

Invitation to Comment

Title	Small Claims: Appearance by Declaration or Telephone (amend Code Civ. Proc., § 116.540)
Summary	The proposed amendment to Code of Civil Procedure section 116.540 would authorize the court in its discretion and for good cause shown to allow a party or witness in small claims court to appear by written declaration or by telephone.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Cara Vonk, Attorney, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>With limited exceptions, the Small Claims Act does not currently authorize a court to grant the request of a party or witness to appear by written declaration or by telephone for good cause shown.¹ The requirement to personally appear may in some circumstances be so burdensome, perhaps at a cost greater than the amount in controversy, that it defeats the underlying purpose of small claims court as an accessible forum for the resolution of minor civil disputes.</p> <p>For example, a party who is physically incapable of getting to the courthouse, or a defendant who is not present in California, including a corporation with no employees or duly appointed or elected officers or directors in California, must nonetheless make a personal appearance or risk an adverse judgment. Similar burdens may be faced by a witness who has been subpoenaed into small claims court who must make a personal appearance.</p> <p>Committee members noted that in appropriate circumstances some courts are already allowing parties and witnesses to appear in small claims court by telephone or declaration. The experience with persons in the military, prisoners, and out-of-state owners of California real property under Code of Civil Procedure section 116.540 (e), (f), and (g) seems to demonstrate that appearance by declaration is workable, at least, in some circumstances.</p> <p>In other contexts, limited telephone appearances are allowed in cases</p>

¹ Exceptions include a plaintiff in the armed services, an incarcerated party, and a defendant who is a nonresident owner of real property. These individuals may appear by declaration or by another person. (See Code Civ. Proc., §116.540(e), (f), and (g).)

filed by a local child support agency in a family support action (Cal. Rules of Court, rule 5.324; form FL-679) and hearings and conferences in general civil cases under rule 3.670 of the California Rules of Court.

Appearance by telephone may affect the ability of a judge to assess (1) the credibility of the individual on the telephone, (2) who is actually appearing on the telephone, and (3) whether an attorney is present. These factors however, appear to be outweighed by the right of an individual to appear in small claims court, especially if a request is carefully weighed on a case-by-case basis and only granted when good cause is shown as provided in the proposed amendments.

If the proposed legislation is enacted, a new form requesting an appearance in small claims court by declaration or telephone would be developed by the Judicial Council.

Attachment

Code of Civil Procedure section 116.540 would be amended effective January 1, 2009, to read:

1 **§ 116.540**

2

3 **(a)–(m) * * ***

4

5 **(n)** The court in its discretion, and for good cause shown, may allow any party or
6 witness to appear by telephone or by written declaration under penalty of perjury.
7 If a telephonic appearance is allowed, the court shall ensure that: (1) the testifying
8 party is sworn as a witness, and (2) his or her testimony is audible to the opposing
9 parties and the public observers of the trial.

Item LEG07-06 Response Form

Title: Small Claims: Appearance by Declaration or Telephone (amend Code Civ. Proc., § 116.540)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.