JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Susan Huguenor and Hon. Jerilyn Borack, Cochairs
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DATE: February 10, 2006

SUBJECT: Juvenile Law: Correction of Rule 38.3(g) Regarding Stay of a Posttermination Placement Order Pending Appeal of Placement Order After Termination of Parental Rights (Welf. & Inst. Code, § 366.28); Clarification of Notice on Form JV-820 (Welf. & Inst. Code, § 366.26(l); Rule 38) (amend Cal. Rules of Court, rule 38.3(g); revise form JV-820) (Action Required)

Issue Statement

Rule 38.3(g)

In response to the Legislature's passage of Senate Bill 59 (Escutia) (Stats. 2003, ch. 247), which added section 366.28 to the Welfare and Institutions Code to specifically address the issue of appealing a placement order after termination of parental rights, the Judicial Council created rules 38.2 and 38.3, effective January 1, 2005. Since then, amendments were required by statutory changes affecting notice of juvenile law proceedings. Those rules were amended, effective January 1, 2006, as part of a larger proposal incorporating the statutory changes. During that process, language from rule 38.1 (on review of orders under Welf. & Inst. Code, § 366.26) was inadvertently substituted into rule 38.3(g) in place of the language required by the statute and subsequently adopted by the Judicial Council. Therefore, the amended rule 38.3(g) adopted by the council effective January 1, 2006, erroneously contained language from rule 38.1 rather than the intended language, necessitating the proposed correction.

Form JV-820

Under rule 38(e)(4), a party to a juvenile dependency proceeding is given 7 days in which to file form JV-820, *Notice of Intent to File Writ Petition and Request for Record*, after the court makes an order setting a permanency planning hearing. That time is extended to 12 days when the party is notified of the order setting the hearing only by mail. (Rule 38(e)(5).) In response to a comment submitted during the process of amending and revising several rules and forms effective January 1, 2006, the advisory committee

revised form JV-820's notice box to change the deadline for filing the form from 12 days to 17 days after the clerk's mailing of notification of the order. The commentator's proposed change was based on the 10-day completion of service provision in Code of Civil Procedure section 415.20(a), (b) (time period for service of summons and complaint). The commentator noted that under that standard of service completion a party to a dependency proceeding technically would have only a 2-day period of time to respond to notice provided by mail. While the Juvenile and Family Law Advisory Committee felt that the commentator's reasoning and the statute cited did not apply, the fairness assessment was well taken, especially for cases where the party receiving notice resides out of state. The committee then proposed mirroring Code of Civil Procedure section 1013(a)'s 10-day extension for mailing to out of state parties, which led to the new "17-day" time for filing the form. But the change created an unintended conflict between the form and the rule. This conflict is being addressed in a proposal during the next RUPRO cycle, but in the meantime it is necessary to correct the form for consistency.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective February 24, 2006:

1. Adopt amended rule 38.3(g) of the California Rules of Court to correct a clerical error; and

2. Approve revised form JV-820 to correct an unintended conflict with rule 38(e)(5).

The text of the amended rule is attached at page 5; the revised form is attached at page 6.

Rationale for Recommendation

Rule 38.3(g)

The committee recommends amending rule 38.3(g) to reinstate language adopted by the Judicial Council effective January 1, 2005, specifying the procedure for stay of a post-termination placement order pending appeal of the placement order after termination of parental rights as required by Welfare and Institutions Code section 366.28.

The amendment is necessary because of an inadvertent clerical error that occurred with the most recent amendment to rule 38.3. At that time a number of rules were amended in response to statutory changes affecting existing rules of court regarding notice of juvenile law proceedings. Both rule 38.1 and rule 38.3 were part of this amendment. Rules 38.1 and 38.3 are very similar rules providing procedural and timeline requirements for reviewing orders of the juvenile court by writ petition. Rule 38.1 provides procedures and timelines for reviewing orders setting hearings under Welfare and Institutions Code section 366.26, while rule 38.3 provides procedures and timelines for reviewing placement orders under Welfare and Institutions Code section 366.28. A number of the amendments to both rule 38.1 and rule 38.3 that were proposed in 2005 mirrored one

another because of the similarity of the procedures for review. But the procedure for stay of a hearing under Welfare and Institutions Code section 366.26 (rule 38.1(g)) does *not* mirror the procedure for stay of a posttermination placement order under Welfare and Institutions Code section 366.28 (rule 38.3(g)). During the process of readying the rules for Judicial Council action, the language of rule 38.1(g) was inadvertently placed into rule 38.3(g), replacing the language required by statute that had already been adopted by the Judicial Council.

This proposed amendment simply reinstates the language required by statute for rule 38.3(g), which was already approved by the Judicial Council effective January 1, 2005.

Form JV-820
The committee recommends adopting revised form JV-820 to reinstate the notice language in place prior to January 1, 2006, to prevent possible confusion regarding the time limits applicable to the filing of a notice of intent to file a writ petition following the setting of a permanency planning hearing in a juvenile dependency proceeding.

The revision is necessary because of the appearance of a conflict between rule 38 and form JV-820. The committee meant to adopt an extended period of time for filing a notice of intent for out-of-state parties, modeled on the 10-day extension for out-of-state mailings in Code of Civil Procedure section 1013(a), which would give out-of-state parties 17 days to file a notice of intent. But rule 38(e)(5) still has the prior 12 day filing deadline from when the notice is mailed, which potentially creates confusion over the actual time limits.

The committee intends to circulate in the next RUPRO cycle a proposal that would reconcile the rule with the form, incorporating a clear statement of time limits modeled on Code of Civil Procedure section 1013(a). That proposal will include the 5-day extension of time for mailing in state—the extension that currently exists— and will also propose a 10-day extension of time when the notice is mailed to out-of-state parties and a 20-day extension of time when the notice is mailed to out-of-country parties. This would take care of some notice and filing problems reported by jurisdictions bordering other states and Mexico. But in the meantime, to prevent unnecessary confusion for parties in dependency proceedings and court personnel, the committee recommends returning the prior language to form JV-820 requiring that the notice of intent be filed within 12 days after the date that the court clerk mailed notice of the order setting a permanency planning hearing.

<u>Alternative Actions Considered</u>
Both proposed actions are necessary for accuracy and to comply with governing law. No alternative actions were considered.

Comments From Interested Parties

Because the proposed rule amendment corrects a clerical error and reinstates the language originally adopted by the Judicial Council and contained in the rule until January 1, 2006, the proposal did not circulate for comment.

Because the proposed form revision merely returns the form to the language in effect prior to January 1, 2006, to prevent confusion and error, and because proposed revisions to the form and amendments to its associated rule will be circulated for comment in the next RUPRO cycle, this proposal did not circulate for comment.

Implementation Requirements and Costs

None.

Attachments

Rule 38.3(g) of the California Rules of Court is amended, effective February 24, 2006, to read:

Rule 38.3. Writ petition under Welfare and Institutions Code section 366.28 and rule 1436.5 to review order designating specific placement of a dependent child after termination of parental rights

(a)–(f) ***

(g) Stay

~~The reviewing court may stay the hearing set under Welfare and Institutions Code section 366.26, but must require an exceptional showing of good cause.~~

A request by petitioner for a stay of the posttermination placement order will not be granted unless the writ petition shows that implementation of the superior court's placement order pending the reviewing court's decision is likely to cause detriment to the child if the order is ultimately reversed.

(h)–(j) ***

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	**DRAFT 1** **02/07/06 cc** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD (California Rules of Court, Rule 38)	CASE NUMBER:

NOTICE

The court has set a hearing to make a permanent plan for this child. If you wish to preserve your right to appeal the court's decision, a petition for extraordinary writ must be filed. If you intend to file the petition for a writ, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within 7 days of the date specified in item 5a. If you received this notice by mail only, the notice of intent must be filed within 12 days after the date that the clerk mailed the notification. You may use this form to notify the court. The petition for extraordinary writ must be served within 10 days after the record is filed.

1. Petitioner's name:

2. Petitioner's address:

3. Petitioner's phone number:

4. Petitioner is
   a. ☐ parent *(name):*
   b. ☐ guardian
   c. ☐ county welfare agency
   d. ☐ child
   e. ☐ other *(state relationship to child or interest in the case)*:

5. a. On *(date)*: the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. I intend to file a petition for extraordinary writ to challenge the findings and orders made by the court on that date and request that the clerk assemble the record.
   b. List all known dates of the hearing that resulted in the order:

6. The hearing under Welfare and Institutions Code section 366.26 is set for *(date, if known):*

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ☐ PETITIONER ☐ ATTORNEY)

The notice of intent to file a writ petition must be signed by the party intending to file the writ petition, or if to be filed on behalf of the child, by the attorney of record for the child. Upon a finding of good cause, based on a declaration by the attorney of record as to why the party could not sign the notice, the appellate court may waive the requirement of the party's signature. (Cal. Rules of Court, rule 38(e)(3).) Signatories of this notice do not waive the notice requirements of Welfare and Institutions Code section 294.

Form Approved for Optional Use
Judicial Council of California
JV-820 [Rev. February 24, 2006]

Cal. Rules of Court, rule 38
Welfare and Institutions Code, § 366.26
www.courtinfo.ca.gov