

## RESOLUTION 07-05-2010

### DIGEST

#### Telephonic Appearances: Civil Proceedings

Amends Code of Civil Procedure section 367.5 to provide that the courts shall permit parties and their attorneys to appear by telephone in specified civil proceedings.

### RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

#### History

No similar resolutions found.

#### Reasons

This resolution amends Code of Civil Procedure section 367.5 to provide that the courts shall permit parties and their attorneys to appear by telephone in specified civil proceedings. This resolution should be disapproved because it eliminates the court's discretion to require a party to appear in person where a personal appearance would materially assist in the determination of the proceedings.

The current statute (and companion rule of court) encourage, but do not require, trial courts to permit telephonic appearances by counsel in specified civil proceedings. The stated goal of this resolution is to make that decision discretionary for counsel. While this is a desirable goal, the resolution would eliminate the court's exercise of its discretion to "require a party to appear in person at a hearing, conference, or proceeding if the court determines, on a hearing-by-hearing basis, that a personal appearance would materially assist in the determination of the proceedings." (Code Civ. Proc., § 367.5(c).) This resolution would thus eliminate a key factor in the judge's control of his or her own courtroom proceedings.

Further, the proponent has overlooked California Rules of Court, rule 3.670, which tracks the language of the section 367.5. The proponent has proposed an amendment only to section 367.5, leaving the related Court rule unchanged. The resultant disparities between the code and the rule might result in confusion and inconsistency among the procedures adopted by the courts, contrary to one of the goals the proponent seeks to eliminate.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommend that legislation be sponsored to amend Code of Civil Procedure section 367.5 to read as follows:

- 1 § 367.5
- 2 (a) It is the intent of this section to promote uniformity in the procedures and
- 3 practices relating to telephone appearances in civil cases. ~~To improve access to the courts~~
- 4 ~~and reduce litigation costs, courts should, to the extent feasible, permit parties to appear by~~
- 5 ~~telephone at appropriate conferences, hearings, and proceedings in civil cases. To improve~~
- 6 ~~access to the courts, reduce litigation costs and reduce the environmental impact associated~~

7 with personal appearances, the courts shall permit parties and their attorneys to appear by  
8 telephone at hearings and proceedings in civil cases. Appearances for any matter identified  
9 in subdivision (b) shall be permitted regardless of whether the person appearing  
10 telephonically is a moving or opposing party. This section is not intended to bar or restrict  
11 the ability of any party or attorney to personally appear for a hearing, conference or  
12 proceeding, if they so choose.

13 (b) Except as provided in subdivision (c), in all general civil cases, as defined in the  
14 California Rules of Court, a party that has provided notice may appear by telephone at the  
15 following conferences, hearings, and proceedings:

16 (1) An ex parte hearing.

17 (2) A motion to set aside a default or default judgment.

18 (3) A motion to quash.

19 (4) A demurrer or motion to strike.

20 (5) A motion for judgment on the pleadings.

21 ~~(6)~~ (6) A case management conference, provided the party has made a good faith  
22 effort to meet and confer before the conference as required by law and has timely served  
23 and filed a case management statement.

24 (7) A status conference.

25 ~~(2)~~ (8) A trial setting conference or motion to continue trial.

26 ~~(4)~~ (9) A hearing on a discovery motion.

27 (10) A hearing on a motion for summary judgment or adjudication.

28 ~~(5)~~ (11) A conference to review the status of an arbitration or mediation.

29 (12) A motion to be relieved as counsel.

30 (13) A motion for good faith settlement or opposition to an application for good  
31 faith settlement.

32 (14) A motion to tax or strike costs.

33 (15) A motion for attorney's fees.

34 (16) A motion for sanctions.

35 ~~(6)~~ (17) A hearing to review the dismissal of an action.

36 (18) A motion to enforce a settlement or enter judgment in accordance with Code  
37 of Civil Procedure section 664.6 or 664.7.

38 ~~(3)~~ (19) A hearing on any law and motion matter not specifically identified above,  
39 except motions in limine.

40 ~~(7)~~ (20) Any other hearing, conference, or proceeding if the court determines that a  
41 telephone appearance is appropriate.

42 (c) The court may require a party to appear in person at a hearing, conference, or  
43 proceeding listed in subdivision (b) if the court determines, on a hearing-by-hearing basis,  
44 ~~that a personal appearance would materially assist in the determination of the proceedings~~  
45 ~~or in that appearance of a party or attorney by telephone would cause prejudice to any~~  
46 other party, or otherwise materially interfere with the effective management or resolution  
47 of the particular case.

48 (d) Consistent with its constitutional rulemaking authority, the Judicial Council  
49 shall adopt rules effectuating the policies and provisions in this section by January 1, 2008  
50 2012, and may adopt rules relating to matters not covered by subdivision (a). The rules  
51 may prescribe, but are not limited to prescribing, the notice to be given by a party  
52 requesting a telephone appearance under subdivision (a), the manner in which telephone

53 appearances are to be conducted, the conditions required for a party to be permitted to  
54 appear by telephone, and provisions relating to the courts' use of private vendors to provide  
55 telephone services.

56 (e) This section does not apply to any types of cases or types of conferences,  
57 hearings, and proceedings except those specified in subdivision (b). Consistent with its  
58 constitutional rulemaking authority, the Judicial Council may by rule provide for the  
59 procedures and practices, and for the administration of, telephone appearances for all types  
60 of cases and matters not specified in subdivision (b). For these other cases and matters, the  
61 Judicial Council may specify the types of cases and matters in which parties may appear by  
62 telephone, the types of cases and matters in which parties shall appear personally, the  
63 conditions under which a party may be permitted to appear by telephone, and any other  
64 rules governing telephone and personal appearances that are within its rulemaking  
65 authority.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Orange County Bar Association

## **STATEMENT OF REASONS**

Existing Law: Code of Civil Procedure section 367.5 gives courts the option to allow telephonic appearances and specifically identifies a small number of proceedings for which telephonic appearances can be permitted.

This Resolution: Would modify Section 367.5 to clearly provide parties and counsel with the option to appear telephonically for an increased number of proceedings before the courts. Additionally, this would clarify that both moving parties are permitted to appear telephonically.

The Problem: There is a significant disparity between different jurisdictions, and even courtrooms within the same jurisdiction, as to whether telephonic appearances are permissible in different types of proceedings, thereby creating substantial confusion as to whether telephonic appearances will be allowed. Other restrictions are sometimes imposed, whereby parties are advised that they are not permitted to appear telephonically if they are the moving party on the motion. Additionally, certain courtrooms create broad sweeping policies barring telephonic appearances in that courtroom, instead of making determinations on a “hearing-by-hearing basis” as required by the code. Therefore, a more uniform rule permitting the appearances of parties and their counsel is needed.

This modification is intended to expand upon the cost reduction measures associated with the making of personal appearances which initially prompted the creation of this section. Additionally, and no less important, telephonic appearances help to lessen the environmental impact associated with having thousands of attorneys travel to appearances which could easily be completed telephonically.

**IMPACT STATEMENT:** This resolution does not affect any other law, statue or rule.

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**RESPONSIBLE FLOOR DELEGATE:**

**COUNTER ARGUMENTS**

**FAMILY LAW SECTION**

**RECOMMENDATION: DISAPPROVE**

The Family Law Section Executive Committee (FLEXCOM) voted to oppose Resolution 05-10-2009, 16-0-0. FLEXCOM believes that the current law on telephonic appearances is sufficient and that this change would not be workable for family law actions.

**This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar Board of Governors or overall membership and is not to be construed as representing the position of the State Bar of California.**

**Membership in the Family Law Section is voluntary, and funding for section activities, including all legislative activities, is obtained entirely from voluntary services.**

**BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY**

All parties/attorneys can not always hear each other when one or more parties/attorneys participate telephonically. The court should have the discretion to determine whether telephonic appearances are to be allowed.

