

Title	Juvenile Law: Presence and Participation of Child at Hearings (amend Cal. Rules of Court, rules 5.534 and 5.725)
Summary	The proposed rule amendments will promote legal compliance with 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, and eliminate unnecessary redundancy.
Source	Family and Juvenile Law Advisory Committee  Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	Melissa Ardaiz, Associate Attorney, 415-865-7567, melissa.ardaiz@jud.ca.gov
Discussion	<p>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) states 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.”</p> <p>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</p>

language in section 349(a).

The committee further proposes deleting rule 5.725(d), “Presence of child”. Rule 5.725 governs the selection of a permanent plan in juvenile court proceedings, 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.

The proposed rule text is attached on pages 3–4.

Welfare and Institutions Code section 349 is attached on page 5.

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Attachments

Rules 5.534 and 5.725 of the California Rules of Court would be 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

**Welfare and Institutions Code §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.

## Item SPR09-36 Response Form

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

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*