

Invitation to Comment

<p>Title</p>	<p>Alternative Dispute Resolution: Access to Hearings and Records in Proceedings Before Temporary Judges and Referees (Adopt Cal. Rules of Court, rules 2.833, 3.930, 3.931, and 3.932; amend rules 2.400 and 3.926: amend and renumber rules 2.834, 2.835, and 3.909; and repeal rules 3.907, 3.908, 3.910, and 3.927)</p>
<p>Summary</p>	<p>This proposal would clarify that in all proceedings before either a referee or a temporary judge selected by the parties, all original papers must be filed with the court clerk and all hearings that would be open if held in court must be open, regardless of whether they are held at or outside of the courthouse. This proposal would also amend and reorganize the rules relating to referees to make them more consistent with the rules relating to temporary judges.</p>
<p>Source</p>	<p>Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair</p>
<p>Staff</p>	<p>Heather Anderson, ADR Subcommittee Counsel, 415-865-7691, heather.anderson@jud.ca.gov</p>
<p>Discussion</p>	<p>The California Rules of Court contain sets of rules relating to both temporary judges and to referees appointed under Code of Civil Procedure sections 638 and 639. Among other things, these rules address public access to proceedings conducted by such temporary judges and referees and to the records from these proceedings. Despite these existing provisions, however, there are concerns that the public may not always have appropriate access to these proceedings or to papers that have been filed in these proceedings.</p> <p>This proposal would strengthen these existing provisions in several ways. First, the rule regarding court records would be amended to clarify that all original papers in proceedings conducted by either a temporary judge or a referee must be filed with the court clerk, not with the temporary judge or referee. The amendments would also prohibit a temporary judge or referee from accepting any paper that is required to be filed that does not have a clerk’s file stamp. This should ensure that the court clerk’s office has the complete case file and can make all nonconfidential portions of such a file available to the public, as it does in any equivalent case being heard by the court.</p> <p>This proposal would similarly clarify that proceedings conducted by a referee or a temporary judge requested by the parties must be just as open to the public as equivalent proceedings conducted by the court. To facilitate this, such temporary judges and referees would be</p>

required to notify the court when a hearing was set in a proceeding they were conducting and provide the date, time, and place of the hearing and the name and number of a person to be contacted if a member of the public wants to attend the proceedings. This would ensure that the clerk's office has information about all scheduled hearings in proceedings conducted by temporary judges or referees and can assist any person who would like to attend a hearing.

To reflect recent amendments to the rules relating to temporary judges that distinguish between court-appointed temporary judges and temporary judges requested by the parties, current references in the rules to "privately compensated" temporary judges would be replaced with references to temporary judges "requested by the parties."

Finally, the proposal would amend and reorganize the rules relating to referees to bring these rules into conformity with equivalent provisions in the rules relating to temporary judges. Among other things, these amendments would eliminate duplicative language currently in rules 3.920 and 3.927 and bring together in a new chapter all of the provisions that apply both to voluntary references ordered under Code of Civil Procedure section 638 and involuntary references ordered under section 639. These changes are intended to make the rules simpler and easier to understand.

Attachments

Rules 2.833, 3.930, 3.931, and 3.932; of the California Rules of Court would be adopted; rules 2.400 and 3.926 would be amended; rules 2.834, 2.835, and 3.909 would be amended and renumbered; and rules 3.907, 3.908, 3.910, and 3.927 would be repealed, effective January 1, 2008, to read:

1 **Rule 2.400. Court records**

2
3 **(a) Removal of papers**

4
5 Only the clerk may remove and replace papers in the court's files. Unless
6 otherwise ordered by the court, filed papers may only be inspected by the
7 public in the office of the clerk and released to a court officer or ~~attaché~~
8 employee for use in a court facility. No original papers filed with the clerk
9 may be used in any location other than a court facility, unless so ordered by
10 the presiding judge.

11
12 **(b) Original papers filed with the clerk; duplicate papers for temporary**
13 **judge or referee**

14
15 All original papers in a case pending before a temporary judge or referee,
16 whether privately compensated appointed at the request of the parties or not,
17 a party must tender and be filed with the clerk must accept for filing all
18 original papers in the same manner as would be required if the case were
19 being heard by the court, including accompanied by the required fee filing
20 within the any time limits specified by law and paying any required fees. The
21 filing party must provide a filed-stamped copy to the temporary judge or
22 referee of each paper relevant to the issues before the temporary judge or
23 referee. ~~When the paper may be filed without payment of a fee, instead of a~~
24 ~~filed-stamped copy, the filing party may use a true copy of the paper~~
25 ~~accompanied by a declaration about the date of its filing.~~ The temporary
26 judge or referee must not accept or consider any copies of papers that are
27 required to be filed that do not have the clerk's file stamp.

28
29 **(c) Return of exhibits**

- 30
31 (1) The clerk must not release any exhibit except on order of the court. The
32 clerk must require a signed receipt for a released exhibit.
33
34 (2) If proceedings are conducted by a temporary judge or a referee outside
35 of court facilities, the temporary judge or referee must keep all exhibits
36 and deliver them, properly marked, to the clerk at the conclusion of the
37 proceedings, ~~unless the parties file a written stipulation that the exhibits~~
38 ~~may be disposed of otherwise.~~ On request of the temporary judge or
39 referee, the clerk must deliver exhibits filed or lodged with the court to

1 the possession of the temporary judge or referee, who must not release
2 them to any person other than the clerk. Exhibits in the possession of
3 the temporary judge or referee, other than those that have been ordered
4 sealed, must be made available during business hours for inspection by
5 any person within a reasonable time after request.
6

7 **Rule 2.833. Papers and Exhibits**
8

9 All parties and temporary judges in proceedings before temporary judges
10 requested by the parties must comply with the applicable requirements of rule
11 2.400 concerning the filing and handling of papers and exhibits.
12

13
14 **Rule 2.834. 2.833. Open proceedings; notices of proceedings, use of court**
15 **facilities, and order for hearing site**
16

17 **(a) Open proceedings**
18

19 All proceedings before a temporary judge requested by the parties that would
20 be open to the public if held before a judge in a courthouse must be open to
21 the public, regardless of whether held in or outside a courthouse.
22

23 **(a)(b) Posting of Notice regarding proceedings before privately compensated**
24 **temporary judge requested by the parties**
25

26 For all No later than 5 days before the hearing date, a temporary judge
27 requested by the parties must promptly notify the clerk of the date, time,
28 location, and nature of all hearings scheduled in matters pending before the
29 privately compensated temporary judges. The clerk must enter the hearing
30 information in the court's docket and post a notice in the courthouse
31 indicating the case name and number as well as the and the name and
32 telephone number of a person to contact to arrange for attendance at any
33 proceeding that would be open to the public if held in a courthouse.
34

35 **(b)(c) Use of court facilities, court personnel, and summoned jurors**
36

37 A party who has elected to use the services of a privately compensated
38 temporary judge requested by the parties is deemed to have elected to
39 proceed outside the courtroom. Court facilities, court personnel, and
40 summoned jurors may not be used in proceedings pending before a privately
41 compensated temporary judge requested by the parties except on a finding by
42 the presiding judge that their use would further the interests of justice.

1 **(e)(d) Order the appropriate hearing site**

2
3 The presiding judge, on request of any person or on the judge’s own motion,
4 may order that a case before a ~~privately compensated~~ temporary judge
5 requested by the parties must be heard at a site easily accessible to the public
6 and appropriate for seating those who have made known their plan to attend
7 hearings. The request must be made by letter with reasons stated and must be
8 accompanied by a declaration that a copy of the request was mailed to each
9 party, to the temporary judge, and to the clerk for placement in the file. The
10 order may require that notice of trial or of other proceedings be given to the
11 requesting person directly. The granting of an order for an accessible and
12 appropriate hearing site is not a ground for withdrawal of a stipulation.

13
14
15 **Rule 2.835. ~~2.834~~. Motions or applications to be heard by the court**

16
17 **(a) Motion or application to seal records**

18
19 A motion or application to seal records in a cause before a ~~privately~~
20 ~~compensated~~ temporary judge requested by the parties must be filed with the
21 court and must be served on all parties, the temporary judge, and any person
22 or organization that has made known their intention to attend the hearing.
23 The motion or application must be heard by the trial court judge to whom the
24 case is assigned or, if the case has not been assigned, by the presiding judge.
25 Rules 2.550–2.551 on sealed records apply to motions or applications filed
26 under this rule.

27
28 **(b) Motion for leave to file complaint for intervention**

29
30 A motion for leave to file a complaint for intervention in a cause before a
31 ~~privately compensated~~ temporary judge requested by the parties must be filed
32 with the court and served on all parties and the temporary judge. The motion
33 must be heard by the trial court judge to whom the case is assigned or, if the
34 case has not been assigned, by the presiding judge. If intervention is allowed,
35 the case must be returned to the trial court docket unless all parties stipulate
36 in the manner prescribed in rule 2.831(a) to proceed before the temporary
37 judge.

1 **Division 9. References**

2
3 **Chapter 1. Reference by Agreement of the Parties Under Code of Civil**
4 **Procedure Section 638**

5 **Rule 3.900. Purposes of reference**

6 **Rule 3.901. Application for order appointing referee**

7 **Rule 3.902. Order appointing referee**

8 **Rule 3.903. Selection and qualifications of referee**

9 **Rule 3.904. Certification and disclosure by referee**

10 **Rule 3.905. Objections to the appointment**

11 **Rule 3.906. Motion to withdraw stipulation**

12 ~~**Rule 3.907. Motions or application to seal records**~~

13 ~~**Rule 3.908. Motion for leave to file complaint for intervention**~~

14 ~~**Rule 3.907. 3.909. Proceedings before privately compensated referees Use**~~
15 ~~**of court facilities and court personnel**~~

16 ~~**Rule 3.910. Request and order for appropriate and accessible hearing site**~~

17
18 **Chapter 2. Court-Ordered Reference Under Code of Civil Procedure Section**
19 **639**

20 **Rule 3.920. Purposes and conditions for appointment of referee**

21 **Rule 3.921. Motion for appointment of a referee**

22 **Rule 3.922. Form and contents of order appointing referee**

23 **Rule 3.923. Selection and qualification of referee**

24 **Rule 3.924. Certification and disclosure by referee**

25 **Rule 3.925. Objection to reference**

26 **Rule 3.926. Use of court facilities**

27 ~~**Rule 3.927. Circumstances required for appointment of discovery referee**~~

28
29 **Chapter 3. Rules Applicable to References Under Either Code of Civil**
30 **Procedure Section 638 or 639**

31 **Rule 3.930. Papers and exhibits**

32 **Rule 3.931. Open proceedings, notice of proceedings, and order for hearing**
33 **site**

34 **Rule 3.932. Motions or applications to be heard by the court**

35
36
37 ~~**Rule 3.907. Motion or application to seal records**~~

38
39 ~~A motion or application to seal records in a case pending before a referee must be~~
40 ~~served on all parties, the referee, and any person or organization that has made~~
41 ~~their intention to attend the hearing known and be filed with the court. The motion~~
42 ~~or application must be heard by the judge to whom the case is assigned or by the~~

1 presiding judge or law and motion judge. Rule 2.550 and 2.551 apply to the
2 motion or application to seal the records.

3
4 **Reviser's Note: The content of this rule is being moved to new rule 3.932(a).**

5
6
7 **~~Rule 3.908. Motion for leave to file for intervention~~**

8
9 ~~A motion for leave to file a complaint for intervention in a case pending before a
10 referee must be served on all parties and the referee and filed with the court. The
11 motion must be heard by a judge to whom the case is assigned or by the presiding
12 judge or law and motion judge if the case has not been assigned. If intervention is
13 allowed, the case must be returned to the trial court docket unless all parties
14 stipulate in the manner prescribed in rule 3.901 to proceed before the referee.~~

15
16 **Reviser's Note: The content of this rule is being moved to new rule 3.932(b).**

17
18
19 **~~Rule 3.907, 3.909. Proceedings before privately compensated referees~~ Use of
20 court facilities and court personnel**

21
22 **~~(a) Use of court facilities and court personnel~~**

23
24 A party who has elected to use the services of a privately compensated
25 referee appointed under Code of Civil Procedure section 638 is deemed to
26 have elected to proceed outside the courthouse. Court facilities, ~~and~~ court
27 personnel, and summoned jurors may not be used in proceedings pending
28 before a privately compensated such a referee, except on a finding by the
29 presiding judge that their use would further the interests of justice.

30
31 **~~(b) Posting of notice in courthouse~~**

32
33 For all matters pending before privately compensated referees, the clerk must
34 post a notice in the courthouse identifying the case name and number and the
35 name and telephone number of a person to contact to arrange for attendance
36 at any proceeding that would be open to the public if held in a courthouse.

37
38 **Reviser's Note: The content of subdivision (b) is being moved to new rule**
39 **3.931(b).**

1 **Rule 3.910. Request and order for appropriate and accessible hearing site**

2
3 ~~The court may, on request of any person or on the court's own motion, order that a~~
4 ~~case pending before a referee must be heard at a site easily accessible to the public~~
5 ~~and appropriate for seating those who have notified the court of their intention to~~
6 ~~attend hearings. A request for hearing at an accessible and appropriate site must~~
7 ~~state the reasons for the request, be served on all parties and the referee, and be~~
8 ~~filed with the court. The order may require that notice of trial or of other~~
9 ~~proceedings be given to the requesting person directly.~~

10
11 **Reviser's Note: The content of this rule is being moved to new rule 3.931(c).**

12
13
14 **Rule 3.926. Use of court facilities**

15
16 A reference ordered under Code of Civil Procedure section 639 entitles the parties
17 to the use of court facilities and court personnel to the extent provided in the order
18 of reference. The proceedings may be held in a private facility, but, if so, the
19 private facility must be open to the public ~~upon request of any person~~ as provided
20 in rule 3.931.

21
22 **Rule 3.927. Circumstances required for appointment of discovery referee**

23
24 ~~A discovery referee must not be appointed under Code of Civil Procedure section~~
25 ~~639(a)(5) unless the exceptional circumstances of the particular case require the~~
26 ~~appointment.~~

27
28 **Reviser's Note: This rule would be deleted because it duplicates the content**
29 **of this rule 3.920(c).**

30
31
32
33 **Chapter 3. Rules Applicable to References Under Either Code of Civil**
34 **Procedure Section 638 or 639**

35
36 **Rule 3.930. Papers and exhibits**

37
38 All parties and referees in proceedings before a referee must comply with the
39 applicable requirements of Rule 2.400 concerning the filing and handling of
40 papers and exhibits.

1 **Rule 3.931. Open proceedings, notice of proceedings, and order for hearing**
2 **site**

3
4 **(a) Open proceedings**

5
6 All proceedings before a referee that would be open to the public if held
7 before a judge in a courthouse must be open to the public, regardless of
8 whether held in or outside a courthouse.

9
10 **(b) Notice regarding proceedings before referee**

11
12 No later than 5 days before the hearing date, a referee must promptly notify
13 the clerk of the date, time, location, and nature of all hearings scheduled in
14 matters pending before the referee. The clerk must enter the hearing
15 information in the court's docket and post a notice in the courthouse
16 indicating the case name and number and the name and telephone number of
17 a person to contact to arrange for attendance at any proceeding that would be
18 open to the public if held in a courthouse.

19
20 **Reviser's Note: The content of this subdivision is from current rule 3.909.**

21
22 **(c) Order for appropriate hearing site**

23
24 The court may, on the request of any person or on the court's own motion,
25 order that a case pending before a referee must be heard at a site easily
26 accessible to the public and appropriate for seating those who have notified
27 the court of their intention to attend hearings. A request for hearings at an
28 accessible and appropriate site must state the reasons for the request, be
29 served on all parties and the referee, and be filed with the court. The order
30 may require that notice of trial or of other proceedings be given to the
31 requesting person directly.

32
33 **Reviser's Note: The content of this subdivision is from current rule 3.910.**

34
35
36 **Rule 3.932. Motions or applications to be heard by the court**

37
38 **(a) Motion or application to seal records**

39
40 A motion or application to seal records in a case pending before a referee
41 must be filed with the court and served on all parties, the referee, and any
42 person or organization that has made known their intention to attend the

1 hearing. The motion or application must be heard by the judge to whom the
2 case is assigned or by the presiding judge or law and motion judge. Rules
3 2.550 and 2.551 apply to the motion or application to seal the records.
4

5 **Reviser’s Note: The content of this subdivision is from current rule 3.907.**

6
7 **(b) Motion for leave to file complaint for intervention**
8

9 A motion for leave to file a complaint for intervention in a case pending
10 before a referee must be filed with the court and served on all parties and the
11 referee. The motion must be heard by the judge to whom the case is assigned
12 or by the presiding judge or law and motion judge if the case has not been
13 assigned. If intervention is allowed, the case must be returned to the trial
14 court docket unless all parties stipulate in the manner prescribed in rule
15 3.901 to proceed before the referee or the court issues a new order
16 appointing a referee under rule 3.922.
17

18 **Reviser’s Note: The content of this subdivision is from current rule 3.908.**
19

Item SPR07-13 Response Form

Title: Alternative Dispute Resolution: Access to Hearings and Records in Proceedings Before Temporary Judges and Referees (Adopt Cal. Rules of Court, rules 2.833, 3.930, 3.931, and 3.932; amend rules 2.400 and 3.926: amend and renumber rules 2.834, 2.835, and 3.909; and repeal rules 3.907, 3.908, 3.910, and 3.927)

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

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.