

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: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
Heather Anderson, Senior Attorney, 415-865-7691,
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Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Kerry Doyle, Attorney, 415-865-8791, kerry.doyle@jud.ca.gov

DATE: October 2, 2009

SUBJECT: Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt Cal. Rules of Court, rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 5.708, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820, JV-825, and JV-828) (Action Required)

Issue Statement

This proposal would revise the rules governing appeals and writs in juvenile cases to delete duplicate provisions, consolidate provisions addressing the same subject, fill gaps in the rules, and make several substantive changes in the rules. It would also make corresponding forms changes.

Currently, rules governing appeals and writs in juvenile cases are located in both title 5, Family and Juvenile Law Rules, and title 8, Appellate Rules, of the California Rules of Court. Many of the rules in both titles address the same proceedings, and sometimes the provisions of the rules in each title differ. Rule 8.400 is very long and addresses multiple topics, making it difficult for rule users to understand. There are also gaps in the current rules; for example, the rules do not currently address how to abandon an appeal.

When non-substantive changes to the appellate rules were made in 2004 and a prior proposal relating to juvenile appeals was circulated for public comment in 2006, a number of additional substantive concerns and issues were raised concerning these rules, including: (1) the current rules could be construed as defining a right of appeal more restrictive than the right of appeal afforded by statute; (2) the normal record on appeal excludes certain motions that typically need to be in the record, necessitating the filing of applications to make additions to the record; (3) the current rules require automatic augmentation of the record with all subsequent orders even though many of these orders may be unrelated to the issues on appeal; (4) the rules contain inconsistent provisions concerning who must be notified of the filing of a notice of intent to file a writ petition and who must be served with a writ petition; (5) the rules contain inconsistent provisions relating to notifying Indian tribes of various appellate filings; and (6) the current requirement that the potential petitioner must sign the notice of intent to file a writ petition creates a difficult procedural hurdle that may result in some parties losing their ability to seek review in these matters.

Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective July 1, 2010¹:

1. Adopt, amend, renumber or repeal rules 5.585–5.600, 5.708, and 8.400–8.456 as detailed below in recommendations 2–13 to delete duplicative provisions, consolidate provisions addressing the same issue, delete provisions related to appellate procedures from title 5 of the California Rules of Court, which contains the family and juvenile rules, and move them to title 8, which contains the appellate rules;
2. Renumber rule 5.585 as rule 5.590 and amend it to eliminate provisions addressing the right to appeal from the rules, add an advisory committee comment directing readers to statute and case law addressing this right, and clarify the requirements concerning advisement of appellate rights;
3. Amend rule 5.708 to contain the correct reference to rule 5.590;
4. Amend rules 8.405(b), 8.450(f), 8.452(c), 8.454(g), and 8.456(c) to clarify that de facto parents, as identified in the rules, must currently be awarded that status by the juvenile court;

¹ The proposed effective date of the revised forms is July 1, 2010. To give courts additional time to implement any necessary changes by this effective date, including making any necessary changes to computerized case management systems and to us up any stock piles of existing forms, the proposal needs to be considered by the Judicial Council at its October meeting.

5. Amend the provisions in rules 8.405(b), 8.450(f), 8.452(c), 8.454(g), and 8.456(c) regarding notice to Indian tribes and custodians to conform with statute;
6. Renumber current rule 8.404 as rule 8.407 and amend it to include motions and related materials as a part of the normal record on appeal;
7. Renumber rule 8.408 as rule 8.409 and amend it to delete the provisions relating to augmentation and correction of the record, move these provisions to new rule 8.410 and replace the requirement for automatic augmentation of the record with a requirement that the trial court provide notice to the parties whenever it amends or recalls the judgment or makes any other order in the case;
8. Adopt rule 8.411 to provide a procedure for abandoning an appeal;
9. Amend rule 8.416 to allow trial and appellate courts to agree to follow the expedited procedures for appeals in juvenile dependency cases that are now followed in the Superior Courts of Orange, Imperial, and San Diego Counties;
10. Amend rules 8.450–8.456 to:
 - a. Allow the attorney of record to sign the notice of intent to file writ petition in proceedings under either Welfare and Institutions Code section 366.26 or 366.28; and
 - b. Clarify who must be sent notice of the filing of the notice of intent and who must be served with a writ petition, including removing caregivers from the lists of those who must receive any such notice or petition;
11. Revise *Orders Under Welfare and Institutions Code Sections 366.26, 727.3, 727.31* (form JV-320), *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* (form JV-820), and *Notice of Action* (form JV-828) to conform to recent statutory amendments and the proposed rule amendments;
12. Amend *Proof of Service-Juvenile* (form JV-510) to allow its use with all documents that could be filed in the juvenile court and remove the proof of service portion from *Petition for Extraordinary Writ* (form JV-825); and
13. Amend *Notice of Appeal-Juvenile* (Form JV-800) so it can be used to request appointment of counsel on appeal and to update references to rule numbers.

The text of the amended rules is attached at pages 26–60; the text of the revised forms is attached at pages 61–75.

Rationale for Recommendation

As indicated above, a number of concerns and issues were raised concerning the rules governing appeals and writs in juvenile cases when other changes to these rules were circulated for public comment in 2004 and 2006. In 2008, the Family and Juvenile Law Advisory Committee and the Appellate Advisory Committee formed a joint working group to consider all of these issues and concerns and to identify necessary changes. This working group reviewed the rules relating to appeals and writ proceedings in juvenile delinquency and dependency proceedings and all of the suggestions and developed a proposal for amending these rules and revising related forms.

The proposal includes amendments regarding: (1) consolidation of rules relating to appeals and writs in juvenile proceedings; (2) the trial court's advisement of the right to appeal; (3) notice to de facto parents; (4) notice to Indian tribes and custodians; (5) the record on appeal; (6) abandoning an appeal; (7) optional fast-tracking of appeals; (8) attorney signature on a notice of intent to file writ petition; (9) notice of the filing of a notice of intent to file writ petition; and (10) service of writ petitions. Additionally, the proposal contains amendments to five Judicial Council forms to conform to the changes in the rules.

Alternative Actions Considered

The committees considered not moving forward with this proposal at this time in order to give the committees time to consider whether to circulate a revised proposal that incorporates the new substantive suggestions received during the public comment process. However, given the current omissions and contradictions in the existing rules, the committees decided that it was preferable to present this proposal to the council now, and to consider the new substantive suggestions in a future cycle.

The committees also considered recommending that rule 8.405(b) be amended to provide that the superior court clerk need only send notice of filing of a notice of appeal to a represented party's counsel, rather than to both the party and counsel. Based on the weight of comments received and given the importance of preserving appellate rights, the committees decided not to recommend that amendment.

Comments From Interested Parties

This proposal was circulated as part of the spring 2009 comment cycle. The distribution list included justices, judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. In addition, this proposal was sent to all of the district appellate projects. Input was also sought on this proposal multiple times from the Trial Court Presiding Judges Advisory Committee/

Court Executives Advisory Committee Joint Rules Working Group, as well as from administrative presiding justices.

Twenty-one individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, 4 agreed with the proposal if modified, and 12 did not indicate their position on the proposal as a whole but provided comments on specific aspects of the proposal.

Commentators commented on the following: (1) the trial court's advisement of the right to appeal; (2) notice to Indian tribes and custodians; (3) the record on appeal; (4) optional fast-tracking of appeals; (5) attorney signature on notice of intent to file writ petition; (6) notice of the filing of a notice of intent to file writ petition; (7) service of writ petitions; and (8) four of the Judicial Council forms.

Implementation Requirements and Costs

The proposal to automatically include motions and related material in the record on appeal in juvenile cases should reduce the time and costs for appointed counsel and the courts associated with preparing and considering applications to add these materials to the record. In addition, the proposal not to automatically augment the record with any new orders, but instead to notify counsel of these orders, should decrease the size and cost of preparing these records.

Amending rules 8.450(e) and 8.454(e) to provide that the notice of intent can be signed by either that party intending to file the petition or that party's attorney may result in more notices of intent and petitions being filed, which would increase the workload for both the superior courts and Courts of Appeal.

Adding the request for appointment of counsel to form JV-800 should reduce delays in and improve the process of appointing appellate counsel in appropriate cases.

Attachments

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Issue Statement

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Rationale for Recommendation

Background

Between 2000 and 2004, the Appellate Rules Project Task Force, working under the Judicial Council's Appellate Advisory Committee, reviewed and proposed revisions to all of the California Rules of Court relating to proceedings in the Courts of Appeal and the Supreme Court. The final installment of those rule revisions, which included revisions to the rules relating to appellate review of juvenile proceedings, was approved by the

Judicial Council in August 2004 and went into effect on January 1, 2005. These revisions are commonly referred to as “the appellate rules reorganization.”

The task force focused on making the existing appellate rules clearer and easier to understand and making the juvenile appellate rules self-contained. In general, the task force did not consider or recommend substantive changes to the rules. In the course of the task force’s work, however, many commentators suggested substantive changes to the rules. The suggested changes were forwarded to the Family and Juvenile Law Advisory Committee for its consideration.

In 2006, the Family and Juvenile Law Advisory Committee made several recommendations based on the comments received during the appellate rules reorganization. While some of these recommendations were ultimately approved by the Judicial Council, it became clear to staff and to the committee that there were many other concerns relating to these appellate rules.

To consider all of the suggestions received concerning these rules and the gaps that had been identified and to identify any other necessary changes, in 2008 the Family and Juvenile Law Advisory Committee and the Appellate Advisory Committee formed a joint working group. This working group, which included appellate court justices, an appellate court administrator, an attorney from a district appellate project, and a county counsel familiar with juvenile law, reviewed all of the rules relating to appeals and writ proceedings in juvenile delinquency and dependency proceedings and all of the suggestions and developed a comprehensive proposal for amending these rules and revising related forms.

Consolidation of rules relating to appeals and writs in juvenile cases

Currently, rules governing appeals and writs in juvenile cases are located in both title 5, Family and Juvenile Law Rules, and title 8, Appellate Rules, of the California Rules of Court. Many of the rules in both titles address the same proceedings, and sometimes the provisions of the rules in each title differ.

This proposal would delete all of the provisions addressing appellate procedure from title 5 and move them into title 8; only those provisions relating to the trial court’s responsibility to advise participants of their appellate rights and responsibilities and trial counsel’s responsibility to make a recommendation about appointment of counsel for a child would remain in title 5.² Additionally, this proposal would delete duplicative provisions and consolidate provisions addressing the same issue, such as rules 5.585(d)

² The committees are not currently proposing any amendments to rule 5.661, relating to recommendations for appointment of counsel to represent a child on appeal. Under Welfare and Institutions Code section 395, the Judicial Council is to prepare a report that, among other things, examines the results of implementing the requirement concerning recommendations for the appointment of counsel. The committees plan to consider suggestions for modifying rule 5.661 after this report is completed.

and (e) and 5.590, which both relate to advisement of the right to appeal and procedural steps to file such an appeal, and rules 5.600 and 8.450, which both address notice of intent to file a writ petition regarding an order setting a hearing under Welfare and Institutions Code section 366.26.³

Advisement of right to appeal (rule 5.590)

Currently, rule 5.585(a) addresses the right to appeal and the right to appointed counsel in section 601 and 602 (juvenile delinquency) cases, and rule 5.585(b) addresses the right to appeal and right to appointed counsel in section 300 (juvenile dependency) cases. Because the right to appeal is a matter of statute, the rules of court relating to appeals in other types of cases, including civil and criminal cases, do not address this right. In addition, current rule 5.585(a) refers only to the child's right to appeal. Under section 800 and case law, however, it is clear that others may also appeal in certain circumstances, including the People and parents who have been held liable or had monetary judgments against them.⁴ Similarly, current rule 5.585(b) refers only to the petitioner's, child's, and parent's or guardian's right to appeal. Under section 395 and case law, however, it is clear that others may also appeal in certain circumstances, including de facto parents,⁵ grandparents,⁶ and the public defender's office.⁷ Several cases have specifically held that if the predecessor to rule 5.585 were to be construed to define a right of appeal more restrictive than the right of appeal afforded by statute, it would have been void.⁸

To eliminate the possibility that rule 5.585 might be read as inappropriately limiting the right to appeal and to make the rules concerning juvenile appeals more consistent with the rules relating to other appeals, the committees recommend deleting the reference to the right to appeal from this rule (which would be renumbered as rule 5.590 in this proposal) and adding an advisory committee comment directing readers to the statutes and case law concerning the right to appeal.

Currently, rule 5.585(e) addresses stays of execution or judgment. The committees recommend that this provision be moved to a new, separate rule (proposed rule 5.595) so that it is easier for rule users to find this provision. The committees also recommend adding a new rule in title 8 (proposed rule 8.404) containing this same language, as the reviewing court may also be asked to stay an order or judgment.

The committees further recommend moving the provisions relating to the right to appointed counsel to proposed new rule 8.403 in the appellate rules. This would make

³ All statutory references in this report are to the Welfare and Institutions Code.

⁴ See, e.g., *In re Michael S.* (2007) 147 Cal.App.4th 1443, and *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 [upholding parent's standing to appeal money judgment against parent for delinquent acts of child].

⁵ See, e.g., *In re Aaron R.* (2005) 130 Cal.App.4th 697; *In re Joel H.* (1993) 214 Cal.App.3d 662; and *In re Rachael C.* (1991) 235 Cal.App.3d 1445.

⁶ See, e.g., *In re Merrick V.* (2004) 122 Cal.App.4th 235.

⁷ See, e.g. *In re Sean R.* (1989) 214 Cal.App.3d 662.

⁸ See, *In re Aaron R.* and *In re Rachael C.*, supra at footnote 4.

these rules more consistent with the rules relating to criminal appeals, which address appointment of appellate counsel in the appellate rules, rather than the trial court rules.

Dividing rule 8.400

Currently, rule 8.400 is titled “Appeals in juvenile cases generally” and it is located in a article of the rules entitled “Appeals.” The content of this rule, however, includes some provisions relating to writ proceedings in juvenile cases as well. Rule 8.400 is also very long and includes topics that are covered in separate rules in the rules relating to civil appeals (see rules 8.100 and 8.104). This proposal would create a new article of the rules entitled “General provisions” for rules that apply to both appeals and writ proceedings and would move the provisions from current rule 8.400(a) and (b), which address application of the rules and confidentially, in this new article. It would also divide the remaining provisions of rule 8.400, which relate only to appeals, into a series of shorter rules that should be easier for readers to understand.

Notice to de facto parents (rules 8.405(b), 8.450(f), 8.452(c), 8.454(g), and 8.456(c))

Several rules relating to appellate proceedings in juvenile cases currently require that certain notices be sent to “any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings.” Under case law,⁹ all persons found by the juvenile court to be de facto parents of a child have the right to participate in juvenile proceedings relating to that child, so it is not necessary and could be misleading to include language about their standing in the rules. De facto parent status can also change, and a person who was once a de facto parent may lose that status. To reflect these facts, the committees recommend that in all rules that require notice to de facto parents, the reference to “any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings” be changed to “any person currently awarded by the juvenile court the status of the child’s de facto parent.”

Notice to Indian tribes (rules 8.405(b), 8.450(f), 8.452(c), 8.454(g), and 8.456(c))

Currently, different rules have different requirements for notifying Indian tribes of various appellate filings. Rule 8.400(h) requires the superior court clerk to send notice of the filing of a notice of appeal in all juvenile cases to “any Indian tribe that has appeared in the proceeding.” Rule 8.450(f) requires the superior court clerk to send a notice of the filing of a intent to file a writ petition challenging an order setting a hearing regarding termination of parental rights under section 366.26 to “the Indian custodian and tribe of the child or the Bureau of Indian Affairs if the identify [sic] or location of the parent or Indian custodian and the tribe cannot be determined.” Rule 8.454(g) requires the superior court clerk to send a notice of intent to file a writ petition challenging an order designating a specific placement of a dependent child after termination of parental rights under section 366.28 to “the tribe of an Indian child and the Indian custodian.” Both rule

⁹ See, e.g., *In re Keisha E.* (1993) 6 Cal.4th 68; *In re Leticia S.* (2001) 92 Cal.App.4th 378; *In re Jodie R.* (218 Cal.App.3d 1615.

8.452(d) and 8.456(d) require the petitioner to send a copy of any petition filed under these rules to “all parties entitled to receive notice under section 294.” Section 294, provides, in relevant part “(i) If the court knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.” The lack of consistency in these provisions may lead to confusion about the proper notification of Indian tribes in these juvenile proceedings.

To increase both consistency within the rules and with the requirements of sections 224.2 and 294 and to increase awareness of the statutory requirements relating to notice of Indian tribes, the committees recommend that most of these rules be amended to provide that, “If the court knows or has reason to know that an Indian child is involved,” notice must be sent to “the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under section 224.2” As indicated above, this is the standard for notice that is provided in section 294.

However, the committees recommend slightly different language in rules 8.452 and 8.456, which address whom the petitioner must serve with petitions in proceedings under 366.26 and 366.28, respectively. Since the petitioner, not the court, is responsible for serving the petition, it seems inappropriate to ask that the petitioner determine if “the court knows or has reason to know if an Indian child is involved.” But the petitioner can determine if the court has sent a copy of the notice of intent to file a writ petition to an Indian custodian, tribe, or the Bureau of Indian Affairs. If the court has done this, it indirectly indicates that the court knows or has a reason to know that an Indian child is involved in the proceeding. The committees therefore recommend that rules 8.452 and 8.456 be amended to require that the petitioner serve the petition on the Indian custodian, tribe, or Bureau of Indian Affairs “if the notice of intent to file the writ petition was sent to an Indian custodian, tribe, or Bureau of Indian Affairs.”

Record on appeal (rules 8.407 and 8.410(b)(2))

Currently, motions and related material are not included in the normal record on appeal in juvenile proceedings. Under rule 8.404(c) (which would be renumbered as rule 8.407 under this proposal), any party or any Indian tribe may apply to the superior court to include in the clerk’s transcript any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court. However, it takes time and public resources for appellate counsel to prepare and the courts to consider such applications.

This proposal would revise rule 8.407, which addresses the contents of the record on appeal, to include motions and related material as part of the normal record on appeal. The committees concluded that removing the requirement for appellate counsel to file applications in the superior court requesting these records and for the court to rule on such applications will save more than the additional cost to trial courts of having to

include these materials in the clerk's transcript, as they are generally not voluminous. Making this change would also expedite the appellate process.

Currently, rule 8.408 addresses preparing, sending, augmenting, and correcting the record in juvenile appeals. In the rules relating to appeals in civil and criminal cases, augmenting and correcting the record is addressed in a separate rule. In addition, rule 8.408(e) addresses augmenting and correcting the record by cross-referencing to rule 8.340, which governs augmentation and correction of the record in felony appeals. Rule 8.340 provides for automatic augmentation of the record whenever the trial court amends or recalls the judgment or makes any other order in the case. In juvenile cases, however, there may be many subsequent orders that are not relevant to the judgment or order being appealed. Automatically including all these subsequent orders in the record on appeal may not be necessary and may add to the length and cost of these records.

This proposal would renumber current rule 8.408 as rule 8.409 and amend it to delete the provisions relating to augmentation and correction of the record. Those provisions would be moved to new rule 8.410 that addresses only augmentation and correction of the record. In addition, the cross-reference to rule 8.340(a) which is currently in rule 8.408 would be replaced with new language providing for notice to the parties whenever the trial court amends or recalls the judgment or makes any other order in the case. The parties can then use this information to determine whether to request that the record be augmented with this new material. To make it easier for rule users, this proposal would also replace the current cross-reference to rule 8.340(b), which addresses correction of the record, with the text of that provision.

Abandoning an appeal

The current rules relating to appeals in juvenile cases do not address how to abandon an appeal. The committees recommend adopting rule 8.411 to address abandonment of an appeal. The language of proposed rule 8.411 is modeled on rule 8.316 regarding abandonment of felony appeals.

Optional expedited procedure in juvenile dependency appeals (rule 8.416)

Current rule 8.416 provides that in the Superior Courts of Orange, Imperial, and San Diego Counties, all appeals in juvenile dependency cases are expedited.¹⁰ In those counties, the time for many steps in the appellate process (including for augmenting the record, filing the appellant's opening brief, and setting a case for oral argument) is shortened, and extensions of time are granted only on an exceptional showing of good cause. The intended result is that appeals can be determined within 250 days.

¹⁰ Rule 8.416 also applies in all courts to appeals from judgments or orders terminating parental rights under section 366.26.

The committees recommend that rule 8.416 be amended to allow other superior courts and the District Courts of Appeal to agree to use this expedited procedure and to adopt local rules providing that rule 8.416 govern appeals from that superior court.

Attorney signature on notice of intent to file a writ petition (rules 8.450 and 8.454)

Under current rules 8.450(e) and 8.454(e), a notice of intent to file a writ petition challenging an order setting a hearing regarding termination of parental rights under section 366.26 or challenging an order designating a specific placement of a dependent child after termination of parental rights under section 366.28 must be signed by the party intending to file the petition unless it is filed on behalf of a child or the reviewing court waives this requirement for good cause. This is a very unusual requirement. In general, attorneys may sign on their client's behalf documents that are to be filed with a court when the client has authorized the filing of the document. For example, in felony cases, a notice of appeal on behalf of a defendant may be signed by either the defendant or the defendant's attorney (see rule 8.304(a)(3)).

The time to file a notice of intent is very short—only 7 days from issuance of the order being challenged if the party was present at the hearing at which the order was issued or 12 days after issuance of the order if notice of the order was mailed to the party in California. It may be difficult for an attorney to contact a client and arrange a meeting to get the client's signature in time to file the notice of intent, particularly when the client does not have stable housing. Filing of the notice of intent is a prerequisite to the filing of a petition challenging section 366.26 or 366.28 orders, and the filing of a petition is a prerequisite to any appeal in these matters. Thus, unless the court waives the signature requirement, a client's unavailability to sign a notice of intent can result in the client being precluded from seeking any review of these decisions, regardless of how meritorious the issues are that would have been raised on review.

To eliminate the concern that difficulties in obtaining the potential petitioners' signatures could threaten these individuals' rights to seek review, and also to make these rules more consistent with the general rule that attorneys may sign documents on behalf of their clients, the committees recommend amending rules 8.450(e) and 8.454(e) to provide that the notice of intent must be authorized by the party intending to file the petition, but that it can be signed by either that party or that party's attorney. One of the potential consequences of making this change might be that more notices of intent and petitions are filed, which would increase the workload for both the superior courts and Courts of Appeal. In particular, the committees note that under rules 8.450(g) and 8.454(h), the filing of the notice of intent is the trigger for beginning the preparation of the clerk's and reporter's transcripts, so if more notices of intent are filed, additional transcripts may need to be prepared. At this time, it is not clear that there will be such an increase in the number of notices of intent that are filed and the committees concluded that the importance of removing this procedural barrier to the filing of a notice of intent

outweighs the risk of this potential increase. Staff are exploring the options for tracking the number of notices of intent to determine the impact of this proposed amendment.

Notice of the filing of a notice of intent to file a writ petition (rules 8.450 and 8.454)

Currently, rules 5.600(e) and 8.450(f) contain different requirements regarding who must be notified of the filing of a section 366.26 notice of intent.¹¹ While both of these current rules require that the clerk send notice of the filing of the notice of intent to many of the same individuals, rule 5.600(e), through a cross-reference to section 294, requires that notice be sent to the following individuals who are not listed in rule 8.450: siblings and their caregivers and attorneys and unknown parents. Similarly, rule 8.450 requires that notice be sent to the following individuals who are not listed in rule 5.600: any legal guardian and the probation officer or social worker. Rule 8.454(g), which addresses who must be notified of the filing of a section 366.28 notice of intent, also contains a different list of those who need to be notified of the filing of such a notice of intent.¹² These overlapping and inconsistent notice requirements may cause confusion. In addition, it seems burdensome and unnecessary to send notice to some of the individuals listed in these rules.

The committees recommend repealing current rule 5.600, but adding siblings to the list of those who must receive notice of the filing of a section 366.26 notice of intent under rule 8.450(f). Repealing rule 5.600 would eliminate the requirement for service of the notice of intent on siblings' caregivers and unknown parents. The committees also recommend eliminating the requirement, now in rules 5.600(e), 8.450(f) and 8.454(g), that notice of

¹¹ Current rule 5.600(e) requires that the clerk serve a copy of the section 366.26 notice of intent on "each person listed in [Welfare and Institutions Code] section 294, the child's CASA volunteer, the child's present caregiver, any de facto parent," and the clerk of the reviewing court. Welfare and Institutions Code section 294(a), in turn lists the following individuals who are entitled to notice of the "selection and implementation hearing held pursuant to Section 366.26": the mother; the fathers, presumed and alleged; the child, if the child is 10 years of age or older; any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court; if the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney; if the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney; the grandparents of the child, if their address is known and if the parent's whereabouts are unknown; all counsel of record; any unknown parent by publication, if ordered by the court; and the current caregiver of the child, including foster parents, relative caregivers, preadoptive parents, and nonrelative extended family members. Welfare and Institutions Code section 294(i) also provides that if the court knows or has reason to know that an Indian child is involved, "notice shall be given in accordance with Section 224.2." Current rule 8.450(f) requires that the clerk serve a copy of the section 366.26 notice of the intent on each party, including the child if the child is 10 years of age or older; the mother; the father; the presumed and alleged parents; the current caregiver; any legal guardian; any de facto parent; the probation officer or social worker; any CASA volunteer; the grandparents of the child, if their address is known and if the parents' whereabouts are unknown; and the Indian custodian and tribe of the child or the Bureau of Indian Affairs if the identity or location of the parent or Indian custodian and the tribe cannot be determined.

¹² Current rule 8.454(g) requires that the clerk serve a copy of the 366.28 notice of the intent each counsel of record; each relevant party, including the child, if the child is 10 years of age or older, the child's present caregiver, any legal guardian, and any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings; the probation officer or social worker; the child's Court Appointed Special Advocate (CASA) volunteer; and the tribe of an Indian child and the Indian custodian.

both section 366.26 and section 366.28 notices of intent be sent to the child's caregiver. The committees point out that caregivers, while entitled to notice of and attendance at certain juvenile hearings,¹³ are not parties to the case and do not have standing to participate in the writ proceeding. Caregivers' participation in the juvenile proceedings is limited. They must receive a summary of the social worker's recommendations related to certain hearings, but they do not receive copies of the social worker's report.¹⁴ Additionally, they are not entitled to receive notice of a filing of a notice of appeal.¹⁵ Given caregivers' limited role in these proceedings, the committees believe it is not necessary to provide caregivers with notice that a party has filed a notice of intent to file a writ petition. However, the committees recommend adding prospective adoptive parents to the list of those who receive notice of the filing of a section 366.28 notice of intent. Under rule 8.456(d), prospective adoptive parents already receive copies of the actual writ petition challenging a placement order, so it makes sense that they also receive the notice of intent to file such a writ petition.

Service of writ petitions (rules 8.452(d) and 8.456(d))

Currently, rule 8.452(d) requires that writ petitions in proceedings under section 366.26 must be sent to "all parties entitled to receive notice under section 294, the child's Court Appointed Special Advocate (CASA) volunteer, the child's present caregiver, and any de facto parent given standing to participate in the juvenile court proceedings." Rule 8.456 contains two different provisions identifying who must receive writ petitions in proceedings under section 366.28. Similar to 8.452(d), rule 8.456(d) requires that writ petitions be sent to "all parties entitled to receive notice under Welfare and Institutions Code section 294, any Court Appointed Special Advocate (CASA) volunteer, the child's present caregiver, the child's prospective adoptive parents, and any de facto parent given standing to participate in the juvenile court proceedings." Subdivision (c) currently provides that the petitioner must give notice "to all parties entitled to receive notice under rule 8.454." Rule 8.545(g), in turn requires that notice be sent to "(A) Each counsel of record; (B) each relevant party, including the child, if the child is 10 years of age or older, the child's present caregiver, any legal guardian, and any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings; (C) the probation officer or social worker; (D) the child's Court Appointed Special Advocate (CASA) volunteer; and (E) the tribe of an Indian child and the Indian custodian." As with the requirement for notice of the filing of a notice of intent, these overlapping and inconsistent requirements relating to service of writ petitions may cause confusion. In addition, it seems burdensome and unnecessary to serve some of the individuals listed in these rules.

¹³ Under sections 293, 294, and 295, caregivers must be notified of review, permanency, and section 366.26 hearings.

¹⁴ Welfare and Institutions Code section 366.21.

¹⁵ California Rules of Court, rule 8.400(h).

The committees recommend deleting the current provisions relating to sending the writ petition in rules 8.452 and 8.456 and replacing them with a narrower list of those who must be served with a copy of the petition. The amended rules would require that these writ petitions be served on each attorney of record; any unrepresented party; the child's Court Appointed Special Advocate (CASA) volunteer; any person currently awarded by the juvenile court the status of the child's de facto parent; the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs as required under section 224.2, if the notice of intent was served on any of these; and, for writ petitions in proceedings under section 366.28, any prospective adoptive parent. This would eliminate the requirement, now in both rule 8.452(d) and rule 8.456 (c) and (d) that writ petitions be served on the child's caregiver. As discussed above, caregivers are not parties to the case and do not have standing to participate in the writ proceeding. In addition, with respect to petitions, there is the added concern about access to confidential information about the parents that is often included in these petitions. A caregiver is not entitled to view the child's confidential case file¹⁶ and should not have access to confidential information attached to a writ petition. These proposed amendments would also eliminate the current requirement, under rule 8.456(c), that the section 366.28 writ petition be sent to represented parties as well as to their attorneys, to any legal guardian of the child, and to the probation officer or social worker.

General review hearing requirements (rule 5.708)

Current rule 5.708 contains a reference to rule 5.585, which is being renumbered in this proposal to rule 5.590. The committees recommend amending the reference to rule 5.585 with the new rule number.

Judicial Council forms

The committees recommend revising five Judicial Council forms—*Orders Under Welfare and Institutions Code Sections 366.26, 727.3, 727.31* (form JV-320), *Notice of Appeal—Juvenile* (form JV-800), *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* (form JV-820), *Petition for Extraordinary Writ* (form JV-825), and *Notice of Action* (form JV-828)—to conform to the changes made by this proposal and recent statutory changes. The committees also recommend the following changes, designed to improve these forms:

- Add an item to form JV-800 allowing the appellant to request appointed counsel.
- Revise form JV-820 to provide for the attorney of record to sign the notice of intent.
- Delete the Proof of Service portion of form JV-825 and revise *Proof of Service—Juvenile* (form JV-510) to allow its use with all documents that could be filed in the

¹⁶ Welf. & Inst. Code, § 827.

juvenile court. The intent is that form JV-510 could be a universal proof of service form for any document filed with the juvenile court. This would reduce the number of future forms created, as a proof of service form would no longer be needed when new forms are created. Eventually, this form could replace the multiple proofs of service currently found in the juvenile forms.

- Revise form JV-828 to correctly reflect the requirements of rule 8.452. Currently, form JV-828 states that a response to a writ petition in section 366.26 proceedings must be filed under rule 8.452(c)(2)(B) within 10 days after the filing of the writ petition. However, rule 8.452(c)(2)(B), states that a response must be filed within 10 days after a respondent receives a request from the reviewing court for a response.

Alternative Actions Considered

The committees considered not moving forward with this proposal at this time in order to give the committees time to consider whether to circulate a revised proposal that incorporates the new substantive suggestions received during the public comment process. However, given the current omissions and contradictions in the existing rules, the committees decided that it was preferable to present this proposal to the council now and to consider the new substantive suggestions in a future cycle.

The committees also considered recommending that rule 8.400(h) be amended to provide that the superior court clerk need send notice of filing of a notice of appeal only to a represented party's counsel, rather than to both the party and counsel. In fact, the committee sought input on whether the notice to counsel is sufficient. Five commentators provided input on this issue. Three recommended retaining the current requirement of notice to both counsel and the party and two commentators thought that notifying the attorney was sufficient. Based on the weight of these comments and given the importance of preserving appellate rights, the committees chose not to recommend that notice be sent only to a represented party's counsel.

Comments From Interested Parties

This proposal was circulated as part of the spring 2009 comment cycle. The distribution list included justices, judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. In addition, this proposal was sent to all of the district appellate projects. Input was also sought on this proposal multiple times from the Trial Court Presiding Judges Advisory Committee/ Court Executives Advisory Committee Joint Working Group on Rules, as well as from administrative presiding justices.

Twenty-one individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, 4 agreed with the proposal if modified, and 12 did not indicate their position on the proposal as a whole but provided comments on

specific aspects of the proposal. A chart containing the full text of the comments received and the committee's responses is attached beginning on page 76.

Advisement of right to appeal (Rule 5.590)

One commentator from a district appellate project suggested that rule 5.590 should not require the trial court to tell parents, without qualification, that they always have the right to appeal. They suggested that the rule be redrafted, separating out section 300 and section 601/602 advisements and that an advisory committee comment be added to the rule advising the court to inform other persons that they are not precluded from appealing, and advising parents in 601/602 cases that they may also have the right to appeal.

The committees did not revise the proposal as suggested by this commentator because articulating these limitations in the rules would be an important substantive change that was not included in the proposal circulated for public comment. However, the committees did revise the proposal to provide that the trial court must advise the child and parents "if there is a right of appeal." This should address the concerns raised by appellate project, at least in the short term, without making substantial changes to the proposal that was circulated.

Another commentator, the Superior Court of San Diego County, suggested that the advisement regarding writ procedures in section 366.26 proceedings should include the deadline for filing the notice of intent. The committees agreed with this suggestion and revised proposed rule 5.590(b) to require that the court's advisement concerning the requirement to file a notice of intent include information about the deadline for filing that notice of intent. Although this is a substantive change in the rule, the committees concluded that it is a relatively minor change that is unlikely to create controversy.

Notice to Indian tribes (rules 8.405(b), 8.450(f), and 8.454(g))

The proposal that was circulated for public comment included proposed amendments to several existing provisions concerning notice to Indian tribes. The proposed new language would require such notice "if the court knows or has reason to know that an Indian child is involved" in the proceeding. Several commentators suggested that this standard would be too difficult to follow, because the clerk would not know if the court knows or has reason to know that an Indian child is involved.

The committees recommend adoption, as circulated for public comment, of the amendments requiring notification of Indian tribes "if the court knows or has reason to know that an Indian child is involved" in the proceeding. As discussed above, section 294 provides, in relevant part "(i) If the court knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2." The committees concluded that the best approach was to stay with the language that is based on this statutory notice requirement. The committees note that rule 5.481, which

addresses notice to Indian tribes in juvenile proceedings, uses this same statutory standard of “if it is known or there is reason to know that an Indian child is involved in a proceeding.” Staff is looking into ways to assist court staff in identifying cases in which notice to Indian tribes is required by ensuring that the Indian Child Welfare Act (ICWA) status of a case is clearly indicated on the case file.

Motions as part of regular record (rule 8.407)

The proposal that was circulated for public comment specifically sought input on whether motions and associated material should be automatically included in the normal record on appeal in juvenile proceedings, rather than requiring appellate counsel to file, and the court to consider, applications to include these materials in the record. Eight commentators provided input on this issue. Seven of these commentators, including four appellate projects and a presiding justice of a Court of Appeal, supported including these motions and related material as part of the normal record. Only one commentator, the Superior Court of San Diego County, suggested that these motions and related material should not be included as part of the normal record.

Based on the weight of these comments, the committees recommend amending the rule to include motions as part of the normal record.

Optional expedited procedure for juvenile dependency appeals (rule 8.416)

The proposal to amend rule 8.416 to allow other superior courts and their district’s Court of Appeal to agree to use the expedited appeal procedure in all juvenile dependency appeals received very mixed comments. Five comments, all from appellate practitioners (four commentators joined in one comment), expressed disagreement with this proposal. The concerns raised were as follows: the shortened time frame would encourage litigants and their lawyers to file notices automatically in every case rather than taking the time to assess whether a viable appellate issue exists, resulting in wasted judicial and clerical resources; fewer appellate counsel would be willing to accept appointment of these cases; and the quality of briefing would decline.

Five other comments, including one from three of the appellate projects and one from a presiding justice of a Court of Appeal, expressed support for this proposal. However, three of these commentators, including the appellate projects, the presiding justice, and one other commentator, suggested that the decision about whether to opt in to the shorter time frames under this rule should be made by the Court of Appeal alone, rather than by agreement with the trial courts. The presiding justice also suggested that all these appeals be expedited, as was recommended by the California Blue Ribbon Commission on Children in Foster Care.

The committees recommend adopting the amendments to rule 8.416 as circulated for public comment.

With regard to the concerns of the appellate practitioners, the committees note that these expedited time frames have successfully been implemented by all courts in termination of parental rights cases under section 366.26 and in Orange, Imperial, and San Diego Counties in all juvenile appeals without detrimentally affecting the quality of representation in these appeals. Second, this proposal is authorizing only, it does not require that any Court of Appeal or superior court implement these expedited time frames. The committees expect that the courts will work with the counsel who handle these appeals to assess whether they can appropriately be implemented in the particular jurisdiction.

With regard to the suggestion that the expedited time frames be implemented at the option of the Court of Appeal, rather than on agreement with the trial court, the committees are concerned about the workload implications that this might have for trial courts. Rule 8.416 contains expedited time frames for handling augmentations to the record, which will affect trial court staff. It therefore seems appropriate for the implementation of these expedited time frames to be agreed on by both courts. In addition, the committees note that, even in the Fourth Appellate District, implementation has been done only in some counties (although such a county-by-county implementation may be easier in that district because cases are assigned to divisions within the appellate district partially based on the trial courts in which they arose). Finally, the committees note that, because this is an authorization only, Courts of Appeal could determine whether it was practical to implement these expedited time frames in only certain courts within their district.

Attorney signature on notice of intent to file writ petition (rules 8.450 and 8.454 and The Invitation to Comment proposed amending rules 8.450(e) and 8.454(e) to provide that the notice of intent must be authorized by the party intending to file the petition, but that it can be signed by either that party or that party's attorney. It also proposed revising 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 (form JV-820) to reflect this rule amendment.

The proposed amendments to allow attorneys to sign the notice of intent received overwhelming support—nine commentators agreed with these amendments, three commentators disagreed with or raised concerns about the amendments, and one commentator did not indicate a position on the amendments, but made a suggestion for additional changes. The commentators who disagreed with or expressed concerns about the proposal were generally concerned about the possibility that the amendments would result in the filing of additional notices of intent when the client is not really interested in pursuing a writ petition and the workload implications of those additional filings for the courts. Two commentators suggested that, to avoid attorneys filing notices of intent without the permission of their client, the attorneys should indicate that the client authorized the filing of the notice of intent, either by checking a box that could be added

to form JV-820¹⁷ or by declaring that they have spoken to their client and the client authorized the filing of the writ petition or were unable to speak to the client but believe their client would want to file the writ petition.

Based on these comments, the committees recommend that rules 8.450 and 8.454 be amended to allow the attorney of record to sign the notice of intent to file a writ petition. The committees concluded, however, that the adding a box to form JV-820 where the attorney would indicate that the client authorized the filing of the notice of intent or otherwise requiring the attorney to declare that they had the client's authorization would be an important substantive change that was not circulated for public comment and thus beyond the scope of this proposal. The committees, therefore, will consider these potential changes during an upcoming committee year. In the meantime, staff are exploring the options for tracking the number of notices of intent to determine the impact of this proposed amendment.

Notices of intent and writ petitions sent to children (rules 8.450, 8.452, 8.454, and 8.456)

Rules 8.450 and 8.454 currently require that the superior court clerk send notice of the filing of a notice of intent to file a writ petition to the parties, including “the child, if the child is 10 years of age or older.” Rules 8.452 and 8.456 similarly require that the writ petition be sent to a party who is a child if that child is 10 years of age or older.¹⁸ In the proposal that was circulated for public comment, the limitation requiring that notice be sent only to children 10 years of age or older was eliminated, so that all parties, including children of any age, would have been required to be sent these notices of intent and writ petitions.

Several commentators noted that the result of removing the limitation requiring that notices be sent only to children 10 years of age or older would be that the caregiver would open the envelope and read it—thereby nullifying the concern that caregivers should not receive these notices because of the confidential nature of the proceedings. Based on these comments, the committees revised the proposal to retain the current requirement that only children 10 years of age or older be sent the notice of intent and the writ petition.

Notice of intent to siblings (rule 8.450)

As discussed above, currently, rule 5.600(e), through a cross-reference to section 294, requires that notice of the filing of a notice of intent be sent to the child's siblings. As

¹⁷ A member of the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee's Joint Rules Working Group similarly suggested, as part of that group's operational impact summary, that the notice of intent form could be revised to require that the attorney state what efforts were made to secure the signature of the Petitioner or to describe why the client is unavailable.

¹⁸ As noted above, both of these rules require the petitioner to send the petition to “to all parties entitled to receive notice under section 294.” Section 294, in turn, requires that notice be sent to “the child, if the child is 10 years of age or older.”

circulated for comment, the proposal would have deleted the requirement that siblings receive this notice.

Four commentators joined in a comment indicating that siblings or their counsel should receive the notice of intent. These commentators suggested that if siblings do not receive this notice, they may be deprived of due process, especially in cases where the section 366.26 hearing is set at the disposition hearing or at a six-month review and there is a concurrent decision concerning sibling placement that could adversely affect the siblings' interest in continuing the sibling relationship with the child in question.

Based on these comments, the committees have revised the proposal to retain the current requirement that siblings, as defined in section 294, be sent notice of the filing of the notice of intent and the writ petition.

Service of writ petitions on prospective adoptive parents (Rules 8.454 and 8.456)

As discussed above, the proposal that was circulated for public comment eliminated the current requirements that notice of the filing of both section 366.26 and section 366.28 notices of intent and writ petitions be sent to the child's caregiver. It also deleted the provision in rule 8.456(d) that required that writ petitions in section 366.28 proceedings be sent to prospective adoptive parties, among others.

Several individuals joined in a comment suggesting that rule 8.454 be amended to specify that if the writ petition is from a decision concerning a prospective adoptive parent, the notice of intent should be served on the person seeking prospective adoptive parent status. These commentators indicated that because of the confusing wording of section 366.26(n), some courts and county counsel take the position that the prospective adoptive parent is not a party. They suggested that, although there is a published appellate case¹⁹ which holds that prospective adoptive parents have the right to participate in the trial court proceedings about whether they will be granted prospective adoptive parent status, which would make them a real party in interest to the writ proceedings, it should be made clear in the rule that they also have the right to notice of any writ proceedings that arise out of the trial court's determination concerning their status. The county counsel's office from a large county similarly suggested that section 366.28 notices of intent should be served on the prospective adoptive parent, who is oftentimes the caregiver. They noted that these writs involve posttermination placement orders where the child may be removed or ordered not to be removed from a placement, so the caregiver may be directly affected by the order. They also expressed concern about eliminating the requirements to send the notice of intent and serve the writ petition in these proceedings on caregivers, who may be the designated prospective adoptive parents, because they may be aggrieved by the order and suggested that it may be appropriate for the rules to require service on the designated prospective adoptive parent.

¹⁹ *Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331.

Based on these comments, the committees have revised the proposed amendments to rules 8.454 and 8.456 to provide that the notice of intent and the petition in section 366.28 proceedings be sent to the prospective adoptive parent or person seeking prospective adoptive parent status. Because these rules currently require that the petition be sent to prospective adoptive parties, the committees considered this to be a clarification, rather than a substantive change.

Liberal construction of petitions (rules 8.452 and 8.456)

Rules 8.452 and 8.456 currently include subdivisions requiring that the writ petition be liberally construed. The proposal that was circulated for public comment deleted these provisions because they appeared out of place in a portion of the rule addressing the contents of these petitions.

One commentator objected to the removal of these provisions, suggesting that the deletion curtails the petitioner's right and creates a different criteria for construing notices of appeal and writs. Based on this comment, the committees have revised the proposal to retain the provision concerning liberal construction in rules 8.452 and 8.456. However, the committees have integrated this provision into the subdivisions of the rules identifying the minimum contents of the petitions.²⁰

Request for appointment of counsel (form JV-800)

Notice of Appeal—Juvenile (form JV-800) does not currently include a space where the appellant can request appointment of counsel. The proposal that was circulated for public comment did not include adding such a space to this form.

Two commentators suggested that form JV-800 be revised to add a space that the appellant can use to request appointment of appellate counsel, similar to the space on the felony notice of appeal.²¹ They noted that is more efficient for the request to be part of the notice of appeal so that cases are not delayed by the need to contact the client in order to obtain such a request.

Based on these comments, the committees revised the proposal to add the space for requesting appointment of counsel to form JV-800. The committees considered this to be a minor substantive change that would be unlikely to create controversy.

²⁰ The committees noted that the provision in rule 8.400(c) requiring that notices of appeal be liberally construed includes more direction to rule users about what needs to be included to make a notice of appeal sufficient: "The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located."

²¹ ___ I request that the court appoint an attorney for this appeal. I ___ was ___ was not represented by an appointed attorney in the trial court.

Implementation Requirements and Costs

The proposal to automatically include motions and related material in the record on appeal in juvenile cases should reduce the time and costs for appointed counsel and the courts associated with preparing and considering applications to add these materials to the record. In addition, the proposal not to automatically augment the record with any new orders, but instead to notify counsel of these orders, should decrease the size and cost of preparing these records.

Amending rules 8.450(e) and 8.454(e) to provide that the notice of intent must be authorized by the party intending to file the petition, but that it can be signed by either that party or that party's attorney, may result in more notices of intent and petitions being filed, which would increase the workload for both the superior courts and Courts of Appeal. In particular, the committees note that under rules 8.450(g) and 8.454(h), the filing of the notice of intent is the trigger for beginning the preparation of the clerk's and reporter's transcripts, so if more notices of intent are filed, additional transcripts may need to be prepared. Because it is not clear at this time whether more notices of intent would be filed, staff are exploring the options for tracking the number of notices of intent to determine the impact of this proposed amendment.

Adding the request for appointment of appellate counsel to form JV-800 should reduce delays and improve the process of appointing counsel in appropriate cases.

Attachments

Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective July 1, 2010:

1. Adopt, amend, renumber or repeal rules 5.585–5.600, 5.708, and 8.400–8.456 as detailed below in recommendations 2–13 to delete duplicative provisions, consolidate provisions addressing the same issue, delete provisions related to appellate procedures from title 5 of the California Rules of Court, which contains the family and juvenile rules, and move them to title 8, which contains the appellate rules;
2. Renumber rule 5.585 as rule 5.590 and amend it to eliminate provisions addressing the right to appeal from the rules, add an advisory committee comment directing readers to statute and case law addressing this right, and clarify the requirements concerning advisement of appellate rights;
3. Amend rule 5.708 to contain the correct reference to rule 5.590;

4. Amend rules 8.405(b), 8.450(f), 8.452(c), 8.454(g), and 8.456(c) to clarify that de facto parents, as identified in the rules, must currently be awarded that status by the juvenile court;
5. Amend the provisions in rules 8.405(b), 8.450(f), 8.452(c), 8.454(g), and 8.456(c) regarding notice to Indian tribes and custodians to conform with statute;
6. Renumber current rule 8.404 as rule 8.407 and amend it to include motions and related materials as a part of the normal record on appeal;
7. Renumber rule 8.408 as rule 8.409 and amend it to delete the provisions relating to augmentation and correction of the record, move these provisions to new rule 8.410 and replace the requirement for automatic augmentation of the record with a requirement that the trial court provide notice to the parties whenever it amends or recalls the judgment or makes any other order in the case;
8. Adopt rule 8.411 to provide a procedure for abandoning an appeal;
9. Amend rule 8.416 to allow trial and appellate courts to agree to follow the expedited procedures for appeals in juvenile dependency cases that are now followed in the Superior Courts of Orange, Imperial, and San Diego Counties;
10. Amend rules 8.450–8.456 to:
 - a. Allow the attorney of record to sign the notice of intent to file writ petition in proceedings under either Welfare and Institutions Code section 366.26 or 366.28; and
 - b. Clarify who must be sent notice of the filing of the notice of intent and who must be served with a writ petition, including removing caregivers from the lists of those who must receive any such notice or petition;
11. Revise *Orders Under Welfare and Institutions Code Sections 366.26, 727.3, 727.31* (form JV-320), *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* (form JV-820), and *Notice of Action* (form JV-828) to conform to recent statutory amendments and the proposed rule amendments;
12. Amend *Proof of Service-Juvenile* (form JV-510) to allow its use with all documents that could be filed in the juvenile court and remove the proof of service portion from *Petition for Extraordinary Writ* (form JV-825); and

13. Amend *Notice of Appeal-Juvenile* (Form JV-800) so it can be used to request appointment of counsel on appeal and to update references to rule numbers.

The text of the amended rules is attached at pages 26–60; the text of the revised forms is attached at pages 61–75.

Attachments

California Rules of Court, rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411 are adopted; rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456 are amended; rules 5.585, 8.404, and 8.408 are amended and renumbered as rules 5.590, 8.407, and 8.409, respectively; rule 8.406 is renumbered as rule 8.408; rules 5.590 and 5.600 are repealed; and forms JV-320, JV-510, JV-800, JV-820, JV-825 and JV-828 are revised, effective July 1, 2010, to read:

1 **Title 5. Family and Juvenile Rules**

2
3 **Chapter 5. Appeals and Writs Appellate Review**

4
5 **Rule 5.585. Rules governing appellate review**

6
7 The rules in title 8, chapter 5 govern appellate review of judgments and orders in
8 cases under Welfare and Institutions Code section 300, 601, or 602.

9
10 **Advisory Committee Comment**

11
12 Rules 8.450 and 8.452 describe how a party, including the petitioner, child, and parent or
13 guardian, must proceed if seeking appellate court review of findings and orders of the juvenile
14 court made at a hearing at which the court orders that a hearing under Welfare and Institutions
15 Code section 366.26 be held.

16
17
18 **Rule 5.585. Review by appeal 5.590. Advisement of right to review in**
19 **Welfare and Institutions Code section 300, 601, or 602 cases**

20
21 **(a) Right to appeal—section 601–602 proceedings**

22
23 In proceedings under section 601 or 602, the child may appeal from any
24 judgment, order, or decree specified in section 800 and is entitled to court-
25 appointed counsel. If the court determines that the parent or guardian can
26 afford counsel but has not retained counsel for the child, the court must
27 appoint counsel for the child at the expense of the parent or guardian.

28
29 **(b) Right to appeal—section 300 proceedings**

30
31 In proceedings under section 300, the petitioner, child, and the parent or
32 guardian each has the right to appeal from any judgment, order, or decree
33 specified in section 395. Any judgment, order, or decree setting a hearing
34 under section 366.26 may be reviewed on appeal following the order at the
35 section 366.26 hearing only if the procedures in rules 8.450, 8.452, and 5.600
36 have been followed. All appellants are entitled to representation by counsel

1 and the reviewing court may appoint counsel to represent an indigent child,
2 parent, or guardian.

3
4 ~~(e)~~ **Stay of execution of order or judgment (§§ 395, 800)**

5
6 The court must not stay an order or judgment pending an appeal unless
7 suitable provision is made for the maintenance, care, and custody of the
8 child.

9
10 ~~(d)~~**(a) Advisement of appeal rights—rule 5.590 to appeal**

11
12 If at a contested hearing on an issue of fact or law the court finds that the
13 child is described by Welfare and Institutions Code section 300, 601, or 602
14 or sustains a supplemental or subsequent petition, the court after making its
15 disposition order other than orders covered in (b) must advise, orally or in
16 writing, the child, if of sufficient age, and, if present, the parent or guardian
17 of:

- 18
19 (1) The right of the child, parent, and guardian to appeal from the court
20 order if there is a right to appeal;
- 21
22 (2) The necessary steps and time for taking an appeal;
- 23
24 (3) The right of an indigent appellant to have counsel appointed by the
25 reviewing court; and
- 26
27 (4) The right of an indigent appellant to be provided with a free copy of the
28 transcript.

29
30 ~~(e)~~**(b) Notice of trial rights; Advisement of requirement for writ petition to**
31 **preserve appellate rights when court orders hearing under section**
32 **366.26**

33
34 When the court orders a hearing under Welfare and Institutions Code section
35 366.26, the court must advise ~~orally~~ all parties ~~present~~ and, if present, the
36 child's parent, guardian, or adult relative, and by first class mail for parties
37 ~~not present~~, that if the party wishes to preserve any right to review on appeal
38 of the order setting the hearing under Welfare and Institutions Code section
39 366.26, the party is required to seek an extraordinary writ by filing a *Notice*
40 *of Intent to File Writ Petition and Request for Record (California Rules of*
41 *Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ
42 petition and request for record and a *Petition for Extraordinary Writ*

1 (*California Rules of Court, Rules 8.452, 8.456*) (form JV-825) or other
2 petition for extraordinary writ.

3
4 (1) The advisement must be given orally to those present when the court
5 orders the hearing under Welfare and Institutions Code section 366.26.

6
7 ~~(1)(2)~~ Within ~~24 hours of the one day~~ after the court orders the hearing
8 under Welfare and Institutions Code section 366.26, notice the
9 advisement must be sent by first-class mail must be provided by the
10 clerk of the court to the last known address of any party who is not
11 present when the court orders the hearing under Welfare and
12 Institutions Code section 366.26.

13
14 (3) The advisement must include the time for filing a notice of intent to file
15 a writ petition.

16
17 ~~(2)(4)~~ Copies of *Petition for Extraordinary Writ (California Rules of*
18 *Court, Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File*
19 *Writ Petition and Request for Record (California Rules of Court, Rule*
20 *8.450)* (form JV-820) must be available in the courtroom and must
21 accompany all mailed notices informing the parties of their rights.
22

23 ~~(f) — Time for filing notice of appeal~~

24
25 ~~Notice of appeal must be filed within 60 days after the making of an~~
26 ~~appealable order or, if the matter was heard by a referee who was not sitting~~
27 ~~as a temporary judge, within 60 days after the order becomes final under rule~~
28 ~~5.540(e). Notice of appeal may be filed on *Notice of Appeal—Juvenile*~~
29 ~~(*California Rules of Court, Rule 8.400*) (form JV 800).~~

30
31 ~~(g) — Procedure~~

32
33 ~~Procedures for appeals from juvenile court are in title 8, division 1, chapter~~
34 ~~5.~~

35
36 Advisory Committee Comment

37
38 Subdivision (a). The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile
39 delinquency) cases is established by Welfare and Institutions Code section 800 and case law (see,
40 for example, *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141
41 Cal.App.4th 1017), and *In re Sean R.* (1989) 214 Cal.App.3d 662). The right to appeal in Welfare
42 and Institutions Code section 300 (juvenile dependency) cases is established by Welfare and
43 Institutions Code section 395 and case law (see, for example, *In re Aaron R.* (2005) 130
44 Cal.App.4th 697, and *In re Merrick V.* (2004) 122 Cal.App.4th 235).

1
2 **Subdivision (b).** Welfare and Institutions Code section 366.26(l) establishes important
3 limitations on appeals of judgments, orders, or decrees setting a hearing under section 366.26,
4 including requirements for the filing of a petition for an extraordinary writ and limitations on the
5 issues that can be raised on appeal.
6

7
8 **~~Rule 5.590. Notification of appeal rights in juvenile cases~~**
9

10 ~~In juvenile court proceedings in which the child is found to be a person described~~
11 ~~by section 300, 601, or 602 after a contested issue of fact or law, the juvenile~~
12 ~~court, after making its order at the conclusion of the dispositional hearing or an~~
13 ~~order changing or modifying a previous disposition at the conclusion of a hearing~~
14 ~~on a supplemental petition, will advise, either orally or in writing, the child and, if~~
15 ~~present, the child's parent, guardian, or adult relative of any right to appeal from~~
16 ~~such order, of the necessary steps and time for taking an appeal, and of the right of~~
17 ~~an indigent person to have counsel appointed by the reviewing court.~~
18

19
20 **~~Rule 5.595. Review by extraordinary writ—section 300 proceedings~~ Stay**
21 **~~pending appeal~~**
22

23 ~~If review by petition for extraordinary writ is sought regarding judgments, orders,~~
24 ~~or decrees other than those described in rules 8.450, 8.452, 8.454, 8.456, and~~
25 ~~5.600, a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452,*~~
26 ~~8.456) (form JV 825) may be used.~~
27

28 The court must not stay an order or judgment pending an appeal unless suitable
29 provision is made for the maintenance, care, and custody of the child.
30

31
32 **~~Rule 5.600. Writ petition after orders setting hearing under section 366.26;~~**
33 **~~appeal~~**
34

35 **~~(a) Writ petition process~~**
36

37 ~~Rules 8.450 and 8.452 describe how a party including the petitioner, child,~~
38 ~~and parent or guardian must proceed if seeking appellate court review of~~
39 ~~findings and orders of the juvenile court made at a hearing at which the court~~
40 ~~orders that a hearing under section 366.26 be held.~~
41

42 **~~(b) Notice of trial rights; section 366.26~~**
43

1 ~~When the court orders a hearing under section 366.26, the court must advise~~
2 ~~orally all parties present, and by first class mail for parties not present, that if~~
3 ~~the party wishes to preserve any right to review on appeal of the order setting~~
4 ~~the hearing under section 366.26, the party is required to seek an~~
5 ~~extraordinary writ by filing a *Notice of Intent to File Writ Petition and*~~
6 ~~*Request for Record, (California Rules of Court, Rule 8.450) (form JV 820) or*~~
7 ~~other notice of intent to file a writ petition and request for record and a~~
8 ~~*Petition for Extraordinary Writ (California Rules of Court, Rules 8.452,*~~
9 ~~*8.456) (form JV 825) or other petition for extraordinary writ.*~~

10
11 ~~(1) Within 24 hours of the hearing, notice by first class mail must be~~
12 ~~provided by the clerk of the court to the last known address of any~~
13 ~~party who is not present when the court orders the hearing under~~
14 ~~section 366.26.~~

15
16 ~~(2) Copies of *Petition for Extraordinary Writ (California Rules of Court,*~~
17 ~~*Rules 8.452, 8.456) (form JV 825) and *Notice of Intent to File Writ**~~
18 ~~*Petition and Request for Record (California Rules of Court, Rule 8.450)*~~
19 ~~(form JV 820) must be available in the courtroom and must accompany~~
20 ~~all mailed notices informing the parties of their rights.~~

21
22 ~~**(c) Time for filing the notice of intent to file writ petition and request for**~~
23 ~~**record**~~

24
25 ~~To permit determination of the writ petition before the scheduled date for the~~
26 ~~hearing under section 366.26 on the selection of the permanent plan, a notice~~
27 ~~of intent to file a writ petition and request for record must be filed with the~~
28 ~~clerk of the juvenile court within 7 days of the date of the order setting a~~
29 ~~hearing under section 366.26. The period for filing a notice of intent to file a~~
30 ~~writ petition and request for record will be extended 5 days if the party~~
31 ~~received notice of the order setting the hearing under section 366.26 only by~~
32 ~~mail. A *Notice of Intent to File Writ Petition and Request for Record*~~
33 ~~(*California Rules of Court, Rule 8.450*) (form JV 820) may be used.~~

34
35 ~~**(d) Contents of the notice of intent to file writ petition**~~

36
37 ~~The notice of intent to file a writ petition must include, if known, all dates of~~
38 ~~the hearing that resulted in the order setting the hearing under section 366.26.~~

39
40 ~~**(e) Notice and service**~~

41
42 ~~The clerk must serve a copy of the notice of intent to file a writ petition on~~
43 ~~each person listed in section 294, the child's CASA volunteer, the child's~~

1 present caregiver, and any de facto parent. The clerk must also serve, by
2 first class mail or fax, on the clerk of the reviewing court, a copy of the
3 notice of intent to file a writ petition and a proof of service list. On receipt of
4 the notice of intent to file a writ petition, the clerk of the reviewing court
5 must lodge the notice, which gives the reviewing court jurisdiction of the
6 writ proceedings.

7
8 **(f) — Record**

9
10 Immediately on the filing of the notice of intent to file a writ petition and
11 request for record, the clerk of the juvenile court must assemble the record:

12
13 (1) — Notifying each court reporter by telephone and in writing to prepare a
14 reporter's transcript of each session of the hearing and to deliver the
15 transcript to the clerk no more than 12 days after the notice of intent to
16 file a writ petition and request for record is filed; and

17
18 (2) — Preparing the clerk's transcript under rule 8.616(a).

19
20 The record must include all reports and minute orders contained in the
21 juvenile court file, a reporter's transcript of all sessions of the hearing at
22 which the order setting a hearing under section 366.26 was made, and any
23 additional evidence or documents considered by the court at that hearing.

24
25 Immediately on completion of the transcript, the clerk must certify the record
26 as correct, and deliver it by the most expeditious means to the reviewing
27 court, and transmit copies to the petitioner and parties or counsel of record,
28 by any method as fast as the express mail service of the United States Postal
29 Service. On receipt of the transcript and record, the clerk of the reviewing
30 court must notify all parties that the record has been filed and indicate the
31 date on which the 10 day period for filing the writ petition will expire.

32
33 **(g) — Petitioner; trial counsel**

34
35 Trial counsel for the petitioning party or, in the absence of trial counsel, the
36 party, is responsible for filing the petition for extraordinary writ. Trial
37 counsel is encouraged to seek assistance from, or consult with, attorneys
38 experienced in writ procedures.

39
40 **(h) — Petition for extraordinary writ; form JV-825**

41
42 The petition for extraordinary writ may be filed on a *Petition for*
43 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-

1 ~~825) or other petition for extraordinary writ. Petitions for extraordinary writ~~
2 ~~submitted on a *Petition for Extraordinary Writ (California Rules of Court,*~~
3 ~~*Rules 8.452, 8.456) (form JV 825) must be accepted for filing by the*~~
4 ~~appellate court. All petitions must be liberally construed in favor of their~~
5 ~~sufficiency.~~

6
7 **(i) — Time for filing petition**

8
9 ~~The petition for extraordinary writ must be served and filed within 10 days~~
10 ~~after filing any record in the reviewing court.~~

11
12 **(j) — Contents of petition for writ; service**

13
14 ~~The petition for extraordinary writ must summarize the factual basis for the~~
15 ~~petition. Petitioner need not repeat facts as they appear in any attached or~~
16 ~~submitted record, provided, however, that references to specific portions of~~
17 ~~the record, their significance to the grounds alleged, and disputed aspects of~~
18 ~~the record will assist the reviewing court and must be noted. Petitioner must~~
19 ~~attach a memorandum in support of the petition.~~

20
21 **Rule 5.708. General review hearing requirements**

22
23 **(a)–(m) *****

24
25 **(n) Requirements upon setting a section 366.26 hearing (§§ 366.21, 366.22,**
26 **366.25)**

27
28 The court must make the following orders and determinations when setting a
29 hearing under section 366.26:

30
31 **(1)–(4) *****

32
33 **(5) The court must ensure that notice is provided as follows:**

34
35 **(A)** Within 24 hours of the review hearing, the clerk of the court must
36 provide notice by first-class mail to the last known address of any
37 party who is not present at the review hearing. The notice must
38 include the advisements required by rule ~~5.585(e)~~5.590(b).

39
40 **(B) *****

41
42 **(6) The court must follow all procedures in rule ~~5.585~~ 5.590 regarding writ**
43 **petition rights, advisements, and forms.**

1
2 (o) ***

3 **Title 8. Appellate Rules**

4
5 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

6
7 **Chapter 5. Juvenile Appeals and Writs**

8
9 **Article 1. General provisions**

10
11
12 **Rule 8.400. Appeals in juvenile cases generally Application**

13
14 ~~(a) Application~~

15
16 ~~Rules 8.400–8.474~~ The rules in this chapter govern:

- 17
18 (1) Appeals from judgments or appealable orders in:
- 19
20 (A) ~~Dependency and delinquency~~ Cases under the Welfare and
21 Institutions Code sections 300, 601, and 602; and
22
23 (B) Actions to free a child from parental custody and control under
24 Family Code section 7800 et seq.; and
25
26 (2) Writ petitions under Welfare and Institutions Code sections 366.26 and
27 366.28.

28
29 ~~(b) Confidentiality~~

- 30
31 ~~(1) Except as provided in (3), the record on appeal and documents filed by~~
32 ~~the parties may be inspected only by reviewing court and appellate~~
33 ~~project personnel, the parties or their attorneys, and other persons the~~
34 ~~court may designate.~~
- 35
36 ~~(2) To protect anonymity, a party must be referred to by first name and last~~
37 ~~initial in all filed documents and court orders and opinions; but if the~~
38 ~~first name is unusual or other circumstances would defeat the objective~~
39 ~~of anonymity, the party's initials may be used.~~
- 40
41 ~~(3) Filed documents that protect anonymity as required by (2) may be~~
42 ~~inspected by any person or entity that is considering filing an amicus~~
43 ~~curiae brief.~~

1
2 (4) ~~The court may limit or prohibit public admittance to oral argument.~~

3
4 **(e) ~~Notice of appeal~~**

5
6 (1) ~~To appeal from a judgment or appealable order under these rules, the~~
7 ~~appellant must file a notice of appeal in the superior court. The~~
8 ~~appellant or the appellant's attorney must sign the notice.~~

9
10 (2) ~~The notice of appeal must be liberally construed, and is sufficient if it~~
11 ~~identifies the particular judgment or order being appealed. The notice~~
12 ~~need not specify the court to which the appeal is taken; the appeal will~~
13 ~~be treated as taken to the Court of Appeal for the district in which the~~
14 ~~superior court is located.~~

15
16 **(d) ~~Time to appeal~~**

17
18 (1) ~~Except as provided in (2) and (3), a notice of appeal must be filed~~
19 ~~within 60 days after the rendition of the judgment or the making of the~~
20 ~~order being appealed. Except as provided in rule 8.66, no court may~~
21 ~~extend the time to file a notice of appeal.~~

22
23 (2) ~~In matters heard by a referee not acting as a temporary judge, a notice~~
24 ~~of appeal must be filed within 60 days after the referee's order becomes~~
25 ~~final under rule 5.540(c).~~

26
27 (3) ~~When an application for rehearing of an order of a referee not acting as~~
28 ~~a temporary judge is denied under rule 5.542, a notice of appeal from~~
29 ~~the referee's order must be filed within 60 days after that order is~~
30 ~~served under rule 5.538(b)(3) or 30 days after entry of the order~~
31 ~~denying rehearing, whichever is later.~~

32
33 **(e) ~~Cross-appeal~~**

34
35 ~~If an appellant timely appeals from a judgment or appealable order, the time~~
36 ~~for any other party to appeal from the same judgment or order is either the~~
37 ~~time specified in (d) or 20 days after the superior court clerk mails~~
38 ~~notification of the first appeal, whichever is later.~~

39
40 **(f) ~~Receipt by mail from custodial institution~~**

41
42 ~~If the superior court clerk receives a notice of appeal by mail from a~~
43 ~~custodial institution after the period specified in (d) has expired but the~~

1 envelope shows that the notice was mailed or delivered to custodial officials
2 for mailing within the period specified in (d), the notice is deemed timely.
3 The clerk must retain in the case file the envelope in which the notice was
4 received.

5
6 **(g) — Premature or late notice of appeal**

7
8 (1) — A notice of appeal is premature if filed before the judgment is rendered
9 or the order is made, but the reviewing court may treat the notice as
10 filed immediately after the rendition of judgment or the making of the
11 order.

12
13 (2) — The superior court clerk must mark a late notice of appeal “Received
14 [date] but not filed,” notify the party that the notice was not filed
15 because it was late, and send a copy of the marked notice of appeal to
16 the district appellate project.

17
18 **(h) — Superior court clerk’s duties**

19
20 (1) — When a notice of appeal is filed, the superior court clerk must
21 immediately:

22
23 (A) — Mail a notification of the filing to each party — including the
24 minor — other than the appellant, to all attorneys of record, and to
25 the reviewing court clerk; and

26
27 (B) — Notify the reporter by telephone and in writing to prepare a
28 reporter’s transcript and deliver it to the clerk within 20 days after
29 the notice of appeal is filed.

30
31 (2) — The clerk must immediately mail a notification of the filing to any de
32 facto parent, any Court Appointed Special Advocate (CASA)
33 volunteer, and any Indian tribe that has appeared in the proceedings.

34
35 (3) — The notification must show the name of the appellant, the date it was
36 mailed, the number and title of the case, and the date the notice of
37 appeal was filed. If the information is available, the notification must
38 also include:

39
40 (A) — The name, address, telephone number, and California State Bar
41 number of each attorney of record in the case;

1 ~~(B) The name of the party that each attorney represented in the~~
2 ~~superior court; and~~

3
4 ~~(C) The name, address, and telephone number of any unrepresented~~
5 ~~party.~~

6
7 ~~(4) The notification to the reviewing court clerk must also include a copy~~
8 ~~of the notice of appeal and any sequential list of reporters made under~~
9 ~~rule 2.950.~~

10
11 ~~(5) A copy of the notice of appeal is sufficient notification if the required~~
12 ~~information is on the copy or is added by the superior court clerk.~~

13
14 ~~(6) The mailing of a notification is a sufficient performance of the clerk's~~
15 ~~duty despite the discharge, disqualification, suspension, disbarment, or~~
16 ~~death of the attorney.~~

17
18 ~~(7) Failure to comply with any provision of this subdivision does not affect~~
19 ~~the validity of the notice of appeal.~~

20
21 **Rule 8.401. Confidentiality**

22
23 **(a) Access to filed documents**

24
25 (1) Except as provided in (3), the record on appeal and documents filed by
26 the parties in proceedings under this chapter may be inspected only by
27 the reviewing court and appellate project personnel, the parties or their
28 attorneys, and other persons the court may designate.

29
30 (2) To protect anonymity, a party must be referred to by first name and last
31 initial in all filed documents and court orders and opinions; but if the
32 first name is unusual or other circumstances would defeat the objective
33 of anonymity, the party's initials may be used.

34
35 (3) Filed documents that protect anonymity as required by (2) may be
36 inspected by any person or entity that is considering filing an amicus
37 curiae brief.

38
39 **(b) Access to oral argument**

40 The court may limit or prohibit public admittance to oral argument.
41

1
2 **Article 1. 2. Appeals**
3

4 **Rule 8.403 Right to appointment of appellate counsel and prerequisites for**
5 **appeal**
6

7 **(a) Welfare and Institutions Code section 601 or 602 proceedings**
8

9 In appeals of proceedings under Welfare and Institutions Code section 601 or
10 602, the child is entitled to court-appointed counsel. If the court determines
11 that the parent or guardian can afford counsel but has not retained counsel
12 for the child, the court must appoint counsel for the child at the expense of
13 the parent or guardian.
14

15 **(b) Welfare and Institutions Code section 300 proceedings**
16

17 (1) Any judgment, order, or decree setting a hearing under Welfare and
18 Institutions Code section 366.26 may be reviewed on appeal following
19 the order at the Welfare and Institutions Code section 366.26 hearing
20 only if:
21

22 (A) The procedures in rules 8.450 and 8.452 regarding writ petitions
23 in these cases have been followed; and
24

25 (B) The petition for an extraordinary writ was summarily denied or
26 otherwise not decided on the merits.
27

28 (2) The reviewing court may appoint counsel to represent an indigent
29 child, parent, or guardian.
30

31 (3) Rule 5.661 governs the responsibilities of trial counsel in Welfare and
32 Institutions Code section 300 proceedings with regard to appellate
33 representation of the child.
34

35 **Advisory Committee Comment**
36

37 The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile delinquency)
38 cases is established by Welfare and Institutions Code section 800 and case law (see, for example,
39 *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017)
40 and *In re Sean R.* (1989) 214 Cal.App.3d 662). The right to appeal in Welfare and Institutions
41 Code section 300 (juvenile dependency) cases is established by Welfare and Institutions Code
42 section 395 and case law (see, for example, *In re Aaron R.* (2005) 130 Cal.App.4th 697, and *In re*
43 *Merrick V.* (2004) 122 Cal.App.4th 235).
44

1 Subdivision (b)(1). Welfare and Institutions Code section 366.26(l) establishes important
2 limitations on appeals of judgments, orders, or decrees setting a hearing under section 366.26,
3 including requirements for the filing of a petition for an extraordinary writ and limitations on the
4 issues that can be raised on appeal.

5
6
7 **Rule 8.404. Stay pending appeal**

8
9 The court must not stay an order or judgment pending an appeal unless suitable
10 provision is made for the maintenance, care, and custody of the child.

11
12
13 **Rule 8.405. Filing the appeal**

14
15 **(a) Notice of appeal**

- 16
17 (1) To appeal from a judgment or appealable order under these rules, the
18 appellant must file a notice of appeal in the superior court. Any notice
19 of appeal on behalf of the child in a Welfare and Institutions Code
20 section 300 proceeding must be authorized by the child or the child's
21 CAPTA guardian ad litem.
- 22
23 (2) The appellant or the appellant's attorney must sign the notice of appeal.
- 24
25 (3) The notice of appeal must be liberally construed, and is sufficient if it
26 identifies the particular judgment or order being appealed. The notice
27 need not specify the court to which the appeal is taken; the appeal will
28 be treated as taken to the Court of Appeal for the district in which the
29 superior court is located.

30
31 **(b) Superior court clerk's duties**

- 32
33 (1) When a notice of appeal is filed, the superior court clerk must
34 immediately:
- 35
36 (A) Mail a notification of the filing to:
- 37
38 (i) Each party other than the appellant, including the child if the
39 child is 10 years of age or older;
- 40
41 (ii) The attorney of record for each party;
42

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- (iii) Any person currently awarded by the juvenile court the status of the child's de facto parent;
- (iv) Any Court Appointed Special Advocate (CASA) volunteer;
- (v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and
- (vi) The reviewing court clerk; and

(B) Notify the reporter by telephone and in writing to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.

(2) The notification must show the name of the appellant, the date it was mailed, the number and title of the case, and the date the notice of appeal was filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, and California State Bar number of each attorney of record in the case;

(B) The name of the party that each attorney represented in the superior court; and

(C) The name, address, and telephone number of any unrepresented party.

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal and any sequential list of reporters made under rule 2.950.

(4) A copy of the notice of appeal is sufficient notification if the required information is on the copy or is added by the superior court clerk.

(5) The mailing of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

1
2 Advisory Committee Comment
3

4 Subdivision (a). Notice of Appeal—Juvenile (California Rules of Court, Rule 8.400) (form JV-
5 800) may be used to file the notice of appeal required under this rule. This form is available at
6 any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
7

8
9 **Rule 8.406. Time to appeal**

10
11 **(a) Normal time**
12

13 (1) Except as provided in (2) and (3), a notice of appeal must be filed
14 within 60 days after the rendition of the judgment or the making of the
15 order being appealed.
16

17 (2) In matters heard by a referee not acting as a temporary judge, a notice
18 of appeal must be filed within 60 days after the referee’s order becomes
19 final under rule 5.540(c).
20

21 (3) When an application for rehearing of an order of a referee not acting as
22 a temporary judge is denied under rule 5.542, a notice of appeal from
23 the referee’s order must be filed within 60 days after that order is
24 served under rule 5.538(b)(3) or 30 days after entry of the order
25 denying rehearing, whichever is later.
26

27 **(b) Cross-appeal**
28

29 If an appellant timely appeals from a judgment or appealable order, the time
30 for any other party to appeal from the same judgment or order is either the
31 time specified in (a) or 20 days after the superior court clerk mails
32 notification of the first appeal, whichever is later.
33

34 **(c) Receipt by mail from custodial institution**
35

36 If the superior court clerk receives a notice of appeal by mail from a
37 custodial institution after the period specified in (a) has expired but the
38 envelope shows that the notice was mailed or delivered to custodial officials
39 for mailing within the period specified in (a), the notice is deemed timely.
40 The clerk must retain in the case file the envelope in which the notice was
41 received.

1
2 **(d) No extension of time; late notice of appeal**
3

4 Except as provided in rule 8.66, no court may extend the time to file a notice
5 of appeal. The superior court clerk must mark a late notice of appeal
6 “Received [date] but not filed,” notify the party that the notice was not filed
7 because it was late, and send a copy of the marked notice of appeal to the
8 district appellate project.
9

10 **(e) Premature notice of appeal**
11

12 A notice of appeal is premature if filed before the judgment is rendered or
13 the order is made, but the reviewing court may treat the notice as filed
14 immediately after the rendition of judgment or the making of the order.
15

16
17 **Rule 8.404. 8.407. Record on appeal**
18

19 **(a) Normal record: clerk’s transcript**
20

21 The clerk’s transcript must contain:

- 22
23 (1) The petition;
24
25 (2) Any notice of hearing;
26
27 (3) All court minutes;
28
29 (4) Any report or other document submitted to the court;
30
31 (5) The jurisdictional and dispositional findings and orders;
32
33 (6) The judgment or order appealed from;
34
35 (7) Any application for rehearing;
36
37 (8) The notice of appeal and any order pursuant to the notice;
38
39 (9) Any transcript of a sound or sound-and-video recording tendered to the
40 court under rule 2.1040;
41
42 (10) Any application for additional record and any order on the application;
43 and

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(11) Any opinion or dispositive order of a reviewing court in the same case-
and;

(12) Any written motion or notice of motion by any party, with supporting
and opposing memoranda and attachments, and any written opinion of
the court.

(b) * * *

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

(1) Any party or Indian tribe that has intervened in the proceedings may
apply to the superior court for inclusion of any oral proceedings in the
record of any of the following items:

~~(A) In the clerk’s transcript: any written motion or notice of motion
by any party, with supporting and opposing memoranda and
attachments, and any written opinion of the court; and~~

~~(B) In the reporter’s transcript: any oral proceedings.~~

(2) – (7) * * *

(d) – (f) * * *

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) provides that only the reporter’s transcript of a hearing that
resulted in the order being appealed must be included in the normal record. This provision is
intended to achieve consistent record requirements in all appeals of cases under Welfare and
Institutions Code section 300, 601, or 602 and to reduce the delays and expense caused by
transcribing proceedings not necessary to the appeal.

Subdivision (b)(2)(A) recognizes that findings made in a jurisdictional hearing are not separately
appealable and can be challenged only in an appeal from the ensuing dispositional order. The rule
therefore specifically provides that a reporter’s transcript of jurisdictional proceedings must be
included in the normal record on appeal from a dispositional order.

Subdivision (b)(2)(B) specifies that the oral proceedings on any motion by the appellant that was
denied in whole or in part must be included in the normal record on appeal from a disposition
order. Rulings on such motions usually have some impact on either the jurisdictional findings or
the subsequent disposition order. Routine inclusion of these proceedings in the record will
promote expeditious resolution of appeals of cases under Welfare and Institutions Code section
300, 601, or 602.

1
2
3 **Rule ~~8.406, 8.408.~~ * * ***

4
5
6 **Rule ~~8.408, 8.409.~~ Preparing, and sending, ~~augmenting, and correcting~~ the**
7 **record**

8
9 **(a) Application**

10
11 Except as provided in ~~(b)~~ 8.416(c)(1), this rule does not apply to cases under
12 rule 8.416.

13
14 **(b) – (d) * * ***

15
16 **~~(e) – Augmenting and correcting the record in the reviewing court~~**

17
18 ~~(1) – Rule 8.340(a) (b) governs augmentation of the record without court~~
19 ~~order.~~

20
21 ~~(2) – On request of a party or on its own motion, the reviewing court may~~
22 ~~order the record augmented or corrected as provided in rule 8.155(a)~~
23 ~~and (c).~~

24
25 **Advisory Committee Comment**

26
27 **Subdivision (a).** Subdivision (a) calls litigants’ attention to the fact that a different rule (rule
28 8.416) governs *sending, augmenting, and correcting* the record in appeals from judgments or
29 orders terminating parental rights and in dependency appeals in certain counties. Rule 8.408(b)
30 governs *preparing and certifying* the record in those appeals. (See rule ~~8.416(a)(2)~~ [~~“In all~~
31 ~~respects not provided for in this rule, rules 8.400–8.412 apply.”~~] 8.416(c)(1) [~~“The record must be~~
32 prepared and certified as provided in rule 8.409(b).”].)

1 **Rule 8.410. Augmenting and correcting the record in the reviewing court**

2
3 **(a) Omissions**

4
5 If, after the record is certified, the superior court clerk or the reporter learns
6 that the record omits a document or transcript that any rule or order requires
7 to be included, without the need for a motion or court order, the clerk must
8 promptly copy and certify the document or the reporter must promptly
9 prepare and certify the transcript and the clerk must promptly send the
10 document or transcript—as an augmentation of the record—to all those who
11 are listed under 8.409(d).

12
13 **(b) Augmentation or correction by the reviewing court**

14
15 (1) On motion of a party or on its own motion, the reviewing court may
16 order the record augmented or corrected as provided in rule 8.155(a)
17 and (c).

18
19 (2) If, after the record is certified, the trial court amends or recalls the
20 judgment or makes any other order in the case, the trial court clerk must
21 notify each entity and person to whom the record is sent under rule
22 8.409(d).

23
24
25 **Rule 8.411. Abandoning the appeal**

26
27 **(a) How to abandon**

28
29 An appellant may abandon the appeal at any time by filing an abandonment
30 of the appeal. The abandonment must be authorized by the appellant and
31 signed by either the appellant or the appellant’s attorney of record. In a
32 Welfare and Institutions Code section 300 proceeding in which the child is
33 the appellant, the abandonment must be authorized by the child or, if the
34 child is not capable of giving authorization, by the child’s CAPTA guardian
35 ad litem.

36
37 **(b) Where to file; effect of filing**

38
39 (1) If the record has not been filed in the reviewing court, the appellant
40 must file the abandonment in the superior court. The filing effects a
41 dismissal of the appeal and restores the superior court’s jurisdiction.

- 1 (1) Except in ~~eases~~ appeals governed by rule 8.416~~(e)~~, the appellant must
2 serve and file the appellant's opening brief within 40 days after the
3 record is filed in the reviewing court.
4
5 (2) The respondent must serve and file the respondent's brief within 30
6 days after the appellant's opening brief is filed.
7
8 (3) The appellant must serve and file any reply brief within 20 days after
9 the respondent's brief is filed.
10
11 (4) In dependency cases in which the child is not an appellant but has
12 appellate counsel, the child must serve and file any brief within 10 days
13 after the respondent's brief is filed.
14
15 (5) Rule 8.220 applies if a party fails to timely file an appellant's opening
16 brief or a respondent's brief, but the period specified in the notice
17 required by that rule must be 30 days.
18

19 **(c) Extensions of time**

20
21 The superior court may not order any extensions of time to file briefs. Except
22 in ~~eases~~ appeals governed by rule 8.416~~(f)~~, the reviewing court may order
23 extensions of time for good cause.
24

25 **(d) Failure to file a brief**

- 26
27 (1) Except in ~~dependency appeals in Orange, Imperial, and San Diego~~
28 ~~Counties, and in appeals from the termination of parental rights~~ appeals
29 governed by rule 8.416, if a party fails to timely file an appellant's
30 opening brief or a respondent's brief, the reviewing court clerk must
31 promptly notify the party's counsel; or ~~if not represented~~, the party, if
32 not represented, by mail that the brief must be filed within 30 days after
33 the notice is mailed and that failure to comply may result in one of the
34 following sanctions:
35

36 (A) – (B) * * *

37
38 (2) – (3) * * *

39
40 **(e) * * ***

41 **Rule 8.416. Appeals from all terminations of parental rights; dependency**
42 **appeals in Orange, Imperial, and San Diego Counties and in other counties by**
43 **local rule**

1
2 **(a) Application**
3

4 (1) This rule governs:
5

6 (A) Appeals from judgments or appealable orders of all superior
7 courts terminating parental rights under Welfare and Institutions
8 Code section 366.26 or freeing a child from parental custody and
9 control under Family Code section 7800 et seq.; and

10
11 (B) Appeals from judgments or appealable orders ~~of the Superior~~
12 ~~Courts of Orange, Imperial, and San Diego Counties~~ in all
13 juvenile dependency cases ~~of~~:

14
15 (i) The Superior Courts of Orange, Imperial, and San Diego
16 Counties; and
17

18 (ii) Other superior courts when the superior court and the
19 District Court of Appeal with jurisdiction to hear appeals
20 from that superior court have agreed and have adopted local
21 rules providing that this rule will govern appeals from that
22 superior court.
23

24 (2) In all respects not provided for in this rule, rules ~~8.400-8.403~~–8.412
25 apply.
26

27 **(b) Cover of record**
28

29 (1) In appeals under (a)(1)(A), the cover of the record must prominently
30 display the title “Appeal From [Judgment or Order] Terminating
31 Parental Rights Under [Welfare and Institutions Code Section 366.26
32 or Family Code Section 7800 et seq.],” whichever is appropriate.
33

34 (2) In appeals ~~from judgments or appealable orders of the Superior Courts~~
35 ~~of Orange, Imperial, and San Diego Counties~~ under (a)(1)(B), the cover
36 of the record must prominently display the title “Appeal From
37 [Judgment or Order] Under [Welfare and Institutions Code Section 300
38 et seq. or Family Code Section 7800 et seq.],” whichever is appropriate.
39

40 **(c) Preparing, certifying, and sending the record**
41

42 (1) The record must be prepared and certified as provided in rule 8.409(b).
43

1 ~~(1)~~(2) When the clerk's and reporter's transcripts are certified as correct,
2 the clerk must immediately send:

3
4 (A) The original transcripts to the reviewing court by the most
5 expeditious method, noting the sending date on each original; and

6
7 (B) One copy of each transcript to the attorneys of record for the
8 appellant, the respondent, and the ~~minor, child,~~ and to the district
9 appellate project, by any method as fast as United States Postal
10 Service express mail.

11
12 ~~(2)~~(3) If appellate counsel has not yet been retained or appointed when the
13 transcripts are certified as correct, the clerk must send that counsel's
14 copies of the transcripts to the district appellate project.

15
16 (d) **Augmenting or correcting the record ~~in the reviewing court~~**

17
18 (1) Except as provided in (2) and (3), rule ~~8.155~~ 8.410 governs any
19 augmentation or correction of the record.

20
21 (2) An appellant must serve and file any ~~request~~ motion for augmentation
22 or correction within 15 days after receiving the record. A respondent
23 must serve and file any such ~~request~~ motion within 15 days after the
24 appellant's opening brief is filed.

25
26 (3) The clerk and the reporter must prepare any supplemental transcripts
27 within 20 days, giving them the highest priority.

28
29 (4) The clerk must certify and send any supplemental transcripts as
30 required by (c).

31
32 (e) **Time to file ~~appellant's opening briefs~~**

33
34 (1) To permit determination of the appeal within 250 days after the notice
35 of appeal is filed, the appellant must serve and file the appellant's
36 opening brief within 30 days after the record is filed in the reviewing
37 court.

38
39 (2) Rule 8.412(b) governs the time for filing other briefs.

40
41 (f) * * *

1 **(g) Failure to file a brief**

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

6
7 **(h) * * ***

8
9 **Article ~~2~~ 3. Writs**

10
11 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**
12 **under Welfare and Institutions Code section 366.26**

13
14 **(a) Application**

15
16 Rules 8.450–8.452 and ~~5.600~~ 8.490 govern writ petitions to review orders
17 setting a hearing under Welfare and Institutions Code section 366.26. ~~Rules~~
18 ~~8.485–8.493 do not apply to petitions governed by these rules.~~

19
20 **(b) Purpose**

21
22 Rules 8.450–8.452 are intended to encourage and assist the reviewing courts
23 to determine on their merits all writ petitions filed under these rules within
24 the 120-day period for holding a hearing under Welfare and Institutions
25 Code section 366.26.

26
27 **(c) Who may file**

28
29 The petitioner’s trial counsel, or, in the absence of trial counsel, the party, is
30 responsible for filing any notice of intent and writ petition under rules 8.450–
31 8.452. Trial counsel is encouraged to seek assistance from or consult with
32 attorneys experienced in writ procedure.

1
2 **(d) Extensions of time**
3

4 The superior court may not extend any time period prescribed by rules
5 8.450–8.452. The reviewing court may extend any time period, but must
6 require an exceptional showing of good cause.
7

8 **(e) Notice of intent**
9

10 (1) A party seeking writ review under rules 8.450–8.452 must file in the
11 superior court a notice of intent to file a writ petition and a request for
12 the record.
13

14 (2) The notice must include all known dates of the hearing that resulted in
15 the order under review.
16

17 (3) The notice must be ~~signed~~ authorized by the party intending to file the
18 petition and must be signed by that party or, if filed on behalf of a
19 child, by the attorney of record for the child that party. ~~The reviewing~~
20 ~~court may waive this requirement for good cause on the basis of a~~
21 ~~declaration by the attorney of record explaining why the party could not~~
22 ~~sign the notice.~~
23

24 (4) – (5) * * *
25

26 **(f) Sending the notice of intent**
27

28 (1) When the notice of intent is filed, the superior court clerk must
29 immediately mail a copy of the notice to:
30

31 (A) ~~Each counsel~~ The attorney of record for each party;
32

33 (B) Each party, including the child if the child is 10 years of age or
34 older;
35

36 (C) Any known sibling of the child who is the subject of the hearing if
37 that sibling either is the subject of a dependency proceeding or has
38 been adjudged to be a dependent child of the juvenile court as
39 follows:
40

41 (i) If the sibling is under 10 years of age, on the sibling's
42 attorney;
43

1 (ii) If the sibling is 10 years of age or over, on the sibling and the
2 sibling's attorney.

3
4 (D) The mother, the father, and the any presumed and alleged
5 parents; the dependent child's present caregiver;

6
7 (E) ~~any~~ The child's legal guardian, if any; and

8
9 (F) ~~Any person who has been declared a~~ currently awarded by the
10 juvenile court the status of the child's de facto parent and given
11 standing to participate in the juvenile court proceedings;

12
13 ~~(G)~~ (G) The probation officer or social worker;

14
15 ~~(H)~~ (H) Any Court Appointed Special Advocate (CASA) volunteer;

16
17 ~~(I)~~ (I) The grandparents of the child, if their address is known and if the
18 parents' whereabouts are unknown; and

19
20 ~~(J)~~ (J) If the court knows or has reason to know that an Indian child is
21 involved, the Indian custodian, if any, and tribe of the child or
22 the Bureau of Indian Affairs if the identify or location of the
23 parent or Indian custodian and the tribe cannot be determined as
24 required under Welfare and Institutions Code section 224.2.

25
26 (2) The clerk must promptly send by first-class mail or fax a copy of the
27 notice of intent and a ~~proof of service~~ list of those to whom the notice
28 of intent was sent to:

29
30 (A) The reviewing court; and

31
32 (B) The petitioner if the clerk mailed the notice of intent to the Indian
33 custodian, tribe of the child, or the Bureau of Indian Affairs. by
34 first class mail or fax.

35
36 (3) If the party was notified of the order setting the hearing only by mail,
37 the clerk must include the date that the notification was mailed.

38
39 (g) **Preparing the record**

40
41 When the notice of intent is filed, the superior court clerk must:
42

1 (1) Immediately notify ~~the~~ each court reporter by telephone and in writing
2 to prepare a reporter's transcript of the oral proceedings at each session
3 of the hearing that resulted in the order under review and deliver the
4 transcript to the clerk within 12 calendar days after the notice of intent
5 is filed; and

6
7 (2) Within 20 days after the notice of intent is filed, prepare a clerk's
8 transcript that includes the notice of intent, proof of service, and all
9 items listed in rule 8.404(a).

10
11 **(h) – (i) * * ***

12
13
14 **Rule 8.452. Writ petition to review order setting hearing under Welfare and**
15 **Institutions Code section 366.26 and rule 5.600**

16
17 **(a) Petition**

18
19 (1) The petition must be liberally construed and must include:

20
21 (A) The identities of the parties;

22
23 (B) The date on which the superior court made the order setting the
24 hearing;

25
26 (C) The date on which the hearing is scheduled to be held;

27
28 (D) A summary of the grounds of the petition; and

29
30 (E) The relief requested.

31
32 ~~(2) The petition must be liberally construed.~~

33
34 ~~(3)~~(2) The petition must be accompanied by a memorandum.

35
36 **(b) * * ***

37
38 **(c) ~~Time to file~~ Serving and filing the petition and response**

39
40 (1) The petition must be served and filed within 10 days after the record is
41 filed in the reviewing court. The petitioner must serve a copy of the
42 petition on:

- 1 (A) Each attorney of record;
2
3 (B) Any unrepresented party, including the child if the child is 10
4 years of age or older;
5
6 (C) Any known sibling of the child who is the subject of the hearing if
7 that sibling either is the subject of a dependency proceeding or has
8 been adjudged to be a dependent child of the juvenile court as
9 follows:
10
11 (i) If the sibling is under 10 years of age, on the sibling's
12 attorney;
13
14 (ii) If the sibling is 10 years of age or over, on the sibling and the
15 sibling's attorney.
16
17 (D) The child's Court Appointed Special Advocate (CASA)
18 volunteer;
19
20 (E) Any person currently awarded by the juvenile court the status of
21 the child's de facto parent; and
22
23 (F) If the court sent the notice of intent to file the writ petition to an
24 Indian custodian, tribe, or Bureau of Indian Affairs, then to that
25 Indian custodian, tribe of the child, or the Bureau of Indian
26 Affairs as required under Welfare and Institutions Code section
27 224.2.
28

29 (2) Any response must be served on each of the people and entities listed
30 above and filed:
31

- 32 (A) Within 10 days—or, if the petition was served by mail, within 15
33 days—after the petition is filed; or
34
35 (B) Within 10 days after a respondent receives a request from the
36 reviewing court for a response, unless the court specifies a shorter
37 time.
38

39 ~~(d) Sending the writ~~

40
41 ~~Petitioner must send the writ to all parties entitled to receive notice under~~
42 ~~Welfare and Institutions Code section 294, the child's Court Appointed~~
43 ~~Special Advocate (CASA) volunteer, the child's present caregiver, and any~~

1 ~~de facto parent given standing to participate in the juvenile court~~
2 ~~proceedings.~~

3
4 ~~(e)(d)~~ * * *

5
6 ~~(f)(e)~~ **Augmenting or correcting the record in the reviewing court**

7
8 (1) Except as provided in (2) and (3), rule ~~8.155~~ 8.410 governs any
9 augmentation or correction of the record.

10
11 (2) The petitioner must serve and file any request for augmentation or
12 correction within 5 days—or, if the record exceeds 300 pages, within 7
13 days; or, if the record exceeds 600 pages, within 10 days—after
14 receiving the record. A respondent must serve and file any such request
15 within 5 days after the petition is filed or an order to show cause has
16 issued, whichever is later.

17
18 (3) A party must attach to its motion a copy, if available, of any document
19 or transcript that the party wants added to the record. The pages of the
20 attachment must be consecutively numbered, beginning with the
21 number one. If the reviewing court grants the motion, it may augment
22 the record with the copy.

23
24 (4) If the party cannot attach a copy of the matter to be added, the party
25 must identify it as required under rules 8.122 and 8.130.

26
27 ~~(3)~~(5) An order augmenting or correcting the record may grant no more than
28 15 days for compliance. The clerk and the reporter must give the order
29 the highest priority.

30
31 ~~(4)~~(6) The clerk must certify and send any supplemental transcripts as
32 required by rule 8.450(h). If the augmentation or correction is ordered,
33 the time to file any petition or response is extended by the number of
34 additional days granted to augment or correct the record.

35
36 ~~(g)(f)~~ * * *

37
38 ~~(h)(g)~~ * * *

39
40 ~~(i)(h)~~ * * *

41
42 **(i) Filing, modification, finality of decision, and remittitur**

1 (3) The notice must be ~~signed~~ authorized by the party intending to file the
2 petition and signed by the party or, if filed on behalf of the child, by the
3 attorney of record ~~for the child that party~~. ~~The reviewing court may~~
4 ~~waive this requirement for good cause on the basis of a declaration by~~
5 ~~the attorney of record explaining why the party could not sign the~~
6 ~~notice.~~

7
8 (4) – (5) * * *

9
10 (f) * * *

11
12 (g) **Sending the notice of intent**

13
14 (1) When the notice of intent is filed, the superior court clerk must
15 immediately mail a copy of the notice to:

16
17 (A) ~~Each counsel~~ The attorney of record for each party;

18
19 (B) ~~Each relevant party, including the child if the child is 10 years of~~
20 ~~age or older; the child's present caregiver;~~

21
22 (C) Any known sibling of the child who is the subject of the hearing if
23 that sibling either is the subject of a dependency proceeding or has
24 been adjudged to be a dependent child of the juvenile court as
25 follows:

26
27 (i) If the sibling is under 10 years of age, on the sibling's
28 attorney;

29
30 (ii) If the sibling is 10 years of age or over, on the sibling and the
31 sibling's attorney;

32
33 (D) Any prospective adoptive parent;

34
35 (E) ~~any~~ The child's legal guardian if any; ~~and~~

36
37 (F) ~~Any person who has been declared a~~ currently awarded by the
38 juvenile court the status of the child's de facto parent and given
39 standing to participate in the juvenile court proceedings;

40
41 ~~(G)~~ (G) The probation officer or social worker;

1 ~~(D)~~(H) The child's Court Appointed Special Advocate (CASA)
2 volunteer, if any; and

3
4 ~~(E)~~(I) If the court knows or has reason to know that The tribe of an
5 Indian child and is involved, the Indian custodian, if any, and
6 tribe of the child or the Bureau of Indian Affairs as required under
7 Welfare and Institutions Code section 224.2.

8
9 (2) The clerk must promptly send by first class mail or fax a copy of the
10 notice of intent and a ~~proof of service~~ list of those to whom the notice
11 of intent was sent to:

12
13 ~~(A)~~ The reviewing court, ;and

14
15 ~~(B)~~ The petitioner if the clerk mailed a copy of the notice of intent to
16 the Indian custodian, tribe of the child, or the Bureau of Indian
17 Affairs. by first class mail or fax.

18
19 ~~(3)~~ If the party was notified of the post placement order only by mail, the
20 clerk must include the date that the notification was mailed.

21
22 **(h) Preparing the record**

23
24 When the notice of intent is filed, the superior court clerk must:

25
26 (1) Immediately notify ~~the~~ each court reporter by telephone and in writing
27 to prepare a reporter's transcript of the oral proceedings at each session
28 of the hearing that resulted in the order under review and to deliver the
29 transcript to the clerk within 12 calendar days after the notice of intent
30 is filed; and

31
32 (2) * * *

33
34 **(i) – (j) * * ***

35
36
37 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28**
38 **to review order designating or denying specific placement of a**
39 **dependent child after termination of parental rights**

40
41 **(a) Petition**

42
43 (1) The petition must be liberally construed and must include:

1
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- (A) The identities of the parties;
- (B) The date on which the superior court made the posttermination placement order;
- (C) A summary of the grounds of the petition; and
- (D) The relief requested.

~~(2) — The petition must be liberally construed.~~

~~(3)~~(2) The petition must be accompanied by a memorandum.

(b) * * *

(c) ~~Time to file~~ **Serving and filing the petition and response**

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court. The petitioner must ~~give notice to all parties entitled to receive notice under rule 8.454.~~ serve the petition on:

- (A) Each attorney of record;
- (B) Any unrepresented party, including the child if the child is 10 years of age or older;
- (C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:
 - (i) If the sibling is under 10 years of age, on the sibling’s attorney;
 - (ii) If the sibling is 10 years of age or over, on the sibling and the sibling’s attorney;
- (D) Any prospective adoptive parent;
- (E) The child’s Court Appointed Special Advocate (CASA) volunteer;

1 (F) Any person currently awarded by the juvenile court the status of
2 the child’s de facto parent; and

3
4 (G) If the court sent the notice of intent to file the writ petition to an
5 Indian custodian, tribe, or Bureau of Indian Affairs, then to that
6 Indian custodian, tribe, or the Bureau of Indian Affairs as required
7 under Welfare and Institutions Code section 224.2.

8
9 (2) Any response must be served on each of the people and entities listed in
10 (1) and filed:

11
12 (A) Within 10 days—or, if the petition was served by mail, within 15
13 days—after the petition is filed; or

14
15 (B) Within 10 days after a respondent receives a request from the
16 reviewing court for a response, unless the court specifies a shorter
17 time.

18
19 **~~(d)~~—Sending the writ**

20
21 ~~Petitioner must send the writ to all parties entitled to receive notice under~~
22 ~~Welfare and Institutions Code section 294, any Court Appointed Special~~
23 ~~Advocate (CASA) volunteer, the child’s present caregiver, the child’s~~
24 ~~prospective adoptive parties, and any de facto parent given standing to~~
25 ~~participate in the juvenile court proceedings.~~

26
27 **~~(e)~~(d) Order to show cause or alternative writ**

28
29 If the court intends to determine the petition on the merits, it must issue an
30 order to show cause or alternative writ.

1
2 **(f)(e) Augmenting or correcting the record in the reviewing court**
3

4 (1) Except as provided in (2) and (3), rule ~~8.155~~ 8.410 governs
5 augmentation or correction of the record.
6

7 (2) The petitioner must serve and file any request for augmentation or
8 correction within 5 days—or, if the record exceeds 300 pages, within 7
9 days; or, if the record exceeds 600 pages, within 10 days—after
10 receiving the record. A respondent must serve and file any such request
11 within 5 days after the petition is filed or an order to show cause has
12 issued, whichever is later.
13

14 (3) A party must attach to its motion a copy, if available, of any document
15 or transcript that it wants added to the record. The pages of the
16 attachment must be consecutively numbered, beginning with the
17 number one. If the reviewing court grants the motion, it may augment
18 the record with the copy.
19

20 (4) If the party cannot attach a copy of the matter to be added, the party
21 must identify it as required under rules 8.122 and 8.130.
22

23 ~~(3)~~(5) An order augmenting or correcting the record may grant no more than
24 15 days for compliance. The clerk and the reporter must give the order
25 the highest priority.
26

27 ~~(4)~~(6) The clerk must certify and send any supplemental transcripts as
28 required by rule 8.454(i). If the augmentation or correction is ordered,
29 the time to file any petition or response is extended by the number of
30 additional days granted to augment or correct the record.
31

32 **(g)(f) * * ***
33

34 **(h)(g) * * ***
35

36 **(i)(h) Decision**
37

38 (1) – (4) * * *
39

40 (5) Rule 8.490 governs the filing, modification, finality of decisions, and
41 remittitur in writ proceedings under this rule.
42

43 **(j)(i) * * ***

| | |
|--|---|
| 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> | FOR COURT USE ONLY Draft 4 09/11/09 xyz Not approved by the Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CHILD'S NAME: | |
| ORDERS UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 366.26, 727.3, 727.31 | CASE NUMBER: |

| |
|--|
| Child's name: Date of birth: _____ Age: _____ Parent's name <i>(if known)</i> : _____ <input type="checkbox"/> Mother <input type="checkbox"/> Father Parent's name <i>(if known)</i> : _____ <input type="checkbox"/> Mother <input type="checkbox"/> Father |
|--|

1. a. Hearing date: _____ Time: _____ Dept.: _____ Room: _____
 b. Judicial officer:
 c. Parties and attorneys present:

2. The court has read and considered the assessment prepared under Welfare and Institutions Code section 366.21(i) or 366.21(c) and the report and recommendation of the social worker probation officer and other evidence.
3. The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

THE COURT FINDS AND ORDERS

4. a. Notice has been given as required by law.
 b. This case involves an Indian child and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5. The child is 10 years or older and is not present; the court finds that the child was properly notified of the right to be present, and was given an opportunity to attend.
6. The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7. The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code sections 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for
 Parent *(name)*: _____ Mother Father
 Parent *(name)*: _____ Mother Father

| | |
|------------------------|-----------------------|
| CHILD'S NAME: _____ | CASE NUMBER: _____ |
|------------------------|-----------------------|

8. a. There is clear and convincing evidence that it is likely the child will be adopted.
- b. This case involves an Indian child and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *(If item 8a or 8b is checked, go to item 9 unless item 10, 11, or 12 is applicable. If item 8a or 8b is not checked, go to item 14 or 15.)* **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**
9. The parental rights of
- a. Parent (name): Mother Father
- b. Parent (name): Mother Father
- c. Alleged fathers (names):
- d. Unknown mother All unknown fathers
are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
- e. **The adoption is likely to be finalized by (date):**
(If item 9 is checked, go to items 16, 17, 18, 19, and 20.)
10. The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. *(If item 10 is checked, go to item 14 or 15.)*
11. Termination of parental rights would be detrimental to the child for the following reasons *(If item 11 is checked, check reasons below and go to item 14 or 15):*
- a. The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b. The child is 12 years or older and objects to termination of parental rights.
- c. The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d. The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.
- e. There would be substantial interference with the child's sibling relationship.
- f. The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
- (1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
- (2) The child's tribe has identified guardianship or another permanent plan for the child.
12. Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 12 is checked, check reasons below and go to item 13):*
- a. is a member of a sibling group that should stay together.
- b. has a diagnosed medical, physical, or mental disability.
- c. is 7 years or older.

| | |
|----------------------------|---------------------------|
| CHILD'S NAME: _____ | CASE NUMBER: _____ |
|----------------------------|---------------------------|

13. a. Termination of parental rights is not ordered at this time. Adoption is the permanent placement goal, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order)*:
(If item 13a is checked, provide for visitation in items 13b and 13c as appropriate, and go to items 16, 17, 18, 19, and 20.)

b. Visitation between the child and

| | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> Parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Legal guardian (name): | | |
| <input type="checkbox"/> Other (name): | | |

is scheduled as follows *(specify)*:

c. Visitation between the child and *(names)*:
is detrimental to the child's physical or emotional well-being and is terminated.

14. The child's permanent plan is legal guardianship with a specific goal of *(specify)*:

Adoption

Dismissal of Dependency

Other *(specify)*: _____

(Name): _____
is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(If item 14 is checked, provide for visitation in items 14a and 14b as appropriate, and go to item 14c or 14d.)*

a. Visitation between the child and

| | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> Parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Legal guardian (name): | | |
| <input type="checkbox"/> Other (name): | | |

is scheduled as follows *(specify)*:

b. Visitation between the child and *(names)*:
is detrimental to the child's physical or emotional well-being and is terminated.

c. Dependency Wardship is terminated.

d. Dependency Wardship is not terminated. The likely date for termination of the dependency or wardship is *(date)*: _____
(If this item is checked, go to items 16, 17, 18, 19, and 20.)

The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

15. a. The child's permanent plan is an identified placement with *(name of placement)*:
with a specific goal of *(specify)*:

- | | |
|---|---|
| (1) <input type="checkbox"/> returning home | (4) <input type="checkbox"/> permanent placement with a fit and willing relative |
| (2) <input type="checkbox"/> adoption | (5) <input type="checkbox"/> a less restrictive foster care setting |
| (3) <input type="checkbox"/> legal guardianship | (6) <input type="checkbox"/> independent living with identification of a caring adult to serve as a lifelong connection |

The child's specific goal is likely to be achieved by *(date)*:
(If item 15a is checked, provide for visitation in items 15b and 15c as appropriate, and go to items 16, 17, 18, 19, and 20.)

| | |
|------------------------|-----------------------|
| CHILD'S NAME: _____ | CASE NUMBER: _____ |
|------------------------|-----------------------|

- b. Visitation between the child and
- | | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> Parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Legal guardian (name): | | |
| <input type="checkbox"/> Other (name): | | |
- is scheduled as follows (specify):

- c. Visitation between child and (names):
is detrimental to the child's physical or emotional well-being and is terminated.

16. The child's placement is necessary.
17. The child's placement is appropriate.
18. The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been proven unsuccessful.
19. The services set forth in the case plan include those needed to assist the child age 16 or older in making the transition from foster care to independent living. (This finding is required only for a child 16 years or older.)
20. The child remains a dependent ward of the court. (If this box is checked, go to items 21 and 22 if applicable, and items 23 and 24.)
21. All prior orders not in conflict with this order will remain in full force and effect.
22. Other (specify):

23. Next hearing date: _____ Time: _____ Dept.: _____ Room: _____
- a. Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
- b. Six-month postpermanency review

24. The Parent (name): _____ Mother Father
- Parent (name): _____ Mother Father
- Child
- Other (name): _____
- have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: _____

JUDICIAL OFFICER

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____ | FOR COURT USE ONLY Draft 6 09/15/09 xyz Not approved by the Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CASE NAME: | |
| PROOF OF SERVICE—JUVENILE | CASE NUMBER: |

I served a copy of the _____ (*name of document*) on the following persons or entities by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar:

1. Social worker Probation officer Attorney
 - a. Name and address: _____
 - a. Name and address: _____
 - b. Date of service: _____
 - b. Date of service: _____
 - c. Method of service: _____
 - c. Method of service: _____

2. Mother Father Legal guardian Attorney
 - a. Name and address: _____
 - a. Name and address: _____
 - b. Date of service: _____
 - b. Date of service: _____
 - c. Method of service: _____
 - c. Method of service: _____

3. Mother Father Legal guardian Attorney
 - a. Name and address: _____
 - a. Name and address: _____
 - b. Date of service: _____
 - b. Date of service: _____
 - c. Method of service: _____
 - c. Method of service: _____

4. Mother Father Legal guardian Attorney
 - a. Name and address: _____
 - a. Name and address: _____
 - b. Date of service: _____
 - b. Date of service: _____
 - c. Method of service: _____
 - c. Method of service: _____

| | |
|--------------------|----------------------|
| CASE NAME: | CASE NUMBER: |
|--------------------|----------------------|

5. Child (if 10 years of age or older)
a. Name and address:

b. Date of service:
c. Method of service:

Attorney
a. Name and address:

b. Date of service:
c. Method of service:

6. Child (if 10 years of age or older)
a. Name and address:

b. Date of service:
c. Method of service:

Attorney
a. Name and address:

b. Date of service:
c. Method of service:

7. Child's sibling
a. Name and address:

b. Date of service:
c. Method of service:

Attorney
a. Name and address:

b. Date of service:
c. Method of service:

8. CASA volunteer
a. Name and address:

b. Date of service:
c. Method of service:

Attorney
a. Name and address:

b. Date of service:
c. Method of service:

9. Tribe/Bureau of Indian Affairs
a. Name and address:

b. Date of service:
c. Method of service:

Attorney
a. Name and address:

b. Date of service:
c. Method of service:

10. Indian custodian
a. Name and address:

b. Date of service:
c. Method of service:

Attorney
a. Name and address:

b. Date of service:
c. Method of service:

| | |
|--------------------|----------------------|
| CASE NAME: | CASE NUMBER: |
|--------------------|----------------------|

11. Child's caregiver
 a. Name and address:

 b. Date of service:
 c. Method of service:

Attorney
 a. Name and address:

 b. Date of service:
 c. Method of service:

12. De facto parent
 a. Name and address:

 b. Date of service:
 c. Method of service:

Attorney
 a. Name and address:

 b. Date of service:
 c. Method of service:

13. Grandparent
 a. Name and address:

 b. Date of service:
 c. Method of service:

Attorney
 a. Name and address:

 b. Date of service:
 c. Method of service:

14. Other (*specify*):
 a. Name and address:

 b. Date of service:
 c. Method of service:

Attorney
 a. Name and address:

 b. Date of service:
 c. Method of service:

15. Other (*specify*):
 a. Name and address:

 b. Date of service:
 c. Method of service:

Attorney
 a. Name and address:

 b. Date of service:
 c. Method of service:

16. At the time of service I was at least 18 years of age and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (*specify*):

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: _____

 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE)

| | |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO. : _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ | <p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">Draft 4 09/11/09 xyz Not approved by the Judicial Council</p> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CASE NAME: | |
| NOTICE OF APPEAL—JUVENILE | CASE NUMBER: |

—NOTICE—

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 4–6 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.

1. I appeal from the findings and orders of the court (specify date of order or describe order):

2. This appeal is filed by

a. Appellant (name):

b. Address:

c. Phone number:

d. Name and address and phone number of person to be contacted (if different from appellant):

3. I request that the court appoint an attorney on appeal. I was was not represented by an appointed attorney in the superior court.

Date: _____

(TYPE OR PRINT NAME)

 (SIGNATURE OF APPELLANT ATTORNEY)

4. Items 5 through 7 on the reverse are completed not completed.

| | |
|-------------------------|---------------------------|
| CASE NAME: _____ | CASE NUMBER: _____ |
|-------------------------|---------------------------|

5. Appellant is the

- | | |
|---|---|
| a. <input type="checkbox"/> child b. <input type="checkbox"/> mother c. <input type="checkbox"/> father d. <input type="checkbox"/> guardian | e. <input type="checkbox"/> de facto parent f. <input type="checkbox"/> county welfare department g. <input type="checkbox"/> district attorney h. <input type="checkbox"/> other (state relationship to child or interest in the case): |
|---|---|

6. This notice of appeal pertains to the following child or children (specify number of children included): _____

- a. Name of child:
Child's date of birth:
 - b. Name of child:
Child's date of birth:
 - c. Name of child:
Child's date of birth:
 - d. Name of child:
Child's date of birth:
- Continued in Attachment 5.

7. The order appealed from was made under Welfare and Institutions Code section (check all that apply):

- a. **Section 360** (declaration of dependency) Removal of custody from parent or guardian Other orders
 with review of section 300 jurisdictional findings
 Dates of hearing (specify):
- b. **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
 Termination of parental rights Appointment of guardian Planned permanent living arrangement
 Dates of hearing (specify):
- c. **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
 Dates of hearing (specify):
- d. Other appealable orders relating to dependency (specify):
 Dates of hearing (specify):
- e. **Section 725** (declaration of wardship and other orders)
 with review of section 601 jurisdictional findings
 with review of section 602 jurisdictional findings
 Dates of hearing (specify):
- f. Other appealable orders relating to wardship (specify):
 Dates of hearing (specify):
- g. Other (specify):

| | |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____ | FOR COURT USE ONLY Draft 7 09/15/09 xyz Not approved by the Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| CASE NAME: _____ | |
| NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26 (California Rules of Court, Rule 8.450) | CASE NUMBER: _____ |

NOTICE

The juvenile court has decided it will make a permanent plan for this child that 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 ATTORNEY)

The Notice of Intent to File Writ Petition must be signed by the person who intends to file the writ petition or by the attorney of record.

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

| | |
|------------------------------------|--------------------------------|
| APPELLATE CASE TITLE: _____ | APPELLATE CASE NUMBER: |
|------------------------------------|--------------------------------|

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(l); 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, RULES 5.538, 5.540

SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, or
- By the attorney of record

| | |
|---|---|
| COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____ | Court of Appeal Case Number <i>(court will provide)</i> : _____ |
|---|---|

| |
|---|
| <p>In re the Matter of:</p> <hr/> <p><i>(Name and date of birth of subject child or children)</i></p> <hr/> <p style="text-align: center;">Petitioners</p> <p style="text-align: center;">v.</p> <p>Superior Court of California, County of _____</p> <hr/> <p style="text-align: center;">Respondent</p> <hr/> <p style="text-align: center;">Real Party in Interest</p> <hr/> |
|---|

(FILE STAMP)

DRAFT 1 09/02/09 mc

Superior Court No. _____

Superior Court No. _____

Related Appeal Pending
Appellate Court No. _____

**PETITION FOR EXTRAORDINARY WRIT
(California Rules of Court, Rules 8.452, 8.456)**

STAY REQUESTED *(see item 11).*

INSTRUCTIONS—READ CAREFULLY

- Read the entire form *before* completing any items.
- This petition must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and mark the additional page box.
- If you are filing this petition in the Court of Appeal, file the original and 4 copies.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies.
- Notify the clerk of the court in writing if you change your address after filing your petition.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

| | |
|--------------------|----------------------|
| CASE NAME: | CASE NUMBER: |
|--------------------|----------------------|

1. This *Petition for Extraordinary Writ (Juvenile Dependency)* is filed on behalf of petitioner.
 - a. Name:
 - b. Address:
 - c. Phone number:

2. Petitioner is the

| | |
|---|--|
| <ol style="list-style-type: none"> a. <input type="checkbox"/> child b. <input type="checkbox"/> mother c. <input type="checkbox"/> father d. <input type="checkbox"/> guardian | <ol style="list-style-type: none"> e. <input type="checkbox"/> de facto parent f. <input type="checkbox"/> county welfare department g. <input type="checkbox"/> district attorney h. <input type="checkbox"/> other (<i>state relationship to child or interest in the case</i>): |
|---|--|

3. The *Petition for Extraordinary Writ (Juvenile Dependency)* pertains to the following child or children (*specify number of children*): _____
 - a. Name of child:
Child's date of birth:
 - b. Name of child:
Child's date of birth:
 - c. Name of child:
Child's date of birth:
 - d. Name of child:
Child's date of birth:

Continued in Attachment 3.

4. This petition seeks extraordinary relief from the order of (*name*):
 - a. setting a hearing under Welfare and Institutions Code section 366.26 to consider termination of parental rights, guardianship, or another planned permanent living arrangement.
OR
 - b. designating a specific placement after a placement order under Welfare and Institutions Code section 366.28.
OR
 - c. *other (specify)*:

5. The challenged order was made on (*date of hearing*):

6. The order was erroneous on the following grounds (*specify*):

7.
 - a. Supporting documents are attached.
 - b. Because of exigent circumstances, supporting documents are not attached (*explain*):

8. Summary of factual basis for petition (*Petitioner need not repeat facts as they appear in the record. Petitioner must reference each specific portion of the record, its significance to the grounds alleged, and disputed aspects of the record*):

Additional pages attached.

| | |
|-------------------------|---------------------------|
| CASE NAME: _____ | CASE NUMBER: _____ |
|-------------------------|---------------------------|

9. Points and authorities in support of the petition are attached (*number of pages attached*): _____

10. Petitioner requests that this court direct the trial court to (*check all that apply*):

- a. Vacate the order for hearing under section 366.26.
- b. Vacate the order designating a specific placement after termination of parental rights under section 366.28.
- c. Remand for hearing.
- d. Order that reunification services be
 provided continued.
- e. Order visitation between the child and petitioner.
- f. Return or grant custody of the child to petitioner.
- g. Terminate dependency.
- h. Other (*specify*):

11. Petitioner requests a temporary stay pending the granting or denial of the petition for extraordinary writ.

- a. Hearing date (*must specify*):
- b. Reasons for stay (*specify*):

Additional pages attached.

12. Total number of pages attached: _____

13. I am the petitioner attorney for petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

 (TYPE OR PRINT NAME)

▶

 (SIGNATURE OF PETITIONER ATTORNEY)

Address:

| | |
|---|---|
| COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____ | Court of Appeal Case Number (court will provide): _____ |
|---|---|

In re the Matter of:

(Name and date of birth of subject child or children)

Petitioners

v.

Superior Court of California, County of _____

Respondent

Real Party in Interest

(FILE STAMP)

(FILE STAMP)

Superior Court No. _____

Superior Court No. _____

Related Appeal Pending

Appellate Court No. _____

NOTICE OF ACTION
(California Rules of Court, Rule 8.452)

BY THE COURT:

The following Order to Show Cause or Alternative Writ is issued:

1. Any response must be filed under rule 8.452 of the California Rules of Court, within 10 days after receiving this notice or within _____ days after receiving this notice (must be less than 10 days.).
2. Oral argument will not be granted unless requested by a party.
3. Juvenile court hearing under Welfare and Institutions Code section 366.26 is stayed.
4. Other (specify): _____

Date: _____

(Signature)

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators and General Comments | | | | |
|--|---|-----------------|---|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| 1. | Appellate Court Committee of the San Diego County Bar Association by Matthew C. Mulford Chair | NI | See comments on specific provisions below. | |
| 2. | Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego | NI | See comments on specific provisions below. | |
| 3. | Sherri Cohen Attorney Sausalito | NI | See comments on specific provisions below. | |
| 4. | Committee on Appellate Courts State Bar of California by Saul Bercovitch Legislative Counsel | A | See comments on specific provisions below. | |
| 5. | First District Appellate Project by Mat Zwerling Executive Director Central Appellate Project—Los Angeles by Jonathan Steiner Executive Director Central California Appellate Program by George Bond Executive Director | NI | Please find below comments from the Appellate Projects on amendments to the rules of Court proposed in the Invitations to Comment regarding records in criminal appeals (SPR09-05) and juvenile appeals and writs (PSR09-10). We have comments on a few of the proposed changes. See comments on specific provisions below. See comments on specific provisions below. | |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators and General Comments | | | | |
|--|--|-----------------|--|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| | Sixth District Appellate Project by Michael Kresser Executive Director | | | |
| 6. | Seth Gorman Attorney Half Moon Bay | AM | See comments on specific provisions below. | |
| 7. | Janice A. Jenkins Attorney Albany | NI | See comments on specific provisions below. | |
| 8. | Edward Jessen Reporter of Decisions Supreme Court of California Joseph Lane Clerk/Executive Officer Court of Appeal, Second Appellate District Frederick K. Ohlrich Clerk/Administrator Supreme Court | NI | See comments on specific provisions below. | |
| 9. | Joseph Lane Clerk/Executive Officer Court of Appeal, Second Appellate District | NI | See comments on specific provisions below. | |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators and General Comments | | | | |
|--|--|-----------------|---|---------------------------|
| | Commentator | Position | Comment | Committee Response |
| 10. | Los Angeles County Office of the County Counsel by James Owens Assistant County Counsel | AM | See comments on specific provisions below. | |
| 11. | Los Angeles Dependency Lawyers, Inc. by Ellen Bacon Writ Attorney Law Offices of Emma Castro | NI | The undersigned is the writ attorney for the Law Office of Emma Castro, one of the four firms comprising Los Angeles Dependency Lawyers, Inc. Along with our 80 staff attorneys, 4 writ attorneys, 4 supervising attorneys and 4 firm directors, we represent approximately 16,000 parents with open dependency cases in Los Angeles County. On their behalf, we request the proposed changes be made to the rules governing writs and appeals in juvenile cases. See comments on specific provisions below. | |
| 12. | Hon. Judith D. McConnell Presiding Justice Court of Appeal, Division One Fourth Appellate District San Diego | NI | See comments on specific provisions below. | |
| 13. | Orange County Bar Association by Michael G. Yoder President | AM | See comments on specific provisions below. | |
| 14. | Janet H. Saalfield Attorney Sausalito | NI | See comments on specific provisions below. | |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators and General Comments

| | Commentator | Position | Comment | Committee Response |
|-----|--|-----------------|--|---------------------------|
| 15. | Janet G. Sherwood Attorney Corte Madera Carole Greeley Attorney Fairfield Susan Horst Attorney San Francisco | NI | See comments on specific provisions below. | |
| 16. | Valerie Sopher Attorney El Cerrito | NI | See comments on specific provisions below. | |
| 17. | Superior Court of Los Angeles County | A | No specific comment. | No response required. |
| 18. | Superior Court of Riverside County | A | No specific comment. | No response required. |
| 19. | Superior Court of San Diego County by Michael M. Roddy Executive Officer | AM | See comments on specific provisions below. | |
| 20. | Superior Court of San Mateo County by Jeff Rolston Court Services Supervisor | AM | See comments on specific provisions below. | |
| 21. | Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group | A | 1. Agree with no further comment; and 2. A working group operational impact review on this proposal is available by contacting | No response required. |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators and General Comments

| | Commentator | Position | Comment | Committee Response |
|-----|--|-----------------|--|---------------------------|
| | by Patrick Danna Court Services Analyst | | working group staff. | |
| 22. | Jane Winer Senior Appellate Court Attorney Court of Appeal, Second Appellate District | NI | See comments on specific provisions below. | |
| 23. | Cynthia J. Wojan Juvenile Court Coordinator Superior Court of Solano County | A | See comments on specific provisions below. | |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Rule 5.585 | | |
|--|---|--|
| Commentator | Comment | Committee Response |
| Valerie Sopher Attorney El Cerrito | Rule 5.585. Current Rule 5.585(b) states the petitioner, child and the parent or guardian each has the right to appeal from any judgment, order or decree specified in section 395, that all appellants are entitled to representation by counsel and the reviewing court may appoint counsel to represent indigent parties. Proposed Rule 5.585(a) does not state these rights but only that the juvenile court must advise of these rights and only after the dispositional order. There is no reference to advisement of appellate rights when the court issues post-dispositional orders. The Invitation to Comment “Discussion” states that proposed rule 8.403 corrects any confusion about limiting the right to appeal to the petitioner, child, parent or guardian but proposed rule 8.403(b)(2) states only that the reviewing court may appoint counsel to represent an indigent child, parent or guardian. It does not include the statement from current rule 5.585 “All appellants are entitled to representation by counsel.” Therefore, the right to appeal and appointed counsel for indigents is less clearly stated in the proposed rules. | The committees are recommending that the focus of the rules be narrowed somewhat. With regard to the right to appeal, as was discussed in the invitation to comment, this right is contained in statute and case law. The committees concluded that it would be best not to try to repeat or paraphrase this right in the rules. Instead, the committees are recommending the addition of an advisory committee comment following rule 8.403 that contains statutory and case references concerning the right to appeal. With regard to representation by counsel, the committees concluded that, like the rules relating to criminal appeals, these rules should focus on addressing appointment of counsel by the court. With regard to advisement of appellate rights, current rule 5.585 does not address advisement of appellate rights postdisposition. Adding a requirement for such an advisement would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year. |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Rules: 5.590(a), 5.590(b), 5.590(b)(4) | | |
|--|---|---|
| Commentator | Comment | Committee Response |
| <p>Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego</p> | <p><u>5.590(A): ADVISEMENT OF RIGHT TO APPEAL IN 300, 601, OR 602 CASE</u></p> <p>This rule provides for four-step advice to “the child . . . and . . . the parent or guardian” in Welfare and Institutions Code section 300, 601, and 602 cases: (1) the right to appeal, (2) the way to appeal, (3) the right to appointed counsel, and (4) the right to free transcript.</p> <p>This is correct in section 300 cases, but it may not be in section 601 or 602 cases. While the committee is appropriately proposing a modification to the rule on filing the appeal (proposed 8.405), to avoid suggesting that only the child can <i>ever</i> appeal in such cases, the rule should not require the trial court to tell parents, without qualification, that they <i>always</i> have the right to appeal and have the right to appointed counsel and a free transcript if indigent:</p> <ul style="list-style-type: none"> • Parents and guardians have the right to appeal under <u>some</u> circumstances (<i>In re Michael S.</i> (2007) 147 Cal.App.4th 1443 and <i>In re Jeffrey M.</i> (2006) 141 Cal.App.4th 1017 [upholding parent’s standing to appeal money judgment against parent for delinquent acts of child]). But it is not clear they have the right to appeal from <u>every</u> 601-602 decision. (See <i>In re Almalik S.</i> (1998) 68 Cal.App.4th 851 [no right under Welf. & Inst. Code, § 800 where child not removed from home].) • As to free counsel and a free transcript for the parent, it is questionable there is a right to either one for a parent | <p>The committees are not recommending the changes suggested by the commentator at this time, but have amended the proposal to require the court to advise the child, and parent or guardian “if there is a right of appeal.” This should address the concerns raised by the commentator, at least in the short term, without making substantial changes to the proposal that was circulated. Articulating the limitations suggested by the commentator in the rules would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year.</p> |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rules: 5.590(a), 5.590(b), 5.590(b)(4) | | |
|---|--|---------------------------|
| Commentator | Comment | Committee Response |
| | <p>appealing from a money judgment, although the court has discretion to appoint (see <i>In re Jeffrey M., supra</i>, 141 Cal.App.4th 1443 [court appointed counsel for mother appealing money judgment in delinquency case]; <i>County of Orange v. Dabbs</i> (1994) 29 Cal.App.4th 999 [indigent noncustodial parent is given appointed counsel in responding to county’s appeal from superior court’s refusal to order full child support]).</p> <p>I suggest the four-step advisement be given to only the child in a 601 or 602 case, but that an advisory committee comment direct the trial court to tell the parents this advisement should not be read as implying anything, one way or the other, about their own right to appeal. A similar admonition should be given in a 300 case to miscellaneous parties, if present (other parties than the parent, child, or guardian – such as de facto parents, caregivers, etc.). The revised rule language could be:</p> <p>RULE 5.590. ADVISEMENT OF RIGHT TO REVIEW IN WELFARE AND INSTITUTIONS CODE SECTION 300, 601, OR 602 CASES</p> <p>(a) Advisement of right to appeal</p> <p>(1) If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order must advise, orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of: * * *</p> <p>(2) If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions</p> | |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Rules: 5.590(a), 5.590(b), 5.590(b)(4) | | |
|---|---|---------------------------|
| Commentator | Comment | Committee Response |
| | <p>Code section 601 or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order must give the child, orally or in writing, the advisements prescribed by (1).</p> <p>(b) Advisement of requirement for writ petition in Welfare and Institutions Code section 366.26 proceedings * * *</p> <p>Advisory Committee Comment</p> <p>Subdivision (a)(1). The court should inform other persons present, if any, that the advice as to the right of a child or parent or guardian to appeal should not be understood as suggesting that others are precluded from appealing. (E.g., <i>In re B.G.</i> (1974) 11 Cal.3d 679, 693; <i>In re Vincent M.</i> (2008) 161 Cal.App.4th 943, 952–953; <i>In re Shirley K.</i> (2006) 140 Cal.App.4th 65; <i>In re Aaron R.</i> (2005) 130 Cal.App.4th 697, 703; <i>In re Cesar V.</i> (2001) 91 Cal.App.4th 1023; <i>In re Joel H.</i> (1993) 19 Cal.App.4th 1185; <i>In re Rachael C.</i> (1991) 235 Cal.App.3d 1445 overruled on other grounds in <i>In re Keishia E.</i> (1993) 6 Cal.4th 68.)</p> <p>Subdivision (a)(2). The court should inform any parent or guardian present that the advice as to the right of a child to appeal should not be understood as suggesting that the parent or guardian is precluded from appealing. (E.g., <i>In re Michael S.</i> (2007) 147 Cal.App.4th 1443; <i>In re Jeffrey M.</i> (2006) 141 Cal.App.4th 1017.)</p> | |
| Seth Gorman Attorney Half Moon Bay | New Proposed Rule 5.590(a) & (b) (currently at 5.585) includes modifications to the advisements in terms of the necessity to appeal, or the necessity to file an extraordinary writ. | |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Rules: 5.590(a), 5.590(b), 5.590(b)(4) | | |
|---|--|---|
| Commentator | Comment | Committee Response |
| | <p>1. Rule 5.590(a): Following “the court after making its disposition order” add: “of orders other than provided in subdivision (b).”</p> <p style="padding-left: 40px;">When a court makes a disposition order and concurrently sets a hearing under Welfare and Institutions Code section 366.26, the disposition order is reviewable only by extraordinary writ. Therefore, the court should not be giving a notice of appeal rights when the order can only be reviewed by extraordinary writ.</p> <p>2. Rule 5.590(b): Add after “that if the party wishes to preserve any right to review on appeal on the order setting the hearing under Welfare and Institutions Code section 366.26” the following language: “and any order concurrently made with the order setting the hearing under Welfare and Institutions Code section 366.26, ...”</p> <p>3. Add Rule 5.590(b)(4): “If the court gives both an advisement of requirements for writ petitions and an advisement of rights to appeal, then the court shall specify the order or orders to which the writ advisement applies and appeal advisement applies.”</p> <p style="padding-left: 40px;">Some courts give parents two forms concurrently, a Notice of Appeal rights and a Notice of Extraordinary Writ rights. Both forms are general forms indicating that appeal or writ must be filed to secure appellate review. The purpose of giving the advisement of writ rights is so that a parent will be</p> | <p>1. The committees have amended the proposal to provide clarity.</p> <p>2. This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the Rules of Court generally cannot be recommended for adoption without first being circulated for public comment. The committee will therefore consider this suggestion during an upcoming committee year</p> <p>3. Imposing this new advisement requirements on the trial courts would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the Rules of Court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year.</p> |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Rules: 5.590(a), 5.590(b), 5.590(b)(4) | | |
|--|--|---|
| Commentator | Comment | Committee Response |
| | <p>on notice that he or she has 7 days to file the Notice of Intent. Without the notice, many courts excuse the forfeiture from the failure to writ and allow subsequent review from the termination of parental rights. However, giving a parent both forms concurrently defeats the clarity of the notice. Accordingly, the undersigned would propose the following addition: [see addition above.]</p> | |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Rule 5.590, subd. (b) – Comment: The FJLAC should consider whether the advisement re .26 writ procedure should include the deadline for filing the notice of intent (i.e., within 7 days, if party is present in court when .26 is set). Rationale for adding deadline to advisement: The filing deadline is important information for the parties who are being advised. Caveat: There are different deadlines if a party is notified by mail of the setting of the .26 (12, 17, or 27 days). However, because these deadlines apply to parties who are not present in court when the advisement is given, it would be pointless to include the latter deadlines in the advisement.</p> | <p>The committees have amended the proposal to state that the advisement must contain the necessary steps and time for filing the writ petition. This advice is one of the most important facts the party must know. This mirrors the requirement for advice of appellate rights in subdivision (a) of this rule. Criminal rules 4.305, 4.306, and 4.470 also provide for notice of the time for taking an appeal. Although this is a substantive change, the committees believe it is a minor change that is unlikely to create controversy.</p> |
| <p>Jane Winer Senior Appellate Court Attorney Court of Appeal, Second Appellate District</p> | <p>5.590(b) – I would change the heading to “Advisement of Requirement of Writ Petition to Review Orders Setting Hearing Under WIC Section 366.26.”</p> | <p>The committees have amended the proposal so the heading more accurately reflects the stage of proceedings while not causing potential confusion with existing forms by using “Advisement of requirement for writ petition to preserve appellate rights in orders setting hearing under section 366.26.”</p> |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.400 | | |
|--|--|---|
| Commentator | Comment | Committee Response |
| Seth Gorman Attorney Half Moon Bay | <p>1. Modify Rule 8.400(1)(B) to add the underscored language: “Actions to free a child from parental custody and control under Family Code section 7800 et seq. OR PROBATE CODE SECTION 1516.5; and”</p> <p style="padding-left: 40px;">Termination of parental rights under Probate Code section 1516.5 is generally governed by the requirements under Family Code section 7800 et seq., but which standards apply to appeal is not entirely clear. However, such appeals have traditionally been handled under the standards of Rule 8.400.</p> <p>2. Modify Rule 8.400(1)(C) to add “Actions under Family Code section 7662–7666.”</p> <p style="padding-left: 40px;">In independent or agency adoptions when the parents do not consent to the adoption or relinquish parental rights, termination of the parent’s rights occurs under two different schemes, Family Code section 7822/7825 (abandonment or unfitness), and Family Code section 7662–7666 (as to alleged or unknown fathers). Thus, when both parents appeal, one appeal is handled under Rule 8.400's standards and the other under the civil appeal standards. This amendment reconciles the conflict.</p> | <p>These would be important substantive changes that were not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committee will therefore consider this suggestion during an upcoming committee year.</p> |

| Rule 8.401 | | |
|---|--|--|
| Commentator | Comment | Committee Response |
| Edward Jessen Reporter of Decisions Supreme Court of California | <p><i>Recommended amendment</i></p> <p>Proposed new Rule 8.401(a)(2), showing recommended changes with underscoring and strikethrough: “To protect anonymity, a party must be referred to <u>only</u> by first name and</p> | <p>This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of</p> |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Rule 8.401 | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| <p>Joseph Lane Clerk/Executive Officer Court of Appeal, Second Appellate District</p> <p>Frederick K. Ohlrich Clerk/Administrator Supreme Court</p> | <p>last initial in all filed documents and court orders and opinions; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the party’s initials may be used.”</p> <p><i>Supporting documentation for recommendation</i></p> <ul style="list-style-type: none"> • In September 2003, the Judicial Conference of the United States adopted a policy on privacy and public access to electronic case information, including judicial opinions. The policy was spawned by provisions of the federal E-Government Act of 2002. In relevant part, that policy required that the names of minor children be redacted to initials, and a model local rule included in the policy stated: “If the involvement of a minor child must be mentioned, only the initials of the child should be used.” Various federal rules were subsequently amended to require initials only when referencing minor children. The amended rules included Federal Rules of Civil Procedure, rule 5.2; Federal Rules of Criminal Procedure, rule 49.1; and, Federal Rules of Appellate Procedure, rule 25(a)(5). • Approximately 75 percent of the appellate opinions now being filed by the Courts of Appeal in juvenile appeal and writ matters already reflect the initials-only style of confidentiality. For reasons explained below, courts and authors have determined for themselves that the rule’s exception allowing initials where “other circumstances [that] would defeat the objective of anonymity” now categorically exists in all juvenile appeal and writ matters. • An informal survey of state appellate courts by the National | <p>court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year</p> |

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| Rule 8.401 | | |
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| Commentator | Comment | Committee Response |
| | <p>Conference of Appellate Court Clerks showed that 17 states now have a policy of using an initials-only style for juvenile confidentiality. Three states retain a policy of using a first-name, last-initial style for juvenile confidentiality. (Not all states responded, and some responded that there is no policy and no predominant practice.)</p> <ul style="list-style-type: none"> • Superior courts are also following the initials-only style of the Judicial Conference of the United States with regard to public access to case records. Superior courts for San Mateo and Santa Barbara have standing orders stating: “If the involvement of a minor child must be mentioned, only the initials of that child should be used.” <p><i>What changed: Internet access to juvenile writ and appeal case information (2008); Internet posting of all opinions (2001)</i> In September 2008, in furtherance of the Judicial Council’s access-to-justice policy, case information (i.e., docketing entries and related information) for juvenile appeal and writ matters was added to case information long available on the judicial branch’s Web site for nonconfidential criminal and civil matters.¹</p> <p style="padding-left: 40px;">FN1 The implementation team for this expansion of case information adopted an initials-only style for confidentiality to avoid burdening deputy clerks with determining, in every juvenile appeal and writ matter, if first names were “unusual” for purposes of current rule 8.400.</p> <p>This extension of publicly available case information means the appellate courts are providing a great deal more case-record</p> | |

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| Rule 8.401 | | |
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| Commentator | Comment | Committee Response |
| | <p>information by which juveniles are potentially identifiable. No longer are the opinions posted to the Internet² the sole source of potentially identifying information for those entitled to confidentiality. And it is predictable there will be further demands for additional case-record information (e.g., briefs) in the next few years.</p> <p style="padding-left: 40px;">FN2 Nonpublished opinions have been posted to the Internet since late 2001; published opinions have been posted since the mid-1990's.</p> <p>In making significantly more case-record information available, the California appellate courts stepped into the issues of case-record privacy and public access analyzed by the United States Judicial Conference in 2003 in recommending the initials-only style for juveniles. In fact, apparently no entity that has examined these issues has come to any conclusion other than using the initials-only style for juvenile confidentiality.³</p> <p style="padding-left: 40px;">FN3 See also the February 2004 Report to the Chief Judge of the State of New York by the Commission on Public Access to Court Records, which recommends the initial-only style.</p> <p>Further, the first-name, last-initial style of juvenile confidentiality has been in a <i>quiet state of failure since late 2001</i> (i.e., since the inception of Internet posting of nonpublished opinions). Since 2001, the Reporter of Decisions and staff have made, prior to Internet posting, nonsubstantive postfiling corrections to <i>more than 4,000 opinions</i> in juvenile appeal and writ matters for lapses by Courts of Appeal in providing confidentiality (e.g., failing to note that a party had an “unusual” first name). The initials-only style is less prone to</p> | |

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| Rule 8.401 | | |
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| Commentator | Comment | Committee Response |
| | <p>subjective assessments, or lack of recognition, that particular first names are “unusual. That means there will be fewer instances where the Reporter must make otherwise undesirable alterations to opinions before Internet posting. (In fact, with 75 percent of opinions already using the initials-only style, there has been a significant reduction in the number of opinions requiring correction in recent months.)</p> <p><i>What else changed: “Informational privacy in the Google era”</i> Anyone still skeptical about the imperative need to formally adopt an initials-only style for juvenile confidentiality must read Schumm, <i>No Names, Please: The Virtual Victimization of Children, Crime Victims, the Mentally Ill, and Others in Appellate Court Opinions</i> (2008) 42 Ga. L.Rev. 471. Professor Schumm (Indiana University School of Law) explains how and why, on a national scale, it has become so difficult to meaningfully and effectively provide confidentiality in appellate opinions and case records. What Professor Schumm describes parallels the experience of the Reporter of Decisions in processing and posting over 100,000 opinions to the Internet.</p> <p>Professor Schumm compellingly explains how the Internet and search engines like Google have compromised the privacy to which juveniles are legally entitled, and how important it is for appellate courts to recognize and mitigate those compromises. Here are selected excerpts from the article:</p> <ul style="list-style-type: none"> • “Appellate courts are leading purveyors of incredibly intimate and embarrassing information about both adults and children who happen to be pulled into the judicial system. [H]undreds of judicial opinions [are] posted to the | |

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| Rule 8.401 | | |
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| Commentator | Comment | Committee Response |
| | <p>Internet each day by appellate courts around the country. In light of the nature of the information disclosed and the ease with which it can be obtained, one might expect carefully crafted rules or procedures to protect the privacy of persons thrust into the judicial system, such as the use of initials or pseudonyms instead of names. There are, however, few and sometimes inconsistent rules or procedures applied by appellate courts in deciding whose identity will be protected and whose will be exposed in very public judicial opinions that will follow them for the rest of their lives.”</p> <ul style="list-style-type: none"> • “For the first 200 years of the nation’s history, inclusion of names and personal information in a judicial opinion had little reach beyond the litigants of that case and the relatively few lawyers who had both access to the books where the cases were published and the legal education necessary to find the information there.” • “The pervasiveness of Internet access and the ease with which information of all types and sources may be accessed by search engines such as Google now allow virtually anyone—employers, neighbors, acquaintances, and even adversaries—to access a wealth of personal information about others with a few keystrokes.” • “[T]he precedential value of an appellate opinion [generally] has little to do with the name of a person. . . .” • “As a result of removing personal information, the opinions may become slightly more difficult to remember and cite, as there are considerably fewer combinations of initials . . . | |

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| Rule 8.401 | | |
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| Commentator | Comment | Committee Response |
| | <p>. Nevertheless, this could be addressed by [allowing] the use of three initials In any event, even if some duplication results, the thousands of cases captioned ‘Smith v. State,’ suggest that case names still can be recalled and cited, even if their title is ubiquitous.” (There are at least 160 citable opinions in the Official Reports entitled “<i>People v. Smith</i>,” and citing these opinions have never proven troublesome.)</p> <p><i>Conclusion</i> Although proposed rule 8.401(a)(2) (current rule 8.400) may have experienced some sort of de facto amendment for the reasons noted above, many, if not most, juvenile appeal and writ matters will ultimately reach the Supreme Court on petitions for review, and there must be consistency and uniformity for the Supreme Court in how Courts of Appeal provide confidentiality in captions and opinions.⁴</p> <p style="padding-left: 40px;">FN4 See <i>In re Edward S.</i> (2009) 173 Cal.App.4th 387, footnote 1, in which Presiding Justice J. Anthony Kline makes the point that rule 8.400’s first-name, last-initial style for juvenile confidentiality remains authoritative, notwithstanding the contrary practice by many Courts of Appeal. The point implicitly made is that “some sort of de facto amendment” of rule 8.400 is not good policy and cannot provide the necessary uniformity.</p> | |
| Superior Court of San Diego County By Michael M.Roddy Executive Officer | <p>Rule 8.401. subd (a)(1) – Insert “the”: “...the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by <i>the</i> reviewing court and appellate project personnel... .”</p> | The committee s have amended the proposal to improve grammar. |

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| Rule 8.403 | | |
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| Commentator | Comment | Committee Response |
| <p>Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego</p> | <p><u>Counsel</u>: The provisions in 8.403(b)(2) on appointed counsel in dependency appeals are incomplete and not as helpful as they might be. They merely say: “The reviewing court may appoint counsel to represent an indigent child, parent, or guardian.” This permissive language oversimplifies the law:</p> <ul style="list-style-type: none"> • The court must appoint counsel on request for an appealing indigent parent or child. (Welf. & Inst. Code, § 395, subd. (b)(1) [appellant child]; <i>In re Jacqueline H.</i> (1978) 21 Cal.3d 170, 177 [appellant parent]; see also <i>In re J.W.</i> (2002) 29 Cal.4th 200 [an indigent parent appealing a judgment terminating parental rights in a proceeding to free a child from parental custody and control is entitled to counsel under Fam. Code, § 7895].) • In the case of a nonappealing minor, the court is not legally obligated to appoint counsel in all cases. (Welf. & Inst. Code, § 395, subd. (b)(1); <i>In re Zeth S.</i> (2003) 31 Cal.4th 396 [court free but not compelled to appoint counsel for nonappealing minor].) However, the court’s exercise of discretion is constrained by Welfare and Institutions Code section 395, subdivision (b)(1), which provides, “If the child is not an appellant, the court of appeal <u>shall</u> appoint counsel if the court of appeal determines, after considering the recommendation of the trial counsel or guardian ad litem, . . . that appointment of counsel would benefit the child.” (Emphasis added.) | <p>This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year.</p> |

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| Rule 8.403 | | |
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| Commentator | Comment | Committee Response |
| | <ul style="list-style-type: none"> The court <u>may</u> but is not obligated to appoint counsel for other indigent parties, such as respondent parents, de facto parents, and others who may be involved in the appeal. (<i>In re Bryce C.</i> (1995) 12 Cal.4th 226 [respondent parent does not have right to counsel, although court may appoint discretionarily].) ... <p>***</p> <p>***</p> <p>*<u>RULE 8.403 RIGHT TO A APPOINTMENT OF APPELLATE COUNSEL AND PREREQUISITES FOR APPEAL</u></p> <p>(a) Welfare and Institutions Code section 601 - 602 proceedings</p> <p>***</p> <p>(b) Welfare and Institutions Code section 300 proceedings</p> <p>(1) Any judgment, order, or decree setting a hearing</p> <p><u>(1) The court must appoint counsel on request to represent an indigent parent, guardian, or child who is appealing.</u></p> <p><u>(2) Appointment of counsel for a nonappealing child is governed by Welfare and Institutions Code section 395, subdivision (b)(1).</u></p> <p><u>(3) The court may appoint counsel for other indigent parties.</u></p> | |
| Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District Los Angeles | <p>Rule 8.403: Advisory Committee Comment</p> <p>The first sentence in the Advisory Committee Comment should read as follows: “The right to appeal in Welfare and Institutions Code section 600 or 601 or 602 (juvenile delinquency) cases”</p> | The committees have amended the proposal so the advisory committee comment accurately reflects the applicable code sections—601 and 602. |

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| Rule 8.403 | | |
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| Commentator | Comment | Committee Response |
| | <p>The last case in the second sentence of the Advisory Committee Comment, involving the right to appeal in Welfare and Institutions Code section 300 (juvenile dependency) cases, is <i>In re Sean R.</i> (1989) 214 Cal.App.3d 662. <i>Sean R.</i> is actually a juvenile delinquency case involving the right of the Public Defender to appeal. Footnote 2 on pages 664–665 of <i>In re Sean R.</i> discusses appealability in Welfare and Institutions Code section 602 proceedings pursuant to Penal Code section 800. The case should be removed from the cite at the end of the second sentence and should be added after <i>In re Jeffrey M.</i> at the end of the first sentence, which is concerned with the right to appeal in delinquency matters.</p> | <p>The committees have revised the proposal to place the citation to <i>In re Sean R.</i> with the other delinquency case citations.</p> |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Rule 8.403, subd. (a) – In heading, change hyphen to “or”: “Welfare and Institutions Code section 601 <u>or</u> 602 proceedings”</p> | <p>The committees have amended the proposal as suggested by the commentator.</p> |

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| Rule 8.405(a) | | |
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| Commentator | Comment | Committee Response |
| Superior Court of San Diego County by Michael M. Roddy Executive Officer | Rule 8.405, subd. (a)(1) – Insert “CAPTA” before “guardian ad litem” (see, e.g., proposed Rule 8.411): “... must be authorized by the child or the child’s <u>CAPTA</u> guardian ad litem.” | The committees have amended the proposal to provide internal consistency. |

| Rule 8.405(b) | | |
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| Commentator | Comment | Committee Response |
| Appellate Court Committee of the San Diego County Bar Association by Matthew C. Mulford Chair | We wish to respond to the committee’s question of “whether it would be sufficient to serve a copy only on the attorney when a party is represented.” We believe that parties should always be notified, regardless of whether an attorney is representing them. This conclusion is based primarily on the following factors: (1) if the appeal is from a Welfare & Institutions Code section 366.26 hearing, the attorney may have been relieved; and (2) clients may alert the attorney they too want to appeal without having to wait until the attorney notifies them of the pending appeal. Moreover, given the very short timelines for appealing and the attorneys’ often very high caseloads, also serving the party serves as another check on preserving the party’s right to appeal. This is particularly true if the party was not in attendance at the hearing from which the appeal is being taken. Minute orders advising of the right to appeal are not always clear to the lay person. | Based on this and other comments, the committee’s proposal will maintain the requirement that each party and the attorney of record for each party must be sent a notification of the filing of a notice of appeal. |

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| Rule 8.405(b) | | |
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| Commentator | Comment | Committee Response |
| <p>Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego</p> | <p>*RULE 8.405. FILING THE APPEAL. (a) Notice of appeal (1) To appeal from a judgment or appealable order under these rules, <u>within the time prescribed by rule 8.404</u> the appellant must file a notice of appeal * * *</p> <p>(b) Prerequisite for appealing judgment, order, or decree setting hearing under Welfare and Institutions Code section 366.26 <u>Any judgment, order, or decree setting a hearing under Welfare and Institutions Code section 366.26 may be reviewed on appeal following the order at the Welfare and Institutions Code section 366.26 hearing only if:</u> (1) The procedures in rules 8.450 and 8.452 regarding writ petitions in these cases have been followed; and (2) The petition for an extraordinary writ was summarily denied or otherwise not decided on the merits.</p> <p>(c)b Superior court clerk’s duties * * *</p> | <p>This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year.</p> |
| <p>First District Appellate Project by Mat Zwerling Executive Director</p> <p>Central Appellate Project—Los Angeles by Jonathan Steiner Executive Director</p> <p>Central California Appellate Program</p> | <p>Regarding proposed new rule 8.405(b) (replacing current rule 8.400(h)), the invitation to comment particularly seeks input on whether the current rule requiring notice to <i>both</i> counsel and parties is needed, or whether notice to counsel is sufficient. We recommend retaining the current requirement of notice to both counsel and the party.</p> <p>If the appeal is from a Welfare and Institutions Code section 366.26 hearing in which parental rights have been terminated, the attorney may have been relieved. In addition, notifying the party protects the party’s appellate rights. Learning that another</p> | <p>See response above to Appellate Court Committee of the San Diego County Bar Association.</p> |

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| Rule 8.405(b) | | |
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| Commentator | Comment | Committee Response |
| <p>by George Bond Executive Director</p> <p>Sixth District Appellate Project by Michael Kresser Executive Director</p> | <p>party has appealed, may influence the noticed party decision about whether to appeal. Attorneys often have very high caseloads and may not notify their clients in a timely way. This problem can be exacerbated if the party was not in attendance at the hearing from which the appeal is being taken. Accordingly, we recommend that the current requirement of notice to both the parties and counsel (current rule 8.400(h)(1)(A)) be continued, as is proposed (proposed new rule 8.405(b)(1)(A)(i) and (ii)).</p> | |
| <p>Los Angeles County Counsel Office of the County Counsel by James M. Owens Assistant County Counsel</p> | <p>Note: The committee requested comments concerning whether it would be sufficient to serve a copy only on the attorney when a party is represented.</p> <p>Comment: Serving only the attorney of record with the notice of appeal as opposed to both the attorney and the parent should suffice. Also, it might actually prove helpful as a parent's address is oftentimes not reliable. However, by serving the notice on the parent, if there has been a change of attorney in the trial court and the former or new attorney has not informed the parent of the notice of appeal and the parent wants to file his or her own appeal, the parent would at least be on notice that an appeal has been filed.</p> | <p>See response above to Appellate Court Committee of the San Diego County Bar Association.</p> |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Rule 8.405, subd. (b) – Comment: Notification to the attorney should be sufficient. The same should apply to Rules 8.450(f) and 8.454(g). Sending copies to both the party and his or her attorney is unnecessarily duplicative and a waste of court resources—e.g., copying and postage expenses and an increase in workload for court staff already overburdened due to staff shortages.</p> | <p>See response above to Appellate Court Committee of the San Diego County Bar Association. Appellate Court. This is the current requirement in the rules; maintaining this requirement will not increase the workload of court staff.</p> |

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| Rule 8.405(b) | | |
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| Commentator | Comment | Committee Response |
| | Drafting suggestions made to only require notice to attorney of record and any unrepresented party. * | |
| Cynthia Wojan Juvenile Court Coordinator Superior Court of Solano County | <p>You asked for specific comment regarding serving the attorney only with the Notice of the Filing of a Notice of Appeal. By only having to serve the attorney of a party who is represented would be a huge timesaver in our division. Our unit is small and any timesavers are very welcomed.</p> <p>The attorney should be communicating with their client on a regular basis and can provide a copy of the filing and explain the document to the client as well if need be. I would appreciate this change.</p> | See response above to Appellate Court Committee of the San Diego County Bar Association. |

| Rule 8.407 | | |
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| Commentator | Comment | Committee Response |
| Appellate Court Committee of the San Diego County Bar Association by Matthew C. Mulford Chair | <p>The Committee requested comments on whether written motions and associated materials should automatically be included in the normal record on appeal in every juvenile case rather than requiring parties and Indian tribes to apply for inclusion of these materials. We believe that including all motions and associated materials in every record on appeal is the better practice. In general, motions are rare and likely will be part of the challenge on appeal; they will have to be added if they are not already in the record.</p> <p>Delay, confusion, and extra expense—and, possibly, overlooked issues—are caused by requiring parties to apply to</p> | The committees have amended the proposal to include motions as part of the normal record on appeal. Removing the requirement for appellate counsel to move to augment the record and for the court to rule on such motions will save more than the additional cost to trial courts of having to copy them, as they are generally not voluminous. This should also expedite the process. |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.407 | | |
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| Commentator | Comment | Committee Response |
| | the superior court to include this material or to ask the Court of Appeal to order it augmented later. Thus, it would be more efficient and provide a more complete record to require that all motions and related material be automatically included in the record in appeal. | |
| Sherri Cohen Attorney Sausalito | I support the proposed rule to include all motions as part of the normal record on appeal. It will be beneficial because it will be cost saving in the long run and will speed up the appellate process with no prejudicial effect on the litigants. The motions typically are not lengthy and it will be faster and more cost efficient to have the clerk copy them routinely than to continue to implement the current augmentation process, which involves time consuming motions to the appellate court. | See response above to Appellate Court Committee of the San Diego County Bar Association. |
| First District Appellate Project by Mat Zwerling Executive Director Central Appellate Project-Los Angeles by Jonathan Steiner Executive Director Central California Appellate Program by George Bond Executive Director Sixth District Appellate Project by Michael Kresser | In connection with the proposal to move the rule governing the record on appeal from 8.404 to 8.407, the committee specifically requests comment on whether the normal record should automatically include written motions and associated materials, rather than requiring a request. It is most efficient to have the normal record include all matters an appellate attorney would reasonably believe necessary to review. Appellate attorney is usually new to the case and has to review any materials that could possibly give rise to appellate issues. An important part of that review would be examination of written motions—particularly those decided adversely to the appellant. Requiring a request for such material would cause delay and add expense. Avoiding such delay is particularly imperative in juvenile cases, which may have shortened briefing schedules and have statutory priority. We recommend that written motions and associate material be included in the | See response above to Appellate Court Committee of the San Diego County Bar Association. |

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| Rule 8.407 | | |
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| Commentator | Comment | Committee Response |
| Executive Director | normal record. | |
| Janice A. Jenkins Attorney Albany | Re: Rule 8.407: Motions should be included as part of the normal record because, more often than not, they are relevant to the issues on appeal. It will reduce overall costs if they are routinely included because it costs more for appellate counsel to move to augment the record than it will cost to have the juvenile include them in the record to begin with. | See response above to Appellate Court Committee of the San Diego County Bar Association. |
| Hon. Judith D. McConnell Presiding Justice Court of Appeal, Division One Fourth Appellate District San Diego | The Committee requested comments on whether written motions and associated materials should automatically be included in the normal record on appeal in every juvenile case rather than requiring parties and Indian tribes to apply for inclusion of these materials. I think they should. Our court has a Miscellaneous Order (No. 090308) that requires such documents to be included in the court record, which has reduced the number of augmentation motions and delays and minimized the possibility of overlooked issues. The proposed changes to rule 8.407 to require the automatic inclusion of such documents will help the parties, their counsel and courts throughout the state. | See response above to Appellate Court Committee of the San Diego County Bar Association. |
| Janet G. Sherwood Attorney Corte Madera Carole Greeley Attorney Fairfield Susan Horst | Rule 8.407: Include motions as part of the normal record. They are often relevant to the issues on appeal. Routinely including them will reduce overall costs to the State. Making it unnecessary for appellate counsel to move to augment the record and for the court to rule on such motions will save much more than the small additional costs to trial courts of having to copy them, as they are generally not voluminous. | See response above to Appellate Court Committee of the San Diego County Bar Association. |

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| Rule 8.407 | | |
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| Commentator | Comment | Committee Response |
| Attorney San Francisco | | |
| Valerie Sopher Attorney El Cerrito | Rule 8.407. Written motions, notices of the motion, supporting and opposing memoranda and the court’s written opinion on the motion are critical to the normal record. These pleadings and opinion inform appellate counsel and the reviewing court of the issues that were raised and considered by the trial court. Reasonably competent appellate counsel will routinely request this material as part of a thorough investigation of the case, particularly when there are ineffective assistance of counsel issues to investigate. Requiring a motion to augment will further delay appellate proceedings as counsel will typically need to request an extension of time in their augment request. This requirement will incur unnecessary costs to the state and counties for the time billed by court-appointed appellate attorneys in preparing the augment request and the time court staff must spend on something that would otherwise take seconds when preparing the initial record. Now staff will need to take time to locate, Xerox, prepare a second set of envelopes for a separate mailing of the augmented material to all the parties which in and of itself will increase the cost. | See response above to Appellate Court Committee of the San Diego County Bar Association. |
| Superior Court of San Diego County by Michael M. Roddy Executive Officer | Rule 8.407, subd. (c) – Comment: Written motions and associated materials should <u>not</u> automatically be included in the record on appeal in every juvenile case. Due to the limited resources available, juvenile courts should not have to bear the expense of copying and sending documents that may be completely irrelevant to the appeal. Motions and accompanying materials (memoranda, attachments, exhibits, etc.) can be quite voluminous. The current requirements help ensure that | See response above to Appellate Court Committee of the San Diego County Bar Association. |

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| Rule 8.407 | | |
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| Commentator | Comment | Committee Response |
| | additions to the record are relevant to the appeal. | |

| Rule 8.410 | | |
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| Commentator | Comment | Committee Response |
| Los Angeles County Office of the County Counsel by James Owens Assistant County Counsel | Concern: Adding the requirement that the clerk must notify each entity and person to whom the record is sent that the trial court amended or recalled the judgment, augmented, or corrected the record, or made any other order in the case would be helpful, but may be a serious workload issue for the clerk. | The committees believe that the proposed change will result in a decrease in clerk workload. The current rule cross-references rule 8.340(a), which calls for automatic augmentation of the record whenever the trial court amends or recalls the judgment or makes any other order in the case. In recognition of the fact that there may be many subsequent orders in juvenile cases that are not relevant to the judgment or order being appealed, the committee is adding a new subdivision (b) to rule 8.410 that would provide for notice to the parties of such action by the trial court. The parties can then use this information to determine whether to request that the record be augmented. |
| Superior Court of San Diego County by Michael M. Roddy Executive Officer | Rule 8.410, subd. (b)(2) - Comment: In concept, the new provision providing for notice of an amended or recalled judgment or any other order is an improvement over automatic augmentation of the record. Perhaps, however, there should be some limitation on the types of orders that would fall under this rule; “any other orders” can be interpreted too broadly. On another point, should the notifying be performed by the | The committees do not recommend making any change to the proposal in response to this comment. The committees considered whether it was possible to identify any categories of subsequent orders that would always be irrelevant to any appeal and therefore of which counsel would not need notice. The committees concluded that this approach was not practical and that it was preferable to notify counsel of all such orders and let them determine relevancy. The committees have revised the proposal to clarify that |

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| Rule 8.410 | | |
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| Commentator | Comment | Committee Response |
| | <p>“trial court clerk” (presumably referring to the judge’s courtroom clerk) or the “superior court clerk” (the clerk tasked with compiling the clerk’s transcript, sending notices, et al.)? From an operational viewpoint, it might make more sense to assign this new duty to the superior court clerk, who is more likely to know which entities and persons would have to be notified.</p> | <p>the superior court clerk must provide notice if the trial court amends or recalls the judgment being appealed, or makes any other order in the case.</p> |

| Rule 8.411 | | |
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| Commentator | Comment | Committee Response |
| <p>Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego</p> | <p>8.411: ABANDONING THE APPEAL. I suggest minor refinements to the advisory committee comment: The Supreme Court has held that appellate counsel for an appealing minor has the power authority to move to dismiss a dependency appeal based on counsel’s assessment of the child’s best interests, but that the motion to dismiss requires the authorization of the child or, if the child is incapable of giving authorization, the authorization of the child’s CAPTA guardian ad litem. (<i>In re Josiah Z.</i> (2005) 36 Cal.4th 664.)</p> | <p>The committees agree with these changes and have incorporated them into the proposal.</p> |
| <p>Seth Gorman Attorney Half Moon Bay</p> | <p>Rule 8.411 (abandoning the appeal): Modify proposed (a): How to abandon: “An appellant may abandon the appeal at any time by filing an abandonment of the appeal. The abandonment must be authorized by the appellant and signed by either the appellant</p> | <p>The committees did not delete the requirement that the abandonment must be authorized by the child or the child’s guardian ad litem. <i>In re Josiah Z.</i> specifically held that a motion to dismiss a dependency appeal must be authorized by the child or the child’s CAPTA guardian ad litem. Further, the court stated that CAPTA and rule 1448 (now rule 5.502) mandates appointment of</p> |

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| Rule 8.411 | | |
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| Commentator | Comment | Committee Response |
| | <p>or the appellant’s attorney of record. STRIKE—“In a Welfare and Institutions Code section 300 proceeding in which the child is the appellant, the abandonment must be authorized by the child, or if the child is not capable of giving authorization, by the child’s CAPTA guardian ad litem.”</p> <p>If a child is the appellant, the abandonment must be authorized by the child, or if the child is not capable of giving authorization, by the child’s guardian ad litem, if appointed.”</p> <p>In proceedings under section 300, sometimes the parents are minors themselves and have guardian ad litem appointed, not necessarily CAPTA guardian ad litem. Moreover, the standards for dismissal of appeals as stated in <i>In re Josiah Z.</i> (2005) 36 Cal.4th 664, does not appear to be limited to CAPTA guardian ad litem. The standards appear to be that the child, if competent, is entitled to direct the litigation, including dismissal, notwithstanding the appointment of a guardian ad litem.</p> | <p>a guardian ad litem for each child on appeal from a dependency proceeding.</p> |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Rule 8.411, subd. (a) - Move comma: “... the abandonment must be authorized by the child, or, if the child is not capable of giving authorization ...”</p> <p>Rule 8.411, Advisory Committee Comment - Insert “of,” insert period after “guardian ad litem,” and move close parenthesis to end of citation: “... if the child is incapable of giving authorization, the authorization of the child’s CAPTA guardian ad litem. (<i>In re Josiah Z.</i> (2005) 36 Cal. 4th 664).”</p> | <p>The committees have amended the proposal to improve punctuation.</p> <p>The committees have amended the proposal to improve grammar and punctuation.</p> |

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| Rule 8.412 | | |
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| Commentator | Comment | Committee Response |
| Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego | <p>8.412: BRIEFS Subdivision (b)(5) should be deleted as duplicative of (and less complete than) subdivision (d). Rule 8.416(g), in turn, should reference 8.220 directly, rather than 8.412: “Rule <u>8.220</u> 8.412 applies if a party fails to file an appellant’s opening brief or a respondent’s brief, but The period specified in the notice required by that rule must be 15 days.”</p> | The committees agree with these clarifying suggestions and have incorporated them into the proposal. |
| Superior Court of San Diego County by Michael M. Roddy Executive Officer | <p>Rule 8.412, subd. (a)(1) – Delete the “s” in Rules: “Rules 8.200 governs the briefs ...”</p> <p>Rule 8.412, subd. (b)(1) – Comment: Why is the appellant allowed 40 days after the record is filed to file the AOB? Under rule 8.212, the appellant has 30 days to file the AOB. Note also that the deadlines to file the respondent’s brief and reply brief under rule 8.412 mirror the deadlines in rule 8.212 – 30 days and 20 days, respectively. Due to the need for the expeditious resolution of juvenile appeals, the deadline for the AOB should be 30 days or less in all counties. (See, e.g., rule 8.416(e)(1) [allowing 30 days for filing of AOB].)</p> <p>Rule 8.412, subd. (b)(5) - Comments: [1] Why is the time for notification by the reviewing court clerk longer for juvenile appeals (30 days) than the time specified in rule 8.220 (15 days)? The longer period prolongs an appeals process that should be faster than the process for civil appeals. [2] The content of rule 8.412(b)(5) is duplicated (but with more detail) in rule 8.412(d). The latter also allows 30 days for notification</p> | <p>The committees have amended the proposal to correct the error.</p> <p>The time frames are modeled on the times for felony appeals and have been the same for years. The extra time is given, in part, to deal with delays in sending and delivery of prison mail. Additionally, this would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year.</p> <p>The time frames are modeled on the times for felony appeals and have been the same for years. The extra time is given, in part, to deal with delays in sending and delivery of prison mail. Additionally, this would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally</p> |

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| Rule 8.412 | | |
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| Commentator | Comment | Committee Response |
| | <p>by the reviewing court clerk, which is too much time (see rule 8.416(g) [allowing 15 days for notification].) [3] The sanctions for failure to comply are slightly inconsistent; rule 8.412(d) allows the court to relieve appointed counsel and appoint new counsel, a sanction not provided by rule 8.412(b)(5), which cross-references rule 8.220. (The subdivisions are similar in that they allow the court to dismiss the appeal or decide the appeal on the record, the opening brief, and any oral argument by the appellant.)</p> <p>Rule 8.412, subd. (d) – Drafting suggestion: “... the reviewing court clerk must promptly notify the party’s counsel, or if not represented, the party, if not represented, by mail that the brief must be filed within 30 days after the notice is mailed, and that failure to comply may result in one of the following sanctions: [¶] ...”</p> | <p>cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year.</p> <p>The committees have amended the proposal to improve grammar.</p> |

| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| <p>Appellate Court Committee of the San Diego County Bar Association by Matthew C. Mulford Chair</p> | <p>We have no problem with the proposal to amend rule 8.416 to give other superior courts and the District Court of Appeal the option of treating all juvenile dependency appeals as expedited appeals, but believe a top down implementation of such rule would be more workable.</p> <p>Rule 8.416(a)(1)(b)(ii) permits individual superior courts to make appeals expedited by implementing the rule by local rule when they have reached an agreement to do so with the Court of Appeal. This language would permit implementation of the</p> | <p>The committees believe that it is appropriate to provide for implementation of these shortened time frames on the agreement of the relevant Court of Appeal and superior court. Some of these shortened time frames, particularly those relating to augmentation of the record, impact the workload of superior court staff. The committees also note that this county-by-county implementation approach has already been applied; the three courts in which these expedited timeframes have been applied to the dependency appeals do not represent</p> |

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| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| | <p>rule on an ad hoc, county by county basis within the district. While varying policies for expedited appeals across different county superior courts may have worked in the Fourth District Court of Appeal, we believe that in the First and Third Districts, which cover dozens of counties, it may prove too difficult for Court of Appeal personnel to keep track of which cases are subject to the expedited rules and the restricted timelines. A more workable rule, therefore, would permit implementation of expedited appeals from the top down, that is, the Court of Appeal should determine whether to implement the rule by local rule, perhaps after receiving comments from the superior courts within the district. Such a top down approach would give Courts of Appeal the option to adopt a rule requiring expedited appeals from all courts, rather than forcing Courts of Appeal to choose between a patchwork of expedited and non-expedited cases or, if a patchwork is infeasible, no expedited cases.</p> <p>We propose that rule 8.416(a)(I)(b)(ii) read as follows:</p> <p>(ii) Other superior courts when the Court of Appeal with jurisdiction to hear appeals from that superior court has adopted this procedure by local rule.</p> | <p>all of the counties covered by the Fourth Appellate District.</p> |
| <p>Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego</p> | <p>*It would seem to be more user-friendly to clerks and reporters handling an appeal under proposed rule 8.416 simply to incorporate the verbatim provisions of proposed 8.409(b) into 8.416(b): RULE 8.409. PREPARING, SENDING, . . . (a) Application Except as provided in rule 8.416(c)(1), This rule does not apply</p> | <p>The committees agree with this change and have incorporated it into the proposal.</p> |

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| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| | <p>to cases under rule 8.416. (b) * * * RULE 8.416. APPEALS FROM . . . (a) Application * * * (b) Preparing the transcripts Cover of record <u>(1) Within 20 days after the notice of appeal is filed:</u> <u>(A) The clerk must prepare and certify as correct an original of the clerk’s transcript and sufficient copies to comply with (c)(1).</u> <u>(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter’s transcript and the same number of copies as (A) requires of the clerk’s transcript.</u> <u>(2) In appeals under this rule, the cover of the record must prominently display the title of the proceedings:</u> <u>(A) In appeals under (a)(1)(A), “Appeal from [Judgment or Order] Under [Welfare and Institutions Code Section 366.26 or Family Code Section 7800 et seq.],” whichever is appropriate.</u> <u>(B) In appeals under (a)(1)(B), “Appeal from [Judgment or Order] Under [Welfare and Institutions Code Section 300 or Family Code Section 7800 et seq.],” whichever is appropriate.</u> 8.416: FAST-TRACK CASES Proposed subdivision (a)(1)(B)(ii) extends application of the rule to cover: “Other superior courts when the superior court and the District Court of Appeal with jurisdiction to hear appeals from that superior court have agreed and have adopted local rules providing that this rule will govern appeals from that superior court.”</p> | |

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| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| | <p>I think the implicit requirement that the decision be made on a county-by-county basis would be unworkable, especially in districts like the First and Third, which have numerous small counties. Such districts would likely end up either with a confusing patchwork—with appeals from some counties on fast-track and others not, within a single district—or with no fast-track at all, even though the Court of Appeal and all the major counties want it. The rule primarily affects the Court of Appeal, and that court should make the decision.</p> <p>The county superior courts should be <i>consulted</i> about the decision whether to have fast track, but should not have a <i>veto</i> power over the decision.</p> <p>Specifying a local rule adopted by the Court of Appeal as the means to opt in would provide an opportunity for counties to comment while not ceding veto power to them.</p> <p>Subdivision (a)(1)(B)(ii) of rule 8.416 could say: Superior courts located in districts in which the Court of Appeal has adopted a local rule providing that this rule will govern appeals in that district.</p> | |
| <p>Sherri Cohen Attorney Sausalito</p> | <p>Rule 8.416: I oppose the proposal to shorten the time in which the litigants are allowed to file a Notice of Appeal. Shortening the time during which the litigant needs to consult with his/her trial attorney to determine if a notice should be filed in the first place will have the negative effect of encouraging litigants and their lawyers to file notices automatically in every case, just to ensure that they don't miss the deadline. This will result in wasted judicial and clerical resources instead of proper</p> | <p>The proposal does not include any change to the time for filing the notice of appeal.</p> |

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| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| | utilization of the current built-in screening process whereby litigants and trial attorneys take the time to assess the possibility that a viable appellate issue exists and should be pursued. I am also opposed to this change because I see no compelling reason for litigants in dependency court to be treated differently than other people in civil or criminal cases, particularly since the need for expediency in dependency cases is already addressed in the current statutory framework (i.e., the requirement of a showing of exceptional good cause for extensions of time under various circumstances and the shortened timelines already established for filing writs of mandate when the case is referred for permanency planning). | |
| <p>First District Appellate Project by Mat Zwerling Executive Director</p> <p>Central Appellate Project—Los Angeles by Jonathan Steiner Executive Director</p> <p>Central California Appellate Program by George Bond Executive Director</p> <p>Sixth District Appellate Project by Michael Kresser Executive Director</p> | <p>Proposed rule 8.416(a)(1)(B)(ii) would permit courts to opt into fast-track in nontermination cases “when the superior court and the District Court of Appeal with jurisdiction to hear appeals from that superior court have agreed and adopted local rules providing that this rule will govern appeals from that superior court.” We agree that the rules should offer a mechanism for adopting fast-track for nontermination appeals.</p> <p>But we have some concerns about allowing fast-track only if the Court of Appeal <i>and the superior court</i> agree. In appellate districts with numerous counties, it may be difficult to gain the assent of all counties. If all counties in the district do not agree, the district would either have a confusing mixture of fast-track and non-fast-track, or—to avoid the confusion of mixed rules—the district might forego fast-track entirely, even though a majority might want it. With this concern in mind and because the procedures mainly affect the appellate courts, we believe the decision should be made solely by the Court of Appeal,</p> | See response above to Appellate Court Committee of the San Diego County Bar Association. |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| | with input from the counties and other input the Court of Appeal might seek (e.g. through public notice, the district project, attorneys, County Counsel, and other affected entities). | |
| Janice A. Jenkins Attorney Albany | Re: Rule 8.416. Application of shorter timelines in cases involving termination of parental rights is likely to have an adverse effect on the processing and quality of appeals from those orders. Fewer appellate counsels will be willing to accept appointment of those cases and it is likely that imposing a greater rush than already exists will adversely affect the quality of work. It is already quite difficult to plan the workload in view because (i) it is rarely known when the record will be ready, (ii) it is impossible to know how difficult it will be to prepare a brief until the record has been received and reviewed. Many counsel already decline cases in counties in which the “experiment” to expedite cases has been imposed. | These expedited time frames have successfully been applied in all dependency appeals in Orange, Imperial, and San Diego Counties. The committees do not believe that this had adversely affected the quality of these appeals nor made it difficult to find counsel willing to take these appointments. |
| Los Angeles County Office of the County Counsel by James M. Owens Assistant County Counsel | If a County Superior Court and its District Court of Appeal agree to use the expedited procedures under rule 8.416, the rules on augmenting or correcting the record (8.416(d)(2)) may be very burdensome on appellate attorneys in certain counties where the volume of appeals is great. The rule would require that respondents file a motion to augment/correct the record within 15 days after the opening brief is filed. Most appellate attorneys do not start reviewing the appellate record until that time or later. Recommendation: Amend the rule to allow that a motion to augment/correct the record be filed with the respondent's brief or, in the alternative, after 15 days with permission of the Court. | This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year. |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| Los Angeles Dependency Lawyers, Inc by Ellen Bacon Writ Attorney Law Offices of Emma Castro . | Aligning the other appellate divisions with the counties of Imperial, Orange and San Diego and “fast tracking” cases involving appellate review of the termination of parental rights serves not only the interests of the children whose permanency is at issue, but also parents. Visitation between parent and child typically ceases after parental rights are terminated. For those parents who are ultimately successful on an appeal from the judgment terminating parental rights, the time issue becomes yet another obstacle in the remand proceedings. Lessening the time for final resolution for all parties—parents <i>and</i> children—is a benefit to all involved. | No response required. |
| Hon. Judith D. McConnell Presiding Justice Court of Appeal Fourth Appellate, District, Division One San Diego | Proposed Rule 8.416(a)(1)(b)(ii) - Expedited Appeals for Juvenile Dependency Cases. Rule 8.416 currently provides for expedited appeals in juvenile dependency cases within the geographical boundaries of the Court of Appeal, Fourth Appellate District, Divisions One and Three. Given the fundamental and important nature of the parties’ interests in these cases, I firmly support the Committee’s proposed amendment to rule 8.416 to authorize other superior courts and courts of appeal to treat appeals in these cases as expedited appeals. In fact, I urge the Committee to make this provision mandatory rather than optional throughout the state, as recommended by the California Blue Ribbon Commission on Children in Foster Care. If, however, the provision is made optional, the Committee may wish to consider whether the decision about whether to opt into rule 8.416(a) should be made at the Court of Appeal level (where it would affect all superior courts within the appellate court’s jurisdiction), rather than on a county-by-county basis. | See response above to Appellate Court Committee of the San Diego County Bar Association. |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| Janet Saalfield Attorney Sausalito | I strongly oppose the extension of the option to require that appeals be expedited. Court-appointed appellate counsel already find it exceedingly difficult to predict and plan their workload because 1) record preparation at both the outset and augmentation often involves numerous extensions of time by court reporters and 2) when counsel accept a case, they have no idea how complicated it is, and therefore how much time it will take to brief the issues. Therefore, if expedition is required, the quality of briefing is likely to decline. | See response above to Janice A. Jenkins. |
| Janet G. Sherwood Attorney Carole Greeley Attorney Fairfield Susan Horst Attorney San Francisco | Rule 8.416. The subdivision (a)(1)(B)(ii) provision allowing other courts to use shorter timelines for termination of parental rights appeals is likely to result in fewer appellate counsel willing to accept cases and a deterioration in the quality of the work. Court-appointed appellate counsel already find it difficult to predict and plan their workload because 1) record preparation often involves extensions of time by court reporters which impact when the opening brief will be due and 2) when counsel accept a case, they have no idea how complicated it is or how much time it will actually take to brief the issues. If the case turns out to be complex or the record voluminous, the quality of briefing is likely to decline simply because counsel does not have sufficient time to do a thorough job within the shortened time lines. In addition, it is likely that some appellate counsel will simply decline to accept cases out of “expedited” counties because they know that they will not have enough time to do a good job on the appeal. | See response above to Janice A. Jenkins. |
| Valerie Sopher Attorney at Law El Cerrito | Rule 8.416. Rule 8.416(e)(1), which requires the filing of appellant’s opening brief in thirty days, in conjunction with current Rule 8.416(f), which remains unchanged and does not | See response above to Janice A. Jenkins. |

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| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| | <p>allow the reviewing court to order extensions of time except upon “an exceptional showing of good cause,” puts an onerous burden on court-appointed appellate counsel. Allowing superior and appellate courts to adopt the restrictions of Rule 8.416 (per Rule 8416(1)(B)(ii)), will undermine the quality of dependency appellate representation to indigent parents and children and potentially violate statutory and constitutional rights of California’s dependency scheme.</p> <p>(1) Court appointed counsel for indigent parties in dependency appeals need to balance a caseload while having limited control over the size and nature of accepted appointments. Often the attorney is asked to accept appointment on cases that are not “record ready” without knowing the size of the record, the complexity of the issues involved and the amount of time it will take to prepare the opening brief. Usually, the attorney does not receive the record until several days after it has been filed with the reviewing court and the time has started to run. Frequently, one record may be delayed due to court reporter extensions or other reasons, only to be filed close in time to a record in another case the attorney has accepted weeks later to maintain a sufficient caseload.</p> <p>(2) Court-appointed indigent counsel will be unfairly punished for not meeting these stringent deadlines. When counsel misses the deadline for filing the brief, the court issues a “default notice” under proposed rule 8.412(d)(1). These notices are considered black marks against the attorney’s performance record and repeated issuance could affect the amount and nature of cases offered to that attorney. With the enactment of the proposed rules, attorneys will need more time to file their</p> | |

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| Rule 8.416 | | |
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| Commentator | Comment | Committee Response |
| | <p>briefs and default notices will be more common. Issuance of more notices in and of itself will increase costs to the state in terms of court staff time and resources.</p> <p>(3) Proposed rule 8.416 potentially curtails the statutory and constitutional rights of indigent parents by creating a system that will force court-appointed counsel to perform at substandard levels due to onerous time restrictions. This will create one manageable system for criminal appellate counsel and an unmanageable system for dependency appellate counsel and lead to equal protection challenges to the rule.</p> <p>(4) Finally, this rule does not address the delay from the courts of appeal in this state which routinely issue their opinions many, many months after briefing is complete.</p> | |
| <p>Superior Court of San Diego County By Michael M. Roddy Executive Officer</p> | <p>Rule 8.416 heading - Do not delete “and.” “from the superior courts of ... Counties” is separate from “from other superior courts ...” (See subd. (a)(1)(B)(i).)</p> <p>Rule 8.416(c)(2)(B) – Change “minor” to child” for consistency with other juvenile rules.</p> | <p>The committees have amended the proposal to improve grammar.</p> <p>The committees have amended the proposal to provide internal consistency.</p> |
| <p>Jane Winer Senior Appellate Court Attorney Court of Appeal, Second Appellate District</p> | <p>8.416 – I agree</p> | <p>No response required.</p> |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.450 | | |
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| Commentator | Comment | Committee Response |
| Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego | I notice that subdivision (f) in rule 8.454, on premature and late notices of intent, has no counterpart in 8.450. Is that intentional? | Rule 8.450 does not currently contain a provision equivalent to rule 8.454(f) and adding such a provision was not part of the proposal that was circulated for public comment. The committees will consider this suggestion during an upcoming committee year. |
| Joseph Lane Clerk/Executive Officer Court of Appeal, Second Appellate District | <p>The proposed last sentence in section (a) is trying to say that Rule 8.490, DOES apply, and that rules 8.485 -8.489 and 8.491- 8.493 do not apply. (See page 44 of spr09-10.pdf)</p> <p>Article-2. 3. Writs 13 14 Rule 8.450. Notice of intent to file writ petition to review order setting hearing 15 under Welfare and Institutions Code section 366.26 16 17 (a) Application 18 19 Rules 8.450–8.452 and 5.600 govern writ petitions to review orders setting a 20 hearing under Welfare and Institutions Code section 366.26. Except as 21 provided in rule 8.452, rules 8.485–8.493 do not apply to petitions governed 22 by these rules.</p> <p>However, to find that rule 8.490 does apply, one must go the rule 8.452 (i).</p> <p>(i) Filing, modification, finality of decision, and remittitur Rule 8.490 governs the filing, modification, finality of</p> | The committees will amend the rule to cross-reference rule 8.490, rather than 8.452, which cross-references rule 8.490. |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.450 | | |
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| Commentator | Comment | Committee Response |
| | <p>decisions, and remittitur in writ proceedings under this rule. (See page 48 of spr09-10.pdf)</p> <p>We believe it be simpler to say in the first sentence “Rules 8.450-8.452, 8.490 and 5.600 govern...” and eliminate the last sentence.</p> <p>12 Article 2. 3. Writs 13 14 Rule 8.450. Notice of intent to file writ petition to review order setting hearing 15 under Welfare and Institutions Code section 366.26 16 17 (a) Application 18 19 Rules 8.450–8.452, 8.490, and 5.600 govern writ petitions to review orders setting a 20 hearing under Welfare and Institutions Code section 366.26. 21 Except as provided in rule 8.452, rules 8.485–8.493 do not apply to petitions governed 22 by these rules.</p> <p>We also recommend that a similar change be made to Rule 8.470. E.g.</p> <p>Rule 8.470. Hearing and decision in the Court of Appeal Except as provided in rules 8.400–8.456, rules 8.252–8.272, and 8.490 govern hearing and decision in the Court of Appeal in juvenile cases.</p> | <p>The proposal that was circulated for public comment did not include rule 8.470, as no changes to that rule were proposed. The committees will consider this suggestion during an upcoming committee year</p> |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.450 | | |
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| Commentator | Comment | Committee Response |
| | <p>SP09-10: Rule 8.450 Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26</p> <p>Section (f) in current rule 8.454 addresses premature and late notice of intent, but there is no similar provision in rule 8.450.</p> <p>Rule 8.454 (f) Premature or late notice of intent to file writ petition (1) A notice of intent to file a writ petition under Welfare and Institutions Code section 366.28 is premature if filed before a date for a postdetermination placement order has been made. The reviewing court may treat the notice as filed immediately after the postdetermination order has been made. (2) The superior court clerk must mark a late notice of intent to file a writ petition under section 366.28 “Received [date] but not filed,” notify the party that the notice was not filed because it was late, and send a copy of the marked notice to the party’s counsel of record, if applicable. <i>(Subd (f) amended effective January 1, 2007; adopted effective January 1, 2006.)</i></p> <p>We request that a new section (f) be added to rule 8.450 that would duplicates the information in section (f) in Rule 8.454.</p> | <p>See response above to Appellate Defenders.</p> |
| <p>Janice A. Jenkins Attorney Albany</p> | <p>Rule 8.450, subd. (f): Removing the requirement that the Notice of Intent be served on children 10 or older leaves a requirement that it be served on <i>all</i> children because they are parties to their own dependency case. When it is served on</p> | <p>The committees have amended the proposal to be consistent with section 290.1’s requirement for service on children age 10 or older.</p> |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.450 | | |
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| Commentator | Comment | Committee Response |
| <p>Janet G. Sherwood Attorney Corte Madera</p> <p>Carole Greeley Attorney Fairfield</p> <p>Susan Horst Attorney San Francisco</p> | <p>children under the age of 10, the net result will be that the caregiver will open the envelope and read it—thereby nullifying the concern that caregivers should not be served because of the confidential nature of the proceedings. It would make more sense to require that the notice be served on counsel for the parties and on all parties who are not represented by counsel. In the alternative, consistent with Welf. & Inst. Code 290.1 et seq., subparagraph (f)(1)(B) (and rule 8.405. subd. (b)) could be amended to only require service on children aged 10 or older.</p> <p>Also, elimination of a requirement that siblings or their counsel be served may deprive the siblings of due process, especially in cases where the section 366.26 hearing is set at the disposition hearing or at a six month review and there is a concurrent decision concerning sibling placement that could adversely affect the siblings’ interest in continuing the sibling relationship with the child in question. Any sibling issues would have to be addressed in the writ petition because those orders were made at the hearing at which the section 366.26 hearing was set but the siblings would not have notice of the writ proceedings unless they were represented by the same counsel who represents the child in whose case the Notice of Intent is filed.</p> | <p>Current rules 5.590 and 8.452 require service of the notice of intent and the writ to all parties entitled to receive notice under section 294. This section defines the type of sibling and manner of notice. The committees have revised the proposal to include siblings, as described in section 294, to the list of those who must receive both the notice of intent and the writ petition.</p> |
| <p>Superior Court of San Diego County</p> | <p>Rule 8.450(f) – Drafting suggestions: Change “(B) Each party, including the child, if the child is 10 years of age or older” to “(B) Each party not represented by counsel;” or “(B) Any unrepresented party;” as stated in rule 8.452(c).</p> <p>Change (C) to “Any presumed or alleged parent;”. Change (D) to “The child’s legal guardian, if any;”. Change (G) to “The</p> | <p>The committees have amended the proposal to improve grammar.</p> |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rule 8.450 | | |
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| Commentator | Comment | Committee Response |
| | <u>child’s</u> Court Appointed Special Advocate (CASA) volunteer;” (see, e.g., rule 8.452(c)). | |
| Jane Winer Senior Appellate Court Attorney Court of Appeal, Second Appellate District | Rule 8.450(f) – I do not think the Notice of Intent should be sent to “alleged parents.” | This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year |

| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| Appellate Court Committee of the San Diego County Bar Association by Matthew C. Mulford Chair | Proposed Rules 8.450(e) and 8.454(e) - Attorney Signature on Notice of Intent In response to the committee’s request for comments on whether the proposed amendments strike an appropriate balance in terms of providing access to review, we believe this change would provide better access to review for clients who may be difficult to locate or who do not appear at hearings for a variety of reasons, but for whom review is appropriate. Further, such an amendment would make this rule more consistent with the general rule that attorneys may sign documents on their client’s behalf. The concern that more notices of intent and petitions would be filed and thereby increase the workload for both the superior courts and Courts of Appeal is not a legitimate reason to deny access to review by a means open to all other parties—their attorney’s signature on the notice seeking review. The | No response required. |

SPR09-10

Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| | procedural barrier created by the need for a client signature is artificial and undermines appellate rights. Appellate review is important, and the proposed amendments simply would eliminate this procedural barrier. In general, trial attorneys are in the best position to assess whether a notice of intent is appropriate. They normally would be required to write and file the subsequent petition. It is unlikely trial attorneys would file notices of intent where no viable issues are present. | |
| Sherrri Cohen Attorney Sausalito | Rule 8.450, subd. (e): I support the proposal to allow trial counsel to sign the Notice of Intent under this subdivision. The time frame is already quite short here and I have often experienced circumstances where, after the parent has authorized the attorney to sign the document and the case is on appeal, there has been time and expense wasted in a requisite effort to “prove” the parents’ intent in the appellate court. Also, circumstances whereby an appeal will be pursued for a phantom client who has effectively abandoned the minor and the case are unlikely, given the professional responsibilities of trial and appellate counsel. | No response required. |
| First District Appellate Project by Mat Zwierling Executive Director Central Appellate Project—Los Angeles by Jonathan Steiner Executive Director Central California Appellate | Rule 8.450(e) Filing Notice of Intent to file Writ Petition The proposed amendment to rule 8.450(e)(3) would eliminate the requirement that a notice of intent to file a writ petition be personally signed by the party unless the reviewing court finds good cause for the attorney signing it. Under the proposed amendment, the attorney may sign the notice, but the filing still must still be authorized by the party. We believe the proposed change is warranted. It makes the | No response required. |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

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| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| <p>Program by George Bond Executive Director</p> <p>Sixth District Appellate Project by Michael Kresser Executive Director</p> | <p>procedures for filing a notice of intent consistent with those for filing a notice of appeal, which permit a notice signed by the party or the attorney. (E.g., rules 8.100(a)(1), 8.304(a)(3), 8.400(c)(1).) The change also reflects the legislative intent behind the Welfare and Institutions Code section 366.26 writ requirement, which was to replace the appeal process with an expedited and easy to use equivalent, not with a lesser and more burdensome process. The requirement of a personal signature could cost a party the right to review, even when the party authorized the attorney to seek writ review.</p> <p>We doubt this change will result in significantly more writ petitions. Attorneys are unlikely to file a notice of intent with no basis for believing the case has merit and they are still required to have the party’s authorization before they file the notice. The filing of the notice, moreover, does not mean the case will be completed. The attorney or client must still prepare a substantive petition; it is not unusual for no petition to be filed after a notice of intent. Even if the change meant some small number of additional filings, we do not believe this procedural hurdle is warranted by possible caseload concerns.</p> | |
| <p>Susan Horst Attorney San Francisco</p> | <p>I do, however, want to add one concern regarding allowing counsel to sign the notice of intent to file a writ petition. The present requirement specified by case law—that the parent sign, or counsel explain why the parent cannot sign and that the notice has been authorized—guarantees that the parent truly has participated in the proceedings below and has made a decision to challenge the juvenile court’s setting order. I am concerned that counsel may obtain a parent’s permission to file a petition at the outset of proceedings, thereafter have no contact with the</p> | <p>Based on the weight of the responses received, the committees recommend that rules 8.450 and 8.454 be amended to allow trial counsel to sign the notice of intent to file a writ petition but also recommend maintaining the requirement that counsel obtain the client’s authorization to file the notice of intent. This change will make the procedures for filing a notice of intent consistent with those for filing a notice of appeal, which permit a notice of appeal to be signed by the party or the attorney. The</p> |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| | parent, and nonetheless feel compelled to file an unwarranted petition. | current requirement of a personal signature by the client goes beyond ensuring that the client has authorized the filing of the notice of intent and can, in some circumstances, cost a party the right to review, even when the party has authorized the attorney to seek writ review. Deleting the procedural requirement for the obtaining the client’s signature or submitting a declaration will not alter the attorney’s duty to determine whether there are viable issues for writ review, and thus it should not impact an attorney’s decision about whether to file a notice of intent. |
| Janice Jenkins Attorney | Rule 8.450, subd. (e): Amending the rule to permit counsel to sign the Notice of Intent on behalf of client is a positive change. It reduces the likelihood that a party will be deprived on any appellate review because of logistical problems in getting the notice of intent signed by the party in such a short time frame. | No response required. |
| Los Angeles County Counsel Office of the County Counsel by James Owen Assistant County Counsel | <u>Attorney Signature on Notice of Intent to File Writ Petition:</u> <u>Recommendation:</u> The notice of intent form should include a box underneath the signature line, next to the attorney box indicating “with client’s consent.” This would allow the attorney to sign the form with the client’s consent if the client is unavailable or otherwise unable to sign the form. With regard to an ineffective assistance of counsel claim, parties will make this argument regardless of who signs the form because the attorney could sign the form and yet not file the writ petition. | This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year |

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| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| Los Angeles Dependency Lawyers, Inc. by Ellen Bacon Writ Attorney Law Offices of Emma Castro | Los Angeles Dependency Lawyers, Inc. is also fully supportive of the change allowing attorneys of record to execute the "Notice of Intent to File a Writ" form. Pursuant to Penal Code section 2625, incarcerated parents do not have a right to be present at review hearings pursuant to section 366.21 and 366.22. While some bench officers in Los Angeles County would order a parent transported upon his/her request, with the state wide budget issues, incarcerated parents will not be transported for any hearings other than disposition and a section 366.26 hearing. As a result, our trial attorneys who believe a challenge to the termination or denial of family reunification services meritorious are in a race against the clock to get the form timely filed. For many of our incarcerated parents, to whom we must send the form "snail mail", they are unfairly being denied the opportunity to file such notice challenging the court's findings because of the signature requirement and timelines. | No response required. |
| Hon. Judith D. McConnell Presiding Justice Court of Appeal Fourth Appellate District, Division One | I support the proposed changes to rule 8.450(e)(3) to allow an attorney for a party to a juvenile dependency proceeding to sign the notice of intent to file a juvenile dependency writ petition on behalf of the client without having to first submit a declaration explaining why the client did not sign the notice. This change will minimize delays that arise under the current rule when counsel fails to comply with the declaration requirement or to provide a sufficient declaration that satisfies the current rule's requirements and is consistent with the general provisions of law that allow an attorney to sign documents on his or her client's behalf. Moreover, the elimination of the requirement for the attorney | No response required. |

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| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| | <p>declaration when his or her client is unavailable (which is essentially all that this proposed change does) should not significantly affect the number of notices of intent or petitions that will be filed or the workload of the superior courts and courts of appeal. The deletion of the attorney declaration requirement would not affect whether there are viable issues for writ review, and thus it should have no impact on an attorney’s decision about whether to file a notice of intent.</p> <p>I disagree with the suggestion that the elimination of the attorney declaration requirement would increase ineffective assistance of counsel claims. Simplifying the requirements for filing a notice of intent should not have much, if any, effect on such claims. In any event, I believe a party who is unable to sign a notice of intent should not be denied access to review. Thank you for the opportunity to Comment on the proposed rule changes for the spring cycle of 2009.</p> | |
| Janet Saalfield Attorney Sausalito | <p>I am an attorney who practices full time in the appellate courts representing parents.</p> <p>I strongly support the provision providing that attorneys may sign the notice of intent. This is a critically important component of due process so as to assure access to appellate review by parents who may, due to their poverty or incarceration, be difficult for their trial counsel, who are exceedingly overburdened with cases, to reach.</p> | No response required. |
| Janet G. Sherwood Attorney Corte Madera | <p>Rule 8.450, subd. (e): Amending the rule to permit counsel to sign the Notice of Intent on behalf of client is a positive change. It reduces the likelihood that a party will be deprived</p> | No response required. |

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| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| <p>Carole Greeley Attorney Fairfield</p> <p>Susan Horst Attorney San Francisco</p> | <p>on any appellate review because of logistical problems in getting the notice of intent signed by the party in such a short time frame.</p> | |
| <p>Valerie Sopher Attorney El Cerrito</p> | <p>Rule 8.450(e). Support proposed change to allow party or party’s attorney to sign the notice of intent. This will help protect the right to challenge this critical ruling in a dependency case. This would prevent ineffective assistance of counsel claims because the attorney has protected his or her client’s right to review termination or denial of reunification services when the section 366.26 hearing is set. The concern that this provision will put a burden on the courts should be considered in light of the practice of many trial counsels who routinely do not file writs because they have no time to prepare them and are ill-equipped or underpaid to do so.</p> | <p>No response required.</p> |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Rules 8.450(e) and 8.454(e) – Comment: The Committees invited “comments on whether these proposed amendments strike an appropriate balance in terms of providing access to review in these matters.” Due to the potential of the proposed amendments to “increase the workload for both the superior courts and Courts of Appeal” and to increase the number of transcripts that may need to be prepared, as well as the potential for additional IAC claims which could result in delaying final placements, I believe the appropriate balance in terms of providing access to review is achieved by <u>leaving these rules as</u></p> | <p>See response above to Superior Court of San Mateo County.</p> |

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| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| | <p><u>they are</u>. The current versions of these rules provide for a waiver of the signing requirement for good cause if the attorney of record explains in a declaration why the party could not sign the notice. (E.g., rule 8.450(e)(3).) The existence of this waiver provision, I believe, strikes the “appropriate balance in terms of providing access to review in these matters,” especially in light of the potential for negative consequences (increased workload et al.) if the signing requirement is completely eliminated. If any of those consequences should actually occur, it is ultimately the children who will suffer.</p> | |
| <p>Superior Court of San Mateo County by Jeff Rolston Court Services Supervisor</p> | <p>Allowing the attorney to sign the notice of intent has the potential for seriously impacting the workload of the division who process juvenile writs. There is the potential for a notice of intent to be filed in every case where the Court orders a 366.26 hearing. If the attorney is going to sign the notice of intent, they should have to declare that they have either spoken with their client and the client want to file the notice, or that they have been unable to contact their client but that if they were able to contact them they believe their client would want to file the writ. The intent would be to require the attorney to make reasonable efforts to contact their client and find out whether or not they wanted to pursue a writ.</p> <p>As Background:</p> <p>The filing of the notice triggers the clerk’s office to notice the reporter to prepare their record. If attorneys filed a notice of intent in all cases where a 366.26 hearing were set then it would impact the cost of preparing the reporter’s transcripts and could have a significant fiscal impact on the Court. The</p> | <p>See response above to S. Horst. This proposal maintains the requirement that the client authorize the filing of the notice of intent.</p> |

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| Rules 8.450 & 8.454—Attorney Signature on Notice of Intent to File Writ Petition | | |
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| Commentator | Comment | Committee Response |
| | writs are prepared by the trial attorney who might be quick to file the notice of intent, in order not to be accused of ineffective counsel. However, if they are unable to contact their client before they have to write and file their writ, they more than likely will not file the writ. However, this [may not] happen until after the record had been prepared and forwarded to the COA. This already happens but on a much smaller scale; if notices of intent are filed on every case when the attorney is unable to contact their client within the time they have to file, by the time they hear from their clients, if they hear from them, it will be too late. | |
| Jane Winer Senior Appellate Court Attorney Court of Appeal, Second Appellate District | 8.450(3) & 8.454(3) – I disagree with the proposed changes. The current system works fine. There is no issue of access under the current system. The proposed change will cause delays in permanency. | See response above to comments of Susan Horst. |

| Rule 8.452 | | |
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| Commentator | Comment | Committee Response |
| Superior Court of San Diego County by Michael M. Roddy Executive Officer | <p>Rule 8.452(c) – Drafting suggestion: Change new language to: “The petitioner must serve <u>a copy of</u> the petition on: [¶¶]”</p> <p>Rule 8.452(e)(3) – Drafting suggestion: “(3) A party must attach to its motion a copy, if available, of any document or transcript that # <u>the party</u> wants added to the record.” In the third sentence, insert a comma after “If the reviewing court grants the motion.”</p> <p>Rule 8.452(e)(4) – Drafting suggestion: Change cross-</p> | <p>The committees have amended the proposal for clarity.</p> <p>The committees have not revised the proposal to include subdivisions within the rule. This increases amendments that may need to be made upon further revision of the</p> |

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| Rule 8.452 | | |
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| Commentator | Comment | Committee Response |
| | reference to "... rules 8.122(a) and 8.130(a)" to be more specific. | rules, and if the revisions are not made, the cross-references are then incorrect. |

| Rule 8.454 | | |
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| Commentator | Comment | Committee Response |
| Janice Jenkins Attorney Albany Janet G. Sherwood Attorney Corte Madera Carole Greeley Attorney Fairfield Susan Horst Attorney San Francisco | Rule 8.454, subd.(g): This should specify that if the writ petition is from a decision concerning a prospective adoptive parent, the Notice of Intent should be served on the person seeking prospective adoptive parent status. Because of the confusing wording of section 366.26, subd. (n), some courts and county counsels take the position that the prospective adoptive parent is not a party. Although there is a published appellate case which holds that they have the right to participate in the trial court proceedings as to whether they will be granted prospective adoptive parent status, which would make them a real party in interest to the writ proceedings, it should be made clear in the rule that they also have the right to notice of any writ proceedings that arise out of the trial court's determination concerning their status. | The committees have amended the proposal to clarify that both the notice of intent and the writ petition should be served on prospective adoptive parents. Because these rules currently require that the petition be sent to prospective adoptive parties, the committees considered this to be a clarification, rather than a substantive change. |
| Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District Los Angeles | Subdivision (c) of rule 8.454, Who may file, adds the words "in the superior court," to the sentence stating that "The petitioner's trial counsel, or, in the absence of trial counsel, the party, is responsible for filing <u>in the superior court</u> any notice of intent and writ petition under rules 8.454–8.456." Adding the words "in the superior court" in subdivision (c) [Who may file] does not appear necessary, since a proposed | The committees have revised the proposal to remove the reference to "in the superior court" from subdivision (c) |

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| Rule 8.454 | | |
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| Commentator | Comment | Committee Response |
| | <p>modification to subdivision (e) of rule 8.454 [Notice of intent] informs the reader that “A party seeking writ review under rules 8.454–8.456 must file <u>in the superior court</u> a notice of intent to file a writ petition . . . ”</p> <p style="text-align: center;">While keeping the addition of the words “in the superior court” in subdivision (c) might nevertheless be useful, the modification, as worded, tells the petitioner that the <i>petition</i> as well as the notice of intent is to be filed in the superior court. If the modification to subdivision (c) is retained, the rule should be changed to read, “The petitioner’s trial counsel, or, in the absence of trial counsel, the party, is responsible for filing any notice of intent and writ petition under rules 8.454–8.456. The notice of intent is to be filed in the superior court. Trial counsel is encouraged to seek . . .”</p> <p style="text-align: center;">Since the Revisers’ Notes on rule 8.454 state that the same changes are proposed for rules 8.450 and 8.454, the same modification should be added to rule 8.450(c) if the change is retained in rule 8.454(c).</p> | <p>and maintain the reference in subdivision (e).</p> |
| <p>Superior Court of San Diego County By Michael M. Roddy Executive Officer</p> | <p>Rule 8.454(e)(3) – Delete comma after “or”: “... and signed by the party or, by the attorney of record ...”</p> | <p>The committees have amended the proposal to improve punctuation.</p> |

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| Rule 8.456 | | |
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| Commentator | Comment | Committee Response |
| Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District Los Angeles | The Revisers’ Notes state that the same changes proposed for rule 8.452 are proposed for rule 8.456. Subdivision (e)(1) of rule 8.452, re augmentation and correction of the record, deletes the reference to rule 8.155 and substitutes rule 8.410. The same change should appear in (e)(1) of rule 8.456. Rule 8.456(e)(1) should be changed to read “Except as provided in (2) and (3), rule 8.155 8.410 governs augmentation or correction of the record.” | The committees have amended the proposal to contain the correct cross-reference. |

| Rules 8.452 and 8.456 - Liberal Construction of Writ Petitions | | |
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| Commentator | Comment | Committee Response |
| Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego | In rule 8.452 and 8.456, a proposal is to delete subdivision (a)(2), “The petition must be liberally construed.” I think the existing provision in 8.452 and 8.456 on construing petitions liberally were intended to reflect the purpose behind Welfare and Institutions Code section 366.26 and its implementing rules, which was to create a user-friendly, expeditious alternative to an appeal. The implicit message to clients and counsel was, “Don’t worry a lot about formalities; just get the facts and issues before us as quickly as you can.” Perhaps the “liberal construction” language was inappropriate, because so similar to that for notices of appeal, but I wonder whether some substitute can be used to retain the message. In any event, the concept of liberal construction should be added to subdivision (e) of rules 8.450 and 8.454 on the notice of intent, since that document is analogous to a notice of appeal, which is always construed liberally. | The committees have revised the proposal to include in rules 8.452 and 8.456 that the petition must be liberally construed. The committees have amended the proposal to state that writ petitions must be liberally construed. |

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Rules 8.452 and 8.456 - Liberal Construction of Writ Petitions

| Commentator | Comment | Committee Response |
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| Valerie Sopher Attorney El Cerrito | Rule 8.452(a). The proposed rule deletes the mandate under current subdivision (a)(2) that the petition must be liberally construed because the drafters do not think it belongs in a subdivision concerning what the petition must include. (Revisers’ Notes 1.) Yet, it is not reinserted anywhere else. Deleting this mandate curtails the petitioner’s right and creates a different criteria for construing notices of appeal (proposed Rule 8.405(a)(3)) and writs. | The committees have revised the proposal to include in rules 8.452 and 8.456 that the petition must be liberally construed. |

Notice under the Indian Child Welfare Act (Rules 8.405(b)(1)(A)(v), 8.450(f)(1)(I), 8.452(c)(1)(E), 8.454(b)(1)(G) and 8.456(c)(1)(E))

| Commentator | Comment | Committee Response |
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| Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego | In subdivision (f)(1)(I) of rule 8.450 and (g)(1)(I) of 8.454, the provision that the clerk must send a copy of the notice to the Indian tribe if the “court knows or has reason to know that an Indian child is involved” seems to place the clerk in the untenable position of deciding what the court “knows” or, even further, judging what the court “has reason to know” – i.e., <i>should</i> know. That is not an appropriate role for a clerk. The duty to send notice should have an ascertainable, objective basis. What seems to be the intent of the rule is to require notice to the tribe if the “court has found that an Indian child is involved, or it has received evidence about that possibility and has indicated it is considering such a finding.” A similar problem occurs in subdivision (c)(1)(E) of rules 8.452 and 8.456, on serving writ petitions and responses. | The language of the proposed amendments was taken directly from Welfare and Institutions Code 224.2, which sets out the requirements for notice to Indian tribes in juvenile proceedings. The proposed language also mirrors the language in rule 5.481, which also generally addresses these notice requirements. Staff is looking into ways to ensure that the case file clearly indicates whether the court knows or has reason to know that an Indian child is involved in the proceeding. |

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| Commentator | Comment | Committee Response |
| <p>Los Angeles County Office of the County Counsel by James M. Owens, Assistant County Counsel Monterey Park</p> | <p>*Notice of the Filing of a Notice of Appeal:</p> <p>Concern: Proposed amendments regarding statutory notice requirements in cases involving Indian children by adding the provision that, “if the court knows or has reason to know that an Indian child is involved, notice must be sent to the Indian custodian and the child’s tribe” is problematic. The appellate clerk in the clerk’s office will not readily have information regarding the Indian custodian and the child’s tribe. Oftentimes, such information is not in the minute order, but located in a social worker’s report, the reporter’s transcript or other part of the record. Moreover, unless a tribe has intervened, serving possible tribes would be a workload budget issue and may create confusion for the tribal recipients.</p> <p>Concern: Requiring the clerk to provide notice of the notice of intent to the Indian custodian and the child’s tribe, if the court knows or has reason to know that an Indian child is involved, may be problematic for the same reason as serving the notice of appeal. This information is not readily known or available to the clerk, is not necessarily in the minute orders, and may be in various parts of the record. Moreover, on these types of writ petitions, only the reporters’ transcripts from the hearing setting the section 366.26 hearing are generated so if an ICWA discussion occurs on the record at arraignment/detention or a hearing prior to the setting hearing, the clerk may not be able to determine or obtain this information.</p> <p>Service of Writ Petitions:</p> <p>Concern: Requiring service of the writ petition on the Indian</p> | <p>See response above to Appellate Defenders.</p> |

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Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases (adopt California Rules of Court rules 5.585, 8.401, 8.403, 8.404, 8.405, 8.406, 8.410, and 8.411; amend rules 5.595, 8.400, 8.412, 8.416, 8.450, 8.452, 8.454, and 8.456; amend and renumber rules 5.585, 8.404, and 8.408 as rules 5.590, 8.407, and 8.409, respectively; renumber rule 8.406 as rule 8.408; repeal rules 5.590 and 5.600; and revise forms JV-320, JV-510, JV-800, JV-820 and JV-828)

All comments are verbatim unless indicated by an asterisk (*).

| Notice under the Indian Child Welfare Act (Rules 8.405(b)(1)(A)(v), 8.450(f)(1)(I), 8.452(c)(1)(E), 8.454(b)(1)(G) and 8.456(c)(1)(E)) | | |
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| Commentator | Comment | Committee Response |
| | <p>custodian and the child’s tribe, if the court knows or has reason to know that an Indian child is involved, also may be problematic. The appellate clerk in the clerk’s office will not readily have information regarding the Indian custodian and the child’s tribe. Oftentimes, such information is not in the minute order, but located in a social worker’s report, the reporter’s transcript or other part of the record. Moreover, unless a tribe has intervened, serving possible tribes would be a workload/budget issue and may create confusion for the tribal recipients. The clerk may not have served the notice, so the other parties may not be on notice that an Indian child is involved. Only the transcripts from the setting hearing are generated, so if an ICWA discussion regarding the child’s heritage is made at an earlier hearing, the parties may not know to serve the Indian custodian or the child’s tribe.</p> | |
| <p>Orange County Bar Association by Michael G. Yoder, President Newport Beach</p> | <p>The concern here is with the Indian Child Welfare Act (ICWA) and the proposed changes for which tribes needed to be noticed. The committee comments are “To give additional guidance about statutory notice requirements in cases involving Indian children, the current reference to ‘any Indian tribe that has appeared in the proceeding’ would be modified. As amended, this provision would indicate that if the court knows or has reason to know that an Indian child is involved, notice must be sent to the Indian custodian, if any, and the child’s tribe.”</p> <p>It is believed that the language proposed for CRCs 8.405(b)(1)(A)(v), 8.450(f)(1)(I), 8.452(c)(1)(E), 8.454(b)(1)(G) and 8.456(c)(1)(E) is too vague. Such language has caused countless appeals and opinions. Language such as</p> | <p>See response above to Appellate Defenders.</p> |

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All comments are verbatim unless indicated by an asterisk (*).

| Notice under the Indian Child Welfare Act (Rules 8.405(b)(1)(A)(v), 8.450(f)(1)(I), 8.452(c)(1)(E), 8.454(b)(1)(G) and 8.456(c)(1)(E)) | | |
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| Commentator | Comment | Committee Response |
| | “to any Indian tribe that has identified the child as a member or eligible for Membership” would be less broad and at the same time comply with the spirit of ICWA. | |
| <p>First District Appellate Project by Mat Zwerling Executive Director</p> <p>Central Appellate Project—Los Angeles by Jonathan Steiner Executive Director</p> <p>Central California Appellate Program by George Bond Executive Director</p> <p>Sixth District Appellate Project by Michael Kresser Executive Director</p> | <p>In addition, the current rule provides for notice of the filing of the notice of appeal to “any Indian tribe that has appeared in the proceedings.” (Current rule 8.400(h)(2). Proposed subdivision (b)(1)(A)(v) of rule 8.405 modifies that requirement to expand the notice requirement to include an Indian custodian and BIA, in addition to the tribe. We agree with the proposed expansion of the entities to be noticed. But the proposed rule also would expand the notice requirement to apply, not just when a tribe has appeared in the case, but also when “the court knows or has reason to know that an Indian child is involved.” This change may not be practical because a superior court clerk may not be in a position to ascertain whether the court “knows” or “has reason to know” an Indian child is involved. A more practical solution might be to require notice when the clerk is aware of more concrete indications an Indian child is involved. The rule might be revised to require notice to the tribe, Indian custodian or BIA “when a tribe has appeared in the proceedings, the child has been found to be an Indian child, or the social services agency has noticed tribes or BIA about the proceedings but the court has not yet determined whether an Indian child is involved.” (This comment also applies to proposed rules 8.450(f)(1)(I), 8.452(c)(1)(E), 8.454(g)(1)(G), 8.456(c)(1)(E) governing similar provisions regarding sending a copy of the notice of intent to file a writ petitions and service of such petitions.)</p> | <p>See response above to Appellate Defenders.</p> |

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| General Comments Concerning Rules | | |
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| Commentator | Comment | Committee Response |
| <p>Appellate Court Committee of the San Diego County Bar Association by Matthew C. Mulford Chair</p> | <p>F. Overall Organization of Rules</p> <p>We suggest the rules in article 2 be reorganized to reflect the chronological progression of the appellate process. Currently, article 2 begins with rule 8.403, which addresses the appointment of appellate counsel and prerequisites for reviewing orders made at the hearing setting a Welfare and Institutions Code section 366.26 hearing. We believe article 2 should begin with what is now proposed rule 8.406, which describes the time limits applicable to filing the notice of appeal. It should be followed by what is now proposed rule 8.405, which addresses the requirements for filing the notice of appeal. This rule should be followed by rule 8.404, which discusses stays pending appeal. And that rule should be followed by rule 8.403, which discusses appointment of counsel and the prerequisites for reviewing a setting order. It should be followed by rule 8.407, which discusses the record on appeal. Thereafter the rules should follow the existing organization.</p> | <p>The committees do not agree with this suggestion. With the exception of rule 8.404, these rules address these topics in the same order as they are addressed in the rules relating to both civil and criminal appeals.</p> |
| <p>Appellate Defenders, Inc. by Elaine A. Alexander Executive Director San Diego</p> | <p>8.403: RIGHT TO COUNSEL AND WRIT REQUIREMENT 8.404: STAYING PROCEEDINGS PENDING APPEAL 8.405: FILING APPEAL 8.406: TIME TO APPEAL</p> <p>I have a few suggestions on these rules. Organization:</p> <p>These provisions seem out of order. The court does not appoint counsel or stay the proceedings until the appeal is filed, and so the rule on filing the appeal should logically go first. Perhaps</p> | <p>See response to comments of Appellate Court Committee of the San Diego County Bar Association.</p> |

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| General Comments Concerning Rules | | |
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| Commentator | Comment | Committee Response |
| | <p>they could be placed in this order: 8.405, 8.406, 8.404,8.403 and then renumbered.</p> <p>While having the rule on the time to appeal separate from the one on filing a notice of appeal is consistent with other rules, readers expecting to get this information from a rule entitled “Filing the appeal” might be puzzled or even jump to disastrously wrong conclusions (e.g., there is no deadline) when they go through it and find no reference to a due date. The matter is extremely important, and the rule should lead the reader to it. I suggest adding a cross-reference to the “Time to appeal” rule. (I suggest the committee consider a similar change to the civil and criminal rules on filing an appeals)</p> <p>It seems strange to have a subdivision on the 366.26 writ requirement be in the same rule (8.403) as the right to counsel. Because they deal with a prerequisite to filing an appeal, I suggest the writ provisions be moved into “Filing the appeal,” perhaps as new subdivision (b) – renumbering current (b) as (c).</p> | |
| <p>Committee on Appellate Courts State Bar of California by Saul Bercovitch Legislative Counsel</p> | <p>The Committee does, however, raise one issue concerning other appellate considerations regarding juvenile cases, not addressed by the current and proposed rules. The Rules of Court currently address both juvenile dependency proceedings under Welfare and Institutions Code section 300 and delinquency proceedings pursuant to Welfare and Institutions Codes sections 601 and 602 under the single designation of “juvenile” rules in the appellate context. The dependency and delinquency trial and appellate court proceedings address markedly different issues resulting in dissimilar appellate variables, such as number and</p> | <p>This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. The committees will therefore consider this suggestion during an upcoming committee year.</p> |

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| General Comments Concerning Rules | | |
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| Commentator | Comment | Committee Response |
| | <p>standing of parties, record on appeal, and public policies be applied. As to juvenile dependency, the courts must determine the safety and best interests of the child in reviewing arguments from several possible parties including, among others, the County, both parents and an attorney appointed for the child. In contrast, an appeal from a delinquency hearing closely mirrors an appeal from a criminal case as it involves a prosecutor and the juvenile charged with a crime.</p> <p>As such, the Committee submits that the distinct nature of these proceedings substantially affects the necessary record on appeal, issues and procedural policies at both the trial and appellate levels. Hence the Committee encourages the Judicial Council to consider modifying the Rules of Court in a manner that divides the current rules identified as “juvenile rules” into separate sections for “juvenile dependency” and “juvenile delinquency.”</p> | |

| FORM JV-320 | | |
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| Commentator | Comment | Committee Response |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Form JV-320, p. 1, item 2 - Change citation from 366.21(b) to 366.21(c) to reflect amendment to WIC § 366.21 effective 1-1-09.</p> <p>Form JV-320, p. 1, item 5 - Insert “and was given an opportunity to attend” at the end of the sentence to reflect amendment to WIC § 349(d) effective 1-1-09.</p> | <p>The committees have amended the proposal to reflect recent statutory amendments.</p> |

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| FORM JV-320 | | |
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| Commentator | Comment | Committee Response |
| | <p>Form JV-320, p. 1, item 7 - Add “366.25”: “sections 361.5, 366.21, 366.22, <u>366.25</u>, 727.2, or 727.3, ...” because § 366.25(a)(3) requires termination of services when the court sets a .26 hearing at the 24-month review hearing.</p> <p>Form JV-320, p. 2, item 8b - Add “and items 16-24”: “(... <i>If item 8a or 8b is not checked, go to item 14 or 15 <u>and items 16-24.</u></i>)”</p> <p>Form JV-320, p. 2, item 9e - Change last sentence (italicized parenthetical) to “items 16-24”: “(<i>If item 9 is checked, go to items 16, 17, 18, 19, and 20 <u>24.</u></i>)”</p> <p>Form JV-320, p. 2, item 10 - Add “and items 16-24”: “(<i>If item 10 is checked, go to item 14 or 15 <u>and items 16-24.</u></i>)”</p> <p>Form JV-320, p. 2, item 11 - Add “and items 16-24”: “(<i>If item 11 is checked, check reasons below and go to item 14 or 15 <u>and items 16-24.</u></i>)”</p> <p>Form JV-320, p. 3, item 13a - Change last sentence (italicized parenthetical) to “items 16-24”: “(<i>If item 13a is checked, ... and go to items 16, 17, 18, 19, and 20 <u>24.</u></i>)”</p> <p>Form JV-320, p. 3, item 13c - Change “terminated” to “prohibited”: “Visitation ... is detrimental ... and is terminated <u>prohibited.</u>” “Prohibited” would include those who never had visitation rights to begin with (e.g., relative, incarcerated parent, et al).</p> <p>Form JV-320, p. 3, item 14 - Add “and items 16-24”: “(<i>If item</i></p> | <p>The committees decided not to amend the proposal to contain all items in one instruction. The current version of the form leads the user to subsequent items on a step-by-step basis. For example, after filling out item 14 or 15, the form then directs the user to items 16, 17, 18, 19, and 20. The committee believes the current item-by-item instructions are easier for users of the form to understand.</p> <p>The committees decided not to amend the form to state that visitation is “prohibited.” The current version of the form uses the word “terminated” to mirror the language in the statute.</p> |

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| FORM JV-320 | | |
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| Commentator | Comment | Committee Response |
| | <p><i>14 is checked, ... and go to item 14c or 14d <u>and items 16-24.</u>)”</i></p> <p>Form JV-320, p. 3, item 14b - Change “terminated” to “prohibited”: “Visitation ... is detrimental ... and is terminated prohibited.” “Prohibited” would include those who never had visitation rights to begin with (e.g., relative, incarcerated parent, et al.).</p> <p>Form JV-320, p. 3, item 14d - Change last sentence (italicized parenthetical) to “items 16-24”: “<i>(If this item is checked, go to items 16, 17, 18, 19, and 20-<u>24.</u>)”</i></p> <p>Form JV-320, p. 3, item 15a - Change last sentence (italicized parenthetical) to “items 16-24”: “<i>(If item 15a is checked, ... and go to items 16, 17, 18, 19, and 20-<u>24.</u>)”</i></p> <p>Form JV-320, p. 4, item 15b - Change “terminated” to “prohibited”: “Visitation ... is detrimental ... and is terminated prohibited.” “Prohibited” would include those who never had visitation rights to begin with (e.g., relative, incarcerated parent, et al.).</p> | |

| FORM JV-510 | | |
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| Commentator | Comment | Committee Response |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Form JV-510 - Query: <i>Has any consideration been given to adding a box for the District Attorney or City Attorney? Although it would be reasonable to deem service to the social worker as service to the child welfare agency, service to the</i></p> | <p>The district attorney or city attorney could be listed in item 1, after the probation officer, there is a box for “Attorney.” While the district attorney does not represent the probation officer, the district attorney</p> |

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| FORM JV-510 | | |
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| Commentator | Comment | Committee Response |
| | <p><i>probation officer probably could not be deemed service to the prosecution for documents such as a petition for sealing, request for disclosure of juvenile case file, notice of hearing re psychotropic medications, et al. On the other hand, service to the prosecution could be indicated by using one of the boxes for "Other" on page 3.</i></p> <p>Form JV-510, p. 2, item 9 - Change slash to "or": "Tribe <u>or</u> Bureau of Indian Affairs."</p> | <p>could be listed here, as the form does not indicate the attorney represents the party. Additionally the prosecution could be listed in items 14 or 15 as "Other," as indicated by the commentator.</p> <p>The committees have amended the proposal to improve grammar.</p> |

| FORM JV-800 | | |
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| Commentator | Comment | Committee Response |
| <p>Appellate Court Committee of the San Diego County Bar Association by Matthew C. Mulford Chair</p> | <p>Revision of Notice of Appeal Form (JV-800)</p> <p>We have extensive suggestions for the juvenile notice of appeal form. We believe the current form is much too complex and has too many boxes to check, leaving too many potential traps for denying appeals based on technicalities. Because changes in the invitation to comment are de minimis, however, we will submit our suggestions in a separate memo and focus here on a few matters that cause regular problems.</p> <p>Almost all dependency appellants are indigent and require appointed counsel. It is most efficient for the request for counsel to be part of the notice of appeal so cases are not delayed by the need to contact the client in order to obtain such request. Therefore, we propose the following language be added in a new number 3 on page 1: "Appellant is indigent and</p> | <p>The committees welcome future suggestions for improving this form.</p> <p>The committees have amended the proposal to add the space for requesting appointment of counsel to form JV-800, as suggested by these commentators. The working group committees considered this to be a minor substantive change that would be unlikely to create controversy. The committees welcome future</p> |

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| FORM JV-800 | | |
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| Commentator | Comment | Committee Response |
| | <p>requests appointment of counsel on appeal. Yes No ” The remaining sections would need renumbering.</p> <p>Additionally, the language of the current form has led some courts to refuse to consider a claim based on a ruling made at the hearing delineated in the checked box, when the ruling at issue was based on a different code section. The most common example occurs in the context of Welfare and Institutions Code section 388 rulings made in connection with a section 366.26 hearing, where the notice of appeal states the appeal is from an appeal under 366.26. Some courts have refused to consider the section 388 rulings unless mentioned separately on the notice of appeal form. To alleviate this problem, we propose changing the language for line 6 on page 2 of the notice of appeal form from “6. The order appealed from was made under Welfare and Institutions Code section (check all that applies): ...” to “6. The order or orders appealed from were made at a hearing under: ...”. Such amendment is imperative to protect the right to appeal and to prevent technical mistakes or oversights from precluding the consideration of claims on their merits.</p> | <p>suggestions for improving this form.</p> <p>This would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the Rules of Court generally cannot be recommended for adoption without first being circulated for public comment. The committee will therefore consider this suggestion during an upcoming committee year.</p> |
| <p>Joseph Lane Clerk/Executive Officer Court of Appeal, Second Appellate District</p> | <p><u>Form JV-800 NOTICE OF APPEAL-JUVENILE</u></p> <p>We request that a check box be inserted on the first page of this form after item number 2, which would allow the appellant to request appointment of counsel. See for example item number 4 on the proposed criminal notice of appeal form CR-120.</p> <p style="padding-left: 40px;">4. ___ Defendant requests that the court appoint an attorney for this appeal. Defendant ___ was ___ was not represented by an appointed attorney in the superior court.</p> | <p>See response above to Appellate Court Committee of the San Diego County Bar Association.</p> |

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| FORM JV-800 | | |
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| Commentator | Comment | Committee Response |
| | <p>New item 3 could read:</p> <p>3. ___ I request that the court appoint an attorney for this appeal. I ___ was ___ was not represented by an appointed attorney in the trial court.</p> | |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Form JV-800, p. 2, item 6b - <i>Comment: If item 6c contains the language regarding the requirement of filing a writ petition, then item 6b should contain it, too (see WIC § 366.26(1)):</i> “(selection and implementation of permanent plan <u>in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits</u>)”</p> | <p>The committees have revised the proposal to reflect the statutory requirements of 366.26(1) on the form. While this is a substantive change, the committees concluded it is a minor substantive change that will not cause controversy.</p> |

| FORM JV-820 | | |
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| Commentator | Comment | Committee Response |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Form JV-820, p. 1 - Drafting suggestion for new box: “The <i>Notice of Intent to File Writ Petition</i> must be signed by the person intending who intends to file the writ petition or by the attorney of record.” This would be consistent with the language in the 4th box on page 2.</p> <p>Form JV-820, p. 2, 2nd box, bullet #4 - There is a printing error (de fac • • to) in the first sentence, which starts “After you file a writ petition ...”</p> <p>Form JV-820, p. 2, 3rd box - The citation style at the bottom</p> | <p>The committees have revised the proposal to improve grammar and punctuation on the form.</p> |

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| FORM JV-820 | | |
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| Commentator | Comment | Committee Response |
| | <p>should match the style used in the 2nd box: “SEE WELF. & INST. CODE, §§ 248-252; CAL. RULES OF COURT, RULES 5.538, and rule 5.540.”</p> <p>Form JV-820 - Query: <i>Why is the word “Section” not in upper case (like the rest of the title) in the caption on page 1 and the footers on pages 1 and 2? “... UNDER WELFARE AND INSTITUTIONS CODE <u>SECTION</u> 366.26”</i></p> | |

| FORM JV-828 | | |
|---|---|---|
| Commentator | Comment | Committee Response |
| <p>Superior Court of San Diego County by Michael M. Roddy Executive Officer</p> | <p>Form JV-828 - Delete “s” from “Rules” in citation beneath caption and in footer: “(California Rules of Court, Rules 8.452)”</p> <p>Form JV-828 - Capitalize “order”: The following <u>Order</u> to Show Cause or Alternative Writ is issued:”</p> <p>Form JV-828, item 1 - Change to “<u>Any</u> response must be filed under rule 8.452 of the California Rules of Court, [box] within 10 days after receiving this notice”</p> <p>Form JV-828, item 2 - Add “a”: “... unless requested by <u>a</u> party.”</p> <p>Form JV-828, item 3 – Drafting suggestion: “Hearing in trial court Juvenile court hearing pursuant to ... is stayed.”</p> | <p>The committees have revised the proposal to improve the grammar on the form.</p> |