



# Judicial Council of California

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## REPORT TO THE JUDICIAL COUNCIL

*Item No.: 24-130*

For business meeting on September 20, 2024

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**Title**

Civil Practice and Procedure: Tentative Rulings

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rule 3.1308

**Recommended by**

Civil and Small Claims Advisory Committee  
Hon. Tamara L. Wood, Chair

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2025

**Date of Report**

August 21, 2024

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### Executive Summary

Rule 3.1308 of the California Rules of Court requires courts that offer tentative rulings in civil law and motion matters to make all tentative rulings available by telephone. The Civil and Small Claims Advisory Committee recommends amending the rule to eliminate that requirement, given the variety of different court practices necessitated by individual court circumstances.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend rule 3.1308 to eliminate the requirement that tentative rulings made in civil law and motion matters be made available by telephone, and provide only that they be made available by a method designated by the court.

The text of the amended rule is attached at pages 4–5.

## **Relevant Previous Council Action**

In 1992, the Judicial Council adopted rule 3.1308 (then-numbered rule 324) to establish a uniform timetable for courts that wish to use a tentative ruling procedure requiring notice of appearance at oral argument for civil law and motion matters. The Judicial Council included the requirement that all tentative rulings requiring notice of appearance at oral argument be made available by telephone.

In 2000, the Judicial Council amended the rule to allow courts to make tentative rulings available both by telephone and “at the option of the court, by any other method designated by the court.” The Civil and Small Claims Advisory Committee noted that “notice by telephone is more reliable and more widely available than notice by fax or e-mail.” (Judicial Council of Cal., Advisory Com. Rep., *Uniform Statewide Rules in Preempted Fields* (Apr. 17, 2000), p. 4.)

In 2007, the Judicial Council renumbered the rule to rule 3.1308 in accordance with the reorganization and renumbering of the California Rules of Court. At the same time, the Judicial Council also amended the rule to move part of subdivision (c) to its own subdivision (e) to make clear that “[t]his rule does not require any judge to issue tentative rulings.” (Cal. Rules of Court, rule 3.1308(e).)

## **Analysis/Rationale**

Given that the committee has not revisited this rule in over 15 years, during which time the internet and electronic communication have become ubiquitous, the requirement that courts make tentative rulings available by telephone is ripe for reevaluation. The committee made the determination in 2000 that “notice by telephone is more reliable and more widely available than notice by fax or e-mail.” Recent technological advancements, however, call for a reevaluation of this determination.

The committee understands that at least some courts are not making tentative rulings available by telephone but, instead, are using other methods to make these rulings available. The committee understands that various courts exercise different methods for making tentative rulings available, including posting tentative rulings online or, when no notice to appear is required (under rule 3.1308(a)(2)), posting them on the courtroom door, handing them to parties in person as parties enter the courtroom, and reading them out loud. To the extent courts are publishing the tentative rulings telephonically, they are expending court and staff resources to make tentative rulings available in a method that may be underutilized by litigants.

The committee recommends removing the telephone requirement from rule 3.1308 and permitting each court to determine the publication method most useful to litigants in their area. The rule will continue to require that a court following the tentative ruling procedures in subdivision (a) of the rule so state in its local rules, but the court will be able to identify whatever method of publication is used, rather than be required to provide a telephone number.

## **Policy implications**

The key policy implication is to afford courts maximum flexibility in how they inform litigants of tentative rulings. This amendment is therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Access, Fairness, Diversity, and Inclusion (Goal I); Modernization of Management and Administration (Goal III); and Quality of Justice and Service to the Public (Goal IV). Additionally, courts that currently make tentative rulings available by phone but would not under the proposed amendment may experience a decreased demand on resources.

## **Comments**

The proposal was circulated for public comment from March 29 to May 3 as part of the council's spring 2024 invitation-to-comment cycle. It received six comments. Four were from courts, one was from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, and one was from a county bar association. All commenters agreed with the proposal (or indicated that the proposal appropriately addressed the stated purpose) without substantive comment.

A chart of comments and the committee's response to each is attached at pages 6–9.

## **Alternatives considered**

The committee considered amending rule 3.1308 to require that tentative rulings be made available “by internet,” “upon request,” “in a method or methods designated by the court, which must include a method accessible to persons without internet access,” or some combination of those options. However, given the individual circumstances of each court, the committee concluded that the rule should allow courts to determine the best method for providing tentative rulings, and that the courts' local rules should state the chosen method, just as they must now state the telephone number.

The committee considered taking no action but concluded that amending the rule to remove the telephone requirement was appropriate given that this option, where available, is not frequently used by litigants; complying with the requirement places a burden on courts; and alternative methods are available to inform litigants of tentative rulings.

## **Fiscal and Operational Impacts**

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the amended rule and may require amendments to local rules if courts decide to make tentative rulings available by methods other than telephone. To the extent courts currently providing tentative rulings by telephone decide to post them in some other way, this amendment may have a positive operational impact by better utilizing administrative resources.

## **Attachments and Links**

1. Cal. Rules of Court, rule 3.1308, at pages 4–5
2. Chart of comments, at pages 6–9

Rule 3.1308 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 3.1308. Tentative rulings**

2  
3 **(a) Tentative ruling procedures**

4  
5 A trial court that offers a tentative ruling procedure in civil law and motion matters  
6 must follow one of the following procedures:

7  
8 (1) *Notice of intent to appear required*

9  
10 The court must make its tentative ruling available by ~~telephone and also, at~~  
11 ~~the option of the court, by any other~~ a method designated by the court, by no  
12 later than 3:00 p.m. the court day before the scheduled hearing. If the court  
13 desires oral argument, the tentative ruling must so direct. The tentative ruling  
14 may also note any issues on which the court wishes the parties to provide  
15 further argument. If the court has not directed argument, oral argument must  
16 be permitted only if a party notifies all other parties and the court by 4:00  
17 p.m. on the court day before the hearing of the party's intention to appear. A  
18 party must notify all other parties by telephone or in person. The court must  
19 accept notice by telephone and, at its discretion, may also designate  
20 alternative methods by which a party may notify the court of the party's  
21 intention to appear. The tentative ruling will become the ruling of the court if  
22 the court has not directed oral argument by its tentative ruling and notice of  
23 intent to appear has not been given.

24  
25 (2) *No notice of intent to appear required*

26  
27 The court must make its tentative ruling available by ~~telephone and also, at~~  
28 ~~the option of the court, by any other~~ a method designated by the court, by a  
29 specified time before the hearing. The tentative ruling may note any issues on  
30 which the court wishes the parties to provide further argument at the hearing.  
31 This procedure must not require the parties to give notice of intent to appear,  
32 and the tentative ruling will not automatically become the ruling of the court  
33 if such notice is not given. The tentative ruling, or such other ruling as the  
34 court may render, will not become the final ruling of the court until the  
35 hearing.

36  
37 **(b) No other procedures permitted**

38  
39 Other than following one of the tentative ruling procedures authorized in (a), courts  
40 must not issue tentative rulings except:

41  
42 (1) By posting a calendar note containing tentative rulings on the day of the  
43 hearing; or

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(2) By announcing the tentative ruling at the time of oral argument.

**(c) Notice of procedure**

A court that follows one of the procedures described in (a) must so state in its local rules. The local rule must specify the ~~telephone number~~ method for obtaining the tentative rulings and the time by which the rulings will be available.

**(d) Uniform procedure within court or branch**

If a court or a branch of a court adopts a tentative ruling procedure, that procedure must be used by all judges in the court or branch who issue tentative rulings.

**(e) Tentative rulings not required**

This rule does not require any judge to issue tentative rulings.

**SPR24-09**

**Civil Practice and Procedure: Tentative Rulings** (amend Cal. Rules of Court, rule 3.1308)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Orange County Bar Association by Christina Zabat-Fran President	A	The proposal appropriately addresses the stated purpose.	The committee appreciates the information provided.
2.	Superior Court of Los Angeles County by Bryan Borys Director of Research and Data Management	A	The Court supports this proposal.	The committee appreciates the information provided.
3.	Superior Court of Orange County Family Law and Juvenile Divisions by Katie Tobias Operations Analyst	NI	<i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the information provided.
			<i>Would the proposal provide cost savings? If so, please quantify.</i> No, the proposal does not appear to provide any cost savings.	The committee appreciates the information provided.
			<i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> Implementation would require providing communication to judicial officers and staff.	The committee appreciates the information provided.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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	Commenter	Position	Comment	Committee Response
			<p><u>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</u>                      Yes, three months would provide sufficient time for implementation in Orange County.</p>	<p>The committee appreciates the information provided.</p>
			<p><u>How well would this proposal work in courts of different sizes?</u>                      Our court is a large court, and this could work for Orange County.</p>	<p>The committee appreciates the information provided.</p>
4.	Superior Court of Riverside County by Sarah Hodgson Chief Deputy of Legal Services / General Counsel	NI	<p>No additional comments nor suggestions.</p> <p>Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> <li>• It does address the state purpose.</li> </ul> <p>Would the proposal provide cost savings? If so, please quantify.</p> <ul style="list-style-type: none"> <li>• No cost saving associated with this change for the Court</li> </ul> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p>	<p>The committee appreciates the information provided.</p> <p>The committee appreciates the information provided.</p> <p>The committee appreciates the information provided.</p> <p>The committee appreciates the information provided.</p>

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li>Depending on the court’s method of choice, training will be needed, maybe technology upgrades, revising processes and procedures.</li> </ul>	
			<p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> <li>No, if a Local Rule is needed, that will take more than three months.</li> </ul>	<p>The committee notes that the proposed rule amendment does not require courts to amend their local rules. If a court chooses to amend its local rules in response to this proposed change, the court may do so as provided in California Rules of Court, rule 10.613, which includes the possibility of an expedited effective date under subdivision <i>i</i>.</p>
			<p>How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none"> <li>It will work well as it give the Courts the flexibility to designate the method on making these tentative available.</li> </ul>	<p>The committee appreciates the information provided.</p>
5.	Superior Court San Diego County by Mike Roddy Executive Officer	A	<p>Q: Does the proposal appropriately address the state purpose?  <b>A: Yes.</b></p>	<p>The committee appreciates the information provided.</p>
			<p>Q: Would the proposal provide cost savings? If so, please quantify.  <b>A: No, as our court currently posts tentative rulings on our website.</b></p>	<p>The committee appreciates the information provided.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.



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	Commenter	Position	Comment	Committee Response
			<p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?  <b>A: None.</b></p>	<p>The committee appreciates the information provided.</p>
			<p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?  <b>A: Yes.</b></p>	<p>The committee appreciates the information provided.</p>
			<p>Q: How well would this proposal work in courts of different sizes?  <b>A: This proposal should work well, regardless of the size of the court.</b></p>	<p>The committee appreciates the information provided.</p>
6.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules Subcommittee)	A	The Joint Rules Subcommittee (JRS) notes that the proposal is intended to provide significant cost savings or efficiencies.	The committee appreciates the information provided.

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