

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
Case Management Subcommittee
Hon. Frank Roesch, Chair
Anne M. Ronan, Committee Counsel, 415-865-8933
anne.ronan@jud.ca.gov

DATE: September 30, 2008

SUBJECT: Civil Forms: *Case Management Statement* (revise form CM-110) (Action Required)

Issue Statement

Assembly Bill 500 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 case management conferences 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 revision to *Case Management Conference Statement* (form CM-110) adds a place in the caption for a party to indicate whether it intends to appear by telephone.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2009, revise the civil *Case Management Statement* (form CM-110) to provide a place for a party to indicate whether it intends to appear at the conference by telephone and to delete current item 21.

The text of revised form CM-110 is attached at pages 4–7.

Rationale for Recommendation

Telephone appearances

The *Case Management Statement* (form CM-110) does not currently include a way for a party to indicate whether it intends to appear at a conference by telephone. To implement the recent changes in the law, a place would be added in the caption of the form whereby

a party may provide notice under rule 3.670(g) that it intends to appear at the conference by telephone. Specifically, below the title of the form, a box followed by the words “Notice of Intent to Appear by Telephone, by (*name*): _____” would be added.

Other revision

Some courts have suggested that the current provision in item 21 which requires that all previous case management orders be attached to form CM-110 is unnecessary and should be eliminated. This item has been eliminated from the revised form.

Alternative Actions Considered

The committee considered not including the item indicating a party’s intent to make a telephone appearance. Some members of the committee and some commentators expressed concern that the item may lead parties to believe that telephone appearances at case management conferences are allowed even if the form is not timely filed. However the committee concluded that, because a party could, under rule 3.670(g)(1), notify the court of its intent to appear by telephone as late as three court days before the appearance by filing a separate document stating such intent, it benefits both the courts and the parties to provide this simpler method of providing earlier notice. Under either type of notice, a court still has the right to require parties to appear at the case management conference if the statement was not timely served and filed or for other good cause.

The committee also considered, and circulated for comment, modification of item 17c on the *Case Management Statement* to require that parties identify “issues regarding the discovery of electronically stored information.” This modification was to support a separately proposed amendment to rule 3.724, requiring that the parties meet and confer on issues relating to electronic discovery prior to the initial case management conference. Both proposals, which the committee initially voted to recommend to the Judicial Council, were intended to supplement legislation that the Judicial Council this year sponsored to amend the Civil Discovery Act, to improve the procedures for handling the discovery of electronically stored information.¹ Because the governor has recently vetoed that legislation, however, the committee has withdrawn both proposals from the current cycle.

Comments From Interested Parties

The revised form was circulated for public comments in the spring 2008 comments cycle. Comments were received from 12 individuals and organizations, including several courts and bar organizations. Most of the commentators were in favor of the proposal. A summary of the comments and the committee’s responses is attached at pages 8–11.

¹ The legislation was contained in Assembly Bill 926 (Evans), which was jointly sponsored by the Judicial Council, California Defense Council, and the Consumer Attorneys of California.

Some commentators requested a modification of the circulated form to include a blank space in which to identify the specific party or parties that were stating their intent to appear by phone. Some also requested a modification of the text to more directly track the language used in rule 3.670(g)(1)(B), “Notice of Intent to Appear by Telephone.” Both of these modifications have been made to the form.

The Superior Court of Los Angeles County objected that the inclusion of the “Notice of Telephone Appearance” box would suggest that telephone appearances were permitted in all instances and would burden the court by requiring advance review of the forms in order to advise the parties that a telephone appearance would not be permitted due to noncompliance with the rules. The commentator also expressed concerns that the notice on the form would cause confusion if a party later decided to appear in person. The committee notes that both concerns go to the provisions of rule 3.670 itself, rather than to the notice item on the case management form. Under that rule, a party can file a separate Notice of Intent to Appear by Telephone up to three court days before the scheduled appearance or inform the court orally of its intent (rule 3.670(g)(1)(B)). The rule also provides for instances where a party subsequently decides to appear in person (rule 3.670(g)(3)).

The State Bar Committee on Administration of Justice objected to the revision of item 17 of form CM-110 because, while the commentator supported parallel language in the context of the e-discovery rules, those rules have not yet been adopted. Those rules were being considered concurrently with the revision to item 17, but, as noted above, the proposed rules and the modification to item 17 have been withdrawn.

Implementation Requirements and Costs

Making the new forms available to the public will incur minor costs in. There are no other implementation requirements over and above those inherent to the revisions to rule 3.670 that were adopted in 2007.

Attachments

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request a jury trial a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. Trial date

- a. The trial has been set for *(date)*:
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:
- c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. Estimated length of trial

The party or parties estimate that the trial will take *(check one)*:

- a. days *(specify number)*:
- b. hours (short causes) *(specify)*:

8. Trial representation *(to be answered for each party)*

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. Fax number:
- f. E-mail address:
- g. Party represented:

Additional representation is described in Attachment 8.

9. Preference

This case is entitled to preference *(specify code section)*:

10. Alternative Dispute Resolution (ADR)

- a. Counsel has has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. All parties have agreed to a form of ADR. ADR will be completed by *(date)*:
- c. The case has gone to an ADR process *(indicate status)*:

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in *(check all that apply)*:

- (1) Mediation
- (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) Binding judicial arbitration
- (5) Binding private arbitration
- (6) Neutral case evaluation
- (7) Other *(specify)*:

e. This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court *(specify exemption)*:

11. Settlement conference

The party or parties are willing to participate in an early settlement conference *(specify when)*:

12. Insurance

a. Insurance carrier, if any, for party filing this statement *(name)*:

b. Reservation of rights: Yes No

c. Coverage issues will significantly affect resolution of this case *(explain)*:

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

Bankruptcy Other *(specify)*:

Status:

14. Related cases, consolidation, and coordination

a. There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

Additional cases are described in Attachment 14a.

b. A motion to consolidate coordinate will be filed by *(name party)*:

15. Bifurcation

The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons)*:

16. Other motions

The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues)*:

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Discovery

- a. The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
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- c. The following discovery issues are anticipated (*specify*):

18. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PARTY OR ATTORNEY)
(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

SPR08-25**Civil Form: Case Management Conference Statement** (revise form CM-110)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
1.	Tina Allen Highland	N	I was not allowed to attend the mandatory settlement conference because plaintiff's brief contained a new statement of an alleged agreement.	This comment does not address the proposed revision to form CM-110.
2.	Julie A. Goren, Esq. Lawdable Press Sherman Oaks	A	1. Fix the typesetting error in the first box. 2. Question: Where parties jointly file the statement, would checking the box for telephone appearance mean that all parties agree to appear by phone? Should there be a way for one party, but not all parties, to indicate their intent to appear by phone?	1. The error has been corrected. 2. The proposed form has been revised to address this concern.
3.	Cheryl Kanatzar Deputy Executive Officer Superior Court of Ventura County	AM	The form should be modified to reflect clearly which party would be appearing telephonically if that box is checked.	The proposed form has been revised to address this concern.
4.	Orange County Bar Association By Cathrine Castaldi, President Newport Beach	A	No specific comments.	Commentator's agreement is noted.
5.	Alex Scheingross San Diego	A	No specific comments.	Commentator's agreement is noted.
6.	State Bar of California, Committee on Administration of Justice By Saul Bercovitch, Staff Attorney San Francisco	AM	CAJ supports this proposal in general, but suggests some modifications. 1. The Case Management Statement may be submitted by a party or jointly by the parties. CAJ believes it would be helpful to add "by _____" after the words "Telephone	The committee's support is noted. 1. The proposed form has been revised to address this concern.

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	Commentator	Position	Comment	Committee Response
			<p>Appearance,” so that where the Case Management Statement statement is filed jointly, the party or parties who want to make a Telephone Appearance can fill in the blank.</p> <p>2. CAJ does not favor adding the phrase “including issues regarding the discovery of electronically stored information” to Paragraph 17.c, at least at this time. Although CAJ supported parallel language in the context of the proposed electronic discovery rules, those rules have not yet been adopted. In addition, other relevant items are not specifically noted in the form.</p> <p>3. In discussing this form, CAJ noted an issue with rule 3.670(g)(1)(A), which should be clarified at some point. The rule currently states: “Place the phrase ‘Telephone Appearance’ below the title of the moving, opposing, or reply papers.” CAJ believes that “Case Management Statement” should be added to the list.</p>	<p>2. This proposed modification has been withdrawn.</p> <p>3. Because the Case Management Statement (form CM-110) is a mandatory form, adding the new phrase to the form is sufficient, without further change to the rule.</p>
7.	Superior Court of Los Angeles County	N	<p>Do not agree with proposed amendment to the form Case Management Statement, which would add a box indicating if a party intended to appear by telephone.</p> <p>1. Including the box suggests that telephonic appearance is permitted in all cases. However, the Rules of Court permit telephonic appearance only if the CMC statement is timely filed.</p>	<p>1. A party has until three court days before the appearance to provide notice to the court, either orally or in writing, of its intent to appear by phone. Including an item for providing such</p>

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	Commentator	Position	Comment	Committee Response
			<p>Presumably this will add to the burden on the court to review all CMC statements sufficiently in advance of the CMC in order to contact the party or counsel to advise him or her that a telephonic appearance will be not be permitted because the party did not comply with the Rules.</p> <p>2. It also has the potential for causing confusion: if a party checks the “telephonic appearance” box but later decides to appear in person, the opposing party may appear by telephone in reliance on the representation that the other party would not appear.</p>	<p>notice in form CM-110 (rule 3.670 (g)(1)(B)) would generally provide more notice than is required under the rules. If that form is filed late, the court may bar the telephone appearance no matter how the notice is provided.</p> <p>2. This issue has been addressed by rule 3.670(g)(3), which expressly provides that any party that has given notice to appear by telephone and that subsequently chooses to appear in person must so notify the court and all other parties at least two court days before the appearance. The proposal in no way changes that rule.</p>
8.	Superior Court of Riverside County By David Gutknecht Supervising Management Analyst	A	As Assembly Bill 500 and amended rule 3.670 have changed the law to allow parties to appear by telephone at case management conferences, unless otherwise ordered by the court, the proposed revisions to the Case Management Statement (form CM-110), particularly the caption for a party to indicate whether it intends to appear by telephone, are appropriate.	Commentator’s agreement is noted.
9.	Superior Court of San Bernardino County By Debra Meyers, Director Staff Counsel Services and Self-Help Division	A	No specific comments.	Commentator’s approval is noted.

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	Commentator	Position	Comment	Committee Response
10.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	A	No specific comments.	Commentator's approval is noted.
11.	Derek Tabone, Attorney Van Nuys	A	No specific comments.	Commentator's approval is noted.
12.	TCPJAC/CEAC Joint Working Group on Rules By Patrick Danna, Court Services Analyst, Lead AOC Staff San Francisco	AM	The Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Working Group recommends that the revised form have a check box to clearly state "Notice of intent to appear by telephone." This would notify the court of the litigants request to appear by telephone and give the court the discretion to approve appearances by telephone.	The proposed form has been revised to address this concern. The committee notes, however, that under rule 3.670 the parties have the right, if in compliance with the rule, to appear by telephone at a case management conference unless the court, on a hearing-by-hearing basis, determines otherwise.