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INVITATION TO COMMENT

SPR13-14

Title	Action Requested
Civil Practice and Procedure: Telephonic Appearances	Review and submit comments by June 18, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rules 3.670, 3.1207, and 5.324	January 1, 2014
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary

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. This proposal would amend rule 3.670 of the California Rules of Court to clarify that the hearings, conferences, and proceedings at which a party may appear by telephone include all law and motion matters, to add ex parte applications to the types of proceedings at which a party may appear by telephone, and to clarify that a court should grant leave to appear by telephone on shortened notice if good cause exists. Rule 3.1207 (regarding ex parte appearances generally) and rule 5.324 (regarding telephonic appearances in certain child support proceedings) would also be amended to reflect the changes in the telephonic appearance rule.

Background

The intent of this proposal is to make telephone appearances more available to parties and attorneys in civil cases, and to promote uniformity in the procedures and practices relating to telephone appearances in these cases. Code of Civil Procedure section 367.5 and amended rule 3.670 of the California Rules of Court¹ were enacted, effective January 1, 2008, to allow parties to appear by telephone at certain conferences, hearings, and proceedings in civil cases, unless the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the case.

¹ All further references to rules are to California Rules of Court unless otherwise indicated.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Members of the bar have reported that there appears to be some confusion across the state as to what types of matters parties are generally permitted to appear at telephonically under rule 3.670, including questions as to whether all law and motion matters are covered under the rule and whether moving parties, as well as opposing parties may appear telephonically. Members of the bar have requested that the rule be clarified on these points. They have also asked that the rule be expanded to expressly permit telephonic appearances for ex parte applications, and to clarify that, when a party has good cause for being unable at the last minute to appear in person at a hearing, the court should permit a telephonic appearance even without the notice otherwise required in the rules.²

The Proposal

The proposal would amend the rule regarding telephonic appearances in civil matters to address the issues raised by members of the bar, as described below. The amendments would *not* alter the discretion currently accorded to judicial officers to determine that personal appearance is required at a particular hearing or proceeding.

Amendments to Rule 3.670

- **Rule 3.670(c).**³ The subdivision of the rule describing matters for which parties may appear telephonically, would be amended to clarify that moving parties as well as opposing parties be permitted to appear by telephone. Although there is no prohibition on moving parties appearing by telephone in the current rule, attorneys report that issues have arisen in some courts where moving parties have been categorically precluded from appearing telephonically. This amendment would clarify that moving as well as opposing parties may appear telephonically at the specific types of hearing and proceedings listed in the rule, unless ordered to appear in person by the court under rule 3.670(f)(2) (currently numbered (e)(2)) and subject to the notice provisions in the rule.

This subdivision—and others—would also be amended to clarify that the rules permitting appearance by telephone are all subject to exceptions where a court orders a person to appear under subdivision (f)(2) of the rule and are subject to the notice provisions set out in subdivision (h).

- **Rule 3.670(c)(3).** The subdivision of the rule identifying hearings on law and motion matters as a type of hearing at which telephonic appearances are generally permitted

² The Conference of California Bar Associations originally proposed new legislation to make these and further changes to the statute regarding telephone appearances, but at the request of the Chief Justice agreed to work with the Judicial Council to develop appropriate rule amendments instead. A Telephone Appearances Working Group was organized in July 2012 by the Civil and Small Claims Advisory Committee to work on these issues, with representatives from that committee and from the Consumer Attorneys of California, California Defense Counsel, the California Judges Association, the Court Executives Advisory Committee, and the Trial Court President Judges Advisory Committee. This proposal was developed by that working group, considered by the full Civil and Small Claims Advisory Committee, and recommended by that committee.

³ This rule number and those in the following bullet points all refer to the proposed rule attached to this comment.

would be expanded to include a more detailed list of examples of the types of law and motion matters covered by the rule. This is intended to clarify that the current rule includes *all* law and motion matters, another issue that, based on reports from attorneys, apparently needs clarification.

- **Rule 3.670(d).** A new subdivision would be added to the rule to include ex parte applications among the types of proceedings at which a party may appear telephonically unless ordered to appear in person. (See proposed rule 3.670(d).)⁴ In order to address concerns that a court might not have received papers in time to handle such an appearance telephonically, the proposal would permit telephonic appearance by an ex parte *applicant* only if the applicant has filed the moving papers by at least 10 a.m. *two* court days before the ex parte appearance and, if required by local rule, provided papers directly to the department which is to rule on the application. A party opposing an ex parte application would be able to appear telephonically without meeting such a requirement, but subject to the notice provisions.
- **Rule 3.670(h)(1).** In considering the new rules for notice of telephonic appearances on ex parte applications, the committee consulted with CourtCall—the current vendor with a master agreement to provide facilities and service for telephonic appearances—and determined that there is no *technological* reason mandating more time for notice. CourtCall is able to set up a call with only a few minutes’ notice. In light of this information, the group also considered amending the notice required for telephonic appearances (those not on shortened time as ex part applications are) from three court days to two court days. (Cf. proposed rule 3.670(h)(1)(B).) The committee asks for specific comments as to whether shortening the requirement of two days notice in that section of the rule would work well for parties and courts.
- **Rule 3.670(h)(3)–(4).** New notice provisions would be added to the rule, for giving notice of intent to appear telephonically on an ex parte application. An applicant would have to give notice to the court and any other party in the action by 10 a.m. two days before the ex parte, while an opposing party would have until 2 p.m. the day before the hearing. This would allow an opposing party time to give notice of intent to appear telephonically even if the applicant chooses to appear personally and so provides notice to an opposing party at 10 a.m. the day before the ex parte appearance.
- **Rule 3.670(h)(5).** This subdivision provides that once a person has given notice to the court and other parties that he or she is going to appear telephonically, further notice must be provided if the person later decides to appear in person. This notice requirement was required in order to prevent potential gamesmanship by counsel. The proposal would amend the rule to eliminate the requirement that the notice must be by telephone, and to

⁴ This amendment would be mirrored in the removal of the section of the current rule requiring personal appearances on most ex parte applications. (See deletions marked in proposed rule 3.670(e)(7).)

move the current provision authorizing a court to permit personal appearance even without notice (currently in the following subdivision) into this subdivision.

In considering these amendments, the committee considered whether this provision regarding further notice to appear in person is required at all, and asks for specific comments on this issue.

- **Rule 3.760(h)(6).** The subdivision of the rule authorizing a court to allow a party to appear even without advance notice would be amended to provide that, if a party has good cause for appearing by telephone without having complied with the notice provisions, the court *should* permit the party to appear telephonically. As amended, the rule would apply to, for example, a request from an attorney whose child has become sick the morning of an early hearing or whose car has broken down on the way to court. The Advisory Committee Comment would be amended to include examples of good cause under this subdivision.

Amendments to Rule 3.1207

The general rules regarding ex parte applications currently require that an ex parte application will only be considered if the applicant appears personally, except in certain situations in which no appearance is required. Rule 3.1207 would be amended to reflect that, when required to appear, an applicant may appear either in person or by telephone under amended rule 3.670.

Amendments to Rule 5.324

There is a rule providing for telephonic appearances in certain child support hearings and conferences that provides for when such appearances are permitted, how to request them, the amount of notice required, etc. (Rule 5.324(a)–(i).) That rule incorporates current sections (i) through (p) of rule 3.670, provisions relating to vendors, fees, audibility and other matters which this proposal would not amend. The proposal would, however, change the lettering of those sections of the rule. As a result, a minor technical amendment to the cross-reference in rule 5.324 would be required.

Alternatives Considered

The committee considered not amending the rules but concluded that the amendments are needed to remedy a problem that is causing significant cost or inconvenience to attorneys and parties, and will provide more efficient use of courtrooms.

Implementation Requirements, Costs, and Operational Impacts

Much of the proposed amendment merely clarifies existing law, and so should pose no added burden or cost on the court. The expansion of rule 3.670 to permit telephonic appearances on ex parte application will require some training for clerks and judicial officers, but the impact should be a onetime expense and the benefits substantial. Also, if additional telephonic appearances take place, courts will receive increased revenues as a result.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?
- Regarding rule 3.670(h)(1)(B), in light of the lack of any technical impediment, should the time for notice generally required for a telephonic appearance be shortened from three to two court days before the appearance?
- Regarding rule 3.670(h)(5), should the requirement that a person who has given notice that he or she will appear telephonically give further notice at least two court days before a hearing of a later decision to appear in person be eliminated?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size

Attachments

Proposed amended rule 3.670, at pages 11–18

Proposed amended rule 3.1207, at pages 18–19

Proposed amended rule 5.324, at page 19

Rules 3.670, 3.1207, and 5.324 of the California Rules of Court would be amended, effective January 1, 2014 , to read:

1 **Title 3. Civil Rules**

2
3 **Division 6. Proceedings**

4
5 **Chapter 3. Hearings, Conferences, and Proceedings**

6
7 **Rule 3.670. Telephone appearance**

8
9 **(a) Policy favoring telephone appearances**

10
11 The intent of this rule is to promote uniformity in the practices and procedures relating to
12 telephone appearances in civil cases. To improve access to the courts and reduce litigation
13 costs, courts should permit parties, to the extent feasible, to appear by telephone at
14 appropriate conferences, hearings, and proceedings in civil cases.

15
16 **(b) Application**

17
18 This rule applies to all general civil cases as defined in rule 1.6 and to unlawful detainer
19 and probate proceedings.

20
21 **(c) General provision authorizing parties to appear by telephone**

22
23 Except as ordered by the court under provided in (e)(f)(2) and subject to (h), a party-all
24 parties, including moving parties, may appear by telephone at the following conferences,
25 hearings, and proceedings:

- 26
27 (1) Case management conferences, provided the party has made a good faith effort to
28 meet and confer and has timely served and filed a case management statement before
29 the conference date;
- 30
31 (2) Trial setting conferences;
- 32
33 (3) Hearings on all law and motion matters, except motions in limine, including but not
34 limited to the following:
- 35
36 (A) Motions to set aside defaults or default judgments;
- 37
38 (B) Demurrers or motions to strike;
- 39

- 1 (C) Motions for judgment on the pleadings;
- 2
- 3 (D) Discovery motions;
- 4
- 5 (E) Motions for summary judgment or summary adjudication;
- 6
- 7 (F) Motions to be relieved as counsel;
- 8
- 9 (G) Motions for good faith settlement or opposition to applications for good faith
- 10 settlement;
- 11
- 12 (H) Motions to tax or strike costs;
- 13
- 14 (I) Motions for attorney’s fees;
- 15
- 16 (J) Motions for sanctions;
- 17
- 18 (K) Motions to continue trials;
- 19
- 20 (L) Motions to enforce settlements or to enter judgments pursuant to section 664.6;

21

22 ~~(4)~~ Hearings on discovery motions;

23

24 ~~(5)~~(4) Status conferences, including conferences to review the status of an arbitration or a

25 mediation; and

26

27 ~~(6)~~(5) Hearings to review the dismissal of an action.

28

29 **(d) Provisions regarding ex parte applications**

30

31 (1) Applicants

32

33 Except as ordered by the court under (f)(2) and subject to the provisions in (h),

34 applicants seeking an ex parte order may appear by telephone provided that:

35

36 (A) The moving papers have been filed by at least 10 a.m. two court days before

37 the ex parte appearance, unless otherwise permitted by the court, and,

38

39 (B) Copies of the moving papers have been provided directly to the department in

40 which the matter is to be considered, if required by local rule.

41

42 (2) Opposing Parties

1 Even if the applicant has not complied with (1), except as ordered by the court under
2 (f)(2) and subject to the provisions in (h), parties opposing an ex parte order may appear
3 by telephone.

4
5 **(d)(e) Required personal appearances**

6
7 Except as permitted by the court under ~~provided in (e)(f)(3)~~, a personal appearance is
8 required for hearings, conferences, and proceedings not listed in (c), including the
9 following:

- 10
11 (1) Trials and hearings at which witnesses are expected to testify;
12
13 (2) Hearings on temporary restraining orders;
14
15 (3) Settlement conferences;
16
17 (4) Trial management conferences;
18
19 (5) Hearings on motions in limine; and
20
21 (6) Hearings on petitions to confirm the sale of property under the Probate Code.

22
23 In addition, except as provided in ~~(e)(f)(3)~~, a personal appearance is required for the
24 following persons:

- 25
26 ~~(7) Applicants seeking an ex parte order, except when the applicant is seeking an order:~~
27
28 ~~(A) For permission to file a memorandum in excess of the applicable page limits;~~
29
30 ~~(B) For an extension of time to serve pleadings;~~
31
32 ~~(C) To set hearing dates on alternative writs and orders to show cause; or~~
33
34 ~~(D) By stipulation of the parties;~~

35
36 ~~(8)(7)~~ Persons ordered to appear to show cause why sanctions should not be imposed for
37 violation of a court order or a rule; or

38
39 ~~(9)(8)~~ Persons ordered to appear in an order or citation issued under the Probate Code.

40
41 At the proceedings under (7) and (8), ~~and (9)~~, parties who are not required to appear in
42 person under this rule may appear by telephone.

1 ~~(e)~~**(f) Court discretion to modify rule**

2
3 (1) *Policy favoring telephone appearances in civil cases*

4
5 In exercising its discretion under this provision, the court should consider the general
6 policy favoring telephone appearances in civil cases.

7
8 (2) *Court may require personal appearances*

9
10 The court may require a party to appear in person at a hearing, conference, or
11 proceeding listed in (c) or (d) if the court determines on a hearing-by-hearing basis
12 that a personal appearance would materially assist in the determination of the
13 proceedings or in the effective management or resolution of the particular case.

14
15 (3) *Court may permit appearances by telephone*

16
17 The court may permit a party to appear by telephone at a hearing, conference, or
18 proceeding under ~~(d)~~ if the court determines that a telephone appearance is
19 appropriate.

20
21 ~~(f)~~**(g) Need for personal appearance**

22
23 If, at any time during a hearing, conference, or proceeding conducted by telephone, the
24 court determines that a personal appearance is necessary, the court may continue the matter
25 and require a personal appearance.

26
27 ~~(g)~~**(h) Notice by party**

28
29 (1) Except as provided in (6), A a party choosing to appear by telephone at a hearing,
30 conference, or proceeding, other than on an ex parte application, under this rule must
31 either:

32
33 (A) Place the phrase “Telephone Appearance” below the title of the moving,
34 opposing, or reply papers; or

35
36 (B) At least three court days before the appearance, notify the court and all other
37 parties of the party’s intent to appear by telephone. If the notice is oral, it must
38 be given either in person or by telephone. If the notice is in writing, it must be
39 given by filing a “Notice of Intent to Appear by Telephone” with the court at
40 least three court days before the appearance and by serving the notice at the
41 same time on all other parties by personal delivery, fax transmission, express
42 mail, e-mail if such service has been ordered by the court or agreed to by the

1 parties, or other means reasonably calculated to ensure delivery to the parties
2 no later than the close of the next business day.

3
4 (2) If after receiving notice from another party as provided under (1) a party, that has not
5 given notice also decides to appear by telephone, the party may do so by notifying
6 the court and all other parties that have appeared in the action, no later than noon on
7 the court day before the appearance, of its intent to appear by telephone.
8

9 (3) An applicant choosing to appear by telephone at a ex parte appearance under this
10 rule must

11
12 (A) Place the phrase “Telephone Appearance” below the title of the application
13 papers;

14
15 (B) File and serve the papers in such a way that they will be received by the court
16 and all parties by at least 10 a.m. two court days before the ex parte
17 appearance; and

18
19 (C) If required by local rule, deliver copies of the papers to be considered to the
20 department in which the matter is to be considered.

21
22 (4) Any party other than an applicant choosing to appear by telephone at a ex parte
23 appearance under this rule must notify the court and all other parties that have
24 appeared in the action, no later than 2 p.m. on the court day before the appearance, of
25 its intent to appear by telephone. If the notice is oral, it must be given either in
26 person or by telephone. If the notice is in writing, it must be given by filing a “Notice
27 of Intent to Appear by Telephone” with the court and by serving the notice at the
28 same time on all other parties by personal delivery, fax transmission, express mail, e-
29 mail if such service has been ordered by the court or agreed to by the parties, or other
30 means reasonably calculated to ensure delivery to the parties no later than the close
31 of business on the court day before the appearance.

32
33
34 ~~(3)~~(5) If a party that has given notice that it intends to appear by telephone under (1)
35 subsequently chooses to appear in person, the party must so notify the court and all
36 other parties that have appeared in the action, by telephone, at least two court days
37 before the appearance. Upon request, the court may permit a party to appear in
38 person even if the party has not given the required notice.

39
40
41 ~~(4)~~(6) A party may ask the court for leave to appear by telephone without the notice
42 provided for under (1)–(4). The court, on a showing of good cause, may permit a
43 party to appear by telephone at a conference, hearing, or proceeding even if the party

1 ~~has not given the notice required under (1) or (2) should permit the party to appear~~
2 ~~by telephone upon a showing of good cause. The court may permit a party to appear~~
3 ~~in person even if the party has not given the notice required in (35).~~

4
5 **~~(h)~~(i) Notice by court**

6
7 After a party has requested a telephone appearance under (~~g~~h), if the court requires the
8 personal appearance of the party, the court must give reasonable notice to all parties before
9 the hearing and may continue the hearing if necessary to accommodate the personal
10 appearance. The court may direct the court clerk, a court-appointed vendor, a party, or an
11 attorney to provide the notification. In courts using a telephonic tentative ruling system for
12 law and motion matters, court notification that parties must appear in person may be given
13 as part of the court’s tentative ruling on a specific law and motion matter if that notification
14 is given one court day before the hearing.
15

16 **~~(i)~~(j) Provision of telephone appearance services**

17
18 A court may provide for telephone appearances only through one or more of the following
19 methods:
20

21 (1) * * *

22 (2) * * *

23
24
25 (3) The direct provision by the court of telephone appearance services. If a court directly
26 provides telephone services, it must collect the telephone appearance fees specified
27 in (~~j~~k), except as provided in (~~k~~l) and (~~l~~m). A judge may, at his or her discretion,
28 waive telephone appearance fees for parties appearing directly by telephone in that
29 judge’s courtroom.
30

31 **~~(j)~~(k) Telephone appearance fee amounts; time for making requests**

32
33 The telephone appearance fees specified in this subdivision are the statewide, uniform fees
34 to be paid by parties to a vendor or court for providing telephone appearance services.
35 These fees supersede any fees paid by parties to vendors or courts under agreements or
36 procedures existing before July 1, 2011. Except as provided under (~~k~~l) and (~~l~~m), the fees to
37 be paid to appear by telephone are as follows:
38

39 (1) * * *

40
41 (2) An additional late request fee of \$30 is to be charged for an appearance by telephone
42 if the request to the vendor or the court providing telephone appearance services is
43 not made at least three days before the scheduled appearance, except when:

1
2 (A)-(C) * * *

3
4 (D) The request to appear by telephone is made by a party that received notice of
5 another party's intent to appear and afterward decides also to appear by
6 telephone under (gh)(2). The request of a party seeking to appear under (gh)(2)
7 is timely if the request is made to the vendor or the court providing the service
8 by noon on the court day before the hearing or conference.
9

10 (2) * * *

11
12 ~~(k)~~(l) **Fee waivers**

13
14 (1) *Effect of fee waiver*

15
16 A party that has received a fee waiver must not be charged the fees for telephone
17 appearances provided under (jk), subject to the provisions of Code of Civil
18 Procedure section 367.6(b).
19

20 (2) * * *

21
22 (3) * * *

23
24 ~~(n)~~(m) **Title IV-D proceedings**

25
26 (1) * * *

27
28 (2) *Vendor-provided telephone appearance services*

29
30 If a vendor provides for telephone appearance services in a proceeding for child or
31 family support under Title IV-D, the amount of the fee for a telephone appearance
32 under (jk)(1) is \$58 instead of \$78. No portion of the fee received by the vendor for a
33 telephone appearance under this subdivision is to be transmitted to the State Treasury
34 under Government Code section 72011.
35

36 (3) * * *

37
38 (4) *Fee waivers applicable*

39
40 The fee waiver provisions in (kl) apply to a request by a party in a Title IV-D
41 proceeding for telephone appearance services from a vendor.
42

1 ~~(m)~~(n) * * *

2
3 ~~(n)~~(o) * * *

4
5 ~~(o)~~(p) * * *

6
7 ~~(p)~~(q) * * *

8 **Advisory Committee Comment**

9
10 This rule does not apply to criminal or juvenile matters, and it also does not apply to family law matters,
11 except in certain respects as provided in rule 5.324 relating to telephone appearances in proceedings for
12 child or family support under Title IV-D of the Social Security Act. (See Cal. Rules of Court, rule
13 3.670(b) [rule applies to general civil cases and unlawful detainer and probate proceedings]; rule 5.324(j)
14 [subdivisions ~~(i)~~~~(p)~~ (j)~~(q)~~ of rule 3.670 apply to telephone appearances in Title IV-D proceedings].)

15
16 **Subdivision (h).** Under subdivision (h)(6), good cause should be construed consistent with the policy in
17 (a) and in Code of Civil Procedure section 367.5(a) favoring telephone appearances. Some examples of
18 good cause to appear by telephone without notice include personal or family illness, death in the family,
19 natural disasters, and unexpected transportation delays or interruption.

20
21 **Subdivision (j).** Under subdivision ~~(i)~~(j)(3) of this rule and Government Code section 72010(c), even for
22 proceedings in which fees are authorized, the fees may be waived by a judicial officer, in his or her
23 discretion, for parties appearing directly by telephone in that judicial officer's courtroom.

24
25
26 **Division 11. Law and Motion**

27
28 **Chapter 4. Ex Parte Applications**

29
30 **Rule 3.1207. ~~Personal~~Appearance requirements**

31
32 An applicant for an ex parte application order will be considered without a personal appearance
33 of the applicant must appear, either in person or by telephone under rule 3.670, except in the
34 following cases only:

- 35
36 (1) Applications to file a memorandum in excess of the applicable page limit;
37
38 (2) Applications for extensions of time to serve pleadings;
39
40 (3) Setting of hearing dates on alternative writs and orders to show cause; and
41

1 (4) Stipulations by the parties for an order.
2
3

4 **Title 5. Family and Juvenile Rules**

5
6 **Chapter 10. Government Child Support Cases (Title IV-D Support Cases)**

7
8 **Rule 5.324. Telephone appearance in Title IV-D hearings and conferences**

9
10 **(a)–(i) * * ***

11
12 **(j) Vendors, procedure, audibility, reporting, and information**

13
14 Rule 3.670~~(i)–(p)~~(j)–(q) applies to telephone appearances under this rule.

15
16 **(k) * * ***
17