

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR14-06

Title	Action Requested
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.670; revise form CIV-020	January 1, 2015
Proposed by	Contact
Civil and Small Claims Advisory Committee	Anne Ronan, Attorney
Hon. Patricia M. Lucas, Chair	415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

Last year, the Civil and Small Claims Advisory Committee recommended and the Judicial Council adopted amendments to the telephonic appearances rule, California Rules of Court, rule 3.670. The primary impact of the rule changes was to include *ex parte* applications under the rubric of civil matters at which parties could, as a general rule, appear by telephone if appropriate notice was provided, and to shorten notice for all such appearances from three days to two. This new proposal amends the rule to clarify one of the notice provisions for *ex parte* applications and revises the *Notice of Intent to Appear by Telephone* (form CIV-020) to correct the rule references and the time frame for notice.

The Proposal

This proposal, with an effective date of January 1, 2015, addresses two minor issues that need correction in light of the recent amendments to California Rules of Court, rule 3.670. The proposed changes are as follows:

1. Amend California Rules of Court, rule 3.670(h)(4), to clarify that written, like oral, notice of intent to appear telephonically to oppose an *ex parte* application must be served no later than 2 p.m. on the court day before the appearance; and
2. Revise the *Notice of Intent to Appear by Telephone* (form CIV-020) to correct the rule references in the form, to change the reference to the time for notice from three days to two, and to include a reference to the somewhat different time frame for notice of appearing telephonically on *ex parte* applications.

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 These proposals are circulated for comment purposes only.

Rule 3.670(h)

The current rule on providing notice of telephonic appearance is clear for instances when *an applicant* on an ex parte matter wants to appear telephonically. (See rule 3.670(h)(3).) However, the provisions in the rule regarding notice by *any other party* wanting to appear telephonically are ambiguous. Other than the applicant, a party who seeks to appear by phone on an ex parte application must notify the court, the applicant, and any other parties of that intent *by 2 p.m.* the day before the appearance. (See rule 3.670(h)(4).) The rule states that notice is to be given orally—by phone or in person—or in writing, and if in writing, the notice must be on the Judicial Council notice form (form CIV-020),¹ which is to be filed and served at the same time on all parties. The last sentence of this subparagraph states that service of a written notice is to be by any legal means calculated to ensure delivery *no later than the close of business* that same day.

Providing that service need not be effective until close of business the day before the hearing contradicts the early provision in the rule that the party must notify all parties by 2 p.m. that day. When recommending the amendment to this rule last year to include ex parte applications, the committee did not intend to recommend that the notice time should be extended past the 2 p.m. deadline if the notice was in writing. The inclusion of a different time for service of notice in writing appears to have been an oversight that has resulted in ambiguity in the rules. The proposed amendment would provide that notice is to be done in such a way that it is received by all parties no later than 2 p.m., the hour specified for notice, no matter how provided.

Form CIV-020

The information in the instructions box at the bottom of the *Notice of Intent to Appear by Telephone* (form CIV-020) is outdated in light of the recent changes in the rules. The attached proposed form has been amended so that the instructions reflect the current rules. The changes are as follows:

- In the second paragraph in the box, the reference to the rule regarding written notice has been renumbered to reflect the numbering of the current rule.
- In the third paragraph, the instruction that notice of appearing telephonically must be filed at least three court days before the appearance and served in such a way as to be received by at least the next business day has been amended to reflect the rule that notice of two court days is generally required and that notice is more tightly proscribed on ex parte applications.

Alternatives Considered

The committee considered not recommending any changes. However, the committee concluded that if the rule is not amended, it will be internally inconsistent, which may result in unnecessary expenditures of court time in overseeing litigants' arguments as to whether notice was appropriately given. Similarly, if the instructions on the form are left as is, inconsistent with current rules, problems may arise with disputes between parties and confusion at the filing windows regarding whether the form is timely filed and served.

¹ A party opposing an ex parte application does not have to file any papers in advance, so there is no provision that notice may be included in the opposing papers.

Implementation Requirements, Costs, and Operational Impacts

Correction of these issues should not adversely affect the courts or impose on them any expense. The form is one used by the parties: correcting and expanding the references to the rules will help avoid confusion and questions to the clerks' office. Similarly, clarification of the rule for when written service must be provided will avoid ambiguity and ensure appropriate notice to the courts.

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 appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- How well would this proposal work in courts of different sizes?

Attachments

1. Proposed amended rule 3.670, at pages 4–5
2. Proposed revised form CIV-020, at page 6

California Rules of Court, rule 3.670(h) would be revised, effective January 1, 2015, as follows:

1 **Rule 3.670. Telephone appearance**
2

3 **(a)–(g) * * ***
4

5 **(h) Notice by party**
6

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

10
11 (A) Place the phrase "Telephone Appearance" below the title of the moving,
12 opposing, or reply papers; or
13

14 (B) At least two court days before the appearance, notify the court and all other
15 parties of the party's intent to appear by telephone. If the notice is oral, it must
16 be given either in person or by telephone. If the notice is in writing, it must be
17 given by filing a "Notice of Intent to Appear by Telephone" with the court at
18 least two court days before the appearance and by serving the notice at the
19 same time on all other parties by personal delivery, fax transmission, express
20 mail, e-mail if such service is required by local rule or court order or agreed to
21 by the parties, or other means reasonably calculated to ensure delivery to the
22 parties no later than the close of the next business day.
23

24 (2) If after receiving notice from another party as provided under (1) a party that has not
25 given notice also decides to appear by telephone, the party may do so by notifying
26 the court and all other parties that have appeared in the action, no later than noon on
27 the court day before the appearance, of its intent to appear by telephone.
28

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

31
32 (A) Place the phrase "Telephone Appearance" below the title of the application
33 papers;
34

35 (B) File and serve the papers in such a way that they will be received by the court
36 and all parties by no later than 10:00 a.m. two court days before the ex parte
37 appearance; and
38

39 (C) If provided by local rule, ensure that copies of the papers are received in the
40 department in which the matter is to be considered.
41

42 (4) Any party other than an applicant choosing to appear by telephone at an ex parte
43 appearance under this rule must notify the court and all other parties that have
44 appeared in the action, no later than 2:00 p.m. on the court day before the
45 appearance, of its intent to appear by telephone. If the notice is oral, it must be given
46 either in person or by telephone. If the notice is in writing, it must be given by filing

1 a “Notice of Intent to Appear by Telephone” with the court and by serving the notice
2 at the same time on all other parties by any means authorized by law reasonably
3 calculated to ensure delivery to the parties no later than ~~the close of business~~ 2:00
4 p.m. on the court day before the appearance.
5

6 (5) If a party that has given notice that it intends to appear by telephone under (1)
7 subsequently chooses to appear in person, the party may appear in person.
8

9 (6) A party may ask the court for leave to appear by telephone without the notice
10 provided for under (1)–(4). The court should permit the party to appear by telephone
11 upon a showing of good cause or unforeseen circumstances.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. (if available): E-MAIL ADDRESS (if available): ATTORNEY FOR (Name):	<p>DRAFT</p> <p>03/26/14</p> <p>Not approved by</p> <p>Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
NOTICE OF INTENT TO APPEAR BY TELEPHONE	CASE NUMBER:

1. Party intending to appear by telephone is

Plaintiff/Petitioner (name):

Defendant/Respondent (name):

Other (name):

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

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

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

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

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

As a general rule, this notice must be filed with the court at least two court days before the appearance and must be served at the same time on all other parties in such a way as to ensure delivery to the parties no later than the close of the next business day. (Cal. Rules of Court, rule 3.670(h)(1)(B).) Note that the rules are different for ex parte applications and be sure to follow them. (See Cal Rules of Court, rule 3.670(h)(3)–(4).)