

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

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Lee Smalley Edmon, Chair
Case Management Subcommittee
Hon. Robert B. Freedman, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
patrick.o'donnell@jud.ca.gov

DATE: October 9, 2007

SUBJECT: Telephone Appearances in Civil Cases (amend Cal. Rules of Court,
rules 3.670, 3.722, and 3.1207 and standard 3.1; revise form CM-020)
(Action Required)

Issue Statement

The ability of parties and attorneys to appear by telephone at hearings and conferences in civil cases has increased access to the courts and reduced litigation costs. To make telephone appearances more available to parties and attorneys in these cases, several rules of court and a standard of judicial administration should be amended and a Judicial Council form should be revised. The amendments are intended to promote uniformity in the procedures and practices relating to telephone appearances in civil cases.¹

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2008:

1. Amend rule 3.670 of the California Rules of Court to: (a) permit parties to appear by telephone at case management conferences and other specified conferences, hearings, and proceedings, unless the court determines on a hearing-by-hearing basis that a personal appearance is required; (b) specify the types of proceedings at which a personal appearance is required, unless the

¹ Legislation has also been enacted this year that will expand the use of telephone appearances in court conferences, hearings, and proceedings in civil cases. (See Assem. Bill 500 [Lieu].) The proposed rule amendments are consistent with the legislation.

court orders otherwise; (c) shorten the time for a party to provide notice of intent to appear by telephone; and (d) permit a party to join in a request to appear by telephone;

2. Amend rule 3.722, on case management conferences, to be consistent with amended rule 3.670 and AB 500;
3. Amend standard 3.1 to eliminate subdivision (c) that is not consistent with amended rule 3.670 and AB 500;
4. Amend rule 3.1207, on ex parte applications, to be consistent with the new provision in rule 3.670 that parties do not need to appear in person on ex parte applications for an extension of time to serve pleadings; and
5. Revise *Ex Parte Application for Extension of Time to Serve Pleading and Orders* (form CM-020) to include a statement that the court will consider the application without a personal appearance, as provided in amended rules 3.670 and 3.1207.

The text of the amended rules and standard is attached to the report at pages 15–20. A copy of revised form CM-020 is attached at pages 21 and 22.

Rationale for Recommendation

Amendments to rule 3.670

The Civil and Small Claims Advisory Committee recommends that the current telephone appearance procedures be modified to improve access to the courts and reduce the costs of litigation. The most significant changes would be to rule 3.670 (formerly rule 298), the principal rule on telephone appearances in civil cases.

Consistent with AB 500, the amended rule 3.670 would identify the following specific hearings, conferences, and proceedings at which a party may appear by telephone: (1) case management conferences; (2) trial setting conferences; (3) hearings on law and motion, except for motions in limine; (4) hearings on discovery motions; (5) status conferences, including conferences to review the status of arbitration or mediation; and (6) hearings to review the dismissal of actions. This list includes case management conferences, which is a significant change from current rule 3.670, under which the parties are required to appear in person at case management conferences unless the court permits a telephone appearance.

Rule 3.670 also would be amended to include a list of the types of conferences, hearings, and proceedings at which parties are generally required to appear in person: (1) trials and hearings at which witnesses are expected to testify, (2)

hearings on temporary restraining orders, (3) settlement conferences, (4) trial management conferences, (5) hearings on motions in limine, and (6) hearings on petitions to confirm the sale of property under the Probate Code. (See amended rule 3.670(d)(1)–(6).)

A new subdivision (e) of rule 3.670 would set forth the court’s discretion to modify the provisions in (c) permitting telephone appearances and the provisions in (d) requiring personal appearances. Under rule 3.670(e)(2), the court may require a party to appear in person at a hearing, conference, or proceeding listed in (c) if 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 particular case. In addition, under subdivision (e)(3), the court may permit a party to appear by telephone at a hearing, conference, or proceeding listed in (d) if the court determines that a telephone appearance is appropriate.

The current notice provisions for telephone appearances would be modified. For instance, rule 3.670 presently requires a party that chooses to appear by telephone to give notice of intent to appear “at least five court days before the appearance.” This would be changed to “at least three court days before the appearance.” (See amended rule 3.670(g)(1)(B).) The committee determined that this shortened notice is workable under contemporary telephone appearance practices. To implement the shortened notice period, rule 3.670(g)(1)(A) would be modified to allow the notice to be given in a party’s reply papers.

Other amendments and form change

Rule 3.722, on case management conferences, rule 3.1207, on ex parte applications, and standard 3.1, on telephone appearances, would be amended to be consistent with the amended rule 3.670 and AB 500. Also, rule 3.1207 would be amended to include, in the list of ex parte applications at which an applicant need not appear personally, applications for extensions of time to serve pleadings. To reflect this rule change, *Ex Parte Application for Extension of Time to Serve Pleading and Orders* (form CM-020) would be revised to include a statement that the court will consider the application without a personal appearance.

Alternative Actions Considered

The committee considered a variety of alternative procedures for telephone appearances before reaching consensus in the provisions recommended in the report. In particular, the members discussed what types of conferences, hearings, and proceedings should be listed in amended rule 3.670(c) and (d). The committee also considered various alternatives to the new notice provisions in rule 3.670(g) and (h).

One other alternative considered was exempting complex civil cases from the application of rule 3.670. The version of the rule circulated for comment contained an exception for complex cases. However, in the course of discussions on AB 500, the sponsors of the legislation argued that complex cases should not be exempt. The exemption for complex cases was not included in the legislation and, to be consistent with the legislation, the exemption was removed from the proposed amendments to rule 3.670.

Comments From Interested Parties

This proposal was circulated for public comment in spring 2007. A total of 22 comments were received. The commentators included judicial officers, court administrators, and attorneys. A chart summarizing the comments and the committee's responses is attached to the report at pages 23–36. The commentators generally supported the proposal, although a few suggested modifications. After reviewing the comments, the committee made a number of changes to the proposed rules.

Implementation Requirements and Costs

Many judicial officers in civil departments already permit telephone appearances at most conferences and hearings. The major impact of the amended rules effort will be on judicial officers who do not currently permit telephone appearances at the types of conferences and hearings listed in rule 3.670(c).

In addition, any judicial officer who wants to require an attorney or self-represented party to appear in person at a case management conference will need to make a hearing-by-hearing determination that such an appearance would be of material assistance in the determination of the proceedings or in the effective management or resolution of the case, and will need to notify the attorney or party to appear in person.

As far as costs are concerned, the provision of telephone equipment to the courts by the major vendor has significantly reduced the costs to the courts of making telephone appearances available. As a result of this proposal, court may incur some incidental costs; however, it should be feasible for courts to make telephone appearances available in all the cases required by the rules and legislation.

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Issue Statement

The ability of parties and attorneys to appear by telephone at hearings and conferences in civil cases has increased access to the courts and reduced litigation costs. To make telephone appearances more available to parties and attorneys in these cases, several rules of court and a standard of judicial administration should be amended and a Judicial Council form should be revised. The amendments are intended to promote uniformity in the procedures and practices relating to telephone appearances in civil cases.²

Rationale for Recommendation

History of telephone appearances

In 1982, the Legislature first authorized telephone appearances by attorneys in certain types of court proceedings by enacting Code of Civil Procedure sections 575.5 and 1006.5. Section 575.5 requires the Judicial Council to adopt a standard of judicial administration governing the appearance of counsel by telephone at any pretrial, trial, setting, and arbitration determination conference in a civil case. (Code Civ. Proc., § 575.5(a).) The statute also requires the standard to permit parties to appear by telephone at such a conference unless the conference is

² Legislation has also been enacted this year that will expand the use of telephone appearances in court conferences, hearings, and proceedings in civil cases. (See Assem. Bill 500 [Lieu].) The proposed rule amendments are consistent with the legislation.

combined with a settlement conference or the court orders the personal appearance of counsel. (*Id.*, § 575.5(b).)³

Code of Civil Procedure section 1006.5 similarly mandates that the Judicial Council adopt a standard of judicial administration permitting counsel to appear by telephone at any hearing of a demurrer, an order to show cause, or a pretrial motion. (*Id.*, § 1006.5(a).) Section 1006.5 requires that the standard permit counsel to appear by telephone at any of these hearings unless the action is a proceeding under the Family Code, unless a party states an intent to present oral testimony, or unless the court orders the personal appearance of counsel. (*Id.*, § 1006.5(b).) The statute requires each court to advise the Judicial Council, within six months of the adoption of the standard, whether it will incorporate the standard, or a modified version thereof, into its local rules or will not provide for the appearance of counsel by telephone in its local rules. (*Id.*, § 1006.5(c).)

In accordance with Code of Civil Procedure sections 575.5 and 1006.5, the Judicial Council adopted section 21 (currently standard 3.1) of the Standards of Judicial Administration, on appearances by telephone. Standard 3.1 recommends that each court have “adequate telephone equipment for use in hearings at which counsel may appear by telephone.” (Cal. Stds. Jud. Admin., standard 3.1(a).) Additionally, the standard recommends that each court (1) specify, by local rule or uniform written policy, the types of matters that would be particularly suitable for disposition by telephone hearing, and (2) encourage telephone appearances in nonevidentiary civil matters, if appropriate. (*Id.*, standard 3.1(c).) Finally, the standard recommends that each court adopt a local rule specifying details about telephone appearances. (*Id.*, standard 3.1(e).)

In 1987, the Legislature enacted Government Code section 68070.1 to expand the availability of telephone appearances. That statute requires the Judicial Council to adopt a standard allowing counsel to appear by telephone in any nonevidentiary law and motion or probate hearing or conference. (Gov. Code, § 68070.1(a).) The statute also allows the Judicial Council to exclude certain types of hearings from the statutory mandates. (*Ibid.*) Finally, the statute requires the Judicial Council to establish a pilot project for teleconferencing in nonevidentiary law and motion and probate hearings and conferences. (*Id.*, § 68070.1(b).) In 1988, the Judicial Council established the pilot project under rule 298 of the California Rules of Court. Ten courts participated in the pilot project.

³ Code of Civil Procedure section 575.6, enacted in 1993, provides that, notwithstanding section 575.5, the superior court of each county shall adopt a rule enabling the appearance of counsel by telephone at trial setting conferences in civil cases. It also provides that a local rule may require the personal appearance of counsel at a trial setting conference for good cause stated.

Despite the statutes, rules, and standards encouraging the use of telephone appearances, attorneys expressed concerns that courts were not permitting telephone appearances in many situations. In 1996, the Judicial Council directed the Civil and Small Claims Advisory Committee to prepare a rule of court on telephone appearances. In October 1997, the Civil and Small Claims Advisory Committee recommended that rule 298 of the California Rules of Court be amended to end the pilot project and replace it with a permanent rule on telephone appearances. The committee felt that, as a result of the willingness of private companies to install and maintain telephone equipment free of charge, the main objection to expanding the use of telephone appearances—expense—had been eliminated.

The committee's proposed amendments to rule 298 permit counsel to appear by telephone in any nonevidentiary law and motion hearing, probate hearing, or conference, except when the court determines that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case. Courts are required to make these determinations on a case-by-case basis. Counsel are required to appear personally for settlement conferences and final status conferences unless the court orders otherwise. When the Judicial Council considered the proposed amendments to rule 298, some members were concerned that the amendments did not require counsel to notify the court or other parties if they intended to appear by telephone. In response, the committee added notice provisions to rule 298. The amended rule, with the notice provisions, became effective July 1, 1998.

Recent developments

In 2003, the telephonic appearance rule was amended to delete obsolete references to municipal courts. The amendments also extended the coverage of the rule to all parties. Thus, the rule currently authorizes self-represented persons as well as attorneys to appear by telephone at certain types of conferences and hearings in civil cases.

The Civil and Small Claims Advisory Committee considered the issue of telephone appearances again in 2003–2004. It recommended amendments to rule 298,⁴ relating to telephone appearances, and to rule 212,⁵ on case management conferences. Specifically, the committee proposed amending rule 298, authorizing telephone appearances, to eliminate the exception for case management conferences. Under the proposed amendments, counsel and self-represented parties generally would have been allowed to appear by telephone at case

⁴ Rule 298 was renumbered as rule 3.670, effective January 1, 2007.

⁵ Rule 212 was divided and renumbered as rules 3.720–3.730, effective January 1, 2007. The provision relating to appearing personally or, if permitted, by telephone at a case management conference is currently in rule 3.722(c).

management conferences. Courts would still have had the discretion to require personal appearances at case management conferences on a case-by-case basis. The committee also proposed amending rule 212 on case management conferences to eliminate the provision that counsel “must appear personally or, if permitted under rule 298(c), by telephone.” The proposed amendments to rules 298 and 212 were presented to the Judicial Council in October 2004. After discussing the amendments, the council referred the proposals to the Civil and Small Claims Advisory Committee for further consideration.

Assembly Bill 500

Attorneys have continued to support the expansion of opportunities to appear by telephone at conferences, hearings, and proceedings. In February 2007, Assembly Bill 500 (Lieu) was introduced. This legislation, as originally proposed, would have permitted a party to appear by telephone at any hearing or conference at which witnesses were not expected to testify. It also would have changed the provisions relating to notice to appear by telephone and would have placed them in a statute.

As the Civil and Small Claims Advisory Committee developed its proposed rules on telephone appearances during 2007, discussions were held regarding AB 500. In June 2007, the legislation was amended and is now compatible with the rules proposal contained in this report. The intent of the legislation is to promote uniformity in the procedures and practices relating to telephone appearances. The legislation states that courts should, to the extent feasible, permit parties to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases.

AB 500 specifies the types of hearings, conferences, and proceedings at which a party that has provided notice may appear by telephone in general civil cases. These are (1) case management conferences; (2) trial setting conferences; (3) hearings on law and motion, except motions in limine; (4) hearings on discovery motions; (5) conferences to review the status of an arbitration or a mediation; (6) hearings to review the dismissal of an action; and (7) any other hearings, conferences, or proceedings if the court determines that a telephone appearance is appropriate. The statute provides that the court may require a party to appear in person at the conferences, hearings, and proceedings described above if 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.

When AB 500 was amended, the notice provisions were removed. Hence, notice to appear by telephone is governed by the California Rules of Court. As described below, the proposed amendments to rule 3.670 include changes to the current notice provisions.

When AB 500 is enacted, it will supersede all previous legislation regarding telephone appearances in civil cases. AB 500 will repeal Code of Civil Procedure sections 575.5, 575.6, and 1006.5 and Government Code section 68070.1. As a result, new Code of Civil Procedure section 367.5 and the rules in the California Rules of Court will govern telephone appearances in general civil cases.

Amendments to rule 3.670

The Civil and Small Claims Advisory Committee recommends that the current telephone appearance procedures be modified to improve access to the courts and reduce the costs of litigation. The most significant changes would be to rule 3.670 (formerly rule 298), the principal rule on telephone appearances in civil cases. This rule, when it was originally adopted, provided for pilot projects in telephone appearances. As discussed above, previous amendments expanded the scope and application of the rule. The rule presently allows self-represented parties as well as attorneys to appear by telephone. It applies to all courts. The rule permits parties to appear by telephone at most hearings and conferences in civil cases, with certain exceptions. The committee's proposed changes to rule 3.670 are described below.

Rule 3.670(a) and (b)

Consistent with AB 500, a new preliminary subdivision would state that the intent of rule 3.670 is to promote uniformity in the practices and procedures relating to telephone appearances in civil cases. The rule would also include a policy statement that courts, to the extent feasible, should permit parties to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases. (See amended rule 3.670(a).) This statement is the same as the policy statement in AB 500. Rule 3.670 would continue to specify that it applies to all general civil cases and to unlawful detainer and probate proceedings. (See amended rule 3.670(b).)⁶

Rule 3.670(c)

Consistent with AB 500, rule 3.670(c) would identify the following hearings, conferences, and proceedings at which a party may appear by telephone: (1) case management conferences; (2) trial setting conferences; (3) hearings on law and motion, except for motions in limine; (4) hearings on discovery motions; (5) status conferences, including conferences to review the status of arbitration or mediation; and (6) hearings to review the dismissal of actions. This list includes case management conferences, which is a significant change from current rule 3.670, under which the parties are required to appear in person at case management conferences unless the court permits a telephone appearance. However, a party's ability to appear by telephone at a case management conference would be

⁶ A separate rule authorizing telephone appearances in child support proceedings was adopted, effective July 1, 2005. (See Cal. Rules of Court, rule 5.324.)

conditional: the party must have made a good faith effort to meet and confer and have filed a timely case management conference statement before the conference date.

Rule 3.670(d)

Rule 3.670 would be amended to replace the present list of “exceptions” with a list of the types of conferences, hearings, and proceedings at which parties are generally required to appear in person: (1) trials and hearings at which witnesses are expected to testify, (2) hearings on temporary restraining orders, (3) settlement conferences, (4) trial management conferences, (5) hearings on motions in limine, and (6) hearings on petitions to confirm the sale of property under the Probate Code. (See amended rule 3.670(d)(1)–(6).) In addition, the rule would require personal appearances for (1) applicants seeking ex parte orders except for certain specified types of orders, (2) persons ordered to appear to show cause why sanctions should not be imposed for violation of a court order or rule, and (3) persons ordered to appear in a order or citation issued under the Probate Code. (See amended rule 3.670(d)(7)–(9).)

Rule 3.670(e)

A new subdivision (e) of rule 3.670 would set forth the court’s discretion to modify the provisions in (c) permitting telephone appearances and the provisions in (d) requiring personal appearances. In exercising its discretion, the court is to consider the general policy favoring telephone appearances in civil cases. (See amended rule 3.670(e)(1).) Under rule 3.670(e)(2), the court may require a party to appear in person at a hearing, conference, or proceeding listed in (c) if 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 particular case. In addition, under subdivision (e)(3), the court may permit a party to appear by telephone at a hearing, conference, or proceeding listed in (d) if the court determines that a telephone appearance is appropriate.

Rule 3.670(f)

A new subdivision (f) would be added to rule 3.670 specifying that if, at any time during a hearing, conference, or proceeding conducted by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance. This provision is based on a similar provision in the current telephone appearance rule for hearings and conferences in child support cases. (See rule 5.324(i).)

Rule 3.670(g)

The current notice provisions for telephone appearances would be modified. Rule 3.670 presently requires a party that chooses to appear by telephone to give notice

of intent to appear “at least five court days before the appearance.” This would be changed to “at least three court days before the appearance.” (See amended rule 3.670(g)(1)(B).) The committee determined that this shortened notice is workable under contemporary telephone appearance practices. To implement the shortened notice period, rule 3.670(g)(1)(A) would be modified to allow the notice to be given in a party’s reply papers.

A new provision would allow a party that has not given the notice under (g)(1) to join in the request to appear by telephone. A party may join by notifying the court and all other parties that it intends to appear by telephone no later than noon on the court day before the appearance. (See amended rule 3.670(g)(2).)

Another new provision states that the court, on a showing of good cause, may permit a party to appear by telephone even if the party has not given the notice required under (g)(1) or (2). (See amended rule 3.670(g)(4).) This recognizes that there may be circumstances under which a party who may not have anticipated the need to appear by telephone may need to do so. Also, the court may permit a party to appear in person even if the party has not given the notice required under (g)(3).

Rule 3.670(h)

The provision in rule 3.670 concerning notice by the court that a personal appearance is required would be modified to be compatible with contemporary practices and procedures. Instead of requiring notice by telephone, the rule would require “reasonable notice.” The rule would also provide that the court “may continue the hearing if necessary to accommodate the personal appearance.” (See amended rule 3.670(h).) Finally, a sentence would be added: “The court may direct the court clerk, a court-appointed vendor, a party, or an attorney to provide the notification.”

Other amendments and form change

Rule 3.722, on case management conferences, rule 3.1207, on ex parte applications, and standard 3.1, on telephone appearances, would be amended to be consistent with the amended rule 3.670 and AB 500.

Rule 3.722

Rule 3.722(c) would be amended to state that parties must appear at case management conferences either by telephone or personally, as provided in rule 3.670. The provision in subdivision (c) based on current rule 3.670, which indicates that a party requires the permission of the court to appear by telephone, would be eliminated.

Rule 3.1207 and form CM-020

Rule 3.1207 would be amended to include, in the list of ex parte applications at which an applicant need not appear personally, applications for extensions of time to serve pleadings. To reflect this rule change, *Ex Parte Application for Extension of Time to Serve Pleading and Orders* (form CM-020) would be revised to include a statement that the court will consider the application without a personal appearance.

Standard 3.1

In standard 3.1, subdivision (c) currently states that courts should specify by local rule or policy the types of motions they consider particularly suitable for telephone appearances. This provision would be repealed as obsolete and inconsistent with amended rule 3.670 and AB 500, because the rule and legislation are meant to create uniformity of practice and specify the types of matters at which parties may appear by telephone throughout the state.

Alternative Actions Considered

The committee considered a variety of alternative procedures for telephone appearances before reaching consensus in the provisions recommended in the report. In particular, the members discussed what types of conferences, hearings, and proceedings should be listed in amended rule 3.670(c) and (d). The committee also considered various alternatives to the new notice provisions in rule 3.670(g) and (h).

One other alternative considered was exempting complex civil cases from the application of rule 3.670. The version of the rule circulated for comment contained an exception for complex cases. However, in the course of discussions on AB 500, the sponsors of the legislation argued that complex cases should not be exempt. The current law on telephone appearances does not exclude complex cases. There was a concern that if an exemption were created, there would be no law governing telephone appearances in complex civil cases. The sponsors also believed that the proposed legislation and related rule amendments would work for complex cases. If the court in a complex case needs the parties to appear in person, it would have the authority under the proposed legislation to order them to appear on a hearing-by-hearing basis. Accordingly, the exemption for complex cases was not included in the legislation and, to be consistent with the legislation, the exemption was removed from the proposed amendments to rule 3.670.

Comments From Interested Parties

This proposal was circulated for public comment in spring 2007. A total of 22 comments were received. The commentators included judicial officers, court administrators, and attorneys. The commentators generally supported the proposal,

although a few suggested modifications. A chart summarizing the comments and the committee's responses is attached at pages 23–36.

After reviewing the comments, the committee made a number of changes to the proposed rules. For example, it broadened rule 3.670(c)(5), regarding the conferences at which a party may appear by telephone, to read: "Status conferences, including conferences to review the status of an arbitration or a mediation." It modified the notice to be given by the court to simply be "reasonable notice before the hearing." And it added the statement that the court "may continue the hearing if necessary to accommodate the personal appearance."

Implementation Requirements and Costs

Many judicial officers in civil departments already permit telephone appearances at most conferences and hearings. The major impact of the amended rules effort will be on judicial officers who do not currently permit telephone appearances at the types of conferences and hearings listed in rule 3.670(c). For these judicial officers and their court staffs, it will be necessary to become familiar with, and to implement, the procedures required to permit telephone appearances.

In addition, any judicial officer who wants to require an attorney or self-represented party to appear in person at a case management conference will need to make a hearing-by-hearing determination that such an appearance would be of material assistance in the determination of the proceedings or in the effective management or resolution of the case, and will need to notify the attorney or party to appear in person.

As far as costs are concerned, the provision of telephone equipment to the courts by the major vendor has significantly reduced the costs to the courts of making telephone appearances available. As a result of this proposal, courts may incur some incidental costs; however, it should be feasible for courts to make telephone appearances available in all the cases required by the rules and legislation.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2008:

1. Amend rule 3.670 of the California Rules of Court to: (a) permit parties to appear by telephone at case management conferences and other specified conferences, hearings, and proceedings, unless the court determines on a hearing-by-hearing basis that a personal appearance is required; (b) specify the types of proceedings at which a personal appearance is required, unless the court orders otherwise; (c) shorten the time for a party to provide notice of

intent to appear by telephone; and (d) permit a party to join in a request to appear by telephone;

2. Amend rule 3.722, on case management conferences, to be consistent with amended rule 3.670 and AB 500;
3. Amend standard 3.1 to eliminate subdivision (c) that is not consistent with amended rule 3.670 and AB 500;
4. Amend rule 3.1207, on ex parte applications, to be consistent with the new provision in rule 3.670 that parties do not need to appear in person on ex parte applications for an extension of time to serve pleadings; and
5. Revise *Ex Parte Application for Extension of Time to Serve Pleading and Orders* (form CM-020) to include a statement that the court will consider the application without a personal appearance, as provided in amended rules 3.670 and 3.1207.

The text of the amended rules and standard is attached at pages 15–20. A copy of revised form CM-020 is attached at pages 21 and 22.

Attachments

Rules 3.670, 3.722, and 3.1207, and standard 3.1 of the California Rules of Court are amended, effective January 1, 2008, to read:

1 **Rule 3.670. Telephone appearance**

2
3 **(a) Policy favoring telephone appearances**

4
5 The intent of this rule is to promote uniformity in the practices and
6 procedures relating to telephone appearances in civil cases. To improve
7 access to the courts and reduce litigation costs, courts should permit parties,
8 to the extent feasible, to appear by telephone at appropriate conferences,
9 hearings, and proceedings in civil cases.

10
11 **(a)(b) Application**

12
13 This rule applies to all general civil cases as defined in rule 1.6 and to
14 unlawful detainer and probate proceedings.

15
16 **(b)(c) General provision authorizing parties to appear by telephone**

17
18 ~~Except as provided in (c), a party may appear by telephone in any conference~~
19 ~~or hearing at which witnesses are not expected to be called to testify. Except~~
20 as provided in (e)(2), a party may appear by telephone at the following
21 conferences, hearings, and proceedings:

- 22
23 (1) Case management conferences, provided the party has made a good
24 faith effort to meet and confer and has timely served and filed a case
25 management statement before the conference date;
26
27 (2) Trial setting conferences;
28
29 (3) Hearings on law and motion, except motions in limine;
30
31 (4) Hearings on discovery motions;
32
33 (5) Status conferences, including conferences to review the status of an
34 arbitration or a mediation; and
35
36 (6) Hearings to review the dismissal of an action.

37
38 **(e)(d) Exceptions Required personal appearances**

1 Except as provided in (e)(3), a personal appearance is required for hearings,
2 conferences, and proceedings not listed in (c), including the following:

- 3
4 (1) Trials and hearings at which witnesses are expected to testify;
5
6 (2) Hearings on temporary restraining orders;
7
8 ~~(1)(3) Settlement conferences, unless the court orders otherwise;~~
9
10 ~~(2) Case management conferences, unless the court permits telephone~~
11 ~~appearances at those conferences; and~~
12
13 ~~(3) Any hearing or conference for which the court, in its discretion,~~
14 ~~determines that a personal appearance would materially assist in a~~
15 ~~determination of the proceeding or in resolution of the case. The court~~
16 ~~must make this determination on a case-by-case basis.~~
17
18 (4) Trial management conferences;
19
20 (5) Hearings on motions in limine; and
21
22 (6) Hearings on petitions to confirm the sale of property under the Probate
23 Code.

24
25 In addition, except as provided in (e)(3), a personal appearance is required
26 for the following persons:

- 27
28 (7) Applicants seeking an ex parte order, except when the applicant is
29 seeking an order:
30
31 (A) For permission to file a memorandum in excess of the applicable
32 page limits;
33
34 (B) For an extension of time to serve pleadings;
35
36 (C) To set hearing dates on alternative writs and orders to show cause;
37 or
38
39 (D) By stipulation of the parties;
40
41 (8) Persons ordered to appear to show cause why sanctions should not be
42 imposed for violation of a court order or a rule; or
43

1 (9) Persons ordered to appear in an order or citation issued under the
2 Probate Code.

3
4 At the proceedings under (7), (8), and (9), parties who are not required to
5 appear in person under this rule may appear by telephone.

6
7 **(e) Court discretion to modify rule**

8
9 (1) Policy favoring telephone appearances in civil cases

10
11 In exercising its discretion under this provision, the court should
12 consider the general policy favoring telephone appearances in civil
13 cases.

14
15 (2) Court may require personal appearances

16
17 The court may require a party to appear in person at a hearing,
18 conference, or proceeding listed in (c) if the court determines on a
19 hearing-by-hearing basis that a personal appearance would materially
20 assist in the determination of the proceedings or in the effective
21 management or resolution of the particular case.

22
23 (3) Court may permit appearances by telephone

24
25 The court may permit a party to appear by telephone at a hearing,
26 conference, or proceeding under (d) if the court determines that a
27 telephone appearance is appropriate.

28
29 **(f) Need for personal appearance**

30
31 If, at any time during a hearing, conference, or proceeding conducted by
32 telephone, the court determines that a personal appearance is necessary, the
33 court may continue the matter and require a personal appearance.

34
35 **(d)(g) Notice by party**

36
37 (1) A party choosing to appear by telephone at a hearing, conference, or
38 proceeding under this rule must either:

39
40 (A) Place the phrase “Telephone Appearance” below the title of the
41 moving, ~~or~~ opposing, or reply papers; or

42
43 (B) At least ~~five~~ three court days before the appearance, notify the
44 court and all other parties of the party’s intent to appear by

1 telephone. If the notice is oral, it must be given either in person or
2 by telephone. If the notice is in writing, it must be given by filing
3 a “Notice of Intent to Appear by Telephone” with the court at
4 least ~~five~~ three court days before the ~~hearing~~ appearance and by
5 serving the notice at the same time on all other parties by personal
6 delivery, fax transmission, express mail, or other means
7 reasonably calculated to ensure delivery to the parties no later
8 than the close of the next business day.

9
10 (2) If after receiving notice from another party as provided under (1) a
11 party that has not given notice also decides to appear by telephone, the
12 party may do so by notifying the court and all other parties that have
13 appeared in the action, no later than noon on the court day before the
14 appearance, of its intent to appear by telephone.

15
16 ~~(2)~~(3) If a party that has given notice that it intends to appear by telephone
17 under (1) subsequently chooses to appear in person, the party must so
18 notify the court and all other parties that have appeared in the action, by
19 telephone, at least two court days before the ~~hearing~~ appearance.

20
21 ~~(3)~~(4) The court, on a showing of good cause, may permit a party to appear
22 by telephone at a conference, hearing, or proceeding even if the party
23 has not given the notice required under (1) or (2) and may permit a
24 party to appear in person even if the party has not given the notice
25 required in (3).

26
27 **(e)(h) Notice by court**

28
29 After a party has requested a telephone appearance under ~~(d)~~(g), if the court
30 requires the personal appearance of the party, the court must ~~notify~~ give
31 reasonable notice to all parties by telephone at least one court day before the
32 hearing and may continue the hearing if necessary to accommodate the
33 personal appearance. The court may direct the court clerk, a court-appointed
34 vendor, a party, or an attorney to provide the notification. In courts using a
35 telephonic tentative ruling system for law and motion matters, court
36 notification that parties must appear in person may be given as part of the
37 court’s tentative ruling on a specific law and motion matter if that
38 notification is given one court day before the hearing.

39
40 **(f)(i) Private vendor; charges for service**

41
42 A court may provide teleconferencing for court appearances by entering into
43 a contract with a private vendor. The contract may provide that the vendor

1 may charge the party appearing by telephone a reasonable fee, specified in
2 the contract, for its services.

3
4 **~~(g)~~(i) Audibility and procedure**

5
6 The court must ensure that the statements of participants are audible to all
7 other participants and the court staff and that the statements made by a
8 participant are identified as being made by that participant.

9
10 **~~(h)~~(k) Reporting**

11
12 All proceedings involving telephone appearances must be reported to the
13 same extent and in the same manner as if the participants had appeared in
14 person.

15
16 **~~(i)~~(l) Conference call provider**

17
18 A court, by local rule, may designate a particular conference call provider
19 that must be used for telephone appearances.

20
21 **~~(j)~~(m) Information on telephone appearances**

22
23 The court must publish notice providing parties with the particular
24 information necessary for them to appear by telephone at conferences,
25 ~~and~~ hearings, and proceedings in that court under this rule.

26
27
28 **Rule 3.722. Case management conference**

29
30 **(a)–(b) * * ***

31
32 **(c) Preparation for the conference**

33
34 At the conference, counsel for each party and each self-represented party
35 must appear by telephone or personally ~~or, if permitted as provided in under~~
36 ~~rule 3.670(e)(2), by telephone~~; must be familiar with the case; and must be
37 prepared to discuss and commit to the party's position on the issues listed in
38 rules 3.724 and 3.727.

39
40 **(d)–(e) * * ***

1 **Rule 3.1207. Personal appearance requirements**

2
3 An ex parte application will be considered without a personal appearance of
4 the applicant in the following cases only:

5
6 (1) Applications to file a memorandum in excess of the applicable page limit;

7
8 (2) Applications for extensions of time to serve pleadings;

9
10 ~~(2)~~(3) Setting of hearing dates on alternative writs and orders to show cause;
11 and

12
13 ~~(3)~~(4) Stipulations by the parties for an order.

14
15 **Standard 3.1. Appearance by telephone**

16
17 ~~(a)~~~~(b)~~ * * *

18
19 ~~(e)~~ **Types of matters desired to be heard by telephone**

20
21 ~~Each court should specify, by local court rule or uniform local written policy,~~
22 ~~the types of motions and hearings it considers particularly suitable for~~
23 ~~hearing by telephone appearance. The rule or policy should encourage~~
24 ~~appearance by telephone in nonevidentiary civil matters if appearance of~~
25 ~~counsel in person would not materially assist in a determination of the~~
26 ~~proceeding or in settlement of the case.~~

27
28 ~~(d)~~(c) * * *

29
30 ~~(e)~~(d) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr style="width: 10%; margin-left: 0;"/> TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
EX PARTE APPLICATION FOR EXTENSION OF TIME TO SERVE PLEADING AND <input type="checkbox"/> ORDER EXTENDING TIME TO SERVE AND <input type="checkbox"/> ORDER CONTINUING CASE MANAGEMENT CONFERENCE	CASE NUMBER:
Note: This ex parte application will be considered without a personal appearance. (See Cal. Rules of Court, rule 3.1207(2).)	HEARING DATE: DEPT.: _____ TIME: _____

1. Applicant (*name*):

- is
- a. plaintiff
 - b. cross-complainant
 - c. petitioner
 - d. defendant
 - e. cross-defendant
 - f. respondent
 - g. other (*describe*):

2. The complaint or other initial pleading in this action was filed on (*date*):

3. Applicant requests that the court grant an order extending time for service of the following pleading:

- a. Complaint
- b. Cross-complaint
- c. Petition
- d. Answer or other responsive pleading
- e. Other (*describe*):

4. Service and filing of the pleading listed in item 3 is presently required to be completed by (*date*):

5. Previous applications, orders, or stipulations for an extension of time to serve and file in this action are:

- a. None
- b. The following (*describe all, including the length of any previous extensions*):

6. Applicant requests an extension of time to serve and file the pleading listed in item 3 on the following parties (*name each*):

CASE NAME:	CASE NUMBER:
------------	--------------

7. The pleading has not yet been filed and served on the parties listed in item 6 for the following reasons *(describe the efforts that have been made to serve the pleading and why service has not been completed)*:

Continued on Attachment 7.

8. An extension of time to serve and file the pleading should be granted for the following reasons:

Continued on Attachment 8.

9. If an extension of time is granted, filing and service on the parties listed in item 6 will be completed by *(date)*:

10. Notice of this application under rules 3.1200–3.1207 has been provided as required *(describe all parties or counsel to whom notice was given; the date, time, and manner of giving notice; what the parties or counsel were told and their responses; and whether opposition is expected)* or is not required *(state reasons)*:

Continued on Attachment 10.

11. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF APPLICANT OR ATTORNEY FOR APPLICANT)

▶

(SIGNATURE OF APPLICANT OR ATTORNEY FOR APPLICANT)

Order on Application is below on a separate document.

ORDER

1. The application for an order extending time to serve and file the pleading is granted denied.
2. The pleading must be served and filed no later than *(date)*:
3. The case management conference is rescheduled to:
 - a. Date:
 - b. Time:
 - c. Place:
4. Other orders:
5. A copy of this application and order must be served on all parties or their counsel that have appeared in the case.

Date:

JUDICIAL OFFICER

SP07-23

Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee’s response
1.	Hon. Ronald L. Bauer Chair, Rules and Forms Committee Judge of the Superior Court of California, County of Orange Santa Ana	A	Y	<p>I think this proposal is an extraordinary effort by your group and hope that it staves off the terrible alternative now lurking in the Legislature.</p> <p><u>Rule 3.670(g)(2) and (e)(2)</u> There is just one part that I disfavor, and that is the plan in rule 3.670(g)(2) to permit a late “piggy-back” request to appear by telephone. This notice would be so late that it would afford the court little opportunity to require a personal appearance after it actually receives the notice.</p> <p>I would also suggest that rule 3.670(e)(2) be revised as follows: “...if the court determines that a personal appearance by that party at that particular hearing would materially assist...” This suggestion is related to my opposition to the plan for very late joinders in such requests. The implication of the joinder rule seems to be that one request that is unopposed by the court should be good enough for the entire cast. That is not true. It may be critical for one party to appear personally, even though this is not true for peripheral parties.</p>	<p><u>Rule 3.670(g)(2) and (e)(2)</u> The committee did not share the commentator’s concern about joinder; it supports permitting a party to join in a request to appear by telephone.</p> <p>The committee did not agree with the specific proposed change. The language suggested would alter the intended operation of the rule, which requires a hearing-by-hearing determination of the need for a personal appearance. However, the committee agreed that the proposed rule should be modified to deal with joinders and courts’ decisions sometimes to require personal appearances. Rule 3.670(h) has been revised to require courts only to give “reasonable notice” before the hearing and to indicate that courts “may continue the hearing if necessary to accommodate the personal appearance.”</p>

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee’s response
2.	Hon. Arlene Borick Commissioner of the Superior Court of California, County of San Francisco San Francisco	AM	Y	<u>Rule 3.670(d)(7)</u> This comment pertains to the ex parte application aspect of the proposed rule change regarding telephonic appearances. There appears to be no accommodation for “ex parte applications for extensions of time to serve the summons and complaint.” Due to the nature of this application, many jurisdictions do not require a personal appearance despite the ex parte nature of the proceeding.	<u>Rule 3.670(d)(7)</u> The committee agreed that (d)(7) should be modified to not require a personal appearances on ex parte applications for an extension of time to serve pleadings. Rule 3.1207 also has been revised to be consistent with revised rule 3.670(d)(7).
3.	Joseph L. Chairez President Orange County Bar Association Irvine	A	Y	No specific comments.	No response required.
4.	Kristina Cifuentez Deputy Court Administrator III Superior Court of California, County of Kings Hanford	A	N	No specific comments.	No response required.
5.	Hon. Tim Fall Judge of the Superior Court of California, County of Yolo Woodland	AM	N	The public policy should be reversed, so that telephone conferences are not presumed. Instead, what worked well for me under the old rule was that I would grant them on a hearing-by-hearing basis. There is nothing wrong with telling lawyers that when they have a hearing, they should actually expect to go to the courthouse to attend it.	The committee disagreed. It supports the public policy that is also contained in AB 500 permitting telephone appearances, to the extent feasible, at appropriate conferences, hearings, and proceedings in civil cases.

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee’s response
6.	Aisha Harris Pro Per Marietta, Georgia	A	N	<p>Kudos! Because I live in Georgia and financially I would NEVER be able to purchase an airline ticket to attend my divorce hearings in California, I thank you VERY much, especially for shortening the time required to submit your request for telephone appearances.</p> <p>These changes are very important to those who cannot afford representation.</p>	<p>The commentator’s support for telephone appearances is noted. Such appearances benefit self-represented parties as well as attorneys. However, the committee pointed out that the proposed rule amendments apply only to general civil cases, unlawful detainers, and probate proceedings. A separate rule applies to telephone appearances in child support proceedings. (See Cal. Rules of Court, rule 5.324.)</p>
7.	Hon. Joe Hilberman Judge of the Superior Court of California, County of Los Angeles Santa Monica	AM	N	<p>Good proposals. Fewer required appearances benefit the court and the cost of litigation...and traffic!</p> <p><u>Rule 3.670(c) and (d)</u> I would, however, require appearances at the trial setting conference, as I have discussions with the attorneys, there is a good deal of “give and take,” but most importantly, I give them a copy of the trial orders and requirements, consistent with the Los Angeles Superior Court and state rules.</p>	<p>The commentator’s general support for the proposal is noted.</p> <p><u>Rule 3.670(c) and (d)</u> The committee disagreed with this specific comment. Parties should be allowed to appear by telephone at trial setting conferences, unless the court determines in a particular instance that a personal appearance would materially assist in the determination of the proceedings or in the management or resolution of the particular case. In many cases, no personal appearance should be necessary to set the case for trial.</p>

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee's response
8.	Hon. Jeffrey B. Jones Presiding Judge of the Superior Court of California, County of Imperial El Centro	AM	N	<u>Rule 3.670(g)(1)(B)</u> If the notice period is to be shortened to 3 days, it is my opinion that subdivision (g)(1)(B) should be modified to delete the option of oral notice to the court (i.e., via telephone). This opinion is based on past experience in our civil courts wherein there was a considerable amount of quibbling with counsel over whether notice had been properly given. Since a party calling the court might speak to any number of persons (most of whom are not familiar with telephonic appearance rules), there is no practical way to ensure that a judge hearing a particular matter receives notice of an intent to appear by telephone if the notice is given orally. In fact, there is no way to verify that the notice was given at all. Shortening the notice period to 3 days will exacerbate the problem of the assigned judge not receiving notice.	<u>Rule 3.670(g)(1)(B)</u> The committee disagreed. For most courts, the notice provisions have worked effectively and reducing the notice to three days is workable according to information received by the committee.
9.	Hon. Carolyn B. Kuhl Judge of the Superior Court of California, County of Los Angeles	AM	N	Although I favor encouraging routine use of telephonic appearances, I continue to be of the view that these proposed rules impinge on the appropriate discretion of a trial judge by attempting to micro-manage courtroom operations.	The committee agreed that telephone appearances should be routinely used in appropriate types of cases, but disagreed with the commentator's view of the proposed rule changes. The committee believes that the proposed amended rules provide appropriate authority, guidance, and flexibility to the courts regarding telephone appearances in civil cases.

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee’s response
				<p>With respect to the specific provisions of the rule, I believe counsel should be expected to appear personally once in the case (prior to the pretrial management conference), except where personal appearance would pose a particular burden. Counsel often meet each other for the first time at the case management conference, and the personal contact favors smoother case management and case resolution. Moreover, the trial judge can have a frank discussion of the case and its needs with counsel off the record when counsel appear in person at a case management conference.</p> <p>I understand that trial judges increasingly are conducting perfunctory case management conferences. I believe that judges often do so because counsels’ preparation for the case management conference is perfunctory (or because judges have come to expect that counsels’ preparation for the case management conference will be perfunctory). In my judgment, based on my experience as a supervising judge for the civil department in Los Angeles County, allowing routine telephonic appearances at case management conferences will suggest to all judges that a perfunctory case management conference is the expected standard practice.</p> <p>If the proposed rule goes forward, I would eliminate the exception in rule 3.670(c)(3) for motions in limine.</p>	<p>As far as case management conferences are concerned, although there are some situations in which a personal appearance would be beneficial, there are many situations in which it is not. The amended rules balance these different interests and concerns by permitting parties to appear by telephone at specified proceedings, including case management conferences, but allowing the court to require personal appearances on a hearing-by-hearing basis. The rules also require the parties to appear at certain other types of proceedings in person, unless the court permits a telephone appearance. Although the rules do permit parties generally to appear by telephone at case management conferences, the rules are not intended to lessen the significance of such conferences. If the court concludes that the parties should appear in person at a case management conference in any individual case and orders them to do so, the parties must appear.</p> <p>The exception in rule 3.670(c)(3) would require persons to appear in person for motions in limine. This exception is also contained in AB 500. The committee believes that</p>

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee’s response
					this is appropriate because these motions are important to the conduct of the trial.
10.	Cristina Llop, Attorney San Francisco	A	N	I’m concerned that self-represented litigants may not know how to avail themselves of this opportunity, so though it will increase access, it’s more likely to benefit attorneys. I’m not sure what the solution is or whether the rule needs to say anything about it, but self-help centers, court staff, etc., should ensure that pro pers are aware of this possibility and are assisted in availing themselves of this and following the appropriate procedures. I also wanted to raise the issue of interpreters and the difficulty of having interpreters via telephone, etc.	The committee noted that information about telephone appearances is available to self-represented litigants on Web sites and other sources. It might be improved, however. The committee intends to look further into means to educate the public and the courts about telephone appearances. The committee also notes that new subdivision (f) would permit the court to continue a hearing if there were, for example, difficulties with having an interpreter on the telephone.
11.	Hon. William A. MacLaughlin Presiding Judge of the Superior Court of California, County of Los Angeles	AM	N	I am concerned that CourtCall or another vendor will charge courts for installing, maintaining, or updating the telephone equipment. Given the severe budget problems, we would like to add language to Cal. Rules of Court, rule 3.670(i): “The vendor shall not charge the court any fee” or words to that effect.	The suggestion is beyond the scope of the proposal that was circulated for comment. The committee is not aware of any problems with vendors charging the courts fees; however, it will look further into this issue in the future. (See also response to comment 18.)
12.	Dennis Morris Court Staff Attorney Superior Court of California, County of Merced			<u>Rule 3.670(d)(7)(C)</u> Allowing parties to appear telephonically for <i>ex parte</i> hearings where they stipulate to the subject matter is an excellent idea that will save	<u>Rule 3.670(d)(7)(C)</u> The commentator’s support is noted.

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee's response
				<p>time and costs.</p> <p><u>Rule 3.670(g)(1)(A)</u> Given the proposed 3 day notice period for telephone appearances, allow parties to give notice on reply papers as well as moving and opposition papers.</p> <p>Also, with respect to case management conferences, allow parties to give notice on <i>Case Management Conference Statement</i> (form CM-110).</p> <p><u>Rule 3.670(g)(2)</u> Given that the proposed rule allows the court to permit parties to appear by telephone even where no notice is given (<i>e.g.</i> 3.670(e)(3) & 3.670(g)(4)), this provision seems unnecessary. Its purpose appears to be to allow a party who did not intend to appear by telephone to do so upon learning another party is doing so. This possible benefit to parties appears to be greatly outweighed by the administrative inefficiencies it will create. For example, a party deciding to appear by telephone a day before the hearing would have to call the clerk's office to apprise the court in time for the hearing, causing the attending clerk to take all of the case and party information down and then relay it to both the judicial officer and to the file prior to the hearing. This seems unduly burdensome given the affected party could just call in at the time of the hearing, and the court could routinely find</p>	<p><u>Rule 3.670(g)(1)(A)</u> The committee agreed with this suggestion and has modified the provision to allow notice to be given with the reply.</p> <p>This proposal has been referred to the Civil and Small Claims Advisory Committee's Case Management Subcommittee for further consideration.</p> <p><u>Rule 3.670(g)(2)</u> The committee does not recommend modifying the notice provisions as suggested at this time. However, based on experience with these rules, it may be appropriate in the future to simplify the notice provisions.</p>

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee's response
				<p>good cause for an unnoticed telephone appearance where other parties have already made such arrangements.</p> <p>Proposals</p> <p>1. A suggestion would be to forego altogether the giving notice of an intent to appear by telephone apart from that placed on motion papers (including reply briefs), case management conference statements, and the like. This proposal would eliminate the need for a 5-day (or 3-day) deadline, and would more efficiently address the exceptions proposed in the rule to allow late-filed notices of intent to appear by telephone (<i>i.e.</i>, 3.670(g)(2)). This proposal would also save: (1) court filing time, (2) attorney time, and (3) paper resources because separately captioned intent to appear by telephone notices (which appear to have little purpose, generally, given the large numbers of parties that appear by telephone) would be eliminated. This proposal would also encourage further savings in travel time and fuel in that telephone appearances would be more readily accessible. This proposal is in line with, and more aggressively meets, the proposed policy favoring telephone appearances set forth in rule 3.670(a).</p> <p>2. A second suggestion relating to case management conferences. Once a notice of intent to appear by telephone is placed on the <i>Case Management Conference Statement</i> or is separately noticed, it could be deemed effective on all subsequent CMCs, given that CMCs are</p>	<p>Proposals</p> <p>1. The committee does not support reducing the notice requirements so significantly at this time.</p> <p>2. This suggestion has been referred to the Civil and Small Claims Advisory Committee's Case Management Subcommittee for further consideration.</p>

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee's response
				generally continued, and not set anew, and as such, the continued CMCs may be considered collectively as a single (although protracted) hearing. While this can be accomplished by local rule and/or practice, if included in the current proposed rule it would further the policy of encouraging state-wide uniformity.	
13.	Jerilyn Paik Attorney Sacramento	AM	N	<u>Rule 3.670(g)(1)(B)</u> New rule 3.670(g)(1)(B) should expressly include e-mail by a means of notification for telephonic appearance. A Read or Delivery Receipt may be required. Is there a good reason why this means was not included along with fax, express mail, and personal delivery?	<u>Rule 3.670(g)(1)(B)</u> The committee does not recommend modifying the means of notice by a party to include e-mail. The current notice provisions have been working effectively and do not appear to need to be changed at this time.
14.	Pamela J. Peery Superior Court of California County of Riverside Indio	A	N	No specific comments.	No response required.
15.	Cassie M. Pierson Staff Attorney Legal Services for Prisoners with Children San Francisco	A	Y	Will these proposed changes be applicable to incarcerated persons whose only option may be telephonic appearances? I often hear from incarcerated men and women that they thought they were going to be able to appear telephonically, but there seems to be a breakdown between the court's rules for telephonic appearances and the prison's ability to assist the prisoner in actually completing the call or being present to receive a call.	The rules do not exclude incarcerated persons; however, they also do not address any special issues that appearing by telephone may pose for persons who are incarcerated.

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee's response
16.	Michael M. Roddy Executive Officer Superior Court of California, County of San Diego	A	Y	No specific comments.	No response required.
17.	Leonard Sacks Attorney at Law Granada Hills	A	N	No specific comments.	No response required.
18.	Superior Court of California, County of Los Angeles	AM	Y	Although CourtCall currently makes telephonic appearances possible, we do not know whether it is available in all court locations or whether the availability of the technology at no cost to the court may change at some point in the future. The rule should contain some language that would make it clear that the rule will not apply if an individual court does not have the means or capability to offer telephonic appearances.	The committee is informed that CourtCall is currently available to any court that requests it. The committee intends to look further into the issue of whether there are or may be any problems with costs for telephone appearances being imposed on the courts and, if so, whether a rule or rules on this subject may be appropriate.
19.	Richard Thomas Wichita, Kansas	A	N	I believe [this rule change] is helpful for those who cannot afford to travel to court hearings all the time. [When I must make a personal appearance], I lose time off of work for close to a week, plus the travel expenses that I do not have with a family to help take care of. This does make things much easier for all involved.	No response required.
20.	Hon. John P. Vander Feer Judge of the Superior Court of California, County of San Bernardino	A	N	No specific comments.	No response required.

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee's response
21.	Sandra Bunch Vanderpol President California Court Reporters Association Sacramento	A	Y	<p>The California Court Reporters Association (CCRA) has the following comments to the stakeholders which affect making the record when appearances are telephonic:</p> <ul style="list-style-type: none"> • The risk of misidentifying speakers is an issue in telephonic appearances as the court, the parties, and court staff cannot see the participants. • Parties appearing in propria persona may misidentify themselves purposefully to avoid sanctions or other court orders. • Official reporters are responsible and liable for the accuracy and integrity of record and, therefore, have a stake in the proposed rule changes. • CCRA feels that judges must retain discretion to determine when, and under what circumstances telephonic appearances are appropriate in their courtrooms for the appropriate administration of justice. • The oral statements made by the participants may be distorted, inaudible or unintelligible, if the appropriate conferencing equipment is not used. <p><u>Rule 3.670</u> 1. <i>Proposed Amendment:</i> Subdivision (c)(3), page 5, "Hearings on law and motion" should be deleted.</p> <p><i>Rationale:</i> Law and motion hearings are most often lengthy with factual arguments that require the court reporter and the parties to be</p>	<p>The committee recognized that it is important for court reporters that the presentations at telephone appearances are audible. Rule 3.670(j) addresses this by requiring courts to ensure that statements of participants are audible and are identified as being made by a particular participant.</p> <p>New subdivision (f) will give judges the discretion to continue a hearing or conference if a personal appearance is necessary.</p> <p>The committee intends to look further into the issue of conferencing equipment.</p> <p><u>Rule 3.670</u> 1. The committee disagreed. For telephonic access to be meaningful, parties should generally be permitted to appear by telephone at law and motion hearings; in a particular case, the court may require the parties to appear.</p>

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Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee’s response
				<p>able to listen and concentrate intently. Having these hearings telephonically would require the arguments to be repeated many times for a clear and accurate record to be made.</p> <p>2. <i>Proposed amendment:</i> Subdivision (c)(4), page 5. “Hearings on discovery motions” should be deleted.</p> <p><i>Rationale:</i> Same rationale as above.</p> <p>3. <i>Proposed amendment:</i> Subdivision (d) page 5. “Required personal appearances.” Summary Judgment Motions and Discovery Motions should be added.</p> <p><i>Rationale:</i> Summary Judgment Motions and Discovery Motions involve complex legal issues and often lengthy argument, witnesses, and/or exhibits.</p> <p>4. <i>Proposed amendment:</i> Subdivision (j), page 9, “Audibility and procedure.” Request “and court staff” be added after “to all other participants.”</p> <p><i>Rationale:</i> It is important to the integrity of the record that all court staff be able to hear and understand the statements of all participants.</p>	<p>2. The committee disagreed. For telephone access to be meaningful, telephone appearances should generally be allowed at hearings on discovery motions; in a particular case, the court may require the parties to appear.</p> <p>3. The committee disagreed. For telephone access to be meaningful, parties should not be required generally to appear in person at these proceedings. Requiring personal appearances in all such matters would be expensive and time consuming. In a particular case, the court may require the parties to appear. Also, the parties will often elect to appear in person themselves.</p> <p>4. The committee agreed that the phrase should be added.</p>

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				<p>5. <i>Proposed amendment:</i> Add subdivision (n) to this rule. “Minimum Equipment and Technology Standards. In order to ensure the integrity of the record, the equipment provided by the vendor to the courts should not distort the oral statements of the telephonic hearing, and should be state of the art equipment, i.e., including a headset (earphones) and/or speakers situated nearby the stenographic reporter.”</p> <p><i>Rationale:</i> This section is necessary for the court reporter to make an accurate record and to ensure the integrity of the record for all stakeholders.</p> <p>6. <i>Proposed amendment:</i> Subdivision (m), page 9. “The court must publish notice...” Request the words “and place in local court rules” be inserted.</p> <p><i>Rationale:</i> This would allow each local court to implement rules and protocol for telephonic conferences that apply to each court locally.</p> <p><u>Standard 3.1</u> <i>Proposed amendment:</i> Subdivision (c), page 10. “Types of matters desired to be heard by telephone.” This section should not be deleted.</p> <p><i>Rationale:</i> Local courts must have the discretion to determine what types of cases in their particular jurisdiction are appropriate for telephonic appearances based on local protocol and efficiency.</p>	<p>5. The committee did not agree to add the proposed new subdivision at this time; it was not circulated for public comment. However, the committee recognizes that court reporters need to be able to hear oral presentations and intends to explore the issue of ensuring that appropriate telephone equipment is available from the vendor.</p> <p>6. The committee disagreed. The current rule is more flexible.</p> <p><u>Standard 3.1</u> The committee disagreed. By providing specificity, the amended rules and AB 500 establish more uniform statewide standards. Having each court establish local protocols and practices would impede access, be inefficient, and be inconsistent with AB 500.</p>

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22.	Hon. Stanley Weisberg Judge of the Superior Court of California, County of Los Angeles Van Nuys	AM	N	The present rule regarding case management conferences should remain unchanged. A case management conference is a significant event in the successful management of an unlimited civil case. The court makes orders and often provides counsel with written orders or other material that would otherwise have to be mailed and served on counsel. This is often the only opportunity the court will have to see and communicate in person with counsel about the court's policies and practices until the final status conference or the trial. This communication is facilitated by the physical presence of counsel.	The committee disagreed. Although case management conferences are significant events, they often do not require personal appearances by all attorneys and self-represented parties. In an individual case where a personal appearance would be appropriate, the court has the discretion to order such appearances. (See amended rule 3.670(e)(2).)