

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 233 (Umberg)
Version: June 16, 2022
Hearing Date: August 24, 2022
Fiscal: Yes
Urgency: No
AWM

PURSUANT TO SENATE RULE 29.10

SUBJECT

Civil actions: appearance by telephone

DIGEST

This bill repeals provisions specifically related to telephonic appearances in civil proceedings, on the ground that they were made redundant by more recently adopted statutes that more broadly authorize remote appearances.

EXECUTIVE SUMMARY

The near-complete shutdown of the civil justice system as a result of the COVID-19 pandemic forced California's court system to rapidly incorporate new technologies in order to ensure that civil litigants could safely have their day in court. As a result of this rapid change, the existing system for remote telephonic appearances primarily used for motion hearings and other minor proceedings was quickly overshadowed. First through emergency Rules of Court and then by statute, litigants are now authorized to appear remotely using a range of audio- or audio-visual means in a wider range of procedures. According to the author, however, the continued existence of the telephone-only statutes has caused confusion and potential conflicts with the broader remote appearances scheme. While the statutory framework for all remote appearances is currently set to sunset on July 1, 2023, it is proposed to be extended through 2025 by SB 848 (Umberg, 2022), which is pending on the Assembly Floor. This bill, in anticipation of the extension of the sunset for all remote appearances, repeals the existing telephonic appearance statutes to avoid any confusion or conflict between the two regimes.

This Committee heard a prior, unrelated version of this bill in 2021. After the bill's passage in the Senate, the author gutted and amended it while it was pending in the Assembly Judiciary Committee. This is the first time this Committee has heard this the bill in its current form.

This bill is author-sponsored and supported by the Judicial Council of California and Courtcall, LLC. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) States that courts should, to the extent feasible, permit parties to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases so as to improve court access and reduce litigation costs. (Code Civ. Proc., § 367.5(a).)
- 2) Provides that in all general cases, as defined in the California Rules of Court, a party that has provided notice may appear by telephone at the following conferences, hearings, or proceedings:
 - a) A case management conference, provided that the party has complied with its meet-and-confer obligations and timely filed and served a case management statement.
 - b) A trial setting conference.
 - c) A hearing on law and motion, except motions in limine.
 - d) A hearing on a discovery motion.
 - e) A conference to review the status of an arbitration or mediation.
 - f) A hearing to review the dismissal of an action.
 - g) Any other hearing, conference, or proceeding if the court determines that a telephone appearance is appropriate. (Code Civ. Proc., § 367.5(b).)
- 3) Provides, notwithstanding 2), that a court may require a party to appear in person at a hearing, conference, or proceeding if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case. (Code Civ. Proc., § 367.5(c).)
- 4) Requires the Judicial Council to adopt rules of court related to telephonic appearances in civil cases. (Code Civ. Proc., § 367.5(d), (e).)
- 5) Required the Judicial Council, on or before July 1, 2011, to establish statewide uniform fees to be paid by a party for appearing by telephone, which supersede any fees paid to vendors and courts under any previously existing agreements and procedures. (Code Civ. Proc., § 367.6(a).)
- 6) Provides that the uniform fees in 5) must include a fee for providing the telephone appearance service pursuant to a timely request, an additional fee if the request is made shortly before the hearing, and a fee for canceling a telephone appearance request. (Code Civ. Proc., § 367.6(a).)

- 7) Provides that if a party has received a fee waiver, neither a vendor nor a court may charge that party for any of the fees authorized in 5) or 6), except:
 - a) The vendor or court providing the telephonic service has a lien, as provided, on any judgment that the party may receive, in the amount that the party would have paid for the telephonic appearance; and
 - b) If a vendor or court later receives the waived fee or a portion thereof, the fee shall be distributed consistent with 12). (Code Civ. Proc., § 367.6(b).)
- 8) Provides that the telephonic appearance fees described in 5) and 6) are recoverable costs. (Code Civ. Proc., § 367.6(c).)
- 9) Sets forth a framework for remote appearances – which may include audio or audio-visual remote technology – in civil cases, including civil trials, which is set to sunset on July 1, 2023. (Code Civ. Proc., § 367.75.)
- 10) Requires the Judicial Council, by July 1, 2011, and periodically thereafter as appropriate, to enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases. (Gov. Code, § 72010(a).)
- 11) Requires the master agreement in 9) to include specified terms, including the amount of fees to be paid by a party for a telephonic appearance and a statement that the vendor is required to indemnify and hold the court harmless from claims arising from a failure or interruption of services. (Gov. Code, § 72010(b).)
- 12) Provides that a court may provide telephonic appearance services to a party only through an agreement with a vendor pursuant to a master agreement under 9), a preexisting agreement, or directly from the court. (Gov. Code, § 72010(c).)
- 13) Requires a vendor or court that provides telephonic appearances, for each telephonic appearance fee, to transmit \$20 to the State Treasury for deposit in the Trial Court Trust Fund; if the vendor or court receives only a portion of the fee in accordance with 7)(b) then the vendor or court need transmit only the proportionate share of the amount. (Gov. Code, § 72011(a).)
- 14) Requires the amount to be transmitted to the Trial Court Trust Fund in accordance with 12) to be transferred within 15 days. (Gov. Code, § 72011(b).)
- 15) Required vendors to transmit revenues for telephonic appearances received during the 2009-2010 fiscal year, and requires Judicial Council to apportion these revenues and allocate them to eligible courts as specified. (Gov. Code, § 72011(c)-(e).)

This bill:

- 1) Repeals the Code of Civil Procedure sections that authorize the use of telephonic appearances in civil cases.
- 2) Repeals the Government Code sections providing for the collection and distribution of fees relating to telephonic appearances in civil cases.

COMMENTS

1. Author's comment

According to the author:

With the COVID-19 pandemic impact on courts that caused backlogs in both civil and criminal proceedings, the Judicial Council and courts began to explore new ways to conduct remote appearances. With last year's passage of SB 241, telephonic appearances were incorporated into the broader definitions of remote technology as authorized by Code of Civil Procedure Section 367.75. This inclusion reflects a growing acknowledgement that there is little practical distinction among the various methods to connect to a judicial hearing (e.g. by phone, digital audio and/or digital video). Unfortunately, this inclusion also left the statutes specifically authorizing telephonic appearances in question. SB 233 seeks to repeal these telephonic appearance statutes, thus providing courts with clarity over the use of telephonic appearances as part of the larger remote technology. SB 233 is necessary and ensures that all remote technologies are treated the same.

2. This bill repeals provisions permitting and enabling telephonic appearances in certain civil proceedings, which now conflict with the broader statutory scheme permitting remote appearances

When the COVID-19 pandemic made in-person activities a dangerous health risk, California's civil courts rapidly expanded the use of remote technology, particularly remote video technology, in response. This expansion was first authorized by the Judicial Council's Emergency Rule 3, adopted on April 6, 2020.¹ Then, in 2021, the Legislature enacted SB 241 (Umberg, Ch. 214, Stats. 2021), which authorized remote proceedings in civil and juvenile dependency proceedings, subject to certain technological and procedural requirements.² SB 241 is set to sunset on July 1, 2023, but

¹ Cal. Rules of Court, Appendix I, Emergency Rule 3; California Courts Newsroom, *Judicial Council Adopts New Rules to Lower Jail Population, Suspend Evictions and Foreclosures* (Apr. 6, 2020), available at <https://newsroom.courts.ca.gov/news/judicial-council-adopts-new-rules-lower-jail-population-suspend-evictions-and-foreclosures> (last visited Aug. 22, 2022).

² See Code Civ. Proc., § 367.75.

pending legislation would extend the sunset until January 1, 2026.³ While the increased use of remote technology has not always been smooth or free from controversy, it has quickly surpassed older forms of remote communications in courts – most notably, telephonic appearances.

The popularity of remote means other than telephone to make remote appearances in civil cases has given rise to a new issue: SB 241 did not clarify whether it supersedes the existing telephonic appearance framework or provide guidance on how the two frameworks can be reconciled. While telephonic appearance technology is, arguably, captured by the SB 241 framework, it also has standalone provisions authorizing the collection, and transmission to the Judicial Council, of fees well above those now being charged for remote appearances using low-cost remote technology systems like Zoom and Microsoft Teams. Accordingly, the proponents of this measure contend it is time to revise the old telephonic appearance statutory framework.

This bill is intended to eliminate the confusion and duplicative efforts caused by the simultaneous telephonic and remote appearance frameworks by repealing the standalone telephonic appearance statutes. Judicial Council and the State's largest telephonic appearance vendor, Courtcall, LLC, both support the bill. Budget measures enacted this year are likely to make up for any loss in revenues to the Trial Court Trust Fund, and Courtcall believes that this bill will enable it to offer telephonic appearance rates that are more competitive with existing rates for other remote appearance services.

3. Arguments in support

According to the Judicial Council of California, writing in support:

The Judicial Council supports SB 233, which repeals the obsolete statutes relating to telephonic appearances. The enactment of [Code of Civil Procedure section] 367.75 on January 1, 2022, established a new framework governing remote appearances in California. Nevertheless, pre-existing statutes related to telephonic appearances remain in the codes, causing unnecessary overlap and confusion.

[Code of Civil Procedure section] 367.5 originally authorized telephonic appearances, but only in certain kinds of civil proceedings. It is more limited than [section] 367.75, which encompasses all civil remote appearances, including telephonic appearances. With the enactment of [section] 367.75, [section] 367.5 is no longer necessary...

Removing these code sections benefits court users, the state, and the courts by properly harmonizing statutory authority over remote appearances under [Code

³ See SB 848 (Umberg, 2022).

of Civil Procedure] section 367.75 and greatly reducing fees to users wanting to make their appearance telephonically. It also reduces state work and costs by eliminating the now-unnecessary requirement for a [master services agreement] for only a small subset of remote proceedings.

SUPPORT

Courtcall, Inc.
Judicial Council of California

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: SB 848 (Umberg, 2022) extends the sunset on the remote civil appearance provisions until January 1, 2026, and imposes reporting requirements on the courts and Judicial Council relating to the efficacy of and problems with civil remote proceedings. SB 848 is pending on the Assembly Floor.

Prior Legislation:

SB 538 (Rubio, Ch. 686, Stats. 2021) authorized a party or witness to appear remotely at the hearing on a petition for a domestic or gun violence restraining order.

SB 241 (Umberg, Ch. 214, Stats. 2021) titled the 2021 Court Efficiency Act, among other things, authorized specified remote appearances in specified civil court proceedings. The remote proceedings portion of the bill is set to sunset on July 1, 2023.

AB 177 (Committee on Budget, Ch. 257, Stats. 2021) among other things, required the Judicial Council of California to convene a working group for the purpose for recommending a statewide framework for remote civil court proceedings that addresses equal and fair access to justice, to be submitted no later than January 1, 2023.

SB 467 (Wilk, 2017) would have extended the existing civil Court Call framework to appearances via video teleconferencing and other remote electronic means. SB 467 died in the Assembly Judiciary Committee.

PRIOR VOTES:

Assembly Floor (Ayes 77, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

[Prior votes not relevant]
