

**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, 3.902, and 3.926: amend and renumber rules 2.833, 2.834, and 3.909 as 2.834, 2.835, and 3.907, respectively; 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 the court or at another location. This proposal would also make other clarifying amendments to the rules relating to temporary judges and referees and would reorganize the rules relating to referees to make them more consistent with the structure and format of the rules relating to temporary judges.</p>
<p>Source</p>	<p>Civil and Small Claims Advisory Committee Hon. Dennis Perluss, Chair</p>
<p>Staff</p>	<p>Heather Anderson, ADR Subcommittee Counsel, 415-865-7691, heather.anderson@jud.ca.gov</p>
<p>Discussion</p>	<p>In spring 2007, the Civil and Small Claims Advisory Committee circulated an earlier version of this proposal for public comment. Many of the comments received at that time suggested that the proposal needed to be revised. In particular, some commentators suggested that the rules previously proposed would not be workable in the context of family law cases heard by referees or temporary judges selected by the parties. Based on these comments, the committee worked with the Family and Juvenile Law Advisory Committee to revise the proposal and is circulating this revised proposal for public comment.</p> <p>The California Rules of Court contain 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 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 records that have</p>

been filed in these proceedings. This proposal would strengthen these existing provisions in several ways.

#### Access to Records

Rule 2.400(b) addresses documents filed in proceedings before temporary judges and referees. Under this proposal, this rule would be amended to clarify that all original documents 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.

Rule 2.400(b) also currently requires that parties provide the temporary judge or referee with a file-stamped copy of each paper relevant to the issues before the temporary judge or referee. This proposal would add new provisions to this rule prohibiting a temporary judge or referee from accepting any document that would be required to be filed before it is considered by a court unless the document either has the clerk's file stamp or is accompanied by a declaration from the party stating that the document has been submitted to the court for filing. For any document that would not ordinarily be filed before it is considered by a court, these amendments would require that the document be filed no later than the next court day after the document is submitted to the temporary judge or referee and that the party must promptly provide a file-stamped copy of the document to the temporary judge or referee. 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.

To ensure that the temporary judge or referee does not inappropriately act based on documents that are not accepted for filing by the court, these amendments would also require parties to inform the temporary judge or referee if the document is not accepted for filing by the court or if the filing is subsequently canceled.

Rule 2.400(c)(2) addresses the handling of exhibits in proceedings before temporary judges and referees. This rule currently requires that at the conclusion of the proceedings, the temporary judge or referee deliver the exhibits, properly marked, to the clerk unless the parties file a stipulation that provides otherwise. To ensure that the court, rather than the parties, decides how the exhibits are to be handled, this proposal would amend this rule to require that the court approve any

stipulation for an alternate disposition of exhibits.

Rule 2.400(c)(2) also currently requires that exhibits in the possession of the temporary judge or referee be made available during business hours for inspection by any person within a reasonable time after the request. This proposal would replace that provision with a new subdivision (d)(1) providing that all documents and exhibits in the possession of a temporary judge or referee that would be open to the public if filed or lodged with the court must be made available during business hours for inspection by any person within a reasonable time after the request and under reasonable conditions. This provision is broader than the existing provision because it addresses access to both exhibits and documents filed in the case, but it also clarifies that the public may access only those materials that would be open to the public if filed or lodged with the court and that there may be reasonable conditions on this access. The proposed advisory committee comment accompanying this provision clarifies this latter point by indicating that public access to documents and exhibits in the possession of a temporary judge or referee should be the same as if the case were being heard by a judge. It also notes that documents and exhibits are not normally available to the public during a hearing or when needed by the judge for hearing or decision preparation and it provides that a temporary judge or referee may direct that access to documents and exhibits will be available by scheduled appointment. To facilitate public access to these records, proposed new subdivision (d)(2) would be added requiring that temporary judges and referees provide the court with information about who can be contacted to obtain access to documents or exhibits submitted to the temporary judge or referee.

To increase awareness of the applicable provisions in rule 2.400, this proposal would add new rule 2.833 to the rules on temporary judges selected by the parties and new rule 3.930 to the rules on referees providing that all temporary judges, referees, and parties in proceedings before such individuals must comply with the applicable requirements of rule 2.400 concerning the filing and handling of documents and exhibits (this would require renumbering current rule 2.833 as rule 2.834).

In addition to these changes, this proposal would add a definition of “court facility” to rule 2.400. Rule 2.400(a) refers to use of court records “in a court facility” and 2.400(c)(2) refers to proceedings

conducted by a temporary judge or referee outside of “court facilities.” The term “court facility” is ambiguous; it is unclear whether it applies to all areas within a courthouse, including those used for other purposes. This proposal would define “court facility” to mean any area within a building required or used for court functions (see proposed rule 2.400(e).) This definition is based on language from Government Code Section 70301(d), which is part of the Trial Court Facilities Act.

#### Access to Hearings

The rules relating to temporary judges and referees currently contain several provisions relating to public access to hearings conducted by temporary judges and referees. Rules 2.833(a), relating to temporary judges requested by the parties, and 3.909(b), relating to referees appointed under the agreement of the parties, currently provide that the clerk must post a notice in the courthouse indicating the telephone number of a person to contact to arrange for attendance at any proceeding conducted by such individuals that would be open to the public if held in a courthouse. Rules 3.902(5), relating to referees appointed under the agreement of the parties, and 3.922(g), relating to referees appointed without the parties’ agreement, also provide that the orders appointing these individuals must include the name and telephone number of a person to contact to arrange for attendance at any proceeding before the temporary judge or referee. In addition, rule 3.926, relating to referees appointed without the parties’ agreement, provides that if the proceedings are held in a private facility, the facility must be open to the public on request of any person.

This proposal would add new provisions to the rules relating to temporary judges (proposed rule 2.834(a)) and referees (proposed rule 3.931(a), which would apply to both referees appointed on agreement of the parties and without agreement of the parties) specifically requiring that all proceedings before a referee or a temporary judge requested by the parties that would be open to the public if held before a judge must be open to the public, regardless of whether held in a court facility or at another location. It would also replace the existing provisions requiring clerks to post notices in the courtroom with information about whom to contact for access to hearings conducted by temporary judges and referees and requiring that this contact information be included in the appointment orders. The new provisions would require that referees and temporary judges selected by the parties provide the court with this contact information when they accept their appointments (see proposed rules 2.834(b) and

3.931(b)). In addition, this proposal would permit temporary judges and referees to also provide the court with the address of a publicly accessible Web site that has information about these hearings. These changes should ensure that interested members of the public can access information about all scheduled hearings in proceedings conducted by temporary judges or referees that would have been open if held before a judge.

#### Use of Court Facilities and Personnel

Currently, rule 2.833(b), relating to temporary judges requested by the parties, and rule 3.909(a), relating to referees appointed on agreement of the parties, provide that a party who has elected to use the services of such a temporary judge or referee is deemed to have elected to proceed outside the courtroom and that court facilities, court personnel, and summoned jurors may not be used in proceedings pending before such temporary judges or referees except on a finding by the presiding judge that their use would further the interests of justice. This proposal would amend these rules to provide that parties in family law proceedings before such temporary judges and referees that involve contested child custody or visitation issues can access the courts' mediation and evaluation services to the same extent and in the same manner and location as if the child custody or visitation issue were being heard by a judge.

#### Appropriate Hearing Site

Currently, rule 2.833(c), relating to temporary judges requested by the parties, and rule 3.910, relating to referees appointed on agreement of the parties, provide that the court may, on request of any person or on the court's own motion, order that a case pending before such a temporary judge or referee be heard at a site easily accessible to the public and appropriate for seating those who have notified the court of their intention to attend hearings. This proposal would amend these provisions to use language that is more consistent with other rules regarding applications. It would also add language to clarify that the proceedings are not stayed pending a decision on an application concerning a hearing site unless the presiding judge or his or her designee orders such a stay.

In addition, this proposal would amend these rules to include a new provision requiring that if a court mediator or evaluator is required to attend a hearing before a temporary judge requested by the parties, that hearing must take place at a location requiring no more than 15

minutes' travel time from the mediator's or evaluator's work site, unless otherwise ordered by the presiding judge or his or her designee. Like the existing rules concerning the use of court facilities and personnel, this proposed new provision is designed to ensure that the use of a temporary judge or referee does not create extra burdens for the public court system.

#### Motions to Seal Court Records

Currently, rule 2.834(a), relating to temporary judges requested by the parties, and rule 3.907, relating to referees appointed on agreement of the parties, provide that a motion to seal records under rules 2.550–2.551 must be served on all parties, the temporary judge or referee, and any persons or organizations that have made known their intention to attend the hearing. This proposal would amend these rules to make them more consistent with rule 2.551(b)(2), which requires that such motions be served on all parties “that have appeared in the case.” This includes eliminating the current requirement for service on any persons or organizations that have made known their intention to attend the hearing, since such service is not required in proceedings before sitting judges.

#### Reorganization of Rules Regarding Referees

Currently, rules 3.900–3.910 address references by agreement of the parties under Code of Civil Procedure section 638 and rules 3.920–3.927 address court-ordered references under Code of Civil Procedure section 639. This proposal would amend and reorganize the rules relating to referees to make the structure and format more consistent with the equivalent provisions in the rules relating to temporary judges. Among other things, these amendments would: (1) delete rule 3.927 because it duplicates rule 3.920(c); and (2) delete rules 3.907, 3.908, and 3.910 from the chapter that addresses only references by agreement and move the contents of these rules into a new chapter that applies to both references by agreement of the parties under Code of Civil Procedure section 638 and court ordered references under Code of Civil Procedure Section 639. These changes are intended to make the rules simpler and easier to understand.

#### Other Amendments

This proposal would also make several clarifying changes throughout the rules relating to temporary judges and referees.

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.”

To ensure that items such as Judicial Council forms filed by the parties are encompassed in the rules regarding the handling of documents in matters before temporary judges and referees, current references in these rules to “papers” filed by the parties would be replaced with references to “documents.”<sup>1</sup> However, in 2.400(a), the references to “papers” would be replaced with the term “court records” as the provisions limiting removal of items from court files are broadly applicable to all court records.

Finally, in several places, these rules provide for an action to be taken by the presiding judge or by the judge assigned to hear the matter or the law and motion judge. This proposal would amend these rules to indicate that the action can be taken by the presiding judge or his or her designee. If the presiding judge wanted the action to be taken by the judge assigned to hear the matter or the law and motion judge, the presiding judge could simply designate that judge to hear the matter.

The proposed rule changes are attached on pages 8–18.

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Attachments

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<sup>1</sup> Rule 2.3 defines “paper” as including all documents offered for filing, except exhibits or Judicial Council or local court forms.

Rules 2.833, 3.930, 3.931, and 3.932 of the California Rules of Court would be adopted; rules 2.833, 2.834, and 3.909 would be amended and renumbered as 2.834, 2.835, and 3.907, respectively; rules 2.400, 3.902, and 3.926 would be amended; and rules 3.907, 3.908, 3.910, and 3.927 would be repealed, effective January 1, 2010, to read:

1 **Title 2. Trial Court Rules**

2  
3 **Division 4. Court Records**

4  
5 **Chapter 1. General Provisions**

6  
7 **Rule 2.400. Court records**

8  
9 **(a) Removal of papers records**

10  
11 Only the clerk may remove and replace papers records in the court's files.  
12 Unless otherwise provided by these rules or ordered by the court, ~~filed~~  
13 papers court records may only be inspected by the public in the office of the  
14 clerk and released to authorized court personnel or an attorney of record for  
15 use in a court facility. No original ~~papers filed with the clerk~~ court records  
16 may be used in any location other than a court facility, unless so ordered by  
17 the presiding judge or his or her designee.

18  
19 **(b) Original papers documents filed with the clerk; duplicate papers**  
20 **documents for temporary judge or referee**

21  
22 (1) All original documents in a case pending before a referee or temporary  
23 judge or referee, whether ~~privately compensated~~ appointed by the court  
24 or appointed at the request of the parties or not, a party must tender and  
25 be filed with the clerk must accept for filing all original papers in the  
26 same manner as would be required if the case were being heard by a  
27 judge, including accompanied by the required fee filing within the any  
28 time limits specified by law and paying any required fees. The filing  
29 party must provide a filed-stamped copy to the temporary judge or  
30 referee of each paper document relevant to the issues before the  
31 temporary judge or referee. ~~When the paper may be filed without~~  
32 ~~payment of a fee, instead of a filed stamped copy, the filing party may~~  
33 ~~use a true copy of the paper accompanied by a declaration about the~~  
34 ~~date of its filing.~~

35  
36 (2) If a document must be filed with the court before it is considered by a  
37 judge, the temporary judge or referee must not accept or consider any



1 copy of that document unless the document has the clerk's file stamp or  
2 is accompanied by a declaration stating that the original document has  
3 been submitted to the court for filing.  
4

5 (3) If a document would ordinarily be filed with the court after it is  
6 submitted to a judge or if a party submits an ex parte application, the  
7 party that submits the document or application to a temporary judge or  
8 referee must file the original with the court no later than the next court  
9 day after the document or application was submitted to the temporary  
10 judge or referee and must promptly provide a filed-stamped copy of the  
11 document or application to the temporary judge or referee.  
12

13 (4) A party that has submitted a document to a temporary judge or referee  
14 must immediately notify the temporary judge or referee if the document  
15 is not accepted for filing by the court or if the filing is subsequently  
16 canceled.  
17

18 (c) **Return of exhibits**  
19

- 20 (1) The clerk must not release any exhibit except on order of the court. The  
21 clerk must require a signed receipt for a released exhibit.  
22
- 23 (2) If proceedings are conducted by a temporary judge or a referee outside  
24 of court facilities, the temporary judge or referee must keep all exhibits  
25 and deliver them, properly marked, to the clerk at the conclusion of the  
26 proceedings, unless the parties file, and the court approves, a written  
27 stipulation ~~that the exhibits may be disposed of otherwise~~ providing for  
28 a different disposition of the exhibits. On request of the temporary judge  
29 or referee, the clerk must deliver exhibits filed or lodged with the court  
30 to the possession of the temporary judge or referee, who must not  
31 release them to any person other than the clerk, unless the court orders  
32 otherwise. ~~Exhibits in the possession of the temporary judge or referee~~  
33 ~~must be made available during business hours for inspection by any~~  
34 ~~person within a reasonable time after request.~~  
35

36 (d) **Access to documents and exhibits in matters before temporary judges**  
37 **and referees**  
38

- 39 (1) Documents and exhibits in the possession of a temporary judge or  
40 referee that would be open to the public if filed or lodged with the court  
41 must be made available during business hours for inspection by any

1 person within a reasonable time after request and under reasonable  
2 conditions.

3  
4 (2) Temporary judges and referees must file a statement in each case in  
5 which they are appointed that provides the name, telephone number,  
6 and mailing address of a person who may be contacted to obtain access  
7 to any documents or exhibits submitted to the temporary judge or  
8 referee that would be open to the public if filed or lodged with the court.  
9 The statement must be filed with the temporary judge's or referee's  
10 certification under rule 2.831(b), 3.904(a), or 3.924(a). If there is any  
11 change in this contact information, the temporary judge or referee must  
12 promptly file a revised statement with the court.

13  
14 **(e) Definitions**

15  
16 For purposes of this rule, "court facilities" consist of any area within a  
17 building required or used for court functions.

18  
19 **Advisory Committee Comment**

20  
21 **Subdivision (b)(1).** Rules 2.810 and 2.830 provide definitions of temporary judges appointed by  
22 the court and appointed at the request of the parties, respectively.

23  
24 **Subdivision (d)(1).** Public access to documents and exhibits in the possession of a temporary  
25 judge or referee should be the same as if the case were being heard by a judge. Documents and  
26 exhibits are not normally available to the public during a hearing or when needed by the judge for  
27 hearing or decision preparation. A temporary judge or referee may direct that access to  
28 documents and exhibits be available by scheduled appointment.

29  
30  
31 **Division 6. Appointments by the Court or Agreement of the Parties**

32  
33 **Chapter 2. Temporary Judges Requested by the Parties**

34  
35 **Rule 2.833. Documents and exhibits**

36  
37 All temporary judges and parties in proceedings before temporary judges  
38 requested by the parties must comply with the applicable requirements of rule  
39 2.400 concerning the filing and handling of documents and exhibits.

1 **Rule ~~2.834.~~ 2.833. Open proceedings; notices of proceedings, use of court**  
2 **facilities, and order for hearing site**

3  
4 **(a) Open proceedings**

5  
6 All proceedings before a temporary judge requested by the parties that would  
7 be open to the public if held before a judge must be open to the public,  
8 regardless of whether held in or outside a court facility.

9  
10 **(a)(b) Posting of Notice regarding proceedings before privately compensated**  
11 **temporary judge requested by the parties**

12  
13 (1) For all matters pending before privately compensated  
14 In each case in which he or she is appointed, a temporary judges, the clerk must post a  
15 notice in the courthouse indicating requested by the parties must file a  
16 statement with his or her certification under rule 2.831(b) that provides  
17 the case name, and number as well as the telephone number, and  
18 mailing address of a person to contact to arrange for attendance at any  
19 who may be contacted to obtain information about the date, time,  
20 location, and general nature of all hearings and other proceedings  
21 scheduled in the matter that would be open to the public if held before a  
22 judge in a courthouse. If there is any change in this contact information,  
23 the temporary judge must promptly file a revised statement with the  
24 court.

25  
26 (2) In addition to providing the clerk with the information required under  
27 (1), a temporary judge may also provide the address of a publicly  
28 accessible Web site at which the temporary judge will maintain a  
29 current calendar setting forth the date, time, location, and general nature  
30 of any hearings scheduled in the matter that would be open to the public  
31 if held before a judge.

32  
33 **(b)(c) Use of court facilities, court personnel, and summoned jurors**

34  
35 A party who has elected to use the services of a privately compensated  
36 temporary judge requested by the parties is deemed to have elected to  
37 proceed outside the courtroom court facilities. Except as provided in this  
38 rule, court facilities, court personnel, and summoned jurors may not be used  
39 in proceedings pending before a privately compensated temporary judge  
40 requested by the parties.

1           (1) Parties in family law proceedings pending before a temporary judge  
2 requested by the parties that involve contested child custody or  
3 visitation issues that must be set for mediation under the Family Code  
4 may use the court’s mediation services to the same extent and in the  
5 same manner and location as if the child custody or visitation issue  
6 were being heard by a judge. If the court or the temporary judge orders  
7 a child custody evaluation as defined in rule 5.220, the court’s  
8 evaluation services may be used to the same extent and in the same  
9 manner and location as if the child custody or visitation issue were  
10 being heard by a judge.

11  
12           (2) Court facilities, court personnel, and summoned jurors may be used in  
13 a proceeding before a temporary judge requested by the parties except  
14 on a finding by the presiding judge or his or her designee that their use  
15 would further the interests of justice.

16  
17 **(e)(d) Order the Appropriate hearing site**

18  
19           (1) The presiding judge or his or her designee, on request application of any  
20 person or on the judge’s own motion, may order that a case before a  
21 privately compensated temporary judge requested by the parties must be  
22 heard at a site easily accessible to the public and appropriate for seating  
23 those who have made known their plan to attend hearings. The request  
24 application must be made by letter with reasons stated state facts  
25 showing good cause for granting the application, and must be  
26 accompanied by a declaration that a copy of the request was mailed to  
27 each party, to served on all parties and the temporary judge, and to the  
28 clerk for placement in the file must be filed with the court. The order  
29 may require that notice of trial or of other proceedings be given to the  
30 requesting person directly. The proceedings are not stayed while the  
31 application is pending unless the presiding judge or his or her designee  
32 orders that they be stayed. The granting issuance of an order for an  
33 accessible and appropriate hearing site is not a ground for withdrawal of  
34 a stipulation that a case may be heard by a temporary judge.

35  
36           (2) If a court mediator or evaluator is required to attend a hearing before a  
37 temporary judge requested by the parties, unless otherwise ordered by  
38 the presiding judge or his or her designee, that hearing must take place  
39 at a location requiring no more than 15 minutes’ travel time from the  
40 mediator’s or evaluator’s work site.

1 **Rule ~~2.835.~~ 2.834. Motions or applications to be heard by the court**

2  
3 **(a) Motion or application to seal records**

4  
5 A motion or application to seal records in a cause before a ~~privately~~  
6 ~~compensated~~ temporary judge requested by the parties must be filed with the  
7 court and must be served on all parties; that have appeared in the case and the  
8 temporary judge, ~~and any person or organization that has made known their~~  
9 ~~intention to attend the hearing.~~ The motion or application must be heard by  
10 ~~the trial court judge to whom the case is assigned or, if the case has not been~~  
11 ~~assigned,~~ by the presiding judge or his or her designee. Rules 2.550–2.551 on  
12 sealed records apply to motions or applications filed under this rule.  
13

14 **(b) Motion for leave to file complaint for intervention**

15  
16 A motion for leave to file a complaint for intervention in a cause before a  
17 ~~privately compensated~~ temporary judge requested by the parties must be filed  
18 with the court and served on all parties and the temporary judge. The motion  
19 must be heard ~~by the trial court judge to whom the case is assigned or, if the~~  
20 ~~case has not been assigned,~~ by the presiding judge or his or her designee. If  
21 intervention is allowed, the case must be returned to the trial court docket  
22 unless all parties stipulate in the manner prescribed in rule 2.831(a) to  
23 proceed before the temporary judge.  
24  
25

26 **Title 3. Civil Rules**

27  
28 **Division 9. References**

29  
30 **Chapter 1. Reference by Agreement of the Parties Under Code of Civil**  
31 **Procedure Section 638**

32  
33 **Rule 3.902. Order appointing referee**

34  
35 An order appointing a referee under Code of Civil Procedure section 638 must be  
36 filed with the clerk or entered in the minutes and must specify:

- 37  
38 (1) The name, business address, and telephone number of the referee and, if he  
39 or she is a member of the State Bar, the referee's State Bar number;  
40  
41 (2) Whether the scope of the reference covers all issues or is limited to specified  
42 issues;

- 1  
2 (3) Whether the referee will be privately compensated; and  
3  
4 (4) Whether the use of court facilities and court personnel is authorized. ; ~~and~~  
5  
6 ~~(5) The name and telephone number of a person to contact to arrange for~~  
7 ~~attendance at any proceeding that would be open to the public if held in a~~  
8 ~~courthouse.~~  
9

10  
11 **~~Rule 3.907. Motion or application to seal records~~**

12  
13 ~~A motion or application to seal records in a case pending before a referee must be~~  
14 ~~served on all parties, the referee, and any person or organization that has made~~  
15 ~~their intention to attend the hearing known and be filed with the court. The motion~~  
16 ~~or application must be heard by the judge to whom the case is assigned or by the~~  
17 ~~presiding judge or law and motion judge. Rule 2.550 and 2.551 apply to the~~  
18 ~~motion or application to seal the records.~~  
19

20  
21 **~~Rule 3.908. Motion for leave to file for complaint intervention~~**

22  
23 ~~A motion for leave to file a complaint for intervention in a case pending before a~~  
24 ~~referee must be served on all parties and the referee and filed with the court. The~~  
25 ~~motion must be heard by a judge to whom the case is assigned or by the presiding~~  
26 ~~judge or law and motion judge if the case has not been assigned. If intervention is~~  
27 ~~allowed, the case must be returned to the trial court docket unless all parties~~  
28 ~~stipulate in the manner prescribed in rule 3.901 to proceed before the referee.~~  
29

30  
31 **~~Rule 3.907. 3.909. Proceedings before privately compensated referees~~ Use of**  
32 **court facilities and court personnel**

33  
34 **(a) Use of court facilities and court personnel**

35  
36 A party who has elected to use the services of a ~~privately compensated~~  
37 referee appointed under Code of Civil Procedure section 638 is deemed to  
38 have elected to proceed outside ~~the courthouse~~ court facilities. Except as  
39 provided in this rule, court facilities, and court personnel, and summoned  
40 jurors may not be used in proceedings pending before a ~~privately~~  
41 compensated such a referee.  
42

1           (1) Parties in family law proceedings pending before a referee appointed  
2 under Code of Civil Procedure section 638 that involve contested child  
3 custody or visitation issues that must be set for mediation under the  
4 Family Code may use the court’s mediation services to the same extent  
5 and in the same manner and location as if the child custody or visitation  
6 issue were being heard by a judge. If the court or the referee orders a  
7 child custody evaluation as defined in rule 5.220, the court’s evaluation  
8 services may be used to the same extent and in the same manner and  
9 location as if the child custody or visitation issue were being heard by a  
10 judge.

11  
12           (2) Court facilities, court personnel, and summoned jurors may be used in  
13 a proceeding before a referee appointed under Code of Civil Procedure  
14 section 638 except on a finding by the presiding judge or his or her  
15 designee that their use would further the interests of justice.

16  
17 **(b) — Posting of notice in courthouse**

18  
19           ~~For all matters pending before privately compensated referees, the clerk must~~  
20 ~~post a notice in the courthouse identifying the case name and number and the~~  
21 ~~name and telephone number of a person to contact to arrange for attendance~~  
22 ~~at any proceeding that would be open to the public if held in a courthouse.~~

23  
24  
25 **~~Rule 3.910. Request and order for appropriate and accessible hearing site~~**

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

34  
35  
36 **Chapter 2. Court-Ordered Reference Under Code of Civil Procedure**  
37 **Section 639**

38  
39 **Rule 3.926. Use of court facilities**

40  
41 A reference ordered under Code of Civil Procedure section 639 entitles the parties  
42 to the use of court facilities and court personnel to the extent provided in the order

1 of reference. The proceedings may be held in a private facility, but, if so, the  
2 private facility must be open to the public ~~upon request of any person~~ as provided  
3 in rule 3.931.

4  
5  
6 **Rule 3.927. Circumstances required for appointment of discovery referee**

7  
8 ~~A discovery referee must not be appointed under Code of Civil Procedure section~~  
9 ~~639(a)(5) unless the exceptional circumstances of the particular case require the~~  
10 ~~appointment.~~

11  
12  
13 **Chapter 3. Rules Applicable to References Under Code of Civil Procedure**  
14 **Sections 638 or 639**

15  
16 **Rule 3.930. Documents and exhibits**

17  
18 All referees and parties in proceedings before a referee appointed under Code of  
19 Civil Procedure section 638 or 639 must comply with the applicable requirements  
20 of rule 2.400 concerning the filing and handling of documents and exhibits.

21  
22  
23 **Rule 3.931. Open proceedings, notice of proceedings, and order for hearing**  
24 **site**

25  
26 **(a) Open proceedings**

27  
28 All proceedings before a referee that would be open to the public if held  
29 before a judge must be open to the public, regardless of whether held in a  
30 court facility or in another location.

31  
32 **(b) Notice regarding proceedings before referee**

33  
34 (1) A referee must file a statement with his or her certification under rule  
35 3.904(a) or 3.924(a) in each case in which he or she is appointed that  
36 provides the name, telephone number, and mailing address of a person  
37 who may be contacted to obtain information about the date, time,  
38 location, and general nature of all hearings scheduled in matters pending  
39 before the referee that would be open to the public if held before a  
40 judge. If there is any change in this contact information, the referee  
41 must promptly file a revised statement with the court.  
42



1           (2) In addition, a referee may provide the address of a publicly accessible  
2           Web site at which the referee will maintain a current calendar setting  
3           forth the date, time, location, and general nature of any hearings  
4           scheduled in the matter that would be open to the public if held before a  
5           judge.

6  
7           **(c) Appropriate hearing site**  
8

9           (1) The presiding judge or his or her designee, on application of any person  
10           or on the judge's own motion, may order that a case before a referee  
11           must be heard at a site easily accessible to the public and appropriate for  
12           seating those who have made known their plan to attend hearings. The  
13           application must state facts showing good cause for granting the  
14           application and must be served on all parties and the referee and filed  
15           with the court. The proceedings are not stayed while the application is  
16           pending unless the presiding judge or his or her designee orders that  
17           they be stayed. The issuance of an order for an accessible and  
18           appropriate hearing site is not grounds for withdrawal of a stipulation  
19           for the appointment of a referee.

20  
21           (2) If a court mediator or evaluator is required to attend a hearing before a  
22           referee, unless otherwise ordered by the presiding judge or his or her  
23           designee, that hearing must take place at a location requiring no more  
24           than 15 minutes' travel time from the mediator's or evaluator's work  
25           site.

26  
27  
28           **Rule 3.932. Motions or applications to be heard by the court**  
29

30           **(a) Motion or application to seal records**  
31

32           A motion or application to seal records in a case pending before a referee  
33           must be filed with the court and served on all parties that have appeared in  
34           the case and the referee. The motion or application must be heard by the  
35           presiding judge or his or her designee. Rules 2.550 and 2.551 apply to the  
36           motion or application to seal the records.

37  
38           **(b) Motion for leave to file complaint for intervention**  
39

40           A motion for leave to file a complaint for intervention in a case pending  
41           before a referee must be filed with the court and served on all parties and the  
42           referee. The motion must be heard by the presiding judge or his or her

1 designee. If intervention is allowed, the case must be returned to the trial  
2 court docket unless all parties stipulate in the manner prescribed in rule  
3 3.901 to proceed before the referee or the court issues a new order  
4 appointing a referee under rule 3.922.  
5

## Item SPR09-02 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, 3.902, and 3.926; amend and renumber rules 2.833, 2.834, and 3.909 as 2.834, 2.835, and 3.907, respectively; 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: \_\_\_\_\_

### **To Submit Comments**

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

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

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

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

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

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