



The State Bar Court *of California*

OPEN SESSION AGENDA ITEM 50-4 MARCH 2022

DATE: March 24, 2022

TO: Members, Board of Trustees

FROM: Michelle Cramton, Clerk of the State Bar Court
Erika Doherty, Projects Attorney, State Bar Court

SUBJECT: Rules of Procedure to Continue to Conduct State Bar Court Proceedings
Remotely: Return from Public Comment and Request for Adoption of Rules
5.17, 5.18, and 5.154 and Request for Rescission of Interim Rule 5.19

EXECUTIVE SUMMARY

This item requests approval of permanent new rules 5.17 and 5.18 and amendments to rule 5.154 of the Rules of Procedure and rescission of interim rules 5.17–5.19 and 5.154.

At its November 2021 meeting, the State Bar Board of Trustees authorized Interim Rules of Procedure, rules 5.17, 5.18, and amended rule 5.154, effective for 120 days from January 1, 2022. The Board also authorized a 45-day public comment period for the same rules prior to permanent adoption.

The State Bar received five public comments, one of which agrees with the proposed rules, one that agrees with the proposed rules if modified to make remote appearances the preferred method, and three that disagreed with the proposal. Of the three that disagreed with the proposal, one comment indicated disagreement only but did not provide additional information, and the other two comments did not address the specific rules being proposed.

At its January 2022 meeting, the Board authorized Interim Rule of Procedure 5.19 to require remote court appearances during the COVID-19 Omicron variant surge. This rule was intended to be temporary and is no longer needed.

BACKGROUND

From April 6, 2020, through December 31, 2021, Emergency Rule 3 of the California Rules of Court authorized courts to conduct civil proceedings remotely due to the COVID-19 pandemic. From April 2020 through the end of 2021, the State Bar Court relied on Emergency Rule 3 to conduct nearly all court proceedings remotely by video using Zoom technology and by telephone.

Since January 1, 2022, the State Bar Court has continued to conduct State Bar Court proceedings remotely pursuant to Interim Rules of Procedure 5.17, 5.18, 5.19, and 5.154 as approved by the Board at its [November 2021](#) and [January 2022](#) meetings.

At the November 2021 meeting, the Board also authorized a 45-day public comment period for rules 5.17, 5.18, and 5.154, to gather input prior to permanent adoption. Interim rule 5.19, approved at the January 2022 Board meeting, was intended to be temporary to address concerns related to the COVID-19 Omicron variant. There was never an intent to seek permanent adoption of interim rule 5.19.

DISCUSSION

Following a 45-day public comment period, the State Bar Court proposes permanent adoption of two new Rules of Procedure, rules 5.17 and 5.18, and an amendment to existing rule 5.154 to continue to authorize State Bar Court proceedings to be conducted remotely. There are two nonsubstantive, clarifying changes that are proposed to rule 5.17(D). A clean version of the rules is set forth in Attachment A and a redline version in Attachment B.

The State Bar received five public comments, provided in Attachment C. One comment agreed with the proposed rules, indicating that there is “[i]mproved access to court hearings via remote hearings” that “has been life changing for the good of all.” One comment agreed with the proposed rules, if modified, to prefer remote appearances, to only require a form for in-person appearances, and to make such rules temporary for 18 months. The State Bar Court does not recommend any changes to the proposed rules in response to this comment. The proposed rules set most court proceedings as remote court proceedings, excepting trials and evidentiary hearings. Additionally, a party may choose to appear remotely at a trial or an evidentiary hearing upon notice to the court, unless there is opposition to the remote appearance, and following the opposition, the court determines that the court proceeding should occur in-person. Finally, the court does not recommend that these rules be made temporary; however, the Board may amend or rescind these rules at any time pursuant to its authority.

Three comments disagreed with the proposed rules. Of these comments, one commenter indicated disagreement only but did not provide additional information, and the other two comments did not address the specific rules being proposed. The State Bar Court does not recommend any changes to the proposed rules based on these comments as they are not related to the proposed rules.

Since April 2020, the State Bar Court has conducted nearly all court proceedings remotely by video or telephone. Permitting remote court appearances has reduced time-consuming and costly travel for the parties and witnesses to one of the State Bar Court's two physical locations, San Francisco and Los Angeles. Moreover, maintaining remote access to court proceedings is consistent with the changes that superior courts have made in response to COVID-19. Continuing to allow for remote access to court events based on the parties' preferences is an important means of maintaining and improving access to justice in the State Bar Court.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF PROCEDURE

Title 5, Division 1 and Division 3 of the Rules of Procedure of the State Bar of California, Rules 5.17, 5.18, and 5.154

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees hereby approves and adopts rules 5.17, 5.18, and 5.154 of the Rules of Procedure of the State Bar of California as set forth in Attachment A, effective April 4, 2022; and it is

FURTHER RESOLVED, that the Board of Trustees hereby rescinds interim rules 5.17, 5.18, 5.19, and 5.154, as set forth in Attachment D, effective April 4, 2022.

ATTACHMENTS LIST

- A.** Proposed Rules 5.17, 5.18, and 5.154 of the Rules of Procedure of the State Bar of California (clean copy)
- B.** Proposed Rules 5.17, 5.18, and 5.154 of the Rules of Procedure of the State Bar of California (redline copy)

- C.** Public Comments Received Regarding Proposed Rules 5.17, 5.18, and 5.154 of the Rules of Procedure of the State Bar of California
- D.** Interim Rules 5.17, 5.18, 5.19, and 5.154 of the Rules of Procedure of the State Bar of California (clean copy)

5.17 Appearances for Non-Trial Events in the Hearing Department

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

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

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

(2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person no fewer than 10 days before the appearance.

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

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

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

- (1) An in-person appearance would materially assist in the determination of the proceeding or the effective management or resolution of the case;
- (2) The quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding; or

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

(D) The hearing department ruling to require a remote appearance under subparagraph (B)(4) or to require an in-person appearance under subparagraph (C) is the final ruling in the State Bar Court and is not reviewable.

5.18 Appearances for Evidentiary Hearings and Trials in the Hearing Department

(A) **General Provision Requiring Parties and Witnesses to Appear In-Person.** Except as permitted by this rule, parties and witnesses must appear in-person at evidentiary hearings and at trial as defined in rule 5.4(62).

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

(1) **Notice to the Court.** Within 10 days after the court sends notice of the evidentiary hearing or notice of the trial date pursuant to rule 5.102, a party may provide notice of the party's intent to appear remotely. The notice must be in writing and may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*.

(2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within 10 days after the court has sent notice of the evidentiary hearing or notice of the trial date pursuant to rule 5.102.

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

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

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

electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within five days after the initial notice of the party's intent to appear remotely.

- (2) **Court Determination on Opposition.** In determining whether to conduct an evidentiary hearing or trial in whole or in part through the use of remote technology over opposition, the court must consider the following:
- i. Whether an in-person appearance would materially assist in the determination of the proceeding or the effective management or resolution of the case;
 - ii. Whether the quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding;
 - iii. Whether there is any limited access to technology or transportation asserted by a party that affects the ability for a party or witness to appear remotely; and
 - iv. Whether the interests of justice are best served by permitting a party or witness to appear remotely in whole or in part over another party's opposition.

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

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

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

Rule 5.154 Oral Argument Before Review Department

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

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

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

- (1) **Notice to the Court.** Within 10 days after the court sends notice of the time and place of oral argument, a party may provide notice of the party's intent to appear remotely. The notice must be in writing and may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*.
- (2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within 10 days after the court sends notice of the time and place of oral argument.
- (3) **Notice by the Opposing Party.** On receipt of notice under subparagraph (B)(2), should the opposing party elect to also appear remotely, that party must notify the court and all other parties within five days after the notice is served. The notice must be in writing, may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*, and must be served on all parties pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within five days after the notice is served.

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

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

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

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

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

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

5.17 Appearances for Non-Trial Events in the Hearing Department

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

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

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electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within five days after the initial notice of the party's intent to appear remotely.

- (2) **Court Determination on Opposition.** In determining whether to conduct an evidentiary hearing or trial in whole or in part through the use of remote technology over opposition, the court must consider the following:
- i. Whether an in-person appearance would materially assist in the determination of the proceeding or the effective management or resolution of the case;
 - ii. Whether the quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding;
 - iii. Whether there is any limited access to technology or transportation asserted by a party that affects the ability for a party or witness to appear remotely; and
 - iv. Whether the interests of justice are best served by permitting a party or witness to appear remotely in whole or in part over another party's opposition.

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

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

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

Rule 5.154 Oral Argument Before Review Department

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

(A) General Provision Requiring Parties to Appear in-Person. The Review Department will hear in-person oral argument in San Francisco and Los Angeles. Oral argument shall

be scheduled in the venue in which the trial took place. ~~Location of Oral Argument; Argument by Conference Telephone. Unless otherwise ordered by the court, the Review Department will regularly hear oral arguments in San Francisco and Los Angeles. Oral argument shall be scheduled in the venue in which the trial took place. By written request filed with the Clerk at least 10 days prior to the date of oral argument, counsel entitled to present oral argument may request to do so by a conference telephone system operated by the State Bar Court. The Review Department may require counsel to appear in person.~~

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

- (1) **Notice to the Court.** Within 10 days after the court sends notice of the time and place of oral argument, a party may provide notice of the party's intent to appear remotely. The notice must be in writing and may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*.
- (2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within 10 days after the court sends notice of the time and place of oral argument.
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(C) Information for Remote Appearances. The court will publish information for remote appearances on the State Bar Court website.

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

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

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

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

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

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

Commenter	Agree/Disagree	Comment
No information provided	DISAGREE	None provided.
Matthew Morris	DISAGREE	<p>This change in rule is not fair to attorneys like myself who have dedicated years and finances to becoming an attorney. It drastically cuts our earning potential, by allowing thousands on lesser qualified people perform tasks that are traditionally saved for attorneys. It's so unbelievably unfair. I have \$200,000 of student load debt, because I decided to take the traditional path, that has been required in order to become fully licensed for decades. Why, then, should lawyers be required to take on such massive amounts of debt if the state attorney bar will continue to under cut the value of an attorney. This proposal is beyond upsetting. It's beyond unfair. It is also extremely disappointing and disrespectful. And where does it end? Surely, then, if this proposal is passed there will others that follow. Before long, the court room will be filled with non attorneys, while the true attorneys remain in the foreground with massive amount of student loan debt that other were able to avoid. The backlash to the mental health of attorneys will be substantial. I can hear the newly allowed cohorts bragging to the face of attorneys already. "I didn't go to law school, and I saved my time and money, and I'm in the same place as you," is what their bragging will sound like.</p> <p>Please don't do this. It's so unfair. I am a black man from Compton California. I remain poor to this day, even after being admitted into the state bar in November. I am drowning in student debt. The benefits of supposedly making legal services more accessible are far outweighed by the dangers of upsetting the system. And as a poor man, from the inner city I can tell you more accurately than anyone that legal services are already accessible. There are plenty of lawyers who cater to different classes of people, including the poor. If you don't believe me, why don't you close your books and actually visit the inner city, for once! Philosophy is one thing. But actuality another. This rule won't help substantially. But the hard it will cause will be</p>

		<p>devastating.</p> <p>Please do not pass this absurd rule.</p>
Katherine Lane	DISAGREE	<p>I very strongly disagree with the proposed rule that allows remote appearances in court hearings especially when allowing witnesses to testify. CA is already so lenient about not punishing perjury that perjury is absolutely rampant in the courts. The courts will lose even more power to punish if the witness is not at risk of being immediately sent to jail for a day or two. The courts needs to take back their power, control, and dignity. Lying under oath has become an everyday occurrence in our courts. I also believe that the attorneys should be held more accountable to the courts for bringing forward false testimony. It is a circus.</p>
Cynthia Carrasco	AGREE	<p>It has allowed for equitable justice to be effectuated for vulnerable populations. Improved access to court hearings via remote hearings has been life changing for the good of all.</p>
Stacey Schliffer	AGREE if Modified	<p>The preference should be for remote appearance. No form should be required for a remote appearance. A form should be required for an in person appearance. Make this rule for 18 months until we have a better idea of Covid-19 and the variants coming at us.</p>

Interim Rules of Procedure of the State Bar of California**Rule 5.19 Remote Court Proceedings**

(A) Remote Appearances. Notwithstanding any rule, including but not limited to interim rules 5.17, 5.18, and 5.154 of the Rules of Procedure, to protect the health and safety of the public, including court users, witnesses, State Bar Court personnel and judges, and others, the State Bar Court must conduct all court proceedings as follows:

- (1) **Appearances for Non-Trial Events in the Hearing Department.** If the court receives notice of a party's intent to appear in person under interim rule 5.17(B), the court may order that the proceeding be conducted remotely by providing the parties with at least two court days' notice of the remote proceeding.
- (2) **Appearances for Evidentiary Hearings and Trials in the Hearing Department.** The court may order that an evidentiary hearing or trial be conducted remotely after the period in which a party may provide notice of the party's intent to appear remotely under interim rule 5.18(B) and after the period in which a party may provide any opposition to remote proceedings under interim rule 5.18(C) has ended. If the court orders that the evidentiary hearing or trial will be conducted remotely, the court must provide the parties with at least five court days' notice of the remote proceeding.
- (3) **Review Department Proceedings.** The court may order that oral argument be conducted remotely after the period in which a party may provide notice to appear remotely under interim rule 5.154(B) has ended. If the court orders that the oral argument will be conducted remotely, the court must provide the parties with at least five court days' notice of the remote proceeding.

(B) Court Discretion to Require an In-Person Appearance. Notwithstanding any other provision of this rule or interim rules 5.17, 5.18, and 5.154 of the Rules of Procedure, and except as otherwise required by law, the court may require a party to appear in person at a proceeding in any of the following circumstances:

- (1) If the court determines that an in-person appearance would materially assist in the determination of the proceeding or in the effective management or resolution of the case;
- (2) If the quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding or inhibits the ability to accurately prepare a recording of the proceeding; or
- (3) If, at any time during a remote proceeding, the court determines that an in-person appearance is necessary, the court may continue the matter and require such an appearance.

(C) Timing of This Rule. This rule applies to all court proceedings scheduled to take place from the effective date of this rule through April 1, 2022. Any court event that is scheduled to

occur after that date must be set as an in-person or remote proceeding pursuant to interim rules 5.17, 5.18, or 5.154 of the Rules of Procedure.

(D) Review. The court's decision to order a remote appearance under this rule is the final decision and is not reviewable.

Effective January 20, 2022.

5.17 Appearances for Non-Trial Events in the Hearing Department

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

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

- (1) **Notice to the Court.** The notice must be in writing and filed with the court as far in advance as possible but no fewer than 10 days before the appearance. The notice must be in writing and may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*.
- (2) **Notice to the Opposing Party.** The party must serve the notice on the opposing party pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person no fewer than ten days before the appearance.
- (3) **Notice by the Opposing Party.** On receipt of notice under subparagraph (B)(2), should the opposing party elect to also appear in-person, that party must notify the court and all other parties no fewer than two court days before the appearance. The notice must be in writing, may be submitted using State Bar Court Form *Notice re Remote or In-Person Appearance*, and must be served on all parties pursuant to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person no fewer than two court days before the appearance.
- (4) **Court Discretion to Order Remote Appearance or to Reschedule Proceeding.** If a party has provided notice of the party's intent to appear in-person under this subparagraph, the court may, in its discretion and in the interests of justice, order that the proceeding be conducted remotely or rescheduled if the judge is already scheduled to conduct another in-person proceeding in a different venue on the same date.

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

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

(D) The decision to require a remote appearance under subparagraph (B)(4) or to require an in-person appearance under subparagraph (C) is the final decision in the State Bar Court and is not reviewable.

Effective January 1, 2022.

5.18 Appearances for Evidentiary Hearings and Trials in the Hearing Department

(A) General Provision Requiring Parties and Witnesses to Appear in Person. Except as permitted by this rule, parties and witnesses must appear in-person at evidentiary hearings and at trial as defined in rule 5.4(62).

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

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

to rule 5.26 or 5.26.1. If notice is not provided electronically pursuant to rule 5.26.1, the party must also provide notice by telephone or in-person within five days after the notice is served.

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

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

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

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

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

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

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

Effective January 1, 2022.

Rule 5.154 Oral Argument Before Review Department

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

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

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

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

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

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

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

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

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

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

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

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

Effective January 1, 2022.