

Appearances Count in Court

I have to have a minor vent on this:

In California, many courts allow telephonic appearance for all sorts of hearings. There is also a full industry of "appearance attorneys".

Unless it is truly prohibitive, I don't use either. Yesterday was a great reminder of why these are poor tools. I was at the initial Case Management Conference for a suit against a HOA. We were line #5. Here is how the docket went:

Case #1 - both attorneys were on CourtCall. Judge repeated herself 5-7 times because the attorneys claimed they couldn't hear her.

Case #2 - Whoops! Neither side appeared. OSC sent!

Case #3 - Two appearance attorneys. Judge asked if the case was "at issue". Neither one could speak to anything of substance and as a result the judge was forced to push the case out for no reason.

Case #4 - One counsel on the phone and one in person. The one on the phone spoke over the judge a couple times and over opposing counsel plenty too.

You can see the judge is frustrated.

Case #5 - My hearing. OC was on phone and had the judge repeat comments three times. Then, when trying to set an ADR, he failed to hear what the judge was saying, agreed to mediation, then had to backtrack when it was clear he had misheard the judge. You could really see the judge's annoyance.

When you don't show up for the hearings in person, there is just a lost opportunity. To meet with OC, keep eyes on the judge - to get something useful done. I wish I'd see more attorneys in the Court rather than on the phone.

I generally agree and appear as often as I can, especially if I do not know the other attorney. However, as you know, as a solo sometimes that is tough. I just had San Mateo county set two CMCs with no prior notice on days when I already have court in other counties. Unless I can clone myself, someone is getting me via CourtCall or an appearance attorney.

I also use CourtCall when I know the other side will be attending that way- ie large law firms out of the area who will not come up in person.

Jonathan Stein, California

I concur with the comment about CourtCall -- it's definitely one of those things that is great in theory, but horrid in execution. In fairness to CourtCall, I think a great deal of it has to do with the fact that when you're on the phone, you generally have no idea how you sound to others. A lot of lawyers try to get away with using a cell phone. A lot of lawyers use headsets that are terrible. A surprising number of lawyers have no idea how to enunciate. You can definitely get good at it, though. I had an in-person CMC earlier this week and there were several lawyers on the phone from big firms that clearly had the routine down (e.g. closed their office door, enunciated clearly, identified themselves each time they spoke, etc).

I do that last thing too -- e.g. "Your Honor, this is Andy Chen for plaintiffs. On that last point, blah, blah, blah")

Regarding the appearance thing, I do special appearances in Modesto all the time. Modesto is kind of in the middle of nowhere. When I first moved there in 2014, I didn't know anyone so I did appearances to cover expenses for the first few months. My office is close to the courthouse so it's just a quick walk. Some attorneys requesting a special appearance give the appearance attorney great briefings (e.g. they provide background, copies of recently filed papers, correspondence with the other side, etc). Other attorneys, though, have apparently never been to court in their lives so the briefing they give me is horrible. For instance, my instructions are sometimes just "Request a continuance". That's it. No indication of how long, no indication of the reason why, no indication of whether the other side has agreed to the continuance, etc.

Any lawyer who has appeared even once in CA Superior Court will know that you can't just ask for a continuance without being prepared to disclose the reason. The judge may not ask, but you'll be screwed if the judge asks and the lawyer appearing for you doesn't know. This happened to me one time on an appearance and the judge was so annoyed he ordered that the attorney I was appearing for (who was in Los Angeles) had to show up personally for all future hearings. Not on CourtCall. The attorney had to fly and/or drive to Modesto for every hearing from now on.

Andy Chen, California

Woody Allen once said 80% of success is just showing up.

I say the other 20% is paying attention.

John Davidson, Pennsylvania

So what is the other 15% from? (haha)

I didn't say that I never used CourtCall or an appearance attorney, but yesterday reminded me how bad they can be. On the phone, you cannot read cues from OC or the Court, the value of an appearance attorney, as Andy says, is only as good as the information they have.

Very early on, I had a fraud case on a RE fraud case that was in LA.

Client couldn't afford me, let alone the travel. I was taking it as a 80% pro-bono case, so I CourtCalled for everything I could. I remember several demurrer hearings where I could have sworn I was kicking a###; but had the judge ask, "wait, what did you say about..."

To Andy's point, there are PLENTY of attorneys who haven't mastered CourtCall and they are frustrating as all get out, but I don't understand why the technology isn't better. not one of the people on the phone sounded like they were clearly connected. They sounded more like a NPR news report interview being conducted via skype from some country no one hears of, like Equatorial Guinea.

Drew Winghart, California

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I really tend to dislike telephonic appearances but it depends on the judge and the hearing. I had one in County court in Lake County; I kept "stepping" on the judge; I'd say something and she'd say something; it went downhill very quickly. Mostly, I think, due to my lack of 'visual cues' as to when she was about to speak. she tended to interrupt which is fine in person but very difficult to discern over the phone.

If at all possible I will make personal appearance, even if it's all day round trip; I had one in St. Augustine and another in Port Charlotte, both of which are about 4 hours each way. in both cases the judge told me "if we need another hearing do it telephonically, Mr. Jones" and in both cases we did subsequent telephonic hearings and they went well; mainly because the judges would give me aural clues to speak; i.e., judge would speak then address me, and say "what about that Mr. Jones". And if there was a problem with hearing what was said, I'd say something or the judge would say something right then and there; judge didn't take offense if I spoke up while he was speaking. A lot of this is the judge extending courtesy to person on the phone.

Ronald Jones, Florida

After watching and listening to a local bankruptcy screaming at the speaker phone trying to get the attorney with the cheap headset to let her interrupt I resolved to use CourtCall as little as practical.

And on a couple of times in bankruptcy court in SF I have been at hearings where the judge and the attorneys were all "present" by speakerphone. It was hard to see how anything actually was accomplished at these.

Geoff Wiggs, California

I'm pretty sure this is why CourtCall tells the scheduling attorney in no uncertain terms to not use anything but a landline...no speakers, no headsets, no cell phones, etc.

Barry Kaufman, Florida