

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

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report Summary**

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee  
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs  
Ms. Jennifer Walter, Supervising Attorney, 415-865-7687,  
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DATE: September 12, 2006

SUBJECT: Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406;  
amend Cal. Rules of Court, rules 8.404, 8.412, 8.416, 8.450, 8.452, and 8.456;  
revise forms JV-820 and JV-822) (Action Required)<sup>1</sup>

Issue Statement

In 2004, the Judicial Council adopted the Appellate Rules Project Task Force's proposed technical revisions to the California Rules of Court relating to juvenile proceedings in the Courts of Appeal. During the public comment period for these technical revisions, and during the Spring 2005 regular cycle, many commentators suggested substantive changes to these rules. The proposed revisions to the juvenile appellate rules and forms address these comments and would clarify procedures and timelines for juvenile appeals.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2007:

1. Amend rule 8.404 to (a) include dispositional findings and orders in the normal appellate record, (b) include tribes as persons who may apply to the superior court for addition to the normal record, (c) replace the cross-reference to rule 31.1(c)–

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<sup>1</sup> At the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, the rules that were numbered 37 et seq. have been renumbered as rules 8.400 et seq., and new format conventions have been adopted. Hence, the rule amendments are shown throughout this proposal using the new rule numbers that will become effective January 1, 2007. The rules in this proposal were renumbered as follows: rule 8.404 is former rule 37.1; rule 8.412 is former rule 37.3; rule 8.416 is former rule 37.4; rule 8.450 is former rule 38; rule 8.452 is former rule 38.1. Rules 8.406 is a proposed new rule.

- (d)<sup>2</sup> that explains the procedure for applying for addition to the normal record, with the text of these procedures from rule 31.1(c)–(d);
2. Adopt rule 8.406 to add a procedure for creating a record when more than one appeal is taken from the same judgment or related order;
  3. Amend rule 8.412 to exclude dependency appeals in Orange, Imperial, and San Diego Counties and appeals from the termination of parental rights from the 30-day extension of time provided for late briefs in other dependency appeals;
  4. Amend rule 8.416 to add a 15-day extension of time if an appellant or respondent fails to file a brief in dependency appeals in Orange, Imperial, and San Diego Counties and appeals from the termination of parental rights;
  5. Amend rule 8.450 to (a) include time requirements for filing a notice of intent based on the method of service and place of address, and (b) deem timely a notice of intent mailed or delivered to custodial officials for mailing within the time provided for filing the notice of intent;
  6. Amend rules 8.452 and 8.456 to provide counsel 7 days to request augmentation if the record for a writ petition to review an order setting a hearing under Welfare and Institutions Code section 366.26 or an order designating or denying a specific placement under Welfare and Institutions Code section 366.28 exceeds 300 pages;
  7. Revise form JV-820 to (a) explain the time requirements for filing a notice of intent, (b) explain that a notice of intent mailed or delivered to custodial officials for mailing within the time provided for filing the notice of intent will be deemed timely, (c) clarify that a child’s attorney may sign the notice of intent, (d) explain what will happen at the hearing under Welfare and Institutions Code section 366.26, and (e) explain how to challenge the court’s decision; and
  8. Revise form JV-822 to (a) explain the time requirements for filing a notice of intent, (b) clarify that a child’s attorney may sign the notice of intent, and (c) explain how to challenge the court’s decision.

The text of the rules is attached at pages 16–22; forms JV-820 and JV-822 are attached at pages 23–26.

### Rationale for Recommendation

#### *Rule 8.404*

Amending rule 8.404 will create a more complete normal record on dependency appeals and will clarify the process of applying for additions to the normal record. Currently, the normal record in juvenile appeals does not include the court’s findings and orders from a disposition hearing. These findings and orders provide the foundation for most subsequent actions in the case.

#### *Rule 8.406*

Adopting rule 8.406 will create a process for preparing the appellate record when more than one appeal is taken from the same judgment or related order. The juvenile appellate rules do not currently include a procedure for multiple appeals even though it is common

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<sup>2</sup> Effective January 1, 2007, this will be rule 8.325.

in dependency appeals for more than one appeal to be taken from the same judgment or order.

*Rule 8.412*

Amending rule 8.412 will correct a cross-referencing error made in prior cycles that inadvertently created a 30-day grace period when appellate briefs for appeals in Orange, Imperial, and San Diego Counties and briefs for appeals from termination of parental rights were not timely. This error has created statewide discrepancies in the time for filing briefs for these appeals.

*Rule 8.416*

Amending rule 8.416 will clarify the extension of time provided when counsel fails to file a brief for an appeal in Orange, Imperial, and San Diego Counties or a brief for an appeal from termination of parental rights by (a) eliminating the 30-day grace period inadvertently created in prior cycles that has inconsistently applied throughout the state, (b) by creating a 15-day grace period that balances the requirements that juvenile appeals be handled expeditiously with the need for uniform appellate practices throughout the state.

*Rule 8.450*

Amending rule 8.450 will clarify the timelines for persons filing a notice of intent by (a) specifying the time for filing based on how the notice was provided and where it was mailed to, and (b) specifying how to determine if a notice of intent mailed from a custodial institution is timely. These notices are frequently filed by pro per parties who are often parents or family members who live outside of California or who are institutionalized. The proposed changes to this rule, together with the proposed changes to the accompanying form, Form 820, will succinctly explain the time for filing for all persons who may file a notice of intent.

*Rule 8.452*

Amending rule 8.452 will allow for more complete records of orders setting a hearing under Welfare and Institutions Code section 366.26 by providing appellate counsel 7 days after receiving the record to request augmentation of a record that exceeds 300 pages.

*Rule 8.456*

Amending rule 8.456 will allow for more complete records of orders granting or denying a specific placement request under Welfare and Institutions Code section 366.28 by providing appellate counsel 7 days after receiving the record to request augmentation of a record that exceeds 300 pages.

*Form JV-820*

Revising form JV-820 will explain the timeline and procedures for filing a notice of intent to file a writ petition from orders setting a hearing under Welfare and Institutions

Code section 366.36 with language and a format that will be more accessible to pro per clients who frequently use this process and form.

#### *Form JV-822*

Revising form JV-822 will explain the timeline and procedures for filing a writ petition from orders granting or denying a specific placement under Welfare and Institutions Code section 366.28 with language and a format that will be most accessible to pro per clients who frequently use this process and form.

#### Alternative Actions Considered

The proposed amendments and revisions are necessary to facilitate the expedited juvenile appeals process and to bring the juvenile appellate forms into compliance with their respective rules of court. No alternative actions were considered, but in response to concerns raised by a number of commentators several parts of the initial proposal have been withdrawn. Specifically, the committee eliminated proposed addition to rule 8.400, which would have a) provided a procedure for abandonment and stipulation to abandon an appeal, b) required appellate counsel for a child to determine whether a motion to dismiss the appeal is in the child's best interest and c) allowed a guardian or child not represented on appeal to seek approval of a compromise on the appeal; and the committee removed from its proposal the proposed addition to rule 8.404, which would have eliminated the trial court's discretion to consider an application for addition to the normal record filed after the proposed time for filing.

#### Comments From Interested Parties

Twenty-four individuals and organizations submitted comments on this proposal. Of these, 8 commentators supported adoption of the proposal as circulated. The remaining sixteen commentators expressed concerns about the proposal, either disagreeing with certain amendments or suggesting modification.

The commentators raised the most concern and provided the most suggested changes about (a) the proposed elimination of the trial court's discretion to consider an application for addition to the normal record filed after the proposed time for filing, (b) the proposed addition of a procedure for a guardian or child not represented on appeal to seek approval of a compromise on the appeal, (c) the proposed addition of a procedure for abandonment and stipulation to abandon an appeal and (d) the proposed requirement that would limit an appellate counsel for a child's ability to request a dismissal of the appeal to circumstances when the appellate counsel found the dismissal to be in the child's best interest. In response to these comments, the committee withdrew from this proposal new rule 8.402, which would have provided a procedure for abandonment of, and stipulation to abandon and compromise on, an appeal; the addition to rule 8.404, which would have eliminated the trial court's discretion to consider an application for addition to the normal record filed after the proposed time for filing; withdrew rule 8.400(h)(3), which would have allowed a guardian or child not represented on appeal to seek approval of a compromise on the appeal; and withdrew the requirement in rule 8.400(h)(2), which

would have required appellate counsel for a child to determine a motion to dismiss the appeal is in the child's best interest.

The comments are attached at pages 27–66.

#### Implementation Requirements and Costs

Implementation of the forms revisions will incur standard reproduction costs, but clarification of the issues addressed in the proposed changes will ultimately eliminate uncertainty and thus reduce costs.

Attachments

**JUDICIAL COUNCIL OF CALIFORNIA  
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**Report**

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee  
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Ms. Jennifer Walter, Supervising Attorney, 415-865-7687,  
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DATE: September 12, 2006

SUBJECT: Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend Cal. Rules of Court, rules 8.404, 8.412, 8.416, 8.450, 8.452, and 8.456; revise forms JV-820 and JV-822) (Action Required)<sup>3</sup>

Issue Statement

In 2004, the Judicial Council adopted the Appellate Rules Project Task Force's proposed technical revisions to the California Rules of Court relating to juvenile proceedings in the Courts of Appeal. During the public comment period for these technical revisions, and during the Spring 2005 regular cycle, many commentators suggested substantive changes to these rules. The proposed revisions to the juvenile appellate rules and forms address these comments and would clarify procedures and timelines for juvenile appeals.

Rationale for Recommendation

*Rule 8.404—Adding a court's disposition findings and orders to the normal record on appeal and providing a procedure for application for addition to the normal record.* Amending rule 8.404 will create a more complete normal record on dependency appeals, will clarify the process of applying for additions to the normal record, and will create a process for preparing the appellate record when more than one appeal is taken from the same judgment or related order. Currently, the normal record in juvenile appeals does not include the court's findings and orders from a disposition hearing. These findings and

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<sup>3</sup> At the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, the rules that were numbered 37 et seq. have been renumbered as rules 8.400 et seq., and new format conventions have been adopted. Hence, the rule amendments are shown throughout this proposal using the new rule numbers that will become effective January 1, 2007. The rules in this proposal were renumbered as follows: rule 8.404 is former rule 37.1; rule 8.412 is former rule 37.3; rule 8.416 is former rule 37.4; rule 8.450 is former rule 38; rule 8.452 is former rule 38.1. Rule 8.406 is a proposed new rule.

orders provide the foundation for most subsequent actions in the case and are required for a complete appellate record.

Currently, rule 8.404 directs a party applying for addition to the normal record to follow the procedures in rule 8.324. This rule requires an appellant to file the application with the notice of appeal or as soon thereafter as possible and explains that the application will be treated as denied if filed after the record is sent to the reviewing court. Comments were received in prior rule cycles stating the juvenile appellate rules should be amended to decrease delay. Eliminating the cross reference to, and including the procedure for, applying for addition to the normal record will make this rule self contained, a goal of recent juvenile law rule revisions.

*Rule 8.406—Providing a procedure for creating the record for multiple appeals*

The juvenile appellate rules do not currently include a procedure for multiple appeals even though it is common in dependency appeals for more than one appeal to be taken from the same judgment or order. During prior rule cycles, appellate attorneys commented that juvenile appellate rules do not include the rule 10(a)<sup>4</sup> provisions for multiple and later appeals and suggested they be incorporated into the juvenile appellate rules because many of these cases span many years and often include multiple and later appeals.

*Rule 8.412—Excluding juvenile appeals in Imperial, Orange and San Diego Counties and juvenile appeals on termination of parental right from the 30-day grace period allowed on late briefs on all other juvenile appeals.*

Amending rule 8.412 will correct a cross-referencing error<sup>5</sup> made in prior rule amendments that inadvertently created a 30-day grace period for untimely briefs for appeals in Orange, Imperial, and San Diego Counties and briefs for appeals from termination of parental rights<sup>6</sup>. Meanwhile, rule 8.416 was initially drafted to provide no extension of time for late briefs on these appeals. The lack of certainty caused by this cross-referencing error has created statewide discrepancies in the time for filing briefs for these appeals. This change, together with the amendment of rule 8.416, is intended to harmonize the rules and clarify the grace period for these specific appellate briefs.

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<sup>4</sup> Effective January 1, 2007, this will be rule 8.147.

<sup>5</sup> In 2002, the text of former rule 17(c), which provided that in criminal appeals the grace period after failing to file a brief is 30 days, was moved to rule 37, then subsequently moved into former rule 37.3(b)(5). Prior to these changes, rule 39.1A cross-referenced former rule 37 regarding brief format requirements. Due to the movement of the former rule 17(c) language and due to the former rule 39.1A cross-reference, these rule amendments inadvertently created a 30-day grace period to the time for filing appeals from termination of parental rights and appeals in Orange, Imperial, and San Diego Counties. This inadvertent change was affirmatively incorporated into the juvenile appellate rules in 2005 when rule former 39.1A was renumbered and amended. The amendment deleted the cross-reference and added the 30-day grace period language to the rule itself.

<sup>6</sup> This rule was developed and extended as a pilot program for Orange, Imperial, and San Diego Counties. The rule sets forth an expedited appeal process and, among other things, does not provide a grace period for untimely briefs filed in any dependency appeal these counties. The cross-referencing error noted above mistakenly provided a 30-day grace period in these juvenile dependency appeals.

*Rule 8.416—Providing a 15-day grace period to juvenile appeals in Imperial, Orange, and San Diego Counties and to juvenile appeals of termination of parental rights.*

Amending rule 8.416 will clarify the extension of time provided when counsel fails to file a brief for an appeal in Orange, Imperial, and San Diego Counties or a brief for an appeal from termination of parental rights by (a) eliminating the 30-day grace period inadvertently created in prior rule cycles, and (b) by creating a 15-day grace period. This shorter, 15-day grace period balances the requirement that juvenile appeals be handled expeditiously because of the need for permanency for the children involved with the need for uniform appellate practices throughout the State. Since 2002, appellate practitioners have had a 30-day grace period within which they can file untimely briefs on appeals from termination of parental rights and the briefs will be considered timely. Since 2005, this extension of time has also been available on appeals in Imperial, Orange, and San Diego Counties. This 30-day grace period was not intentional but it resulted in the California appellate courts following different timelines for the filing of briefs for these appeals, and has resulted in different consequences if these briefs are not timely filed. The rule 8.416 proposed 15-day grace period balances the courts' need to have consistent statewide timelines, to protect appellants' rights, and to decide the appeal within 250 days of the filing of the notice of appeal.

To conform to the proposed changes in these rules, the committee recommends removing the 2005 advisory committee comment for rule 8.416 that applied the rule 8.412(d) 30-day grace period to termination of parental rights appeals and all appeals in Orange, Imperial, and San Diego Counties. The new advisory committee comment would explain the above proposed revisions to rules 8.412 and 8.416.

*Rule 8.450—Regarding an order setting a hearing under Welfare and Institutions Code section 366.26—clarifying the postmark date, specifying the time for filing notice of intent, and clarifying timely filing from a custodial institution*

Amending rule 8.450 will clarify the timelines for persons filing a notice of intent by (a) specifying the time for filing based on how the notice was provided and where it was mailed, and (b) specifying how to determine if a notice of intent mailed from a custodial institution was timely filed. These notices are frequently filed by pro per parties who are often parents or family members who live outside of California or who are institutionalized. The timeline adopts the approach of California Civil Procedure Code section 1013(a)—which gives additional time to complete an act if notice was mailed outside of California or outside of the country—addressing when service of notice is complete, the time to act in response to such notice, and the time by which the notice of intent must be filed. The amendment would provide that time is extended depending on the method of service and place of address. In Spring 2005, the Council revised the notice section of form JV-820 to clarify notice of intent timelines and to allow petitioners additional time, as allowed in the California Civil Procedure Code section 1013, for filing form JV-820 if the notice of hearing was received by mail. However, because rule 8.450(e)(5) was not amended accordingly, an unintended conflict arose between the rule and the form. This proposed change would apply the changes previously approved for

form JV-820 to both form JV-820 and rule 8.450(e)(5), making the form and rule consistent and providing clear timelines in all circumstances for all petitioners receiving notice.

*Rule 8.452—Regarding an order setting a hearing under Welfare and Institutions Code section 366.26—Providing appellate counsel 7 days to request augmentation of a record more than 300 pages*

Amending rule 8.452 will allow for more complete records of orders setting a hearing under Welfare and Institutions Code section 366.26 by providing appellate counsel 7 days after receiving the record to request augmentation of a record that exceeds 300 pages. This proposed change addresses concerns of appellate counsel that the current provision of 5 days is not enough time to review a record longer than 300 pages and determine if augmentation is necessary.

*Rule 8.456—Regarding an order granting or denying a specific placement under Welfare and Institutions Codes section 366.28— providing appellate counsel 7 days to request augmentation of a record more than 300 pages*

Amending rule 8.456 will allow for more complete records of orders granting or denying a specific placement request under Welfare and Institutions Code section 366.28 by providing appellate counsel 7 days after receiving the record to request augmentation of a record that exceeds 300 pages. This proposed change addresses concerns of appellate counsel that the current provision of 5 days is not enough time to review a record longer than 300 pages and determine if augmentation is necessary.

*Form JV-820— Regarding an order setting a hearing under Welfare and Institutions Code section 366.26—explaining the time for filing and procedure for filing a notice of intent and clarifying that an attorney for a child who is a minor parent may sign the notice of intent*

Revising form JV-820 will explain the timeline and procedures for filing a notice of intent to file a writ petition from orders setting a hearing under Welfare and Institutions Code section 366.26. The form is being revised to conform to the proposed changes in rule 8.450. The committee recommends revising both forms JV-820 and JV-822 to simplify the forms for petitioners. During the Spring 2005 comment cycle, and during the drafting period of this proposal, comments were received from practitioners, juvenile law judicial officers, and committee members requesting the notice section on these forms be simplified for petitioners because the petitioners, whether represented or not, are required to personally sign the form. The proposed revisions to forms JV-820 and JV-822 would clarify the timeline for filing these forms. The revisions to form JV-820 will also add a box indicating that an attorney for a child client can sign the notice of intent.

*Form JV-822—Regarding a hearing granting or denying a specific placement under Welfare and Institutions Code section 366.28— explaining the time for filing, and procedure for filing, a notice of intent and clarifying that an attorney for a child who is a minor parent may sign the notice of intent*

Revising form JV-822 will explain the timeline and procedures for filing a writ petition from orders granting or denying a specific placement under Welfare and Institutions Code section 366.28. Because this form responds to a different statute (Welfare and Institutions Code section 366.28) than does Form JV-820 (Welfare and Institutions Code section 366.26), the notice requirements are different. There is no requirement for the clerk to give either oral notice at the hearing or mailed notice of an order granting or denying a post-termination placement under Welfare and Institutions Code section 366.28—presumably because parents are no longer involved as their rights have already been terminated—therefore the time for filing a notice of intent is also different than that in Form JV-820. The language and format used are accessible to pro per clients who frequently use this process and form. The revisions to form JV-822 will also add a box indicating that an attorney for a child client can sign the notice of intent.

#### Alternative Actions Considered

The proposed amendments and revisions are necessary to facilitate the expedited juvenile appeals process and to bring the juvenile appellate forms into compliance with the corresponding rules of court. No alternative actions were considered, but in response to concern by a number of commentators several parts of the initial proposal have been removed. Specifically, the committee eliminated proposed addition to rule 8.400, which would have a) provided a procedure for abandonment and stipulation to abandon an appeal, b) required appellate counsel for a child to determine whether a motion to dismiss the appeal is in the child's best interest and c) allowed a guardian or child not represented on appeal to seek approval of a compromise on the appeal; and the committee removed from its proposal the proposed addition to rule 8.404, which would have eliminated the trial court's discretion to consider an application for addition to the normal record filed after the proposed time for filing.

#### Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 24, 2006, through June 23, 2006, 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. Twenty-four individuals and organizations submitted comments on this proposal. Of these, 8 commentators supported adoption of the proposal as circulated. The remaining sixteen commentators expressed concerns about the proposal, either disagreeing with certain amendments or suggesting modification.

Appropriate changes have been made to address the vast majority of comments, which suggested minor grammatical or technical changes to improve clarity and accuracy. Several commentators suggested substantive changes to the committee's proposed amendments. These suggestions and the committee's responses are summarized below.

#### *Rule 8.400—Juvenile Appeals Generally, Abandonment, Dismissal, and Compromise*

As circulated for comment, rule 8.400(h) addressed abandonment, voluntary dismissal and compromise of juvenile appeals. After consideration of proposed rule 8.400(h) and the many comments received, the committee decided to withdraw the entire rule for further review of its potential effect on the discretion of the court, the role of counsel, and the prompt determination of juvenile appeals. As explained below and in the comment chart, the committee will incorporate many of the suggested changes into future proposed amendments to juvenile appellate rules. For consistency with other appellate rules, the committee will propose separating out proposed subdivision (h) into a separate rule, proposed rule 8.402.

Subdivision (h)(1), addressing abandonment before the record is filed, received technical comments and appropriate changes have been noted for future proposals. Commentators raised significant concerns about subdivision (h)(2) and subdivision (h)(3)—addressing, respectively, abandonment and dismissal after the record is filed and abandonment and dismissal by counsel for a child in a dependency proceeding—specifically regarding the role of counsel for a child and the jurisdiction of the appellate and trial courts on juvenile appeals to determine the best interest of a child.

Rule 8.400(h)(2) addressed a request or stipulation to dismiss an appeal after the record is filed in the Court of Appeal. It closely followed the language of rule 20, but additional language was provided to address the holding of the California Supreme Court in *In re Josiah Z.* (2005) 36 Cal.4th 664, 680-681. As circulated for public comment, the language proposed read “If the request for dismissal is filed by the appellate counsel for a child, the dismissal must be authorized by the child or the child’s CAPTA guardian ad litem and must be based on appellate counsel’s assessment of the child’s best interest.” In response to this language, commentators noted that children in the dependency system are often of an age where their views are entitled to be considered, that the proposed language fails to account for the circumstances when the appellate counsel may be bound by a competent child’s wishes regardless of the counsel’s assessment of best interest, and stated that the holding in *In re Josiah Z.* did not limit an appellate counsel for a child’s ability to move to dismiss an appeal to the counsel’s determination regarding the child’s best interest. Initially, the committee addressed these concerns by amending subdivision (h)(2) to read “If the request or stipulation for dismissal is filed by the appellate counsel for a child the dismissal must be authorized by the child or the child’s CAPTA guardian ad litem.” As the CAPTA guardian ad litem rule only applies to dependency cases, commentators also suggested this paragraph be limited to apply only to dependency appeals. The committee will incorporate these suggestions into future proposed amendments to juvenile appellate rules.

As circulated for public comment, subdivision (h)(3) stated “if a guardian or child who is a party to the proceeding but not represented on appeal seeks approval of a proposed compromise of a pending appeal, the Court of Appeal may, before ruling on the compromise, direct the trial court to determine whether the compromise is in the best interest of the child and to report its findings.” Commentators suggested deleting this

paragraph because the term “compromise” was vague and because this procedure may cause delay. Additional concerns were raised regarding the potential conflict this paragraph might create with the jurisdiction of the Court of Appeal. Commentators stated the Court of Appeal has jurisdiction over the appeal and if the guardian or child do not agree with the compromise or stipulation he or she could file a brief rather than have it sent back to juvenile court for approval. Commentators also suggested that the proposed amendments circumvent the Supreme Court’s holding in *In re Zeth S.* (2003) 31 Cal.4th 396, 405, by permitting a party who has not timely appealed to seek and obtain a change in the judgment or order from the reviewing court. Based on these concerns, and because a party represented on the appeal may present the compromise to the Court of Appeal, the committee has decided to withdraw the proposal regarding compromise of juvenile appeals. The committee will not consider including compromise of juvenile appeals in future proposals unless additional comments are received that warrant such consideration.

#### *Rule 8.404–Normal Record*

As circulated for comment, rule 8.404 modified the procedure for applying for addition to the normal record by requiring that the appellant file any such application with the notice of appeal, thereby eliminating the option to file it “as soon thereafter as possible,” and by requiring the respondent to file an application within five days of appellant’s notice of appeal. Commentators raised concerns that this attempt to decrease delay in preparing the record would actually create more delay because appellate counsel would subsequently need to file more requests for augmentation. Commentators noted that removing the provision allowing the application to be filed “as soon thereafter as possible” removed the trial court’s discretion to consider applications filed after the notice of appeal. Based on these comments, the committee decided against any change in the time for applying for additions to the record in the trial court, but simply agreed to recommend replacing the cross-reference to rule 8.324 (c)–(d) with the actual language from that rule.

#### *Rule 8.406—Multiple Appeals*

As circulated for comment, rule 8.404(g)(2) added procedures for preparing the record on multiple and later appeals. With regard to later appeals, the proposed rule would have allowed parties to incorporate parts of a record in a prior appeal in the same case by specifying those parts in the notice of appeal. Commentators suggested deleting the provision for later appeals. They noted that the provisions for later appeals are not workable in the dependency appeals process. While later appeals do occur in these cases, generally the appellate attorney does not have access to the prior record as the attorney is not the same attorney that handled the prior appeal. In the cases where the attorney is the same attorney that handled the prior appeal, the attorneys generally mail the record to the client and do not have access to the record. Comments from the Appellate Advisory committee also noted that the courts often file the records in storage and do not have ready access to these records. Based on these comments, the committee has decided to withdraw the provision for later appeals. For consistency with other appellate rules, the committee decided to break out subdivision (g), regarding multiple appeals, into a separate rule, now proposed rule 8.406.

*Rules 8.454 and 8.456–Writ Petitions under Welfare and Institutions Code Section 366.28 to Review an Order Designating or Denying a Specific Placement*

Commentators suggested adding a requirement to rule 8.454 or rule 8.456 that would require courts, after deciding to grant or deny a specific placement, to advise parties that they must file a writ petition to seek review of the court’s findings and orders and to preserve any right to appeal issues decided. Commentators noted that Welfare and Institutions Code section 366.26(1)(3)(A)<sup>7</sup> requires the court give this advisement orally, and the clerk to give notice by mail, after a court sets a hearing under Welfare and Institutions Code section 366.26 to consider termination of parental rights and that the consequences for not filing a writ in both situations is the same.

The committee declined to add this suggested notice requirement. This notice and advisement are not required by Welfare & Institutions Code section 366.28, the statute controlling hearings for a specific placement request. Adding this advisement would imply that after a section 366.28 decision, a clerk also must comply with the written notice requirements of section 366.26(1)(3)(A). The parties to a section 366.26 hearing are not similarly situated to the parties of a section 366.28 hearing and therefore are not necessarily entitled to such notice. The writ petition to be filed after the setting of the section 366.26 hearing is the parties’ only means to prevent termination of parental rights and preserve the constitutionally protected parent-child relationship. The section 366.28 writ petition is filed after termination of parental rights and seeks review of a denial of a specified placement. Adding the advisement to section 366.28 hearings would expand the rights of the parties at these hearings beyond those rights provided by the statute.

*Other Comments*

Two commentators noted there are a number of changes to rules 8.412, 8.416, 8.450, 8.452, and 8.456 that apply to termination of parental rights under Welfare & Institutions Code section 366.26. These commentators stated there has been a great deal of confusion about the application of these termination of parental rights rules to delinquency cases and suggest clarification of whether these rules apply to delinquency cases. The committee declined to add such clarification. The changes that apply to the rules regarding termination of parental rights under Welfare & Institutions Code section 366.26 do not alter any previous requirement that delinquency courts follow a parallel track traditionally taken by the dependency courts in conducting permanency planning for a child.

Several commentators also made suggestions for additional substantive changes to these rules, including: elimination of the automatic grace periods for all dependency appeals statewide; shortening the time for filing the notice of appeal from 60 days to 30 days; increasing the time for filing the notice of intent for persons living outside the United

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<sup>7</sup> Welf. & Inst. Code section 366.26(1)(3)(A) requires the court to orally notify the parties present, and the clerk to notify the parties not present by first class mail, that the court has set a section 366.26 hearing and that the parties must file a petition for writ to preserve any issues for appeal.

States from 20 days to 30 days; and reexamining the provision preventing counsel from signing the notice of intent except for good cause. Because these suggestions were not part of the proposal previously circulated for public comment, the committee will consider them for inclusion in the Spring 2007 cycle.

A chart summarizing comments is attached at pages 27–66.

### Implementation Requirements and Costs

Implementation of the forms revisions will incur standard reproduction costs, but clarification of the issues addressed in the proposed changes will ultimately eliminate uncertainty and thus reduce costs.

### Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2007:

1. Amend rule 8.404 to (a) include dispositional findings and orders in the normal appellate record, (b) include tribes as persons who may apply to the superior court for addition to the normal record, and (c) replace the cross-reference to rule 31.1(c)–(d)<sup>8</sup> that explains the procedure for applying for addition to the normal record, with the text of these procedures from rule 31.1(c)–(d) to the body of rule 8.404.
2. Adopt rule 8.406 to add a procedure for creating a record when more than one appeal is taken from the same judgment or related order.
3. Amend rule 8.412 to exclude dependency appeals in Orange, Imperial, and San Diego Counties and appeals from the termination of parental rights from the 30-day extension of time provided for late briefs in other dependency appeals.
4. Amend rule 8.416 to add a 15-day extension of time if an appellant or respondent fail to file a brief in dependency appeals in Orange, Imperial, and San Diego Counties and appeals from the termination of parental rights.
5. Amend rule 8.450 to (a) include time requirements for filing a notice of intent based on the method of service and place of address, and (b) deem timely a notice of intent mailed or delivered to custodial officials for mailing within the time provided for filing the notice of intent.
6. Amend rules 8.452 and 8.456 to provide counsel 7 days to request augmentation if the record for a writ petition to review an order setting a hearing under Welfare and Institutions Code section 366.26 or an order designating or denying a specific placement under Welfare and Institutions Code section 366.28 exceeds 300 pages.
7. Revise form JV-820 to (a) explain the time requirements for filing a notice of intent, (b) explain that a notice of intent mailed or delivered to custodial officials for mailing within the time provided for filing the notice of intent will be deemed timely, (c) clarify that a child’s attorney may sign the notice of intent, (d) explain what will happen at the hearing under Welfare and Institutions Code section 366.26, and (e) explain how to challenge the court’s decision .

---

<sup>8</sup> Effective January 1, 2007, this will be rule 8.325.

8. Revise form JV-822 to (a) explain the time requirements for filing a notice of intent, (b) clarify that a child's attorney may sign the notice of intent, and (c) explain how to challenge the court's decision.

The text of the rules is attached at pages 16–22; forms JV-820 and JV-822 are attached at pages 23–26.

## Attachments

Rules 8.404, 8.412, 8.416, 8.450, 8.452, and 8.456 are amended, and rule 8.406 is adopted effective January 1, 2007, to read:<sup>1</sup>

1 **Rule 8.404. Record on appeal**

2  
3 **(a) Normal record: clerk's transcript**

4  
5 The clerk's transcript must contain:

6  
7 (1)–(4) \*\*\*

8  
9 (5) The jurisdictional and dispositional findings and orders;

10  
11 (6)–(11) \*\*\*

12  
13 **(b) \*\*\***

14  
15 **(c) Application in superior court for addition to normal record**

16  
17 (1) Any party or tribe may apply to the superior court for inclusion in the  
18 record of any of the following items:

19  
20 (A) \*\*\*

21  
22 (B) In the reporter's transcript: ~~the~~ any oral proceedings, on any  
23 prehearing motions.

24  
25 (2) ~~The application and order are governed by rule 8.324(c)–(d).~~ An  
26 application for additional record must describe the material to be  
27 included and explain how it may be useful in the appeal.

28  
29 (3) The application must be filed in the superior court with the notice of  
30 appeal or as soon thereafter as possible, and will be treated as denied if  
31 it is filed after the record is sent to the reviewing court.

32  
33 (4) The clerk must immediately present the application to the trial judge.

34  
35 (5) Within five days after the application is filed, the judge must order that  
36 the record include as much of the additional material as the judge finds  
37 proper to fully present the points raised by the applicant. Denial of the  
38 application does not preclude a motion in the reviewing court for  
39 augmentation under rule 8.155.

40  
<sup>1</sup> These recommended amendments have been made to the version of this rule adopted by the Judicial Council at its June 30, 2006, business meeting and reflect the text that will be in effect on January 1, 2007. Any amendments adopted as part of this proposal will be incorporated into the text of the rule that goes into effect on January 1, 2007.

1           (6) If the judge does not rule on the application within the time prescribed  
2           by (5), the requested material—other than exhibits—must be included in  
3           the clerk’s transcript or the reporter’s transcript without a court order.  
4

5           (7) The clerk must immediately notify the reporter if additions to the  
6           reporter’s transcript are required under (5) or (6).  
7

8 (d)–(f)\*\*\*  
9

10  
11 **Rule 8.406. Record in multiple appeals in the same case**  
12

13 If more than one appeal is taken from the same judgment or related order, only one  
14 appellate record need be prepared, which must be filed within the time allowed for  
15 filing the record in the latest appeal.  
16

17 **Rule 8.412. Briefs by parties and amici curiae**  
18

19 (a) \*\*\*  
20

21 (b) **Time to file**  
22

23 (1) Except in cases governed by rule 8.416(e), the appellant must serve and  
24 file the appellant’s opening brief within 40 days after the record is filed  
25 in the reviewing court.  
26

27 (2) The respondent must serve and file the respondent’s brief within 30  
28 days after the appellant’s opening brief is filed.  
29

30 (3) The appellant must serve and file any reply brief within 20 days after  
31 the respondent’s brief is filed.  
32

33 (4) In dependency cases in which the ~~minor~~ child is not an appellant but  
34 has appellate counsel, the ~~minor~~ child must serve and file any brief  
35 within 10 days after the respondent’s brief is filed.  
36

37 (c) \*\*\*  
38

39 (d) **Failure to file a brief**  
40

41 (1) Except in dependency appeals in Orange, Imperial, and San Diego  
42 Counties, and in appeals from the termination of parental rights, if a  
43 party fails to timely file an appellant’s opening brief or a respondent’s

1 brief the reviewing court clerk must promptly notify the party's  
2 counsel, or if not represented, the party, by mail that the brief must be  
3 filed within 30 days after the notice is mailed, and that failure to  
4 comply may result in one of the following sanctions:

5  
6 (A) If the brief is an appellant's opening brief:

7  
8 (i) If the appellant is the county, the court will dismiss the  
9 appeal;

10  
11 (ii) If the appellant is other than the county and is represented  
12 by appointed counsel on appeal, the court will relieve that  
13 appointed counsel and appoint new counsel;

14  
15 (iii) If the appellant is other than the county and is not  
16 represented by appointed counsel, the court will dismiss the  
17 appeal.

18  
19 (B) If the brief is a respondent's brief, the court will decide the appeal  
20 on the record, the opening brief, and any oral argument by the  
21 appellant.

22  
23 (2) If a party fails to comply with a notice under (1), the court may impose  
24 the sanction specified in the notice.

25  
26 (3) Within the period specified in the notice under (1), a party may apply to  
27 the presiding justice for an extension of that period for good cause. If  
28 an extension is granted beyond the 30-day period and the brief is not  
29 filed within the extended period, the court may impose the sanction  
30 under (2) without further notice.

31  
32 ~~(d)~~(e) \*\*\*

33  
34  
35 **Rule 8.416. Appeals from all terminations of parental rights; dependency**  
36 **appeals in Orange, Imperial, and San Diego Counties**

37  
38 (a)–(f) \*\*\*

39  
40 (g) **Failure to file a brief**

1 Rule 8.412 applies if a party fails to timely file an appellant’s opening brief  
2 or a respondent’s brief, but the period specified in the notice required by that  
3 rule must be 15 days.

4  
5 ~~(g)(h)~~ \*\*\*

6  
7 **Advisory Committee Comment**

8  
9 **Subdivision (g).** Effective January 1, 2007, revised rule 8.416 incorporates a new subdivision (g)  
10 to address a failure to timely file a brief in all termination of parental rights cases and in  
11 dependency appeals in Orange, Imperial, and San Diego Counties. Under the new subdivision,  
12 appellants would not have the full 30-day grace period given in rule 8.412(d) in which to file a  
13 late brief, but instead would have the standard 15-day grace period that is given in civil cases.  
14 The intent of this revision is to balance the need to determine the appeal within 250 days with the  
15 need to protect appellants’ rights in this most serious of appeals.

16  
17  
18 **Subdivision ~~(g)(h)~~.** Subdivision ~~(g)(h)~~(1) recognizes certain reviewing courts’ practice of  
19 requiring counsel to file any request for oral argument within a time period other than 15 days  
20 after the appellant’s reply brief is filed or due to be filed. ~~It is not a substantive change.~~ The  
21 reviewing court is still expected to determine the appeal “within 250 days after the notice of  
22 appeal is filed.” (*Id.*, subd. 8.416(e).)

23  
24 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**  
25 **under Welfare and Institutions Code section 366.26**

26  
27 **(a)–(d)** \*\*\*

28  
29 **(e) Notice of intent**

30  
31 **(1)–(2)** \*\*\*

32  
33 **(3)** The notice must be signed by the party intending to file the petition or,  
34 if filed on behalf of ~~the a~~ minor child, by the attorney of record for the  
35 ~~minor~~ child. The reviewing court may waive this requirement for good  
36 cause on the basis of a declaration by the attorney of record explaining  
37 why the party could not sign the notice.

38  
39 **(4)** ~~The notice must be filed within 7 days after the date of the order setting~~  
40 ~~the hearing or, if the order was made by a referee not acting as a~~  
41 ~~temporary judge, within 7 days after the referee’s order becomes final~~  
42 ~~under rule 5.540(e).~~ The date of the order setting the hearing is the date  
43 on which the court states the order on the record orally, or issues an  
44 order in writing, whichever occurs first. The notice of intent must be  
45 filed according to the following timeline requirements:

1  
2 (A) If the party was present at the hearing when the court ordered a  
3 hearing under Welfare and Institutions Code section 366.26, the  
4 notice of intent must be filed within 7 days after the date of the  
5 order setting the hearing.

6  
7 ~~(5)~~(B) If the party was notified of the order setting the hearing only  
8 by mail, the notice of intent must be filed within 12 days after the  
9 date the clerk mailed the notification.

10  
11 (C) If the party was notified of the order setting the hearing by mail,  
12 and the notice was mailed to an address outside California but  
13 within the United States, the notice of intent must be filed within  
14 17 days after the date the clerk mailed the notification.

15  
16 (D) If the party was notified of the order setting the hearing by mail,  
17 and the notice was mailed to an address outside the United States,  
18 the notice of intent must be filed within 27 days after the date the  
19 clerk mailed the notification.

20  
21 (E) If the order was made by a referee not acting as a temporary  
22 judge, the party has an additional 10 days to file the notice of  
23 intent as provided in rule 5.540(c).

24  
25 (5) If the superior court clerk receives a notice of intent by mail from a  
26 party in a custodial institution after the time specified in (4) has expired  
27 but the envelope containing the notice of intent shows that it was  
28 mailed or delivered to custodial officials for mailing within the time  
29 specified in (4), the notice is deemed timely. The clerk must retain in  
30 the case file the envelope in which the notice was received.

31  
32 (f)–(i) \*\*\*

33  
34 **Rule 8.452. Writ petition to review order setting hearing under Welfare and**  
35 **Institutions Code section 366.26 and rule 5.600**

36  
37 (a)–(e) \*\*\*

38  
39 (f) **Augmenting or correcting the record in the reviewing court**

40  
41 (1) Except as provided in (2) and (3), rule 8.155 governs any augmentation  
42 or correction of the record.  
43

- 1 (2) The petitioner must serve and file any request for augmentation or  
2 correction within 5 days—or, if the record exceeds 300 pages, within 7  
3 days; or, if the record exceeds 600 pages, within 10 days—after  
4 receiving the record. A respondent must serve and file any such request  
5 within 5 days after the petition is filed or an order to show cause has  
6 issued, whichever is later.  
7  
8 (3) An order augmenting or correcting the record may grant no more than  
9 15 days for compliance. The clerk and the reporter must give the order  
10 the highest priority.  
11  
12 (4) The clerk must certify and send any supplemental transcripts as  
13 required by rule 8.450(h). If the augmentation or correction is ordered,  
14 the time to file any petition or response is extended by the number of  
15 additional days granted to augment or correct the record.  
16

17 (g)–(i) \*\*\*  
18

19 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28**  
20 **and rule 5.600 to review order designating or denying specific**  
21 **placement of a dependent child after termination of parental rights**  
22

23 (a)–(e) \*\*\*  
24

25 (f) **Augmenting or correcting the record in the reviewing court**  
26

- 27 (1) Except as provided in (2) and (3), rule 8.155 governs augmentation or  
28 correction of the record.  
29  
30 (2) The petitioner must serve and file any request for augmentation or  
31 correction within 5 days—or, if the record exceeds 300 pages, within 7  
32 days; or, if the record exceeds 600 pages, within 10 days—after  
33 receiving the record. A respondent must serve and file any such request  
34 within 5 days after the petition is filed or an order to show cause has  
35 issued, whichever is later.  
36  
37 (3) An order augmenting or correcting the record may grant no more than  
38 15 days for compliance. The clerk and the reporter must give the order  
39 the highest priority.  
40  
41 (4) The clerk must certify and send any supplemental transcripts as  
42 required by rule 8.454(i). If the augmentation or correction is ordered,

1  
2  
3  
4  
5

the time to file any petition or response is extended by the number of additional days granted to augment or correct the record.

**(g)-(j)**

\*\*\*

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  <hr/> <p style="text-align: center;">TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i>: _____</p> <p>E-MAIL ADDRESS <i>(Optional)</i>: _____</p> <p>ATTORNEY FOR <i>(Name)</i>: _____</p>	<b>FOR COURT USE ONLY</b>   <b>DRAFT 16 10/19/06 mc Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: CASE NAME:	
<b>NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE Section 366.26 (California Rules of Court, Rule 8.450)</b>	CASE NUMBER:

**NOTICE**

The juvenile court has decided it will make a permanent plan for this child which may result in the termination of your parental rights and adoption of the child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

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. Child's name: \_\_\_\_\_ Child's date of birth: \_\_\_\_\_
6. a. On *(date)*: \_\_\_\_\_ the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.  
 b. List all known dates of the hearing that resulted in the order:
7. The hearing under Welfare and Institutions Code section 366.26 is set for *(date, if known)*:  
 Date: \_\_\_\_\_

\_\_\_\_\_ (TYPE OR PRINT NAME) ▶ \_\_\_\_\_ (SIGNATURE OF  PETITIONER  CHILD'S ATTORNEY)

**The *Notice of Intent to File Writ Petition* must be signed by the person intending to file the writ petition, or, if it is to be filed on behalf of the child, by the child's attorney of record. See the back of this form for more information.**

**PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES**

**WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?**

- The court may order the termination of parental rights and adoption of the child.
- The court may order a legal guardianship for the child.
- The court may order a permanent plan of placement of the child with a fit and willing relative.
- The court may order a permanent plan of placement of the child in a foster home.

The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

**SEE WELF. & INST. CODE, § 366.26 FOR MORE INFORMATION**

**HOW DO I CHALLENGE THE COURT'S DECISION TO SET A HEARING TO MAKE A PERMANENT PLAN?**

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time specified below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get copies of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal, you must send copies of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings. With your writ petition, you must file a Proof of Service confirming you have sent a copy of the petition to these people.  
**SEE WELF. & INST. CODE, § 366.26 (f); CAL. RULES OF COURT, RULES 8.450–8.452**

**WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?**

- If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 12 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in a state other than California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 27 days from the date the clerk mailed the notification.
- If you are a party in a custodial institution you must give the Notice of Intent to custodial officials for mailing within the time specified in this box.

**SEE CAL. RULES OF COURT, RULES 8.450, 5.540(c)**

- If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the Notice of Intent.

**SEE WELF. & INST. CODE, §§ 248-252; CAL. RULES OF COURT, RULE 5.538 and rule 5.540**

**SIGNATURE ON NOTICE OF INTENT**

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.450(e)(3).)

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  <hr/> <p style="text-align: center;">TELEPHONE NO.: <span style="margin-left: 150px;">FAX NO. (<i>Optional</i>):</span></p> <p>E-MAIL ADDRESS (<i>Optional</i>):</p> <p>ATTORNEY FOR (<i>Name</i>):</p>	<b>FOR COURT USE ONLY</b>  <b>Draft 17 10/19/06 mc Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS (California Rules of Court, Rule 8.454)</b>	CASE NUMBER:

**NOTICE**

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
  - a.  child's caretaker (*specify dates in your care*):
  - b.  child
  - c.  county welfare department
  - d.  legal guardian
  - e.  other (*state relationship to child or interest in the case*):
5. Child's name: Child's date of birth:
6. a. On (*date*): the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
- b. On (*date*): the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.

Date: \_\_\_\_\_

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF  PETITIONER  CHILD'S ATTORNEY)

**The Notice of Intent to File Writ Petition must be signed by the person intending to file the writ petition, or, if it is to be filed on behalf of the child, by the child's attorney of record. See the back of this form for more information.**

**PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES**

**HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?**

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get a copy of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal you must send a copy of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings.

**SEE CAL. RULES OF COURT, RULES 8.454–8.456**

**WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?**

- If you were present when the court granted or denied the specified placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the specified placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the specified placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

**SIGNATURE ON NOTICE OF INTENT**

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.450(e)(3).)

**SPR06-33**

**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

**GENERAL POSITIONS AND COMMENTS**

**List of All Commentators and Their Overall Positions on the Proposal**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Please see comment excerpts and summaries under specific topic headings below</b>	<b>Please see committee responses under specific topic headings below</b>
1	Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	AM	Y		
2	Ms. Sandy Almansa Supervising Legal Clerk II Stanislaus Superior Court	A	Y		
3	Ms. Grace Andres Program Manager Solano Superior Court	A	N		
4	Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District	AM	N		
5	California Appellate Project, Los Angeles	AM	Y		
6	Ms. Janice Y. Fukai Law Offices of the Los Angeles County Alternate Public Defender	AM	Y		
7	Ms. Janet Garcia Planning and Research Unit Los Angeles Superior Court	A	Y		
8	Mr. David Gutknecht Principal Management Analyst Riverside County Superior Court	A	Y		
9	Ms. Carole Greeley Attorney at Law	AM	Y		

**SPR06-33**

**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

	Bay Area Dependency Chapter of California Appellate Defense Counsel				
10	Mr. Michael P. Judge Public Defender of Los Angeles County	AM	Y		
11	Ms. Cheryl Kanatzar Deputy Executive Officer Ventura County Superior Court	AM	Y		
12	Ms. Tressa Kentner Court Executive Officer San Bernardino County Superior Court	A	N		
13	Mr. Nelson Lu Deputy Public Defender San Joaquin County Public Defender	A	N		
14	Ms. Joan McCoy Court Appointed Special Advocate CASA of Fresno and Madera Counties	A	N		
15	Ms. Debra Meyers Chief of Staff Counsel Services San Bernardino County Superior Court	A	N		
16	Mr. James M. Owens Assistant County Counsel Los Angeles Office of the County Counsel–Dependency Division	AM	N		
17	Mr. Mike Roddy Executive Officer Superior Court of San Diego County	AM	Y		
18	Ms. Kathryn Schleppehorst Family Law Section Executive Committee	AM	Y		
19	Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency	AM	Y		

**SPR06-33**

**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

	Division				
20	Jan Sherwood Attorney at Law	AM	N		
21	Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	AM	Y		
22	Mr. Howard K. Watkins Senior Deputy County Counsel Office of Fresno County Counsel	AM	N		
23	The State Bar of California's Committee on Appellate Courts	AM	Y		
24	Ms. Diane Wasznicky Liaison Family Law Section Executive Committee to Family and Juvenile Law Advisory Committee Family Law Section of the Sate Bar Executive Committee	AM	Y		

**GENERAL COMMENTS ABOUT THE PROPOSAL**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Sandy Almansa Supervising Legal Clerk II Stanislaus Superior Court	General	A	No specific comment.	No response required.
Ms. Grace Andres Program Manager Solano Superior Court	General	A	No specific comment.	No response required.
Ms. Janet Garcia Planning and Research Unit Los Angeles Superior Court	General	A	No specific comment.	No response required.
Mr. David Gutknecht Principal Management Analyst	General	A	No specific comment.	No response required.

**SPR06-33**

**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Riverside County Superior Court				
Ms. Tressa Kentner Court Executive Officer San Bernardino County Superior Court	General	A	No specific comment.	No response required.
Mr. Nelson Lu Deputy Public Defender San Joaquin County Public Defender	General	A	No specific comment.	No response required.
Ms. Joan McCoy Court Appointed Special Advocate CASA of Fresno and Madera Counties	General	A	No specific comment.	No response required.
Ms. Debra Meyers Chief of Staff Counsel Services San Bernardino County Superior Court	General	A	No specific comment.	No response required.

**COMMENTS ABOUT SPECIFIC RULES AND FORMS**

**Rule 8.400(h)(1) (formerly rule 37)–Appeals in juvenile cases generally, time to appeal**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.400(h)(1) (formerly rule 37)	AM	Change time for filing dependency notice of appeal from 60 days to 30 days.	This suggested change did not circulate for comment and therefore the committee declines to incorporate the suggestion. The committee will consider adding this suggestion to the Spring 2007 cycle.

**Rule 8.400(h)(1) (formerly rule 37)–Appeals in juvenile cases generally, abandonment**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Cheryl Kanatzar Deputy Executive Officer	Rule 8.400(h)(1)	AM	Amend the third sentence to read: “The superior court clerk must promptly notify the	After consideration of proposed rule 8.400(h) and the many comments it

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Ventura County Superior Court	(formerly rule 37)		Court of Appeal, the court reporter, and the parties of the abandonment or stipulation.”	received, the committee decided to withdraw the entire rule for further review of its potential effect on the discretion of the court, the role of counsel, and the prompt determination of juvenile appeals. The committee will incorporate this suggestion into future proposed amendments to juvenile appellate rules and break out subdivision (h) into a separate rule, proposed rule 8.402.
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**Rule 8.400(h)(2) (formerly rule 37)–Appeals in juvenile cases generally, stipulation to dismiss and its application to dependency**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.400(h)(2) (formerly rule 37)	AM	This requirement should not apply to delinquency cases.	After consideration of proposed rule 8.400(h) and the many comments it received, the committee has decided to withdraw the entire rule for further review of its potential effect on the discretion of the court, the role of counsel, and the prompt determination of juvenile appeals. The committee will incorporate this suggestion into future proposed amendments to juvenile appellate rules and break out subdivision (h) into a separate rule, proposed rule 8.402. Specifically, the committee will clarify that rule 8.400(h)(2) (formerly rule 37) is limited to

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Ms. Janice Y. Fukai Law Offices of the Los Angeles County Alternate Public Defender	Rule 8.400(h)(2) (formerly rule 37)	AM	Similar comment as above.	dependency cases because rule 5.662 (formerly rule 1448), the CAPTA guardian ad litem rule, applies exclusively to dependency cases.  Same response as above.
Mr. Michael P. Judge Public Defender of Los Angeles County	Rule 8.400(h)(2) (formerly rule 37)	AM	Similar comment as above.	Same response as above.
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.400(h)(2) (formerly rule 37)	AM	Similar comment as above.	Same response as above.

**Rule 8.400(h)(2) (formerly rule 37)–Appeals in juvenile cases generally, stipulation to dismiss and *In re Josiah Z.* (2005) 36 Cal.4th 664**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.400(h)(2) (formerly rule 37)	AM	Fails to allow for the fact that appellate counsel may be bound by a competent minor’s wishes, regardless of counsel’s assessment of best interest. <i>In re Josiah Z.</i> held that appellate counsel has the authority to seek dismissal based on the minor’s best interest with the consent of the minor or, if the minor is incapable of giving consent, the CAPTA guardian ad litem. It did not address the	After further consideration of proposed rule 8.400(h) and the many comments it received, the committee decided to withdraw the entire rule for further review of its potential effect on the discretion of the court, the role of counsel, and the prompt determination of juvenile appeals. The committee

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

			question whether counsel must conclude the dismissal is in the minor’s best interests before seeking it when a competent minor affirmatively wants to dismiss. Even in the dependency context, counsel must accept the decision of a competent minor of sufficient age to seek dismissal of his or her own appeal. Amend to delete this language that sets out substantive requirements for counsel’s exercise of authority.	will incorporate this suggestion into future proposed amendments to juvenile appellate rules and break out subdivision (h) into a separate rule, proposed rule 8.402. Specifically, the committee will modify this language for a future proposal to read “If the request or stipulation for dismissal is filed by the appellate counsel for a child in a dependency proceeding, the dismissal must be authorized by the child or the child’s CAPTA guardian ad litem. On receipt of a request or stipulation to dismiss, the Court of Appeal may dismiss the appeal and direct immediate issuance of the remittitur. The Court of Appeal clerk must promptly notify the superior court and all parties and attorneys of the dismissal.”
Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District	Rule 8.400(h)(2) (formerly rule 37)	AM	Amend to read “In 2005, the California Supreme Court held that appellate counsel has the power to seek dismissal of a child’s dependency appeal based on the child’s best interest if authorized by the child or the child’s CAPTA guardian ad litem. <i>In re Josiah Z.</i> (2005) 36 Cal.4th 664, 675-676, 680-681	Same response as above.
Ms. Janice Y. Fukai Law Offices of the Los Angeles County	Rule 8.400(h)(2) (formerly	AM	Amend to conform to <i>In re Josiah Z.</i>	Same response as above.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Alternate Public Defender	rule 37)			
Mr. Michael P. Judge Public Defender of Los Angeles County	Rule 8.400(h)(2) (formerly rule 37)	AM	Amend to conform to <i>In re Josiah Z.</i>	Same response as above.
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.400(h)(2) (formerly rule 37)	AM	Second sentence should be rewritten: “Any request for dismissal filed by the appellate counsel for a child or stipulation for dismissal signed by the appellate counsel for a child must be authorized by the child’s CAPTA guardian ad litem based on the child’s best interest.”	Same response as above.
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.400(h)(2) (formerly rule 37)	AM	The “best interest” language is not apropos. In addition, children in the dependency system are of an age where their views are entitled to be considered. <i>In re Josiah Z.</i> (2005) 36 Cal.4th 664 did not say an appellate counsel’s determination regarding the child’s best interest was the only basis for appellate counsel to move to dismiss. The rule should be amended to read: “If the request for dismissal is filed by the appellate counsel for a child, the dismissal must be authorized by the child or the child’s CAPTA guardian ad litem.”	Same response as above.
The State Bar of California’s Committee on Appellate Courts	Rule 8.400(h)(2) (formerly rule 37)	AM	The citation to <i>In re Josiah Z.</i> should be changed to “(2005) 36 Cal.4th 664, 675-676, 680-681.	Same response as above.

**Rule 8.400(h)(2) (formerly rule 37)–Appeals in juvenile cases generally, stipulation to dismiss General**

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.400(h)(2) (formerly rule 37)	AM	Change first sentence to read: “After the record is filed in the Court of Appeal, the appellant may serve and file in that court a request to dismiss the appeal, and any party may serve and file a stipulation to dismiss the appeal.”	After consideration of proposed rule 8.400(h) and the many comments it received, the committee decided to withdraw the entire rule for further review of its potential effect on the discretion of the court, the role of counsel, and the prompt determination of juvenile appeals. The committee will incorporate this suggestion into future proposed amendments to juvenile appellate rules and break out subdivision (h) into a separate rule, proposed rule 8.402.
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.400(h)(2) (formerly rule 37)	AM	Add new second sentence: “Any stipulation for dismissal must indicate why the stipulation for dismissal meets the requirements of section 128, subdivision (a)(8) of the Code of Civil Procedure.”	The committee has withdrawn the rule for the reasons stated above.
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.400(h)(2) (formerly rule 37)	AM	Now fourth sentence should be amended to read: “On receipt of a request for dismissal, or of a stipulation for dismissal meeting the requirements of section 128, subdivision (a)(8) of the Code of Civil Procedure the Court of Appeal may dismiss the appeal and direct immediate issuance of the remittitur.”	Same response as above.
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego	Rule 8.400(h)(2) (formerly	AM	In Advisory Committee’s comment add: “The Court of Appeal applies the criteria set forth in section 128, subdivision (a)(8) of the Code of	Same response as above.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

County, Juvenile Dependency Division	rule 37)		Civil Procedure on a case-by-case basis. (In Re Rashad H. (2000) 78 Cal.App.4th 376, 382).”	
Jan Sherwood Attorney at Law	Rule 8.400(h)(2) (formerly rule 37)	AM	The proposed amendments should state how, if at all, California Civil Procedure Code section 128(a)(8) applies to the provisions regarding compromise and stipulation to dismiss. The language “affirmatively seeking dismissal” is not clear. The rule is not clear if it applies only to motions to dismiss based on abandonment or settlement or if it applies to all motions to dismiss an appeal.	Same response as above.
The State Bar of California’s Committee on Appellate Courts	Rule 8.400(h)(2) (formerly rule 37)	AM	The proposed amendments create a procedure for abandoning, voluntarily dismissing, or approving a compromise on a juvenile appeal. Subdivision (h)(1) refers to the filing of an “abandonment” of the appeal, whereas subdivision (h)(2) refers to a stipulation or request to “dismiss” the appeal. An Advisory Committee Comment to rule 30.2 (new rule 8.312) notes that “an appellant may dismiss an appeal by filing an abandonment of it” where as the term “dismiss” is generally reserved “for the discretionary act of a reviewing court in response to an abandonment filed in that court. . . . “ To be consistent with rule 30.3 (new rule 8.316), the reference to a stipulation or request to “dismiss the appeal in the proposed amendments to rule 37 (new rule 8.400) should be modified to refer to a request or stipulation to “abandon” the appeal.	Same response as above.

**Rule 8.400(h)(3) (formerly rule 37)–Appeals in juvenile cases generally, compromise**

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
California Appellate Project, Los Angeles	Rule 8.400(h)(3) (formerly rule 37)	N	Disagree: The proposed compromise circumvents <i>In re Zeth S.</i> (2003) 31 Cal.4th 396, 405 by permitting a party below who has not timely appealed to seek and obtain in the reviewing court a change in the judgment or order timely appealed by other parties.	After consideration of proposed rule 8.400(h) and the many comments it received, the committee decided to withdraw the entire rule for further review of its potential effect on the discretion of the court, the role of counsel, and the prompt determination of juvenile appeals. The committee will incorporate this suggestion into future proposed amendments to juvenile appellate rules and break out subdivision (h) into a separate rule, proposed rule 8.402. Specifically, the committee will not propose a procedure for compromise on appeal unless future comments warrant consideration of such a procedure.
Mr. James M. Owens Assistant County Counsel Los Angeles Office of the County Counsel–Dependency Division	Rule 8.400(h)(3) (formerly rule 37)	AM	Amend by deleting this paragraph. If the guardian, or child who is a party and not represented, seeks approval of a proposed compromise of a pending appeal, this paragraph allows the Court of Appeal, before ruling on the compromise, to direct the trial court to determine whether the compromise is in the best interest of the child and to report its findings. The commentator suggests deleting this paragraph because the commentator believes the proposed change will cause delay,	Same response as above.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

<p>Ms. Kathryn Schleppehorst Family Law Section Executive Committee</p>	<p>Rule 8.400(h)(3) (formerly rule 37)</p>	<p>AM</p>	<p>and because the Court of Appeal has jurisdiction over the matter and if the guardian or child do not agree with the compromise or stipulation they can file a brief rather than have it sent back to juvenile court for approval. “Compromise” is vague.</p> <p>Similar comment as above.</p>	<p>Same response as above.</p>
<p>Ms. Diane Wasznicky Liason Family Law Section Executive Committee to Family and Juvenile Law Advisory Committee Family Law Section of the Sate Bar Executive Committee</p>	<p>Rule 8.400(h)(3) (formerly rule 37)</p>	<p>AM</p>	<p>Similar comment as above.</p>	<p>Same response as above.</p>

**Rule 8.404(a) (formerly rule 37.1)–Record on appeal, clerk’s transcript**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
<p>Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association</p>	<p>Rule 8.404(a) (formerly rule 37.1)</p>	<p>AM</p>	<p>Agree with proposed amendments.</p>	<p>No response required.</p>
<p>Ms. Janice Y. Fukai Law Offices of the Los Angeles County Alternate Public Defender</p>	<p>Rule 8.404(a) (formerly rule 37.1)</p>	<p>AM</p>	<p>Agree with proposed amendments.</p>	<p>No response required.</p>

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Mr. Michael P. Judge Public Defender of Los Angeles County	Rule 8.404(a) (formerly rule 37.1)	AM	Agree with proposed amendments.	No response required.
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**Rule 8.404(c)–Record on appeal, clerk’s transcript**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.404(c) (formerly rule 37.1)	N	Disagree. The proposed requirement would be workable in many cases, but the court should have discretion to entertain later motions. Sometimes the notice of appeal is filed in a rush, the client may file in pro per, or the need for additional record is not immediately apparent. The amendment would probably increase delay. If the additional record is necessary for the appeal, appellate counsel will have to request it as an augmentation. The augmentation will delay the proceedings more than an application for addition to the normal record.	The Committee agrees to withdraw the proposed amendment. The Committee will also delete the cross reference to rule 31.1 (c)–(d) (new rule 8.324) and will add the language of rule 31.1(c)–(d) (new rule 8.324) into the text of the rule.
Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District	Rule 8.404(c) (formerly rule 37.1)	AM	Amend to read: “The application and order are governed by rule 8.324 (c)–(d) (formerly rule 31.1) except that the application by appellant must be filed in the superior court at the same time as the notice of appeal or it will be deemed denied. Application by any other party or tribe must be filed within 5 days of notice of appellant’s notice of appeal.”	The Committee agrees to withdraw the proposed amendment. The Committee will also delete the cross reference to rule 31.1 (c)–(d) (new rule 8.324) and will add the language of rule 31.1(c)–(d) (new rule 8.324) into the text of the rule.
Ms. Janice Y. Fukai	Rule	AM	Delete last portion of proposed changes to first	The Committee agrees to withdraw

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Law Offices of the Los Angeles County Alternate Public Defender	8.404(c) (formerly rule 37.1)		sentence “or it will be deemed denied.” Unacceptable because the application would be denied even if it was justified.	the proposed amendment. The Committee will also delete the cross reference to rule 31.1 (c)–(d) (new rule 8.324) and will add the language of rule 31.1(c)–(d) (new rule 8.324) into the text of the rule.
Mr. Michael P. Judge Public Defender of Los Angeles County	Rule 8.404(c) (formerly rule 37.1)	AM	Delete the last portion of the proposed changes to the first sentence “or it will be deemed denied.” Unacceptable because the application would be denied even if it was justified.	The Committee agrees to withdraw the proposed amendment. The Committee will also delete the cross reference to rule 31.1 (c)–(d) (new rule 8.324) and will add the language of rule 31.1(c)–(d) (new rule 8.324) into the text of the rule.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	Rule 8.404(c) (formerly rule 37.1)	AM	Amend first sentence to add “the” between “as” and “notice”.	The Committee agrees to withdraw the proposed amendment. The Committee will also delete the cross reference to rule 31.1 (c)–(d) (new rule 8.324) and will add the language of rule 31.1(c)–(d) (new rule 8.324) into the text of the rule.
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.404(c) (formerly rule 37.1)	Y	Agree with proposed changes.	No response required.
The State Bar of California’s Committee on Appellate Courts	Rule 8.404(c)	AM	Amend the second sentence of paragraph (2) of subdivision (c) to read: “Application by any	The Committee is withdrawing the proposed amendment.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

	(formerly rule 37.1)		other party or tribe must be filed within 5 days of the notice of appeal.” The word “the” should be inserted before “notice of appeal.”	
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**Rule 8.404(g)(1) (formerly rule 37.1)–Record on appeal, multiple appeals**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.404(g)(1) (formerly rule 37.1)	AM	Counterintuitive to limit the number of copies of the record since multiple appeals indicates more parties will need a copy of the record. No suggestion.	The Committee declines to incorporate the suggestion. When more than one appeal is taken from the same judgment or related order, the proposed language allows one appellate record to be prepared. The proposed language does not limit the number of copies of this appellate record. For consistency with other appellate rules, the Committee decided to break out subdivision (g), regarding multiple appeals, into a separate rule, now proposed rule 8.406.
Ms. Janice Y. Fukai Law Offices of the Los Angeles County Alternate Public Defender	Rule 8.404(g)(1) (formerly rule 37.1)	AM	Amend to eliminate the potential delay created by the timeline requirement. As written, the proposed 8.404(g)(1) (formerly rule 37.1) allows one appellate record to be prepared which must be filed within the time allowed for filing the record in the latest appeal. The commentator notes this will cause delays, for example, if multiple petitions are sustained and these delays contravene the Legislature’s intent to handle juvenile matter expeditiously.	The Committee declines to incorporate the suggestion. While the timeline may cause an initial delay, the purpose of its proposed language is to create one complete record which will streamline and clarify the process. For consistency with other appellate rules, the Committee decided to break out subdivision (g), regarding multiple

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Mr. Michael P. Judge Public Defender of Los Angeles County	Rule 8.404(g)(1) (formerly rule 37.1)	AM	Similar comment as above.	appeals, into a separate rule, now proposed rule 8.406.  Same response as above.
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**Rule 8.404(g)(2) (formerly rule 37.1)–Record on appeal, later appeals**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.404(g)(2) (formerly rule 37.1)	AM	The incorporating by reference portion is unclear. If this is another way of requesting additional record it is unnecessary and confusing to create an alternative when the rule 8.404(c) (formerly rule 37.1) process already exists. If this is meant to exclude prior records from the new transcript altogether, this would work only if all appellate counsel and the court have possession of the prior records. This may not be the case if the prior records may have been put in storage or sent to the client or if counsel changed. Suggestion: clarify and consider Ct. App. Second Dist., Local Rules, rule 1 (new rule 8.100), Contents of Reporter’s and Clerk’s Transcripts in Criminal and Juvenile Appeals.	The Committee agrees to modify and will withdraw the proposed amendment.
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.404(g)(2) (formerly rule 37.1)	AM	This creates a problem for counsel who have returned the record to the client at the conclusion of the earlier appeal because the party will not have access to the portions of the	The Committee agrees to modify and will withdraw the proposed amendment.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

California Appellate Project, Los Angeles	Rule 8.404(g)(2) (formerly rule 37.1)	AM	<p>record incorporated by reference. An attorney appointed on the later appeal may not be the same appellate counsel on the earlier appeal. Obtaining the record from predecessor counsel will take time. Some parties join the case at later stages in the proceedings and would not have access to the entire record. Change the language from “may incorporate by reference” to “deemed to be part of the record.” There is no statutory authority addressing how an appellate record can be incorporated by reference.</p> <p>Amend to include language similar to former rule 11(b) (new rule 8.150) 2001: “If there has been a prior appeal in the same action or proceedings, and any portions of the record therein are desired for use in the second appeal, these need not be copied or included in the subsequent record unless the reviewing court so orders.” Amend to specify that the record for a subsequent appeal should begin after the proceedings challenged on the first appeal.</p>	The Committee agrees to modify and will withdraw the proposed amendment.
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**Rule 8.412(b)(5) (formerly rule 37.3)–Briefs by parties and amici curiae, time to file**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.412(b)(5) (formerly rule 37.3)	AM	Agree with most of rule.	No response required.
The State Bar of California’s	Rule	AM	Amend opening sentence to read: “Except in	The Committee agrees to

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Committee on Appellate Courts	8.412(b)(5) (formerly rule 37.3)		dependency appeals in Orange, Imperial, and San Diego Counties, and in appeals from the termination of parental rights . . .”	incorporate the suggestion. For consistency with other appellate rules, the Committee decided to give this section its own subdivision and expand it to be more comprehensive. It now appears at rule 8.412(d).
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**Rule 8.416 (formerly rule 37.4)—Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.416 (formerly rule 37.4) Reference to “Defendant”	AM	“After notifying defendant” is not clear. “Defendant” is not applicable, and this implies a second notice will be sent out but this is not clear.	Agree to delete “after notifying defendant” as it is repetitive and “defendant” is not applicable in this context. However, the Committee incorporated that change into rule 8.412(d), and now cross-references rule 8.412 in rule 8.416.
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.416 (formerly rule 37.4) Reference to “Defendant”	AM	Agree with 8.416(g)(1) (formerly rule 37.4) except for (iii). Amend to read: “(iii) If the appellant is other than the county and is not represented by appointed counsel, the court will dismiss the appeal.” The proposed language implies a second notice will be sent.	Same response as above.
Hon. Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate	Rule 8.416 (formerly rule 37.4)	AM	Similar comment as above.	Same response as above.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

District	Reference to “Defendant”			
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	Rule 8.416 (formerly rule 37.4) Reference to “Defendant”	AM	Similar comment as above.	Same response as above.
The State Bar of California’s Committee on Appellate Courts	Rule 8.416 (formerly rule 37.4) Reference to “Defendant”	AM	Similar comment as above.	Same response as above.
Ms. Carole Greeley Attorney at Law Bay Area Dependency Chapter of California Appellate Defense Counsel	Rule 8.416 (formerly rule 37.4) General	AM	In paragraph (1) of subdivision (g) amend to read: “If a party fails to timely file an appellant’s opening brief or a respondent’s brief in a termination of parental rights case, the reviewing court clerk must promptly notify the party’s counsel, or if not represented, the party, by mail that the brief must be filed within 15 days after the notice is mailed, and that failure to comply will result in one of the following sanctions:”	The Committee agrees to modify. The Committee, in accordance with a concurrent proposal, will change “will” to “may.” However, the Committee incorporated that change into rule 8.412(d), and now cross-references rule 8.412 in rule 8.416.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	Rule 8.416 (formerly rule 37.4) General	AM	To more closely track the language of rule 17 (new rule 8.220), In paragraph (3) of subdivision (g) amend to change “under (1) without further notice” to “under (2) without further notice”.	The Committee agrees to modify. However, the Committee incorporated that change into rule 8.412(d), and now cross-references rule 8.412 in rule 8.416.
Mr. Mike Roddy Executive Officer	Rule 8.416 (formerly	AM	In the advisory comment, change two uses of “subsection” to “subdivision”.	The Committee agrees to modify. However, the Committee incorporated that change into rule

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Superior Court of San Diego County	rule 37.4) General			8.412(d), and now cross-references rule 8.412 in rule 8.416.
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.416 (formerly rule 37.4) General	AM	Make rule 8.416 (formerly rule 37.4) applicable to all dependency appeals.	The Committee declines to incorporate this suggestion. The Committee will consider adding this suggestion to the Spring 2007 cycle.
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.416 (formerly rule 37.4) General	AM	Eliminate automatic grace periods for all dependency appeals statewide. The rules allowing the Court to grant extensions of time and to relieve defaults other than late notices of appeals adequately addresses the issue of late briefs. An automatic grace period for late briefs is neither necessary nor appropriate.	The Committee declines to incorporate the suggestion. The Committee’s proposed language in rules 8.412 (formerly rule 37.3) and 8.416 (formerly rule 37.4) balance the needs of the court to determine the appeal expeditiously and its need to protect appellants’ rights.
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.416 (formerly rule 37.4) General	AM	Amend last sentence to read: “If an extension is granted beyond the initial 15-day period and the brief is not filed within the extended period, the court may impose the sanction under (1) without further notice.”	The Committee agrees to modify the sentence but the Committee will be changing the current reference to paragraph (1) to a reference to paragraph (2). However, the Committee incorporated that change into rule 8.412(d), and now cross-references rule 8.412 in rule 8.416.
The State Bar of California’s Committee on Appellate Courts	Rule 8.416 (formerly	AM	Amend paragraph 1 of subdivision (g) to read: “If a party fails to timely file an appellant’s	The Committee agrees to modify this paragraph to read: “If a party fails to timely file an appellant’s opening brief or a respondent’s

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

	rule 37.4) General		opening brief or a respondent’s brief in a dependency appeal in Orange, Imperial, and San Diego County, or in an appeal from a termination of parental rights . . . “	brief the reviewing court clerk must . . .” The current language of subdivision (a) clearly limits the application of the rule to dependency appeals in Orange, Imperial, and San Diego Counties, and in appeals from the termination of parental rights. However, the Committee incorporated that change into rule 8.412(d), and now cross-references rule 8.412 in rule 8.416.
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**Rule 8.450(e)(3) (formerly rule 38)–Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26, notice of intent**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.450(e)(3) (formerly rule 38)	AM	Agree with changes.	No response required.

**Rule 8.450(e)(4)(A)–Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26, party present at hearing**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.450(e)(4) (A) (formerly rule 38)	AM	Citing Janice J. v. Superior Court (1997) 55 Cal.App.4th 690, Guillermo G. v. Superior Court (1995) 33 Cal.App.4th 1168, Code of Civ. Proc. § 283, People v. Bouchard (1957) 49 Cal.2d 438, 440, People v. Brych (1988) 203 Cal.App.3d 1068, 1076, and United States of	The Committee will take this comment into consideration during the next rule cycle. This comment suggests substantive changes that would require presentation to the public during a comment period.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

<p>Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.</p>	<p>Rule 8.450(e)(4) (A) (formerly rule 38)</p>	<p>AM</p>	<p>Mexico v. Rask (1930) 109 Cal.App.497, 500-402, commentator suggests reexamining the provision which prevents counsel from signing the notice of intent except for good cause.</p> <p>Delete “or was represented by counsel at the hearing.” This language is inconsistent with the rest of the rule. If the party was personally absent, notice will be sent by mail. (Rules 5.715(d)(3)(H) (formerly rule 1461), 5.720(c)(10) (formerly rule 1462); Welf. &amp; Inst. Code § 294(a).) When counsel was present but the party was notified by mail, the rule as proposed would leave doubt as to whether 8.450(e)(4)(A) (formerly rule 38) or one of the mailing subdivisions would apply and thus whether the time would be 7, 12, 17, or 20 days. As long as the party must sign the notice of intent personally, rule 8.450(e)(3) (formerly rule 38) is appropriate to set the deadline according to the party’s own presence or absence.</p>	<p>The Committee agrees to delete “or was represented by counsel at the hearing.”</p>
<p>Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association</p>	<p>Rule 8.450(e)(4) (A) (formerly rule 38)</p>	<p>AM</p>	<p>Different rules apply when a party was absent from the hearing but was represented by counsel. Amend to read: “(e)(4) This subdivision applies except as otherwise provided. The date of the order setting the hearing is the date on which the court states the order on the record orally, or issues an order in writing, whichever occurs first. The notice of intent must be filed according to the following time line requirements: (A) If the party was present at the hearing when the court ordered a</p>	<p>Agree to modify language. Agree to delete “or was represented by counsel at the hearing.” The Committee will also be deleting “This subdivision applies except as otherwise provided” because the subdivision is clearly limited to timelines for filing a Notice of Intent when the court has set a hearing under Section 366.36. Additionally, to further clarify the</p>

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

			hearing under Welfare and Institutions Code section 366.26, the notice of intent must be filed within 7 days after the date of the order setting the hearing.”	filing timelines, the Committee will be adding the language “the date the clerk mailed the notification is the postmark date appearing on the envelope” from the proposed revisions to JV-820 to paragraph (4) of subdivision (E).
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**Rule 8.450(e)(4)(B) (formerly rule 38)–Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26, referee not acting as a temporary judge**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.450(e)(4)(B) (formerly rule 38)	AM	Clarify. No suggestion. Proposed language is unclear as it implies the referee acting as a temporary judge sent the notice.	The Committee agrees to clarify this subparagraph. This subparagraph will read: “If the order was made by a referee not acting as a temporary judge, the party has an additional 10 days to file the notice of intent as provided in rule 5.540(c).” (formerly rule 1417) To further clarify paragraph (4), the order of the subparagraphs will be reorganized. This subparagraph will now be subparagraph (E).
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	Rule 8.450(e)(4)(B) (formerly rule 38)	AM	Change the time provided from “12 days” to “7 days” unless the intention was to change the time from “7” to “12” days.	The Committee agrees to clarify this subparagraph. This subparagraph will read: “If the order was made by a referee not acting as a temporary judge, the party has an additional 10 days to file the notice of intent as provided

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

				in rule 5.540(c).” (formerly rule 1417) If the order was made by a referee not acting as a temporary judge, the party has the amount of time afforded to them according to how they received notice of the court’s order plus the additional 10 days required for the referee’s order to become final. To further clarify paragraph (4), the order of the subparagraphs will be reorganized. This subparagraph will now be subparagraph (E).
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**Rule 8.450(e)(4)(D) (formerly rule 38)–Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26, address outside California and within the United States**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.450(e)(4)(D) (formerly rule 38)	AM	Confusing. Amend to read: “If the party was notified of the order setting the hearing by mail, and the place of mailing the notice of intent or the place of address is outside California, the notice of intent must be filed within 17 days after the date the clerk mailed the notification.”	The Committee agrees to modify. To further clarify paragraph (4), the order of the subparagraphs will be reorganized. This subparagraph will now be subparagraph (C).
The State Bar of California’s Committee on Appellate Courts	Rule 8.450(e)(4)(D) (formerly rule 38)	AM	Amend to read: “If the party was notified of the order setting the hearing by mail, and notice was mailed to an address outside the State of California but within the United States, the notice of intent must be filed within 17 days after the date the clerk mailed the notification. If the superior court clerk receives a notice of intent by mail from a self represented party in a	The Committee is amending to delete the “self represented” requirement. The Committee agrees to amend to clarify the place of mailing is always within California. The Committee is amending to add “but within the United States.” In

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

			custodial institution or from a self represented party who resides outside the State of California but within the United States after this period has expired but the envelope containing the notice of intent shows that it was mailed or delivered to custodial officials for mailing within the 17 days after the date the clerk mailed the notification of the order setting the hearing, the notice is deemed timely. The clerk must retain in the case file the envelope in which notice was received.”	response to other comments, the Committee is amending the prison delivery rule language in the proposed paragraph 5 by deleting its application to parties residing outside California and the United States. Therefore, the Committee declines to incorporate that language into this subparagraph.
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**Rule 8.450(e)(4)(E) (formerly rule 38)–Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26, outside of the United States**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.450(e)(4)(E) (formerly rule 38)	AM	20 days has proven to be inadequate time for parties residing outside North America. Amend to read: “If the party was notified of the order setting the hearing by mail and the place of mailing or the place of address is outside of California, the notice of intent must be filed within 30 days after the date the clerk mailed the notification.” Suggest change 20 days to 30 days to account for mailing to persons in the Middle East or other geographical locations where mail is unreliable.	The Committee declines to modify the time provided for persons residing outside North America to file the notice of intent. The Committee will consider adding this suggestion to the Spring 2007 cycle.
The State Bar of California’s Committee on Appellate Courts	Rule 8.450(e)(4)(E) (formerly rule 38)	AM	Amend to read: “If the party was notified of the order setting the hearing by mail, and the notice was mailed to an address outside the United States, the notice of intent must be filed within 27 days after the date the clerk mailed the	The Committee agrees to amend to clarify the place of mailing is always within California. The Committee agrees to amend to read “27” days. In response to other

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

			notification. If the superior court clerk receives a notice of intent by mail from a self represented party in a custodial institution or from a self represented party who resides outside the United States after this period has expired but the envelope containing the notice of intent shows that it was mailed or delivered to custodial officials for mailing within 27 days after the date the clerk mailed the notification of the order setting the hearing, the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.	comments, the Committee is amending the prison delivery rule language in the proposed paragraph 5 by deleting its application to parties residing outside California and the United States. Therefore, the Committee declines to incorporate that language into this subparagraph.
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**Rule 8.450(e)(5) (formerly rule 38)–Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26, prison delivery rule**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.450(e)(5) (formerly rule 38) Persons in custodial institutions and persons residing inside and outside the United States	AM	Address limiting mail filing to persons described in subdivision (D) and excluding those in (E) (outside the U.S.) and those coming under other subdivisions. Allowance is already made for differences in geographical location.	Agree to clarify that the proposed changes to rule 8.450(e)(5) (formerly rule 38) apply to parties in custodial institutions in California, outside of California, and outside the United States. The new language will read: If the superior court clerk receives a notice of intent by mail from a party in a custodial institution after the time in (4) has expired but the envelope containing the notice of intent shows that it was mailed or delivered to custodial officials for mailing within the time specified in

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

<p>Ms. Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association</p>	<p>Rule 8.450(e)(5) (formerly rule 38) Persons in custodial institutions and persons residing inside and outside the United States</p>	<p>AM</p>	<p>Unfair for persons who live within California but may live further away than someone living in, for example, Tijuana. Suggest the “mailbox” rule apply equally to persons within the state of California. Amend to read: “If, after the period specified in (4) has expired, the superior court clerk receives a notice of intent mailed by a party but the envelope containing the notice of intent shows that it was mailed, or delivered to custodial officials for mailing, within the time provided, the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.” If these changes are adopted, corresponding changes must be made to respective forms.</p>	<p>(4) after the date the clerk mailed the notification of the order setting the hearing, the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.</p> <p>Agree to clarify that the proposed changes to rule 8.450(e)(5) (formerly rule 38) apply to parties in custodial institutions in California, outside of California, and outside the United States. The new language will read: If the superior court clerk receives a notice of intent by mail from a party in a custodial institution after the time in (4) has expired but the envelope containing the notice of intent shows that it was mailed or delivered to custodial officials for mailing within the time specified in (4) after the date the clerk mailed the notification of the order setting the hearing, the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.</p>
<p>Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.</p>	<p>Rule 8.450(e)(5) (formerly rule 38) “self-</p>	<p>AM</p>	<p>Remove “self-represented” qualifier to “party in a custodial institution”. The prison mailing rule applies to a party mailing the notice from within an institution whether or not the party has an attorney.</p>	<p>Agree to delete “self represented” as it refers to a party who resides in a custodial institution.</p>

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Ms. Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	represented ” qualifier  Rule 8.450(e)(5) (formerly rule 38) “self-represented” qualifier	AM	Similar comment.	Agree to delete “self represented” as it refers to a party who resides in a custodial institution.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	Rule 8.450(e)(5) (formerly rule 38) “self-represented” qualifier	AM	Similar Comment.	Agree to delete “self represented” as it refers to a party who resides in a custodial institution.

**Rule 8.452(f) (formerly rule 38.1)–Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26 and rule 5.600 (formerly rule 1438)**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	Rule 8.452(f) (formerly rule 38.1)	AM	Agree with proposed changes.	No response required.

**Rule 8.454 (formerly rule 38.2)–Notice of intent to file writ petition under Welfare and Institutions Code Section 366.28 to review order designating specific placement of a dependent child after termination of parental rights**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.454 (formerly rule 38.2)	AM	Amend title to read: “Notice of Intent to File Writ Petition Under Welfare and Institutions Code Section 366.28 to Review Order Designating or Denying Specific Placement of a Dependent Child After Termination of Parental Rights.”	The Committee agrees to modify the title to this rule though this rule was not out for comment in this cycle. The Committee considers this a technical change which, if not made, would cause confusion and would create inconsistencies between the rules governing writ petitions filed in response to a court’s order granting or denying a specified placement.
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**Rule 8.456 (formerly rule 38.3)–Writ petition under Welfare and Institutions Code section 366.28 and rule 1436.5 (new rule 5.600) to review order designating specific placement of a dependent child after termination of parental rights**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	Rule 8.456 (formerly rule 38.3)	AM	Agree with proposed changes.	No response required.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	Rule 8.456 (formerly rule 38.3)	AM	Delete title reference to rule 5.600 (formerly rule 1436.5) because rule 5.600 (formerly rule 1436.5) does not appear to apply to writ petitions under Welf. & Inst. Code § 366.28.	The Committee agrees to modify.
Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division	Rule 8.456 (formerly rule 38.3)	AM	Amend title to read: “Writ petition under Welfare and Institutions Code section 366.28 and rule 5.600 (formerly rule 1436.5) to review order designating or denying specific placement of a dependent child after termination of parental rights.”	The Committee agrees to modify.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

**Rules 8.412 (formerly rule 37.3), 8.416 (formerly rule 37.4), Advisory Committee Comment to rule 8.412 (formerly rule 37.3), 8.450 (formerly rule 38), 8.452 (formerly rule 38.1), and 8.456 (formerly rule 38.3) generally**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Janice Y. Fukai Law Offices of the Los Angeles County Alternate Public Defender	Rules 8.412 (formerly rule 37.3), 8.416 (formerly rule 37.4), Comment to rule 8.412 (formerly rule 37.3), 8.450 (formerly rule 38), 8.452 (formerly rule 38.1), and 8.456 (formerly rule 38.3) generally	AM	Amend to clarify if they apply to delinquency cases pursuant to Welf. & Inst. Code § 726, et seq. There are a number of changes which apply to termination of parental rights under Welf. & Inst. Code § 366.26. There is a great deal of confusion about the application of these rules to delinquency proceedings, which now require the delinquency courts to follow a parallel track to that traditionally taken by the dependency courts in conducting permanency planning.	These rules apply in delinquency cases to the extent that the court conducts permanency planning for a child. The proposed changes apply to termination of parental rights under Welf. & Inst. Code § 366.26 and do not alter any previous requirement that delinquency courts follow a parallel track traditionally taken by dependency courts.
Mr. Michael P. Judge Public Defender of Los Angeles County	Same as above	AM	Similar comment as above.	Same response as above.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

**Rule 8.452 (formerly rule 38.1)–Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26 and rule 5.600(formerly rule 1436.5)/8.456(formerly rule 38.3) Writ petition under Welfare and Institutions Code section 366.28 and rule 5.600 (formerly rule 1436.5) to review order designating specific placement of a dependent child after termination of parental rights**

California Appellate Project, Los Angeles	Rules 8.452 (formerly rule 38.1), 8.456 (formerly rule 38.3)	AM	Amend both rules to clarify that any request for an additional record must be filed as a motion to augment in the reviewing court and that requests to correct the writ record will not be accepted by the juvenile court. The current language is confusing to counsel and clerks who are accustomed to correctly applying rule 8.155 (formerly rule 12) to augment the record on appeal and rule 8.340 (b) (formerly rule 32.1) to correct the record on appeal. Trial counsel mistakenly submit requests to correct the writ record to the juvenile court. The juvenile court clerks are uncertain whether to process the correction request or to direct counsel to file the request in the reviewing court. The appellate clerks are also uncertain where a request for correction of a writ record is to be filed. See rule 2 (new rule 8.104) of the Court of Appeal Local Rules, Second District.	The Committee declines to incorporate the suggestion. Rule 8.452(f)(1) (formerly rule 38.1) and rule 8.456(f)(1) (formerly rule 38.3) clearly state that rule 8.155 (formerly rule 12) governs any augmentation or correction of the record.
California Appellate Project, Los Angeles	Rules 8.452 (formerly rule 38.1), 8.456 (formerly rule 38.3)	AM	Amend to add a provision that requires the Welfare and Institutions Code § 366.26(1)(3)(A) advisement regarding requirement of filing a petition for extraordinary writ to preserve any right to appeal the issues decided.	The Committee declines to add the suggested language. Welf. & Inst. Code § 366.26 (1)(3)(A) requires the court to give oral notice to the parties present, or the clerk to give written notice to the parties not present, of the court’s decision to set a section 366.26 hearing and of the requirement that parties must file a writ petition to preserve any

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

				<p>right to appeal on the issues decided by the court. This notice and advisement are not required by section 366.28. Adding the section 366.26(1)(3)(A) advisement requirement may imply the clerk also has this written notice requirement following section 366.28 decisions. Neither the oral advisement, nor the written notice, are supported by law. In addition, the parties to a section 366.26 hearing are not similarly situated to the parties of a section 366.28 hearing and therefore do not necessarily require such notice. The writ petition to be filed after the setting of the section 366.26 hearing is the parties' only possibility to prevent termination of parental rights and preserve the constitutionally protected parent/child relationship. The section 366.28 writ petition is filed after termination of parental rights and seeks review of a denial of a specified placement. The Committee declines to incorporate suggested changes to rule 8.454 (formerly rule 38.2) because it is not proposing amendments to this rule in this proposal and such proposed amendments would require circulation for public</p>
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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

Mr. James M. Owens Assistant County Counsel Los Angeles Office of the County Counsel–Dependency Division	Rules 8.452 (formerly rule 38.1), 8.456 (formerly rule 38.3)	AM	Similar comment as above.	comment.  Same response as above.
Ms. Kathryn Schleppehorst Family Law Section Executive Committee	Rules 8.452 (formerly rule 38.1), 8.456 (formerly rule 38.3)	AM	Similar comment as above.	Same response as above.
Ms. Diane Wasznicky Liason Family Law Section Executive Committee to Family and Juvenile Law Advisory Committee Family Law Section of the Sate Bar Executive Committee	Rules 8.452 (formerly rule 38.1), 8.456 (formerly rule 38.3)	AM	Similar comment as above.	Same response as above.

**Form JV-800–Notice of Appeal**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
California Appellate Project, Los Angeles	JV-800	AM	Delete number 6(c) on form JV-800. Number 6(c) provides appellant a box to indicate the appellant is appealing a decisions granting or denying a specified placement. However, to preserve such a decision for appeal, appellant must first file a petition for writ. Number 6(c) is	The Committee agrees to revise the form as suggested. This amendment will occur in a companion proposal addressing technical changes to juvenile rules.

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

			<p>confusing because it does not inform appellant of the requirement to first file a writ petition. Number 6(c) may also confuse appellant because JV-800 does not currently have an option on the form to indicate appellant is appealing a court’s decision to set the matter for a Welf. &amp; Inst. Code § 366.26 hearing. In such cases, appellant must also file a writ petition to preserve issues for appeal. Because both court orders require appellant to first file a writ petition, the JV-800 form should be revised to delete number 6(c).</p>	
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**Form JV-820–Notice of Intent to File Writ Record and Request for Record**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.	JV-820 Notice box	AM	The notice box on page 1 does not cover the rule 8.450(e)(4)(B) or (5) (formerly rule 38) situations – decisions by a referee and prison mailing. Petitioners in such situations would have to choose among inapplicable alternatives and could be misled.	The Committee agrees to incorporate language addressing these two situations. The Committee will also amend the title of the form to read “Notice of Intent to file writ petition and request for record to review order setting a hearing under Welfare and Institutions Code section 366.26” The Committee will also revise number 6 by deleting “extraordinary.”
Ms. Elaine Alexander Executive Director Appellate Defenders, Inc	JV-820 Notice box	AM	The notice box on page 1. Amend to read: “The juvenile court has decided it will make a permanent plan for this child which may result in the termination of your parental rights and	The Committee agrees to incorporate the suggestion.

**SPR06-33**

**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

			adoption of the child. If you want an appeals court to review the juvenile court’s decisions, you must first tell the juvenile court by filing a Notice of Intent. You may use this form for that. The deadline for filing it is on page 2 of this form.	
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	JV-820 Notice box	AM	Similar comment as above.	The Committee agrees to incorporate the suggestion.
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	JV-820 Page 2	AM	On the reverse of JV-820 in third box, delete “or your attorney” because the party, not the attorney, must file the notice of intent.	The Committee agrees to incorporate the suggestion.
Ms. Carmela F. Simoncini Appellate Court Committee of the San Diego County Bar Association	JV-820 Page 2	AM	Revise language making the postmark date controlling. Statutory and rule provisions governing the clerk’s proof of service of the order setting the hearing, the proof of service is generally considered the date of mailing. Revise to read: “• If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing. • If you were not present in court but were given notice by mail of the court’s decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification. • If you were not present in court, were given notice by mail of the court’s decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 20 days	The Committee declines to incorporate the recommended changes regarding the postmark date. The Committee agrees to modify the language by removing “or your attorney.” The Committee declines to eliminate the 12 day timeline for persons not present at the hearing who live in California and were notified of the court’s order by mail.

**SPR06-33**

**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

			from the date the clerk mailed the notification.” If the suggestions to rule 8.452(e)(4)(E) (formerly rule 38.1) are adopted, a corresponding change would be required here to provide for 30, instead of 20, days.	
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-820 Page 1	AM	Increase area of page allowed for Case Name and for Item 5 to include space for multiple siblings.	The Committee declines to incorporate the suggestion. One form JV-820 is to be used per child.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-820 Page 1	AM	Change new box near the bottom of page 1 to: “The Notice of Intent to File a Writ Petition must be signed by the person . . .” By deleting “a” this sentence will match the title of the forms as printed in caption and footers.	The Committee agrees to modify.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-820 Page 2	AM	In the second box on page 2, insert a comma after “in the Court of Appeal” and change “a copy” to “copies”. Change citation reference from Welf. & Inst. Code § 294 to 366.26(1), Cal. Rules of Court, rules 8.450–8.452 (formerly rules 38–38.1).	The Committee agrees to modify.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-820 Page 2	AM	In third box on page 3, insert an additional bullet point and sentence after the first bulleted sentence, i.e.: “If the hearing was set by a referee not acting as a temporary judge, you must file the Notice of Intent within 7 days after the referee’s order becomes final under rule 5.540(c) (formerly rule 1417).” If the Committee intended to change the time period from 7 to 12 days, this sentence should be changed accordingly.	The Committee agrees to clarify this subparagraph. This subparagraph will read: “If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the notice of intent” and the form will reference Welf. & Inst. Code Sections 248-252 and Cal. Rules of Court, rules 5.538 and 5.540

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

<p>Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division</p>	<p>JV-820 Page 2</p>	<p>AM</p>	<p>Amend the first box at the top of page 2, the third and fourth bullet items to reflect that placement with a relative or foster home are permanent plan options. Amend to read:</p> <ul style="list-style-type: none"> <li>• The court may order a permanent plan of placement of the child with a fit and willing relative.</li> <li>• The court may order a permanent plan of placement of the child in a foster home. The above options are listed in the court’s order of preference of permanent plans, because the court’s main goal is to give the child a stable and permanent living situation.</li> </ul>	<p>(formerly rules 1416 and 1417).</p> <p>The Committee agrees to modify.</p>
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**Form JV-822–Notice of Intent to File Writ Record and Request for Record**

Commentator	Issue or provision	Position	Comment Excerpt or Summary:	Committee Response
<p>Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.</p>	<p>JV-822 Page 1</p>	<p>AM</p>	<p>Notice box on Page 1: In accordance with JV-820 suggestions, amend to read: “The juvenile court has ordered a specific placement for this child. If you want an appeals court to review the juvenile court’s decisions, you must first tell the juvenile court by filing a Notice of Intent. You may use this form for that. The deadline for filing it is on page 2 of this form.</p>	<p>The Committee agrees to amend. The Committee will also amend the title of the form to read “Notice of Intent to file writ petition and request for record to review order designating or denying specific placement of a dependent child after termination of parental rights”</p>
<p>Ms. Elaine Alexander Executive Director Appellate Defenders, Inc.</p>	<p>JV-822 Page 2</p>	<p>AM</p>	<p>Top box on page 2: Amend to read: “. . . or, if the decision was made by a referee not acting as a temporary judge and the juvenile court judge has not ordered a rehearing of the</p>	<p>The Committee agrees to modify to include language addressing the timelines for filing the Notice of Intent if the order was made by a</p>

**SPR06-33**

**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

			referee’s decision within the 10-day period allowed, you must file the Notice of Intent within 12 days of the date that the 10-day period expired.	referee not acting as a judge.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-822 Page 2	AM	Similar comment as above.	The Committee agrees to modify to include language addressing the timelines for filing the Notice of Intent if the order was made by a referee not acting as a judge.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-822 Page 1	AM	Increase area of page allowed for Case Name and for Item 5 to include space for multiple siblings.	The Committee declines to incorporate the suggestion. One form JV-822 is to be used per child.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-822 Page 1	AM	In item 4, insert a box to check if petitioner is a parent or legal guardian.	The Committee declines to modify as suggested. At the time of filing the JV-822, parental rights have been terminated. The Committee agrees to modify to add a box for legal guardian.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-822 Page 1	AM	Change new box near the bottom of page 1 to: “The Notice of Intent to File a Writ Petition must be signed by the person . . .” By deleting “a” this sentence will match the title of the forms as printed in caption and footers.	The Committee agrees to modify.
Mr. Mike Roddy Executive Officer Superior Court of San Diego County	JV-822 Page 2	AM	Change first box on page 2 to match text and format of second and third boxes on page 2 of JV-820. Separate the information into two boxes with the titles “How do I challenge the Court’s Placement Decision After Termination of	The Committee agrees to modify. The Committee will add a sentence to what is now the second box. Agree to modify to the extent consistent with the Committee’s intent to clarify the time to file the

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**Juvenile Law: Appellate Procedure (adopt Cal. Rules of Court, rule 8.406; amend rules 8.404 [formerly rule 37.1], 8.412 [formerly rule 37.3], 8.416 [formerly rule 37.4], 8.450 [formerly rule 38], 8.452 [formerly rule 38.1], and 8.456 [formerly rule 38.3]; revise forms JV-820 and JV-822)**

<p>Mr. Mike Roddy Executive Officer Superior Court of San Diego County</p>	<p>JV-822 Page 2</p>	<p>AM</p>	<p>Parental Rights” and “When Do I Have To File My Notice of Intent to File Writ Petition and Request for Record?” If this suggestion is accepted, the first bulleted sentence in the first box would read “File this <i>Notice of Intent to File Writ Petition and Request for Record</i> in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.”</p> <p>Change the citation to Welf. &amp; Inst. Code §294 to §366.26(1).</p>	<p>notice of intent if the placement decision was made by a referee not acting as a temporary judge is 12 days.</p> <p>The Committee agrees to modify by deleting citation to Welf. &amp; Inst. Code section 294 but declines to incorporate the suggestion because Welf. &amp; Inst. Code section 366.26(1) notice provisions do not apply to section 366.28.</p>
<p>Mr. Gary Seiser Senior Deputy County Counsel Office of County Counsel San Diego County, Juvenile Dependency Division</p>	<p>JV-822 Page 1</p>	<p>AM</p>	<p>Amend #6(b) to read: “On (date): the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. I intend to file a petition for extraordinary writ to challenge the specific placement order or the denial of a specific placement request made by the court on that date and request that the clerk assemble the record.”</p>	<p>The Committee agrees to modify. The Committee will also revise by deleting “extraordinary.”</p>
<p>Mr. Howard K. Watkins Senior Deputy County Counsel Office of Fresno County Counsel</p>	<p>JV-822 Page 2</p>	<p>AM</p>	<p>Revise to include the 12-day time limit to file the notice of intent if the notice of intent was served by mail. (Cal. Rules of Court, rule 8.454(e)(5).) (formerly rule 38.2)</p>	<p>The Committee agrees to incorporate the suggestion.</p>

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