



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title	Agenda Item Type
Telephone Appearances: Time for Notice and Notice Form	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 3.670; revise form CIV-020	January 1, 2016
Recommended by	Date of Report
Civil and Small Claims Advisory Committee	October 8, 2015
Hon. Patricia M. Lucas, Chair	Contact
	Debora Morrison, 415-865-8713
	debora.morrison@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends amending rule 3.670(h) of the California Rules of Court to clarify requirements for serving notice of intent to appear in court by telephone. The recommended amendments would resolve an internal inconsistency in one provision and address an ambiguity in another. The committee also recommends revising the *Notice of Intent to Appear by Telephone* (form CIV-020), to update rule references and clarify the included instructions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that, effective January 1, 2016, the Judicial Council:

1. Amend rule 3.670(h) of the California Rules of Court to clarify requirements for serving notice of intent to appear in court by telephone; and
2. Revise the *Notice of Intent to Appear by Telephone* (form CIV-020) to update references to the rule and expand and update the included instructions.

The text of the proposed amendment to the rule is attached at pages 9–10. Form CIV–020, reflecting the proposed revision, is attached at page 11.

Previous Council Action

The Judicial Council most recently amended rule 3.670 of the California Rules of Court, effective January 1, 2014.¹ Among other things, those amendments shortened the notice requirement for telephone appearances in regularly noticed hearings from three to two court days and added *ex parte* applications to the types of matters at which a party generally may appear by telephone if proper notice is provided.²

Rationale for Recommendation

Rule 3.670(h)(1)(B)

Two years ago, the Judicial Council amended rule 3.670(h)(1)(B), shortening the notice period for parties intending to appear by telephone at regularly noticed hearings, conferences, or proceedings.³ As amended, the provision now requires that a party planning to appear by telephone must notify the court and all other parties at least two court days before the hearing (rather than three court days, as previously required). The amendments left unchanged the requirement in the same provision that the notice, if in writing, must be served in a manner intended to ensure delivery by the close of the next business day. Under rule 3.670(h)(1)(B), therefore, a written notice of intent to appear by telephone now may be delivered as late as *the close of the business day before the appearance*.

If notice is provided in writing, rather than orally,⁴ this creates a potential Catch-22 for a party receiving the notice who decides also to appear by telephone. Under rule 3.670(h)(2), which was not affected by the recent amendment, that receiving party must notify the court and all other parties “*no later than noon on the day before the appearance*.”⁵ Essentially, the deadlines set by the two provisions—subsections (h)(1)(B) and (h)(2)—now overlap in a way that could make it impossible for some receiving parties to themselves provide written notice of an intent to appear by telephone within the period required under rule 3.670(h)(2). If, for example, at the close of the business day before a hearing, a party were to receive written notice of another’s intent to appear by telephone and then also decide to appear by telephone, that receiving party, if desiring to provide written notice, would have to do so before noon on the day just ended, i.e., before having

¹ All references to rules in this report are to the California Rules of Court, unless otherwise noted.

² Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Civil Practice and Procedure: Telephonic Appearances* (Aug. 2, 2013), *id.*, mins. (Oct. 25, 2013), pp. 23–24. See also Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Telephonic Appearances in Civil Cases* (Oct. 9, 2007), pp. 5–9 (statutory and rule history related to telephone appearances).

³ Rule 3.670(h)(1)(B) only applies if the party planning to appear by telephone for the hearing did not provide notice of that intent on the moving, opposing, or reply papers. (See rule 3.670(h)(1)(A).)

⁴ Rule 3.670(h)(1)(B) allows parties to provide oral or written notice of the intent to appear by telephone. “If the notice is oral, it must be given either in person or by telephone.” (Rule 3.670(h)(1)(B).)

⁵ Italics added.

received the notice. Effectively, this forecloses the option of providing written notice in such instances.

To correct this overlap, the proposal would amend rule 3.670(h)(1)(B), changing the time for service of the original written notice. The amendment would require that the party originally advising of an intent to appear by telephone serve the written notice using a means authorized by law and reasonably calculated to ensure delivery to the other parties at least two court days before the appearance.⁶ This would mean the party could serve written notice on the last day permitted under the rule only by using electronic means (fax transmission or e-mail) if properly authorized⁷ or hand delivery. Alternatively, a party could provide oral notice two court days before the appearance.⁸

Rule 3.670(h)(4)

Although clear on the requirements for the applicant who first announces an intent to appear by telephone at an ex parte hearing,⁹ the rule's description of the requirements for *any other party* who thereafter may elect to do so as well contains an ambiguity that may create confusion. In its first sentence, rule 3.670(h)(4) instructs that the other party seeking to make an ex parte appearance by telephone must “notify” the court and all other parties “no later than 2:00 p.m. on the court day before the appearance.” If providing the notice in writing, that other party must file it with the court and “serve” it on all parties in a manner intended to ensure delivery “no later than the close of business” on the same day (i.e., on the court day before the appearance).¹⁰

The statement that *service* need not be effected until close of business the court day before the appearance seems to contradict the earlier statement requiring the other party to *notify* everyone by 2:00 p.m. the same day. The inclusion of a different (later) time for “service” of written notice in this context appears to have been an oversight. The proposed amendment would change the sentences describing the notice and service requirements to use the same language in both, establishing the same time requirements. Specifically, the proposal is to amend rule 3.670(h)(4) to state that “any other party” planning to appear by telephone for an ex parte hearing must provide notice, and must accomplish service of the notice if it is in writing, by “2:00 p.m. or the ‘close of business’ (as that term is defined in rule 2.250(b)(10)), whichever is earlier.”¹¹

⁶ By including a specific timeframe for delivery in the rule, the rule would come within the exception to the various extensions of time that the Code of Civil Procedure otherwise provides for different types of service. (See Code Civ. Proc., §§ 1013(a), (c), (e), 1010.6(a)(4).)

⁷ See Code Civ. Proc., §§ 1010.6(a), 1013(e) (specifying circumstances in which electronic service is permitted); Cal. Rules of Court, rule 2.251 (same).

⁸ Rule 3.670(h)(1)(B).

⁹ Rule 3.670(h)(3).

¹⁰ Rule 3.670(h)(4).

¹¹ See rule 2.250(b)(10) (“ ‘Close of business’ is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier”).

Form CIV–020

The information included 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 2014 rule changes discussed above. The attached proposed form would include revisions updating references to rule 3.670, and also expanding and updating the included instructions. The following are the proposed changes:

- In the second paragraph in the instruction box, the reference to the subsection of the rule describing notice requirements would be updated to reflect current numbering required by the previous rule amendments.
- In the third paragraph in the instruction box, the description of the different notice requirements would be updated to reflect the previous rule amendments and also would be expanded to provide more information. Specifically, the paragraph would be amended to reflect the shorter two-day notice requirement for appearances by telephone for regularly noticed hearings, would add a brief statement of notice requirements for parties other than the applicant in that context, and would add a brief statement of notice requirements for applicants and other parties choosing to use the telephone for ex parte appearances. The paragraph also would refer parties to the rule for related information about service requirements, rather than providing partial information as it currently does.

Comments, Alternatives Considered, and Policy Implications

Comments received

As originally circulated for public comment, from April 18 to June 18, 2014, this proposal only included recommended amendments to rule 3.670(h)(4) (appearance by telephone for ex parte hearings) and revisions to the *Notice of Intent to Appear by Telephone* (form CIV–020). In the comments received, however, a commentator also noted an inconsistency in rule 3.670(h)(1)(B), caused by the earlier amendments reducing the period of required notice for appearances by telephone at regularly scheduled hearings. The committee revised the proposal, adding amendments that would address this further issue and making various additional wording changes responding to other input from commentators. The revised proposal was circulated for public comment from April 17 to June 17, 2015. The significant comments received in both instances are discussed below.

Original proposal (2014). The original proposal, circulated for public comment in 2014, proposed amending rule 3.670(h)(4) to clarify that a party other than the applicant who seeks to appear by telephone for an ex parte hearing must notify the court, the applicant, and any other parties of that intent in a way that is intended to ensure all receive it no later than 2:00 p.m. on the day before the hearing. It also proposed revising the *Notice of Intent to Appear by Telephone* (form CIV–020) to update the rule reference and notice period following the previous amendments to rule 3.670, modestly expanding the instructions as well.

Eight comments were received, all generally favoring the proposal. The commentators included three superior courts (Los Angeles, Riverside, and San Diego), the Joint Rules Working Group

(now a subcommittee) of the Judicial Council’s Trial Court Presiding Judges and Court Executives Advisory Committees, the State Bar’s Committee on the Administration of Justice, the Orange County Bar Association, the manager of Self-Help Services for the Superior Court of Orange County, and a small legal publisher. (The text of all comments received and committee responses are included in the comment chart for the original proposal, attached at pages 12–19.)

Two commentators approved the proposal but sought modifications.

Timing of service of Notice of Intent to Appear by Telephone (rule 3.670(h)(1)(B)). The Orange County Bar Association agreed with the original proposal but noted another inconsistency in rule 3.670(h)(1)(B) that the original proposal did not address. The inconsistency was between the recently shortened notice period for intent to appear by telephone at regularly scheduled hearings (now two court days), the unchanged deadline for delivering that notice (close of the next business day), and the deadline by which any receiving party must provide notice of a similar intent (noon on the court day before the appearance).

As noted above, the committee revised the proposal, adding amendments to resolve the issue and circulated the revised proposal for public comments. As circulated the second time, the proposed amendments directed that written notice of intent to appear by telephone at a regularly scheduled hearing must be served in a manner calculated to ensure delivery no later than 5:00 p.m. the same day that it is filed with the court.

Other suggested text changes to rule and form. Lawdable Press, a small legal publisher, also suggested several wording changes for rule 3.670(h)(1)(B) and (h)(2) to clarify requirements and raised a question about whether the *Notice of Intent to Appear by Telephone* (form CIV–020) is an optional form. The committee agreed with all but one of the wording suggestions and included them in the revised proposal, which it circulated for public comment. The question about the nature of the form arose from wording in the original proposal, which was clarified in the revised proposal. As the form itself states (in the bottom left corner), it is approved for optional use. Any suggestion to the contrary in the original proposal was unintended.

Second proposal (2015). The current (revised) proposal, circulated for public comment in 2015, received 11 comments. The commentators included four superior courts (Los Angeles, Orange, Riverside, and San Diego), the California Judges Association (CJA), three committees of the State Bar (Administration of Justice, Rules and Legislation, and Delivery of Legal Services), the Orange County Bar Association, an author and small legal publisher, and an attorney. Nine commentators agreed with the revised proposal, one agreed if modifications were made, and one suggested two points for clarification without indicating a position. (The text of all comments received and committee responses are included in the comment chart for the revised proposal, attached at pages 20–26.)

The following issues received the most significant comments (with details on each topic following):

- Bifurcated notice
- Close of business
- Revised instructions on form CIV-020
- Language access and family law hearings

Bifurcated notice (rule 3.670(h)(1)(B)). The State Bar of California’s Committee on Administration of Justice (CAJ) agreed with the proposal but observed that it may be difficult to serve written notice by 5:00 p.m. on the day it is filed, if the parties have not consented to service by fax or e-mail and personal delivery is impracticable.¹² The commentator suggested that the rule could be read as allowing a bifurcated method of providing notice, under which a party might file a written notice with the court but not serve it on the parties, providing notice to them orally instead. The commentator suggested amending the rule to expressly state this option.

The committee has considered this suggestion and does not agree. It does not read rule 3.670(h)(1)(B) as allowing a bifurcated approach. The provision states that, if notice is in writing, it must be “given by filing [a notice] with the court . . . *and by serving the notice*” on the other parties.¹³ The committee also concluded that amending the rule to provide a bifurcated notice procedure would make it unduly complicated and is unnecessary because the rule already allows the option of providing oral notice to both the court and all other parties. Written notice is not required.

The committee observed, however, that the proposed language would have the unintended consequence of unnecessarily advancing the deadline to serve notice of an intent to appear by telephone for a regularly scheduled hearing for some parties. As circulated the second time, the proposed amendment would have required that all parties filing such notice serve it in a manner intended to ensure delivery *the same day*, even if they were filing the notice with the court well in advance of the deadline (i.e., more than two court days before the hearing). The committee has revised the proposal to simply require that filing and service both occur at least two court days before the hearing.

Close of business (rule 3.670(h)(4)). Two commentators—an author and small legal publisher and CAJ—suggested that using the phrase “close of business” in the proposed amendment to rule 3.670(h)(4) introduces potential uncertainty regarding the deadline by which parties other than the applicant must provide notice of an intent to appear by telephone for an ex parte hearing. The revised proposal had suggested amending rule 3.670(h)(4) to clarify that such other parties

¹² See, e.g., Code Civ. Proc., §§ 1010.6(a)(2), 1013(e) (limiting service by fax or e-mail).

¹³ Rule 3.670(h)(1)(B), italics added.

must provide notice “no later than 2:00 p.m. or *the close of business* on the court day before the appearance, whichever is earlier.”¹⁴

The first commentator suggested revising the proposal to omit the phrase, “close of business,” leaving 2:00 p.m. on the day before the appearance as the deadline to provide notice. The committee did not accept this suggestion, however, concluding that doing so could introduce new uncertainty as a court clerks’ office could close on some days before 2:00 p.m. The second commentator suggested including a reference to the definition of “close of business” provided in rule 2.250(b)(10).¹⁵ The committee has accepted this suggestion and revised its proposal to reflect it.

Notice of Intent to Appear by Telephone (form CIV-020). The author/small legal publisher commentator also observed that, as proposed, the introductory sentence to the third paragraph of amended instructions on the *Notice of Intent to Appear by Telephone (form CIV-020)* mistakenly suggested ex parte applicants “must” use that notice form. To avoid this suggestion, the commentator recommended removing the instruction that followed on notice requirements for ex parte applicants. The committee agrees that an ex parte applicant must include notice of the intent to appear by telephone on the application papers themselves, rather than filing a separate notice (the form CIV-020). Because the commentator’s recommended change would eliminate helpful instructions on providing notice for ex parte applicants, however, the committee instead modified the introductory sentence to the paragraph to correct the point, removing the suggestion that ex parte applicants must use form CIV-020.

Language access and family law hearings. Two commentators—the State Bar’s Standing Committee on the Delivery of Legal Services and the Superior Court of Orange County—noted an issue regarding language accessibility for telephone appearances. The court commentator suggested adding an interpreter line item to the *Notice of Intent to Appear by Telephone (form CIV-020)*. The committee will refer this issue and the suggestion to the Judicial Council’s Language Access Plan Implementation Task Force and Court Interpreters Advisory Panel for future action, as they are currently developing proposed procedures and forms directly related to interpreters.

Finally, the Superior Court of Orange County also suggested clarifying whether rule 3.670 applies to telephone appearances subject to Family Centered Case Resolution matters covered by rule 5.83(d)(2) or adoption proceedings described in Family Code section 8613.5(a)(1)(B). The committee concludes that the rules are sufficiently clear on this point. Rule 3.670(b) expressly confirms that the rule only applies to general civil cases and specified other non-family law matters. Rule 1.6(4) expressly excludes family law matters, including adoption matters, from the definition of “general civil cases.” Telephone appearances in family law matters instead are

¹⁴ Italics added.

¹⁵ See rule 2.250(b)(10) (“ ‘Close of business’ is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its counter, whichever is earlier”).

addressed in rule 5.324 (for Governmental Child Support cases) and rule 5.9 (for all other family law matters). Accordingly it does not recommend further amendments.

Alternatives considered

The committee considered not recommending any changes. It concluded, however, that, if rule 3.670(h)(1)(B) is not amended, it will remain internally inconsistent. This may create needless confusion for litigants, producing questions and time-consuming arguments about whether notice was appropriately given, adding to the work for courts. Similarly, if instructions on the *Notice to Appear by Telephone* (form CIV-020) are left unrevised, they will be inconsistent with current rules, referring to outdated numbering and notice requirements. 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

Correcting the issues described in this report should not create challenges or expense for courts. Rather the proposed amendments to the rule and the form would likely help to avoid uncertainty or confusion for litigants, reducing the number of questions directed to court clerks' offices and freeing court staff to attend to other duties. Clarification of the rule requirements related to service also may avoid errors that are time consuming for litigants, judicial officers, and court staff.

Attachments

1. Cal. Rules of Court, rule 3.670, at pages 9–10
2. Form CIV-020, at page 11
3. Chart of comments, which circulated from April 18 to June 18, 2014, at pages 12–19
4. Chart of comments, which circulated from April 17 to June 17, 2015, at pages 20–26

California Rules of Court, rule 3.670 is amended, effective January 1, 2016, to read:

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~~ at least two court days before the appearance.
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” (as that term
46 is defined in rule 2.250(b)(10)), whichever is earlier, on the court day before the

1 appearance, of its intent to appear by telephone. If the notice is oral, it must be given
2 either in person or by telephone. If the notice is in writing, it must be given by filing
3 a “Notice of Intent to Appear by Telephone” with the court and by serving the notice
4 ~~at the same time~~ on all other parties by any means authorized by law reasonably
5 calculated to ensure delivery to the parties no later than 2:00 p.m. or “the close of
6 business” (as that term is defined in rule 2.250(b)(10)), whichever is earlier, on the
7 court day before the appearance.
8

9 (5) If a party that has given notice that it intends to appear by telephone under (1)
10 subsequently chooses to appear in person, the party may appear in person.
11

12 (6) A party may ask the court for leave to appear by telephone without the notice
13 provided for under (1)–(4). The court should permit the party to appear by telephone
14 upon a showing of good cause or unforeseen circumstances.
15

16 **(i)–(q) * * ***

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):	
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 California Rules of Court, rule 3.670 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 the court to determine how to make arrangements for telephone services for an appearance either directly with the court or through a court-appointed vendor.**

Read California Rules of Court, rule 3.670(h) to determine when you have to file and serve notice of the intent to appear by telephone. There are different deadlines depending upon the circumstances:

- (1) On a regularly noticed hearing, notice must be given at least two court days before the appearance (Cal. Rules of Court, rule 3.670(h)(1)(B)) or, after receiving notice that another party will be appearing telephonically, by noon on the court day before the appearance (Cal. Rules of Court, rule 3.670(h)(2)).
- (2) On an ex parte application, notice must be given by an applicant by 10:00 a.m. two court days before the hearing (Cal. Rules of Court, rule 3.670(h)(3)(B)). Any party other than an applicant may give notice by 2:00 p.m. or the "close of business" (as that term is defined in rule 2.251) whichever is earlier, on the court day before an ex parte appearance. (Cal. Rules of Court, rule 3.670(h)(4).)

SPR14-06

Rule 3.670; revise form CIV-020

Telephone Appearances: Notice for Ex Parte Appearances and Notice Form

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Lawdable Press By: Julie Goren Sherman Oaks, CA	AM	<p>1. There is an ambiguity regarding the form of written notice. Is CIV-020 supposed to be mandatory?</p> <p>As currently drafted, the rule requires that when notice is in writing a “Notice of Intent to Appear by Telephone” must be filed and served. It doesn’t refer to form CIV-020, and CIV-020 itself indicates that it is approved for optional use. From the rule and form, then, it appears that a “Notice of Intent to Appear by Telephone” could be drafted on pleading paper; after all, that was how it was done in the years before the optional Judicial Council form was approved.</p> <p>The comments to the proposal state that the rule requires written notice to be given “on the Judicial Council notice form (CIV-020).” If that is the intent, then: (1) a reference to CIV-020 ought to follow “Notice of Intent to Appear by Telephone” in both (h)(1)(B) and (h)(4), and (2) the form needs to be changed from “Form Approved for Optional Use” to “Form Adopted for Mandatory Use.” If that is not the intent, the foregoing changes are not necessary.</p> <p>2. I also recommend a few changes to (h)(1)(B):</p> <p style="padding-left: 40px;">A. I question the use of the phrase “at the same time” and what it is meant to modify. Is it requiring filing and service at the</p>	<p>1. The form was approved for optional use effective 2010, to make it easier for self-represented parties to provide written notice. The reference in the text of the Invitation to Comment that the form “must” be used for written notice was a misstatement. It remains an optional form.</p> <p>2.A. This phrase has been used in the rule to indicate that the time for filing and for notice were to be the same. The proposed change is outside the scope of this proposal. The committee agrees, however, that the language is ambiguous and in the revised proposal that it circulated for</p>

SPR14-06

Rule 3.670; revise form CIV-020

Telephone Appearances: Notice for Ex Parte Appearances and Notice Form

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>same time? Is it requiring service on all parties at the same time? Neither could realistically be accomplished or should be required. I would delete it here and in (h)(4).</p> <p>B. Instead of listing all of the possible service methods (and in so doing referring to service by “e-mail” instead of “electronic service” and only mentioning “agreed to by the parties” in relation to e-mail when agreement by the parties is also required for fax service), use the language in (h)(4) “any means authorized by law reasonably calculated to ensure ...”</p> <p>C. I also have problems with the phrase “close of the next business day” as used here. (1) What is the “close”? 5:00 p.m.? Does it depend on the recipient’s office? A specific time, like 5:00 p.m., would be much clearer. (2) Why use “business day” when “court day” is defined elsewhere and is used throughout this rule? Having the notice filed and served two court days before the hearing and delivered the next business day (when what actually is intended is delivery by the next court day, i.e., the court day before the appearance) could lead to unnecessary confusion. There are business days that are not court days (e.g., Cesar Chavez Day, Lincoln’s Birthday, Day after Thanksgiving). As such, the next business day might not be the court day before the appearance.</p>	<p>comment, it has removed this phrase.</p> <p>1.B. The committee agrees and has modified its proposal to reflect the suggestion.</p> <p>1.C. The committee agrees and has modified the its proposal to reflect this suggestion.</p>

SPR14-06

Rule 3.670; revise form CIV-020

Telephone Appearances: Notice for Ex Parte Appearances and Notice Form

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Were the comments in A-C to be adopted, it would read:</p> <p>“If the notice is in writing, it must be given by filing a “Notice of Intent to Appear by Telephone” (Judicial Council Form No. CIV-020) with the court at least two court days before the appearance and by serving the notice on all other parties by any means authorized by law reasonably calculated to ensure delivery to the parties no later than 5:00 p.m. on the next court day.”</p> <p>3. Paragraph (h)(2) doesn’t state how notice is to be given. For consistency, shouldn’t it also be oral or written, and if written, shouldn’t CIV-020 be required to be served so as to be received by noon the court day before the hearing?</p> <p>4. The same changes suggested in 2.A. should be made to (h)(4): adding reference to CIV-020, and deleting the phrase “at the same time.”</p> <p>Changes to CIV-020</p> <p>1. Insert “the” in the second paragraph, second line, between “with” and “court.”</p> <p>2. Presumably the form must be filed and served in compliance with three different</p>	<p>As noted above, the Notice of Intent to Appear by Telephone (form CIV–020) was approved for optional use. The committee therefore declines to add a reference to that specific form to the rule. It agrees in substance with the other suggestions above and has modified its proposal to reflect them.</p> <p>3. The committee appreciates the suggestion but concludes that it is not necessary to reiterate the permissible methods for providing notice in paragraph (h)(2).</p> <p>4. Please see responses to comments 1 and 2.A. above.</p> <p>Changes to form CIV–020.</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 the suggestion, although</p>

SPR14-06

Rule 3.670; revise form CIV-020

Telephone Appearances: Notice for Ex Parte Appearances and Notice Form

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>provisions: (1) two court days before the appearance under (h)(1)(B), (2) by noon on the court day before the appearance under (h)(2), and by 2:00 p.m. the court day before the appearance. The instruction box is somewhat misleading as it doesn't mention the (h)(2) deadline (if indeed the form is intended to be required under (h)(2)), advising the reader to look elsewhere only for the ex parte rules. There seems to be plenty of room on the form to address all three time frames. I suggest revising it to say: "There are three different deadlines for filing and serving this notice, depending upon the circumstances: (1) two court days before the appearance under Cal. Rules of Court, rule 3.670 (h)(1)(B), (2) by noon on the court day before the appearance under Cal. Rules of Court, rule 3.670 (h)(2), and by 2:00 p.m. the court day before an ex parte appearance under Cal. Rules of Court, rule 3.670 (h)(4). Be sure to comply with the rules."</p> <p>3. If the form is indeed mandatory, change "Form Approved for Optional Use" to "Form Adopted for Mandatory Use."</p>	<p>grouping the deadlines into two categories instead, namely, notices for regularly scheduled hearings, and notices for ex parte, hearings.</p> <p>3. Please see response to comment 1, above. The form is approved for optional use.</p>
2.	Maria Livingston Manager Superior Court of Orange County	A	Commenter agrees with the proposed changes. The proposed changes are specific to the stated purpose of the changes. Self-represented litigants require clarity and this minor change clarifies one of the notice provisions for ex parte applications. This change specifies that written notice, just like oral notice of intent to appear	The committee notes the commentator's agreement with the proposal.

SPR14-06

Rule 3.670; revise form CIV-020

Telephone Appearances: Notice for Ex Parte Appearances and Notice Form

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>telephonically to oppose an ex parte application must be served no later than 2 p.m. on the court day before the appearance. This is an important clarification as the rule ambiguously provided for written notice to be served by the end of business day while oral notice was required by 2:00 p.m. This change will negate any arguments as to the propriety of the amount of notice given and shift arguments to more substantive matters.</p> <p>The other change is to Form Civ-020 which is the mandatory form for Written Notice of Intent to Appear Telephonically. The changes in this form are necessary to make the instructions reflect the current proposed rule changes and the appropriate time frame. Self-Represented Litigants rely heavily on forms and it is essential that the forms are logically related to the procedural rules which the forms implement or the litigant's become more confused. The 2 month deadline to enact these changes prior to January 2015 is more than sufficient time for the court system to adjust. The form is already in existence so no new coding should be required. The only change is the requirement that the service of the written notice must be by 2:00 p.m. the day before the appearance rather than by the end of the day.</p> <p>Regarding this particular proposal, the size of the court should not matter as long as the presiding judge accepts and encourages the idea</p>	<p>The committee notes the commentator's agreement with the proposal.</p>

SPR14-06

Rule 3.670; revise form CIV-020

Telephone Appearances: Notice for Ex Parte Appearances and Notice Form

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			of telephonic appearances. Every size county and court should be attempting to cut time and expenses from each case which includes having the attorneys and parties come from long distances to hearings which could be effectively handled by a telephonic appearance.	
3.	Orange County Bar Association Orange County Bar Association	AM	Comments: A problem exists in Rule 3.670(h)(1)(B) that is not resolved by this proposed amendment: the Rule requires notice to be served by a party (if in writing) so as to be received “no later than the close of the next business day”, but Rule 3.670(h)(2) requires the other parties receiving the notice to notify the court and parties “no later than noon on the court day before the appearance” of their intent to also appear by telephone. The Rule thereby precludes an opposing party from receiving notice and electing to appear telephonically if that opposing party does not receive until the “close of the next business day” which is actually after the noon court day before the appearance to also elect. The proposal otherwise addresses the stated purposes.	The committee notes the inconsistency. As the subject exceeds the scope of this proposal, the committee revised the proposal to include an amendment resolving the issue, and has circulated the revised proposal for public comment.
4.	State Bar of California, Committee on Administration of Justice Saul Bercovitch CAJ, Legislative Counsel	A	CAJ supports this proposal.	The committee notes the commentator’s agreement with the proposal.
5.	Superior Court of Los Angeles County Los Angeles County Superior Court	A	No specific comment	The committee notes the commentator’s agreement with the proposal.

SPR14-06

Rule 3.670; revise form CIV-020

Telephone Appearances: Notice for Ex Parte Appearances and Notice Form

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
6.	Superior Court of Riverside County Riverside County Superior Court Staff	A	No specific comment	The committee notes the commentator's agreement with the proposal.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment	The committee notes the commentator's agreement with the proposal.
8.	TCPJAC/CEOC Joint Rules Committee TCPJAC/CEOC	A	<p>This proposal clarifies prior rule changes. It would require development of new local rules only if courts have existing local rules in conflict with the clarification.</p> <p>The following are responses to the proposal's Request for Specific Comments:</p> <p>Does the proposal appropriately address the stated purpose? <i>Yes, the proposal clarifies the rule.</i></p> <p>Would the proposal provide cost savings? If so, please quantify. <i>No, we did not identify any cost savings.</i></p> <p>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? <i>The changes would involve minimal training of staff as to the form changes and the notice requirements.</i></p>	The committee notes the commentator's agreement with the proposal.

SPR14-06

Rule 3.670; revise form CIV-020

Telephone Appearances: Notice for Ex Parte Appearances and Notice Form

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Yes.</i> How well would this proposal work in courts of different sizes? <i>This proposal provides clarity to courts of all sizes.</i>	

SPR15-12**Telephone Appearances: Time for Notice and Notice Form** (amend rule 3.670(h), revise form CIV-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association by Joan P. Weber, President	A	<p>The Judicial Council’s Civil and Small Claims Advisory Committee proposes amendments to CRC 3.670 relating to the notice requirements for telephonic appearances. The amendments, which would be effective January 1, 2016, are intended to “clean up” the amendments made in 2014. Those amendments expanded the list of civil matters at which parties could appear by telephone to include ex parte applications and also shortened notice for all telephonic appearances from three days to two. The proposal would amend CRC 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, the notice must be served in a manner reasonably calculated to ensure delivery by 5 p.m. that same day, as opposed to the next business day, which the rule currently provides for. The proposal would also amend Rule 3.670(h)(4) to clarify that both written notice and 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. Finally, the proposal would revise Judicial Council Form CIV-020 (Notice of Intent to Appear by Telephone) to reflect these changes.</p> <p>The proposed amendments are not substantive and should have little or no impact on the way civil courts do business. Therefore, we support the proposal.</p>	The committee notes the commentator’s support of the proposal.

SPR15-12

Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
2.	Azar Elihu, Attorney at Law Los Angeles	A	No specific comment.	The committee notes the commentator’s agreement with the proposal.
3.	Julie Goren, Author Sherman Oaks	AM	<p>Rule 3.670(h)(4) - The inclusion of “or the close of business” and “whichever is earlier” does not comport with the comments: “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.” and creates an ambiguity -- whose “close of business”? I recommend simply making the change to 2 p.m.</p> <p>CIV-020 - In the text box at (2), the reference to notice by the applicant by 10:00 is incorrect. CRC Rule 3.670(h)(3) directs the applicant to place the phrase “Telephone Appearance” on the application; there is no provision for any other form of notice by the applicant. In the first sentence, strike “notice must be given ...” through the end of the sentence, and in the next sentence, change “Any” to “any” making it a single sentence. Also, if (h)(4) is changed so that the deadline is simply 2:00 p.m., then the wording of the form needs to change as well.</p> <p>The revision date of the form is incorrect.</p>	<p>The committee appreciates the comment and agrees that the provision can be clarified. It has modified the proposal to add reference to rule 2.250(b)(10), which defines the term close of business.”</p> <p>The committee agrees that an applicant intending to appear by telephone for an ex parte hearing must include notice of that intent on the application papers themselves, rather than filing a separate notice (e.g., form CIV-020). The committee disagrees, however, that the referenced text about the required notice period is incorrect and declines to strike it. Instead, it has modified the first sentence of paragraph three of the proposed instructions to remove the suggestion that “this notice” (i.e., form CIV-020) must be used in all listed instances.</p> <p>The committee agrees and has modified its proposed amendments to the form to reflect the suggestion.</p>
4.	Orange County Bar Association by Ashleigh Aitken, President	A	Proposed changes appear to address the issues and correct the inconsistencies.	The committee notes the commentator’s agreement with the proposal.

SPR15-12

Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
5.	State Bar of California Committee On Administration of Justice	A	<p>The State Bar of California’s Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council’s Invitation to Comment, and appreciates the opportunity to submit these comments.</p> <p>CAJ supports this proposal subject to the comments below.</p> <p style="padding-left: 40px;">A. <u>Proposed revision to rule 3.670(h)(1)(B)</u></p> <p>CAJ notes that, under the proposed amendments to rule 3.670(h)(1)(B), an applicant providing notice of intent to appear telephonically in writing must file a notice with the court two court days before the hearing, and must effect service of the notice by 5 p.m. that same day. This presumably requires either personal service or service by fax or email. However, in some cases, personal service may be impracticable and service by fax or email may not be permitted (as these forms of service require court order or consent; see Code Civ. P. § 1010.6, 1013(e)). If the parties have not agreed to email or fax service and for whatever reason (e.g., counsel reside in different cities) personal service is impracticable, the proposed amended rule would require something that cannot be done. CAJ concludes that this is unlikely to present a real world problem, because the rule permits oral notice. This would seem to permit the filing with the court of the notice of intent to appear telephonically two</p>	<p>The committee notes the commentator’s agreement with the proposal and provides a further response below.</p> <p>A. The committee does not agree that, under rule 3.670(h)(1)(B), a party might file with the court a written notice and then abstain from</p>

SPR15-12

Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>court days before the hearing, while providing oral notice that day to opposing counsel. CAJ believes that consideration should be given to stating expressly, in the amended rule, that oral notice is sufficient where it is not practicable to effect service of the written notice by the 5 p.m. deadline.</p> <p style="text-align: center;">B. <u>Proposed revision to rule 3.670(h)(4)</u></p> <p>CAJ suggests a clarifying revision to the proposed amendment. The proposed revision requires that if a party (other than the applicant) wishes to appear telephonically at the hearing, the party must notify the court and other parties “no later than 2:00 p.m. or the close of business on the court day before the appearance, whichever is earlier.” The reference to close of business being earlier than 2:00 p.m. may be confusing. CAJ understands that the early close of business may result from a court filing window closing earlier than 2 p.m., as contemplated by California Rules of Court, rule 2.250(b)(10). To avoid confusion, CAJ suggests revising the proposed rule to read as follows, with proposed new text in bold and underline: “no later than 2:00 p.m. or the close of business <u>(as defined in California Rules of Court, rule 2.250(b)(10))</u> on the court day before the appearance, whichever is earlier.”</p>	<p>serving it on the other parties, providing only oral notice to them instead. The committee declines to modify its proposal to include a provision allowing such a bifurcated approach. Doing so would overly complicate the provision and is unnecessary because the rule already allows the option of providing oral notice to both the court and all other parties. Written notice is not required.</p> <p>B. The committee agrees and has modified the proposal accordingly.</p>

SPR15-12

Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
6.	State Bar of California Litigation Section Rules and Legislation Committee By Reuben A. Ginsburg, Chair	A	The Committee supports the proposed revisions and believes that they appropriately address the stated purpose to eliminate timing inconsistencies and correct the notice form. In addition, we note two typographical errors: the slash after “hearing” in the third line from the bottom of the page should be deleted, and the revision date of “January 1, 2065” at the bottom left of the page should be corrected.	The committee notes the commentator’s support of the proposal and agrees with the suggestion. It has made the corrections to form CIV–020.
7.	State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS) by Maria C. Livingston, Chair	A	<u>Does the proposal appropriately address the stated purpose?</u> Yes. The intent of this proposal is to update and clarify service of notice provisions in light of the recent rule change which shortened notice requirements for all telephonic appearances from three days to two. The revisions to the <i>Notice of Intent to Appear by Telephone</i> (form CIV-020) will help avoid confusion by correcting and updating references to the rules and the changes to the rules will correct the current inconsistencies in notice timeframes. However, SCDLS notes that while telephonic appearances increase access to the courts to many litigants, self-represented limited English proficient speakers face a significant barrier in accessing this “point of entry” to the courts since there is no uniform language accessibility for telephonic appearances: this may be something to consider in the ongoing efforts to develop the statewide Language Access Plan.	The committee notes the commentator’s agreement with the proposal. The committee appreciates the suggestion about language accessibility for telephone appearances. The committee will refer this suggestion to the Judicial Council’s Language Access Plan Implementation Task Force and Court Interpreters Advisory Panel for future action, as they are currently developing proposed procedures and forms directly related to interpreters.

SPR15-12**Telephone Appearances: Time for Notice and Notice Form** (amend rule 3.670(h), revise form CIV-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
8.	Superior Court of Los Angeles County (no name indicated)	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
9.	Superior Court of Orange County by Family Law Operations Managers & Juvenile Court Operations Mgrs.	NI	<p>The Advisory Committee comment under CRC 3.670 states, “<i>This rule does not apply... to family law matters, except in certain respects as provided in rule 5.324 relating to telephone appearances in proceedings for child or family support under Title IV-D of the Social Security Act...</i>” It is unclear if this rule is applicable to Family Centered Case Resolution pursuant to CRC 5.83(d)(2) or adoption proceedings, specifically F.C. 8613.5 (a)(1)(B). Please provide clarification on the applicability of this rule to family court.</p> <p>Additionally, we recommend adding an interpreter line item to the Notice of Intent to Appear by Telephone (CIV-020).</p>	<p>The committee has considered this comment and concludes that the rules are sufficiently clear on this point. Rule 3.670(b) confirms that the rule only applies to general civil cases, as that term is defined in rule 1.6, and to specified other non-family law matters. Rule 1.6(4) expressly excludes family law matters, including adoption matters, from the definition of “general civil cases.” Telephone appearances in family law matters instead are addressed in rule 5.324 (for Governmental Child Support cases) and rule 5.9 (for all other family law matters).</p> <p>Please see the response to comment 7 above.</p>
10.	Superior Court of Riverside County (no name indicated)	A	No specific comment.	The committee notes the commentator’s agreement with the proposal.
11.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Would the proposal provide cost savings? If so please quantify. No.</p> <p>What would the implementation requirements be for courts? Advising staff via e-mail of the change. Our court permits appearances via</p>	The committee notes the commentator’s agreement with the proposal.

SPR15-12**Telephone Appearances: Time for Notice and Notice Form** (amend rule 3.670(h), revise form CIV-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			telephone with notice as late as the day of the hearing. Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	