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INVITATION TO COMMENT SPR15-12

Title	Action Requested
Telephone Appearances: Time for Notice and Notice Form	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.670; revise form CIV-020	January 1, 2016
Proposed by	Contact
Civil and Small Claims Advisory Committee	Anne Ronan, Attorney
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Executive Summary and Origin

Recently, 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 telephonic appearances from three days to two. This new proposal amends the rule to clarify certain of the service of notice provisions in light of the new two-day timeline and revises the *Notice of Intent to Appear by Telephone* (form CIV-020) to correct the rule references and the time frame for notice.

Prior Circulation

A portion of this proposal was circulated in spring 2014, addressing only the service of notice for telephonic appearances on *ex parte* applications. In light of comments received, the committee has expanded the proposed amendments to the rules regarding service of notice for regularly noticed appearances as well, and has further revised the notice form.

The Proposal

This proposal, with an effective date of January 1, 2016, addresses some 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)(1) to require that if written notice of intent to appear telephonically is provided in a matter other than an *ex parte* application,

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the notice must be served in a manner reasonably calculated to ensure delivery by 5:00 p.m. that same day.

2. 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 provided to the court and the parties no later than 2 p.m. or the close of business (whichever is earlier) on the court day before the appearance; and
3. Revise the *Notice of Intent to Appear by Telephone* (form CIV-020) to correct the rule references in the form and to correctly reflect the new times for notice.

Rule 3.670(h)(1)

Two years ago, the council changed this rule to provide that on regularly noticed hearings (i.e., those other than ex parte applications), notice of intent to appear telephonically need only be provided two days (rather than three days) in advance of the hearing. Rule 3.670(h)(1)(B).¹ At that time, no change was made to another provisions in the rule that specifically addresses when *written* notice of the intent to appear telephonically must be made—the rule continues to allow service of such notice by means calculated to ensure delivery to the parties by close of the next business day. Nor was any change made to the time when a party receiving the notice under (h)(1)(B) has to provide notice of that party’s own intent to appear telephonically should he or she wish to do so in light of the other party appearing telephonically— the rule continues to allow service of such notice by noon the day before the hearing. Rule 3.670(h)(2).

As a result of therecent amendment to the time period for notice, these two periods specified in Rule 3.670(h)(1)(B) and 3.670(h)(2) now overlap. Party A can serve written notice of intent to appear telephonically on Party B by any means that ensures Party B gets the notice by close of business one dayafter sending the notice. Since the starting point for sending notice is now two days before the hearing, this language allows written notice of a Party A’s intent to appear telephonically to be delivered to Party B by close of business the day before the hearing. But Party B must provide notice of his or her intent to appear telephonically by noon that same day. To correct this overlap, this proposal would change the time for service of written notice, requiring that service be by a means calculated to ensure delivery to the parties no later than 5:00 p.m. on the same day on which the notice is provided to the court.² This would require that if written notice is given on the last day permitted by the rule, the notice would have to be provided either orally on all other parties or, if in writing, by electronic means (fax or email) if so authorized or by hand delivery of a copy.

Rule 3.670(h)(4)

The current rule on providing notice of telephonic appearance on an ex parte matter is clear for instances when *an applicant* wants to appear telephonically. (See rule 3.670(h)(3).) However, the

¹ Note, the provisions under rule 3.670(h)(1)(B) only come into play if the party seeking to appear telephonically did not provide notice of that intent on the moving, opposition, or reply papers.

² By expressly including a specific timeframe for delivery in the rule, the rule comes within the exception to the various extensions of time provided for in the Code of Civil Procedure for different types of service. See Code Civ. Proc. §§ 1013 (a), (c), (e) and 1010.6(a)(4) (providing for extensions of time for notice by various types of service but only in the absence of a specific exception provided for by statute or rule of court.)

provisions in the rule regarding the time for giving written notice by *any other party* wanting to appear telephonically are unclear. The first sentence of rule 3.670(h)(4) provides that a party other than the applicant 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. However, the last sentence of this subparagraph currently 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 first sentence in the subdivision that the party must notify all parties by 2 p.m. that day. The inclusion of a different time for service of notice in writing appears to have been an oversight. The proposed amendment would change the last sentence in the subdivision to make it consistent with the first sentence by providing that written notice is to be done in such a way that it is received by all parties no later than 2 p.m.

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 updated to reflect the numbering of the current rule.
- In the third paragraph, the instruction regarding the time for notice of appearing telephonically has been amended to reflect the rule that notice of two, rather than three, court days is generally required. The instruction has also been amended to reflect 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.

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. Amended rule 3.670, at pages 5–6
2. Revised form CIV-020, at page 7

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~~ by any means authorized by law and reasonably
22 calculated to ensure delivery to the parties no later than the close of the next
23 business day 5:00 p.m. that same day.

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

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

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

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

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

42
43 (4) Any party other than an applicant choosing to appear by telephone at an ex parte
44 appearance under this rule must notify the court and all other parties that have
45 appeared in the action, no later than 2:00 p.m. or the close of business on the court
46 day before the appearance, whichever is earlier, of its intent to appear by telephone.

1 If the notice is oral, it must be given either in person or by telephone. If the notice is
2 in writing, it must be given by filing a “Notice of Intent to Appear by Telephone”
3 with the court and by serving the notice ~~at the same time~~ on all other parties by any
4 means authorized by law reasonably calculated to ensure delivery to the parties no
5 later than 2:00 p.m. or the close of business, whichever is earlier, on the court day
6 before the appearance.

- 7
- 8 (5) If a party that has given notice that it intends to appear by telephone under (1)
9 subsequently chooses to appear in person, the party may appear in person.
- 10
- 11 (6) A party may ask the court for leave to appear by telephone without the notice
12 provided for under (1)–(4). The court should permit the party to appear by telephone
13 upon a showing of good cause or unforeseen circumstances.
14

