

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli and Hon. Susan Huguenor, Co-Chairs
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DATE: September 21, 2004

SUBJECT: Juvenile Law: Miscellaneous Rules (amend Cal. Rules of Court, rules 37.2, 1438, 1449, and 1450) (Action Required)

Issue Statement

The Family and Juvenile Law Advisory Committee has grouped several juvenile-related issues into one proposal. Implementation of this proposal would promote compliance with statutory mandates and facilitate judicial consistency.

First, a rule of court is needed to specify which court is responsible for dependency appellate transcript costs in cases in which an intercounty transfer has occurred. The current arrangements between the counties regarding transcript costs are informal and inconsistent.

Second, Senate Bill 591 (Scott; stats. 2003, ch. 812) added section 16010.6 to the Welfare and Institutions Code. This section provides that a child's attorney must provide his or her contact information to the child's caregiver, and to the child, if the child is 10 or older within a specified time frame. The Judicial Council was required to adopt a rule of court directing children's attorneys to comply with section 16010.6.

Third, in 2003 Assembly Bill 524 (Haynes; stats. 2003, ch. 306) was enacted, adding section 361.1 to the Welfare and Institutions Code. The bill required the Judicial Council to adopt a rule of court to ensure that when a dependency petition is filed, the parent or guardian is advised that if the allegations contained in the petition are not proven, the child must be returned to the physical custody of the parent or guardian "immediately, but not more than two working days following" the court finding. The proposed amendments to rules 1449 and 1450 incorporate the requirements of section 361.1.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2005:

1. Amend rule 37.2 (previously rule 39) of the California Rules of Court to clarify that when an issue is appealed after the matter is transferred to another county pursuant to rule 1425, the court that made the order being appealed must pay all allowable costs for the preparation of the clerk's and reporter's transcripts.
2. Amend rule 1438 to require attorneys for dependent children to provide their contact information to the child's caregivers, and to the child in specified circumstances, in a timely manner.
3. Amend rule 1450 to provide that when allegations under Welfare and Institutions Code section 300 are not proven, the court must order the child's return to the physical custody of his or her parent or guardian within two working days of the decision. Revise rule 1449 to require the court to advise the parent or guardian that upon dismissal of the petition, their child must be returned within two days of the court order.

The text of the proposed amended rules is attached at pages 5–7.

Rationale for Recommendation

Juvenile appeals—rule 37.2

At its August 27, 2004, the Judicial Council adopted the final installment of the Appellate Advisory Committee, Appellate Rules Project Task Force's renumbering and revision of the appellate rules of the California Rules of Court. The council has approved renumbering and revising former rule 39, now rule 37.2. Revisions to former rule 39 were circulated for comment during the Spring 2004 RuPro cycle, and the committee proposes making those changes to the newly renumbered rule 37.2, consistent with the newly revised appellate rules, the intent of the circulated proposal, and the comments received.

The committee proposes amending rule 37.2 to promote efficiency and consistency between juvenile courts when there has been an intercounty transfer and a subsequent appeal. Staff has learned from court executives that an informal arrangement exists between courts whereby the court that made the order being appealed pays for the cost of transcript preparation for indigent parents and children. However, recently disagreements have arisen between courts about which court is responsible for the costs associated with appellate record preparation. This amendment would promote uniformity by clarifying which court is responsible for the cost of preparing transcripts for appeal when there has been an intercounty transfer.

Attorneys for parties—rule 1438

The committee proposes amending rule 1438 to reflect the new statutory requirement that an attorney for a dependent child promptly provide his or her contact information to the child's caregiver, and to the child if the child is 10 or older, upon receipt of the caregiver's name, address, and telephone number.

In 2003 the California Legislature enacted SB 591, which, in part, added section 16010.6 to the Welfare and Institutions Code. Under section 16010.6(b) the attorney must provide his or her contact information to the child's caregiver—and, in specified circumstances, the child—in a “timely” manner. To provide maximum guidance to juvenile attorneys, the committee recommends that the rule define “timely” as not more than 10 days. The committee believes that 10 days (1) is the maximum period that should elapse before the caregiver and/or child receives the attorney's contact information, (2) is a reasonable period of time in which to require contact between the attorney and the caregiver and child, and (3) is consistent with the statutory intent, including the statutory requirement that the council adopt a rule that implements the statute.

Commencement of jurisdiction hearing—rule 1449

Contested hearing on petition—rule 1450

The committee proposes amending rule 1450 to reflect the new statutory provision that, upon the court's finding that a child is not an abused or neglect child as set forth in section 300 of the Welfare and Institutions Code, the child must be returned to the physical custody of his or her parent or guardian within two working days, and rule 1449 to require the court to advise the parent or guardian of the court's obligation to return the child under rule 1450.

AB 524, signed into law in 2003, enacted Welfare and Institutions Code section 361.1, which provides that the court must advise parents and guardians that if a child is removed from a parent or guardian and the juvenile court subsequently finds that the child does not come within its jurisdiction under Welfare and Institutions Code section 300, the child must be returned to the parent or guardian “immediately..., but, in any case, not more than two working days following the date of that finding, unless the parent or guardian and the agency with custody of the child agree to a later date for the child's release.” These amendments would ensure that parents and guardians are properly advised of their rights and that children are promptly returned to home following dismissal of a dependency petition.

Alternative Actions Considered

The proposed amendments to rules 1438, 1449, and 1450 reflect statutory mandates that the Judicial Council adopt rules of court implementing the statutes. Therefore, no alternatives were considered. With respect to rule 37.2, the committee considered allowing the informal arrangements to continue without intervention but decided the amendment was necessary to provide clarification and consistent administration of appellate transcript costs among the counties.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 5, 2004, through June 4, 2004, to the standard mailing list for family and juvenile law proposals, as well as the regular rules and forms mailing list. This distribution list includes judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. We received a total of six comments. Five commentators agreed with the proposed changes. One commentator agreed with the proposal only if it was modified and suggested technical changes. No commentators disagreed with this proposal.

One commentator pointed out that the Welfare and Institutions Code uses the word *shall* when describing a mandatory duty or procedure and suggested that to promote consistency with the statutes, the rules of court also use the word *shall* rather than *must* in its revisions. The policy of the Judicial Council is to remove the word *shall* from rules that are being revised and replace it with the appropriate explicit term to enhance the clarity of the rules.

The same commentator noted the use of both the terms *attorney* and *counsel* in the rules of court and suggested that the term *attorney* be used throughout since that is the term used in the Welfare and Institutions Code. The committee considered both terms and concluded that they are synonymous. It is the committee's recommendation that, in the process of renumbering the rules of court, definitions of both terms be added to avoid any confusion about their meaning and usage.

The comments and the committee's responses are summarized in the chart attached at pages 8–9.

Implementation Requirements and Costs

Courts that use the form will incur standard reproduction costs.

Attachments

Rules 37.2, 1438, 1449, and 1450 of the California Rules of Court are amended, effective January 1, 2005, to read:

1 **Rule 37.2. Preparing, sending, augmenting, and correcting the record**

2
3 (a)–(e) ***

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5 **(f) Cost of record on appeal**

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7 In an appeal following an intercounty transfer order the court that made the
8 order being appealed must pay all allowable costs of preparing the clerk’s and
9 reporter’s transcripts if the parent or child is indigent.

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11 **Rule 1438. Attorneys for parties (§§ 317, 317.6)**

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13 (a)–(b) ***

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15 (c) **[Competent counsel]** Every party in a dependency proceeding who is
16 represented by an attorney is entitled to competent counsel.

17
18 (1)–(4) ***

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20 (5) (Attorney contact information) The attorney for a dependent child must
21 provide his or her contact information to the child’s caregiver no later
22 than 10 days after receipt of the name, address, and telephone number of
23 the child’s caregiver. If the child is 10 years of age or older, the attorney
24 must also provide his or her contact information to the dependent child no
25 later than 10 days after receipt of the caregiver’s contact information.
26 The attorney may give contact information to a dependent child who is
27 under 10 years of age.

28
29 ~~(5)~~(6) (Caseloads for children’s attorneys) The attorney for a child must have
30 a caseload that allows the attorney to perform the duties required by
31 Welfare and Institutions Code section 317(e) and this rule and to
32 otherwise adequately counsel and represent the child. To enhance the
33 quality of representation afforded to children, attorneys appointed under
34 this rule must not maintain a maximum full-time caseload that is greater
35 than that which allows them to meet the requirements set forth in (3), ~~and~~
36 (4), and (5).

37
38 (d)–(f) ***

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40 **Rule 1449. Commencement of jurisdiction hearing—advice of trial rights;**
41 **admission; no contest; submission**

1 (a) [Petition read and explained (§ 353)] At the beginning of the jurisdiction
2 hearing, the petition shall ~~shall~~ must be read to those present. On request of the child
3 or the parent, guardian, or adult relative, the court shall ~~shall~~ must explain the
4 meaning and contents of the petition and the nature of the hearing, its
5 procedures, and the possible consequences.
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7 (b) [Rights explained (§§ 341, 353, 361.1)] After giving the advice required by
8 rule 1412, the court shall ~~shall~~ must advise the parent or guardian of the following
9 rights:
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11 (1) The right to a hearing by the court on the issues raised by the petition;
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13 (2) The right to assert the privilege against self-incrimination;
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15 (3) The right to confront and to cross-examine all witnesses called to testify
16 against the parent or guardian;
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18 (4) The right to use the process of the court to compel attendance of
19 witnesses on behalf of the parent or guardian; and
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21 (5) The right, if the child has been removed, to have the child returned to the
22 parent or guardian within two working days after a finding by the court
23 that the child does not come within the jurisdiction of the juvenile court
24 under Welfare and Institutions Code section 300, unless the parent or
25 guardian and the child welfare agency agree that the child will be released
26 on a later date.
27

28 (c)–(g) ***
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30 Rule 1450. Contested hearing on petition 31

32 (a)–(g) ***
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34 (h) [Findings of court—allegations not proved (§§ 356, 361.1)] If the court
35 determines that the allegations of the petition have not been proved by a
36 preponderance of the evidence, the court shall ~~shall~~ must dismiss the petition, and
37 terminate any detention orders relating to the petition, ~~and~~. The court must
38 order that the child be returned to the physical custody of the parent or
39 guardian immediately but, in any event, not more than two working days
40 following the date of that finding, unless the parent or guardian and the agency
41 with custody of the child agree to a later date for the child's release. The court
42 must make the following findings, noted in the order of the court:
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- (1) Notice has been given as required by law;
- (2) The birthdate and county of residence of the child;
- (3) The allegations of the petition are not proved.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Diane Altamirano Family Law Facilitator Superior Court of Imperial County	A	N	I applaud the changes to these rules.	No response required.
2.	Hon. Barbara J. Beck Presiding Judge, Juvenile Court Superior Court of Santa Barabara County	A	N	<i>No specific comment.</i>	No response required.
3.	Regina Deihl Executive Director, Legal Advocates for Permanent Planning (LAPP)	A	N	Rule 1438: The proposed amendment to Rule 1438 will ensure that the child and his or her caregivers are able to contact the child’s attorney with information relevant to the child’s health and safety. The rule will facilitate improved outcomes for children by providing additional information to the child’s court-appointed counsel about his or her client’s progress and needs from those with the most day-to-day contact with the child.	No response required.
4.	Hon. John Dobroth Judge Superior Court of Ventura County	A	N	<i>No specific comment.</i>	No response required.
5.	Kim Hubbard President, Orange County Bar Association	AM	Y	<p>1. Rule 37.2: We recommend replacing the reference to the “verbatim transcript” to “the clerk’s and reporter’s transcripts as described in subdivision (c)” to avoid confusion over the term “verbatim transcript.”</p> <p>2. Rule 1438: If consistency with the rules is the goal, the references to “attorneys” should be replaced with the term “counsel,” as referenced in the Welfare</p>	<p>1. The committee agrees to modify the rule to promote consistent application and avoid confusion.</p> <p>2. The committee believes that the terms <i>counsel</i> and <i>attorney</i> are used synonymously and therefore, at this time,</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>and Institutions Code sections 317 & 317.6. As it reads now, however, rule 1438 refers to both “attorney” and counsel,” so this suggested modification is not essential.</p> <p>3. Rule 1449: Welfare and Institutions Code sections 353, 356, and 361.1, referenced in these rules, all use “shall” not “must.” Accordingly, we recommend that the “shall” language remain, so the rules are consistent with the code.</p>	<p>recommends against making the change from <i>counsel</i> to <i>attorney</i> in the rule.</p> <p>3. Consistent with Judicial Council policy, effective January 1, 2002, to replace the word <i>shall</i> in all rules of court, the committee recommends against this modification.</p>
6.	Stephen V. Love Executive Officer Superior Court of San Diego County	A	N	<p>1. Rule 37.2: Update references to Civil Code section 232 to “part 4 (commencing with section 7800) of division 12 of the Family Code,”.</p> <p>2. Form JV-825: Update references to Civil Code section 232 to “part 4 (commencing with section 7800) of division 12 of the Family Code,” as well as in form JV-825 item 3a.</p> <p>3. Rule 1438: Grammatical changes to Rule 1438 (c)(6), next to last line, adding a common after (3), removing “and”, placing a common after (4) and adding “and” after (4).</p>	<p>1. The committee agrees that the modification to former Rule 39 is necessary in order for the rule to reflect the proper statutory reference. The appellate rules renumbering and revision project addressed this reference.</p> <p>2. This rule was circulated for comment, but has since been withdrawn. The suggested change, along with other revisions, will be made in the next RUPRO cycle.</p> <p>3. Agree to modify the text to improve grammar while retaining simplicity.</p>