

**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: Family and Juvenile Law Advisory Committee  
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs  
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DATE: October 2, 2009

SUBJECT: Juvenile Law: Presence and Participation of Child at Hearings (amend  
Cal. Rules of Court, rules 5.534 and 5.725) (Action Required)

Issue Statement

Effective January 1, 2009, the Legislature revised Welfare and Institutions Code section 349, which includes revised provisions regarding a child's presence at and participation in a juvenile court hearing if the child is the subject of that hearing. The proposed rule amendments are necessary to promote legal compliance with section 349 and to eliminate unnecessary redundancy.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2010, amend rules 5.534 and 5.725 of the California Rules of Court to comply with current statutory mandates and to facilitate consistency.

The proposed rule text is attached at pages 4–5.

The text of Welfare and Institutions Code section 349 is attached at page 8.

Rationale for Recommendation

The Family and Juvenile Law Advisory Committee recommends amending rule 5.534(p) of the California Rules of Court to bring it into compliance with new and existing law. Effective January 1, 2009, Welfare and Institutions Code section 349 includes revised provisions regarding a child's presence at and participation in a juvenile court hearing if the child is the subject of that hearing. (Assem. Bill 3051 [Jones]; Stats. 2008, ch. 166.) Section 349(c) states that if the child is present at the hearing, the court must allow the child to address the court and participate in the hearing if the child desires to do so. Section 349(d) provides that

“[i]f the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire whether the minor was given an opportunity to attend. If that minor was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present unless the court finds that it is in the best interest of the minor not to continue the hearing. The court shall continue the hearing only for that period of time necessary to provide notice and secure the presence of the child. The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend.”

The proposed amendments to rule 5.534(p), which addresses the presence of the child at dependency hearings, incorporates each of the new provisions in section 349. The amendments also clarify that the child has a right to be present at each hearing, consistent with existing language in section 349(a).

The committee further proposes deleting subdivision (d) of rule 5.725 (Presence of child). Rule 5.725 contains the procedures for selecting a permanent plan under section 366.26 and subdivision (d) repeats the provisions of rule 5.534(p) regarding a child’s presence at and participation in a juvenile court hearing if the child is the subject of that hearing. It is unnecessary to include subdivision (d) in rule 5.725 since rule 5.534 applies to all juvenile court proceedings.

#### Alternative Actions Considered

The proposed amendments are necessary to bring these rules into compliance with governing law and to promote clarity and ease of use. No alternative actions were considered.

#### Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 17, 2009, through June 17, 2009, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. This distribution list includes judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. A total of eight comments were received. No commentators disagreed with the proposal; six commentators agreed with the proposed changes; one commentator agreed with the proposal if modified and suggested a substantive addition to the rule text; one commentator did not indicate agreement or disagreement. This commentator did not submit narrative comments requiring a response.

One commentator agreed with the proposal if modified, expressing a concern that a judicial officer’s personal view regarding whether a child should attend a hearing may take precedence over a child’s statutory right to attend and participate in the hearing. This

commentator suggested amending rule 5.534 to clearly state that the personal preferences of any juvenile court judge may not take precedence over the child's right to appear. The committee does not recommend incorporating this suggested change. Welfare and Institutions Code section 349 states that a minor who is the subject of the juvenile court hearing is entitled to be present at the hearing. Incorporating the recently revised provisions of section 349 into rule 5.534, as this proposal does, is sufficient to ensure that all courtroom participants have a clear understanding of the legal requirements.

The full text of the comments and the committee's responses are attached at pages 6–7.

#### Implementation Requirements and Costs

Implementation of the revised rules will incur standard reproduction costs.

Attachments



Rules 5.534 and 5.725 of the California Rules of Court are amended, effective January 1, 2010, to read:

1 **Rule 5.534. General provisions—all proceedings**

2  
3 **(a)–(o) \*\*\***

4  
5 **(p) Presence of child (§ 349)**

6  
7 (1) A child who is the subject of a juvenile court hearing is entitled to be  
8 present at the hearing. If the child is present at the hearing, the court  
9 must allow the child, if the child so desires, to address the court and  
10 participate in the hearing.

11  
12 (2) If the child is 10 years of age or older and he or she is not present at the  
13 hearing, the court must determine whether the child was properly  
14 notified of his or her right to attend the hearing and ask why the child is  
15 not present at the hearing and whether the child was given an  
16 opportunity to attend. If the court finds that the child was not properly  
17 notified or that the child wished to be present and was not given an  
18 opportunity to be present, the court must continue the hearing to allow  
19 the child to attend unless the court finds that it is in the best interest of  
20 the child not to continue the hearing. Any such continuance must be  
21 only for that period of time necessary to provide notice and secure the  
22 presence of the child. The court may issue any and all orders  
23 reasonably necessary to ensure that the child has an opportunity to  
24 attend.

25  
26 **Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)**

27  
28 **(a)–(c) \*\*\***

29  
30 **~~(d) Presence of child~~**

31  
32 ~~The child must be present in court if the child or the child’s attorney so~~  
33 ~~request or the court so orders. If the child is 10 years of age or older and is~~  
34 ~~not present at the hearing, the court must determine whether the child was~~  
35 ~~properly notified of his or her right to attend the hearing and ask why the~~  
36 ~~child is not present.~~

37  
38 **~~(e)(d) \*\*\*~~**

1 **(f)(e) \*\*\***  
2  
3 **(g)(f) \*\*\***  
4  
5 **(h)(g) \*\*\***  
6  
7 **(i)(h) \*\*\***  
8

**SPR09-36****Juvenile Law: Presence and Participation of Child at Hearings** (amend Cal. Rules of Court, rules 5.534 and 5.725)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Kern County Dept. of Social Services Monique Hawkins Program Director	A	No narrative comments submitted.	No response required.
2.	Beverly Joan McCoy Volunteer, Court Appointed Special Advocate	AM	<p>It has been my experience as a CASA child advocate that not all juvenile dependency court judges agree that a 10-year-old or older minor who is the subject of a juvenile court hearing is entitled to be present at that hearing. Too often, the judge's personal view that children should remain in school rather than attend a hearing of their case takes precedence over section 290.1 and section 290.2.</p> <p>It should be clearly stated in this proposal that the personal preferences of any juvenile court dependency judge may not take precedence over the right of minors 10 years of age or older to appear at a juvenile court hearing of their case.</p>	Welfare and Institutions Code section 349 states that a minor who is the subject of the juvenile court hearing is entitled to be present at the hearing. Rule 5.534 incorporates these legal provisions. The intent behind this proposal is to incorporate the recently revised provisions of section 349 into rule 5.534. This ensures that the statutory language is clearly written in the rules so that all courtroom participants have a clear understanding of the legal requirements.
3.	Orange County Bar Association Michael G. Yoder President	A	No narrative comments submitted.	No response required.
4.	San Diego County Probation Department Pamela Martinez, Drug Court	NI	This law ensures that a minor has a right to attend their hearings and, if not in attendance, the court is to ensure that they	No response required.

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	Program Office		received proper notification and continue the hearing if the minor wishes to be in attendance unless it is not in the best interest of the child to make the continuance.	
5.	Superior Court of Los Angeles County	A	No narrative comments submitted.	No response required.
6.	Superior Court of Riverside County Staff	A	No narrative comments submitted.	No response required.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No narrative comments submitted.	No response required.
8.	Superior Court of San Mateo County Jeffrey R. Rolston Court Services Supervisor	A	The impact on the clerk's office would be minimal in that if the minors are not noticed to appear there will be continuances, resulting in more paperwork to process.	No response required.

**Welfare and Institutions Code section 349**

(a) A minor who is the subject of a juvenile court hearing and any person entitled to notice of the hearing under the provisions of Sections 290.1 and 290.2, is entitled to be present at the hearing.

(b) The minor and any person who is entitled to that notice has the right to be represented at the hearing by counsel of his or her own choice.

(c) If the minor is present at the hearing, the court shall allow the minor, if the minor so desires, to address the court and participate in the hearing.

(d) If the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire whether the minor was given an opportunity to attend. If that minor was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present unless the court finds that it is in the best interest of the minor not to continue the hearing. The court shall continue the hearing only for that period of time necessary to provide notice and secure the presence of the child. The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend.

(e) Nothing in this section shall prevent or limit any child's right to attend or participate in the hearing.