

205 Cal.App.4th 1445 (2012)
141 Cal. Rptr. 3d 316
JASON ROBERT BRACHER et al., Petitioners,
v.
THE SUPERIOR COURT OF EL DORADO COUNTY, Respondent;
THE PEOPLE, Real Party in Interest.
[No. C069958.](#)
Court of Appeals of California, Third District.
May 16, 2012.

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(4) A requirement that all misdemeanor defendants personally appear at a readiness and settlement conference is inconsistent with applicable case law and the statutory scheme. Section 977, subdivision (a) provides that a misdemeanor defendant may ordinarily appear through counsel. There are some exceptions, but real party in interest fails to identify any that are applicable here. Although some of the underlying matters involve DUI cases, as noted above, the statute provides that "in an *appropriate* case" involving a DUI charge "the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing." (§ 977, subd. (a)(3), italics added.) Thus, the statute does not set forth any blanket exception for DUI cases. By way of contrast, there is a limited statutory exception for certain proceedings in misdemeanor cases involving domestic violence. The statute provides that the defendant "*shall be present* for arraignment and sentencing," and "when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2." (§ 977, subd. (a)(2), italics added.)

(5) Relevant case law likewise indicates that a blanket policy requiring misdemeanor defendants' appearance at a particular proceeding in all cases is invalid. In [*Olney v. Municipal Court* \(1982\) 133 Cal.App.3d 455, 458-459 \[184 Cal.Rptr. 78\] \(*Olney*\)](#), the appellate court considered an argument that misdemeanor defendants could be required to appear at sentencing in all cases. The appellate court recognized that this would constitute a de facto policy of requiring a defendant's personal appearance at the readiness conference, since the majority of misdemeanor sentencings occurred at such conferences. (*Id.* at p. 458, fn. 2.) The appellate court concluded that the statutes allowed "misdemeanants to appear through counsel to respond to the charges against them unless the particular facts and circumstances underlying an individual case justify ordering an accused to personally appear at a particular sta[g]e of the proceedings." (*Id.* at p. 461.) The court observed: "At [1457*1457](#) the readiness hearing or sentencing, the municipal court can independently review the particular circumstances of the case and exercise its discretion in determining whether good cause exists for ordering the mandatory presence of defendant." (*Id.* at p. 462; accord, [*Simmons v. Superior Court*, supra, 203 Cal.App.3d at p. 76.](#))

In so holding, the court in *Olney* recognized that the right to appear through counsel was conditional. A defendant who chooses not to personally appear must do so with knowledge of the proceedings, the court must be confident the defendant authorized counsel to act, and the court has the power to order a defendant to appear when necessary. ([*Olney*, supra, 133 Cal.App.3d at](#)

[pp. 460-461.](#)) With respect to the last point, the court noted "the right to be absent is ... conditioned upon the court's determination defendant's presence is unnecessary" (*Id.* at p. 461.) But the court commented: "[W]e can easily envision not only cases where defendant's presence would be necessary to properly conduct sentencing but also cases where defendant's presence would be completely unnecessary." (*Ibid.*) The court concluded: "Each misdemeanant must be accorded an individual judicial assessment of his case before any judicial determination requiring his presence at sentencing. Any other result would render the statutory right, provided by section 977, subdivision (a), and the remainder of the statutory scheme, a nullity." (*Id.* at p. 462.)

In the underlying matters, the trial judge noted that it would be difficult to have an effective readiness and settlement conference in which a defendant is not personally present. The assistant presiding judge likewise made some statements indicating that pursuant to the local rule and policy considerations, the only misdemeanor defendants who should be excused from personally appearing at the conference are those whose cases have no hope of settling.

Excusing a defendant's personal appearance in a misdemeanor case is consistent with the assistant presiding judge's representation that counsel may attend a readiness and settlement conference "with a signed plea and waiver form and plea in absentia [*sic*] form." We likewise see nothing inherently difficult with having a defendant who is available by telephone enter a plea through counsel. Counsel can presumably provide appropriate assurance as to the defendant's identification and counsel's authority to act. (See [People v. American Bankers Ins. Co. \(1987\) 191 Cal.App.3d 742, 747 & fn. 3 \[236 Cal.Rptr. 501\]](#).) If counsel has the authority to act on the defendant's behalf, the parties may even negotiate a settlement at the readiness and settlement conference itself. Counsel may reasonably ensure that the defendant agrees to the settlement's terms by communicating with the defendant by telephone.

The judge in this case, however, did not make any such allowances but instead required (consistent with Local Rule 5.11.02) the defendant to [1458*1458](#) personally appear in all cases at the readiness and settlement conference. Petitioners properly observe that a defendant who has been ordered to appear at the readiness and settlement conference is "not free to disregard the court's order that defendant be personally present and [instead] merely submit written plea and waiver forms in defendant's absence." "Such a mechanical policy ignores the necessary exercise of judicial discretion which must precede the deprivation of a misdemeanant's statutory right to be absent and appear through counsel." ([Olney, supra, 133 Cal.App.3d at p. 462.](#))

We reject any implication that the trial judge required defendants to personally appear in the underlying cases based on consideration of the particular facts and circumstances of those individual cases. The court made no comments indicating any need to ensure a particular defendant's presence, such as concern about the defendant or the facts of a particular case. The court simply referred to a rule requiring a defendant's appearance, twice invoking the local rules and, in one case, making some comments suggesting it was a state rule. Local Rule 5.11.02 does not permit the court to excuse a defendant's appearance at the readiness and settlement conference.

Petitioners point out that the purpose of allowing defendants to appear through counsel is to allow them access to the courts without causing hardship to them. In misdemeanor cases, the possible fine or penalty is often small and the burden of appearance at a distant courthouse can exceed it. (See generally [*Olney, supra*, 133 Cal.App.3d at p. 459.](#)) Our statutory scheme recognizes the inherent differences in real-world consequences between felony and misdemeanor cases. The scheme balances efficiency and the need for a defendant's participation in proceedings with concerns of convenience and consideration of penalty.