

## RESOLUTION 09-03-05

### DIGEST

#### Civil Law and Motion: Setting of Oral Argument Hearings

Amends California Rules of Court 324 to allow the trial court to set oral argument for a date beyond the original hearing date.

### RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends California Rules of Court 324 to allow the trial court to set oral argument for a date beyond the original hearing date. This resolution should be disapproved because (a) it is unnecessary and (b) it would not solve the problem that concerns the proponent.

This rule was originally adopted by the Judicial Council in 1992 and rewritten in 2000. The resolution would add one sentence to the rule: "The court may set the date of oral argument to a date later than the originally scheduled hearing date." The court already has this power under its inherent authority to set its own calendar. Indeed, it is common for the tentative ruling to notify counsel that the hearing has been continued to a date certain on the court's own motion. Thus, the added language would be surplusage and unnecessary.

The real problem is the common practice of posting the tentative ruling less than 24 hours before the hearing. The rule currently sets 3 p.m. on the day prior to the hearing as the deadline for posting the tentative ruling. This is a "no-later-than" deadline that is often treated as a "no-earlier-than" deadline. (Rule 324, subd. (a)(1).) If the rule is to be amended, it should specify a more reasonable period, e.g., a week, between the posting of the tentative ruling and the hearing. That would resolve counsel's problem with organizing attendance and avoid setting yet another date that will probably conflict with one or more counsels' calendar.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends to the Judicial Council that Rule 324 be amended to read as follows:

- 1 Rule 324. Tentative rulings
- 2 (a) [Tentative ruling procedures] A trial court that offers a tentative ruling procedure in civil law and
- 3 motion matters shall follow one of the following procedures:
- 4 (1) [*Notice of intent to appear required*] The court shall make its tentative ruling available by
- 5 telephone and also, at the option of the court, by any other method designated by the court, by no
- 6 later than 3:00 p.m. the court day before the scheduled hearing. If the court desires oral argument,
- 7 the tentative ruling shall so direct. The tentative ruling may also note any issues on which the court
- 8 wishes the parties to provide further argument. If the court has not directed argument, oral argument
- 9 shall be permitted only if a party notifies all other parties and the court by 4:00 p.m. on the court day
- 10 prior to the hearing of the party's intention to appear. A party shall notify all other parties by
- 11 telephone or in person. The court shall accept notice by telephone and, at its discretion, may also
- 12 designate alternative methods by which a party may notify the court of the party's intention to
- 13 appear. The tentative ruling shall become the ruling of the court if the court has not directed oral
- 14 argument by its tentative ruling and notice of intent to appear has not been given. The court may set
- 15 the date of the oral argument to a date later than the originally scheduled hearing date.
- 16 (2) [*No notice of intent to appear required*] The court shall make its tentative ruling available by
- 17 telephone and also, at the option of the court, by any other method designated by the court, by a
- 18 specified time prior to the hearing. The tentative ruling may note any issues on which the court

19 wishes the parties to provide further argument at the hearing. This procedure shall not require the  
20 parties to give notice of intent to appear, and the tentative ruling shall not automatically become the  
21 ruling of the court if such notice is not given. The tentative ruling, or such other ruling as the court  
22 may render, shall not become the final ruling of the court until the hearing.  
23 (b) [No other procedures permitted] Other than following one of the tentative ruling procedures  
24 authorized in subdivision (a), courts shall not issue tentative rulings except (1) by posting a calendar  
25 note containing tentative rulings on the day of the hearing, or (2) by announcing the tentative ruling  
26 at the time of oral argument.  
27 (c) [Notice of procedure] A court that follows one of the procedures described in subdivision (a) shall  
28 so state in its local rules. The local rule shall specify the telephone number for obtaining the tentative  
29 rulings and the time by which the rulings will be available. If a court or a branch of a court adopts a  
30 tentative ruling procedure, that procedure shall be used by all judges in the court or branch who  
31 issue tentative rulings. This rule does not require any judge to issue tentative rulings.

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

PROPONENT: Bar Association of Northern San Diego County

#### STATEMENT OF REASONS:

Existing Law: Provides for the method of providing tentative rulings prior to the hearing date.

This Resolution: Allows the court to hear oral argument after the noticed hearing date.

The Problem: Courts are giving tentative rulings the afternoon before the hearing date. The court has to prepare for oral argument for all cases at the hearing date instead of just those cases where one or more parties disagree with the tentative ruling by the court. Litigants must assume that there will be a hearing and make appropriate calendar and travel plans. A one hour notice period is way too short, especially for multiple party litigation cases. This resolution would allow the court to set the date for oral argument, if requested, at a date later than the hearing date (in the past, one week later).

#### IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: James E. Lund, 249 E. Fourth Avenue, Escondido, CA 92025; (760) 747-7800; email: [jel@lundlaw.com](mailto:jel@lundlaw.com).

RESPONSIBLE FLOOR DELEGATE:

#### COUNTERARGUMENT

##### SAN DIEGO COUNTY BAR ASSOCIATION

This resolution runs counter to the desirable trend to disallow quirky local practices and make it reasonably possible for a lawyer to practice in courts of multiple counties. Instead of stealthily reinvigorating local rules, the proponent should draft a complete third alternative tentative ruling protocol.

Restoring a court's option to set a hearing date in the tentative ruling would promote inefficiency and delay. Overall, it is better for all counsel in a case to know from the first notice of a motion exactly when a hearing will be held. Under systems that allow hearing dates to be set in or after the tentative ruling, lawyers do not know exactly when to calendar a potential hearing until the tentative ruling is released. That process created conflicts, resulted in ex parte appearances to change hearing dates, and caused delay. The two protocols now permitted by rule 324 allow lawyers to manage their practices efficiently and do not need to be supplemented.