



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

Title	Agenda Item Type
Civil Practice and Procedure: Telephonic Appearances	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 3.670, 3.1207, and 5.324	January 1, 2014
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	August 2, 2013
	Contact
	Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends amending 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 civil conferences, hearings, and proceedings except those expressly listed as requiring personal appearances; to shorten the time for notice of such appearances from three to two court days; 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. The proposal would also amend rule 3.1207 (regarding ex parte appearances generally) and rule 5.324 (regarding telephonic appearances in certain child support proceedings) to reflect the changes in the telephonic appearance rule.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2014:

1. Amend rules 3.670, 3.1207, and 5.324 of the California Rules of Court to:
 - Clarify that the hearings, conferences, and proceedings at which a party may appear by telephone include all civil conferences, hearings, and proceedings except those expressly listed as requiring personal appearances;
 - Shorten the time for notice of such appearances from three to two court days, and amend references in the rule regarding timeliness to reflect that change;
 - Add ex parte applications to the types of proceedings at which a party may appear by telephone; and
 - Clarify that a court should grant leave to appear by telephone on shortened notice if good cause exists.
2. Amend rule 3.1207 (regarding ex parte appearances generally) and rule 5.324 (regarding telephonic appearances in certain child support proceedings) to reflect the changes in rule 3.670.

The amended rules are attached at pages 11–18.

Previous Council Action

The council most recently made substantive changes to rule 3.670 of the California Rules of Court, effective January 1, 2008, to comply with the then–recently amended Code of Civil Procedure section 367.5 to provide that parties could appear by telephone at certain conferences, hearings, and proceedings in civil cases, including all law and motion matters except for in limine motions, unless the court determined 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 The council also recently amended rule 3.670(j), effective July 1, 2013, to increase the amount of the telephone appearance fee and to clarify the operations of the fee provisions in the rule.

Rationale for Recommendation

Background

The Civil and Small Claims Advisory Committee formed the Telephonic Appearances Working Group, at the direction of the Chief Justice and the chair of the Policy Coordination and Liaison Committee, to work on amending the rule of court regarding telephonic appearances in civil pretrial matters, in order to strengthen courts’ implementation of these rules and possibly expand them in light of concerns raised by various attorney groups. The Conference of California Bar

¹ A history of the law on telephone appearances is included in a Judicial Council report, *Telephone Appearances in Civil Cases*, prepared for its meeting on October 26, 2007, which is available online at <http://www.courts.ca.gov/documents/102607itemA19.pdf>.

Associations originally proposed new legislation to change the statute regarding telephone appearances (Code Civ. Proc., § 367.5), mandating telephonic appearances for certain types of hearings and expanding the rule to expressly cover ex parte applications. Other bar groups favored the legislative changes, but some court representatives opposed them.

At the request of the Chief Justice, the bar groups agreed to work with the Judicial Council to develop appropriate rule amendments instead of working on legislative changes. The Telephonic Appearances Working Group was organized in July 2012, with representatives from the Civil and Small Claims Advisory Committee and from the Conference of the California Bar Associations, Consumer Attorneys of California, California Defense Counsel, California Judges Association, Court Executives Advisory Committee, and Trial Court Presiding Judges Advisory Committee.

That group met initially for several hours by video conference in July 2012 and several times after that by telephone. The proposed rules are the outcome of the group's work, as recommended by the Civil and Small Claims Advisory Committee as a whole. Although some members of the working group and the advisory committee were initially opposed to the amendment to add ex parte proceedings to those that could be handled by telephone appearances, they are aware that if the Judicial Council does not adopt such rules, the Legislature, at the urging of several bar groups, appears ready to expand the telephonic appearances statute to provide that parties may appear telephonically at all civil conferences, hearings, or proceedings except a trial or trial readiness conference. See Senate Bill 315 (Lieu). The committee understands that there will be no need for the legislation if the proposed amendments go forward and so, on that basis, all committee members voted to recommend the changes.

The Proposal

The proposal amends the rule regarding telephonic appearances in civil matters to address the issues raised by members of the bar, as described in detail below. The advisory committee concluded that the provisions to clarify when telephonic appearances were permitted and to expand them to include ex parte applications were particularly important at this time, when access to justice is being diminished in many areas due to court closings. The amendments will allow parties to appear more conveniently in areas such as Fresno, San Bernardino, and even Los Angeles Counties, geographically extensive counties in which trial courts have had to close various departments and even entire courthouses because of the fiscal crisis. At the same time, courts can—under these amendments—continue to exercise discretion to require personal appearances when appropriate.

As the California Judges Association stated in its comment agreeing with the proposal:

Other than the significant changes with respect to ex parte applications, these revisions appear to be an appropriate refinement of the rules to address complaints that telephonic appearances may not always be allowed in situations where they probably should be. The changes with respect to ex parte applications are potentially significant, but they are

balanced by an increase in the amount of notice the parties and the Court will have of the application, and increased opportunity to review the papers in advance of the hearing. The proposed revised rules continue to require personal appearances in those areas bench officers care about most, and continue to allow the exercise of judicial discretion to require personal appearance in other situations where the bench officer feels it would be beneficial.

The specifics of the proposal are described below.

Amendments to rule 3.670.

*Rule 3.670(c).*² The subdivision of the rule describing matters for which parties may appear telephonically is amended as follows:

- A phrase would be added to this subdivision—and others—to clarify that the rules permitting appearance by telephone are all subject to exception should a court order a person to appear under subdivision (f)(2) of the rule and are all subject to the notice provisions in subdivision (h).
- The amended rule would expressly provide that moving parties as well as opposing parties are permitted to appear by telephone. Although the current rule does not prohibit moving parties to appear by telephone, attorneys report that issues have arisen in some courts where moving parties have been categorically precluded from appearing telephonically.
- The itemized list of types of hearings, conferences, and proceedings at which telephonic appearances would be permitted is changed to a general provision that parties may appear telephonically at all hearings, conferences, and proceedings except those expressly exempted in subdivision (e) of the rule.³ This amendment will make processing requests simpler for clerks, who will need only to consult the list of express exemptions to determine if a proceeding is a type for which telephonic appearances are generally permitted.

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.⁴ To address concerns that a court might not have received papers in time to

² This rule number and those in the following bullet points refer to the proposed amended rules, attached at pages 11–18.

³ The version of this subdivision that circulated for comment included an expanded and long list of specific law and motion hearings. The recommendation was modified in light of comments received.

⁴ This amendment is mirrored in the removal of the section of the current rule requiring in-person appearances on most ex parte applications. (See deletions marked in proposed rule 3.670(e)(7).) Note that an applicant is currently required to appear in person on most ex parte applications under current rule 3.1207. That rule is also amended as part of this proposal.

handle such an appearance telephonically, the recommendation would permit telephonic appearance by an ex parte applicant *only if* the applicant has filed the moving papers and submitted a proposed order by at least 10 a.m. *two* court days before the ex parte appearance and, if required by local rule, has provided copies of the papers directly to the department that is to consider the application. A party opposing an ex parte application would be able to appear telephonically, subject to notice provisions.

Rule 3.670(e). This subdivision currently contains the list of matters at which personal appearances are required. Minor modifications would be made to this subdivision, primarily to eliminate the requirement of personal appearances for ex parte applicants, but also to clarify the provisions.

Rule 3.670(h)(1). The notice required for telephonic appearances generally (i.e., for parties not appearing on shortened time, as on ex parte applications) would be changed from three court days to two court days. (This change is reflected in other subdivisions also.) 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, and the comments approving this proposed change, the committee concluded that a shorter time frame for notice was appropriate.

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 seeking to appear by telephone will have to give notice to the court and any other party in the action by 10 a.m. two court days before the ex parte and, if required by local rule, must provide copies of all papers to the department that will be considering the application. An opposing party will have until 2 p.m. the day before the hearing to give notice of telephonic appearance. This requirement will allow an opposing party time to give notice of intent to appear telephonically even if the applicant chooses to appear personally, in which case the applicant would not need to provide notice to an opposing party until 10 a.m. the day before the ex parte appearance.

Rule 3.670(h)(5). The amended rule would eliminate the current requirement that once a person has given notice to the court and other parties that he or she would be going to appear telephonically, further notice must be provided if the person later decides to appear in person. This further-notice requirement was previously included in the rule at the request of members of the bar to prevent potential gamesmanship by counsel, but attorneys apparently no longer consider the rule necessary. Its removal will eliminate the court's need to deal with an additional notice requirement.

Rule 3.760(h)(6). The provision in the rule authorizing a court to allow a party to appear even without advance notice would be amended to provide that, if there are unforeseen circumstances or good cause for a party to appear by telephone without having complied with the notice

provisions, the court *should* permit the party to appear telephonically. As amended, the rule could apply, for example, to 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.

Rule 3.760(k). This subdivision regarding late fees would be amended in light of the change of timely notice from three days to two days. In the amended rule, notice shorter than *two* days will result in a late fee, except in the circumstances listed.

Amendments to rule 3.1207. The general rules regarding ex parte applications currently require that an ex parte application be considered only 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. Rule 5.324(a)–(i) provides for telephonic appearances in certain child support hearings and conferences and addresses when such appearances are permitted, how to request them, how much notice is required, and the like. That rule incorporates current sections (i) through (p) of rule 3.670—provisions relating to vendors, fees, audibility, and other matters—which this proposal will not affect. Because this proposal will change the lettering of those sections of rule 3.670, a minor technical amendment to the cross-reference in rule 5.324 is necessary.

Comments, Alternatives Considered, and Policy Implications

Comments received

The proposal was circulated for comments for two months during spring 2013.⁵ Sixteen comments were received, some extensive. Six commentators—the Superior Court of San Diego, the California Judges Association, California Advocates, Inc., the State Bar Committee on Delivery of Legal Services, and two attorneys (The Cross Law Firm and Adam Jaffe)—provided comments agreeing with the proposal. Five commentators—Consumer Attorneys of California, State Bar Committee on Administration of Justice, Orange County Bar Association, an individual judge from the Superior Court of Los Angeles County, and a legal publisher—agreed with the proposal generally but requested some modification.⁶ Four commentators—the Superior Court of Los Angeles County, an individual judge from that court, the California Court Reporters Association, and the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees—disagreed with the proposal, particularly with the addition of a rule authorizing telephonic appearances by all parties on ex parte applications.

⁵ A summary of the comments and the committee’s responses is attached at pages 19–44.

⁶ A member of the public, Mr. Ronald Pierce, also submitted a comment indicating he agreed with the proposal if modified, but he did not suggest any modifications. The text of his comment described concerns arising from the circumstances of a specific case in which he was a self-represented party and so are outside the scope of the proposal.

A summary of the principal comments addressed to specific provisions of the proposed amendments appears below.

Rule 3.670(c). Subdivision describing matters for which parties may appear telephonically.

Several commentators objected to the proposed amendment as circulated, which gave an extensive list of law and motion matters to which the rule would apply, in an attempt to clarify that the rule (and the statute, Code of Civil Procedure section 360.7) authorizes telephonic appearances at *all* law and motion matters, except for those expressly excluded, such as in limine motions. The Consumer Attorneys of California and the Superior Court of Los Angeles County both recommended that instead of setting out a long list of proceedings at which telephonic appearances are allowed, the rule should provide more generally that telephonic appearances are permitted in all instances other than those expressly excluded by the rule. The committee agreed with this recommendation and has modified this subdivision in light of it.

Rule 3.670(d). New subdivision to expressly include ex parte applications. As noted by the California Judges Association, “The changes with respect to ex parte applications are potentially significant, but they are balanced by an increase in the amount of notice the parties and the Court will have of the application, and increased opportunity to review the papers in advance of the hearing.”

The proposal to include ex parte applications to matters that can be heard telephonically is supported by the California Judges Association, the Superior Court of San Diego County, the State Bar Committee on Delivery of Legal Services, California Advocates, Inc., Consumer Attorneys of California, the Orange County Bar Association, and two individual attorneys. It is supported in general, with minor modifications requested, by the State Bar Committee on Administration of Justice and legal publisher Julie Goren.

The inclusion of ex parte applications for telephonic appearances is opposed by the Superior Court of Los Angeles County and two judges from that court (Judge Brazile and Judge Lavin), the California Court Reporters Association, and the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees, which opposes the proposal in its entirety, but particularly this point. The grounds for the oppositions are stated in the comment chart and have all been reviewed and considered by the committee. The primary objections raised and the committee’s responses are described below.

The principal objection raised by the commentators is the difficulty in getting the papers in support of an ex parte application to the department that is going to consider it, particularly without an attorney present to carry the papers there after filing and paying the fee. Some objected that, in a type of proceeding already labor intensive for the courts, removing one set of hands will burden the court and make this process even more difficult. (See comments of the Superior Court of Los Angeles County, Judge Brazile, Judge Lavin, and the Joint Rules Working Group.) The committee understands the issue raised and has attempted to deal with it by

recommending rule changes (1) requiring that the application papers and proposed order be filed two days in advance of the date of consideration, rather than at the time of the ex parte as currently required, and (2) expressly authorizing courts to adopt local rules requiring an applicant intending to appear by telephone to deliver the application papers directly to the department that will be considering the application. (See rule 3.670(d)(1) and (h)(3).)

Some commentators requested that the requirement for courtesy copies for the department be placed directly in the rule and that it be more detailed, with deadline for delivery, and the like. (See comments of the Superior Court of Los Angeles County, Judge Brazile, and Ms. Goren.) But the committee concluded that by leaving those details to local rules, each court can provide in detail what will work best for that court. Also, by permitting local rules to mandate courtesy copies, those courts—particularly smaller ones—that do not want courtesy copies will not be required to have them.

Some commentators objected that allowing telephonic appearances for ex parte applications will increase the number of ex parte applications the courts will have to handle. (See comments of the Superior Court of Los Angeles County and Judge Lavin.) In a similar vein is an objection that the rule changes will result in more notices that the clerks will have to handle (a comment of the Joint Rules Working Group). The committee acknowledges that the change in rules may result in some increases in the burden on the courts (although the majority of the group does not expect the change to open a floodgate of ex parte applications). However, in recommending the amendments, the committee has balanced that increased burden against the offsetting benefits to users of the courts, the large cost savings to parties, and the increased access to justice provided by allowing the mandated appearances at ex parte applications to be made by telephone.

Several objectors raised issues that they perceive as problematic with telephone appearances, such as potential abuse of the process by self-represented parties, interruptions during phone calls (or inability to interrupt when desired), delays or slowing of proceedings, longer hearings, indifferent quality of phone equipment (making calls difficult to hear), and difficulty in accurately reporting the proceedings. (See comments of the Superior Court of Los Angeles County, Judge Brazile, the California Court Reporters Association, and the Joint Rules Working Group.) However, such issues pertain to telephonic appearances *generally*, not just to those on ex parte applications. Because such appearances are currently authorized and encouraged by statute (see Code Civ. Proc., § 367.5), these concerns are beyond the scope of this proposal.

Finally, Judge Lavin pointed out that courts are not required to hold hearings on ex parte applications and suggests that, if the rule is amended to permit telephone appearances on these applications, it should explicitly state that the rule does not guarantee a hearing. In response to this comment, the committee recommends adding a sentence to the Advisory Committee Comment to rule 3.670 to clarify that the amendments are intended to address only the manner in which appearances may be made on ex parte applications and are not intended to alter the way in which courts handle them.

Rule 3.670(e). List of matters at which personal appearances are required. Minor modifications were made to this subdivision, primarily to eliminate the requirement of personal appearances by ex parte applicants. Two commentators suggested that rule 3.670(e)(1) be further modified to include the word “proceedings” in addition to trials and hearings. (See comments of the Superior Court of Los Angeles County and Judge Brazile.) That change has been made.

Those same commentators suggested adding to the list of matters at which personal appearances are required “Final Status Conference (FSC) and Mandatory Settlement Conference (MSC).” The committee concluded that this requested change was unnecessary, noting that because “Final Status Conference” is the specific name given to a trial management conference by the Superior Court of Los Angeles County, a personal appearance is already required at such conferences under current rule 3.670(e)(1)(D). Similarly, the current rule already requires personal appearances at all settlement conferences except as otherwise permitted by the court. (See rule 3.670(e)(1)(C).)

Rule 3.670(h)(1). Notice for telephonic appearances generally. The committee asked for specific comments as to whether shortening the requirement of three days’ notice to two days would work well for parties and courts. Two commentators—Consumer Attorneys of California and the Orange County Bar Association—responded to this request directly. Both favored changing the notice requirement to two days. The State Bar Committee on the Delivery of Legal Services also noted that the shorter the notice required, the easier for self-represented litigants to access the court. Although the Superior Court of Los Angeles County stated a concern of “[s]cheduling problems and notice requirements,” that comment was among a list of objections regarding telephonic appearances in ex parte matters. The primary concern regarding two days’ notice in ex parte matters goes to whether the papers will get to the courtroom within those two days—a point not at issue in regular law and motion or other noticed procedures in which the court has much more time for the processing and delivery of papers.

Rule 3.670(h)(3)–(4). New notice provisions for intent to appear telephonically on an ex parte application. Some commentators objected that two days’ notice to the court was insufficient. No commentators raised concerns regarding two days’ notice to other parties. The State Bar Committee on Administration of Justice requested that some rule be added regarding opposition papers—that is, rules about when they have to be filed and served if the party intends to appear telephonically. The committee did not think that any rule was required on this point—instead leaving it up to the party to ensure that papers were delivered to the court and to the other side before the time for the ex parte application if the party wanted them considered.

Rule 3.670(h)(5). Notice of personal appearance after notice of telephonic appearance. This subdivision currently 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. The committee included a specific question in the invitation to comment on whether this provision is necessary. The only responses received were from the Orange County Bar Association and Consumer Attorneys of California, both of which were in

favor of eliminating the provision. The committee agreed with the commentators and recommends amending the rule so that no further notice is required to appear in person.

Rule 3.760(h)(6.) Telephonic appearance without advance notice. Commentator Goren commented that the section on requesting to appear without notice should be rewritten to require a showing of good cause in any request to appear without notice. The committee disagreed and left the rule as circulated, providing that any party may ask for permission to appear without notice, even without good cause, although a court need not grant such a request. Consumer Attorneys of California objected that the provision still required an undefined good cause before a court was supposed to grant a request to appear without notice. The committee concluded that such a standard was appropriate, although the committee expanded the standard to include “unforeseen circumstances.”

Alternatives Considered

In addition to the alternatives described above, the committee considered not amending the rules at all. The majority of the committee concluded, however, that the amendments are needed to remedy a problem that is causing significant cost or inconvenience to attorneys and parties, and to provide more efficient use of courtrooms. The committee also agreed unanimously that amending the rules was preferable to a broader statutory change.

Implementation Requirements, Costs, and Operational Impacts

From the comments received, it appears that implementation requirements will be minimal, and few, if any, direct costs will be incurred. In fact, increased telephonic appearances should actually increase revenues to the trial courts, because for each telephone appearance fee collected, the vendor transmits \$20 to the State Treasury for deposit in the Trial Court Trust Fund.

As several commentators noted, the addition of ex parte applications to the types of proceedings for which telephonic appearances are required is likely to affect operations, at least in some courts. Ex parte applications are considered in a very short time frame, and when an ex parte applicant or his or her counsel does not personally appear to file the papers and pay the filing fees, the court clerks will be responsible to get those papers to the judicial officer who is to consider them without any assistance from the party. The committee, however, believes any added burden on the court will be minimized by the requirement of extra notice for such applications and requirements for delivery of courtesy copies to the department involved, if the court should so wish. In addition, to the extent that courts are affected, there will be substantial offsetting benefits to parties in terms of access to justice and significant cost-savings.

Attachments

1. Cal. Rules of Court, rules 3.670, 3.1207, and 5.324, at pages 11–18
2. Chart of comments, at pages 19–44

Rules 3.670, 3.1207, and 5.324 of the California Rules of Court are 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)–(b) * * *~~

10
11 **(c) General provision authorizing parties to appear by telephone**

12
13 Except as ~~ordered by the court under provided in (e)(f)(2) and~~ subject to (d)
14 ~~(regarding ex parte applications) and (h) (regarding notice), a party~~ all parties,
15 including moving parties, may appear by telephone at ~~the following~~ all
16 conferences, hearings, and proceedings other than those where personal
17 appearances are required under (e).;

18
19 ~~(1) Case management conferences, provided the party has made a good faith~~
20 ~~effort to meet and confer and has timely served and filed a case management~~
21 ~~statement before the conference date;~~

22
23 ~~(2) Trial setting conferences;~~

24
25 ~~(3) Hearings on law and motion, except motions in limine;~~

26
27 ~~(4) Hearings on discovery motions;~~

28
29 ~~(5) Status conferences, including conferences to review the status of an~~
30 ~~arbitration or a mediation; and~~

31
32 ~~(6) Hearings to review the dismissal of an action.~~

33
34 **(d) Provisions regarding ex parte applications**

35
36 (1) Applicants

37
38 Except as ordered by the court under (f)(2) and subject to (h), applicants seeking an
39 ex parte order may appear by telephone provided that the moving papers have been

1 filed and a proposed order submitted by at least 10:00 a.m. two court days before
2 the ex parte appearance and, if required by local rule, copies have been provided
3 directly to the department in which the matter is to be considered.

4
5 (2) Opposing Parties

6
7 Even if the applicant has not complied with (1), except as ordered by the court
8 under (f)(2) and subject to the provisions in (h), parties opposing an ex parte order
9 may appear by telephone.

10
11 **(d)(e) Required personal appearances**

12
13 (1) Except as permitted by the court under provided in (e)(f)(3), a personal
14 appearance is required for the following hearings, conferences, and proceedings
15 not listed in (c), including the following:

16
17 ~~(1)(A)~~ Trials, and hearings, and proceedings at which witnesses are expected to
18 testify;

19
20 ~~(2)(B)~~ Hearings on temporary restraining orders;

21
22 ~~(3)(C)~~ Settlement conferences;

23
24 ~~(4)(D)~~ Trial management conferences;

25
26 ~~(5)(E)~~ Hearings on motions in limine; and

27
28 ~~(6)(F)~~ Hearings on petitions to confirm the sale of property under the Probate
29 Code.

30
31 (2) In addition, except as permitted by the court under provided in (e)(f)(3), a
32 personal appearance is required for the following persons:

33
34 ~~(7) Applicants seeking an ex parte order, except when the applicant is seeking an~~
35 ~~order:~~

36
37 ~~(A) For permission to file a memorandum in excess of the applicable page~~
38 ~~limits;~~

39
40 ~~(B) For an extension of time to serve pleadings;~~

41
42 ~~(C) To set hearing dates on alternative writs and orders to show cause; or~~

1
2 ~~(D)~~—By stipulation of the parties;

3
4 ~~(8)~~(A) Persons ordered to appear to show cause why sanctions should not be
5 imposed for violation of a court order or a rule; or

6
7 ~~(9)~~(B) Persons ordered to appear in an order or citation issued under the Probate
8 Code.

9
10 At the proceedings described under ~~(7)~~, ~~(8)~~, and ~~(9)~~, (2), parties who are not
11 required to appear in person under this rule may appear by telephone.

12
13 ~~(e)~~(f) **Court discretion to modify rule**

14
15 (1) * * *

16
17 (2) *Court may require personal appearances*

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

24
25 (3) *Court may permit appearances by telephone*

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

30
31 ~~(f)~~(g) * * *

32
33 ~~(g)~~(h) **Notice by party**

34
35 (1) Except as provided in (6), a party choosing to appear by telephone at a
36 hearing, conference, or proceeding, other than on an ex parte application,
37 under this rule must either:

38
39 (A) Place the phrase "Telephone Appearance" below the title of the
40 moving, opposing, or reply papers; or

1 (B) At least ~~three~~ two court days before the appearance, notify the court
2 and all other parties of the party’s intent to appear by telephone. If the
3 notice is oral, it must be given either in person or by telephone. If the
4 notice is in writing, it must be given by filing a “Notice of Intent to
5 Appear by Telephone” with the court at least ~~three~~ two court days
6 before the appearance and by serving the notice at the same time on all
7 other parties by personal delivery, fax transmission, express mail, e-
8 mail if such service is required by local rule or court order or agreed to
9 by the parties, or other means reasonably calculated to ensure delivery
10 to the parties no later than the close of the next business day.

11
12 (2) * * *

13
14 (3) An applicant choosing to appear by telephone at an ex parte appearance
15 under this rule must:

16
17 (A) Place the phrase “Telephone Appearance” below the title of the
18 application papers;

19
20 (B) File and serve the papers in such a way that they will be received by the
21 court and all parties by no later than 10:00 a.m. two court days before
22 the ex parte appearance; and

23
24 (C) If provided by local rule, ensure that copies of the papers are received
25 in the department in which the matter is to be considered.

26
27 (4) Any party other than an applicant choosing to appear by telephone at an ex
28 parte appearance under this rule must notify the court and all other parties
29 that have appeared in the action, no later than 2:00 p.m. on the court day
30 before the appearance, of its intent to appear by telephone. If the notice is
31 oral, it must be given either in person or by telephone. If the notice is in
32 writing, it must be given by filing a “Notice of Intent to Appear by
33 Telephone” with the court and by serving the notice at the same time on all
34 other parties by any means authorized by law reasonably calculated to ensure
35 delivery to the parties no later than the close of business on the court day
36 before the appearance.

37
38
39 ~~(3)~~(5) If a party that has given notice that it intends to appear by telephone under
40 (1) subsequently chooses to appear in person, the party may appear in person.
41 must so notify the court and all other parties that have appeared in the action,
42 by telephone, at least two court days before the appearance.

1
2
3 ~~(4)(6)~~ A party may ask the court for leave to appear by telephone without the
4 notice provided for under (1)–(4). The court, ~~on a showing of good cause,~~
5 ~~may permit a party to appear by telephone at a conference, hearing, or~~
6 ~~proceeding even if the party has not given the notice required under (1) or (2)~~
7 should permit the party to appear by telephone upon a showing of good cause
8 or unforeseen circumstances. ~~The court may permit a party to appear in~~
9 ~~person even if the party has not given the notice required in (3).~~

10
11 **~~(h)~~(i) Notice by court**

12
13 After a party has requested a telephone appearance under ~~(gh)~~, if the court requires
14 the personal appearance of the party, the court must give reasonable notice to all
15 parties before the hearing and may continue the hearing if necessary to
16 accommodate the personal appearance. The court may direct the court clerk, a
17 court-appointed vendor, a party, or an attorney to provide the notification. In courts
18 using a telephonic tentative ruling system for law and motion matters, court
19 notification that parties must appear in person may be given as part of the court’s
20 tentative ruling on a specific law and motion matter if that notification is given one
21 court day before the hearing.
22

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

24
25 A court may provide for telephone appearances only through one or more of the
26 following methods:

27
28 (1) * * *

29
30 (2) The direct provision by the court of telephone appearance services. If a court
31 directly provides telephone services, it must collect the telephone appearance
32 fees specified in ~~(jk)~~, except as provided in ~~(kl)~~ and ~~(lm)~~. A judge may, at his
33 or her discretion, waive telephone appearance fees for parties appearing
34 directly by telephone in that judge’s courtroom.
35

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

37
38 The telephone appearance fees specified in this subdivision are the statewide,
39 uniform fees to be paid by parties to a vendor or court for providing telephone
40 appearance services. Except as provided under ~~(k)~~ and ~~(l)~~ and ~~(m)~~, the fees to be
41 paid to appear by telephone are as follows:
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(1) * * *

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

- (A) When an opposing party has provided timely notice under (h)(4) on an ex parte application or other hearing or conference, or proceeding is set on shortened time for which three days' notice would not be feasible or practical, only the applying party and not any responding party is to be charged the late fee, no late fee is to be charged to that party;
- (B) When the court, on its own motion, sets a hearing or conference on shortened time, no late fee is to be charged to any party;
- (C) When the matter has a tentative ruling posted within the two~~three~~-day period, no late fee is to be charged to any party; and
- (D) When the request to appear by telephone is made by a party that received notice of another party's intent to appear and afterward decides also to appear by telephone under ~~(gh)~~(2), no late fee is to be charged to that party if its request is made to the vendor or the court providing the service by noon on the court day before the hearing or conference.

(3) * * *

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

(1) *Effect of fee waiver*

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

(2) * * *

(3) * * *

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

1 (1) * * *

2

3 (2) *Vendor-provided telephone appearance services*

4

5 If a vendor provides for telephone appearance services in a proceeding for
6 child or family support under Title IV-D, the amount of the fee for a
7 telephone appearance under (jk)(1) is \$58 instead of \$78. No portion of the
8 fee received by the vendor for a telephone appearance under this subdivision
9 is to be transmitted to the State Treasury under Government Code section
10 72011.

11

12 (3) * * *

13

14 (4) *Fee waivers applicable*

15

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

18

19 ~~(m)(n)~~ * * *

20

21 ~~(n)(o)~~ * * *

22

23 ~~(o)(p)~~ * * *

24

25 ~~(p)(q)~~ * * *

26

Advisory Committee Comment

27

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

34

35 **Subdivision (d).** The inclusion of ex parte applications in this rule is intended to address only the
36 way parties may appear and is not intended to alter the way courts handle ex parte applications.

37

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

42

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

5
6
7 **Division 11. Law and Motion**

8
9 **Chapter 4. Ex Parte Applications**

10
11 **Rule 3.1207. ~~Personal~~ Appearance requirements**

12
13 An applicant for an ex parte application order will be considered without a personal
14 appearance of the applicant must appear, either in person or by telephone under rule
15 3.670, except in the following cases only:

16
17 (1)-(4) * * *

18
19
20 **Rule 5.324. Telephone appearance in Title IV-D hearings and conferences**

21
22 **(a)-(i) * * ***

23
24 **(j) Vendors, procedure, audibility, reporting, and information**

25
26 Rule 3.670(i) ~~(p)~~(j)-(q) applies to telephone appearances under this rule.

27
28 **(k) * * ***

Civil Practice and Procedure: Telephonic Appearances (amend Cal. Rules of Court, rules 3.670, 3.1207, and 5.324)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
1.	Hon. Kevin Brazile Superior Court of Los Angeles County	AM	<p>Pursuant to the Invitation To Comment Re: Civil Practice and Procedure: Telephonic Appearances, specifically the proposed amendments to California Rule of Court (CRC) Rule 3.670, I hereby submit comments to the proposed rule amendments. The concerns I have about the amendments and potential problems or negatives the rule may create are as follows:</p> <p>1) Misuse of the rules or abuse of the process by pro-per litigants.</p> <p>2) Interruptions by telephone participants.</p> <p>3) Delays and a general slow down of proceedings and other calendared matters.</p> <p>4) Quality of the court call equipment or phones that may make it difficult to hear what is being said.</p> <p>5) If a court reporter is available the difficulty of creating a transcript of what occurs or is stated.</p> <p>6) Additional or more work for court staff</p>	<p>1. The committee appreciates the comment, but notes that the issue raised is not directed to the current proposal, but rather to the existence of telephonic appearances in general, which statute already provides for.</p> <p>2. See response to point 1. The committee also notes that the service provider CourtCall will arrange for operator assistance with the calls if desired.</p> <p>3. See response to point 1.</p> <p>4. See response to point 1.</p> <p>5. See response to point 1.</p>

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		<p>because ex-partes are "staff-intensive" in terms of paying filing fees, obtaining the file, collecting moving and opposition papers, and ensuring all court-call participants are available.</p> <p>7) Two days notice is inadequate for telephonic court call.</p> <p>8) Will not result in efficiency or decreased costs because moving or opposition papers may not be timely received by court staff or bench officer.</p> <p>9) Telephonic appearances should not be subject to either audio or video recording.</p> <p>[10] As for the ex parte section of the rule, section (e) (1) of the rule should be amended to read as follows: Trials, hearing and <u>proceedings</u> at which <u>persons</u> are expected to testify.</p> <p>[11] In addition, in section (h) (3) (C), delete "if required by local rule", and add, " Conformed</p>	<p>6. While the committee acknowledges that the inclusion of ex parte applications in proceedings at which parties may appear telephonically may have an impact on courts, the requirement of extra notice for such applications and delivery of courtesy copies to the department involved should the court so wish will help minimize that burden. In addition, to the extent there is some added impact on the court, there will be substantial off-setting benefits to parties in terms of access to justice and cost-savings.</p> <p>7. The committee believes that with added provision that a court may mandate delivery of copies of all papers to the department, the time should be sufficient.</p> <p>8. See response to points 6 and 7.</p> <p>9. The proposal would not change any current provisions regarding recordings. See also response to point 1.</p> <p>10. This modification would make rule 3.670 (e) (1) parallel with the introductory language in s (e). The committee agrees with and has made the requested modification.</p> <p>11.The committee has concluded that it is more appropriate to leave the details of such</p>

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			<p>copies of all ex parte papers must be filed in the courtroom , along with payment of fees, when the courtroom opens at _____ a.m. or p.m."</p> <p>[12] Lastly, Final Status Conferences (FSC) and Mandatory Settlement Conferences (MSC) should be added to the list of matters that a personal appearance is required, except as permitted by the court. <u>See</u> section (e).</p>	<p>requirements up to each individual court, particularly since some courts do not want to receive courtesy copies.</p> <p>12. The committee notes that if “Final Status Conference” is the specific name given to a trial management conference by Superior Court of Los Angeles County, a personal appearance is already required at such conferences under current rule 3.670(e)(4) and the proposal would not change that. Similarly the current rule already requires personal appearances at all settlement conferences except as otherwise permitted by the court. See rule 3.670(e)(3).</p>
2.	California Court Reporters Association By: Pam Katros Chair	N	<p>The California Court Reporters Association, CCRA, understands the desire to increase access to the courts and reduce the cost of litigation. However, CCRA represents reporters who will be attempting to make a verbatim record of these proceedings, we believe some guidelines in handling these calls must be put in place.</p> <p>First of all, the equipment used for telephonic appearances in most courthouses is inadequate. Sometimes these calls are handled through a speaker phone which makes it virtually impossible for the reporter to make a record. Telephonic appearances are one of the most difficult to report and makes producing a verbatim record problematic. There is difficulty identifying speakers, especially if there are two men or two women on the call. Although,</p>	<p>The committee appreciates the comment, but notes that the issue raised is not directed to the current proposal, but rather to the existence of telephonic appearances in general, which statute already provides for. The committee agrees that it would be a good practice to have a policy that speakers must identify themselves each time they speak, but would leave any such policy to the discretion of each judicial officer.</p>

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			telephonic appearance on routine matters can save time and money, it's completely different when you're dealing with substantive proceedings such as summary judgment motions, etc. Setting simple policies and procedures regarding equipment and that speakers state their name every time they speak would help court staff produce an accurate record.	
3.	California Advocates, Inc. By: Mike Belote Sacramento	A	Given the realities of modern, multi-county law practice, the ability of counsel to appear telephonically saves clients enormous amounts of money in hourly fees and travel expenses, and permits lawyers to practice far more efficiently. Telephonic appearances also lessen demands on physical infrastructure including courthouses and transportation networks. Given case processing changes in many courts, and closure of courthouses, the ability to appear telephonically is even more important. Adding ex parte applications is an improvement over current rules, and can be operationalized by the telephonic appearances vendor. Finally, the proposed rule changes appropriately preserve judicial discretion in requiring in-person appearances on a case-by-case basis.	The committee notes the commentator's agreement with the proposal. No further response is required.
4.	California Judges Association By: Lexi Howard Legislative Director Sacramento	A	The proposal indicates: The ability of parties and attorneys to appear by telephone at hearings and conferences in civil cases has increased access to the courts and	The committee notes the commentator's agreement with the proposal. No further response is required.

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		<p>reduced litigation costs. This proposal would amend rule 3.670 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.</p> <p>The California Judges Association supports the proposed rule, as specified in Invitation to Comment SPR13-14, because telephonic appearances are useful in some circumstances and with court closures and staff reductions, may become more critical.</p> <p>Rule 3.670(c) contains the basic provisions relating to telephonic appearances. The change to the prefatory section makes it clear that moving parties, as well as responding parties, may appear telephonically. The discussion of the proposed changes suggests that this may have been an issue in some courts.</p> <p>The proposed amended subparts to Rule 3.670(c)(3) enumerate in more detail than the current rule the types of law and motion matters</p>		

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		<p>in which telephonic appearances are permitted. Again, the discussion of the proposed changes suggests that this is to clarify that all law and motion matters are appropriate for telephonic appearances. However, the Court retains its discretion to require a personal appearance where it deems necessary.</p> <p>Proposed Rule 3.670(d) represents a substantial change in the policy with respect to ex parte applications, allowing for the first time telephonic appearances in essentially all civil ex parte matters, provided that the moving papers are filed by 10:00 a.m. two court days in advance of the ex parte appearance, and copies are delivered to the courtroom if required by local rule. The Court may allow later filing. The rule also expressly permits parties opposing ex parte applications to appear telephonically, even if the moving party does not. In turn, current Rule 3.670(d)(7) is amended to delete the short list of ex parte matters for which personal appearances were not required.</p> <p>Proposed Rule 3.670(h)(3) requires that persons intending to appear telephonically on ex parte matters must file and serve on all parties the papers so they are received by 10:00 a.m. two court days before the application. Proposed Rule 3.670(h)(4) requires parties other than the moving party on an ex parte application give notice of intent to appear telephonically by 2:00 p.m. the court day before the appearance.</p>		

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			<p>Proposed Rule 3.670(e) perpetuates the existing list of hearings, conferences and proceedings in existing Rule 3.670(d) (1)-(6) in which personal appearances are required. This list adequately addresses the problems discussed above under SB 315.</p> <p>Other than the significant changes with respect to ex parte applications, these revisions appear to be an appropriate refinement of the rules to address complaints that telephonic appearances may not always be allowed in situations where they probably should be. The changes with respect to ex parte applications are potentially significant, but they are balanced by an increase in the amount of notice the parties and the Court will have of the application, and increased opportunity to review the papers in advance of the hearing. The proposed revised rules continue to require personal appearances in those areas bench officers care about most, and continue to allow the exercise of judicial discretion to require personal appearance in other situations where the bench officer feels it would be beneficial.</p>	
5.	Consumer Attorneys of California By: Erica Dacumos Legislative Coordinator	AM	Consumer Attorneys of California has always supported the broad utilization of telephonic appearances and has appreciated the opportunities over the years to work with the Judicial Council on the implementation and expansion of the use of telephonic appearances.	The committee notes the commentator’s general agreement with the proposal, and addressed the specific requests for modification below.

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		<p>The proposed modifications to Rule 3.670 currently out for comment are consistent with the goal of increasing the utilization of telephonic appearances.</p> <p>The devastating cuts to trial court funding have only created a greater need for more widespread utilization of telephonic appearances. Courts like Fresno and San Bernardino have closed their branch courts, requiring parties or their counsel to travel even farther for what most often are very brief appearances that could be handled by telephone. One press report noted that citizens in Needles, California without transportation need to take a bus to Arizona in order to board a bus to take them to their courthouse in San Bernardino. The closure of courthouses throughout the state have also increased the load on the courthouses that remain open creating longer lines to get into the courthouses at the security check points.</p> <p>While we believe a rule similar to pending SB 315 (Lieu) is a better approach in declaring telephonic appearances shall be allowed in all cases except a few delineated instances, like trial, the proposed rule changes are a good improvement. Of course, we continue to support the continued discretion of judges, on a case-by-case, hearing-by-hearing basis, to compel a personal appearance in a matter if justified.</p> <p>With respect to SPR 13-14, we have the</p>		

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		<p>following specific comments:</p> <p style="text-align: center;">Rule 3.670(c)</p> <p>The current rule sets forth a list of matters where the parties may appear by telephone. CAOC believes it would be more in keeping with the policy of encouraging telephonic appearances to delete this long list of hearings where the parties may appear by telephone and simply state that the parties may appear by telephone in all matters except those few matters where a personal appearance is required.</p> <p style="text-align: center;">Rule 3.670(h)(5)</p> <p>Very often a lawyer will request an appearance telephonically on a matter in light of a conflict that resolves prior to the subject hearing. That lawyer should be able to attend the hearing in person without the need for providing notice or getting permission from the court.</p> <p style="text-align: center;">Rule 3.670(h)(6)</p> <p>The proposed legislative changes sought by the Conference of California Bar Associations last year included numerous examples of lawyers who found themselves in a sudden emergency situation requiring them to seek telephonic appearance a day or two before the hearing. Examples included the lawyer who was rushed to the hospital and sought to appear telephonically from the hospital the next morning but was denied, and a lawyer who was</p>	<p>1. The committee agrees, and has modified the proposal to reflect this suggestion.</p> <p>2. The committee agrees and has modified the proposal to reflect this suggestion.</p> <p>3. The rule calls for notice in advance of telephonic appearances. The committee recognizes that such notice is not always possible and so, in the proposed amendment to rule 3.670(h)(5), intends to strengthen this section of the rule, to provide that a party may always ask to appear without notice in any situation. The court may always permit such an appearance. Further, it provides that if good cause or unforeseen circumstances are shown, the court</p>

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		<p>a single mother whose child suddenly became ill and was unable to attend her daycare. This woman was also denied telephonic appearance. We understand the current changes proposed at this section were intended to address that concern and liberalize requests for telephonic appearances which would otherwise be late. Consumer Attorneys of California believes that as proposed, the current language still presents a barrier by setting forth an undefined “good cause” requirement.</p> <p>The request for specific comments also seeks comment regarding the three-day notice requirement under Rule 3.670(h)(1)(B). The Consumer Attorneys of California believe that time has demonstrated that the parties do not seek or obtain any tactical advantage with the utilization of telephonic appearances or deciding to appear at a hearing after they had previously requested appearance by telephone. Lawyers simply wish to appear telephonically for any number of reasons, such as cost to the client, avoiding hours in traffic and other quality of life issues. Time has also demonstrated that the technology is reliable, and requests for telephonic appearances can be completed by the vendor in relatively short order. Consumer Attorneys believe that the three-day time requirement should be eliminated or reduced to one day’s notice. This would go a long way in alleviating the need for emergency or good cause requests for telephonic appearances</p>	<p>should permit such an appearance.</p> <p>4. The committee agrees and has eliminated this further notice requirement from the recommended rules.</p>	

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			<p>within the three-day window.</p> <p style="text-align: center;">Rule 3.670(h)(5)</p> <p>As noted above, CAOC believes this is an antiquated and unnecessary provision and should be eliminated.</p>	5. See response to point 2 above.
6.	The Cross Law Firm, APC By: Tamara Cross President San Diego	A	No further comment.	The committee notes the commentator's agreement with the proposal. No further response is required.
7.	Julie Goren Author/Publisher Sherman Oaks	AM	<p>Rule 3.670(c)(1) - Make the language referencing (h) consistent with (d)(1) and (d)(2) so that all either say "subject to the provisions in (h)" or "subject to (h)."</p> <p>Rule 3.670(c)(3) - I agree with the changes except for the list of inclusive language and list of examples. Adding "all" law and motion matters is clear; despite the "including but not limited to" language, the list can only complicate things and raise questions as to anything not listed.</p> <p>Rule 3.670(d)(1) - If telephone appearances are encouraged, I question why the process would be made more onerous by requiring filing a day before currently no more than notice is required. Why would the court need the papers earlier simply because the applicant is appearing by telephone? If there isn't a valid reason, I would suggest that the filing deadline be no earlier than one court day before the appearance (still more onerous than it is now as only service by</p>	<p>1. These two sections have now been harmonized.</p> <p>2. The committee agrees that the long list is overly complicated and has further amended this section in the proposal to simplify the rule.</p> <p>3. The committee disagrees with this suggestion and has retained the two-days notice in the proposal in order to assure that courts have time to exercise discretion to determine that a personal appearance is required.</p> <p>The text has been changed as suggested.</p>

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		<p>that time is currently required), and in any respect, I would change "by at least 10 a.m." to "no later than 10 a.m."</p> <p>To ensure that the court has the papers, I would delete "if required by local rule," making delivery of copies to the department mandatory in all cases, and I would add a time by which those copies have to be delivered, e.g., 11 a.m.</p> <p>Rule 3.670(d)(2) - Shouldn't the reference to opposing "an ex parte order" be changed to "an ex parte application"?</p> <p>Rule 3.670(e) - Make the language referencing the (f)(3) exception in two places consistent so that it says "as permitted by the court under (f)(3)" or "as provided in (f)(3)."</p> <p>Rule 3.670(h)(1) - I would delete "Except as provided in (6)" as parties might be more inclined to skip the normal procedure.</p> <p>Rule 3.670(h)(1)(B) - I would delete the detail re authorized methods of service, so it reads "by any means authorized by law and reasonably calculated ..." This language was adopted in C.R.C., Rule 3.1312(a) in lieu of listing the various methods of service.</p> <p>Rule 3.670(h)(3) - Change "a ex parte" to "an ex parte" and add a colon after "must".</p>	<p>4. The committee has concluded that the details of such a rule should be left to individual courts. Some courts do not want any courtesy copies; others may want them on the same day as the filing, etc.</p> <p>5. The text has been modified as suggested.</p> <p>6. The text has been modified as suggested.</p> <p>7. The new language "as permitted by the court" has been added so it is the same in both places.</p> <p>8. The text has been modified as suggested.</p> <p>9. The text has been modified as suggested.</p>

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			<p>Rule 3.670(h)(3)(B) - Make this consistent with whatever changes are made to (d)(1)(A).</p> <p>Rule 3.670(h)(3)(C) - Make this consistent with whatever changes are made to (d)(1)(B). In addition, delete "to be considered."</p> <p>Rule 3.670(h)(4) - Change "a ex parte application" to "an ex parte application." I would delete the detail re authorized methods of service, so it reads "all other parties by any means authorized by law and reasonably calculated ..." This language was adopted in C.R.C., Rule 3.1312(a) in lieu of listing the various methods of service.</p> <p>Rule 3.670(h)(6) - I would change it to: "Where good cause exists for failing to comply with the procedures set forth in (1)-(4), a party may ask the court for leave to appear by telephone. The court should permit the party to appear by telephone upon a showing of good cause."</p>	<p>10. The text has been modified as suggested.</p> <p>11. See response to point 4 above.</p> <p>13. The has been modified as suggested.</p> <p>14. The committee disagrees with this change. Parties can ask for leave to appear without notice even without good cause; a judicial officer may or may not give leave. The new provision is to provide that where good cause exists, the court should grant leave.</p>
8.	Adam Jaffe Law Office of Adam Jay Jaffe San Diego	A	No further comment.	The committee notes the commentator's agreement with the proposal. No further response is required.
9.	Hon. Luis A. Lavin Superior Court Los Angeles Country	N	Unfortunately, many ex parte applications are made without an affirmative showing, in a declaration containing competent testimony based on personal knowledge, of irreparable harm or immediate danger. The proposal would have the effect of increasing the number of ex	The committee disagrees that applicants should not be allowed to appear telephonically on ex parte applications. The committee acknowledges that the change may result in some increase in the burden on the courts, although the committee does not expect the change to open a floodgate of

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			<p>parte filings, including those with questionable merit. If telephone appearances for ex parte applications are allowed, the proposed changes should be modified so that the moving party cannot appear by telephone.</p> <p>In light of budget cuts, many courtrooms will not have court staff available, or even CourtCall phones, to coordinate telephone appearances for ex parte applications which are usually heard at 8:30 a.m. Thus, the bench officer will have to find staff to do this or set up the phone appearances by himself/herself. This will result in delays in hearing ex parte applications in general-- it will also delay the regular calendar or scheduled trials.</p> <p>There is a difference between a motion and an ex parte application. The notice and hearing requirements applicable to motions do not apply to ex parte applications. At a minimum, the proposed rule changes should explicitly state that by allowing for telephone appearances, there is no requirement that an oral hearing be conducted or required for ex parte applications.</p>	<p>ex parte applications. However, against that burden, the group has considered the off-setting benefits to users of the courts, the large cost-saving to parties and the increased access to justice provided by allowing the mandated appearances at ex parte applications to be made telephonically.</p> <p>The committee has added a comment to the proposed Advisory Committee Comments on the rule to clarify that the change in manner of appearances is not intended to change how the court handles ex parte applications.</p>
10.	Orange County Bar Association By: Wayne Gross President	AM	<p>This proposal reasonably achieves its stated purpose of making telephonic appearances more available to parties and attorneys in general civil cases, unlawful detainer cases, and probate proceedings.</p> <p>It has a positive impact on the public's access to</p>	<p>The committee notes the commentator's general agreement with the proposal.</p> <p>The suggestion for a set of instructions on use of</p>

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			<p>the courts, but would have a greater impact if pro per clients had access to printed instructions for using Court Call etc.</p> <p>We agree that the time for notice of a telephonic appearance should be shortened to two courts days, and we favor an elimination of a notice to appear personally once a person gives notice of their telephonic appearance.</p> <p>The proposal should be modified to include at Rule 3.670(c)(3)(J) the phrase “except as required by the Court under (e)(7) regarding orders to show cause.”</p>	<p>CourtCall is outside the scope of this proposal, but will be considered by the committee as resources allow.</p> <p>The committee agrees and has changed the proposal to reflect this.</p> <p>The proposal has not been modified in such a way that this change is unnecessary.</p>
11.	Ronald Pierce Squaw Valley	AM	*Comments describing actions taken in particular case on request for disability accommodation.	The committee acknowledges the comment and expressed desire that telephonic appearances be granted as part of a disability accommodation. However, such request and comments on a particular a case are outside the scope of this proposal. It has been recommended that Mr. Pierce raise his concerns with the court executive in the superior court in which the actions described in the comment occurred.
12.	State Bar of California Committee on Administration of Justice By: Saul Bercovitch Legislative Counsel	AM	The proposed provisions governing appearances by telephone on ex parte matters specifically address all timing issues except for one. The rules are silent with regard to what must happen with service and filing of the papers of an opposing party who elects to appear by telephone. CAJ recognizes that parties opposing an ex parte application may appear by telephone	The committee notes the commentator’s general agreement with the proposal. However, the committee disagrees with the request that further rules be developed as to the filing and service of papers opposing an ex parte when opponent intends to appear telephonically. No rule currently addresses such filing and service and the committee does not see the need for one.

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			today, and sometimes proceed as they see fit, possibly without the submission of written opposition. CAJ recommends, however, that this new, comprehensive set of rules include specific provisions governing that situation. CAJ believes that any provisions that are adopted should not be allowed to prejudice the moving party in any way. CAJ suggests that consideration be given to adding a provision in the rules requiring that an opposing party who elects to appear at an ex parte matter by telephone file and serve papers in such a way that they will be received by the court and all parties before the ex parte appearance, and (if required by local rule) delivered to the department in which the matter is to be considered.	
13.	State Bar of California Committee on Delivery of Legal Services By: Sharon Ngim Staff Liaison	A	<p>Making telephonic appearances more available to parties and attorneys in civil matters would increase access to the courts, especially for those from rural and outlying geographic areas who would have to travel great distances to the courts, and at the same time reduce emissions that harm the environment.</p> <p>The intent of this proposal is to make telephonic appearances more available in civil cases and to promote uniformity in the procedures developed across the state in implementation of this court rule. The change to allow telephonic appearances for an ex parte application certainly broadens the scope of appearances. The change</p>	The committee notes the commentator's agreement with the proposal. No further response is required.

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			<p>in (c) to the wording “all parties, including moving parties” clarifies the meaning the rule to allow for uniform implementation.</p> <p>It would allow self-represented parties to make motions and other appearances without being required to take off an entire day from work, thus allowing them to exercise their rights more easily. It will allow these parties to bring ex parte applications as needed with the rules spelled out clearly and concisely.</p> <p>The statement from Court Call that they are technically able to arrange a telephonic court appearance in just a few minutes and the fact that the courts have the required equipment now to accept these calls supports this change to make the process less confusing and cumbersome. This is particularly true for - represented litigants. Fewer requirements for personal appearances and the shorter the notice required makes it easier for the self-represented litigant to represent himself/herself and comply with this rule.</p>	
14.	Superior Court of Los Angeles County	N	<p>Concerns about the proposed amendments:</p> <p>1. Pro per litigants misuse or abuse of the process.</p>	<p>1. The committee appreciates the comments, but notes that the issue raised is not directed to the current proposal, but rather to the existence of telephonic appearances in general, which are already authorized by statute in most situations.</p>

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		2. Interruptions by phone participants.	2. See response to point 1. The committee also notes that the service provider Court Call will arrange for operator assistance with the calls if desired.
		3. Delays or slow-down of proceedings.	3. See response to point 1.
		4. Parties or participants not hearing what is being said or done.	4. See response to point 1.
		5. No court reporter availability, and if available, difficult for court reporter to make a record.	5. See response to point 1.
		6. Parties may fail to appear which will result in delays to other calendared matters.	6. See response to point 1.
		7. Additional or more work for court staff to process and prepare ex parte applications. Ex partes generally are “staff-intensive” (i.e. paying filing fees, obtaining file, collecting moving or opposition papers, etc.).	7. While the committee acknowledges that the inclusion of ex parte applications may have an impact on courts, the requirement of extra notice for such applications and delivery of courtesy copies to the department involved should the court so wish will help minimize that burden. In addition, to the extent there is some added impact on the court, there will be substantial off-setting benefits to parties in terms of access to justice and cost-savings.
		8. Visual connections –The committee is generally opposed to any video or visual recording of ex parte matters or proceedings.	8. The proposal does not include any provisions for video recordings.
		9. Scheduling problems and notice	9. See response to point 7 above.

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		<p>requirements.</p> <p>10. May actually lead to more ex parte applications being filed.</p> <p>11. Will not result in efficiency or decreased costs.</p> <p>12. The requirement that moving papers, “if required by local rule,” be filed two days in advance of the ex parte may be insufficient for moving papers to be received by the bench officer hearing the ex parte matter.</p> <p>13. Moving or opposition papers not being received timely by the bench officer.</p> <p>The following changes should be made to the proposed amendments:</p> <p>1. The rule should state: “here are the situations</p>	<p>10. The committee acknowledges that the change may result in some increase in the burden on the courts, although the committee does not expect the change to open a floodgate of ex parte applications. However against that burden, the group has considered the off-setting benefits to users of the courts, the large cost-saving to parties and the increased access to justice provided by allowing the mandated appearances at ex parte applications to be made telephonically.</p> <p>11. See response to point 10 above.</p> <p>12. The proposed rule provides that a local rule may require that the papers be delivered to the department in which the ex parte is to be heard in advance of the hearing. This should solve the problem of a court being unable to get the papers to the department.</p> <p>13. See response above at point 12 above.</p> <p>Regarding the proposals changes:</p> <p>1. The committee agrees and the proposal has</p>

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		<p>in which a telephonic appearance cannot be used,” instead of listing what matters that telephonic appearances can be used for, which would allow for telephonic appearances in all matters not specifically excluded by the rule.</p> <p>2. At subsection (e) (1), change it to read: “Trials, hearings, and proceedings, at which persons are expected to testify.”</p> <p>3. At subsection (h) (3) (C), delete: “If required by local rule....”</p> <p>4. Conformed copies of all ex parte papers must be in the appropriate Department (Courtroom), along with proof of payment of fees, at 8:30 a.m. when the courtroom opens and not later when the court is calling the calendar.</p> <p>5. Add Final Status Conference (FSC) and Mandatory Settlement Conference (MSC) to the list of matters that a personal appearance is required, except as permitted by the court.</p>	<p>been modified to reflect this.</p> <p>2. This modification would make rule 3.670 (e) (1) parallel with the introductory language in s (e). The committee agrees and had modified the proposal to reflect this suggestion.</p> <p>3. The committee has concluded that it is more appropriate to leave the details of such requirements up to each individual court, particularly since some courts do not want to receive courtesy copies.</p> <p>4. See above.</p> <p>5. The committee notes that “Final Status Conference” is the specific name given to a trial management conference by Superior Court of Los Angeles County. A personal appearance is already required at such conferences under current rule 3.670(e)(4) and the proposal would not change that. Similarly the current rule already requires personal appearances at all settlement conferences except as otherwise permitted by the court. See rule 3.670(e)(3).</p>	

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			<p>6. Eliminate ex partes from the rule.</p> <p>7. Eliminate Writs, Receivers and special proceedings from the rule.</p>	<p>6. The committee disagrees with this requested modification. See response to point 10 above.</p> <p>7. The requested modification is outside the scope of this proposal and would require statutory change to implement.</p>
15.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A	The rules should be amended and/or new rules should be adopted to provide guidance to courts who allow telephonic appearances in family court proceedings. The void of guidance in this area is extremely problematic and it leaves courts in an untenable situation of trying to guess as to the rules and/or fees that apply to telephonic appearances in family court matters.	The committee notes the commentator’s agreement with the proposal. As to further rules for telephonic appearances in family law matters, this request will be forwarded to the Family and Juvenile Law Advisory Committee for its consideration.
16.	TCPJAC/CEAC Joint Rules Working Group	N	<p>This proposal imposes on judicial discretion and will have a workload impact especially as it relates to the ex parte process defined by the proposed rule for telephone appearance; therefore, the JRWG does not agree with the proposal.</p> <p>Operational impacts identified by the working group:</p> <p>1. Cause a Potential Fiscal Impact No impact identified.</p> <p>2. Create an Impact on Existing Automated Systems</p>	<p>The committee responds the specific comments, including those on workload and perceived impact on judicial discretion below.</p> <p>1. Since no impact identified, no response required.</p> <p>2. The committee appreciates the information re</p>

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		<p>Impacts in this assessment area are unknown. There will be no impact on V3 courts, or courts that use the Court Call calendar to track telephonic appearances, rather than their content management system.</p> <p>In courts that do not currently track telephonic appearances in their CMS, if the number of appearances increases, those courts may want the CMS updated with fields for this information and the calendars updated with this information (many courts already have this).</p> <p>3. Raise Any Trial Court Labor or Employment Related Concerns No impact identified.</p> <p>4. Require Development of Local Rules and Forms No impact identified.</p> <p>5. Create Need for Additional Training, Which Requires the Commitment of Staff Time and Court Resources No impact identified.</p> <p>6. Increase Court Staff Workload The rule may increase workload of clerks and judicial assistants in determining if a telephonic appearance is allowable in the specific hearing, conference, or proceeding.</p> <p>There are several provisions in the proposed</p>	<p>possible impact.</p> <p>3. Since no impact identified, no response required.</p> <p>4. Since no impact identified, no response required.</p> <p>5. Since no impact identified, no response required.</p> <p>6. See responses to specific points below.</p>

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		<p>rule, which may have impact on staff workload.</p> <p>Several sections of the proposed rule (Section 3.670 (d) Section 3.670 (h) (1)(b), and Section 3.670 (h)(4)) require parties to give notice to the court of the desire to appear telephonically. Such notification to the court causes operational concerns. Many civil courtrooms are operating with reduced staffing and/or increased caseloads due to budget reductions. The notice requirements would substantially burden court staff with increased telephone calls, increased filings and expedited document management.</p> <p>Processing ex parte applications is always time-intensive for court staff, involving processing filing fees, obtaining the court file, locating moving or opposition papers and issuing a court order, all on an expedited basis. When the moving party is present, counsel or the litigant can assist court staff in this process (for example, by obtaining the court file from a central file and delivering it to the courtroom). The ex parte process defined by the proposed rule for telephonic appearances requires court staff to do every aspect of this process with no assistance from the litigants. This will increase staff workload. In addition, the availability of telephonic ex parte appearances may increase the number of ex parte applications made, with an increase in staff workload.</p>	<p>The committee notes that only the notice requirements re telephonic appearances in ex parte applications are new (3.670(d) and (h)(4).) The notice for all telephonic appearances has been required since the current version of the rule was adopted in 2007. To the extent there is some added impact on the court, there will be substantial off-setting benefits to parties in terms of access to justice and cost-savings.</p> <p>While the committee acknowledges that the inclusion of ex parte applications may have an impact on courts, the requirement of extra notice for such applications and the provision allowing a court to require delivery of courtesy copies to the department involved should the court so wish will help minimize that burden. In addition, to the extent there is some added impact on the court, there will be substantial off-setting benefits to parties in terms of access to justice and cost-savings.</p>	

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		<p>Section 3.670(c) (1) – under the general provisions authorizing parties to appear by phone, this section indicates that telephonic appearances may be allowed in case management conferences provided, “...that the party has made a good faith effort to meet and confer...” How is this to be enforced and how is the court to prove that this has been done?</p> <p>7. Change the Responsibilities of the Presiding Judge and/or Supervising Judge No impact identified.</p> <p>8. Create An Impact on Court Security There are no negative impacts in this assessment area. This rule proposal may have a positive impact on security with less people entering the courtroom.</p> <p>9. Create an Impact on Local or Statewide Justice Partners No impact identified.</p> <p>10. Implementation In V3 courts that already allow telephonic appearances, implementation would not be an issue and the amended rules may be implemented within two months.</p> <p>Two months is sufficient time to configure as the changes are minimal and not required for all courts. Courts’ case management systems will not be affected by these changes.</p>	<p>The committee notes that this is not a new requirement but is part of the current rule, and has been in effect for the past five years. However, under the proposal as modified following consideration of comments, this provision has been removed.</p> <p>7. Since no impact identified, no response required.</p> <p>8. The committee notes the positive impact identified.</p> <p>9. Since no impact identified, no response required.</p> <p>10. The committee appreciates the information that implementation within two months will not be an issue.</p>

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		<p>11. Any Other Major Fiscal or Operational Impacts During CourtCall appearances, especially with multiple parties, it can be difficult for a party to make a good record if another party continues talking without interruption. Also, CourtCall can make it impossible to interrupt a lawyer or a party that refuses to stop talking. As a result, a matter can take longer than it otherwise would if all parties were present in court or it may not be possible to make a complete record.</p> <p>12. Request for Specific Comments The project sponsor asked whether the proposal appropriately addresses the stated purpose.</p> <p>The JRWG does not agree that this proposal would not alter the discretion currently accorded to judicial officers to determine when a personal appearance is required at a particular hearing or proceeding. To the contrary, JRWG believes this rule is an incursion on judicial discretion.</p> <p>Under current rule, judges may already allow for telephonic appearances. The proposed language as stated, “courts should permit parties, to the extent feasible, to appear by telephone...” implies that telephonic appearances are favored and encouraged in all cases. This is further enforced in Section f (1) that encourages courts to “...consider the general policy favoring telephonic appearances</p>	<p>11. Concerns regarding reporting calls go to telephonic appearances generally, not the changes recommended here, and so are outside the scope of this proposal. Further, the committee has been advised by Court Call that the provider does have the technology to allow a judicial officer to cut off speakers on the call, or to request a Court Call operator be on the line to do the same.</p> <p>12. The committee notes that the language objected to is not new or part of the proposed amendment, but is part of the current rule, and is a direct quote from the statutory provision. See Civil Code section 367.5(a): “To improve access to the courts and reduce litigation costs, courts should, to the extent feasible, permit parties to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases.”</p> <p>Beyond adding ex parte applications to the matters on which telephonic appearances may be made, the proposal does not change the discretion accorded a judicial officer to require personal appearance at any particular hearing for which he or she believes it appropriate.</p>

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			<p>in civil cases.”</p> <p>The judicial officer must have substantial discretion to determine when telephonic appearances will and will not further case management goals. Telephonic appearance may be useful in brief motions with no argument; but in cases where there is argument and/or multiple parties, telephonic appearances may be detrimental to all parties.</p> <p>JRWG also recommends that any perceived benefits of the proposal be weighed against RUPRO's policy of limiting rule proposals to critical rule and form proposals that are mandated by statute or case law, or are otherwise deemed urgent and necessary.</p>	<p>The committee agrees, and has balanced the benefits of increased access to justice and significant savings for parties and counsel against the policy of limiting rule proposals, The committee concluded that that the benefits are substantial enough to support the recommended rule change.</p>