

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
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DATE: September 3, 2009

SUBJECT: Civil Form: *Notice of Intent to Appear by Telephone* (approve form
CIV-020) (Action Required)

Issue Statement

Code of Civil Procedure section 367.5 and amended rule 3.670 of the California Rules of Court changed the law, effective January 1, 2008, to allow parties to appear by telephone at certain conferences, hearings, and proceedings in civil cases, unless 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 case. The proposed form is intended to facilitate a party's providing written notice of intent to appear by telephone.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2010, approve *Notice of Intent to Appear by Telephone* (form CIV-020) to facilitate providing written notice to the court and the other parties that a party intends to appear at a hearing, conference, or proceeding by telephone.

The text of proposed form CIV-020 is attached at page 3.

Rationale for Recommendation

Rule 3.670 provides that a party must provide notice to the court and other parties of intent to appear by telephone. If a notice of telephonic appearance is not included below the title of the moving, opposition, or reply papers, notice must be given either orally or in writing at least three court days before the appearance. This form is to facilitate providing written notice.

Clerks from several courts requested this form, especially for the use of self-represented litigants. The form will be of assistance to represented parties as well, permitting them to easily give notice when the decision to appear by telephone is made after other papers have been filed.

The proposed form is straightforward. Item 1 identifies the party intending to appear by telephone. Item 2 identifies the event at which the appearance is to occur by title, date, time, department, and, if known, judicial officer. A box at the bottom of the form provides information about (1) the statute and rule of court that identify matters on which telephonic appearances are appropriate, (2) the need to make arrangements regarding telephone services for the appearance, and (3) the deadlines for filing and serving the notice. This box will be helpful to assure that the notice is used appropriately, particularly by self-represented litigants.

Alternatives Considered

The committee considered the alternative of not recommending a form, but concluded that a form would be of use to litigants.

Comments From Interested Parties

The proposed form was circulated for comment in the spring 2009 comment period. Comments were received from five courts and two bar organizations. Five commentators agreed with the proposal, with two agreeing if it were modified. A chart showing all comments received and the committee's responses is attached beginning at page 4.

The Superior Court of Orange County proposed clarifying item 1 by adding introductory text stating "The person appearing by phone is." The committee modified the text to clarify that the item is to identify the party intending to appear by telephone.

The Superior Court of San Diego County proposed that the name of the judicial officer before whom the matter is to be heard be added to item 2, in order to assist a clerk's office in identifying situations where the document is filed in the wrong department. The form has been modified as requested.

Implementation Requirements and Costs

There will be some minor costs in making the new form available to the public. Modification of computerized case management systems may be appropriate to integrate the new forms into the system. There are no other implementation requirements over and above those inherent to the rules and statutes already in effect authorizing telephone appearances.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT v.6 08.02.09</p> <p style="text-align: center;">NOT APPROVED BY JUDICIAL COUNCIL</p>
<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<p>NOTICE OF INTENT TO APPEAR BY TELEPHONE</p>	CASE NUMBER: _____

1. Party intending to appear by telephone is:

- Plaintiff/Petitioner *(name):*
- Defendant/Respondent *(name):*
- Other *(name):*

2. The conference, hearing, or proceeding is for *(describe):*

set on *(date):* _____ at *(time):* _____ in *(department):* _____
 before *(name of judicial officer, if known):* _____

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

See Code of Civil Procedure section 367.5 and rule 3.670 of the California Rules of Court to determine if a conference, hearing, or proceeding is one generally considered appropriate for telephone appearance. Note that a court may determine on a hearing-by-hearing basis that a personal appearance is required. (Code Civ. Proc., § 367.5(c).)

This form is intended only to provide written notice to a court and parties as provided in rule 3.670(g)(1)(B) of the California Rules of Court. **Check with court to determine how to make arrangements for telephone services for an appearance either directly with the court or through a court-appointed vendor.**

This notice must be filed with the court at least three court days before the appearance and must be served at the same time on all other parties in such a way as to ensure delivery to the parties no later than the close of the next business day. (Cal. Rules of Court, rule 3.670(g)(1)(B).)

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Civil Forms: *Notice of Intent to Appear by Telephone* (adopt form CIV-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael G. Yoder President Newport Beach	A	No additional comments.	No response is necessary.
2.	Committee on Administration of Justice of State Bar of California by Saul Bercovitch Legislative Counsel San Francisco	A	CAJ supports this proposal.	The committee notes the support.
3.	Superior Court of Kern County by Christina Rodriguez Assistant Court Supervisor Bakersfield	A	No additional comments.	No response is necessary.
4.	Superior Court of Los Angeles County	A	No additional comments.	No response is necessary.
5.	Superior Court of Orange County by Meri Fischer Family Law Analyst	AM	Form CIV-020 – should be modified as follows: before the #1 insert "person appearing by phone is:"	Item 1 has been modified in light of the comment.
6.	Superior Court of Riverside County by Carrie Snuggs Regional Operations Director	A	Form makes notifying parties and court of telephonic appearance much simpler.	The committee agrees.
7.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	AM	Form CIV-020 – Within Item 2 of this form, it would be helpful if a space was added to include the Judicial Officer before whom the matter is going to be heard in addition to the department number. This would help identify cases where the document is filed in the wrong department. This is especially important in situations where	Item 2 has been modified as proposed.

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	Commentator	Position	Comment	Committee Response
			the case was just reassigned due to a challenge, recusal, etc.	