SCJC CONSULTATION RESPONSE ANNEX A

RCS

Answer to Question 1: No, the general presumption given is inappropriate. The general presumption should be:

> "All hearings shall be in person unless the court, in its discretion, grants an application for a virtual hearing; but the court shall not grant such an application in the following hearings [take in the list in sub-paragraphs (2) and (3)].

Answer to Question 2: No: see the Answer to Question 1.

Answer to Question 3: Yes, if a party wishes to apply for a change in the mode of attendance, a motion is the right way to do that, as the motion will set out the reasons underlying the application, giving both the other parties and the court adequate intimation of the reasons.

Answer to Question 4: No, the court should not have the final say in certain cases where a hearing is identified by the Rules of Court as one where an in person hearing should take place: see Answer to Question 1.

Answer to Question 5: The proposed changes will not achieve fair and open justice. There is no "open" justice where members of the public have to apply to be included in the proceedings, and then are permitted only to hear (and not see) what is taking place. Open justice occurs where members of the public have free and complete access to the proceedings, both aural and visual. Moreover remote hearings have definite drawbacks: stilted and formulaic proceedings; technological breakdowns; a lack of the normal *gravitas* engendered by in person court proceedings; strain and exhaustion for remote users; loss of important nuances of voice and body language; a lack of opportunity to test both witnesses and lawyers by a free question-and-answer dialogue.

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Answer to Question 6: No, the general presumption given is inappropriate. The general presumption should be:

> "All hearings shall be in person unless the court, in its discretion, grants an application for a virtual hearing; but the court shall not grant such an application in the following hearings [take in the list in sub-paragraphs (2) and (3)].

Answer to Question 7: No: see the Answer to Question 1.

Answer to Question 8: Yes, if a party wishes to apply for a change in the mode of attendance, a motion is the right way to do that, as the motion will set out the reasons underlying the application, giving both the other parties and the court adequate intimation of the reasons. There is a need for an application form to accompany the motion, being a form in which the reasons can be set out.

Answer to Question 9: No, the courts should not change the mode of attendance in certain cases where a hearing is identified by the Rules of Court as one where an in person hearing should take place: see Answer to Question 1. The court should not have the final say in the particular cases identified as unsuitable for remote hearings (i.e. the list of cases in sub-paragraphs (2) and (3) above).

Answer to Question 10: The proposed changes will not achieve fair and open justice. There is no "open" justice where members of the public have to apply to be included in the proceedings, and then are permitted only to hear (and not see) what is taking place. Open justice occurs where members of the public have free and complete access to the proceedings, both aural and visual. Moreover remote hearings have definite drawbacks: stilted and formulaic proceedings; technological breakdowns; a lack of the normal *gravitas* engendered by in person court proceedings; strain and exhaustion for remote users; loss of important nuances of voice and body language; a lack of opportunity to test both witnesses and lawyers by a free question-and-answer dialogue.