

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Case Management Subcommittee, Hon. Arthur E. Wallace, Chair  
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DATE: October 1, 2004

SUBJECT: Telephone Appearances (amend Cal. Rules of Court, rules 212 and 298)  
(Action Required)

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Issue Statement

Currently, rule 212 of the California Rules of Court requires counsel and self-represented parties to appear personally at case management conferences, unless the court permits telephone appearances. Rule 298 authorizes parties to appear at conferences and hearings by telephone, except at case management conferences. To facilitate the general use of telephone appearances at case management conferences, these rules should be amended to allow counsel and parties to appear by telephone, unless the court on a case-by-case basis determines that they must appear in person. These rule amendments will improve access to the courts and reduce the costs of litigation.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2005:

1. Amend rule 212 of the California Rules of Court; and
2. Amend rule 298 to provide that parties generally may appear at case management conferences by telephone.

Rule 298 would also be amended to require a personal appearance by any party or counsel who is ordered to appear at hearings on orders to show cause for a violation of a court order or a rule of court.

The text of amended rules 212 and 298 is attached at page 5.

### Rationale for Recommendation

Allowing parties to appear by telephone at case management conferences would reduce the cost to litigants in civil cases. Judges and attorneys who have used telephone appearances for case management conferences generally have found that this procedure works quite well. Hence, rule 212 should be amended to eliminate the provision that counsel “must appear personally or, if permitted under rule 298(c), by telephone”; and rule 298(c)(2) authorizing telephone appearances should be amended to eliminate the exception for case management conferences.

Thus, under the amended rules, counsel and self-represented parties would generally be allowed to appear by telephone at case management conferences. Courts would still have the discretion to require personal appearances at case management conferences on a case-by-case basis under rule 298(c)(3).

In addition, rule 298(c)(2) should be amended to add an exception to the telephone appearance rule for “hearings on orders to show cause for violation of a court order or a rule of court.” The committee considered it preferable to require parties or counsel who have violated a court order or rule to appear at the hearing on the order to show cause (OSC) in person. This should encourage compliance with court orders and rules.

Finally, rule 298(b) should be amended by adding a general statement that courts may not deny or condition an appearance by telephone at a hearing or conference except as permitted under the rule.

### Alternative Actions Considered

The committee discussed leaving the rules unchanged so that personal appearances would still be required at case management conferences. There was a difference of opinion on this issue. Some members of the committee expressed the view that it would be preferable to require counsel and self-represented parties to still appear in person at case management conferences. They thought that it improved the case management process to require parties to be present in person at conferences.<sup>1</sup> However, a majority of the committee regarded it as preferable to allow counsel and self-represented parties generally to appear by telephone at such conferences. Costs would be substantially reduced for most cases, and judges, on a case-by-case basis, could still order counsel and self-represented parties to appear in person at conferences.

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<sup>1</sup> The committee was informed that this is also the view of some of the judges of the Superior Court of California, County of Los Angeles.

### Comments From Interested Parties

The proposal was circulated for comment in the spring of 2004. A total of 15 comments were received. The commentators included judges, attorneys, the Committee on Administration of Justice (CAJ) of the State Bar of California, and the president of the Los Angeles County Court Reporters Association. A chart summarizing the comments and the committee's responses is attached at pages 6–11.

Most of the commentators supported the proposal to amend rules 212 and 298 to facilitate telephone appearances at case management conferences. The CAJ stated: "The proposed amendments to rule 298 will improve access to the courts and reduce the costs of litigation in California by enabling parties to appear by telephone at case management conferences unless the court, on a case-by-case basis, determines that a personal appearance would be of material assistance." As discussed above, a majority of the committee agreed with this comment. A minority thought it would be preferable to retain the current rule.

The other main change in the rules would be to require personal appearances where an order to show cause has been issued for violation of a court order or rule of court. There were several comments on this proposal. The CAJ supported this change; on the other hand, a judge stated that counsel should be allowed to appear telephonically at OSC hearings because most concern only missed deadlines. The committee agreed with the CAJ that the rule should be amended to require appearances at OSC hearings; otherwise, there may be an undue number of requests for telephone appearances at these hearings. If a party complies with the court's order before the OSC hearing, the court may notify the party that the hearing has been canceled and thus eliminate the hearing entirely.

At the suggestion of a member of the council's Rules and Projects Committee one other change was made to rule 298(c)(2). The rule was modified to clarify that the personal appearance requirement applies to "[a]ny party or counsel who is ordered to appear" at hearings on orders to show cause. Thus, parties or counsel who are not ordered to appear pursuant to the order to show cause may appear by telephone.

There were several other comments on the proposals. One commentator was concerned that the proposed new last sentence for rule 298(b) might be interpreted as requiring all courtrooms to provide for telephone appearances. He thought the rule should be more flexible. The committee disagreed. The amended rule reflects the general policy that courts should permit telephone appearances; personal appearances should be required only if one of the exceptions stated in the rule applies.

Another commentator asked if courts can handle multiparty calls. Based on their experience, the committee members believed that courts should be able to handle multiparty calls. If a court does not presently have this capability, it may either acquire it or use a private vendor that provides this service.

An attorney suggested that rule 298 should require each court to provide notice if it does or does not provide for telephone appearances in certain matters. The committee regarded the amended rule as clear without such an added provision.

The president of the Los Angeles Court Reporters Association was concerned that the lack of appropriate technology might make it difficult to ensure an accurate record. The committee believed that courts are generally able to create clear and accurate records of telephone conferences and that the problems with establishing such records are generally not technological.

Finally, a judge stated: “My experience with telephone conferences has been less than satisfactory. I urge you not to exempt personal appearances on law and motion matters.” However, most commentators’ and committee members’ experiences with telephone appearances have been quite positive. Telephone conferences have made it easier and less expensive for litigants to participate in hearings and conferences. Especially for attorneys, telephone appearances have substantially reduced the amount of time required to attend conferences and hearings; and judicial officers have not encountered any special problems in conducting hearings or conferences by telephone. Hence, the committee declined to follow the judge’s recommendation.

#### Implementation Requirements and Costs

Increased use of telephone appearances at case management conferences will require some additional scheduling and planning by the courts. However, the ability to appear by telephone should result in substantial benefits, including reduced costs, for attorneys, their clients, and self-represented litigants.

Rules 212 and 298 of the California Rules of Court are amended, effective January 1, 2005, to read:

1 **Rule 212. Case management conference; meet-and-confer requirement; and case**  
2 **management order**

3  
4 (a) \*\*\*

5  
6 (b) (1)–(2) \*\*\*

7  
8 (3) (*Appearances at the conference*) At the conference, ~~counsel for~~ each party's  
9 counsel and each self-represented party ~~must appear personally or, if permitted under rule~~  
10 ~~298(e)(2), by telephone~~; must be familiar with the case; and must be prepared to discuss  
11 and commit to the party's position on the issues listed in (e) and (f).

12  
13 (4)–(5) \*\*\*

14  
15 (c)–(k) \*\*\*

16  
17 **Rule 298. Telephone appearance**

18  
19 (a) \*\*\*

20  
21 (b) [**General provision**] Except as provided in (c), a party may appear by telephone in  
22 any conference or hearing at which witnesses are not expected to be called to testify. The  
23 court may not deny or condition an appearance by telephone except as permitted under  
24 this rule.

25  
26 (c) [**Exceptions**] A personal appearance is required for the following:

27  
28 (1) \*\*\*

29  
30 (2) ~~Case management conferences, unless the court permits telephone appearances~~  
31 ~~at those conferences~~; Any party or counsel who is ordered to appear at hearings  
32 on orders to show cause for violation of a court order or a rule of court; and

33  
34 (3) \*\*\*

35  
36 (d)–(j) \*\*\*

**SPR04-06**  
**Telephone Appearances**  
**(amend Cal. Rules of Court, Rules 212 and 298)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Rich Best San Francisco, California	AM	N	The rule should provide for the appearance of nonparties who are interested in the outcome and may have a vital interest in the matter, yet not be able or have the time or resources to travel to the proceeding. For example, a nonparty deponent who is being compelled by a distant court to answer questions over a fifth amendment or privilege objection. Family members or actual or potential beneficiaries may be vitally interested in a probate or conservatorship hearing. Add a catchall phrase such as “persons directly interested in or affected by the hearing unless telephonic appearance is denied by court for good cause at least two days prior to the hearing.”	The committee will consider this proposal in the future. However, because it goes beyond the amendments circulated, no recommendation is being made at this time regarding the proposed provision.
2.	Committee on Administration of Justice The State Bar of California San Francisco, California	AM	Y	The Committee on Administration of Justice (CAJ) supports the proposed amendments to rules 298 and 212 of the California Rules of Court. Rule 298, which provides that parties may appear by telephone at conferences and hearings, would be amended (1) to remove case management conferences from the list of exceptions to the general rule; and (2) to add to the list of exceptions hearings on orders to show cause for violations of court orders or rules of court.  The proposed amendments to rule 298 will	The committee notes the CAJ’s support for the amendments.

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				<p>improve access to the courts and reduce the costs of litigation in California by enabling parties to appear by telephone at case management conferences unless the court, on a case-by-case basis, determines that a personal appearance would be of material assistance. Thus, the statewide policy and practice would be to permit telephone appearances at case management conferences, obviating the need for a local rule authorizing such telephone appearances. For consistency, rule 212(b) would be amended to eliminate language requiring parties to appear personally at case management conferences.</p> <p>CAJ further supports the addition of hearings on orders to show cause for violations of a court order or a rule of court to the list of exceptions in rule 298(c). The committee supports the belief that the personal presence of the parties or their counsel at this type of hearing is generally necessary or desirable.</p>	<p>The committee agreed with this comment.</p> <p>The committee agreed with this comment.</p>
3.	Hon. Stephen D. Cunnison Judge of the Superior Court of California, County of Riverside Riverside, California	A	N	No comment	No response required.

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4.	Mary Majich Davis Chief Deputy Executive Officer Superior Court of California, County of San Bernardino San Bernardino, California	A	N	Agree with proposed changes.	No response required.
5.	Hon. Lynn Duryee Judge Superior Court of California, County of Marin San Rafael, California	N	N	Counsel should be able to appear telephonically at OSC hearings—most have to do with very minor missed deadlines.	The committee disagreed; it believes that the rule should provide for personal appearances at OSC hearings. This would encourage compliance. On the other hand, if parties were permitted to appear telephonically, they would frequently request to do so and courts would have to consider multiple requests. If a party has complied with an order before the hearing, the court has the discretion to cancel the hearing entirely.
6.	Hon. Sherrill Ellsworth Commissioner Superior Court of California, County of Riverside Riverside, California	A	N	I already do this. It is a great idea; however, technology may be a concern. Can courts handle multiparty calls?	Courts generally can handle multiparty calls with available technology.
7.	Hon. Joan Ettinger Commissioner	AM	N	There are many OSCs in Probate re failure to account, file an inventory etc. . . . at times the	The committee disagreed; it believes that the rule should provide for

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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	Superior Court of California, County of Riverside Riverside, California			party who has to act is out of state. When I allow them to appear for those by telephone (Court Call), I have better luck in getting an appearance and then a resolution. So I would like to see the same language– “unless the court orders otherwise”–so I can, on a case-by-case basis, make an exception.	personal appearances at OSC hearings. This would encourage compliance. On the other hand, if parties were permitted to appear telephonically, they would frequently request to do so and courts would have to consider multiple requests. If a party has complied with an order before the hearing, the court has the discretion to cancel the hearing entirely.
8.	Hon. Richard Todd Fields Judge of the Superior Court of California, County of Riverside Riverside, California	A	N	I think . . . contested motions should be generally excluded from the rule unless the court permits telephonic appearances at these hearings.	The committee considered the telephone appearance rule to be applicable to contested matters and does not recommend that it be modified in this regard.
9.	Ms. Julie Goren Lawdable Press Sherman Oaks, California	AM	N	In rule 298(c)(2), add the phrase “unless the court orders otherwise” at the end of the sentence.	The committee disagreed; it believes that the rule should provide for personal appearances at OSC hearings. This would encourage compliance. On the other hand, if parties were permitted to appear telephonically, they would frequently request to do so and courts would have to consider multiple requests. If a party has complied with an order before the hearing, the court has the discretion to cancel the hearing entirely.

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10.	Mr. Richard L. Haeussler Attorney Newport Beach, California	A	N	It would be helpful if the rule would require a notice from the court if it permits or does NOT permit telephone appearances in specific matters.	The rule itself is sufficiently clear concerning the matters for which telephone appearances are—or are not—permitted.
11.	Ms. Kim Hubbard President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response required.
12.	Hon. Erik Michael Kaiser Judge of the Superior Court of California, County of Riverside Riverside, California	N	N	My experience with telephone conferences has been less than satisfactory. I urge you not to exempt personal appearances on law and motion matters.	Most commentators' and members' experiences with telephone appearances have been more positive.
13.	Hon. Dennis E. Murray Presiding Judge of the Superior Court of California, County of Tehama Red Bluff, California	AM	N	The proposed changes to rule 298 create one problem. In our court, not all courts are set up for telephonic appearances. We can usually, but not always, make accommodations including a requirement that those appearing by telephone arrange a conference call. By adding the last sentence to 298(b), it raises an issue as to whether we can do this. I agree with the substance of this rule; but for practical reasons, we need a little flexibility.	Many courts currently have the capacity to allow for appearance by telephone. If a court does not, it can either acquire this capability or use a private vendor that provides this service.
14.	Hon. Barry Riemer Commissioner	A	N	I've been doing this all along and it works well. The flexibility to decide case by case is included	The committee noted the commentator's positive experience

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	Superior Court of California, County of Riverside Riverside, California			in the rule.	with telephone appearances.
15.	Arnella Sims President Los Angeles County Court Reporters Association Los Angeles, California	N	Y	<p>Although this rule change is all meant to improve access to the courts and reduce the cost of litigation by promoting the use of telephone appearances, we must again comment on the lack of appropriate technology and procedures to ensure an accurate record.</p> <p>Available equipment in the courts used for telephone conferences is inadequate. It is frequently difficult to identify speakers. If the rule were to authorize use of telephone conferencing for pro per litigant appearances, we can envision situations where phone calls would include added background noises that would naturally occur when a person is in a home rather than business environment (crying babies, music, children playing, etc.).</p> <p>Expanding the use of telephone conferencing will further diminish the ability to make an accurate and complete record of court proceedings, unless the issue of equipment and procedures is addressed.</p>	<p>Although the telephone technology might sometimes be improved, establishing a clear and accurate record can generally be achieved by judicial officers conducting telephone hearings using existing technology.</p> <p>The rule has already applied to self-represented persons for one and a half years without major problems.</p> <p>The committee did not regard this as a problem that cannot be resolved as the use of telephone conferencing increases.</p>