



Protocol for Remote Jury Trials

Riverside Superior Court

February 1, 2021; Revised 04/26/2021

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

REMOTE CIVIL JURY TRIALS PROTOCOL

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I. Pretrial Webex procedures and practice sessions

Quite simply, significant preparation and improvisation are keys to successfully navigating a remote civil jury trial. The following tools have been offered to the bench and bar for assistance with conducting a remote trial:

1. For instructions to attorneys on how to navigate a remote trial using Webex, [click here](#).¹
2. For instructions to bench officers on how to navigate a remote trial using Webex, [click here](#).
3. For instructional and presentation videos on how to use some of Webex’s most important features, [click here](#).

a. Preparing witnesses to testify remotely.

Attorneys and parties are of course heavily invested in the litigation at hand. Many witnesses are not. It is very important for attorneys to explain to witnesses that they will be required to appear remotely during the trial. Notices to witnesses about the remote trial should accompany subpoenas and should look similar to what the court issues to parties and counsel. An example follows:

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¹ It is recommended that the instructions for attorneys and bench officers be reviewed by both in advance of trial.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
265 N. Broadway
Blythe, CA 92225
www.riverside.courts.ca.gov

RMG
OCT - 2 2020

NOTICE OF TELEPHONIC APPEARANCE

MICHAEL JOSEPH FREELAND JR

vs.

CASE NO: BLC2000048

GOLDENVOICE LLC

TO: **John Smith, M.D.**
Pediatrics Dept.
UCLA Medical Center
405 Hilgard Ave.
Los Angeles, CA 90095

In response to health and safety concerns caused by COVID-19 pandemic, the statewide emergency orders, the court's general orders, and the adoption of Emergency Rule 3, the court will be conducting certain civil hearings telephonically, until further notice.

Therefore, the above entitled case is scheduled for **TELEPHONIC APPEARANCE** re: Hearing re: Motion on 10/09/20 at 10:30 in Department 260.

To appear by telephone dial (213) 306-3065 or (415) 655-0001, when prompted enter:

Meeting Number: 280-164-018 #
Access Code: # (no number after the #)

Please MUTE your phone until your case is called and it is your turn to speak. It is important to note

b. Practice sessions with the assigned courtroom.

Everyone, including the judge and court staff, needs to practice with Webex. Webex is an excellent program and it more than meets our needs, but like every other program on the market it has its idiosyncrasies to which we must become accustomed. Oftentimes however, it is not Webex that is the problem but rather the particular device that a person is using to join the trial/meeting. Repeated practice and troubleshooting can address these issues.

For example, with respect to the type of audio setup to be utilized during trial, it is a good idea for attorneys, parties, and witnesses to utilize Webex's "Call me at" feature. For more information, please take a look at pages 2-3 of these [instructions for attorneys](#).

To find the 9-digit Webex meeting number for your assigned courtroom, [click here](#) and scroll down. While this portion of the court's website refers to

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telephonic appearances, the same 9-digit code for telephonic appearances also grants access to Webex video meetings which is where remote trials will occur.

Everyone, including court staff, are recommended to participate in a practice session with your assigned courtroom before trial begins.

Finally, to review a common Trial Setting Order for remote trials, please [click here](#).

II. Motions in limine

Motions in limine are very important to every trial, but they are particularly significant in remote trials. If you anticipate any evidentiary problems either arising from or being exacerbated by remote trials, do not leave the matter to chance. Address it in a motion in limine.²

For example, laying foundation for disputed documents can present unique challenges in remote trials. In traditional trials, it is not uncommon for a witness to be questioned at length about a document before it is ever published to the jury. However, it is not currently possible to examine a witness in the jury's presence on Webex and also show the witness a document that the jurors cannot see.

In this circumstance a sidebar could be called, and using Webex's 'breakout room' feature (see § IX, *infra*) the jurors could be excluded from both an examination of the witness and a broadcasting of the document. However, attorneys for various reasons often wish to lay foundation for documents (and other exhibits) in the presence of the jury. These are therefore issues for which stipulations should be considered, and/or pretrial rulings should be sought. Or, a copy of the document in question could be provided to the witness in advance of his or her testimony so that it could be referred to during questioning without the jury seeing it.

² If expressly authorized by the judge, counsel may use the courtroom email address to transmit last-minute filings. For a list of email addresses for the unlimited-civil division, please [click here](#).

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III. Jury orientation

Jurors in remote civil jury trials will report to their assigned courthouse only once. They will be sworn-in, and they will receive a detailed orientation on how the remote trial will occur. Barring exceptional circumstances, jurors in remote trials will not come to a courthouse facility again. Attorneys and parties will not be present during the orientation process. If stipulated to by the parties, the assigned bench officer may attend a portion of the jury orientation and may excuse jurors based on hardships.

The pandemic has resulted in a significant decrease in the number of jurors that can sit inside each jury assembly room consistent with social-distancing rules. Also, remote civil jury trials will be competing with criminal trials for prospective jurors. Accordingly, expect delays between the parties announcing ready for trial and jurors actually being summoned to the jury assembly room.

- a. Preparation of jury questionnaires
 - i. Hardship questions
 - ii. COVID-19 questions
 - iii. Technological-proficiency questions
 - iv. Case-specific questions

Through the use of Laserfiche technology, the superior court has instituted a sophisticated online jury questionnaire process. Just one example of the digital forms the system creates can be [viewed here](#).³ The four categories of questions listed above can be incorporated into the online jury questionnaire. We are finding that some jurors in criminal cases are using the online questionnaire process prior to coming to court, but many are not. However, once all jurors have responded to a court facility, those that have not completed the online questionnaire will be ordered to do so.

Submitting detailed questions for inclusion in the online questionnaire is critical to remote trial jury selection. The goal is to reduce the length of time spent conducting oral voir dire of prospective jurors. Many prospective jurors

³ As explained in detail at the December 14, 2020, online presentation on this subject, attorneys will be able to log-in to the court's Laserfiche system and draft proposed questions for inclusion in the online questionnaire. The trial judge will ultimately decide which questions will be included in the finalized questionnaire.

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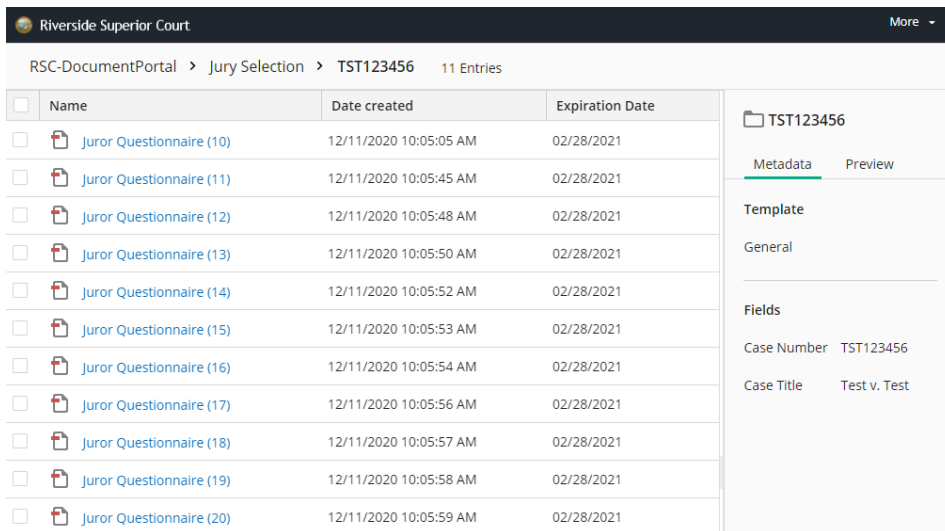
may struggle initially with the use of Webex though many will learn to use it effectively after just a few tries. Still, some prospective jurors may prove difficult to hear and understand. A detailed written questionnaire—which our current technology permits jurors to fill out with even their cellular phones—assists greatly with this process.

The four types of questions listed above (i-iv) should all, to the extent possible, be addressed in the digital questionnaire to be completed by the prospective jurors. For an example of a list of questions for jurors summoned to a remote trial, [click here](#).

IV. Jury selection

a. Distribution of completed jury questionnaires to the trial attorneys.

Once the online jury questionnaires have been completed, the trial judge and attorneys will receive a link where they can view and download .pdf (Adobe Acrobat) copies of the questionnaires. The downloading page will look similar to this:



Due to screen size limitations, it is highly unlikely that all prospective jurors will be examined in one session. No more than 18 jurors being examined at a time is a current recommendation, particularly because Webex can only show up to 25 participants’ videos in one screen. It will likely prove helpful for the court and parties to simulate a jury box on the Webex screen. For more instructions on using Webex for jury selection including creating a virtual jury box, [click here](#) (see pp. 6-8).

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b. Mini-openings (CCP § 222.5(d))

Due to current changes in the law, both the California Rules of Court and the Code of Civil Procedure now allow for mini-opening statements. This procedure is highly recommended for remote trials. As effective as remote trials can be, there is an obvious loss of human interaction and in-person contact that is present during traditional trials. The mini-opening procedure gives the attorneys an early opportunity to introduce themselves, their clients, and the core facts of the trial.

c. Peremptory challenges

Jury selection and the manner in which peremptory challenges will be exercised is a matter within the trial court's sound discretion. For instance, each trial judge will have to decide how many prospective jurors should be admitted to the Webex meeting insofar as only 25 persons can be viewed on one screen at one time.⁴ However, it is recommended that peremptory challenges not be exercised until at least 18 jurors are present in the remote courtroom and all cause challenges to those jurors have been exhausted. Jury selection will likely be one of the most tedious stages of the remote trial process, and an efficient procedure for the exercise of peremptory challenges is necessary. One advantage of remote trials is that jurors will not need to periodically switch seats as is common when challenges are exercised in traditional trials. Finally, if *Batson/Wheeler*-type challenges (e.g. CCP § 231.5) are made to an attorney's exercise of a peremptory challenge, a breakout room sidebar-session can be initiated. (See § IX, *infra*.)

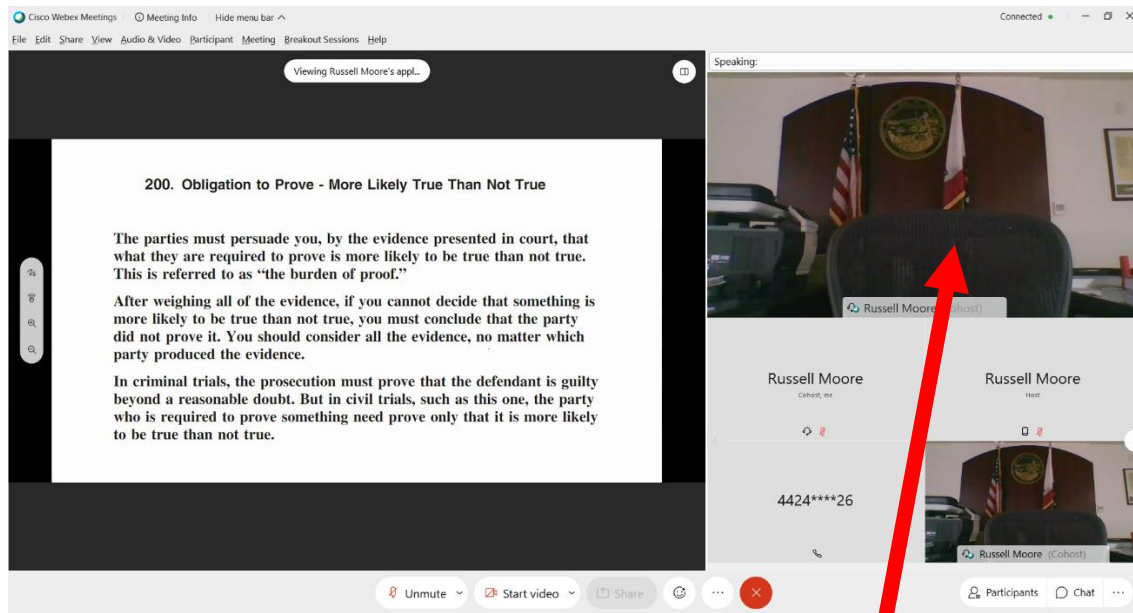
V. Pre-instructions to the jury

After jurors have been selected, many courts will issue detailed instructions to jurors that are similar to [these](#). Also, the bench officer will have the opportunity to read CACI pre-instructions to the jury. By using presenter mode, screen-sharing, and side-by-side view, the judge can read and present jury instructions in the following format:

⁴ Webex allows for scrolling between multiple screens in order to see other participants not shown in the initial 25. However, for obvious reasons most counsel will wish to be able to see all jurors at once without having to flip back and forth between screens during voir dire. Also, admitting more than 25 persons to the meeting adds additional responsibility for the court and its staff, i.e. making sure that all participants have their video cameras on and are paying attention to the proceedings.

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The judge reading the opening instructions will appear here. The same format may be utilized by attorneys when they are delivering opening statements and closing arguments. For more information, please see pages 26-27 of [these instructions](#).

VI. Opening statements

The key to an effective opening statement can be utilization of presenter mode, screen-sharing, and side-by-side view. This three-part method is described in detail in pages 14-19 of [these instructions](#).

VII. Witnesses

- a. Ensuring that the devices used to connect to Webex are adequate.

In the [instructions to attorneys](#), specifically at pages 1-3, substantial detail is devoted to ensuring that Webex participants are able to hear and be heard during a remote trial. In sum, many computers, tablets, and smartphones have varying qualities and levels of audio. This variation can not only make hearing the witness difficult, but it may create problems for court reporters (and others) who may hear one participant much more loudly than the others. Therefore, the [instructions to attorneys](#) from the outset describe a method entitled “Call me at” in the Webex audio settings that almost everyone in a trial should use in order to improve and equalize the sound. Perhaps more so

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than any other feature in Webex, the audio settings for each participant is critically important.

b. Objections.

Objections can pose an issue for remote trials. First, it should be noted that everyone in a trial who is not currently speaking should mute their microphones to eliminate any and all background noise. However, an objecting attorney must be ready to unmute him/herself—for example by quickly tapping the space bar—in order to voice an objection. The court must then ensure that the attorneys have heard and understand the objection. Because there is often a split-second delay between when a person speaks and when the other participants hear it, expect some minor difficulties with objections being made and heard.

c. Taking frequent breaks.

Serving as a juror in court can be physically and mentally taxing. It is no less so in a remote setting. Also, it is anticipated that court reporters will experience difficulties hearing witnesses from time-to-time. Therefore, frequent breaks are suggested. While more-frequent breaks will increase the length of the trial, we recommend them so as not to ‘burn out’ the jurors and court staff on the remote trial process.

VIII. Exhibits

- a. Detailed exhibit list
- b. Pre-marked (i.e. numbered/lettered) *digitized* exhibits
- c. Periodic versus all-in-one distribution of exhibits to jurors

Significant detail and attention must be devoted to the preparation of exhibits for remote jury trials.⁵ When the trial is over, it will be necessary for hard copies of the exhibits to be provided to the trial court so that there will be a traditional record for review in the court of appeal and Supreme Court.

With Webex, whatever you can show on your computer you can show to the trial participants. This includes audio and video, thus as one example

⁵ Please refer to Riverside Superior Court [local rule 3401](#) for more information on the requirement of preparing exhibits and/or exhibit [binders for trial](#).

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deposition excerpts can be played during trial. As an attorney in a remote trial, you can share with the trial participants an Excel spreadsheet, phone records, X-rays, MRIs, etc. The possibilities are limitless. However, many documents will need to be scanned into digital format in order to be properly displayed upon the screen.⁶ For instructions on displaying exhibits through the screen-sharing process, see pages 15-21 of [these instructions](#).

It is also important to digitally include the name and number of the exhibit on every document, program, or multimedia shown on the screen to jurors. This can be done in a number of ways, for instance by writing the name and number on the exhibit before it is scanned. An exhibit name and number can also be digitally inserted using any of Microsoft Office's programs, e.g. Word, Excel, PowerPoint, and others. Adobe Acrobat, the program that brought us .pdfs, also has features that allow for digitally labeling and numbering exhibits.

New exhibits may become necessary depending on the progress of the trial. Use of the courtroom email address to provide jurors with new and additional exhibits is one option, but that option requires the judge's express consent. Please also see the instructions to both attorneys and bench officers as to how files can be shared with meeting participants through use of the Webex program.

An open question is whether to provide all exhibits to the jurors at once or on a periodic basis. This is a question that will have to be resolved on a case-by-case basis. Depending on the nature and length of the trial, binders with hard-copy exhibits could be provided from the outset to the jurors. There are drawbacks to this process but it may prove appropriate in some cases. The most important takeaway from this discussion is for attorneys to be thinking early and often about how they would like the jurors in their cases to see and access the exhibits.

In some cases, significant privacy concerns may be raised with certain exhibits being in the possession of jurors. In such instances, the court may decide to convene in a courtroom that can accommodate proper social-distancing in order for examination of the exhibit to occur. The same exception may apply when the jurors need to examine a physical item of

⁶ OCR-settings are recommended for all documents scanned to digital format. OCR allows for quickly searching a scanned document for key words, numbers, and phrases.

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evidence. However, gathering in person will be the extreme exception and not the rule.

IX. Sidebars held in breakout rooms

Instructions on using breakout rooms for jury selection are discussed in detail in the instructions for both attorneys and bench officers. (See hyperlinks listed on page 1.) Breakout room technology allows for sidebars that jurors cannot see or hear but which will be livestreamed to the public. The court is responsible for setting up breakout rooms for sidebars. The only thing an attorney need do is wait for a pop-up window to appear on his/her screen that includes the option to enter the breakout room.⁷ For more instructions on how court staff will initiate the breakout room, see pages 8-14 of [these instructions](#).

One advantage of remote trials over traditional trials is that sidebars will be easier to initiate and terminate. Quite often, traditional-trial sidebars require either that the jury exit the courtroom or that the judge, court clerk, attorneys, and court reporter head for chambers or an adjacent hallway. None of that is necessary with breakout rooms which are simply a meeting within a meeting. In this respect, remote trials may be more efficient than traditional trials.

X. Jury instructions

The manner in which a judge can read, be seen, and display jury instructions all at the same time is discussed in section V, *supra*. Due to the unique challenges presented by remote trials, additional jury instructions beyond those included in CACI may be necessary. Refer back to section V for an excellent example of special instructions to jurors in remote trials.

The completed jury instructions will need to be made available to the jurors. Use of the department email address to disseminate them is recommended as one method of transmittal. The file transfer feature offered by Webex (see

⁷ Currently, the livestreaming function does not follow the court into the breakout room. Therefore, if a sidebar is to be livestreamed, the *jurors* will have to be placed into a breakout room or the “Lobby.” (See pp. 9-10 of the instructions to attorneys for more information about the Webex Lobby.) Like criminal cases, civil cases are presumed to be public proceedings, and sidebars will be livestreamed unless compelling circumstances to the contrary can be demonstrated by the party seeking to restrict public access.

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pages 9-10 of [these instructions](#)) is another option for sharing jury instructions with the jurors.

Instructions on the deliberation process are listed in section XIII, *infra*.

XI. Closing arguments

The process here is no different than opening statements. The attorney speaking should be “pinned” so that he/she is the dominant participant in the meeting.⁸ The attorney delivering closing argument must also be made a presenter⁹ so that the attorney can share his or her computer screen. Again, by using presenter mode and side-by-side view, attorneys and trial participants can see both the attorney arguing the case as well as any exhibits being shown on the screen. This is a very significant feature that Webex offers. For more instruction and detail, see pages 14-20 of [these instructions](#).

XII. Verdict forms

The remote jury trial verdict form procedure is still in flux. As simply one method, a technologically-sophisticated foreperson could digitally fill-out a verdict form (e.g. a .pdf) and send it back to the court. This could be done with many apps available today for computers, tablets, and smartphones, or it could be done with a digital pen such as the one marketed by Apple.

Another method for use could be Laserfiche, where like jury questionnaires there could be drop-down menus or interactive boxes for questions and answers. For example,

“Was the defendant’s negligence a substantial factor in causing harm to the plaintiff?”

Click the following box if the answer is “Yes.”

Click the following box if the answer is “No.”

If and only if you clicked the box for “Yes,” continue on to the next question.”

⁸ Pinning a participant in the trial is the responsibility of the court staff and is described in more detail in pages 15-18 in the instructions for bench officers.

⁹ The court staff has the responsibility of designating an attorney a “presenter.”

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In light of the many challenges posed by remote jury trials, it appears that the verdict form procedure will not pose an insurmountable task. However, like everything else in a remote trial, attorneys should prepare their proposed verdict forms well in advance.

XIII. Deliberations

Deliberations also pose unique challenges in remote civil jury trials. Court staff will be responsible each day for setting up the breakout room session that will allow jurors to deliberate privately.

a. Communications with the foreperson.

Once the jury has selected a foreperson, it will be critical for the foreperson to have a method of communication with the court. It is recommended that the foreperson be provided with the courtroom assistant's and individual department's email addresses so that questions and updates can be exchanged in a timely manner. At the very least, the foreperson should have a reliable method, i.e. a phone number, with which to communicate with the court and its staff on a moment's notice.

While jurors have the absolute right to select their foreperson, it is not a bad idea to recommend that they either select a foreperson with technological prowess or designate another juror skilled in the use of modern technology who can assist with the digital process of remote deliberations.

Because breakout rooms are not livestreamed, there is no need for the court to periodically shut it down and/or restart it. Therefore, jurors in a remote trial can pick and choose their breaks and start times without seeking input from the court. The foreperson will need to efficiently manage the jury's time.

b. Questions from the jury.

The foreperson should be responsible for transmitting questions from the jurors to the court. Because jurors will not be provided with written forms to use in submitting questions, the foreperson should transmit the jurors' questions to the court via email. An alternative is for the foreperson to recite the question out loud so that the court reporter may take it down for the record. Should individual jurors need to address the court outside the other jurors' presences, a separate breakout room can be created for this purpose.

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XIV. Reading of the verdict

When the jurors have reached a verdict, they should be returned to the main Webex meeting room where all parties and counsel can be present for the reading of the verdict.

XV. Post-trial motions and judgment

The remote civil jury trials process should not affect post-trial motions or the rendering of judgment. What remote trials may engender are motions for new trial based upon issues that arose due to the remote trial process. However, the Riverside Superior Court is not the first court to implement remote jury trials, and a large superior court like Alameda County has been using them since the summer of 2020 to great success. So have courts in other States. With no definite end to the pandemic in sight, remote trials are currently a must, and we will do everything we can to make them fair and just for all involved.

It is important to note that each superior court judge as a constitutional officer retains the power and discretion to conduct civil trials as he or she sees fit. Nevertheless, the overarching goal for the Riverside Superior Court for the foreseeable future is to conduct civil jury trials remotely in furtherance of the critically-important goal of promoting the health and safety of all Californians. (See [Cal. Emerg. Rules, rule no. 3.](#))

Should you have questions, please feel free to email them to Dept260@riverside.courts.ca.gov. Thank you very much for your cooperation with this process.