

Telephonic Appearances in Judicial Proceedings:

Getting Closer to Universal Judicial Acceptance

By Bruce M. Brusavich



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Twenty-seven years ago the California Legislature clearly understood the benefits of telephonic court appearances when it directed the Judicial Council to adopt Standards of Judicial Administration governing telephonic appearances. Code of Civil Procedure section 575.5 (1982). The Legislature recognized that litigants could save potentially millions of dollars in legal fees paid to their lawyers for driving to and from court. They probably envisioned a reduction in traffic

congestion and less pollution if the courts would embrace telephonic appearances.

The judiciary was slow to embrace the call for telephonic appearances. This slow movement toward telephonic appearances was apparently acceptable to the bar, since most court appearances were litigant-generated and a court appearance usually meant that something significant could happen in the case. Then came Delay Reduction Case Management.

Early Delay Reduction legislation encouraged the individual courts to “experiment” with case management techniques; and experiment they did. Suddenly, litigants were being called to court early and often for brief and often insignificant hearings. Orders to Show Cause Re Service, early Status Conferences, Case Management Conferences, Mediation Conferences, Post-Mediation Conferences, more Status Conferences, Trial Setting Conferences, and

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Pre-Trial Conferences became the norm in many cases. Delay Reduction fostered a whole new business of the “rent-a-lawyer” and the ability to appear telephonically began to be an option litigants and their lawyers wanted and needed.



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Over time, the trial bars were successful in amending the Delay Reduction statutes to provide some greater uniformity statewide and put limits as to how soon and often the courts could bring parties to court. (Government Code section 68616 was enacted in 1990 and amended in 1993 (SB 401) and 1996 with AB 3471 and most recently in 2007 with AB 1264 (Eng).) In 2003, the Judicial

Council created the Blue Ribbon Panel of Experts on the Fair and Efficient Administration of Civil Cases which also attempted to limit the number of court appearances and tried to make the case management conference the principal court hearing. The result of that work resulted in significant changes to the California Rules of Court concerning Delay Reduction case management.

Introducing Affordable Technology

A significant impediment to the early implementation of telephonic appearances was the availability of suitable technology that the courts could afford. This was addressed in 1995 when lawyers Mark S. Wapnick and Robert V. Alvarado, Jr., started CourtCall, LLC, which began making telephonic appearances available nationwide. CourtCall began providing all of the state-of-the-art equipment free of cost to the courts. This was significant in that it removed the financial burden of implementing telephone appearances statewide for our courts.

The next significant events that occurred which forced a commitment to expanded utilization of this technology were the terrorist attacks of September 11, 2001. When the airlines resumed flying, travelers found themselves confronted with chaotic, ever-changing security measures and long delays at airports. The days of the quick commuter flight for a court hearing in another part of the state were gone forever. Likewise, whether they could afford it or not, courts began implementing security screening, requiring lawyers and litigants to stand in long lines to enter our courthouses. A few judges, who were able to bypass the public security lines, began levying sanctions or worse when lawyers or litigants were delayed in the security lines and unable to get to court hearings on time.

Despite the worsening traffic, escalating



gasoline prices, and greater awareness of global warming and availability of improved technology to make telephonic appearances

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easy to accommodate, many judges held on to their old ways and required personal appearances for some or all matters. While many court leaders were successful in persuading the judges to embrace the 21st Century and telephonic appearances, the bar continued to face peculiar and varying rules on the utilization of telephonic appearances from court to court.

From the plaintiffs’ contingency bar per-

spective, traveling to court for a two-minute hearing was becoming an economic burden. The cost of running a small business law practice had been consistently increasing over the years with higher rents, utilities, salaries, benefits, taxes and everything else required to run a small business. Litigation-related expenses, such as experts, depositions and court fees, were increasing, while case resolutions were becoming more difficult and protracted. It became evident that something had to be done to either encourage or force the courts to expand the utilization of telephonic appearances.

Support for Expanding Usage

In 2007, the Consumer Attorneys of California (CAOC) sponsored AB 500 by Southern California Assemblymember and lawyer Ted Lieu. The “green” benefits of the bill where emphasized and passage seemed assured. AB 500 was initially introduced as a simple bill that would have eliminated all exceptions to telephonic appearances, properly allowing the litigants and their lawyers to make the decision when a court appearance should be made in lieu of a telephonic appearance. AB 500 quickly picked up support from the California Defense Council and the Association of California’s insurance companies, who saw the benefit in having their insurance defense lawyers telephonically appear at many judicial hearings.

The Judicial Council Civil and Small Claims Advisory Committee created a Telephonic Appearance Working Group to address the issue. The scope of the bill was quickly limited to general civil cases, unlawful detainer and probate matters. It became apparent that uniformity was required and that the Judicial Council could no longer sanction the idiosyncratic rules as they existed. Some individual courts required the requesting attorney to have an office beyond



so many miles from the courthouse. Others based their decision to allow a telephonic appearance upon the zip code of the requesting attorney's office. Others had arbitrary limits as to how many cases they would take a day on the telephonic basis, while yet others made a distinction as to the kind of hearing. It was reported that one judge only allowed lawyers practicing within his county to appear telephonically. Out of town lawyers had to appear personally.

— Telephonic — Appearances Enhanced

The Working Group eventually reached a consensus and proposed amendments to AB 500 and an implementing Rule of Court. The result was the enactment of Code of Civil Procedure section 367.5 concerning telephonic appearances and significant revisions to existing Rule 3.670 of the California Rules of Court applicable to all general civil cases, unlawful detainer and probate proceedings. The statute and the related rule clearly reflect a legislative and judicial policy of encouraging telephonic appearances in most matters that do not require testimony of witnesses. California Code of Civil Procedure section 367.5(c) emphasizes this point by requiring a judicial determination that a personal appearance must be made on a "hearing-by-hearing" basis where the court has deemed the appearance necessary for that hearing. The language was intended to prohibit blanket or arbitrary policies precluding telephonic appearances for all hearings in a particular case or to exclude types of hearings in all cases which would otherwise be covered by the statute and the rule. Despite the clear statutory mandate encouraging telephonic appearances and prohibiting arbitrary local, local rules requiring personal appearances, many individual courts still have not embraced the technology as they should.

— 'CourtCall' Calling —

CourtCall recently announced that they have concluded 1.5 million telephonic court appearances. CourtCall conservatively estimates that they have helped save millions of gallons of gasoline (the equivalent of 90 million kilowatts of energy, enough to supply over 900 homes per year for 10 years with electricity) and millions of hours of attorney time, saving their clients hundreds of millions of dollars. These CourtCall appearances have saved between 27,000-37,500 metric tons of CO₂, the equivalent of taking approximately 600 cars completely off the road each year for the past 10 years.

Lawyers and litigants need to do their part to promote the wide utilization of telephonic technology. The solemnity of the court must be respected. Barking dogs, shuffling papers, conversations with your staff and other distractions all enter the courtroom and interfere with the court's ability to conduct proceedings. Judges need to be aware of the burdens and costs to litigants of lengthy commutes for a brief hearing that could easily be handled telephonically. The court should also appreciate that having a lawyer most familiar with the file available telephonically is much better than having a less-experienced attorney, or a specially-appearing attorney hired for the appearance, appear personally at the hearing. If all parties demonstrate the courtesy everyone else is entitled to and as better and better technology develops, utilization of the technology will become more widespread and accepted.

With the current budget problems and the anticipated budget cuts facing our courts, hopefully the courts will reduce or eliminate unnecessary court appearances and concentrate on providing litigants with quality time for jury trials. In addition, hopefully, someday all courts will fully embrace telephonic appearances and our Legislature's vision of 27 years ago will finally be realized.