

**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. Douglas P. Miller, Chair  
Uniform Rules Subcommittee, Hon. Elaine Watters, Chair  
Patrick O'Donnell, Committee Counsel, 415-865-7665,  
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DATE: October 16, 2002

SUBJECT: Telephone Appearances at Hearings (amend Cal. Rules of Court,  
rule 298) (Action Required)

Issue Statement

When rule 298 of the California Rules of Court, the telephone appearance rule, was originally adopted in March 1988, it applied to pilot projects in 10 counties.<sup>1</sup> Subsequently, the rule was amended and expanded several times. Although it presently applies to civil proceedings in all trial courts in the state, it has not been amended to reflect trial court unification and modern usage. The rule contains an obsolete provision that it “also applies to civil cases in municipal courts that permit telephone appearances.” The rule would be more effective if it is amended to clarify that it applies to all civil actions, including hearings in limited civil cases, unless a particular exception applies.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2003, amend rule 298 to clarify it and extend it to a wider range of hearings.

The text of amended rule 298 is attached at pages 5–7.

Rationale for Recommendation

The courts' experience with the telephone appearance rule has been favorable. Based on this experience, several amendments should be made to improve and clarify rule 298.

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<sup>1</sup> These pilot projects were mandated by Government Code section 68070.1(b).

First, subdivision (a) should be amended to clarify the scope of the rule and the exceptions to it. The sentence on municipal courts should be deleted. Under the amended rule, telephone appearances would be permitted at most hearings in civil cases as defined in proposed new rule 200.1(2) and in unlawful detainer and probate proceedings, where no witnesses are expected to testify. The rule would apply to limited as well as unlimited civil cases. Because of the smaller financial amounts involved in limited civil cases, making telephone appearances available in limited civil cases is particularly desirable.

Second, in subdivision (b) and elsewhere in the rule, the word “counsel” should be replaced by “party” or “parties.”<sup>2</sup> This change would expand the telephone appearance rule to cover self-represented parties. Counsel would, of course, still be authorized to appear by telephone.<sup>3</sup> The amendment to subdivision (b) is appropriate to specifically authorize self-represented litigants also to appear by telephone and thereby increase access to the courts.

Third, in subdivision (c)(2), the words “has provided by local rule or written local policy” should be replaced. Instead, personal appearances would be required at case management conferences unless the court “permits” telephone appearances at such conferences. The court may grant permission by a variety of means, including providing for telephone conferences in the notice of case management conference.

Fourth, the notice procedures in subdivision (d) should be simplified. Under amended rule 298, a party would provide notice of intent to appear by telephone by either (1) placing the phrase “Telephone Appearance” below the title in the party’s moving or opposing papers, or (2) by notifying the court and other parties of the party’s intent to appear by telephone. The latter form of notice would have to be provided at least five days before the hearing, which is the same as under the current rule.

Fifth, in subdivision (h), the word “Reporting” should replace “Recording,” and “reported” should replace “recorded.” The new terms would more accurately reflect the intent of the rule.

Finally, throughout the rule “shall” has been replaced by “must” to reflect the policy favoring the use of plain language in the rules.

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<sup>2</sup> The original 1987 legislation had focused on enabling counsel to appear by telephone at nonevidentiary hearings. (See Govt. Code, § 68070.1(a).)

<sup>3</sup> See Cal. Rules of Court, Rule 249(c)(5) (the term “party” includes a party’s attorney of record). In a separate report, the committee recommends relocating the definition of “party” to proposed new rule 200.1(8).

### Alternative Actions Considered

The committee considered shortening the amount of time by which notice of intent to appear by telephone must be given. It also considered eliminating the requirement that a party that changes its mind and chooses to appear in person must notify the court and all other parties at least two days before the hearing. But the committee finally decided to leave these notice provisions as presently provided.

### Comments From Interested Parties

Twenty-six comments were received on the telephone appearance rule. The commentators included judicial officers, court administrators, officers of the California and Los Angeles County Court Reporters Associations, the Chief Counsel for the Department of Child Support Services, and a self-represented litigant.<sup>4</sup>

Most commentators favored the amendments to rule 298: 12 supported the amendments, 8 supported them with modifications, 3 disagreed with them, and 1 did not indicate agreement or disagreement.

A major subject of concern to the commentators was the timing and manner of notice of intent to appear by telephone. The proposed amendments that were circulated for comment would have reduced the time for notice of intent to appear by telephone in subdivision (d) from five to three days. They would also have eliminated the requirement that someone who subsequently chooses to appear in person must notify the court and others at least two days before the hearing. Based on the comments, the committee restored the original five-day and two-day notice provisions.

A commentator recommended that rule 298 should be clarified to indicate it does not apply to arbitration or mediation. The committee did not regard this as necessary since the rule expressly applies only to court hearings or conferences.

Representatives of court reporters associations expressed some concerns about the language of rule 298 and made suggestions for clarification. The committee believes that the proposed rule has sufficient safeguards to establish an accurate record of a telephonic appearance. One commentator recommended that action on the rules proposal be delayed and the matter be referred to the Reporting of the Record Task Force. The committee believes that the courts' experience with telephonic appearances has been favorable to date with existing technology, and it

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<sup>4</sup> Some of the comments relate to the question raised in the invitation to comment whether rule 298 should be expanded to apply to family law proceedings. These comments have been referred to the Family and Juvenile Law Advisory Committee.

does not think that the delay or referral are necessary while awaiting further technological developments.

In response to the request in the invitation to comment, several commentators suggested that the ability to appear by telephone should be extended to family law. On behalf of the State Department of Child Support Services, the chief counsel made various suggestions for a rule or rules permitting telephone appearances in child support cases. He observed that, by giving parents the ability to appear by telephone, the courts would significantly increase access to the courts for these parents. However, two court administrators opposed the creation of a general right to appear by telephone in family law matters. These comments have been referred to the Family and Juvenile Law Advisory Committee for its consideration.

Finally, one commentator was concerned about the extension of telephone appearances to self-represented persons in probate proceedings. This commentator suggested that limits be placed on self-represented litigants' right to appear by telephone. On the other hand, a court indicated that it planned to make telephone appearances available for non-contested and non-evidentiary probate proceedings. The issue of whether rule 298 should continue to apply to probate proceedings was referred to the Probate and Mental Health Advisory Committee. On August 1, 2002, that committee reviewed the proposal and the public comments. It recommends that rule 298 continue to apply to probate hearings at which no witnesses are expected to testify.

A chart summarizing the public comments and the committee's responses is attached at pages 8–26.

#### Implementation Requirements and Costs

The implementation of telephonic ruling procedures may require some additional effort and allocation of resources in courts or departments that presently do not use these procedures. But ultimately the result of greater use of telephonic means to conduct hearings should be to reduce these costs for both litigants and the courts.

#### Attachments

Rule 298 of the California Rules of Court is amended, effective January 1, 2003, to read:

1 **Rule 298. Telephone appearance**

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3 (a) [**Applicability**] This rule applies ~~in superior court and only to all~~ civil actions, general civil cases as defined in rule 200.1(2) and to  
4 ~~special proceedings of a civil nature such as unlawful detainer, and~~  
5 ~~probate proceedings. The rule also applies to civil cases in municipal~~  
6 ~~courts that permit telephone appearances. The rule does not apply to~~  
7 ~~causes arising under the Welfare and Institutions Code, the Family~~  
8 ~~Code, or Code of Civil Procedure sections 527.6, 527.7, and 527.8.~~

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11 (b) [**General provision**] Except as provided in subdivision (c), ~~counsel a~~ a  
12 ~~party may shall have the option of appearing by telephone in any~~  
13 ~~conference or law and motion or probate hearing, at which witnesses are~~  
14 ~~not expected to be called to testify.~~

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

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18 (1) Settlement conferences, unless the court orders otherwise;

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20 (2) Case management conferences, unless the court ~~has provided by~~  
21 ~~local rule or written local policy for~~ permits telephone appearances  
22 ~~for~~ at those conferences; and

23  
24 (3) Any hearing or conference for which the court, in its discretion,  
25 determines that a personal appearance would materially assist in a  
26 determination of the proceeding or in resolution of the case. The  
27 court ~~shall~~ must make this determination on a case-by-case basis.

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29 (d) [**Notice by ~~counsel~~ party**]

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31 (1) ~~Counsel~~ A party choosing to appear by telephone at a hearing  
32 ~~under this rule shall~~ must either

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34 (A) place the phrase "Telephone Appearance" below the title of  
35 ~~the moving or opposing papers. If counsel is not required to file~~  
36 ~~moving or opposing papers for the appearance and chooses to~~  
37 ~~appear by telephone, counsel shall~~ or

38  
39 (B) at least five court days before the appearance, file and serve a  
40 ~~"Notice of Intent to Appear by Telephone."~~ notify the court and

1                    all other parties of the party’s intent to appear by telephone. If the  
2                    notice is oral, it must be given either in person or by telephone. If  
3                    the notice is in writing, it must be given by filing a “Notice of  
4                    Intent to Appear by Telephone” with the court at least five court  
5                    days before the hearing and by serving the notice at the same time  
6                    on all other parties by personal delivery, facsimile transmission,  
7                    express mail, or other means reasonably calculated to ensure  
8                    delivery to the parties no later than the close of the next business  
9                    day.

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11                    (2) If a party that has given notice that it intends to appear by  
12                    telephone subsequently chooses to appear in person, the party must  
13                    so notify the court and all other parties that have appeared in the  
14                    action, by telephone, at least two court days before the hearing.

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16                    ~~If counsel subsequently chooses to appear in person, counsel shall, at~~  
17                    ~~least two court days before the hearing, notify by telephone the court, all~~  
18                    ~~other counsel, and all parties appearing in propria persona.~~

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20                    (e) **[Notice by court]** ~~If, After counsel~~ a party has requested a telephone  
21                    appearance under subdivision (d), if the court requires the personal  
22                    appearance of counsel, the party, the court shall must, at least one court  
23                    day before the hearing, notify all parties by telephone all counsel and all  
24                    parties at least one court day before the hearing. appearing in propria  
25                    persona. In courts using a telephonic tentative ruling system for law  
26                    and motion matters, court notification that ~~counsel~~ parties must appear  
27                    in person may be given as part of the court’s tentative ruling on a  
28                    specific law and motion matter if that notification is given one court day  
29                    before the hearing.

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31                    (f) **[Private vendor; charges for service]** A court may provide  
32                    teleconferencing for court appearances by entering into a contract with a  
33                    private vendor. The contract may provide that the vendor may charge  
34                    ~~counsel~~ the party appearing by telephone a reasonable fee, specified in  
35                    the contract, for its services.

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37                    (g) **[Audibility and procedure]** Each court ~~shall~~ must ensure that the  
38                    statements of participants are audible to all other participants and that  
39                    the statements made by a participant are identified as being made by  
40                    that participant.

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42                    (h) **[Recording Reporting]** All proceedings involving telephone  
43                    appearances ~~shall~~ must be recorded reported to the same extent and in  
44                    the same manner as if the participants had appeared in person.

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- (i) **[Conference call provider]** A court, by local rule, may designate a particular conference call provider that ~~shall~~ must be used for telephone appearances.
  
- (j) **[Information on telephone appearances]** Each court ~~shall~~ must publish notice providing parties ~~and attorneys~~ with the particular information necessary for them to appear by telephone at conferences and hearings in that court under this rule.

Comments for SPR02-11  
Telephone Appearance at Hearings

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Mia A. Baker Standing Committee on the Delivery of Legal Services State Bar of California San Diego, California	A	Y	<p>The State Bar Standing Committee on the Delivery of Legal Services reviewed the Judicial Council's proposed spring 2002 revisions to the California Rules of Court and Judicial Council forms at its meeting in Los Angeles on May 29, 2002. Although we are not able to comment individually on the proposed revisions due to time constraints, the committee wishes to extend its thanks to the Judicial Council for your efforts in promulgating these proposals.</p> <p>The Standing Committee applauds the Judicial Council for drafting these proposed changes which will facilitate access to the courts in California, assist self-represented litigants, provide plain language forms and enhance court communication in sensitive cases. In particular, the Standing Committee reviewed, approved, and strongly supports [the proposal, SPR02-11].</p>	The committee noted the State Bar Standing Committee's support for the proposed changes in rule 298.
2.	Hon. Mark R. Forcum, Assistant Presiding Judge Hon. Robert D. Foiles, Case Management Conference Judge, et al. Superior Court of California, County of San Mateo	AM	Y	Our court supports the policy that telephonic appearances should be allowed at most hearings in civil proceedings at which witnesses are not expected to testify. However, we believe the proposed rule of court does not sufficiently clarify what constitutes proper notice of intent to appear by telephone at a hearing. The notice requirements should be coordinated with a court's use of tentative ruling lines in the trial departments that permit telephonic appearances. In our court, telephonic appearances are permitted on the law and motion, case	



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				<p>management and probate calendars. (We are currently working to set up telephonic appearance capabilities in the probate court for non-contested and non-evidentiary hearings.)</p> <p>First, we believe that to be consistent with the deadline to file most responsive papers, the required notice of intention to appear telephonically should remain at 5 court days prior to a hearing as opposed to 3 court days as set forth in the proposed rule. Since 99% of hearings are set well ahead of the five-day cut-off, this allows parties plenty of time to comply with notice requirements regarding their intention to appear telephonically.</p> <p>I. <u>Law and Motion Tentative Rulings</u></p> <p>The notice requirements of the proposed rule do not correlate with other rules of court governing tentative rulings. For example, since law and motion tentative rulings are not issued until the day before the hearing [California Rule of Court 324(a)(1)] (California Rule of Court 324(a)(1) states that “the court shall make its tentative ruling available by telephone . . . no later than 3:00 p.m. the court day before the scheduled hearing”), the proposed rule fails to provide parties ample time to give proper notice of their intention to appear telephonically at a law and motion hearing the following day. Our court handles this notice requirement by requiring parties to give notice of their</p>	<p>The committee agreed that the five-day notice provision in the current rule is preferable.</p> <p>The committee considered adding a new subdivision to expressly deal with notice to appear by telephone after a tentative ruling has been issued. However, after extensive discussion, it concluded that permitting a party to give notice that it will appear telephonically after the issuance of a tentative ruling would sometimes be so late as to be impractical for many courts. Hence, it concluded that parties who want to appear telephonically should use the procedures specified in rule 298.</p>

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				<p>intention to appear telephonically at the same time they notify the court and opposing counsel of their intention to appear at the hearing. San Mateo Superior Court local rule 3.13(b) states that “a party wishing to make a telephonic appearance must serve and file a Request for Telephone Appearance Form with CourtCall [the court’s telephone appearance vendor] not later than 4:30 p.m. on the first court day prior to the appearance.” This permits parties to determine whether or not they are going to make an appearance at the hearing (and perhaps appear telephonically) <i>after</i> they know how the court has ruled on their motion.</p> <p>In order to take a court’s tentative ruling system into account and provide sufficient notice to parties, we would suggest amending the rule to include the following language (highlighted in bold type):</p> <p>“A party choosing to appear under this rule must either place the phrase “Telephone Appearance” below the title of the moving or opposing papers or (2) at least <b>5 court days</b> before the appearance notify the court and all parties of the party’s intent to appear by telephone. <b>Where there has been a tentative ruling issued by the court, a party must give notice of intent to appear by telephone at the time the party is required to notify the court that</b></p>	<p>The committee did not think that the suggested amendments would be feasible or financially possible for all courts to implement. Hence, it does not recommend the adoption of the proposed amendments.</p>

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				<p><b>the party intends to appear at the hearing. The court may shorten the notice requirement at its discretion.”</b></p> <p>II. <u>Case Management Conferences</u></p> <p>We are also puzzled by the exception for case management conferences that is delineated in proposed rule 298(c)(2), which separates case management conferences from other “civil actions.” We do not believe there is anything remarkable about case management or status conferences that warrants different guidelines for telephonic appearances. We believe that for the sake of consistency and to avoid confusion with rule 298(a), subdivision (c)(2) should be eliminated altogether since most people believe that case management conferences come under the purview of “all civil actions.”</p> <p>If there is a reason for making a special exception for case management conferences that is not explained in the background summary of the proposed rule, we also would recommend that the proposed rule allow for other ways to give notice to parties that they may appear telephonically [besides] including [the permission] in a court’s local rules. We believe there are several ways to give constructive notice to parties that they may appear telephonically, which may be more in keeping with rule 298(j) than 298(c)(2). As</p>	<p>The committee agreed that the courts should be given more flexibility in allowing parties to appear by telephone at case management conferences. Hence, in rule 298(c)(2), the word “permits” has been substituted for “has provided by local rule or written local policy.”</p>

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				<p>an example, even though our local rules do not specify that parties can appear telephonically at a case management conference hearing, the initial complaint packet served on all parties in a case contains information regarding how parties may register for a telephonic appearance. Since the CourtCall information sheet and registration form is distributed to parties at the time of filing, we believe parties receive constructive notice that this option is available to them. This is supported by the fact that up to half of our appearances at case management conferences are by CourtCall.</p> <p>Our court allows parties to register for a telephonic appearance at a case management conference hearing up until 4:00 p.m. the preceding day, if the case management judge permits it. This is similar to the procedure in law and motion. The decision regarding the registration cutoff and notice to opposing counsel is left to the discretion of the individual judge. The decision for a shorter notification period is often driven by practical considerations. Since our court's case management conference calendar consists of approximately 120 cases per week, we want to facilitate appearance by counsel whenever possible. The parties are discouraged from regularly making last-minute requests to appear at a conference telephonically by the late charges they incur from CourtCall. The current system works well with 50–75 parties</p>	<p>Rule 298(c)(2) gives the court the authority to permit telephone appearances at case management conferences. Thus, the manner in which parties must indicate that they will appear telephonically at a conference is left to the court to determine. By contrast, the timing and manner of notice at law and motion hearings are governed by rule 298(d).</p>

Comments for SPR02-11  
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				appearing telephonically at case management conferences per week.	
3.	Hon. Richard E. Best Commissioner Superior Court of California, County of San Francisco	A	N	Access to the courts as well as the obvious saving of time and money requires this rule be made applicable to family law, where money problems are often critical. For the same reasons, rule 324 on tentative rulings should apply to family law and probate.	The comment is noted. The matter will be referred to the Family and Juvenile Law Advisory Committee.
4.	Julie Bronson ADR Administrator Superior Court of California, County of Los Angeles	AM	N	The phrase “appearances by telephone at most civil proceedings” may be interpreted to include judicial mediation or arbitration. I would suggest language that clearly indicates that for judicial arbitration and mediation all parties and decision makers must appear.	Since the rule applies only to hearings and conferences, the committee did not think that it was necessary to state that the rule does not apply to arbitrations and mediations.
5.	Julie Camacho Court Program Supervisor Superior Court of California, County of Ventura	N	N	I recommend that the time requirement for providing notice to the court of a party’s intent to appear by telephone remain at 5 days. Currently, the telephone conferencing service that the Ventura County Superior Court utilizes requires that the court fax the case information to their office 3 court days before the hearing. This provides the conference call service an adequate amount of time to make the required arrangements for the conference call, and it also provides the court staff with sufficient time to route the document to the courtroom. Once received in the courtroom, if the judge decides to require a personal appearance by the party, the court must notify the party at least 1 court day prior to the	The committee agreed with this comment.

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				<p>hearing. If the notice requirement is reduced to 3 court days, this will not give the court adequate time to complete this process.</p> <p>In addition, the manner for providing notice should be required in writing. In Ventura County, we have established a local form to be used when the party is not filing a moving or opposing document. The filing of this document provides the information needed by the processing clerks to determine which hearing the conference is being requested for, as well as the information needed by the telephone service to arrange the conference call. It also provides an actual “document” to route to the judge to make them aware of the request and to allow adequate time for the judge to provide notice to the party to appear in person, should they choose to require the party to do so.</p> <p>Last but not least, I believe the requirement that the party who requested the telephonic conference must notify the court at least 2 days before the hearing should they decide to appear in person should not be deleted. There must be some means to notify the court so that the process of faxing the documents to the conference call service will not take place. And, if the documents have already been faxed, it should be the party’s responsibility to notify the conference call service if they have changed their mind so that the call can be canceled.</p>	<p>The committee did not agree with this comment. Under appropriate circumstances, notice by telephone may be adequate.</p> <p>The committee agreed with this comment and restored the two-day notice requirement for parties that decide to appear in person.</p>

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6.	Hon. Cynthia Denenholz Child Support Commissioner Superior Court of California, County of Sonoma	A	N	<p>With regard to telephone appearances in family law matters: I oppose the presumptive right to telephone appearances in family law matters. Litigants should be afforded reasonable access to the court, and therefore some parties should be allowed to appear by telephone. Those who live more than 200 or so miles from the courthouse, or those who present documented proof of a disability precluding travel, are among these. Other litigants should generally <i>not</i> be allowed to appear by telephone except at the discretion of the judicial officer.</p> <p>In family law cases, most litigants are self-represented and have not exchanged all relevant documents before the hearing. It's important that all parties be present, if possible, to: (1) exchange and review all relevant documents; (2) attempt to reach an agreement; and (3) allow the judicial officer to assess their credibility. It would also be difficult to authenticate the identity of the speaker in cases in which the other parent does not appear, or where that parent is not familiar with the telephone litigant's voice. Telephone appearances should also be limited because they would increase the length of the hearings on already strained family law calendars.</p>	The comment is noted. The matter will be referred to the Family and Juvenile Law Advisory Committee.
7.	George Ducich Forms and Rules Coordinator Superior Court of California,	AM	N	The civil court agrees with the proposed changes if modified to make telephonic appearances discretionary for the court. Add "Upon court order"	The policy favoring telephone appearances applies to all courts and should not be left to individual courts or judges to implement on

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

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	County of San Diego			<p>or “Upon approval of the court” to the rule.</p> <p>The probate court has concerns regarding the extension of telephonic appearances to self-represented litigants. These litigants typically have difficulties in providing appropriate notice for typical hearings before our court. Providing appropriate notice under the proposed rules will invite further notice issues. If these rules must be expanded to self-represented litigants to allow equal access to the court, the options for requesting a telephonic appearance should be limited to the first option of making the request at time of filing. This would allow the party sufficient time to complete service. This would be appropriate in all cases as the three-day notice requirement for subsequent requests does not leave enough time for opposition or for the court to deny and contact the parties. Finally, this rule does not contemplate the need to dispense with notice if an interested party cannot be located. This is an ongoing issue in probate actions, particularly guardianships.</p>	<p>an individual basis.</p> <p>These comments were referred to the Probate and Mental Health Advisory Committee. That committee concluded that the rule should apply to self-represented persons seeking to appear by telephone at probate hearings at which no witnesses are expected to testify.</p> <p>The committee has restored the five-day notice requirement.</p>
8.	Keri Griffith Court Program Manager Superior Court of California, County of Ventura	N	N	Giving notice three court days before the appearance is an inadequate amount of time. It gives little time for courts that use a conference call provider to coordinate the conference call. It also gives little time for the judge to receive the notification and make a decision as to whether a personal appearance is needed.	The committee agreed.



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				This rule should not include family law matters because of the number of self-represented litigants who would not be knowledgeable in the proper procedures. They also are not as capable of preparing adequate pleadings that would properly state their position.	This comment will be referred to the Family and Juvenile Law Advisory Committee.
9.	Stephanie Harbin Supervising Legal Clerk II Superior Court of California, County of Stanislaus	A	N	Agree with proposed changes.	No response required.
10.	Kristy Johnson Judicial Council Forms Committee California Department of Child Support Services Rancho Cordova, California	AM	N	Recommend that the rule be extended to other types of proceedings, such as those in family law.	The comment should be referred to the Family and Juvenile Law Advisory Committee.
11.	Hon. Jeffrey B. Jones Judge Superior Court of California, County of Imperial	N	N	Rule 298 (d) allows a party to give three day's oral notice of an intent to appear by telephone. Subdivision (e) directs the court to give at least 1-day notice if a personal appearance is required. The parties should not be able to give oral notice of an intent to appear telephonically—this will ensure errors and disputes, and will likely result in the court never having enough time to order personal appearances when necessary.	The provision for three days notice has been increased to five days, as under the current rule. The committee did not think that notice always has to be written.
12.	Lee Morhar Chief Counsel Department of Child Support	AM	Y	I am submitting the following comments on the proposed rule of court regarding telephone appearances at hearings on behalf of the California	The comments were noted. The matter will be referred to the Family and Juvenile Law Advisory Committee.

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

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	<p>Services State of California Rancho Cordova, California</p>			<p>Department of Child Support Services.</p> <p>Rule 298, by its terms, does not currently apply to proceedings and actions under the Family Code. The proposed amendments to the rule do not change the exclusion of Family Code cases, but you request comments on whether Family Code cases should be covered by this rule.</p> <p>The Department of Child Support Services respectfully requests that the Judicial Council extend rule 298 to child support cases involving the local child support agency. DCSS further requests that the Judicial Council consider amending the rule to allow for testimony by telephone in interstate child support cases, as provided in Family Code section 4930(f), and that the council consider the same rules regarding telephone testimony in interstate cases be applied to Title IV-D child support cases within California in which multiple counties are involved in the same case or in which the parties reside outside the county in which the case is being heard.</p> <p>The proposed rule should not require that testimony by telephone be permitted in all cases. Rather, the rule should specify that the court may permit testimony by telephone unless the court determines that the witnesses need to be present in court in order to preserve the due process rights of the parties or in order to permit the court to assess the demeanor of</p>	

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Telephone Appearance at Hearings

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				<p>the parties while they testify.</p> <p>There are thousands of interstate cases and multiple county child support cases that are heard in the courts each year. In many of these cases, one or both of the parents reside outside the county in which the case is being heard. By giving these parents the ability to appear and present evidence by telephone, the courts would be significantly increasing access to the courts for these parents. For example, a non-custodial parent who resides in Mendocino County is much more likely to participate in a hearing to set child support in San Diego County (the county where the custodial parent and the child reside), if he or she can appear by telephone instead of in person. An appearance in court would require that the non-custodial parent take at least 2 days from work in order to travel to the hearing. By permitting telephone testimony, the parent could participate in the hearing without having to spend 2 days traveling to and from the county in which the hearing would be held. In appropriate cases, the court would have the ability to continue the case and order that the parties be present at the hearing when the court determines that the parties need to be present in order to assess their demeanor.</p>	
13.	Cynthia Papsdorf Kelley Drye & Warren LLP Los Angeles, California	A	N	Agree with proposed changes.	No response required.

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14.	Thomas E. Pringle Vice President California Court Reporters Association Redding, California	AM	N	<p>Rule 298—Agree if modified as follows:</p> <p>(b) Delete “expected to be” so it reads, “hearing at which witnesses are not called to testify.”</p> <p>(g) Insert “and the court reporter” so that it reads, “Each court must ensure that the statements of participants are audible to all other participants and to the court reporter and that statements. . . .”</p> <p>(g) Replace last part of section, “and that statements made by a participant are identified as being made by that participant,” with “and participants must identify themselves before each and every statement.”</p> <p>(g) Add the statement “Lack of compliance may result in the reporter being unable to certify the transcript.”</p> <p>These modifications to (b) and (g) are requested to ensure that the reporter can comply with rule 298(h).</p> <p>(h) Change [Reporting] to [Stenographic reporting].</p>	<p>The committee disagreed. The present language is more accurate.</p> <p>This is not necessary.</p> <p>This is not necessary.</p> <p>This is not necessary.</p> <p>This is not necessary.</p>
15.	Hon. Roger D. Randall Judge Superior Court of California, County of Kern	AM	N	<p>I think use of the word “party” is imprecise, and should be modified to “party representing themselves” or similar language. Otherwise, we will have represented parties wanting to attend the hearing via telephone, which will not work for a variety of</p>	<p>The committee disagreed. The term “party” is sufficiently clear. (See new rule 201.1(8).)</p>

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				<p>reasons.</p> <p>Also, the three-day notice of intent to appear telephonically is too short to allow the court to decide it will require personal appearances. It is quite possible the bench officer will learn so late of the telephonic request that they will not be able to indicate a desire for personal appearance. I would leave the current 5-day rule in effect.</p>	The committee agreed and would retain the five-day notice requirement.
16.	Hon. Harry R. Sheppard Presiding Judge Superior Court of California, County of Alameda	A	N	Agree with proposed changes.	No response required.
17.	Amy Silva Director, Family Law/Probate Operations Superior Court of California, County of Orange		N	<p>Your cover memo for this proposed rule asked for comments regarding extending this rule to Family Law. Family Code section 4930(f) relates only to UIFSA (Uniform Interstate Family Support Act) cases; however, it says the “tribunal” or court “may permit a party or witness residing in another state to . . . testify by telephone, audiovisual means or other electronic means at a designated tribunal. . . .” We are attaching the draft procedure being finalized now in our court, which we developed in collaboration with our local child support agency to implement this statute, as an informational item.</p> <p><u>Telephonic Hearing Procedure</u></p> <p>Pursuant to Family Code Section 4930(f) the court</p>	This comment will be referred to the Family and Juvenile Law Advisory Committee.

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				<p>“ . . . may permit a party or witness residing in another state to be deposed or to testify by telephone, . . . ”</p> <p>A telephonic hearing will never occur on a first setting; all requests must be addressed in open court and authorized by the court. The court will then continue the matter to accommodate all parties.</p> <p>A party may not call the court to request a telephonic hearing. This type of request may only be made through the District Attorney/Local Child Support Agency’s (enforcement agency) office and approved by the court.</p> <p>At time of hearing, the District Attorney, defendant or other party to the action may request a continuance and to appear telephonically. If the court grants the request, normally the District Attorney is ordered to give notice to parties.</p> <p>The calling party is instructed to call the appropriate departmental telephone number on a specified date at the precise time the hearing is set for (Pacific Standard Time). (Note: The call is to be made at the caller’s expense; the court does accept collect calls or pay for these calls.) Upon connection with the court, defendant or other party should identify himself/herself, and inform the court that he/she is calling for a telephonic hearing, and specify the case</p>	

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				<p>number.</p> <p>Procedure:</p> <p>Have party call the enforcement agency at 714-347-8150 to make their request for the telephonic hearing. Let them know they must have their court case number as well as the DA's case number ready.</p> <p>At the time of hearing, the enforcement agency will request continuance for telephonic hearing. (Note: The call is to be made at the caller's expense; the court does accept collect calls or pay for these calls.) If the request is granted, the enforcement agency is usually ordered to give notice to the parties.</p> <p>*Note: If a defendant or other party is present at the hearing, they do have the right to request a continuance for telephonic hearing.</p> <p>The clerk will prepare the minute order and provide a copy to the enforcement agency, who will then give notice to the parties as to date, precise time of hearing, and the telephone number (according to the assigned department) the party(ies) should call.</p> <p>The calling party(ies) will be part of a telephonic hearing conducted by a Family Support Commissioner and recorded by a certified court reporter.</p>	

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				<p>The Child/Family Support courtrooms set telephonic hearings as follows:</p> <ul style="list-style-type: none"> <li>▪ <b>L51</b> 10 a.m. &amp; 3 p.m. 714-935-6010</li> <li>▪ <b>L52</b> 10 a.m. 714-935-6079</li> <li>▪ <b>L54</b> 10 a.m. &amp; 3 p.m. 714-935-6806</li> </ul>	
18.	Prof. Robert L. Simmons (Ret.) University of San Diego	A	N	Agree with proposed changes.	No response required.
19.	Elena Simonian Court Administrator Superior Court of California, County of San Francisco	AM	N	<p>Strike “or” in (b).</p> <p>I’m a little reluctant for parties to give oral notice to the court by leaving a voicemail message.</p> <p>Clarify (j)—the word “publish”—so the courts are clear as to what they are do.</p>	<p>The reference is to any conference or <i>hearing</i>; hence, “or” should be retained.</p> <p>The committee thought that oral notice would be sufficient.</p> <p>The committee thought the term was sufficiently clear and further detail was not necessary.</p>
20.	Arnella I. Sims President Los Angeles County Court Reporters Association Los Angeles, California	AM	N	<p>Expanding the use of telephone appearances will expand the number of cases heard that cannot comply with existing rule 298(h), Code of Civil Procedure section 269, and Business and Professions Code section 8017.</p> <p>The present telephone technology used in courts throughout California for purposes of appearances of counsel is inadequate and often results in court</p>	The comments were noted. However, the committee believed that the rule should be expanded. The courts’ experience with telephonic appearances has been favorable using existing technology, and should not be limited while awaiting further technological developments.



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				<p>reporters being unable to report proceedings completely and accurately. Expanding the use of telephone appearances without also addressing both the technological and procedural aspects of using telephone technology in a far more effective manner than contained in rule 298 will result in further deterioration of the ability of court reporters to make a complete and verbatim record.</p> <p>LACCRA suggests further that consideration of amendment to rule 298 be deferred, and the subject matter contained in proposed amendments to rule 298 be referred to the Reporting of the Record Task Force that has recently been approved by the Judicial Council and appointments made by the Chief Justice.</p>	The committee disagreed. The rule should be amended at this time to reflect trial court unification.
21.	Alan Slater, Chair Court Executives Advisory Committee	A	Y	Recommend to the Judicial Council's Court Technology Advisory Committee approval of the amendments to Rule of Court 298 as submitted.	The committee's support for the amendments to rule 298 was noted.
22.	Stanley M. Sokolow Santa Cruz, California	A	N	I am a self-represented party in a petition for writ of mandate. From this personal experience, I can say that the proposal would be helpful to in-pro-per parties who are busy with their ordinary lives outside of the judicial system. The proposal would reduce the burden of a self-represented party in bringing an action that does not warrant the potentially large expense of legal representation but nevertheless is an important case to the individual or, in our case, to the public at large. Doing a good job in pro per is time-consuming enough. Any help you can give would	The comments were noted. The committee believed the changes would improve access to the courts for self-represented parties.

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				increase access of the public to the judicial system.	
23.	Jaqueline Tapia Attorney Bay Area Legal Aid Oakland, California	A	N	The rule should apply to family law cases, considering many indigent pro per litigants cannot afford to miss work in order to attend each hearing in her/his case. A telephonic appearance option in family law cases will help indigent clients tremendously.	This comment will be referred to the Family and Juvenile Law Advisory Committee.
24.	Unknown Individual Superior Court of California, County of Ventura	A	N	Agree with proposed changes.	No response required.
25.	Richard K. Uno Managing Attorney Human Rights/Fair Housing Commission Sacramento, California	A	N	Agree with proposed changes.	No response required.
26.	Hon. John P. Vander Feer Judge Superior Court of California, County of San Bernardino	AM	N	Notification of telephonic appearance to the court should not be made by telephone as permitted under proposed (d). There is no way to verify or track callers. I do not want a constant stream of telephone calls directly to the courtroom clerk when I am in trial. There is no way to determine if a failure to communicate lies with counsel or the clerk's office. I do not want to hear attorney's claims that they, or someone from their office, spoke to "somebody" in the clerk's office. Notification of telephonic appearance to the court should be in writing or in person. Faxing the written notice should be allowed, thus defeating any claims that it would be too time-consuming or expensive to send written notice to the	The committee disagreed. It thought notification by telephone might be adequate.

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

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				court.	