31 (7) During the state of emergency related to the COVID-19 pandemic, previously  
32 authorized visitation must continue, but the child welfare agency is to  
33 determine the manner of visitation to ensure that the needs of the family are  
34 met. If the child welfare agency changes the manner of visitation for a child  
35 and a parent or legal guardian in reunification, or for the child and a  
36 sibling(s), or a hearing is pending under Welfare and Institutions Code  
37 section 366.26, the child welfare agency must notify the attorneys for the  
38 children and parents within 5 court days of the change. All changes in  
39 manner of visitation during this time period must be made on a case by case  
40 basis, balance the public health directives and best interest of the child, and  
41 take into consideration whether in-person visitation may continue to be held  
42 safely. Family time is important for child and parent well-being, as well as  
43 for efforts toward reunification. Family time is especially important during

1 times of crisis. Visitation may only be suspended if a detriment finding is  
2 made in a particular case based on the facts unique to that case. A detriment  
3 finding must not be based solely on the existence of the impact of the state of  
4 emergency related to the COVID-19 pandemic or related public health  
5 directives.

6  
7 (A) The attorney for the child or parent may ask the juvenile court to  
8 review the change in manner of visitation. The child or parent has the  
9 burden of showing that the change is not in the best interest of the child  
10 or is not based on current public health directives.

11  
12 (B) A request for the court to review the change in visitation during this  
13 time period must be made within 14 court days of the change. In  
14 reviewing the change in visitation, the court should take into  
15 consideration the factors in (c)(7).

16  
17 **(d) Sunset of rule**

18  
19 This rule will remain in effect until 90 days after the Governor declares that the  
20 state of emergency related to the COVID-19 pandemic is lifted, or until amended or  
21 repealed by the Judicial Council.

22  
23 **Advisory Committee Comment**

24  
25 When courts are unable to hold regular proceedings because of an emergency that has resulted in  
26 an order as authorized under Government Code section 68115, federal timelines do not stop.  
27 Circumstances may arise where reunification services to the parent, including visitation, may not  
28 occur or be provided. The court must consider the circumstances of the emergency when deciding  
29 whether to extend or terminate reunification services and whether services were reasonable given  
30 the state of the emergency. (Citations: 42 U.S.C. § 672(a)(1)–(2), (5); 45 CFR § 1355.20; 45 CFR  
31 § 1356.21 (b) – (d); 45 C.F.R. § 1356.71(d)(1)(iii); Child Welfare Policy Manual, 8.3A.9 Title  
32 IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, Question 2  
33 ([www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=92](http://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  
34 Bureau, Administration for Children and Families, U.S. Department of Health and Human  
35 Services.)

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

2  
3 **(a) Application**

4  
5 This rule applies to all proceedings in which a petition has been filed under Welfare  
6 and Institutions Code section 602 in which a hearing would be statutorily required  
7 during the state of emergency related to the COVID-19 pandemic.  
8

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

10  
11 (1) A hearing on a petition for a child who is in custody under Welfare and  
12 Institutions Code section 632 or 636 must be held within the statutory  
13 timeframes as modified by an order of the court authorized by Government  
14 Code section 68115. The court must determine if it is contrary to the welfare  
15 of the child to remain in the home, whether reasonable services to prevent  
16 removal occurred, and whether to place temporary placement with the  
17 probation agency if the court will be keeping the child detained and out of the  
18 home.  
19

20 (2) If a child is detained in custody and an in-person appearance is not feasible  
21 due to the state of emergency, courts must make reasonable efforts to hold  
22 any statutorily required hearing for that case via remote appearance within  
23 the required statutory time frame and as modified by an order of the court  
24 authorized under Government Code section 68115 for that proceeding. If a  
25 remote proceeding is not a feasible option for such a case during the state of  
26 emergency, the court may continue the case as provided in (d) for the  
27 minimum period of time necessary to hold the proceedings.  
28

29 (3) Without regard to the custodial status of the child, the following hearings  
30 should be prioritized during the state of emergency related to the COVID-19  
31 pandemic:  
32

33 (A) Psychotropic medication applications.

34 (B) All emergency medical requests.

35 (C) A petition for reentry of a nonminor dependent.

36 (D) A hearing on any request for a warrant for a child.

37 (E) A probable cause determination for a child who has been detained but  
38 has not had a detention hearing within the statutory time limits.  
39  
40  
41  
42  
43

1 (4) Notwithstanding any other law, and except as described in (5), during the  
2 state of emergency related to the COVID-19 pandemic, the court may  
3 continue for good cause any hearing for a child not detained in custody who  
4 is subject to its juvenile delinquency jurisdiction until a date after the state of  
5 emergency has been lifted considering the priority for continued hearings in  
6 (d).

7  
8 (5) For children placed in foster care under probation supervision, a judicial  
9 determination of reasonable efforts must be made within 12 months of the  
10 date the child enters foster care to maintain a child’s federal title IV-E  
11 availability. If a permanency hearing is continued beyond the 12-month date,  
12 the court must nevertheless hold a review to determine if the agency has  
13 made reasonable efforts to return the child home or place the child  
14 permanently. This finding can be made without prejudice and may be  
15 reconsidered at a full hearing.

16  
17 **(c) Proceedings with remote appearances during the state of emergency.**

18  
19 (1) A court may hold any proceeding under this rule via remote technology  
20 consistent with rule 5.531 and emergency rule 3.

21  
22 (2) At the beginning of any hearing conducted with one or more participants  
23 appearing remotely, the court must admonish all the participants that the  
24 proceeding is confidential and of the possible sanctions for violating  
25 confidentiality.

26  
27 (3) The court is responsible for giving notice of remote hearings, except for  
28 notice to a victim, which is the responsibility of the prosecuting attorney or  
29 the probation department. Notice is required for all parties and may include  
30 notice by telephone or other electronic means. The notice must also include  
31 instructions on how to participate in the hearing remotely.

32  
33 (4) During the state of emergency, the court has broad discretion to take evidence  
34 in the manner most compatible with the remote hearing process, including  
35 but not limited to taking testimony by written declaration. If counsel for a  
36 child or the prosecuting attorney objects to the court’s evidentiary  
37 procedures, that is a basis for issuing a continuance under (d).

38  
39 **(d) Continuances of hearings during the state of emergency.**

40  
41 Notwithstanding any other law, the court may for good cause continue any hearing  
42 other than a detention hearing for a child who is detained in custody. In making this  
43 determination, the court must consider the custody status of the child, whether there

1 are evidentiary issues that are contested, and, if so, the ability for those issues to be  
2 fairly contested via a remote proceeding.

3  
4 **(e) Extension of time limits under Welfare and Institutions Code section 709**

5  
6 In any case in which a child has been found incompetent under Welfare and  
7 Institutions Code section 709 and that child is eligible for remediation services or  
8 has been found to require secure detention, any time limits imposed by section 709  
9 for provision of services or for secure detention are tolled for the period of the state  
10 of emergency if the court finds that remediation services could not be provided  
11 because of the state of emergency.

12  
13 **(f) Sunset of rule**

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

18  
19 **Advisory Committee Comment**

20  
21 This emergency rule is being adopted in part to ensure that detention hearings for  
22 juveniles in delinquency court must be held in a timely manner to ensure that no child is  
23 detained who does not need to be detained to protect the child or the community. The  
24 statutory scheme for juveniles who come under the jurisdiction of the delinquency court  
25 is focused on the rehabilitation of the child and thus makes detention of a child the  
26 exceptional practice, rather than the rule. Juvenile courts are able to use their broad  
27 discretion under current law to release detained juveniles to protect the health of those  
28 juveniles and the health and safety of the others in detention during the current state of  
29 emergency related to the COVID-19 pandemic.

30  
31  
32 **Emergency rule 8. Emergency orders: temporary restraining or protective orders**

33  
34 **(a) Application**

35  
36 Notwithstanding any other law, this rule applies to any emergency protective order,  
37 temporary restraining order, or criminal protective order that was requested, issued,  
38 or set to expire during the state of emergency related to the COVID-19 pandemic.  
39 This includes requests and orders issued under Family Code sections 6250 or 6300,  
40 Code of Civil Procedure sections 527.6 , 527.8, or 527.85, Penal Code sections  
41 136.2, 18125 or 18150, or Welfare and Institutions Code sections 213.5, 304,  
42 362.4, or 15657.03, and including any of the foregoing orders issued in connection  
43 with an order for modification of a custody or visitation order issued pursuant to a

1 dissolution, legal separation, nullity, or parentage proceeding under Family Code  
2 section 6221.

3  
4 **(b) Duration of orders**

5  
6 (1) Any emergency protective order made under Family Code section 6250 that  
7 is issued or set to expire during the state of emergency, must remain in effect  
8 for up to 30 days from the date of issuance.

9  
10 (2) Any temporary restraining order or gun violence emergency protective order,  
11 issued or set to expire during the state of emergency related to the COVID-19  
12 pandemic, must be continued for a period of time that the court determines is  
13 sufficient to allow for a hearing on the long-term order to occur, for up to 90  
14 days.

15  
16 (3) Any criminal protective order, subject to this rule, set to expire during the  
17 state of emergency, must be automatically extended for a period of 90 days,  
18 or until the matter can be heard, whichever occurs first.

19  
20 (4) Any restraining order or protective order after hearing that is set to expire  
21 during the state of emergency related to the COVID-19 pandemic must be  
22 automatically extended for up to 90 days from the date of expiration to enable  
23 a protected party to seek a renewal of the restraining order.

24  
25 **(c) Ex parte requests**

26  
27 (1) Courts must provide a means for the filing of ex parte requests for temporary  
28 restraining orders. Courts may do so by providing a physical location, drop  
29 box, or, if feasible, through electronic means.

30  
31 (2) Any ex parte request may be filed using an electronic signature by a party or  
32 a party's attorney.

33  
34 **(d) Service of Orders**

35  
36 If a respondent appears at a hearing by video, audio, or telephonically, and the  
37 court grants an order, in whole or in part, no further service is required upon the  
38 respondent for enforcement of the order, provided that the court follows the  
39 requirements of Family Code section 6384.

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

2  
3  
4 Any orders issued by a court modifying the duration or expiration date of orders  
5 subject to this rule, must be transmitted to the Department of Justice through the  
6 California Law Enforcement Telecommunications System (CLETS), as provided in  
7 Family Code section 6380, without regard to whether they are issued on Judicial  
8 Council forms, or in another format during the state of emergency.  
9

10  
11 **Emergency rule 9. Toll the statutes of limitations for civil causes of action**

12  
13 Notwithstanding any other law, the statutes of limitation for civil causes of action are  
14 tolled from April 6, 2020, until 90 days after the Governor declares that the state of  
15 emergency related to the COVID-19 pandemic is lifted.  
16

17  
18 **Emergency rule 10. Extensions of time in which to bring a civil action to trial**

19  
20 **(a) Extension of five years in which to bring a civil action to trial**

21  
22 Notwithstanding any other law, including Code of Civil Procedure section 583.310,  
23 for all civil actions filed on or before April 6, 2020, the time in which to bring the  
24 action to trial is extended by six months for a total time of five years and six  
25 months.  
26

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

28  
29 Notwithstanding any other law, including Code of Civil Procedure section 583.320,  
30 for all civil actions filed on or before April 6, 2020, if a new trial is granted in the  
31 action, the three years provided in section 583.320 in which the action must again  
32 be brought to trial is extended by six months for a total time of three years and six  
33 months. Nothing in this subdivision requires that an action must again be brought  
34 to trial before expiration of the time prescribed in (a).  
35

36  
37 **Emergency rule 11. Depositions through remote electronic means**

38  
39 **(a) Deponents appearing remotely**

40  
41 Notwithstanding any other law, including Code of Civil Procedure section  
42 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or nonparty deponent, at

1 their election or the election of the deposing party, is not required to be present  
2 with the deposition officer at the time of the deposition.

3

4 **(b) Sunset of rule**

5

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



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# Biographies

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# Adrienne Marshack

Partner

**Bar Admissions**

California

**Education**

UCLA School of Law, J.D., 2007

Order of the Coif

Solicitations Editor, *UCLA Women's Law Journal*,  
2005-2006

New York University/Tisch School of the Arts,  
B.F.A., Film/Television Production, with honors,  
1999

**Services**

- Advertising Litigation
- Antitrust and Competition
- Class Actions
- Employment and Labor
- Intellectual Property
- Litigation
- TCPA Compliance and Class Action Defense

**Industries**

Retail and Consumer Products

Adrienne Marshack focuses her practice on class actions and complex commercial litigation. She represents clients in the areas of consumer class actions, unfair competition, false advertising, trade secrets, trademark, copyright, and rights of publicity. Adrienne also has substantial experience representing employers in all aspects of litigation, including employee class actions, wage and hour issues, discrimination, harassment and wrongful termination proceedings in state and federal court. Adrienne also counsels clients on a variety of issues, including employment matters, rights of publicity, and proactive protection of rights in trade secrets, copyrights, and trademarks.

Prior to practicing law, Adrienne was an elementary school teacher in South Central Los Angeles, within the Los Angeles Unified School District. Adrienne serves on the Neonatal Intensive Care Unit Advisory Panel for the Children's Hospital of Orange County, and she is a founding member of the Board of Directors of MaxLove Project, Inc., which supports research, education, and family and patient advocacy relating to childhood cancer and other life-threatening childhood diseases.



**COREY D. SMITH**  
**Senior Trial Technician for Golkow Litigation Services**  
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Corey is a Senior Trial Technician who has worked in the trial consulting field since 2002, providing support in well over 200 civil litigation matters. He has appeared before judges and arbitrators across the country and he understands the demanding expectations of trial. He has been involved with hundreds of depositions, mediations, trials, and arbitrations for cases in both State and Federal Courts in prominent litigation matters throughout the United States.

Matters for which he has been involved cover a wide range of litigations, including: personal injury, patent, pharmaceutical, medical device, medical malpractice, environmental, toxic exposure, insurance claims, transportation, securities, and consumer fraud.

Corey has experience with assessing trial technology needs for courtrooms and war rooms, as well as the ability to integrate technology into existing infrastructure. He has facilitated remote video witness testimony in depositions and in Federal and State courts for critical witnesses. He has good problem-solving skills which allow him to diagnose problems and implement solutions to complex technology challenges. Combining his trial technology and trial presentation experience, he assists clients to create and deliver the most persuasive presentations possible.

Corey has a Visual Communications degree with an emphasis in Digital Design and Animation. He also has over 10 years of experience with information technology and computer programming. That unique combination of artistic and technical knowledge allows him to be a asset to trial teams at every level. He has provided technology assistance with mock trials, bench trials, and jury trials during direct examinations and cross-examinations. He has experience building complex case databases with thousands of documents as well as creating persuasive PowerPoint presentations for opening statements, closing arguments, and witness examinations. He routinely identifies, and uses, cutting edge software applications in response to the demands of each case, including: OnCue, Photoshop, Acrobat, Premiere Pro, and the Microsoft Office Suite just to name a few. He also has experience with 3D modeling, rendering, and animation applications such as Autodesk Fusion 360 and the open-source Blender 3D software.

**Involvement in Prominent Litigation**

Talc  
Testosterone Replacement Therapy  
Pelvic Mesh  
Yaz  
Topomax  
Cooper vs. USA

Risperdal  
DePuy Pinnacle Hip  
Toyota Unintended Acceleration  
Gadolinium MRI  
Opioid  
Xarelto



## **PROUD USAHACHAROENPORN**

### **Partner**

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Clients look to trial partner Proud Usahacharoenporn for advice when faced with business disputes, including disputes involving contracts, real property, class actions, insurance coverage, business and intentional torts, unfair competition, and intellectual property. She counsels clients through the litigation process, with a focus on getting her clients the results they want while balancing their business concerns such as controlling costs and maintaining relationships. Her dedication to putting her client's needs first have led to the Southern California Super Lawyers recognizing her as a Rising Star for the past four years in a row.

Some of the victories Proud has achieved for her clients include:

- Prevailing in a hotly-disputed trial to enforce a real property agreement that resulted in a judgment awarding her client a 10-acre property, damages, attorneys' fees, and costs.
- Successfully defending an entertainment company against its former Vice President, who sued the company for compensation, resulting in a jury verdict that denied the opposing party's claim for compensation and awarded damages to her client.
- Prevailing at trial in a federal lawsuit filed on behalf of an insured against its insurer for fire insurance coverage, resulting in an award of approximately \$1 million in favor of her client.
- Obtaining a complete victory for a client in an easement and water rights dispute after substituting in as new counsel only weeks before trial, even though the client's prior counsel had advised the client to settle because there was little chance of prevailing.
- Successfully representing a national health supplement company against a multi-million dollar class action, achieving a denial of class certification and an early resolution of the case in favor of the client.

Proud is also actively engaged in community outreach and pro bono work. She has served on a number of local boards, most currently as a member of the Board of Directors of the Orange County Women Lawyers Association, and

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  - [Cybersecurity](#)
-

dedicates time to furthering the needs of the Southern California Asian American community. Through her pro bono work, Proud has also represented non-profit organizations, victims of domestic violence, and low-income tenants.

## Presentations

- Panelist, "California Change Lawyers Leadership Summit," April 2019
- Speaker, Sonenshine Pro Bono Reception, November 2017
- Panelist, "Pro Bono Training: Eviction Defense for Low Income Tenants," Public Law Center, October 2012

## Publications

- *COVID-19: The Impossibly Impractical Force Majeure Frustrating Business Contracts Everywhere*, Orange County Business Journal, March 2020
- *The Abundance of Data Breach Class Actions Demonstrates the Importance of Implementing Cybersecurity Protocols and Procedures*, April 2017
- *It Appears The Law is Trending Towards Providing Fewer Privacy Protections to Individuals*, October 2016
- *California Supreme Court Broadens the Fraud Exception to the Parol Evidence Rule*, Orange County Business Journal, April 2013
- *Usahacharoenporn, P. E.P. v. Alaska Psychiatric Institute: The Evolution of Involuntary Civil Commitments from Treatment to Punishment*, 28 Alaska L. Rev. 189 (2011)

## Awards & Honors

- Southern California Super Lawyers, Rising Stars Edition, 2017-2019
- Recipient, OneOC Spirit of Volunteerism 2012 Outstanding Volunteer Award

## Memberships & Associations

- Former President and Board of Advisors, Backhausdance of Orange County
- Member of the Board of Directors, Orange County Women Lawyers Association
- Member, Orange County Bar Association
- Member and Former Vice President, Thai American Bar Association
- Member, Orange County Asian American Bar Association

## Bar & Court Admissions

- State Bar of California, 2011
- U.S. District Court for the Central, Eastern, Northern and Southern Districts of California
- U.S. Court of Appeals for the Ninth Circuit

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## Education

- University of California, Los Angeles (B.A., 2008), Magna cum laude
- Duke University (J.D., 2011), B.S. Womble Scholar

## Michael A. Gregg

Shareholder

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## Overview

Michael A. Gregg advises and represents public and private sector employers in a broad range of labor and employment law matters arising under state and federal law and in all aspects of litigation, including trial, arbitration and administrative hearings. He defends employers in state and federal courts and before governmental agencies. He has experience defending clients in complex class actions, including wage and hour class actions. His litigation experience also includes handling appellate matters. Examples of cases he has handled include:

- Discrimination
- Employment-related torts
- Wage and hour claims
- Employee benefits
- Wrongful termination
- Harassment
- Retaliation
- Leaves of absence
- Accommodating disabilities
- Trade secrets
- Labor arbitrations

Michael also counsels and advises clients on employment practices and policies, including how to avoid litigation.

Michael represents unionized and public employers in labor relations matters, including arbitrations, Public Employment Relations Board (PERB) proceedings and other administrative hearings.

## Selected Matters

- Lead counsel in *Gonzalez v. The Los Angeles Lakers, Inc. et al.*, (Los Angeles Superior Court, Case No. BC5467). Obtained a complete dismissal of all claims against the Lakers and its COO in a case alleging claims for race, national origin, and age discrimination; race, national origin, and age harassment; retaliation; failure to prevent discrimination, harassment, and retaliation; violation of the Tom Bane Civil Rights Act; declaratory relief; fraudulent inducement; and negligent misrepresentation. Drafted appellate brief and argued the case before the California Court of Appeal, Second Appellate District, Division 4, Case No. B265823, which resulted in the Court of Appeal affirming the judgment and award of over \$125,000 in fees and costs in favor of the Lakers.
- *Hart et. al. v. Environmental Development Group* (Orange County Superior Court, Case No. 30-2008-00080888). Represented company in a wage and hour class action alleging claims for failure to pay wages, unlawful deductions, failure to provide rest periods and meal periods, failure to provide accurate itemized wage statements and failure to compensate for travel time, among other claims. Michael's work resulted in the trial court denying class certification. Michael also drafted the appellate brief, which resulted in the California Court of Appeal, Fourth Appellate District, Division 3, Case No. G046193, affirming the trial court's denial of class certification.
- *Vaughn v. CNA Casualty of California*, (United States District Court, Central District of California, Case No. SACV 06-859 JVS). Second chair in jury trial that resulted in a defense verdict on all but one claim in a case alleging disability discrimination, failure to prevent discrimination, retaliation, failure to engage in the interactive process and wrongful termination. New trial granted on one inconsistent jury verdict.

## Professional and Community Affiliations

- Board of Directors, Orange County Bar Association
- Co-Founding Member and Board of Directors, Thurgood Marshall Bar Association
- Member, International Association of Privacy Professionals
- Accredited, Certified Information Privacy Professional/United States
- Member, National Bar Association

## Education

J.D., University of Southern California Gould School of Law, 1999

B.A., University of Southern California, 1995

## Bar Admissions

California

## Publications & Press

### **Littler Names New Leadership to Its Affinity Groups and Diversity & Inclusion Council**

*Littler Press Release*

February 14, 2019

### **California's Consumer Privacy Act of 2018: Why Its Ambiguities May Leave Businesses in a Quandary**

*The Computer and Internet Lawyer*

Volume 36, Number 2, February 2019

### **California's Consumer Privacy Act of 2018: Why Its Ambiguities May Leave Businesses in a Quandary**

*Orange County Lawyer*

Vol. 60, Number 10, October 2018

### **Domestic Violence and Professional Sports: Training Could Help Teams Stay Ahead of the Game**

*Sports Litigation Alert*

September 2, 2016

### **Bullying in professional sports: Adapting to an evolving legal landscape and mitigating risk**

*LawInSport*

February 3, 2014

### **A New Era: Understanding the Legal Rights of Homosexual Players In Professional Sports**

*Westlaw Journal Entertainment Industry*

October 1, 2013

### **Ninth Circuit Holds that Employers Are Entitled to Individualized Damages and Affirmative Defense Determinations in Wage and Hour Class Actions**

*Littler Insight*

March 13, 2013

### **9th Circ. Take On Dukes' Scope Raises Bar For Wage Classes**

*Law360.com*

March 5, 2013

### **Is Affirmative Action Out of Date?**

*Orange County Lawyer*

February 1, 2013



**Opinion: Independent Contractors Under Fire**

*Transport Topics*

September 3, 2012

**"Pumped" about HGH Testing? Careful, It May Violate the ADA**

*Entertainment & Sports Lawyer*

April 1, 2012

**Transportation Companies Must Plan for and Implement Changes for 2013 to Comply with New Hours of Service Rules**

*Littler Insight*

February 1, 2012

**No Mandated Meals If Work Is On Wheels**

*Law360.com*

December 23, 2011

**Federal District Court Holds Motor Carriers Are Not Subject to California's Meal and Rest Break Laws**

*Littler Insight*

November 11, 2011

**Motor Carrier Not Subject to State Meal and Rest Break Law**

*Littler ASAP*

November 11, 2011

**Employers that Operate a Mixed Fleet of Vehicles May Lose the Motor Carrier Overtime Exemption**

*Littler Insight*

September 8, 2011

**Employers That Operate A Mixed Fleet Of Vehicles May Lose The Motor Carrier Overtime Exemption**

*Littler ASAP*

September 7, 2011

**California Court of Appeal Holds That Insurance Adjusters Are Exempt-Thereby Limiting The Decision In Bell v. Farmers Insurance Exchange**

*Littler ASAP*

March 3, 2011

**Case Study: Wang V. Chinese Daily News**

*Law360.com*

November 10, 2010

**Ninth Circuit Decision on a Mixture of Class Action Issues May Make Federal Courts a More Attractive Forum For Plaintiffs**

*Littler Insight*

October 7, 2010

**A County's Failure to Define "Grade or Class of Positions" May Undermine Ability to Meet Retirement Funding Obligations**

*Littler Insight*

July 30, 2010

**Individual Liability for Wage Violations Expands**

*Orange County Business Journal*

March 16, 2009

**EU's Highest Court Rules Speech Constitutes Employment Discrimination**

*Littler Insight*

July 29, 2008

**Connect Proposition 209 Dots to Secure Government Funds**

*Los Angeles Daily Journal*

July 8, 2005

**Keep It Simple (at-will employment in California)**

*Los Angeles Daily Journal*

August 30, 2004

## **Speaking Engagements**

**New Employment and Labor Laws for 2016 - Irvine**

Irvine, CA

January 21, 2016

**New Employment and Labor Laws for 2015**

Irvine, CA

January 27, 2015

**Getting it Right in the Golden State — Practical Thoughts for Complying with California's New Pregnancy Disability Leave and Disability Discrimination Regulations**

Irvine, CA

June 6, 2013

**HIPAA Overview**

Lorman Education Services, Santa Ana, CA  
April 17, 2013

**Employment Law Update**

Joint Winter Meeting - SoCal CUPA-HR and Southern California HERC, Costa Mesa, CA  
February 1, 2013

**Littler's Labor & Employment Law Breakfast Series, Employment and Labor Laws Update**

Los Angeles, CA  
January 16, 2013

**Labor and Employment Law Update**

San Diego, CA  
January 15, 2013

**Labor and Employment Law Update**

Irvine, CA  
January 10, 2013

**Employment Law Update**

Irvine, CA  
October 19, 2012

**Leave Me Alone**

Irvine, CA  
September 28, 2012

**Full Brake Ahead? Navigating the FSLA Motor Carrier Exemption**

Winter Membership and Board Meeting - National Tank Truck Carriers (NTTC), Key Largo, FL  
February 16, 2012

**2012 Southern California Legal Update**

Irvine, CA  
January 19, 2012