

RESOLUTION 08-12-2016

DIGEST

Motion Practice: Tentative Rulings Via Internet and E-Mail

Amends California Rules of Court, rule 3.1308, to allow courts to notify parties of tentative rulings via telephone, internet, or e-mail.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Rules of Court, Rule 3.1308 to read as follows:

Rule 3.1308

(a) Tentative ruling procedures

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

(1) *Notice of intent to appear required*

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

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

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

(b) No other procedures permitted

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

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

(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 for obtaining the tentative rulings and the time by which the rulings will be available.

34 (d) Uniform procedure within court or branch
35 If a court or a branch of a court adopts a tentative ruling procedure, that procedure must
36 be used by all judges in the court or branch who issue tentative rulings.
37 (e) Tentative rulings not required
38 This rule does not require any judge to issue tentative rulings.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: As of late, the vast majority of courts issuing tentative decisions do so, most commonly via their web site or through e-mail. And although the Rules of Court currently mandate that tentative decisions, if issued, be published via telephone, only a small fraction of parties ever use the telephone to check tentative decisions. The reason why retrieval of telephonic tentative rulings are disfavored by the parties is because (1) it is often difficult to understand the speaker/robot reciting the tentative; (2) a party cannot study the language of the tentative without calling back multiple times until the complete message can be transcribed; and (3) waiting for a party's own tentative to be read in a mass of other tentative decisions for that calendar can be tiring and time consuming.

But because the court is *required* by the Rules of Court to issue telephonic tentatives, the court must continue to expend time and resources on a system that very few litigants like and very few litigants use.

The Solution: Virtually anyone with a telephone now has internet and e-mail access. Electronic written communications are now inexpensive and ubiquitous. And parties without either phone or internet, can, at least, enjoy free internet access at the public library. They cannot, however, enjoy free telephone service in the same way. Meanwhile all California attorneys are expected to have some minimal facility with the internet, the competence to submit electronic filings, and to communicate with the court via e-mail. The State Bar now requires all attorneys to have e-mail addresses and to post them on the State Bar's website.

The courts should be given the option to issue their tentatives via telephone, via internet, or via e-mail, as they see fit. They should be allowed to expend their resources in a way that makes economic sense. If any particular court decides that it does not serve its community to issue telephonic tentatives and wants to issue them via the internet instead, they should be allowed to do so. Courts should not be compelled to expend their limited resources providing services that few if any litigants choose to use anymore.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

The CCBA's Resolutions Committee recommended Disapproval of this resolution. The full Conference rejected that recommendation and approved the resolution.

COUNTERARGUMENT

SACRAMENTO COUNTY BAR ASSOCIATION

The Sacramento County Bar Association delegation recommended Disapproval of this resolution. The full Conference rejected that recommendation and approved the resolution.